

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

C.P., individually and on behalf of F.P., a
minor child, et al.,

Plaintiffs,

v.

NEW JERSEY DEPARTMENT OF
EDUCATION, et al.,

Defendants.

Civil Action No. 19-cv-12807

**SPECIAL MASTER’S INITIAL REPORT REGARDING STATE
DEFENDANTS’ COMPLIANCE WITH THE 45-DAY RULE**

Jaynee LaVecchia
Special Master

Dated: October 14, 2026

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I. Introduction

Pursuant to the Amended Consent Order (“ACO”) endorsed on May 5, 2026 by the Honorable Edward S. Kiel, U.S.D.J., the undersigned Special Master has been charged with developing a Compliance Plan for submission to the Court and thereafter reporting on the progress of the New Jersey Department of Education (“NJDOE”) in achieving 95% compliance with the time frames for due process hearings set forth in 34 C.F.R. § 300.515 (the “45-Day Rule”), as required by the Original Consent Order (“CO”), as amended by the ACO.

Since appointment, the Special Master has undertaken an investigation for the purpose of developing the required Compliance Plan. That investigation began with meetings with class counsel and representatives of the New Jersey Office of the Attorney General (“NJOAG”), the Office of Administrative Law (“OAL”), and NJDOE.¹ It further entailed a comprehensive review of the accuracy of what information and data were being used to evaluate a compliance rate, including specifically, an examination of the parties’ reliance on adjournment forms for purposes of identifying party-generated requests to extend the time frames otherwise required under the federal law and the ACO. The examination led to the Special

¹ Consistent with legislative authorization, NJDOE utilizes OAL to conduct the due process hearings required by federal law. *See* N.J.S.A. 52:14F-21.1. In such matters, OAL acts as NJDOE’s agent in fulfilling NJDOE’s duties under the IDEA. *See id.*; N.J.A.C. 6A:14-2.7(h). An OAL regulation confirms the agency’s obligation to comply with the time frames set forth in 34 C.F.R. § 300.515. *See* N.J.A.C. 1:6A-18.1.

Master requesting and listening to audio recordings of pre-hearing and status conferences conducted with pro se litigants for which OAL identified adjournment forms filed by Administrative Law Judges (“ALJs”). In listening to those tapes of the recorded proceedings and comparing them to the corresponding adjournment forms, questions developed over the use of the forms, and the reliability of the case tracking data for timeliness purposes. The review also revealed broader issues affecting development of a comprehensive Compliance Plan. At this stage of her involvement with the parties and her review of the current system for resolving due process petitions, the Special Master has identified several aspects of that system that appear to present challenges to NJDOE’s ability to comply with the 45-Day Rule and warrant further examination.

Accordingly, the Special Master issues this initial report to (i) describe her actions and preliminary observations to date; (ii) identify potential barriers to NJDOE’s compliance that merit further inquiry; and (iii) outline the next steps toward evaluating and, where appropriate, addressing those barriers in developing the Compliance Plan.

II. Background

A. The Special Master's Duty to Report²

According to the ACO, the initial “general role of the Special Master is to []work with the Parties to develop a Compliance Plan designed to achieve 95% Compliance with 34 C.F.R. § 300.515 as defined in ¶ 7 of this Amended Consent Order.” (ACO ¶ 15; *see also* Dkt. No. 649 ¶ 9). Accordingly, “[w]ithin a reasonable timeframe to be established by the Special Master,” a Compliance Plan must issue addressing the following:

- (a) benchmarks to measure progress toward achieving 95% Compliance;
- (b) a description of the specific actions and responsibilities expected of Defendants; (c) a detailed outline of the Special Master's intended work;
- (d) presumptive deadlines for completion of specific actions and achievement of specific benchmarks, with the goal of achieving 95% Compliance; and (e) a target date for achieving 95% Compliance.

(Dkt. No. 649 ¶ 10(a)–(e)).

The District Court's Appointment Order assigned the Special Master a number of powers and duties that are ancillary to the development of the Compliance Plan. The Special Master is thus tasked with “review[ing] and analyz[ing] data related to compliance,” “identify[ing] and address[ing] barriers to compliance, through the development and implementation of targeted interventions,” and “mak[ing] recommendations regarding the development, implementation, and

² The observations and preliminary conclusions contained herein are not intended as formal findings of fact or conclusions of law. This Report is promulgated pursuant to the investigative aspects of the ACO and the Appointment Order.

assessment of all initiatives, interventions, and corrective actions designed to rectify non-compliance with the 45-Day rule.” (Dkt. No. 649 ¶ 11; *see also id.* ¶ 12). These “examples are illustrative and not an express limit on the actions the Special Master may take to achieve 95% Compliance.” (Dkt. No. 649 ¶ 11). Under the Appointment Order, the Special Master may ultimately “undertake any necessary investigation to obtain information relevant to the causes of non-compliance and barriers to compliance.” (Dkt. No. 649 ¶ 15).

