



September 8, 2026

VIA EMAIL ONLY

The Honorable Verlina Reynolds-Jackson, Chair
The Honorable Rosaura Bagolie, Vice-Chair
Honorable Members of the Assembly Education Committee

Dear Honorable Chair Reynolds-Jackson, Vice-Chair Bagolie, and Committee Members:

I appreciated the opportunity to testify on behalf of Education Law Center (ELC) before your committee in May regarding the need to improve New Jersey's special education state complaint investigation system. Committee members expressed genuine concern about the issues raised by both parents and special education professionals and seemed receptive to potential legislative solutions.

On the topic of complaint investigation, Assemblywoman Brennan asked whether there are states with effective complaint investigation practices or model legislation from other states that could be of use to the committee. Please forgive my delay in providing the following information in response to her inquiry; this information includes the research undertaken by ELC as well as our recommendations for legislative solutions that are based in part on this research.

1. Online Publication of State Complaint Decisions

As stated in my May testimony, New Jersey should join the growing list of states which publish their state complaint decisions online. At least 16 states publish full complaint investigation reports,¹ and at least three additional states publish meaningful summaries of these decisions.² Several state websites include search features enabling the user to easily find relevant decisions.

¹ Colorado, Delaware, District of Columbia, Indiana, Kansas, Maine, Maryland, Minnesota, Montana (withholds district name), Nebraska, Nevada, New Mexico, Ohio, Oregon, Washington, and Wisconsin (withholds district name).

² Connecticut, Tennessee and Wyoming. ELC's position is that publication of the full reports is the better way to go. Posting of the full reports provides more information to the public, is more efficient than requiring the creation of summaries, and avoids the risk of inaccuracy or unreliability that may result from subjective decisions about what to include or exclude in summaries.

For example, the state of Washington enacted legislation effective June 11, 2026, which requires the superintendent of public instruction to:

[m]aintain an online record of all final decisions issued in response to special education community complaints. Each final decision must be available in an online format and accessible to the public at no charge for 20 years after the complaint is finalized. If, at the effective date of this section, the office of the superintendent of public instruction does not have a historical record of community complaint decisions from the prior 20 years, it must provide an online record of all final decisions for the longest period of time available. Wash. Rev. Code § 28A.155.090(8).

Requiring the New Jersey Department of Education (NJDOE) to publish state complaint investigation reports issued by its Office of Special Education (OSE) is a step toward transparency and accountability that is well suited for legislative action. Publication of these reports will allow both parents and school personnel throughout New Jersey to access OSE's interpretations of state and federal special education rules and to be informed of which actions (or failures to act) by school districts are treated as violations. As discussed below, our research indicates that OSE does a less thorough job in addressing state complaints than equivalent offices in multiple other states. Publication of the reports could potentially have a positive impact on the quality of OSE's investigations and analyses.

Such a requirement could be incorporated within currently existing N.J.S.A. 18A:46-1.2. That statute requires the NJDOE to "make available on its website an electronic database of legal decisions concerning special education in New Jersey." N.J.S.A. 18A:46-1.2(a). Currently, the statute defines that database as including only: "...a full-text copy of each written decision rendered by the New Jersey Office of Administrative Law [OAL] in a special education due process hearing, and, if the decision is appealed, any subsequent decision on the matter rendered by a court of the State of New Jersey or a federal court." N.J.S.A. 18A:46-1.2(b). However, subsection (b) could easily be amended as follows to ensure that complaint investigation reports are included within this electronic database of legal decisions:

*b. The database shall contain a full-text copy of each written decision rendered by the New Jersey Office of Administrative Law in a special education due process hearing, **a full-text copy of each written report rendered by the Office of Special Education in response to a complaint filed under 34 C.F.R. § 300.153 and N.J.A.C. 6A:14-9.2** and, if the decision **or report** is appealed, **a direct link to any subsequent decision on the matter rendered by a court of the State of New Jersey or a federal court.** The database shall include each special education decision rendered after the effective date of this act. N.J.S.A. 18A:46-1.2(b) (proposed edits in bold).*

Notably, the NJDOE's electronic database does not currently include subsequent appeal decisions as required by the Legislature. Instead, the NJDOE merely provides links to seemingly random databases and leaves it up to parents and school staff to determine on their own whether a particular OAL decision has been overruled by a court.³ ELC believes that the Legislature intended that the NJDOE flag any special education decisions that are appealed and *directly* link the related, governing court decision to the underlying decision, so we have also proposed language to make that clear.

