



State of New Jersey
DEPARTMENT OF EDUCATION
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PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ANGELICA ALLEN-McMILLAN, Ed.D.
Acting Commissioner

Via Electronic Mail Only

June 10, 2021

Elizabeth Athos, Esq.
Education Law Center
60 Park Place
Suite 300
Newark, NJ 07102

SUBJECT: Request for Special Education Complaint Investigation #2021-6446

Dear Ms. Athos:

On May 27, 2021, the New Jersey Department of Education (NJDOE) received a signed, written complaint regarding the provision of special education and related services to students with disabilities, pursuant to 34 CFR §300.153 of the Part B regulations adopted for the Individuals with Disabilities Education Act (IDEA). As required by N.J.A.C. 6A:14-9.2(b), a complainant must include a statement that the education agency has violated state or federal special education law, the facts on which that statement is based, and the time period in which the alleged violation(s) occurred.

The Office of Special Education Policy and Dispute Resolution (SPDR) has reviewed your request and is not able to identify information to indicate that an alleged violation of special education regulations has occurred within the past year. Rather, the complaint raises concerns and disagreement about the guidance issued by the NJDOE, including guidance regarding compensatory education determinations for students with disabilities as a result of COVID-19, which was issued by the NJDOE on March 3, 2021.

The guidance documents released by the NJDOE do not preclude any district from fulfilling its obligations to students with disabilities, in accordance with the provisions of the IDEA or the requirements of the state implementation regulations set forth at N.J.A.C. 6A:14. However, the guidance is intended to offer IEP teams, which include the student's parents or guardians, flexibility in determining appropriate interventions, programs, and services, including compensatory and/or recovery services needed as a result of COVID-19. As you aware, Individualized Education Programs (IEPs) are student specific and are developed by the collaboration of a team of individuals, including the student's parents or guardians, who are most knowledgeable of the student's unique and individual needs. As stated in the NJDOE guidance, distributed statewide on March 3, 2021:

“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 objective resulting from missed services.”

As was the case in your previous request for a complaint investigation against numerous school districts throughout the state, your current request for a complaint investigation is not only prospective in that it anticipates potential misapplication of the NJDOE guidance but it, like your previous request, fails to allege any statutory or regulatory non-compliance occurring within the previous calendar year. Therefore, no investigation will be initiated at this time. In accordance with the procedural safeguards set forth in the IDEA and the state’s special education regulations, actual - not prospective- disagreements about the need, type or frequency of compensatory education may be resolved through the special education dispute resolution procedures available to students, parents or guardians if there is a disagreement with the student’s IEP team’s determination concerning compensatory education.

Sincerely,

Dolores Walther

Dolores Walther, Coordinator of Complaint Investigations
Office of Special Education Policy and Dispute Resolution