Having reviewed the ACO and the Appointment Order, and in furtherance of the Special Master’s obligation to engage in meaningful investigation before developing an achievable and durable Compliance Plan, the Special Master issues this Report as the first step toward remediation. It is being submitted to the Court and will provide a platform for next steps with the parties.

B. The Relationship Between NJDOE and OAL

New Jersey’s system for resolving disputes under the Individuals with Disabilities Education Act (“IDEA”) depends on the coordinated work of NJDOE and OAL. NJDOE receives due process petitions and, when the applicable resolution process has concluded or been waived and a hearing is required, transmits the matters to OAL for adjudication by an ALJ. *See* N.J.A.C. 6A:14-2.7(g)–(j); N.J.A.C. 1:6A-9.1. Although OAL conducts the hearings and issues final administrative decisions, NJDOE remains responsible for ensuring compliance with

the IDEA's hearing requirements, including the 45-Day Rule. *See* 34 C.F.R. § 300.515(a).

The agencies have defined aspects of that relationship through a series of interagency memoranda of understanding ("MOUs") addressing the staffing, resources, and administration of special education due process hearings. The Special Master's review of four MOUs executed between December 2020 and September 30, 2024, identified commitments by NJDOE to provide OAL with a total of more than \$2.8 million for ALJ positions. That amount excludes additional funding provided for a Special Education Assignment Judge and other personnel support.

The MOUs also address the technological infrastructure intended to support timely adjudication. Under three MOUs covering the period from September 2021 through September 2024, NJDOE agreed to provide OAL with a total of more than \$1.2 million for an initial software purchase and the operation and maintenance of software "to centralize the scheduling of cases in order to track the progress of special education due process hearings and to ensure compliance with the timelines set forth in the IDEA, federal, and state regulations."

These commitments underscore the importance of examining how the staffing and case-management resources contemplated by the agreements have been implemented and used to advance timely resolution. Effective remediation therefore requires attention both to NJDOE's responsibilities before transmittal and to OAL's

management of cases thereafter, including the resources and systems supporting that work.

C. Overview of the Special Master's Actions Since Appointment

Following the May 5, 2026, Appointment Order, the Special Master engaged relevant stakeholders, including the parties to the litigation and OAL, to identify issues affecting compliance. The Special Master initially met separately with class counsel and representatives from the NJOAG, before later meeting with representatives from both OAL and NJDOE. These initial sessions were intended to permit an informal but candid discussion of the current state of data collection, operations, and related issues, as viewed by the parties and OAL. At the outset, it must be mentioned that the Special Master has appreciated the cooperation and candor of all relevant stakeholders in responding to her requests for information and questions.

Early in the process, the Special Master had questions about the reliance on the adjournment forms, previously mandated by both the Original Consent Order and the ACO, to explain and excuse the near universal pattern of due process hearings not being completed and decisions not being issued within the 45-day timeframe unless the matter quickly, indeed almost immediately, settled upon transmittal to OAL from NJDOE. Reference to a transmitted matter having an adjournment form, which was apparently being used for manual statistical reporting

to the federal monitor, revealed that these forms were accepted for data reporting purposes without undergoing any examination or comparison with what occurred at the actual conferences; yet, they were relied upon to justify protracted periods that extended the Final Decision Date (“FDD”) well beyond the 45-day period. Hence, the Special Master asked to examine individual adjournment forms and ultimately sought to compare the forms’ contents to available recordings of the conferences that were reported as involving a party-generated request that could legitimately extend the FDD.³

Initial review of the forms revealed questions about the information conveyed in the adjournment forms and how the conferences were conducted with respect to efforts to comply with the 45-day timeframe. In addition, in meetings with the parties and OAL, the Special Master detected questions and seeming discrepancies among the parties in how the timeline for the FDD is to be calculated: what was a party-generated request, whether the adjournment form reflected an actual party-generated request for a specific extension of time, how the scheduling of an initial hearing date or a set of hearing dates figured into an extension being labeled a party-generated extension, and how the extended period of time for the FDD was calculated in its parts, as well as totaled, and then applied to the previous FDD. Further questions

³ In meeting with OAL, the Special Master learned that in January 2026, OAL began to audio record pre-hearing conferences in the subset of matters that involved pro se litigants (as well as when a represented party similarly requested audio taping of a pre-hearing conference).

arose concerning additional built-in delaying periods for pre- and post-hearing activities, and also for motion practice. The answers to most if not all of these types of questions could not be discerned from the adjournment forms.

