

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 5366

**STATE OF NEW JERSEY
219th LEGISLATURE**

DATED: MAY 25, 2021

SUMMARY

- Synopsis:** Requires boards of education to provide special education and related services to certain students exceeding age of eligibility for special education and related services.
- Type of Impact:** Multi-year State expenditure increase from the Property Tax Relief Fund; multi-year increase in costs and revenues to local school districts.
- Agencies Affected:** Department of Education; Local School Districts

Office of Legislative Services Estimate

Fiscal Impact	<u>2021-2022 School Year through 2025-2026 School Year</u>
State Cost Increase	Indeterminate
Local Cost Increase	Indeterminate
Local Revenue Increase	Indeterminate

- The Office of Legislative Services (OLS) concludes that this bill may lead to increased State school aid expenditures in indeterminate amounts for costs that may be incurred as a result of the bill during the 2021-2022 through 2023-2024 school years. The OLS does not have the informational basis to project how many students would be provided additional or compensatory special education and related services, including transition services, beyond the age of 21 pursuant to the provisions of this bill.
- To the extent that costs are not covered by federal stimulus aid, the bill requires the State to appropriate such funds as may be necessary to reimburse school districts for costs borne to provide special education and related services, including transition services. The costs and revenue increases for school districts would likely vary among the districts and their magnitude would be dependent on a number of factors, including the educational placement of classified students in the district.

- Under the bill, school districts that send students to approved private schools for students with disabilities (APSSDs) may incur additional tuition costs than they otherwise would have paid through the 2025-2026 school year.
- The OLS notes that the bill requires that the special education and related services, including transition services, provided to students with disabilities under the bill will be first paid for from monies received under the various federal stimulus packages enacted to address the effects of COVID-19 before State funds are utilized.

BILL DESCRIPTION

This bill requires a board of education to temporarily provide special education and related services to certain students who exceed, or will exceed, the current age of eligibility for special education and related services in the 2020-2021 school year, 2021-2022 school year, and the 2022-2023 school year.

This bill would extend the age eligibility for special education and related services by requiring boards of education to provide the education and services included in a student's individualized education program (IEP) to students attaining the age of 21 during the 2020-2021 school year, the 2021-2022 school year, and the 2022-2023 school year, provided that the parent of the student and the IEP team determine that the student requires additional or compensatory special education and related services, including transition services.

Unless otherwise provided in the student's IEP or as ordered by a hearing officer, complaint investigation, or court of competent jurisdiction, a student would not be eligible to receive special education and related services under this bill beyond the school year in which he or she attains the age of 22.

The bill provides that the special education and related services, including transition services, provided to students with disabilities pursuant to the provisions of the bill, to the extent permitted by federal law, will be paid for from the monies received by the State or a school district under the federal Coronavirus Aid, Relief, and Economic Security Act, the federal Coronavirus Response and Relief Supplemental Appropriations Act, 2021, the federal American Rescue Plan Act, or any other federal funding provided to address the impact of the coronavirus pandemic on elementary and secondary schools as it becomes available. To the extent that these federal funds do not cover the costs borne by school districts to provide the special education and related services, including transition services, to students with disabilities pursuant to the provisions of the bill, the bill requires the State to appropriate funds as necessary from the Property Tax Relief Fund to reimburse school districts for these costs. The special education and related services funded pursuant to the provisions of the bill may include, but are not limited to, the additional staff, programs, and facilities deemed necessary by school districts to provide the special education and related services, including transition services, required under the bill.

Under the bill, the Department of Education will permit an APSSD to temporarily utilize non-qualifying spaces on school property for instruction and educational purposes in order to serve any additional students receiving special education and related services, including transition services, under the bill, if the department and the applicable county office of education determine that the school is able to provide suitable accommodations in those spaces for the additional students. The bill also provides that the department will, for the 2021-2022 school year through the 2025-2026 school year, set the maximum tentative tuition rate of each APSSD at the maximum tentative tuition rate set for the 2020-2021 school year if, during the 2021-2022 school year through the

2023-2024 school year, the school exceeds the total number of students at the approved facility in the 2020-2021 school year.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Executive has not submitted a formal fiscal note on this bill. However, in response to questions following the Senate Budget and Appropriations Committee hearing for the Department of Education on April 8, 2021, the department indicated that there are currently 8,687 students with disabilities who would be eligible for an additional year of special education and related services for the three-year period covered by the bill. The table below provides a breakdown of the number of students, by school year. The department stated that it is unable to estimate the costs to the State because it is unlikely that districts will be able to utilize federal funds to cover the costs for these students because under the federal Individuals with Disabilities Education Act (IDEA), this group of students are no longer eligible to receive the special education and related services required by the IDEA.

School Year	Number of Students with Disabilities who will attain the age of 21 on or before June 30 of the School Year
2020-2021	1,390
2021-2022	3,235
2022-2023	4,062
Total	8,687

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that this bill may lead to increased State school aid expenditures in indeterminate amounts for costs that may be incurred as a result of the bill during the 2021-2022 through 2023-2024 school years. The OLS does not have the informational basis to project how many students would be provided additional or compensatory special education and related services, including transition services, beyond the age of 21 pursuant to the provisions of this bill. To the extent that costs are not covered by federal stimulus aid, the State is required to appropriate such funds as may be necessary to reimburse school districts for costs borne to provide special education and related services, including transition services, under the bill.

In addition to potential State cost increases stemming from the bill, the provision of special education and related services specified under the bill may increase costs and revenues to local school districts. The costs and revenues for school districts would likely vary and the magnitude of the increases would be dependent on a number of factors, including the nature of the services provided and the educational placement of classified students in the district.

Under the bill, school districts that send students to APSSDs may incur additional tuition costs than they otherwise would have paid through the 2025-2026 school year. The most recent information available to the OLS indicates that 485 school districts send a total of 9,911 students to APSSDs. The OLS notes that State Board of Education regulations require the calculation of a maximum tentative tuition rate for the ensuing school year for each APSSD. The regulations also require a sending school district to pay the difference between that tentative tuition rate and the

certified, audited tuition rate in the second year following the school year for which the actual cost per student is certified.

The OLS notes that the bill requires that special education and related services, including transition services, provided to students with disabilities under the bill be first paid for from the monies received under the various federal stimulus packages enacted to address the effects of COVID-19 before State funds are utilized. According to a broadcast memo released by the New Jersey Department of Education on March 3, 2021, funds awarded under the federal Elementary and Secondary School Emergency Relief Fund may be used to provide compensatory education or recovery services, or both, to students with disabilities. Despite this, it is unclear whether federal funds would be eligible for the uses provided for in this bill.

Lastly, the OLS notes that under current law and regulation, certain students are already entitled to compensatory education beyond the age of 21 years old. In general, compensatory education may be provided to a student if it is determined that a school district failed to provide a free appropriate public education to a classified special education student.

Section: Education

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).