

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 3759

STATE OF NEW JERSEY
218th LEGISLATURE

DATED: DECEMBER 18, 2019

SUMMARY

- Synopsis:** Creates special education unit within the Office of Administrative Law; requires annual report.
- Type of Impact:** Potential Annual Expenditure Impact to State General Fund.
- Agencies Affected:** Office of Administrative Law and Department of Education.

Office of Legislative Services Estimate

Fiscal Impact	
Potential Annual State Expenditure Impact	Indeterminate

- The Office of Legislative Services (OLS) lacks the informational basis to determine the direction and magnitude of the impact the bill may have on annual State expenditures. The proposed changes regarding the adjudication by the Office of Administrative Law (OAL) of contested special education law cases would not alter the office’s special education caseload relative to the current law baseline. Any change in annual OAL expenditures would result from reorganizing the office in accordance with the legislation and from developing a public-facing system to track contested special education cases once they are assigned to specific administrative law judges. Absent information from the OAL on the manner in which it would implement the bill, the OLS cannot assess the extent to which the bill may produce annual OAL position and expenditure outcomes that may differ from the current law baseline.

BILL DESCRIPTION

This bill affects the adjudication by the OAL of disputes that parents and school districts are unable to resolve informally or through mediation regarding a child’s special education plan, placement, or evaluation. The OAL would continue to render decisions in these contested cases. However, while generalist administrative law judges currently hear these cases, the bill would require the referral of the litigation to a special education unit the OAL would have to establish. The unit would consist of administrative law judges having expertise in special education law

whose number would be proportional to the number and complexity of contested special education cases referred to the OAL and sufficient to render decisions within mandated federal and State time periods.

The bill also directs the OAL to prepare annual reports on the work of the special education unit and to develop a public-facing system to track contested special education cases once they are assigned to specific administrative law judges. The bill would take effect on the first day of the ninth month following enactment.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS lacks the informational basis to determine the direction and magnitude of the impact the bill may have on annual State expenditures.

The bill would not change the OAL's special education law caseload relative to the current law baseline. Any change in annual OAL expenditures would result from reorganizing the office in accordance with the bill. The legislation requires the OAL to cease referring contested special education law cases to generalist administrative law judges and instead to refer these cases to a special education unit the OAL would have to establish. The unit would consist of judges having expertise in special education law. Their number would be proportional to the number and complexity of contested special education cases referred to the OAL and would be sufficient to render decisions within mandated federal and State time periods. The office would have substantial discretion to develop the formula for determining the number of judges in the special education unit. Absent information from the OAL on the formula it would adopt, the OLS cannot gauge the extent to which the bill may lead to annual OAL position and expenditure outcomes that may differ from the current law baseline.

Identifying the bill's effects on annual OAL expenditures is complicated further by recent changes to the special education dispute resolution system. In a letter dated August 6, 2019, the New Jersey Department of Education (NJDOE) informed the Office of Special Education Programs in the United States Department of Education of policy changes it is implementing in response to a corrective action plan issued by that office. The federal Office of Special Education Programs had found several instances of noncompliance by New Jersey's special education dispute resolution system with federal requirements, including that a final decision in contested cases must be reached within 45 calendar days with only limited possible extensions.

Specifically, in its August 6, 2019 letter the NJDOE noted that it would work with the OAL so that special education law hearings are scheduled in compliance with timelines established in federal law; administrative law judges receive regular training and professional development in special education law; and accurate dispute resolution data are collected and reported. In conjunction with the OAL, the NJDOE would also implement an Independent Hearing Officer pilot program in FY 2020 under which contracted independent hearing officers would preside over special education litigation. The hearing officers would supplement, but not supplant, administrative law judges. In response to FY 2020 OLS Discussion Points, the NJDOE specified that the pilot program would be financed by a \$200,000 set-aside in federal Individuals with

Disabilities Education Act funding the State anticipated receiving in FY 2020. Absent information regarding the effects of the NJDOE's announced changes on the OAL's caseload and expenditures, the OLS cannot assess how the bill would alter the new, unknown expenditure baseline.

In reply to FY 2020 OLS Discussion Points, the NJDOE also stated that between September 1, 2017 and March 31, 2019, the OAL conducted 1,389 special education due process hearings. Of that total, 720 hearings, or 52 percent, were not resolved within 45 calendar days, as required by the federal Individuals with Disabilities Education Act and its implementing regulations.

Lastly, the bill requires the OAL to report annually on the work of the special education unit and to develop a public-facing system to track contested special education cases upon assignment to specific administrative law judges. There would be an indeterminate cost increase to develop and maintain the public-facing system. As to the reporting requirements, the NJDOE already reports some of the required OAL data on its webpage and plans to publish additional data according to its August 2019 letter. It is unclear whether the bill's reporting requirements that go beyond the information the NJDOE already intends to compile and publish would increase OAL administrative expenditures considering that the office may be able to use existing resources to achieve compliance.

Section: *Judiciary*
Analyst: *Sarita Welsh*
 Associate Counsel
Approved: *Frank W. Haines III*
 Legislative Budget and Finance Officer

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.).