It quickly became apparent to the Special Master that there were substantial problems with relying on the adjournment forms, which impeded the Special Master's ability to track compliance by NJDOE and its agent, OAL, with the 45-Day Rule. For example, in many instances, the forms were either not used at all or completed by the ALJ sometime after the telephonic or, at times, video conference with the parties. The audio recordings did not clearly establish how specific requests affected the FDD or demonstrate that the parties understood the resulting adjustments to the timeline. Further, those recordings provided little useful information to a reviewer seeking to understand how a particular ALJ calculated an adjusted FDD. Importantly, it appeared to the Special Master that incorrect or inconsistent methods might be in use within OAL to determine which days counted toward the 45-Day Rule. The distinction between days that properly counted toward the 45-Day Rule and days that could be excluded when calculating an extended FDD apparently had never been addressed on the record in this matter.

Accordingly, the Special Master issued an Order to Show Cause directed to the parties. In this Order, the Special Master sought to definitively clarify the proper method for counting days toward the 45-Day Rule. (Dkt. No. 661). Following the

parties' initial response, the Special Master issued a supplemental order asking the parties to prepare responses to a number of additional questions. (Dkt. No. 663). A hearing was then held on the record. At this hearing, the parties represented that they had engaged in prior conferencing among themselves. As a result, ultimately, there was substantial agreement between the parties and the Special Master as to identified questions about how the FDD must be calculated. There was also substantial agreement that certain of the practices observed by the Special Master in her review of the hearing audio recordings did not constitute an appropriately calculated extension of the FDD for timeliness purposes. Thus, on July 10, 2026, the Special Master issued an extensive order memorializing guidance to all parties regarding the correct method for calculating the FDD in light of *truly party-generated requests* for extensions of time, when assessing timeliness under the 45-Day Rule (Dkt. No. 665 at 3–12).

The July 10 Order also established a dual-track system for monitoring the sufficiency and accuracy of the adjournment forms. Commencing August 1, 2026, NJDOE was required to “listen to a random sample of 50% of the recorded conferences and, on a bi-weekly basis, provide the Special Master with a certification reporting on the accuracy of the calculation and tracking of FDDs, as detailed and explained in the Adjournment Forms.” (Dkt. No. 665 at 11). At the same time, the Special Master would “listen to a random sample of 33% of the

recorded conferences and similarly examine the accuracy of the timekeeping of FDDs and the information reflected in the Adjournment Forms.” (*Id.*). OAL was to provide the tapes and adjournment forms for these recorded proceedings to NJDOE and the Special Master periodically, as arranged among them.

With this guidance in place, the Special Master continued her practice of reviewing all adjournment forms and accompanying audio recordings associated with hearings that occurred in the second half of July, in August, and into September. It bears noting that the Special Master had been reviewing all adjournment forms and accompanying pre-hearing conferences that occurred during the first half of July, mindful that neither OAL, the ALJs, nor the interested parties had the benefit of the Special Master’s July 10 Order during that time. While the audio tapes notably revealed in August certain ALJs clearly making efforts to adhere to the Special Master’s July 10 Order, many of the same issues identified earlier in this Report persisted in other recorded proceedings and the adjournment forms that related to those proceedings.

Further confirmation was obtained when NJDOE provided its first certification of review—that certification identified many of the issues observed by the Special Master and discussed in this Report. Sadly, the adjournment form remains an imperfect means for measuring compliance. At worst, it may be viewed as having become a means to provide a paper trail that facilitates delay, justifying

treating the scheduling, movement, and final resolution of these matters as just another case at OAL. Viewed as such, the present method of using the form and the statistical data it provides as the answer to certify a compliance rate that actually reflects a remediation of the issues highlighted by this class action is simply inadequate.⁴

Other observations were gleaned from the above investigative efforts. The extensive review of the audio-taped proceedings provided a wider view of impediments to Defendants' compliance with the 45-Day Rule applicable to the system for resolving due process petitions in this State. Some systemic issues emerged that impede compliance as it was envisioned at the time of entry of the CO and ACO. Others that have come to the fore from this closer examination relate to the current hearing processes in use at OAL that force due process litigants into strict and formalistic litigation procedures and practices that are not necessarily appropriate or needed for the types of issues to be resolved in due process hearings and undermine the requirement for speedy scheduling and resolution of these matters.

