SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 3434

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 22, 2021

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 3434, with committee amendments.

As amended, 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.

Under current State Board of Education regulations, district boards of education are required to provide a free, appropriate public education, in accordance with an individualized education program, to students with disabilities age three through 21. If a student turns 21 years of age during the school year, defined as the period between July 1 and June 30, the student is entitled to finish the school year. On June 30 of the student's final school year, the student is no longer eligible for special education and related services. This process is commonly referred to as "aging out."

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.

Under the bill, students attaining the age of 21 during the 2020-2021 school year would be eligible for special education and related services in the 2021-2022 school year; students attaining the age of 21 during the 2021-2022 school year would be eligible for special education and related services in the 2022-2023 school year; and students attaining the age of 21 in the 2022-2023 school year would be eligible for special education and related services in the 2023-2024 school year. 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.

A student receiving special education and related services, including transition services, pursuant to the provisions of the bill, will be afforded the same rights, privileges, and remedies provided to students with disabilities pursuant to State law, State Board of Education regulations concerning special education, and the federal "Individuals with Disabilities Education Act," 20 U.S.C. s.1400 et seq. Any disputes that arise with respect to the provision or nature of services provided to a student with disabilities in the additional year as provided under the provisions of the bill may be addressed, as determined by the parent of the student, by either:

(1) mediation;

(2) a written request for a complaint investigation submitted to the Director of the Office of Special Education Policy and Dispute Resolution in the Department of Education; or

(3) a special education due process hearing pursuant to the provisions of applicable federal and State law, regulations promulgated thereto.

Finally, 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 (CARES) Act," the federal "Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act, 2021," the federal "American Rescue Plan (ARP) Act," Pub.L.117-2, 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.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) require a school district to provide special education and related services in the 2023-2024 school year to a student with disabilities who attains the age of 21 during the 2022-2023 school year;

(2) clarify that the special education and related services will be provided pursuant to the provisions of the bill if the parent of a student with disabilities and the individualized education program team determine that the student requires additional or compensatory special education and related services, including transition services, in the school year after the school year in which the student attains the age of 21;

(3) provide that any disputes that arise with respect to the provision or nature of services provided to a student with disabilities in the additional year as provided under the provisions of the bill may be addressed, as determined by the parent of the student, by either:

(a) mediation;

(b) a written request for a complaint investigation submitted to the Director of the Office of Special Education Policy and Dispute Resolution in the Department of Education; or

(c) a special education due process hearing pursuant to the provisions of applicable federal and State law, regulations promulgated thereto;

(4) provide 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 (CARES) Act," the federal "Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act, 2021," the federal "American Rescue Plan (ARP) Act," Pub.L.117-2, or any other federal funding provided to address the impact of the coronavirus pandemic on elementary and secondary schools as it becomes available;

(5) require the State to appropriate funds as necessary from the Property Tax Relief Fund to reimburse school districts for the costs to provide the special education and related services, including transition services, to students with disabilities pursuant to the provisions of the bill; and

(6) provide that 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.

FISCAL IMPACT:

The Office of Legislative Services (OLS) concludes that this bill may lead to increased State school aid expenditures in indeterminate amounts 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, during this timeframe. Under the bill, 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.

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. 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.