

STAFF

Angela C. Scheck Publisher
 Mindy Drexel Managing Editor
 Janet Gallo Creative Director
 Lynn Marie Gallo Advertising

EDITORIAL BOARD

Brian R. Lehrner Chair and A View From the Bench Editor
 Asaad K. Siddiqi Vice Chair and What I Wish I Knew Editor
 Senwan Akhtar
 Rita Ann M. Aquilio Reka Bala
 Lori Ann Buza
 Eric C. Cohen Ethics and Professional Responsibility Editor
 John C. Connell
 Nancy Del Pizzo Writer's Corner Editor
 Neil S. Dornbaum
 Angela Foster Tech Tips Editor
 Darren Gelber
 Philip W. Lamparello
 Dawn M. Monsen Lamparello
 Susan L. Nardone Working Well Co-Editor
 Mary Frances Palisano
 Michael J. Plata
 Michael F. Schaff Practice Perfect Editor
 William S. Singer
 Lisa J. Trembly
 Albertina Webb Working Well Co-Editor
 Brandon L. Wolff

NJSBA EXECUTIVE COMMITTEE

Domenick Carmagnola President
 Jeralyn L. Lawrence President-Elect
 Timothy F. McGoughran First Vice President
 William H. Mergner Jr. Second Vice President
 Christine A. Amalfe Treasurer
 Norberto A. Garcia Secretary
 Kimberly A. Yonta Immediate Past President

New Jersey Lawyer (ISSN-0195-0983) is published six times per year. Permit number 380-680. • Subscription is included in dues to members of the New Jersey State Bar Association (\$10.50); those ineligible for NJSBA membership may subscribe at \$60 per year. There is a charge of \$2.50 per copy for providing copies of individual articles • Published by the New Jersey State Bar Association, New Jersey Law Center, One Constitution Square, New Brunswick, New Jersey 08901-1520. • Periodicals postage paid at New Brunswick, New Jersey 08901 and at additional mailing offices. POSTMASTER: Send address changes to New Jersey Lawyer, New Jersey State Bar Association, New Jersey Law Center, One Constitution Square, New Brunswick, New Jersey 08901-1520. • Copyright ©2022 New Jersey State Bar Association. All rights reserved. Any copying of material herein, in whole or in part, and by any means without written permission is prohibited. Requests for such permission should be sent to New Jersey Lawyer, New Jersey State Bar Association, New Jersey Law Center, One Constitution Square, New Brunswick, New Jersey 08901-1520. • New Jersey Lawyer invites contributions of articles or other items. Views and opinions expressed herein are not to be taken as official expressions of the New Jersey State Bar Association or the author's law firm or employer unless so stated. Publication of any articles herein does not necessarily imply endorsement in any way of the views expressed or legal advice. • Printed in U.S.A. • Official Headquarters: New Jersey Lawyer, New Jersey State Bar Association, New Jersey Law Center, One Constitution Square, New Brunswick, New Jersey 08901-1520. 732-249-5000 • Advertising Display 732-565-7560.

FROM THE SPECIAL EDITOR

COVID-19 Pandemic Helps Shine a Light on Special Education

For the first time in almost 20 years, *New Jersey Lawyer* dedicates an edition to special education law. The Individuals with Disabilities Education Act (IDEA) defines special education as “specially designed instruction at no cost to parents, to meet the unique needs of a child with a disability.” According to the New Jersey Department of Education’s most recent collection report, there are approximately 238,000 classified students receiving special education in New Jersey. As reflected in this edition’s articles, special education is critical, so that all students have the opportunity to learn and appropriately progress.

In the wake of the COVID-19 health crisis, this topic could not come at a better time to help shine a light on this important subject where, even before the pandemic, there were issues concerning the delivery and effectiveness of special education programs and services for many New Jersey students. The COVID-19 pandemic has been extremely challenging for many New Jersey students with disabilities who receive special education services, and their families, as remote and hybrid learning platforms presented significant educational and developmental hurdles. Now that schools have reopened and children are being assessed, learning loss and mental health issues are widespread concerns in the special education community. The impact of the COVID-19 pandemic and the resulting learning loss and regression will affect special education students for years to come, but there is hope—New Jersey’s special education system is getting some much needed attention.