⁴ The Special Master separately observes that the electronic case management system contemplated by the ACO and Appointment Order has not yet been implemented. (*See* Dkt. No. 645-2 ¶¶ 16(d), 17(c)–(d); Dkt. No. 649 ¶ 16). Although approximately \$1.2 million has been committed over approximately five years to date toward development of the system, the Special Master has not received a reliable estimate of when it will become operational. Moreover, given the concerns identified through the Special Master's review regarding the accuracy, completeness, and reliability of the underlying case-tracking data, coupled with OAL's representation to the Special Master that parties will not be able to interact directly with the system once operational, it remains unclear whether implementation will meaningfully address the data collection and monitoring issues observed to date.

For these reasons, the Special Master concludes it is necessary to use this initial report to set forth a number of apparent barriers to compliance as presently perceived from the investigation to date.

III. Preliminary Observations

A. NJDOE's Role in Dispute Resolution Before Transmittal to OAL

NJDOE's responsibilities before transmittal to OAL can affect whether matters arrive ready for a timely hearing. The Special Master's preliminary review identifies two areas warranting attention at that stage: (1) the resources available for self-represented parents and (2) opportunities for early, voluntary dispute resolution.

1. Resources for Self-Represented Parents

Many due process petitions involve self-represented parents of special education students. Ensuring that those parents can have their disputes fairly heard and resolved therefore deserves particular attention. Pro se parents arrive at initial OAL hearings unprepared for the use of formal adjudication procedures. This unpreparedness, which is of course not the fault of parents who are not trained attorneys, leads to inevitable delay in the proceedings. Parents must be provided with adequate resources to enable them to appear at initial pre-hearing conferences with at least a general understanding of the process. While others may assist in providing those resources, the responsibility ultimately rests with NJDOE.

On September 25, 2026, the parties to this litigation prepared and posted a pro se litigation guide pursuant to Paragraph 39(b) of the ACO. *See*

<https://nj45dayclassaction.com/wp-content/uploads/2026/09/OSE-Litigation-Guide-Final-9.25.26.pdf>; <https://nj45dayclassaction.com/wp-content/uploads/2026/09/2026-09-25-Pro-Se-Litigation-Guide.pdf>. The Special Master intends to examine whether that written guide should be supplemented by other less-lengthy, plain-language orientation materials or short instructional videos. For example, the educational resources published by Pennsylvania’s Office for Dispute Resolution provide one potentially useful point of comparison. *See, e.g.*, Pa. Off. Dispute Resolution, “Due Process Hearing Videos,” <https://odr-pa.org/due-process/procedures/> (last accessed Oct. 14, 2026). Accessible, consistent information may reduce unnecessary conferences, avoid confusion about available choices, and enable parents to enter the adjudicatory phase of due process hearings occurring at OAL in a better position to make informed decisions concerning evidentiary presentations, voluntary extensions, and like issues.

It ill-serves such litigants to arrive at OAL’s doorstep and have precious time spent in conferences explaining required procedural rules, be led into agreement on procedures that unnecessarily lengthen or delay the resolution of their precise issue or issues, or be carried through protracted, serial conferences that delay getting to the actual hearing for which the matter was sent to OAL.

2. Early and Voluntary Dispute Resolution

Early dispute resolution also warrants attention, particularly where disagreements amenable to resolution are routinely referred into a process organized around formal adversarial hearings. NJDOE's mediation program, in particular, should be reexamined and, preferably, revitalized and prioritized so that it becomes more robust than at present. Mediation should offer a meaningful opportunity to resolve a dispute. It is not merely a box that must be checked before the hearing process kicks off. Further, NJDOE's more direct involvement can signal the importance to district personnel, as well as parents, of the benefit of quickly and agreeably finding the solution that fits that child's educational needs and gets that program in place sooner rather than later, which invariably would be later if full dispute resolution adjudication is required.

