

NJSEP

TESTIMONY OF NEW JERSEY SPECIAL EDUCATION PRACTITIONERS ON A5366

ASSEMBLY EDUCATION COMMITTEE

MAY 12, 2021

Thank you, Assemblywoman Lampitt, and members of the Assembly Education Committee for the opportunity to testify 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, here today 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 the NJSEP testimony that you hear today 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. At the outset, please note two critical points: 1) The Senate

Bill passed, S3434, had been amended in March to address the funding of the bill (which I discuss below) and to add other important provisions, so A5366 itself will need to be amended to match the revised version of S3434; and 2) While the number of students anticipated to be served by this bill is expected to be small¹, the lost services are incredibly important for their post-secondary success.

New Jersey students whose disabilities are so severe as to prevent them from satisfying the requirements of a high school diploma at a younger age are currently entitled to continue to receive special education and related services through the school year in which they turn 21. From the ages of 16 through 21, those students receive federally-mandated transition services as part of their educational programs, 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).

The educational programs of students with significant disabilities who require services until age 21 will generally include functional, hands-on activities – such as work-based learning, community-based instruction, and/or travel training - that are often taught outside of school

¹ 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 revised S3434. However, an examination of the New York City Department of Education 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 the New York City Department of Education (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>.

within the community or at job sites. Because these educational programs are rarely transferable to remote instruction, they were substantially disrupted by school closures that began in March 2020 and, in some cases, have continued until this day. Despite the fact that there has been no waiver of student rights under the Individuals with Disabilities Education Act (IDEA) during the pandemic, many of these students were denied the free appropriate public education (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. Rather than abandoning each family of a student with significant disabilities to fend for themselves, NJSEP members believe that sound State policy requires enactment of a law that will allow for educational services to be extended for these vulnerable New Jersey citizens to make up for essential instruction that has been lost.

Although the bill necessitates that individualized education program teams, including parents, “determine that the student requires additional or compensatory special education and related services, including transition services,” it clears the way for those services to be provided and paid for when those determinations are made. The bill’s provision that these services be paid for by federal funds for pandemic relief, to the extent permitted, will make good use of federal funds that require money to be spent on “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.

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 FAPE denial 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.

We thank the Committee Chair, Assemblywoman Lampitt, and Committee Members Assemblywoman Jasey and Assemblyman Caputo for 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 will otherwise terminate in June 2021, despite severe disruptions of instruction during the pandemic. If you have any questions or need further information, please do not hesitate to reach out to me at eathos@edlawcenter.org. Thank you for your consideration of this testimony.

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