Finally, it would be helpful if the database were to include a search feature that permitted users to search for decisions or reports by issue, school district, type of disability, compensatory education or reimbursement awarded, or other relevant categories.

2. Appointment of Independent Investigators for Complaints Filed Against the State Itself

Federal guidance provides that an "outside party" may be appointed where a state complaint is filed against the state education agency itself. <https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf> (Q&A B-12). ELC and other complainants have requested that OSE appoint an independent investigator for complaints against that office, but these requests have consistently been denied.

We believe that New Jersey should require the appointment of independent investigators for complaints against the NJDOE/ OSE, to avoid the inherent conflict of interest present where an agency investigates itself. Like the publication of state complaints, this simple step would enhance public trust in the special education state complaint process.

New Mexico is an example of a state requiring the appointment of an independent investigator for complaints against the state department of education. This rule appears in N.M. Admin. Code 6.31.2.13 (H)(6), which states: "If the complaint concerns a violation by the [Public Education Department] ..., the secretary of education or designee shall appoint an impartial person or impartial persons to conduct an investigation."⁴ The requirement that

³ The links provided by the NJDOE are to the websites for the Third Circuit Court of Appeals, NJ Court Opinions, and Rutgers Law School law library. None of these websites contain federal district court opinions. As the NJDOE should well know, the overwhelming majority of OAL special education matters that are appealed are decided by the U.S. District Court for the District of New Jersey, not the Third Circuit Court of Appeals or the New Jersey Courts. If a federal district court opinion is then appealed to the Third Circuit, the NJDOE should provide the public with links to both the subsequent district court and Third Circuit opinions.

⁴ Unlike New Jersey, other state education agencies have appointed independent investigators as a matter of practice without an explicit requirement to do so. See, e.g., Maryland State Department of Education (MSDE) #26-046 (Oct. 23, 2025) (MSDE found

an independent investigator be impartial is critical. ELC further recommends that the Legislature explicitly prohibit the use of independent investigators who were previously employed by the NJDOE or any local educational agency whose practices or policies are at issue in the complaint.

3. Compensatory Services Determinations in Response to State Complaints

Federal regulations governing state complaints provide, at 34 C.F.R § 300.151(b):

(b) Remedies for denial of appropriate services. In resolving a complaint in which the SEA [state education agency] has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address—

(1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and

(2) Appropriate future provision of services for all children with disabilities.

We believe that the plain language of 34 C.F.R § 300.151(b)(1) requires OSE to determine whether compensatory services are appropriate when a violation is found and, if so, to specify the amount and type of compensatory services that must be provided. OSE's more common practice, however, once a violation is found, is to order the student's Individualized Education Program (IEP) team to meet to determine *whether* compensatory services are necessary and, if so, to determine the amount and type. In ELC's view, this practice not only violates the plain meaning of the federal regulation but ignores the reality that IEP teams are composed primarily of school district officials, giving parents little power to control their determinations.

In a state complaint filed by ELC against OSE in February 2026, ELC asserted that OSE's practice of delegating compensatory services determinations to IEP teams "violates federal law and state regulations...; precedent in the Third Circuit Court of Appeals; federal Office

noncompliant in its state complaint practices for failure to ensure that LEAs complete corrective action within one year and for failure to issue complaint reports within 60 days after complaints were filed); MSDE # 25-176(a) (July 21, 2025) (finding MSDE noncompliant for failure to ensure that school district completed corrective actions for students similarly situated to those named in earlier complaints); Colorado State-Level Complaint 2025:519 (Colorado Dept. of Educ., April 15, 2025) (independent investigator assigned for multiple complaints against state department of education alleging that department of education failed to meet its general supervisory responsibilities, failed to conduct a sufficient investigation, and failed to meet the 60-day deadline in earlier complaint against Denver Public Schools).

of Special Education Programs (OSEP) guidance; as well as OSE’s own internal and published documents.” The complaint details OSE’s failure to: (1) undertake the legal analyses necessary to determine whether procedural violations by school districts, and failures to implement a student’s IEP, amount to substantive violations warranting compensatory services (and in what amount and type), and (2) conduct the investigations required by federal and state law necessary to make specific compensatory services determinations. Regrettably, OSE refused to find itself noncompliant, and ELC is pursuing other avenues, including this outreach to your committee, to bring about improvement in OSE’s complaint investigation practices.