That said, indisputably, mediation is voluntary and cannot be used to deny or delay a parent's right to a due process hearing or other IDEA rights. *See* 34 C.F.R. § 300.506(b)(1). The opportunity for an impartial hearing remains essential, including where the parties cannot or do not wish to settle. Accordingly, the point of this observation is not to recommend imposition of an additional pre-hearing obstacle or to reduce the number of hearings at the expense of parental rights. Rather, it is to determine whether meaningful voluntary options are available early enough to be useful and whether parties obtain adequate information to make informed

choices about them. In this respect, the educational expertise of NJDOE and its chosen representatives for this purpose can carry a weight that enhances the present status of the mediation stage and help move more disputes quickly to resolution, thereby avoiding the need for full-blown administrative hearings in more matters.

B. Case Assignment and Hearing Procedures After Transmittal to OAL

After transmittal, OAL's case-assignment and management practices can directly affect whether hearings are completed within the applicable deadlines. In this regard, the Special Master has identified several aspects of OAL's current practices that merit closer examination, including the assignment and scheduling of ALJs in special education matters and the procedures used to prepare for and conduct hearings.

1. ALJ Assignment and Scheduling Practices in Special Education Matters

Based on the information provided to date, the Special Master understands that OAL has not established a dedicated unit of ALJs focused solely on handling due process cases. Instead, OAL has represented that, based on training that has been provided, it considers all of its ALJs qualified to hear and decide matters arising under the IDEA. In the Special Master's preliminary view, implementation of the dedicated-unit approach contemplated by enactment of N.J.S.A. 52:14F-21.1 would help OAL more efficiently manage due process cases.

That statute, enacted by the Legislature in 2021, provides that OAL shall “establish . . . a special education unit consisting of administrative law judges having expertise in special education law.” N.J.S.A. 52:14F-21.1(a). The assigned ALJs must “include individuals with a wide range of special education law expertise, including expertise as school board attorneys and as parent and student advocates.” *Id.* And “[t]he number of administrative law judges in the special education unit shall be proportional to the number and complexity of special education cases referred to the office and shall be of a sufficient number to render decisions within the time periods mandated under federal and State law.” *Id.* Once in existence, “all contested cases, . . . , concerning special education law referred to the Office of Administrative Law shall be assigned to and adjudicated by the administrative law judges in the special education unit.” N.J.S.A. 52:14F-21.1(b). A dedicated unit of this kind as envisioned in the legislation could promote more efficient scheduling and timelier disposition of due process hearings, but OAL does not select and appoint ALJs.

The Special Master is cognizant of the nuances of the ALJ appointment process, which entails inter-branch coordination between the executive and legislative branches. That process complicates OAL’s ability to establish a unit of the precise kind that N.J.S.A. 52:14F-21.1 describes. The Special Master understands that OAL does not control the selection, appointment and confirmation

of ALJs. That said, based on the Special Master's preliminary observations, some of the administrative benefits of that model may nonetheless be secured and could improve the circumstances thus far observed by the Special Master.

A dedicated special education subunit of ALJs whose calendars would prioritize special education cases might enable earlier hearing dates for incoming cases. New cases coming in could be moved among these judges to the earliest possible date for hearing among this specialized group based on a more centralized scheduling process. Such centralized control over the availability of the judges in this unit as a whole would appear to improve upon the individualized-judge-scheduling scheme that takes place now and materially advance the goal of compliance with the 45-Day Rule.

According to information provided by OAL, its current scheduling practice generally allocates two days per month on each ALJ's calendar for special education matters. As the Special Master understands the process, when those designated days for that judge do not align with the parties' readiness for hearing, the parties are offered other dates by the judge conferencing the case with the parties, but the dates are selected and, as demonstrated on the hearing tapes, offered based on that judge's availability. The Special Master perceives the current scheduling model as not fulfilling the benefits of having a dedicated subset of specialized judges at the ready for handling special education matters as their priority, as it appears L. 2021, c. 390

anticipated, regardless of whether additional ALJs with the past experience and expertise were appointed. *See id.* § 4.⁵ Whether and how greater coordination across ALJ calendars could make earlier hearing dates and faster case processing available deserves examination by the Special Master and will require discussion with relevant Executive Branch agencies.

Moreover, specialist ALJs heavily invested in such work would be expected to develop an institutional understanding and facility with due process cases and how the various types of such disputes are effectively and efficiently presented and resolved, which would help ensure that requests for extensions of the 45-Day Rule are granted only when necessary. Specialist ALJs would also be expected to have the wherewithal to be able to resolve these cases more rapidly through frequent engagement with, and mastery of, the relevant body of law, thereby reducing delay in the decision-drafting process.

