



# How New Jersey’s Special Education Complaint Resolution System Fails Students

By Rebecca K. Spar and Elizabeth Athos

**T**he enactment of a federal statute governing special education in 1975, currently codified as the Individuals with Disabilities Education Act (IDEA),<sup>1</sup> opened public school-house doors to countless students with disabilities who were previously denied access to equal and appropriate educational opportunities. This article will explore New Jersey’s implementation of the federally-mandated complaint resolution process that has been established under IDEA to afford parents of students with disabilities a “prompt and expeditious,” as well as “less costly and less litigious,” means of correcting violations of their children’s special education rights.<sup>2</sup> We do so in the context of the pandemic, when parents expressed concerns that their children with disabilities were not receiving all the services in their Individualized Education Programs (IEP) during partial or full school closures.

Others reported that IEP services during this time were inappropriate, with students receiving only paper packets or activity sheets or struggling with virtual instruction. Thus, we decided to examine how New Jersey’s complaint system investigated and resolved allegations of violations of IDEA

during COVID-19. Sadly, we find that New Jersey’s system falls short in several significant ways, and we hope that our findings and recommendations will spotlight and promote the reform that is needed.

## IDEA’s Complaint Resolution Requirement

Many are familiar with IDEA’s requirement for special education due process hearings through which parents litigate complaints on their own (or, if fortunate, with legal representation). Less well known is the federal regulatory requirement for states to establish and implement state complaint procedures, separate and in addition to the due process hearing procedures established by IDEA.<sup>3</sup> Since 2006, these federal requirements have been codified within the IDEA regulations at 34 CFR §§300.151-300.153; as an alternative to due process, they obligate a state educational agency (SEA), such as the New Jersey Department of Education (NJDOE), to investigate and resolve complaints of special education violations and to provide compensatory services and monetary reimbursement when appropriate. The significance of this alternative procedure cannot be overstated: it provides an important and feasible option for parents

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without financial resources to enforce their children’s rights. Unlike due process, complaint resolution need not involve parentally retained attorneys or experts, or time off work to attend hearings.

As a general matter, the IDEA regulations mandate that states adopt procedures to do the following:

- Resolve any signed, written complaint that alleges a violation of IDEA’s requirements for school-aged children by a public agency, including one filed by an organization or individual from another state;<sup>4</sup>
- Widely disseminate the state’s complaint procedures to parents and other interested individuals and entities;<sup>5</sup> and
- Address the failure to provide appropriate services to a child or children with disabilities through “corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement)” and through “appropriate future provision of services for all children with disabilities.”<sup>6</sup>

The IDEA regulations further establish a 60-day time limit (absent exceptional circumstances or agreement to engage in mediation) and basic minimum procedures for resolving the complaint: conducting an independent on-site investigation, if necessary; making an independent determination as to whether a violation of IDEA has

occurred; and issuing a written decision that addresses each allegation in the complaint and contains findings of fact, conclusions of law, and reasons for the decision.<sup>7</sup> If needed, “technical assistance activities,” “negotiations,” and “corrective actions to achieve compliance” must be included among the “procedures for effective implementation of the SEA’s final decision.”<sup>8</sup> In addition, the IDEA regulations specify that the SEA must set aside any issue in a complaint that is also the subject of a due process hearing until the conclusion of the hearing;<sup>9</sup> resolve all other issues using the state complaint time limit and procedures,<sup>10</sup> and resolve a complaint “alleging a public agency’s failure to implement a due process hearing decision.”<sup>11</sup>

With regard to the contents of the complaint, it “must allege a violation that occurred not more than one year prior to the date that the complaint is

received.”<sup>12</sup> Notably, the scope of the complaint resolution process is intended to be exactly the same as the scope of the due process hearing process and to encompass complaints that a student has been denied the free appropriate public education (FAPE) required by IDEA.<sup>13</sup> The United States Department of Education (US ED) has described state complaint procedures as a “powerful tool” to be used for both “systemic and child-specific issues.”<sup>14</sup>

