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October 20, 2025

**Via Email (matthew.lynch@law.njoag.gov)**

Matthew Lynch, DAG  
Office of the Attorney General  
25 Market Street PO Box 0112  
Trenton, New Jersey 08625

**RE: C.P., et al. v. N.J. Dep’t of Educ., et al.  
Case No. 1:19-cv-12807-ESK-MJS**

Dear DAG Lynch:

As you know, the Consent Order in this matter, entered on April 11, 2024, provides that the Class may seek appropriate relief, including an order of contempt, if the New Jersey Department of Education (NJDOE) has not complied with the Consent Order. Although the monitoring report for the fourth monitoring period is not yet final, it is clear that NJDOE has not complied with the Consent Order.

Accordingly, pursuant to paragraph 35 of the Consent Order, we write (i) to document NJDOE’s non-compliance, with a reference to the specific provision(s) of the Consent Order that NJDOE has violated, and (ii) to provide a statement of the remedial action the Class seeks.

The most recent report establishes that NJDOE has not achieved a sustained compliance rate of 95%, as defined in paragraph 7 of the Consent Order, for the “Final Decision – Post Full Hearing” group of cases. Indeed, during the last monitoring period, only two out of thirteen such cases were compliant, resulting in a meager 15% compliance rate. And, the data on the thirteen non-compliant cases shows that NJDOE has made virtually no progress whatsoever during the eighteen months since entry of the Consent Order:

Case Number	Date of Transmittal <sup>1</sup>	Date of Decision	Number of Days
EDS 13866-19	August 30, 2019 Reset to April 12, 2024	May 28, 2025	412
EDS 11047-23	August 28, 2023 Reset to April 12, 2024	May 2, 2025	386

<sup>1</sup> For cases reset to April 12, 2024 as provided in the Consent Order, number of days is calculated from the reset date. For cases marked with an \*, date of transmittal is not indicated, so the initial date is the day the petition was filed.

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Case Number	Date of Transmittal <sup>1</sup>	Date of Decision	Number of Days
EDS 03574-24	January 23, 2024 Reset to April 12, 2024	May 27, 2025	517
EDS 09271-23	July 24, 2023 Reset to April 12, 2024	June 30, 2025	445
EDS 05388-22	June 1, 2022 Reset to April 12, 2024	June 23, 2025	438
EDS 15116-24	September 18, 2024*	June 9, 2025	265
EDS 15690-24	November 7, 2024	June 23, 2025	215
EDS 03187-25	March 18, 2025	May 12, 2025	56
EDS 08102-25	May 1, 2025	July 18, 2025	79
EDS 04792-25	March 12, 2025	July 29, 2025	140
EDS 00385-25	February 14, 2024*	August 21, 2025	555

Compliance Report #4 (October 10, 2024) at 13-14. Only one of those cases, EDS 03187-25, was even close to meeting the 45-Day deadline.

Paragraph 7 of the Consent Order also requires NJDOE to attain 95% Compliance for “Pending Cases” and for cases denoted “Final Decision – No Full Hearing.” But NJDOE somehow still cannot even measure compliance rates for the “Pending Cases” and the “Final Decision - No Full Hearing” category of cases. As the Compliance Monitor states with respect to Pending Cases, “at the current time, there is no practical way for the Compliance Monitor to track the timeliness of all pending cases.” Compliance Report #3 (July 1, 2025) at 14 and Compliance Report #4 (October 10, 2025) at 15. With respect to “Final Decision – No Full Hearing” cases, the Compliance Monitor similarly states, “scant data exists on cases without hearing. The Compliance Monitor is unable to ascertain compliance at the case level after being unable to locate may [sic] of the records needed to demonstrate compliance or lack thereof.” Compliance Report #4 at 14. So, for those two categories of cases, NJDOE’s compliance rate is 0%.

NJDOE also has failed to comply with paragraphs 20 and 22 of the Consent Order. Paragraph 20 requires that “NJDOE shall collect data, including through the Adjournment Form referenced in Paragraph 22, as well as the electronic survey at the end of the Adjournment Form and/or through NJOAL’s case management system.” Paragraph 22 requires the use of the Adjournment Form “to track specific extensions of time” and mandates that “each Adjournment Form will be maintained in the electronic case file for each matter.” Yet, NJOAL did not implement the adjournment form until after July 1, 2024 (Compliance Plan (August 11, 2024) at 5), and the use

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of the Adjournment Form has remained “non-uniform” and “incomplete” throughout the remainder of the 18-month period. *See* Compliance Report #2 at 10, #3 at 15, #4 at 16.

The Compliance Monitor specifically recognized that “considerable variability exists in how ALJs complete the form, representing a knowledge gap among the various ALJs.” Compliance Report #3 at 15. And notably, and without explanation, NJDOE ignored and never disseminated the input provided by Class Counsel on December 9, 2024, regarding the content of a broadcast memo that would have provided instructions to users for the proper completion of the Adjournment Form. Astoundingly, the most recent draft Compliance Report indicates that NJOAL did not even begin training the ALJs on the Adjournment Form until April 4, 2025 (Compliance Report #4 (October 10, 2025) at 2), almost an entire year after the Court entered the Consent Order.

Further, NJOAL’s failure to launch its electronic case file system exacerbates the data-collection failures caused by NJOAL’s improper use of the Adjournment Form. Despite a target launch date of mid-November 2024 (Compliance Report #1.2 (October 21, 2024) at 9), as of the present date “no online data collection or record keeping system exists to track due process hearing requests from filing through to conclusion.” Compliance Report #4 at 15. This failure is inexplicable, especially given that NJDOE has entered Memoranda of Understanding with NJOAL since at least 2021 dedicating increasing amounts of money “to maintain and operate 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.” As such, NJOAL’s continued failure to implement such a software system is particularly inexcusable, and raises questions about where that money was spent instead.

