

Testimony before the Senate Health, Human Services and Senior Citizens Committee
Bill S2160
March 9, 2021 at 1:00pm

Mary Ciccone
Director of Policy
Disability Rights New Jersey
For more information: DRNJ-COVID.org

Thank you Chairman Vitale and members of the committee for the opportunity to provide written testimony on Senate Bill S2160 which creates a special education unit within the Office of Administrative Law.

Disability Rights NJ is the federally funded, designated protection and advocacy system for people with disabilities in the State of New Jersey. Under our federal enabling statutes, we provide legal representation, advocacy, education and training, and information and referral to people with disabilities, their families, and the professionals who serve them. Disability Rights NJ advocates for students with disabilities who seek appropriate educational services and have represented many students in due process hearings. Based upon our experiences, the failure of the State to complete a due process hearing within 45 days has been extremely detrimental to the individuals we serve.

The current OAL system for special education has been problematic for some time and violates the requirements of the Individuals with Disabilities Education Act. Under IDEA, a written

Advocating and advancing the human, civil and legal rights of persons with disabilities

decision must be completed within 45 days after the filing. 34 C.F.R. 300.515; N.J.A.C. 6A:4-2.7(j). However, written decisions are never completed within that timeframe. For many years, hearings would be scheduled for many months after the filing and initial conference. Many times, the hearing dates would be spread out over a period of weeks and/or months. Eventually, in most of our cases, the school district would settle the matter on the eve of the hearing for the services that the student was seeking, but the delays resulted in the student receiving an inappropriate program for up to a year while the due process was pending. This failure has an extraordinary detrimental impact on the student and prevents the student from receiving the appropriate education program guaranteed by the IDEA.

Furthermore, the lengthy resolution process creates confusion and extra filings when a parent and school district must create a new annual Individualized Education Program (IEP) while the due process proceeding from the prior IEP is still pending. Disability Rights NJ has represented clients in which this has occurred, and as a result, had to expend additional time and effort to file a second due process petition to challenge the new IEP while the hearing was still pending.

It is not clear whether this bill will necessarily improve the current system. For any system to successfully address these concerns, there must be enough Administrative Law Judges (ALJ) to handle the caseload and adequately hear the pending cases within the 45-day timeframe. It is not clear that this bill authorizes or requires additional ALJs. Without additional ALJs, any efficiencies created by the bill will be minimal and due process hearings are still likely to be

delayed. We recommend that any bill making changes to the due process system in OAL specifically address the current shortcomings.

Thank you for the opportunity for Disability Rights NJ to provide comments to this bill.