ELC’s review of complaint reports from other states reveals multiple examples of reports which, unlike the New Jersey reports detailed in its February 2026 complaint, include the legal and factual analyses necessary for the SEA to make a compensatory services determination. **Indeed, it appears that families filing requests for state complaint investigations in those states stand a better chance of obtaining meaningful relief through this process than families in New Jersey.** A few examples of superior practices in other states include: (1) the ordering of specific compensatory services by the SEA, including the SEA’s reasoning behind the amount ordered;⁵ (2) the maintenance of jurisdiction over a complaint by the SEA while the IEP team meets to consider compensatory services, with the SEA standing ready to determine compensatory services if the IEP team cannot reach agreement;⁶ (3) analysis of whether a failure to implement the IEP was material, giving rise to the requirement of compensatory services;⁷ and (4) consideration of

⁵ Colorado State-Level Complaint 2023:504 (Denver Public Schools, March 18, 2023); Washington State Special Education Citizen Complaint No. 19-48 (Spokane School District, Aug. 2019).

⁶ Complaint 14-01: State Complaint Concerning Iowa Department of Human Services (Iowa Juvenile Home and Girls State Training School) & Area Education Agency 267 (Dec. 20, 2013) (“If the child’s IEP team is in disagreement about compensatory education, IJH and AEA 267 shall refer this matter back to the Department, which shall award compensatory education based on the child’s specific facts. This approach does not defer ultimate decisions on compensatory education to the IEP team, [citing article by legal scholar], and the Department retains jurisdiction over all determinations of compensatory education”); see also Connecticut Complaint Summary Case Number 26-0506 (New Haven Public Schools/Charter School, May 18, 2026) (ordering specific hours of compensatory education, directing the PPT team to meet to “review the calculation of missed services, determine the method of delivering compensatory education, and develop a written compensatory services plan,” and stating that “[i]f the District, the Parent, and her Attorney cannot agree on the plan, this office will determine the compensatory education”).

⁷ Colorado State-Level Complaint 2023:504 (Denver Public Schools, March 18, 2023) (number of missed hours of SLP services satisfied the materiality standard).

whether procedural errors rise to the level of denying a free and appropriate public education (FAPE) to the student.⁸ELC would be pleased to submit reports from other states illustrating positive practices to the committee upon request.

Of note, however, ELC is aware of at least two recent complaint reports in which OSE determined compensatory services based on the school district's failure to offer the FAPE demanded by federal law, suggesting potential improvement in OSE's practices in this area. While we were encouraged to see these recent results, it is necessary for positive practices and meaningful results for families to become the rule in New Jersey. ELC recommends that OSE retain jurisdiction over state complaints until compensatory services have been determined and awarded. We believe OSE should make the determination on compensatory services in the first instance, including quantity and type. However, at a minimum, the Legislature should require that the determination of compensatory education return to OSE when there is not full IEP team agreement (including the parent) about the award.

4. Enforcement of Corrective Action Plans by State Departments of Education

New Jersey's state complaint system lacks a formal enforcement mechanism. Where corrective action is ordered, but the target of the complaint fails to implement the corrective action, parents are directed simply to "notify OSE in writing that the education agency involved in the complaint has not implemented one or more aspects of the State's written decision and/or corrective actions." See Special Education Complaint Investigation pamphlet, <https://nj.gov/education/specialed/policy/disputeresolution/>. Unlike in the case of due process decisions or mediation agreements, for which enforcement forms appear on the OSE website, *id.*, no form exists for parents to complete in the event that the entity found in violation fails to comply with a corrective action plan. Nor does the state regulation regarding enforcement of due process decisions, N.J.A.C. 6A:14-2.7(t), apply to state complaint decisions.

We believe that specific procedures for the enforcement of state complaints are needed to increase confidence in New Jersey's state complaint system. See [*'Perfect storm of awful': Parents call for probe of special-ed office*](#), NJ Spotlight News (April 14, 2026). While state complaints are intended to function as a viable, lower cost alternative to due process proceedings, this procedure remains but a "poor relation" of due process for multiple reasons including the lack of a definitive process for enforcement.

⁸ Oregon State Superintendent of Public Instruction, Case No. 25-054-002 (Douglas County School District 4, March 10, 2025) (district infringed on parents' right to participate in the IEP process, which is one of "three pivotal procedural errors," where district failed to provide parents with quarterly progress reports required by IEP, did not submit any progress information for the complaint period containing scores or measurable data, and failed to provide prior written notice in response to a parental request for reevaluation).

An example of a state requiring its department of education to enforce state complaints is New Hampshire, which has enforcement regulations applicable to “orders of compliance” resulting from state complaints, due process decisions, and state monitoring of special education. N.H. Code Admin. R. Ed 1125.02.

5. Greater Transparency and Accountability in the State Complaint Process

Finally, we will end where we started: ELC strongly believes that the state complaint process requires greater transparency and accountability to improve the effectiveness of results as well as public confidence in those results.