In sum, implementing N.J.S.A. 52:14F-21.1's contemplated scheme to the fullest extent possible would likely ease the time burden that these cases impose on OAL and could assist in evaluating and managing extension requests consistently with the 45-Day Rule. Such concentrated experience might also support more efficient resolution of cases and preparation of decisions. At this stage, a framework

⁵ Notably, the enactment's effective-date provision expressly refers to the "appointment and confirmation of 15 additional administrative law judges," while also establishing an outside date for the law to take effect regardless. L. 2021, c. 390, § 4.

closer to the one outlined in N.J.S.A. 52:14F-21.1 warrants consideration as one possible means of reducing delays and advancing compliance with the 45-Day Rule. In developing the Compliance Plan, the Special Master intends to explore with the relevant agencies whether a more coordinated approach to assignments and scheduling, including greater prioritization of special education matters, could make more effective use of the resources provided for this task and advance compliance with the 45-Day Rule.

2. Procedures Employed in OAL Due Process Hearings

The Special Master's review to date has also raised a broader question: specifically, whether special education due process matters, once transmitted to OAL, are best managed under essentially the same procedural model used for other contested administrative cases transmitted to OAL. OAL's general experience conducting adversarial proceedings is a valuable institutional resource. Yet an IDEA due process hearing is subject to a distinct federal timeline, specialized substantive rights, and a statutory framework that anticipates meaningful participation by parents, many of whom appear without counsel. The possible mismatch between ordinary litigation practice and this specialized case assignment warrants careful consideration.

The Special Master questions whether the routine or presumptive use of these procedures creates avoidable delays particularly in relatively limited disputes.

Having now reviewed numerous pre-hearing audio recordings and considered OAL's current practices, the Special Master has identified the following potential procedural barriers. These observations are not intended to be findings concerning every case or every ALJ.

(a) Motion practice and conventional briefing schedules

The Special Master's review has identified instances in which OAL case management appears to proceed through written motions and briefing sequences typical of ordinary civil litigation. A formalistic briefing format has been observed for discovery disputes and other non-dispositive issues, as well as for semi- or totally-dispositive motions, and can interpose lengthy delays. For example, ALJs may set an opening brief deadline approximately two weeks after an initial conference, allow an additional two weeks for opposition, and permit a further seven days for a reply. Briefing alone can therefore take approximately five weeks before accounting for the ALJ's consideration of the papers, any oral presentation, and rescheduling of the merits hearing. Although appropriate briefing periods will depend on the circumstances of each case, the more fundamental question is whether conventional pre-hearing motion practice is appropriate or necessary in proceedings that the IDEA already contemplates as expedited administrative hearings, governed by a 45-day decision deadline subject to specifically authorized extensions not

intended to eviscerate the emphasis on speediness of the dispute's resolution.⁶ This is particularly a concern where motions do not meaningfully narrow the issues or eliminate the need for an evidentiary hearing. The additional time consumed by briefing and deciding those motions may serve to prolong, rather than facilitate, resolution.

The period preceding transmittal to OAL should provide an opportunity to identify the disputed issues and share available educational records and evaluations, consistent with applicable confidentiality protections. The recurrence of discovery disputes after transmittal suggests that the pre-transmittal process is not producing the degree of information sharing needed to expedite matters for prompt hearing. That concern is particularly significant because OAL's special education rules contemplate discovery principally through informal exchanges, and not through formal interrogatories, requests for admissions, and depositions. *See* N.J.A.C. 1:6A-10.1(d).

⁶ The District Court's recent decision in *K.W. v. Ringwood Board of Education*, 2026 WL 1734092 (D.N.J. June 16, 2026), provides context for examining dispositive motion practice in IDEA proceedings. The Court questioned the appropriateness of summary disposition in light of the IDEA's protections permitting parties to present evidence and examine witnesses, and discussed guidance from the United States Department of Education's Office of Special Education Programs questioning summary procedures outside the complaint-sufficiency process. *Id.* at *12. Ultimately, the Court concluded that disputed material facts required remand for an evidentiary hearing on the parent's compensatory-education claim. *Id.* at *14. While the Court did not establish a prohibition against the use of dispositive motions in these proceedings, it raised timely questions about their compatibility with an expedited hearing process that protects the parties' opportunity to present and test evidence.

