

Testimony before the Senate Education Committee
Bill A5366/S3434
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Thank you Chairperson Lampitt and members of the committee for the opportunity to provide written testimony on Assembly Bill A5366/Senate Bill S3434 which requires boards of education to provide special education and related services to certain students exceeding the age of eligibility for special education and related services.

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 investigate allegations of abuse and neglect and monitor settings where individuals with disabilities receive services, as well as 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.

During the COVID pandemic, many students with disabilities have struggled due to school districts' remote learning. Although school districts were required to implement each child's

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individualized education program, students that are turning 21 would be receiving transition skills such as independent living skills or vocational skills that are not readily transferrable to virtual instruction. In addition, many of these students have disabilities that render them unable to benefit from virtual or remote instruction for myriad reasons that include, but are not limited to, the inability to focus for an extended period of time without in-person redirection and the lack of cognitive ability to use educational packets to instruct themselves. A shortage of special education and related services personnel to deliver the necessary in-person instruction and services has also been a significant problem. In addition, for children who need social skills integration, the limited student interaction has prevented the students from fully experiencing the services needed to make substantial gainful progress on these skills.

This bill seeks to address the negative consequences of this school year and the failures of students with disabilities to receive the services to which they are entitled. Although the Individuals with Disabilities Education Act (IDEA) provides compensatory education as an available remedy, 20 U.S.C.A. § 1415(i)(2)(c)(iii), this remedy can be difficult for parents to obtain. Many districts will only consider compensatory education if the parent files for due process. Providing students with disabilities an extra year of eligibility statutorily would make it easier for parents and students to obtain additional services for the time and services lost due to the pandemic.

A word of caution. Because the IDEA provides for compensatory services, there is a risk that this legislation may inadvertently reduce the student's right to compensatory services. This potential problem could be remedied with legislative language such as "nothing in this statute alters the rights of special education students to compensatory services or limits the delivery of compensatory education services to students who elect to attend an extra year of school," to ensure that students with disabilities continue to maintain all of their rights under the IDEA.

Finally, we would like to note that students who have turned 21 will age out of special education and lose their eligibility under the current law on June 30, 2021. In fact, there are already cases where the parent filed for due process because the district would not even consider compensatory services beyond this school year on the primary basis the student is exceeding the age of IDEA-eligibility. As a result, time is of the essence so that school districts and parents have time to discuss the student's plans and services for next year.

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