While New Jersey prides itself on making public education a priority, public confidence in the state complaint process appears to be at an all-time low. Multiple parents and advocates have reported their negative experiences with this process to ELC, and we have seen examples of OSE reports in which investigations or outcomes (or both) have been subpar. In addition to requiring OSE to publish its complaint reports online as discussed at (1) above, transparency would be enhanced by:

- A. Requiring OSE to provide the complainant with all documents and information shared by the school district, together with an opportunity to respond to those submissions. Currently, a parent’s complaint investigation request will not be accepted by OSE unless the parent shares all information they are relying upon with the school district. The same should apply when the district responds and shares documents and other information with the investigator. When the district’s information and documents are not shared, as is often the case, the parent has no way of correcting misinformation or even honest mistakes made by the school district. This failure to fully disclose information to the complainant also fuels parental distrust of the process;
- B. Requiring OSE’s complaint investigation reports to include a complete list of the documents, interviews, and other evidence relied upon in reaching the agency’s findings and conclusions. Until June 2026, OSE’s Complaint Resolution Manual required all investigators to include in their reports a Table of Persons Interviewed (when interviews are necessary) and a Table of Documents, defined as “a chronological listing of all documents in the record.” See, e.g., OSE’s February 2024 Complaint Resolution Manual, “Writing the Report,” paragraphs 1(f) & (g), p. 12. Without explanation, OSE deleted this requirement from the Manual in June 2026. Going forward, a parent will have no idea as to the scope of any investigation conducted in their case; and
- C. Online publishing of OSE’s Complaint Resolution Manual that sets forth the policies and procedures to be followed by state complaint investigators and ensuring uniformity in the application of those policies and procedures. ELC notes that OSE’s Complaint Resolution Manual has never been posted on the NJDOE’s website for the benefit of parents and school staff who are undergoing investigations and want to know what to expect.

Further, let's recognize that transparency is inextricably linked to the ability to hold government agencies accountable for the accuracy and effectiveness of their results and that the results we expect from the complaint investigation process must be accurate and effective. ELC's May testimony to this committee noted that complaint investigation is an underutilized resource in New Jersey.⁹ Because complaint investigation reports are not published online, on those occasions when OSE has produced strong results in a complaint investigation report, those results are unlikely to be instructive to anyone other than the particular complainant or district involved. Through greater and more effective use of its state complaint process, the NJDOE has the ability to identify and correct systemic noncompliance with IDEA (involving particular issues and/or particular districts) and to reduce the state's overreliance on the more costly and time-intensive due process hearing process to remedy those problems on a case-by-case basis.

One more specific legislative proposal, designed to enhance accountability, would be:

- D. Requiring that OSE's Corrective Action Plans (CAPs) for remedying noncompliance specifically include "data collection for measuring correction of each noncompliance item cited" in addition to the mandatory CAP items currently set forth in N.J.A.C. 6A:14-9.2(g) (namely, objectives, strategies and activities for correcting each noncompliance item cited, resources needed to obtain the objectives, and dates by which the noncompliance will be corrected).

In summary, by enacting statutory mandates for the simple and fair proposals listed above, the Legislature can establish a state complaint process that is fairer to complainants and more effective in producing meaningful remedies. Together, all the changes proposed by ELC would go a long way toward instilling public confidence in the state complaint process, holding OSE accountable for its results, and, when necessary, allowing for meaningful judicial review of state special education complaint decisions.

We remind this Committee, as we testified in May, that Congress has long recognized that disability is a natural part of human experience and that ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities is in our national interest. 20 U.S.C. §1400 (c)(1). ELC is firmly convinced that the state's robust enforcement of rules aimed at ensuring appropriate and effective special

⁹ For the 2023-24 school year, the [Center for Appropriate Dispute Resolution in Special Education](#) (CADRE) reported that only 10.9% of New Jersey disputes – equal to 9.2 of 10,000 students – went through the written state complaint process, while 43.6% went through due process, and another 45.6% through mediation. By contrast, CADRE data shows strikingly higher use of state complaint processes in other northeastern states: out of 10,000 students, the number of state complaint filings was 23.5 in Connecticut, 24.6 in Maryland, 50 in Vermont, and 74.2 in Massachusetts.

education services will improve outcomes for students with disabilities and will make all of us stronger as a state.

Thank you for your consideration of these comments. Please do not hesitate to contact me at eathos@edlawcenter.org or (973) 624-1815, ext. 200, for additional information or to answer any questions.

Respectfully,



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