

# NJSEP

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## TESTIMONY OF NEW JERSEY SPECIAL EDUCATION PRACTITIONERS ON A5366

### ASSEMBLY APPROPRIATIONS COMMITTEE

MAY 18, 2021

Thank you, Appropriations Chair and Deputy Speaker Burzichelli, and members of the Assembly Appropriations Committee for the opportunity to submit testimony on behalf of New Jersey Special Education Practitioners (NJSEP) and six supporting organizations regarding proposed A5366, which would provide critically-needed education services to students with significant disabilities who are aging out of special education. My name is Elizabeth Athos and I am an attorney for Education Law Center, presenting testimony in my capacity as moderator for NJSEP, an association of over 100 attorneys and other advocates who practice in the area of special education law in New Jersey on behalf of parents and students. I have been authorized to let you know that this NJSEP testimony has been endorsed by the following organizations who also work on behalf of parents and students: Advocates for Children of New Jersey, Education Law Center, Innisfree Foundation, NJ Advocates in Action, Save Our Schools NJ Community Organizing, and Volunteer Lawyers for Justice.

To address the profound needs of a small, but vulnerable, group of students - those with significant disabilities who are aging out of special education - NJSEP and the supporting organizations named, strongly urge you to advance A5366 as quickly as possible, since this bill will authorize extensions of eligibility for special education and related services to make up for services lost during the pandemic. Time is of the essence, since school districts have one month

or less to conduct the IEP meetings necessary for students aging out this June to obtain extensions without an interruption of services.

We want to emphasize three critical points:

First, we anticipate the number of students to be served by this bill to be small. With regard to the numbers, NJSEP does not know the numbers of New Jersey students with disabilities who will age out in 2020-21, 2021-21, and 2022-23, the three years covered under the amended A5366. However, an examination of the New York City Department of Education (NYCDOE) and the New Jersey Department of Education websites reveals that both serve approximately the same number of students with disabilities overall: New York City serves 228,000 students with disabilities and New Jersey serves 234,000. When NYCDOE provided comparable relief to a similar group of students last year, news reports revealed that the number served was just over 400 students and that NYCDOE has decided to offer an extension to students aging out this year. See <https://ny.chalkbeat.org/2021/4/15/22386434/nyc-age-out-21-special-ed>.

Second, this legislation is unlikely to cost the State any money because it requires that all of the additional services, to the extent permitted, be paid for by federal funds for pandemic relief. In our view, the services to be afforded by A5366 fall squarely within the intended purposes of those federal funds which include “address[ing] learning loss” and “address[ing] the disproportionate impact of COVID-19 on underrepresented student subgroups” such as students with disabilities. See U.S. DEPARTMENT OF EDUCATION FACT SHEET, American Rescue Plan Act of 2021, ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF FUND (ARP ESSER), available at [https://oese.ed.gov/files/2021/03/FINAL\\_ARP-ESSER-FACT-SHEET.pdf](https://oese.ed.gov/files/2021/03/FINAL_ARP-ESSER-FACT-SHEET.pdf).

We have heard opposition to A5366 based on the fact that federal IDEA funds to serve students with disabilities are intended to serve students between the ages of 3-21 only. While true as a general matter, we are unaware of any restriction on the use of IDEA funds to provide the well-recognized remedy of compensatory education to students whose denial of a free appropriate public education (FAPE) occurred before they turned 21 and lost IDEA-eligibility. Regardless, as noted above, students with disabilities are clearly intended to be served by the broad-based pandemic relief afforded by ARP ESSER (as well as by the two federal relief bills that preceded the ARP) so any age limitations contained within IDEA are not relevant here.

Finally, we can't emphasize enough the importance of these services to the population of students who will be served. This bill extends services for students with the most significant disabilities who have experienced substantial disruptions to federally-mandated transition services designed to facilitate their "movement from school to post-school activities" and prepare them "to lead productive and independent adult lives, to the maximum extent possible." 20 U.S.C. 1400 (c)(5)(A)(ii); 20 U.S.C. 1401(34); 20 U.S.C. 1414(d)(1)(A)(i)(VIII). Students lost services such as community-based training on the use of public transportation or job sampling at a worksite – functional services which are incredibly important for the post-secondary success of these students, but were not transferrable to remote instruction. Despite the fact that there has been no waiver of student rights under IDEA during the pandemic, many of these students were denied the FAPE to which they were entitled prior to turning age 21. All of those students have potential claims to compensatory education or make-up services under IDEA, but, as a practical matter, most will not receive those services without explicit State authorization. Simply put, this bill furthers sound State policy by making up essential educational services lost by some of New

Jersey's most vulnerable citizens and increasing their chances of post-secondary success.

We thank Committee Members Assemblymen Bergen and Webber for co-sponsoring this bill and urge other committee members to support it as well, given the urgency of this matter for students who have turned 21 during the 2020-21 school year and whose educational services terminate in June 2021. We also thank Committee Chair Burzichelli and all members of the Committee for your consideration of this testimony. If you have any questions or need further information, please do not hesitate to reach out to me at [eathos@edlawcenter.org](mailto:eathos@edlawcenter.org).

Organizations Supporting NJSEP Testimony:

Advocates for Children of New Jersey

Education Law Center

Innisfree Foundation

NJ Advocates in Action

Save Our Schools NJ Community Organizing

Volunteer Lawyers for Justice