NJDOE also has violated paragraph 30 of the Consent Order. Despite the requirement of paragraph 30 of the Consent Order, there is no “summary of the actions NJDOE will take in the next monitoring period to rectify noncompliance; and how said actions will be measured and assessed.” In fact, none of the monitoring reports contained specific action plans for the next monitoring period. While the failure to so disclose might be partially attributable to the Compliance Monitor’s lack of insistence, it ultimately was NJDOE’s responsibility to set out the actions it plans to take to rectify noncompliance in each prior monitoring period, and to propose how such action plans would be measured and assessed. NJDOE did not do so.

Finally, NJDOE’s noncompliance necessarily means that NJDOE has not complied with paragraph 10 of the Consent Order, which requires NJDOE to “ensure” that parties receive final decisions in accordance with the 45-day time limit established by 34 C.F.R. § 300.515.

NJDOE’s failures to comply with the Consent Order are beyond reasonable dispute. The only germane questions, therefore, concern what comes next, and how best can the Court get NJDOE to take its obligations seriously, with a time-is-of-the-essence mentality, such that NJDOE will comply with the law.

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In *Duane B. v. Chester-Upland Sch. Dist.*, 1994 U.S. Dist. LEXIS 18755 (E.D. Pa. Dec. 19, 1994), faced with a similar situation, the district court appointed a Special Master in an IDEA case because the defendants—the Pennsylvania Department of Education (PDE) and a Pennsylvania school district—had “moved with the pace of a snail in implementing the stipulated court orders in this case so as to require their being held in civil contempt in order to goad them into getting done the significant tasks that they yet left undone.” *Id.* at \*2. The same easily can be said of NJDOE here.

*Duane B.* explained:

Consent decrees, although negotiated by the parties, are judicial acts, and a party who violates consent decrees is subject to powers by which the court protects its judgments, including, most notably, the power of contempt. Liability for contempt accrues when a defendant disobeys a valid court order, knowing it to have been issued. [citation omitted]. The purpose of a civil contempt remedy is to coerce compliance with the court order and to compensate the complainant for failure to comply. The relevant inquiry is whether the defendants took all the reasonable steps within their power to insure compliance. To find them in contempt, it is not necessary to establish that the defendants willfully disobeyed the court ordered stipulations. The test is objective, rather than subjective.

*Id.* at \*9-10. Here, NJDOE **objectively** is in contempt of the April 2024 Consent Order because the compliance question is data driven and determined by simple mathematics. And the math demonstrates non-compliance, and thus contempt.

After eighteen months working with the Compliance Monitor, it is clear from the data—and NJDOE’s lack of material progress—that a Compliance Monitor with limited power is not sufficient to guide the NJDOE to compliance. Accordingly, pursuant to paragraph 35 of the Consent Order, we will seek remedial action requesting the appointment of a Special Master who will have greater authority, who will report regularly to the Court, and who will have the authority to recommend that the Court enter further remedial orders.

Pursuant to Rule 53 of the Federal Rules of Civil Procedure, the Court may appoint a Special Master to “hold trial proceedings and make or recommend findings of fact on issues to be decided without a jury if appointment is warranted by [] some exceptional condition.” Fed. R. Civ. P. 53(a)(1)(B)(i). Evidence of noncompliance with an injunction that first issued over a year earlier portends continuing violations, constituting just such an exceptional condition. *Nat’l Org. for Reform of Marijuana Laws v. Mullen*, 828 F.3d 536,539 (9th Cir. 1987). This is especially true when necessary to supervise implementation of a remedial order requiring major structural reform of a state institution. *See, e.g., Halderman v. Pennhurst State Sch. and Hosp.*, 612 F.3d 84, 111 (3d Cir. 1979) (en banc), *rev’d on other grounds*, 451 U.S. 1 (1981)

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The persistent and systemic noncompliance documented in this case warrants immediate judicial intervention. This litigation falls squarely within the category of institutional reform matters, like the cases cited above, in which entrenched failures—and failures to remedy—demand the appointment of a Special Master. Given the complexity and gravity of the issues, and NJDOE’s continued failure and refusal to take material steps toward remedying the problems, we will propose the appointment of a Special Master who is a retired United States District Judge or Magistrate Judge. If the parties are unable to agree on a qualified and willing candidate, we will propose that each side submit recommendations to the Court for its consideration and appointment.

Accordingly, before moving for contempt, we request that NJDOE consent to entry of the relief set forth in the proposed Supplemental Consent Order included with this letter. Frankly, given NJDOE’s abysmal performance during this 18-month-plus period, we assume NJDOE would prefer to negotiate a resolution rather than litigate its indisputable contempt of the Consent Order, which will require the expenditure of time and legal fees (ultimately to be paid by NJDOE) all in the name of delay, with the attendant, continued denial of legal rights to special education students in New Jersey.

We believe the Supplemental Consent Order provides the structure for expeditiously bringing New Jersey’s dispute resolution process into compliance. As required by ¶ 35 of the Consent Order, we look forward to NJDOE’s response within thirty days. That said, we welcome prompt discussions with NJDOE about the terms of the Supplemental Consent Order, and will negotiate with NJDOE in good faith. But, to be very clear, we will not chase after NJDOE for such discussions, and we will not delay filing our contempt motion if NJDOE shows up at the last minute with time-consuming deal points. The time to remedy this situation is now.

Very truly yours,

*/s/ Catherine Merino Reisman*

Catherine Merino Reisman  
On Behalf of Class Counsel

cc: Class Counsel (by email) (w/enc.)