**Deficiencies in New Jersey’s Complaint Investigation System**

Apart from its due process hearing system, New Jersey has indeed established state procedures to address special education complaints through a process known as “complaint investigation,” codified at N.J.A.C. 6A:14-9.2. While mirroring the federal requirements in many respects, the New Jersey regulations



**REBECCA SPAR** retired from Cole, Schotz, P.C. in March 2018 where she had a litigation practice in education and disability rights law and represented parents and children in several precedent-setting educational cases. She is a consultant in special education matters, a member of the Board of Trustees of the Education Law Center and of New Jersey Center for Tourette Syndrome and Associated Disorders.



**ELIZABETH ATHOS** is a senior attorney at the Education Law Center, where she has worked since 1997, and facilitates New Jersey Special Education Practitioners, an association of attorneys and professional advocates representing families in special education cases.

diverge from, and narrow, those federal requirements in several significant ways. Several of these differences are relevant to this article.

First, neither the New Jersey regulations nor the Parental Rights in Special Education Handbook (PRISE)<sup>15</sup> that the state provides to parents set forth procedures for “widely disseminating” state procedures for complaints to parents and other interested individuals.<sup>16</sup>

Second, while requiring “findings” and “conclusions,” the New Jersey regulations omit the explicit federal requirements that the written decision of the SEA address “each allegation in the complaint” and contain “[t]he reasons for the SEA’s final decision.”<sup>17</sup>

Third, neither the New Jersey regulations nor PRISE inform parents of the potential remedies available through the state’s complaint investigation procedures. Although the New Jersey Department of Education uses the term “corrective action,” unlike its federal counterpart, it makes no reference to “compensatory services,” “monetary reimbursement,” or the “appropriate future provision of services for all children with disabilities.”<sup>18</sup>

Finally, neither New Jersey’s regulations nor its PRISE clearly inform parents that its complaint investigation system will address denials of FAPE caused by a failure to appropriately address an individual child’s abilities and needs.

### **Our Review of New Jersey’s Pandemic Complaint Investigation Reports**

Through OPRA requests, we obtained 13 complaint investigation reports that addressed two issues of particular concern during the pandemic: 1) failure to implement student IEPs and/or 2) the appropriateness of virtual instruction.<sup>19</sup> Eleven of the complaint investigations were filed by parents, one by a non-custodial aunt and one by a former teacher claiming systematic violations in an

approved private school for students with disabilities. The complaints involved 10 districts and one private school and covered the time period when school facilities began closing in March 2020 through July 12, 2021.<sup>20</sup> During this time period, complaint investigations were handled by NJDOE’s Office of Special Education Policy and Dispute Resolution (SPDR).<sup>21</sup> All the reports were issued on a timely basis.

### **SPDR Found Multiple Failures to Fully Implement Student IEPs**

In 11 of the 13 complaints we examined, SPDR found there were violations of core federal or state requirements. Although SPDR found that the remaining two districts were “compliant,” the primary issue raised in those two complaints was that the virtual instruction was not working for the student which, as discussed below, SPDR would not investigate.<sup>22</sup>

SPDR found districts did not implement multiple components of student IEPs including: (1) not providing the related services in the student IEPs;<sup>23</sup> (2) not providing students with their one-on-one paraprofessional; (3) not providing in-class support by the special education teacher; (4) leaving a student without a working augmentative communication device; (5) placing students in classes for students with behavioral disabilities when their IEPs required placement in a class for students with multiple disabilities; (6) not providing a transition service consisting of a structured learning experience; (7) not providing the accommodations and modification contained in the student’s IEP. In one case, a student was not able to attend their extended year program because the district did not respond to repeated requests from the parent asking for information on how to access the program.