Early production is also necessary to accommodate the 5-Day Disclosure Rule. Parties must disclose the documentary evidence and summaries of testimony they intend to present, and discovery must be completed no later than five business days before the hearing. *See* N.J.A.C. 1:6A-10.1(a)–(c); *see also* 34 C.F.R. § 300.512(a)(3), (b). When production or disputes over experts remain unresolved until a proposed hearing date approaches, the required interval for disclosure can become another obstacle to commencing the hearing. The appropriate response is to establish and enforce exchange deadlines early enough to preserve a prompt hearing date and address noncompliance under the applicable evidentiary rules. The five business day disclosure requirement should not routinely become a reason to delay the hearing, nor does it itself authorize an extension of the FDD.

In light of the foregoing, the Special Master intends to examine whether motion practice can be more closely tailored to the needs of these proceedings. Disputes concerning discovery or expert evidence may, where appropriate, be resolved through immediate oral presentations, focused letter submissions, or an appropriately noticed conference. Where briefing is necessary, its scope and timing should reflect the particular issue and the time remaining before the FDD, while preserving a meaningful opportunity for both parties to be heard. Consideration should also be given to whether merits hearings can remain scheduled while motions

are pending. For self-represented parents in particular, serial motion practice can be difficult to navigate and may burden meaningful advocacy.

These matters warrant further consideration, with input from the parties and OAL, in developing the Compliance Plan.

(b) Expert testimony, written reports, and remote participation

The Special Master also encountered proceedings in which expert witnesses are scheduled for live testimony before the parties and the ALJ consider whether reports, evaluations, stipulated evidence, or an agreed remote appearance could narrow the issues or simplify their presentation. Expert testimony can be indispensable where specialized educational or clinical questions are disputed. Credibility and the opportunity to question an expert may also be important.

Nevertheless, routinely assuming that every expert must appear in person and be examined at length can create substantial scheduling difficulties. Experts may have limited availability, multiple witnesses may be required, and hearings can be broken into sessions separated by weeks. These intervals may impede timely educational relief. A focused pre-hearing process could address whether an evaluation report can be received as an exhibit and whether its contents are genuinely disputed. It could also determine whether the expert is needed for questioning, whether questioning can be limited to identified matters, and whether mutually acceptable contemporaneous video testimony is suitable. The objective would be to

preserve the parties' opportunity to question and cross-examine witnesses efficiently while reducing unnecessary scheduling obstacles.

(c) *Closing presentations and hearing records*

In particular, the additional time rather routinely allowed after the close of evidence for written summations warrants close examination, particularly when the evidentiary hearing has taken only one day or even two. It was perplexing, to say the least, to hear ALJs in pre-hearing conferences permit, or at times seemingly lead the parties into agreement in asking for, such formal written summations and accompanying delays. Written summations may be useful in unusually complex matters, cases with extensive records, or proceedings requiring detailed analysis of multiple legal questions. But a routine expectation that parties will submit post-hearing briefs can delay decision writing and add weeks to an otherwise completed hearing. The potential delay is magnified where parties have limited familiarity with formal briefing.

Consistent with OAL's rules, a presumption of oral summation at the conclusion of the hearing should be strictly enforced in these time-sensitive hearings. *See* N.J.A.C. 1:1-14.7 (e)–(f). In other cases, short simultaneous written submissions limited to specified questions may be preferable to extended sequential briefing. The choice should account for fairness, accessibility, complexity, the parties' requests,

and the time remaining before the applicable FDD. Instead, this practice is being rather routinely used to justify extension of the FDD.

The Special Master's review also identified cases in which parties are given time to obtain transcripts before completing summations, including after hearings lasting approximately one day. Judges are building in this time with litigants in a manner that at times is inviting positive responses so that more time for the FDD is allotted immediately; and these types of invitations lead pro se parties into acquiescence from the way they are being suggested by the court. Notably, district attorneys are routinely asking for briefing without receiving any deterrence from the judge for this additional delay in resolving a special education student's educational dispute. Asking for a transcript may be important, for example, where the evidence is lengthy, materially contested as to its detail, or unusually technical. But making the availability of a prepared transcript a routine prerequisite to closing submissions risks a substantial post-hearing delay unrelated to the need for additional proof.

(d) Sequencing of conferences, discovery, and hearing dates

The Special Master's procedural concerns are not limited to motions or summations. The recordings suggest that pre-hearing conferences may address discovery, the need for and scheduling of further evaluations, testimony on separate days, written submissions, and possible motions before a realistic hearing date is ever set. Some of these steps can be essential, but others may proceed concurrently

or after the central disputed issues have been narrowed. The use of repeated conferences devoted principally to constructing a conventional litigation schedule may otherwise consume significant portions of the 45-day timeline.

