



March 9, 2021

**Position Statement
Expressing Concerns
S-3434 (Addiego, Sweeney)**

Requires boards of education to provide special education and related services to certain students exceeding age of eligibility for special education and related services.

The New Jersey School Boards Association (NJSBA), a federation of all local school boards in the state, supports the intent of this bill to ensure that students' whose transition services may have been interrupted by the pandemic get the services that they need. The NJSBA believes all children should receive the highest quality education. The NJSBA further believes that federal and state governments and local school boards should provide the resources necessary to advance student academic success and close achievement gaps. Additionally, the NJSBA believes that the State should fund 100 percent of the costs of all required special education services in excess of a district's regular education per pupil amount.

Although well-intentioned, **S-3434 raises serious questions about implementation of the bill's provisions.**

S-3434 already covered by federal IDEA— In March 2020, the U.S. Department of Education issued guidance concerning the provision of special education services during the pandemic. In its guidance, the USDOE said: "An [Individualized Educational Program] Team ... would be required to make an individualized determination as to whether compensatory services are needed under applicable standards and requirements." The guidance continues: "If a child does not receive services after an extended period of time, a school must make an individualized determination whether and to what extent compensatory services may be needed, consistent with applicable requirements, including to make up for any skills that may have been lost." The parent, by federal law, is part of the IEP team--the group of teachers and child study team members empowered by law to make decisions about what services the student needs. In March 2021, the N.J. Department of Education said, "Neither the IDEA nor the State's special education regulations require a 1:1 ratio when calculating the amount of compensatory education to be awarded to a student with a disability. It is the role of the IEP team to determine the need, type, amount, frequency, duration, and location of compensatory education necessary to address lack of progress toward IEP goals and objectives resulting from missed services." The additional year required under this legislation may not be appropriate in all circumstances.

Costs for districts—S-3434 may increase costs for districts and the state as they will be required to retain special education students for an additional year. In the case of a special education student who attends a private school for the disabled, for instance, that may mean an additional

\$100,000 or more for tuition and transportation to the private school for that additional year of services. Because this bill creates a new requirement for districts, this may create an unfunded mandate. This bill has no appropriation to meet the requirements of this mandate. NJSBA looks forward to working with the sponsors to help identify a funding source for this well-intentioned bill.

Policy Considerations—It is unclear how this bill can mandate that special education students receive the same protections as they would under the federal IDEA. One of those protections is the ability to appeal from our state Office of Administrative Law directly to U.S. District Court. It is unclear how the state can legislate the use of these federal pathways without the federal authority to do so.

Conclusion--The need to ensure that special education students whose educational programs have been negatively impacted by the pandemic is of paramount importance. **S-3434**, although well-intentioned, needs common sense amendments that will make it more permissive, giving districts the flexibility they need to meet the individual needs of each student along with the funding necessary to accomplish the goals of this legislation.

The NJSBA looks forward to working with the sponsors of S-3434 to give districts the flexibility to meet the needs of their special education students.