The failures to implement student

IEPs were significant, with most occurring for months. For example, a district left a first-grade student without a working augmentative communication device for eight months.<sup>24</sup> Two students were left without any in-class support by their special education teachers for around three months.<sup>25</sup> In three cases, the students were left without their one-on-one aides between March 18, 2020, to Sept. 16, 2020,<sup>26</sup> March 2020 to sometime after Oct. 5, 2020,<sup>27</sup> and April 28, 2020, to May 26, 2021, respectively.<sup>28</sup>

In its investigation of a complaint filed by a former teacher against the private school, SPDR reviewed 10 sample IEPs selected by the private school and found that none of the nine students whose IEPs included related services consistently received them during the 2019-2020 school year. SPDR also found that two students whose IEPs called for placement in classes for students with multiple disabilities were instead placed in classes for students with behavioral disabilities and that one student did not receive their structured learning experience.<sup>29</sup>

### **SPDR Did Not Investigate and Make Findings with Respect to All Issues Raised in Complaints**

Two of SPDR’s most egregious failures to investigate and make findings concerning *all* allegations were: 1) not determining whether activity sheets and/or work packets complied with state or federal requirements; and 2) refusing to investigate and determine whether the virtual instruction was individualized and appropriate for the student.

In one case, in lieu of in-person or virtual instruction, home instructors only sent assignments to the student from March 18, 2020 to May 18, 2020.<sup>30</sup> In another case, a 4-year-old student received work packets for all their services (special education and related services) from March 18, 2020 until school

ended in June 2020.<sup>31</sup> In three cases, some related services consisted of activity sheets starting around March 17, 2020, and continuing until school closed in June 2020.<sup>32</sup> In all of these cases, SPDR failed to exercise its oversight responsibilities and directly address this issue.

As for virtual instruction, temporary regulations were approved on April 1, 2020, which allowed special education and related services to be provided virtually, online or telephonically, but only “as appropriate.”<sup>33</sup> Three families complained that the student was not doing well with virtual instruction and requested changes, including some in-person support.<sup>34</sup> In some cases, students with disabilities were prevented from receiving all their IEP services in virtual general education classes because districts chose to provide asynchronous or recorded instruction by the general education teacher for language arts and math, which precluded simultaneous in-class support or the provision of accommodations and modifications required by the student’s IEP.<sup>35</sup> In addition to violating IDEA by failing to implement the student’s IEP, providing virtual instruction in this way did not give students with disabilities the equitable access offered to students without disabilities.

Instead of making an independent determination as to whether the virtual instruction was individualized and appropriate for a student, and enabled the child to have equitable access, SPDR essentially ruled out *ever* investigating

the appropriateness of virtual instruction for individual students, saying:

“Without an individual assessment of the student’s progress, **which is beyond the scope of this investigation**, conclusions cannot be drawn about the relative efficacy of the student’s programming or the student’s ability to benefit from the delivery of special education and related services in a remote setting.” (emphasis supplied)<sup>36</sup>

The scope of the complaint investigation system is intended to be the same as the scope of a due process hearing and to encompass claims that a student has been denied an appropriate education.<sup>37</sup> Unwillingness to decide allegations that a program is not appropriate is not a new problem for NJDOE. On March 9, 2012, the U.S. ED ordered NJDOE to expand its state complaint system to include disagreements over the appropriateness of a child’s educational placement.<sup>38</sup> After continued advocacy by groups representing students and parents, NJDOE finally removed language from PRISE limiting its investigations to whether the education agency followed the correct procedures, involved the required persons, and made a determination in a timely manner with procedural safeguards. Yet, the removal of the limiting language in PRISE has not cured the problem, as evidenced by SPDR’s refusal to address allegations of the inappropriateness of virtual instruction for individual students during the pandemic.

### **SPDR Told Districts They Must Fully Implement Student IEPs During COVID-19**

Despite significant investigative failures, in its complaint investigation conclusions, SPDR said that “neither [US ED] nor the [NJDOE] have granted local educational agencies the ability to waive or be exempted from the regulations concerning the delivery of special education and related services to students with disabilities.”<sup>39</sup> It went further and told districts and the private school that during COVID-19, they must fully implement student IEPs in order to provide FAPE as required by N.J.A.C. 6A:14-4.1(a). As for those students whose parent chose for them to attend a remote setting, SPDR told their districts that they were not released of their responsibility to provide a FAPE as detailed in the student’s IEP. Similarly, when the student’s IEP required an in-class resource program, SPDR required it be provided by a certified special education teacher, with modifications in accordance with the student’s IEP.