(e) *Scheduling conflicts involving attorneys and school district personnel*

Scheduling conflicts involving attorneys and school district personnel are another significant contributor to protracted proceedings. In many of the pre-hearing recordings reviewed, ALJs appeared exceedingly deferential to the dates those participants offered, without sufficient inquiry into the reasons for their unavailability or the possibility of earlier alternatives. Under OAL's rules, adjournments require good cause and must be for the shortest possible period and to a definite date. *See* N.J.A.C. 1:1-9.6(c)–(d). The rules further caution that an attorney's conflicting court engagement does not automatically warrant an adjournment. *See* N.J.A.C. 1:1-9.6(g). The existence of a scheduling conflict should therefore begin the inquiry, rather than end it.

A bare assertion that counsel is unavailable does not permit meaningful consideration of whether delay is justified. The distinction is illustrated by decisions addressing continuances in other settings. *Compare Ponce-Leiva v. Ashcroft*, 331 F.3d 369, 375–77 (3d Cir. 2003) (upholding denial of request for a continuance where counsel failed to explain a last-minute absence or secure alternate counsel), *with Gov't of the Virgin Islands v. Charleswell*, 115 F.3d 171, 174–75 (3d Cir. 1997)

(reversing denial of a request for a continuance where an unexpected family death impaired counsel's ability to prepare for trial). The circumstances of the particular request matter. Where counsel practices in a firm, ALJs should also inquire why another adequately prepared attorney cannot appear without impairing the client's representation. There should not be general acquiescence to a particular attorney's preference to remain the primary advocate; otherwise that practice can unduly logjam case scheduling.

Similarly, the fact that school district personnel are not ordinarily scheduled to work during the summer does not, standing alone, justify suspending a due process proceeding until the school year resumes. This was witnessed to an alarming degree when listening to audio tapes from conferences throughout July and August. Parents have the right to compel the attendance of witnesses, and OAL's rules provide for issuance of subpoenas. *See* 34 C.F.R. § 300.512(a)(2); N.J.A.C. 1:1-11.1(a). Particularly in matters involving self-represented parents, ALJs should explain that process and, where necessary and appropriate, issue subpoenas to facilitate parents' ability to secure the attendance of needed witnesses. Requests for delay should receive a searching review of the actual impediment, the available alternatives, and the effect on the FDD. Any resulting extension must comply with the 45-Day Rule and be accurately documented. The timely resolution of these cases must be a priority for both sides and their legal representatives.

Taken together, these preliminary observations suggest that the present system is not exercising sufficient control over the progress of due process cases to keep the hearing, related submissions, and final decision within the time required by the 45-Day Rule, subject only to properly supported and documented extensions.

IV. Conclusion and Next Steps

The Special Master has undertaken initial consultations, reviewed materials used to track FDDs, compared adjournment documentation with available recordings, issued guidance through the July 10 Order, and begun an additional monitoring process. That work has raised questions about the reliability of deadline tracking and whether current administrative and adjudicative practices are adapted to the specific requirements of special education due process proceedings.

The issues discussed in this Report are preliminary observations and areas for further inquiry. They do not constitute findings of fact, legal conclusions concerning individual practices or cases, or final recommendations about institutional responsibilities or changes. The Report does not assume that participants in the Special Master's informal meetings were obligated, or had a full opportunity, to present complete positions on every issue identified here. The Special Master remains receptive to explanations, corrections, and information that may materially alter the present assessment.

After circulation of this Report, the Special Master proposes to convene an on-the-record conference with the parties and appropriate OAL representatives to advance development of the Compliance Plan. Among other subjects, the conference will address how extensions are documented and FDDs calculated; the timely exchange of evidence and management of scheduling conflicts; the steps and time required for conventional motion schedules, live expert testimony, written summations, and transcript production; and alternatives that preserve statutory hearing rights. It will also address enhancement of NJDOE's pre-transmittal dispute resolution processes, the status of the electronic case-management project at OAL, the existing system for assigning special education matters, and the information needed to evaluate potential procedural improvements.

The Special Master looks forward to continuing her work with the assistance of the parties and relevant agencies.

Dated: October 14, 2026

Respectfully,

By: 

Jaynee LaVecchia
Special Master