SENATE EDUCATION COMMITTEE

STATEMENT TO

SENATE, No. 4245

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 16, 2021

The Senate Education Committee favorably reports Senate Bill No. 4245 with committee amendments.

As amended, this bill extends the period of time a parent, guardian, or local educational agency has to request a due process hearing regarding the education of a child with disabilities during a COVID-19 school closure or during periods of virtual, remote, hybrid, or in-person instruction.

Under the "Individuals with Disabilities Education Act" (IDEA), a parent or local educational agency may request an impartial due process hearing when there is a disagreement regarding the identification, evaluation, or educational placement of a child with disabilities, or the provision of a free and appropriate public education. An impartial due process hearing is required to be requested by a parent, guardian, or local educational agency within two years from the date the parent, guardian, or agency knew, or should have known, about the alleged action that forms the basis for the complaint. The IDEA permits each state to set its own time limitations for requesting a hearing. Similar to the timeline set by the IDEA, State regulations provide that a party has two years from the date a party knew, or should have known, about the alleged action that forms the basis for the complaint to file a petition for a due process hearing.

This bill would allow a parent, guardian, or local educational agency to file a request for a due process hearing regarding the identification, evaluation, educational placement, or the provision of a free and appropriate public education of a child with a disability during a COVID-19 school closure or a period of virtual, remote, hybrid, or in-person instruction occurring between March 18, 2020 and September 1, 2021 at any time prior to September 1, 2023.

Under the bill, a local educational agency is required, not later than December 31, 2022, or earlier if requested by a parent or guardian, to hold an IEP team meeting to discuss the need for compensatory education and services for every student with a disability who had an IEP at any time between March 18, 2020 and September 1, 2021. The bill provides that a parent or guardian may file for a due process hearing at any time, up to and including September 1, 2023, to

challenge the determinations of the IEP team if the parent or guardian disagrees with the determinations.

Under the bill, if a local education agency has held an IEP team meeting prior to the effective date of the bill and discussed the need for compensatory education and services for a student with a disability who had an IEP at any time between March 18, 2020 and September 1, 2021, and documented the IEP team's determinations as required by the bill, the local educational agency is not required to hold an additional IEP meeting pursuant to the provisions of the bill, unless agreed to by a parent or guardian and a local educational agency.

The bill bars a parent or guardian who filed for mediation or a due process hearing with respect to the need for compensatory education and services for a student with a disability who had an IEP at any time between March 18, 2020 and September 1, 2021 from filing the same claims for the same time period addressed in that filing if the matter was resolved as a result of the mediation or a settlement agreement executed by the parties or a judicial or administrative order.

The provisions of the bill do not apply to any student subject to the provisions of P.L.2021, c.109 (C.18A:46-6.3). All claims for compensatory or additional services for the time period from March 18, 2020 through September 1, 2021 for students subject to the provisions of P.L.2021, c.109 (C.18A:46-6.3) shall be addressed pursuant to the provisions of P.L.2021, c.109 (C.18A:46-6.3).

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) specify that the request for a due process hearing permitted pursuant to the provisions of the bill may be filed at any time prior to September 1, 2023;

(2) require a local educational agency to hold, not later than December 31, 2022, or earlier if requested by a parent or guardian, an IEP team meeting to discuss the need for compensatory education and services for every student with a disability who had an IEP at any time between March 18, 2020 and September 1, 2021;

(3) outline specific parental notification requirements for before and after the IEP meeting;

(4) require all compensatory education and services deemed appropriate by the IEP team to be documented in an IEP in accordance with the provisions of N.J.A.C.6A:14-1.1 et seq. and provided as indicated therein;

(5) provide that parent or guardian may file for a due process hearing at any time, up to and including September 1, 2023, to challenge the determinations of the IEP team if the parent or guardian disagrees with the determinations;

(6) detail a specific situation in which a local education agency would not need to hold an IEP meeting under the provisions of the bill;

(7) bar refiling of certain claims that have already been resolved; and

(8) clarify that the provisions of the bill do not apply to any student subject to the provisions of P.L.2021, c.109 (C.18A:46-6.3), and that all claims for compensatory or additional services for the time period from March 18, 2020 through September 1, 2021 for students subject to the provisions of P.L.2021, c.109 (C.18A:46-6.3) shall be addressed pursuant to the provisions of P.L.2021, c.109 (C.18A:46-6.3).