In addition, SPDR told districts that they could not unilaterally decide not to provide services in the student’s IEP but must either hold an IEP meeting and give written notice before implementing any changes or, with the parent’s consent, follow the procedures for amending an IEP without a meeting. Finally, SPDR told districts they were required to maintain documentation that they had provided all the services in the student IEPs as required by N.J.A.C. 6A:14-1.1(h).

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## **Despite Finding Significant Violations, SPDR Provided Relief to Only One Student**

Federal regulations require states in resolving complaint investigations to address “the failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement).”<sup>40</sup> SPDR found in 11 cases that the districts did not fully implement the student IEPs, thereby violating IDEA requirements. Despite telling districts that they must implement student IEPs during COVID, however, SPDR provided relief to only one student, requiring that district to offer the student a specific amount of compensatory services. Even in that case, though, the district was not required to provide compensatory services for its failure to implement the student’s IEP but rather for violating a state regulation requiring a minimum 10 hours of instruction when a student is on home instruction.<sup>41</sup> SPDR told the district to make up instruction on a one-on-one basis for any week that the district provided fewer than 10 hours of home instruction by a certified teacher.<sup>42</sup>

As discussed below, districts are just as obligated to fully implement student IEPs and to provide compensatory services when they fail to do so. Instead, SPDR only told the districts who had not implemented student IEPs to convene an IEP meeting to “consider” or “determine” whether to provide any compensatory services to the student. Thus, SPDR left the decision about relief in the hands of the district against whom the complaint had been filed.<sup>43</sup>

## **SPDR’s Criteria for Deciding if Students Should Receive Compensatory Services Conflicts with Judicial Precedent**

The US ED reminded SEAs in its September 2021 guidance that a state’s role

with regard to compensatory services included making school districts aware of applicable case law that impacts how compensatory services are identified and determined.<sup>44</sup> SPDR does not, however, refer to any case law in its reports. Instead, SPDR further abrogated its responsibilities by telling districts to use criteria that conflicted with judicial precedent when deciding whether to provide any compensatory services.

Compensatory education is mentioned only once in IDEA’s federal statutes and regulations and that is in the complaint resolution procedures as a remedy along with monetary reimbursement.<sup>45</sup> Compensatory education is a judicially created remedy based on the federal statute and regulation that gives broad discretion to “grant such relief as deem[ed] appropriate when a student with a disability’s rights under IDEA have been violated.”<sup>46</sup>

Judicial precedent from the United States Supreme Court, as well as the Third Circuit, controls what courts, hearing officers, NJDOE and school districts must do when deciding whether a student is entitled to compensatory education. Not only did SPDR fail to inform districts as to the relevant judicial precedent pertaining to compensatory education, the minimal “guidance” SPDR did provide in its complaint reports was contrary to precedent in several ways.

First, when one parent requested monetary reimbursement, SPDR incorrectly responded that “under the regulations governing special education in New Jersey, the parent is not entitled to monetary compensation.”<sup>47</sup> There is no New Jersey regulation prohibiting monetary reimbursement to parents. Further, the federal regulations governing state complaint investigations expressly list monetary reimbursement as an available remedy.<sup>48</sup> There are also multiple United States Supreme Court and

Third Circuit Court of Appeals cases holding that monetary reimbursement is an appropriate remedy in IDEA cases.<sup>49</sup>

Second, SPDR improperly told districts to consider “insufficient progress” resulting from the reduction in special education services required by the student’s IEP in determining whether compensatory education was warranted. Because IDEA’s definition of FAPE mandates that special education and related services be provided in conformity with a student’s IEP,<sup>50</sup> the failure to do so means — by definition and as the United States Supreme Court has recognized — the student will not receive a FAPE.<sup>51</sup> Although some circuits have held that there must be more than a *de minimis* difference between the services in the IEP and those actually provided, the Third Circuit has yet to establish precedent on this issue. Even if there were such precedent, though, the implementation failures in these cases were more than *de minimis*.