Gov. Phil Murphy signed into law several important pieces of legislation, which are referenced in this edition. First, on June 16, 2021, a bill (S-3434/A-5366, P.L.2021, c.109) was approved permitting certain special education students eligibility for an extra year of school. Those who may be eligible include students who would otherwise age out of New Jersey’s educational system because they will turn 21 during the 2020–21, 2021–22, or 2022–23 school years. The New Jersey Department of Education (DOE) estimated that about 8,700 New Jersey students will age out of their special education services during the applicable time frame. Then, on June 30, 2021, Murphy signed legislation (A-5365/S-3872, P.L.2021, c.141) that permitted a parent or guardian to request that a student repeat a grade during the 2021-2022 school year. Next, and most recently, on March 3, 2022, legislation (A-1281/S-905, P.L.2022, c.2) was signed into law, giving parents until Sept. 1, 2023, to file a due process petition with the Office of Administrative Law (OAL) relating to compensatory education claims in connection with COVID-19 school closure or period of remote, hybrid, or in-person instruction between March 18, 2020, and Sept. 1, 2021. The new law also requires school districts to hold an Individualized

Education Program (IEP) team meeting by Dec. 31, 2022, 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 Sept. 1, 2021. There is also a backlog of due process cases in the OAL, which New Jersey is attempting to rectify with legislation (S-2160/A-5701, P.L.2021, c.390) enacted on Jan. 18, 2022, establishing a special education unit within the OAL requiring completion over the next two years.

The 14 articles in this edition of *New Jersey Lawyer* offer a comprehensive compilation of special education's hottest topics, including compensatory education, inclusion, negotiation of settlements, and unilateral placements. This edition also offers practitioners guidance on home instruction, handling matters involving emotional disabilities, the complaint resolution process, obligations concerning struggling readers, and representing college students with special needs. To kick off the edition, Arsen Zartarian, the Deputy General Counsel of the Newark Board of Education and the Chair of the School Law Committee of the New Jersey State Bar Association, provides a review of exhaustion requirements under IDEA based on recent 2021 cases. Cherie Adams, a founding member of Adams, Gutierrez & Lattiboudere, LLC, representing school districts, examines recent developments in special education legislation and New Jersey federal court decisions. Fred Buglione, the Chief Executive Officer of the New Jersey Coalition for Inclusive Education (NJCIE), outlines a student's right to an inclusive education, a very important topic since New Jersey has the highest rate of segregating students in the country, despite the federal and state laws already in place providing that students with disabilities must also be educated in the least restrictive environment to the maximum extent appropriate.

John Rue, the principal of his law firm

concentrating in representing parents in legal disputes with schools, and David Rubin, who concentrates his practice on representing public school districts and private schools, provide an engaging point-counterpoint piece that explains a split of opinion among many special education practitioners concerning the ethical ground rules for negotiating settlement of litigation under IDEA. Joanne L. Butler, a partner at Schenck, Price, Smith & King, LLP representing local public school districts, Denise Dimson Rekem, a partner at Parles Rekem LLP, along with Judith Weinstock, also an attorney at Parles Rekem who focuses on representing individuals with special needs, provide guidance concerning compensatory education, which is an area that has been hotly debated even before the pandemic.

Gibbons directors Debra A. Clifford and myself, who co-lead the Gibbons Child Advocacy Team, offer a comprehensive article that reviews the applicable statutory provisions at issue when considering a unilateral placement, which is also a hotly debated area that has gained momentum given free and appropriate public education (FAPE) issues as a result of the COVID-19 pandemic. Karen Edler, who represents parents and students in education matters, provides a practitioner's guide to home instruction. Mariann Crincoli, an attorney with Sussan, Greenwald & Wesler, explains the need for school districts to address the rise in emotional disabilities. Dr. Ilise Feitshans, who works in research at the Georgetown University Law Center, reviews the impact of COVID-19 on children with disabilities.

Rebecca Spar, a well-regarded consultant in special education matters, and Elizabeth Athos, Senior Counsel with the Education Law Center, offer an article examining New Jersey's special education complaint resolution system and their view of the deficiencies. Denise G. Verzella and Anne Reynolds from Manes

& Weinberg, LLC, address the legal obligation of school districts to identify struggling readers and provide effective instruction. Lacia Japp, an attorney with Disability Rights, New Jersey's Special Education and Juvenile Justice Project, focuses her article on how special education impacts juvenile justice. Lisa Hernandez, an attorney with Manes & Weinberg, LLC and founder of ThinkSpEd, LLC, discusses the new legislation giving certain special education students an extra year in school. In the last article, Laura A. Siclari, a parent attorney and partner at Santomassimo Davis LLP, provides readers with a roadmap for college-bound students with special needs. The subject matter of these articles is critical to anyone practicing or interested in the area of special education.

I am grateful to each of the authors for sharing their time and knowledge in the area of special education, making this edition a special education resource and a tool for practitioners and those interested in special education. I would also like to thank Mindy Drexel, my managing editor, for her dedication, commitment, and helpful insights throughout this process. ■



MARY FRANCES PALISANO is a Director in the Commercial & Criminal Litigation Group at Gibbons P.C., where she co-leads the firm's Child Advocacy Team, which focuses on special education, school discipline, and juvenile delinquency proceedings. She also represents clients in a wide range of criminal matters, including state and federal crimes, municipal court cases, and conducting internal investigations. She is the chair of the firm's pro bono committee as well as the firm's pro bono coordinator and has been consistently named to New Jersey Family magazine's "Best Lawyers for Families" list in the areas of special education/special needs and criminal defense.