Further demonstrating that “insufficient progress” should have no role in deciding whether these students were entitled to compensatory services, the Third Circuit has held that the aim of compensatory education is “to place disabled children in the same position they would have occupied but for the school district’s violations of IDEA,” by providing the educational services children should have received in the first instance.<sup>52</sup> Here, in most complaints, SPDR made factual findings as to what services students should have received, but didn’t, yet failed to obligate districts to provide the missing services as compensatory education in accordance with judicial precedent.

Third, and equally invalid, SPDR told districts to consider whether the student exhibited “any regression without recoupment in a reasonable amount of time.”<sup>53</sup> Regression is a factor that may



require additional compensatory services but is not a prerequisite or required factor in order for a student to be entitled to compensatory services.<sup>54</sup> Adding recoupment as a required factor is antithetical to the purposes of compensatory education and to established precedent in the Third Circuit.<sup>55</sup> Simply looking to whether students can recover from lost instruction does not account for the new skills that were not taught and will never put the student where they would have been had they received all the services in their IEP. At most, it would only return the student to where they were when IEP services were stopped.

Finally, SPDR incorrectly told school districts that if they did decide to provide compensatory services, they didn't need to provide the services on a one-to-one basis. The long and well-established judicial precedent in the Third Circuit requires use of a quantitative approach to determine the amount of compensatory services a student should receive.<sup>56</sup> New Jersey federal courts comply with this precedent, holding that when a school district fails to provide any education for a specified period of time, the student is entitled to compensatory education on an hour-for-hour basis for each day without schooling.<sup>57</sup> If a district only implements some portions of student IEPs, the student is entitled to an hour-for-hour replacement for services not provided unless the failure to fully implement the student's IEP pervades and undermines the entire day, entitling the student to a full day of compensatory services for each day their IEP was not fully implemented.<sup>58</sup> A parent or adult student can always request that something other than the quantitative approach be used, or the parties can agree to something different, but absent this, the precedent in the Third Circuit requires a quantitative approach.

### **SPDR Did Not Take Corrective Action to Prevent Districts from Continuing to Violate State and Federal Requirements**

In addition to providing corrective action to address the needs of an individual child (such as compensatory services or monetary reimbursement), states, pursuant to their general supervisory authority, must consider and, if need be, investigate whether the violations raised in the individual complaint are systematic violations impacting other students in the district. If so, the state must address "appropriate future provision of services for all children with disabilities" by providing corrective action needed to remedy systematic issues.<sup>59</sup>

The factual findings made by SPDR show that none of the districts, including the two which SPDR found compliant, fully implemented the student IEPs. In addition, SPDR's investigations showed that districts were unilaterally deciding (without IEP meetings and written notice to the parents) to not provide core IEP services such as one-to-one aides, in-class support by special education teachers, and accommodations and modifications. One board attorney erroneously told SPDR that their district was not obligated to fully implement student IEPs when the parent chose remote learning, and the district was at least partially open.<sup>60</sup> SPDR still did not impose any corrective action to ensure that all student IEPs in the districts were fully implemented and IEP meetings were held, and written notice provided, when a district believed that changes to the IEP were warranted.

Similarly, despite the private school's pervasive failures to implement student IEPs during the 2019-2020 school year, all SPDR required it to do was send copies of all student logs to the sending districts and ask the districts to hold an IEP meeting and consider the need for compensatory

services. SPDR took no steps to ensure that the private school did not continue to fail to implement student IEPs going forward. SPDR did not even require the private school to provide a copy of the complaint investigation report to the parents of the 10 students discussed in the report.

Although SPDR found that multiple districts as well as the private school were not documenting the provision of IEP services in accordance with state regulations, it only required one district to take corrective action by reviewing its procedures and revising them as necessary to ensure that provision of IEP services was documented in accordance with the regulations.<sup>61</sup> The only other corrective action taken by SPDR was imposed on the district that did not respond to a parent's repeated requests for how their child could access their extended year program. In that case, the district was directed to send a memorandum to all child study team members and special education supervisors informing them of the process for responding to parent requests when CST members were on vacation.<sup>62</sup>

### **Concluding Thoughts**

In reviewing the 13 complaint investigation reports, the most significant positive finding was that, although recognizing the difficulties districts might experience during COVID-19, SPDR was emphatic that districts must still fully implement student IEPs. A second positive result was that SPDR's reports were completed on a timely basis.

Other results are disappointing and show that significant changes and work is needed if New Jersey is to have an effective state complaint resolution system. First, state regulations and New Jersey's PRISE must be changed so that they are consistent with federal regulations, including informing parents that compensatory

services and monetary reimbursement are possible remedies. Next, the state must comply with federal requirements by: 1) widely and accurately disseminating complaint procedures to parents and other interested individuals; 2) providing compensatory services, monetary reimbursement or other appropriate relief to individual students when their IDEA rights are violated; 3) taking corrective action to ensure “appropriate future provision of services for all children with disabilities;” 4) conducting thorough and independent investigations; and 5) investigating and making findings on all issues raised in a complaint including claims that virtual instruction is not appropriate for the student. Third, the state’s conclusions must conform to judicial precedent. Finally, posting complaint reports on NJDOE’s website, as other states do, will educate both parents and school districts about student rights and district obligations.

Having a viable state complaint system is too important, particularly for those parents who lack the financial means to pay for an attorney and the expert needed to achieve a positive outcome in a due process hearing, to leave in its current ineffective state. ■

## Endnotes

1. 20 U.S.C. §§ 1400 to 1482.
2. *Beth V. v. Carroll*, 87 F. 3d 80, 87 (3d Cir. 1996); *Lucht v. Molalla*, 225 F. 3d 1023, 1029 (9 Cir. 2000).
3. This requirement, enacted under the general authority of the U.S. Secretary of Education, 20 U.S.C. §1221e-3, has existed in one form or another since 1977. See United States Department of Education Memorandum and attached Q&A, Complaint Resolution Procedures Under Part B of the IDEA (July 23, 2013), 13-08, p. 15 (hereinafter, “US ED 2013 Complaint Resolution Q&A”).
4. 34 C.F.R. 300.151(a)(1), incorporating *inter alia*, 34 C.F.R. 300.153(a) and (b).
5. 34 C.F.R. 300.151(a)(2).
6. 34 C.F.R. 300.151(b).
7. 34 C.F.R. 300.152(a).
8. 34 C.F.R. 300.152(b)(2).
9. 34 C.F.R. 300.152(c)(1).
10. *Id.*
11. 34 C.F.R. 300.152(c)(3).
12. 34 C.F.R. 300.153 (c).
13. US ED 2013 Complaint Resolution Q&A, p. 19.
14. *Id.*, p. 20.
15. The most recent August 2019 version of PRISE (available only in English) can be accessed on the New Jersey Department of Education’s website at [nj.gov/education/specialed/form/prise/](http://nj.gov/education/specialed/form/prise/).
16. 34 C.F.R. 300.151(a)(2). In addition, New Jersey does not explicitly provide, as does the federal government, that an organization or individual from another state may file a complaint. Compare N.J.A.C. 6A:14-9.2(b) with 34 C.F.R. 300.151(a)(1).
17. Compare N.J.A.C. 6A:14-9.2(e) with 34 C.F.R. 300.152(a)(5).
18. Compare N.J.A.C. 6A:14-9.2 (e), (f), and (g) with 34 C.F.R. 300.151(b).
19. Throughout this article, we use the term “virtual” to encompass instruction or related services provided virtually, online, telephonically or through electronic communications as allowed by temporary amendments. See Providing Special Education and Related Services to Students with Disabilities During Extended School Closures as a Result of COVID-19, NJDOE (April 3, 2020).
20. We did not have access to copies of the complaints that individuals filed during this time period and do not know how many were not accepted by SPDR or were settled or withdrawn by the complainant.
21. The office handling State Complaint Investigations has also been known as “OSEPP” and “OSEP.” At present, SPDR is subsumed under the Office of Special Education (OSE).
22. C2021-6359 Old Bridge Sch. Dist. (Sept. 29, 2020) & C2021-6392 Clifton Sch. Dist. (Feb. 22, 2021). In finding the district “compliant” in the first case, SPDR ignored that the student was given activity sheets for related services and left unresolved whether the student was without a digital device for five months. In the second case, SPDR found that the district didn’t provide the student with the one-on-one aide in their IEP until sometime after October 2020 and left unresolved whether the student received any related services from March through June 2020.
23. SPDR did not always indicate if the related services were provided for the required time, leaving it unclear whether students received the full amount of related services.
24. C2021-6414, Paterson Sch. Dist. (May 24, 2021).
25. C2021-6361, Hillsborough Twp. Sch. Dist. (Jan. 15, 2021); C2021-6382 Highland Park Sch. Dist. (Jan. 8, 2021).
26. C2021-6372 Willingboro School District (Dec. 7, 2020).
27. C2021-6392 Clifton Sch. Dist. (Feb. 22, 2021). Despite finding the district did not provide the aide for at least six months, SPDR said this district was “compliant.”
28. C2021-6429 Paterson Sch. Dist. (June 17, 2021). In two cases, the failure to implement was shorter: there were no counseling services during the student’s extended year program in C2021-6464 Bernards Twp. Sch. Dist. (Sept. 13, 2021) and two counseling sessions which the district agreed to make up in C2021-6435 South Orange-Maplewood Sch. Dist. (Sept. 10, 2021).

29. C2021-6354 Mary A. Dobbins School (Oct. 26, 2020).
30. C2021-6397 Wanaque Sch. Dist. (April 20, 2021).
31. C2021-6429 Paterson Sch. Dist. (June 17, 2021).
32. C2021-6359 Old Bridge Sch. Dist. (Sept. 29, 2020); C2021-6414 Paterson Sch. Dist. (May 24, 2021); C2021-6354 Mary A. Dobbins Sch. (Oct. 26, 2020).
33. See Providing Special Education and Related Services to Students with Disabilities During Extended School Closures as a Result of COVID-19, NJDOE (April 3, 2020).
34. C2021-6392 Clifton Sch. Dist. (Feb. 22, 2021); C2021-6359 Old Bridge Sch. Dist. (Sept. 29, 2020); C2021-6372 Willingboro Sch. Dist. (Dec. 7, 2020).
35. See, e.g., C2021-6361 Hillsborough Twp. Sch. Dist. (Jan. 15, 2021); C2021-6372 Willingboro Sch. Dist. (Dec. 7, 2020); C2021-6392 Clifton Sch. Dist. (Feb. 22, 2021); C2021-6382 Highland Park Sch. Dist. (Jan. 8, 2021).
36. C2021-6392 Clifton Sch. Dist. (Feb. 22, 2021).
37. US ED 2013 Complaint Resolution Q&A, p. 19.
38. Education Law Center obtained this document through an Open Public Records Act request.
39. C2021-6382 Highland Park Sch. Dist. (Jan. 8, 2021).
40. 34 C.F.R. 300.151(b)(1).
41. N.J.A.C. 6A:14-4.8(a)4.
42. C2021-6397 Wanaque Sch. Dist. (April 20, 2021). SPDR's ruling was consistent with an Appellate Division decision, *New Jersey Dept. of Educ. Complaint Investigation*, C2012-4341, No. A-1000-11 (N.J. App. Div., Oct. 11, 2012) (unpublished).
43. Most of the parents had requested changes and/or relief and been denied by district administrators or IEP teams before filing their complaint or had participated in failed mediation after filing.
44. See "Return to School Roadmap: Development and Implementation of Individualized Education Program in the Least Restrictive Environment Under the Individuals with Disabilities Education Act" at page 28 (Sept. 30, 2021).
45. 34 C.F.R. 300.151(b)(1).
46. 20 U.S.C. § 1415(i)(2)(c)(iii); 34 C.F.R. 300.516(c)(3).
47. C2020-6338 Mahwah Sch. Dist. (Aug. 17, 2020).
48. 34 C.F.R. 300.151(b)(1).
49. See, e.g., *Sch. Committee of the Town of Burlington v. Dept. of Educ. Of Mass.*, 471 U.S. 359, 369 (1985); *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993); *D.F. ex rel. A.C. v. Collingswood Borough Bd. Of Educ.*, 694 F.3d 488, 498-99 (3d Cir. 2012); *Ferren C. v. Sch. Dist. of Phila.*, 612 F.3d 712, 715 (3d Cir. 2010); *D.E. v. Cent. Dauphin Sch. Dist.*, 765 F.3d 260, 266-267 (3d Cir. 2014); *Bucks County Dept. of Mental Health/Mental Retardation v. Penn.*, 379 F.3d 61, 62-63 (3d Cir. 2004) (holding that reimbursing parent for their time providing LOVAAS services was appropriate relief).
50. 20 U.S.C. § 1401(9); 34 C.F.R. 300.17.
51. *Hendrick Hudson Dist. Bd. Of Educ. v. Rowley*, 458 U.S. 176, 188-89 (1982); *Andrew v. Douglas Co. Sch. Dist., Re-1*, 137 S. Ct. 988, 994 (2017).
52. *G.L. v. Ligonier Valley Sch. Dist. Auth.*, 802 F.3d 601, 608 (3d Cir. 2015); *Ferren C. Sch. Dist. of Philadelphia*, 612 F.3d 712, 717-718 (3d Cir. 2010).
53. The New Jersey Department of Education suggested districts use this "policy" on page 74 of its *The Road Back, Restart and Recovery Plan for Education*, June 2020.
54. For a discussion on what to do when formulating a compensatory award and the student has lost skills or regressed, see *B.D. v. District of Columbia*, 817 F.3d 792, 798 (D.D.Cir. 2016).
55. *G.L. v. Ligonier Valley Sch. Dist. Auth.*, 802 F.3d 601, 608 (3d Cir. 2015) & *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 717-718 (3d Cir. 2010).
56. See, e.g., *Lester H. by Octavia P. v. Gilhool*, 916 F.2d 865 (3d Cir. 1990) (30 months of compensatory education for 30 months student was without the agreed-to residential placement); *D.E. v. Cent. Dauphin Sch. Dist.*, 765 F.3d 260 (3d Cir. 2014) (student received "one hour for each hour of each school day for each year...totaling 10,000 hours of compensatory education); *M.C. o/b/o J.C. v. Central Reg'l Sch. Dist.*, 81 F.3d 389, 396-398 (3d Cir. 1996) (compensatory education for the period of time school district knew or should have known the IEP did not provide FAPE).
57. *P.N. v. Greco*, 282 F. Supp. 2d 221, 236 (D.N.J. 2003) (where there was complete cessation of school for 17 days, student entitled to 17 days of compensatory education).
58. *Tyler W. v. Upper Perkiomen Sch. Dist.*, 963 F. Supp. 2d 427, 439 (E.D. PA 2013).
59. 34 C.F.R. 300.151(b)(2). See also US ED 2013 Complaint Resolution Q&A, p. 19 (whenever violations are identified for individually named children, "the SEA's complaint resolution **must** include measures to ensure correction of the violations for **all children affected** by the alleged systemic noncompliance described in the complaint") (emphasis added).
60. C2021-6382 Highland Park Sch. Dist. (Jan. 8, 2021).
61. C2021-6397 Wanaque Sch. Dist. (April 20, 2021).
62. C2022-6476 Paterson Sch. Dist. (Sept. 10, 2021).