

C.P. v. New Jersey Department of Education

Civil Action No. 19-cv-12807-NLH-MJS

COMPLIANCE REPORT #1.2

(This Compliance Report contains updates after comment from the parties.)

Submitted by

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Court Monitor

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I. Overview

The federal District Court of New Jersey appointed this compliance monitor on April 11, 2024 for the purpose of implementing the Consent Order and Settlement Agreement. As delineated in paragraph 18 of the Consent Order and Settlement Agreement, the Compliance Monitor's duties include, but are not limited to, the following: Develop a compliance plan; oversee and monitor the implementation of the compliance plan; amend the plan, as necessary and appropriate to address non-compliance; review and analyze data related to noncompliance with the 45-Day rule; identify and address barriers to noncompliance, through the development and implementation of targeted interventions; make recommendations regarding the development, implementation, and assessment of all initiatives, interventions, and corrective actions designed to rectify non-compliance with the 45-Day Rule; and oversee, monitor, measure, assess, and report upon the effectiveness of the compliance plan and implementation of interventions to improve compliance.

The Compliance Monitor has met frequently with NJDOE and OAL to first gain an understanding of the due process hearing system in New Jersey, ascertain the data collection points and tracking mechanisms in both systems, determine contributors to noncompliance, and develop recommendations for compliance. The initial Compliance Plan was issued on August 11, 2024 with recommendations for system changes in order to improve compliance with the 45-Day Rule, which are discussed more fully below.

The initial data collection period was one of observation and learning for the Court Monitor, NJDOE staff, and the Administrative Law Judges at OAL. All parties remain eager to make the necessary correction to achieve system compliance with the 45-Day Rule.

II. Summary of Initiatives, Interventions, and Corrective Actions

NJDOE and OAL have demonstrated a commitment of time and resources to improving the due process hearing system and correcting noncompliance. All parties have been cooperative and committed to making the necessary improvements as evidenced by the

initiative taken to provide requested data in a timely manner, the dedication of time to frequent meetings and strategy development and mapping out plans for implementation of needed changes.

III. Data Collected During Reporting Period from April to August 2024

The Court Monitor requested the following data:

- Data Subset #1 - “Reset” cases. Pursuant to Section IV, paragraph 11, “For purposes of compliance with this Agreement, for all Pending Cases that exist on the date of this Agreement’s approval by the Court (April 11, 2024), the 45-Day Timeline as set forth in 34 C.F.R. §300.515(a) will reset and begin to run on the calendar day immediately following the date of the final approval of this Agreement.” For this subset of approximately 200 cases, the following data was required.
 - Case name
 - Case number
 - Copy of the transmittal notice
 - Original date of case opening at OAL
 - Reset date, or new 45 day deadline
 - Copies of all orders memorializing the reset date
 - Copies of all subsequent orders adjourning the 45 day hearing timeline, including any underlying request for adjournment or any other documentation memorializing the request for adjournment
 - All next event dates for each adjournment
 - Current decision deadline if different from the reset date’s new 45 day deadline
- Data Subset #2 - Pending cases filed after April 11, 2024. Pursuant to Section IX, paragraph 26, the following data was required.
 - Case name

- Case number
- Copy of the transmittal notice and 45 day deadline for disposition
- Original date of case opening at OAL
- All scheduling orders, including the initial scheduling order and the 45-Day deadline for disposition if different from the original deadline
- Any and all Adjournment Forms showing a party's request for specific adjournment, or any other documentation memorializing an adjournment, the reasons for it, and the underlying request, if any
- Any and all next event dates
- Current decision deadline
- Data Subset #3 - Final Decision Cases. Pursuant to Section IX, paragraph 27, the following data was required.
 - Case name
 - Case number
 - Copy of the original transmittal notice and 45 day deadline for disposition
 - All scheduling orders, including the initial scheduling order and the 45 day deadline for disposition if different from the original deadline
 - Any and all Adjournment Forms showing a party's request for specific adjournment, or any other documentation memorializing an adjournment, the reasons for it, and the underlying request, if any
 - The date and a copy of any signed order of dismissal, notice of withdrawal, final decision approving settlement, final decision in the case issued after hearing, and/or any other decisions disposing of a case

NJDOE and OAL provided initial data responsive to the Court Monitor's request to the extent that it had previously been collected. Both entities have responded to the data request by enhancing data collection efforts to more closely match the request of the Court Monitor.

A. NJDOE Monthly Data Summary (updated)

	Number of New Filings (Non-Expedited)	Total Transmittals (Non-Expedited)	District Filed Request with NO Transmittal	Late Transmittals	% of Late Transmittals	Range of Delay*
April 2024	109	36	8	16	45%	1 to 61 days
May 2024	122	43	9	24	56%	2 to 38 days
June 2024	130	24	8	14	58%	2 to 62 days
July 2024	94	8	8	4	50%	6 to 29 days
August 2024	94	12	0	9	75%	4 to 34 days

*Excluding the cases filed by a public agency but not yet transmitted.

B. OAL Data Summary

	Number of Cases	Range of Years
Reset Cases as of 4/11/24	188	2021-2024

	Number of Transmittals	Number of Adjournment Forms	Cases Closed	Range of Years
June Data 2024	114	N/A	117	2022-2024
July Data 2024	71	74	104	2023-2024
August Data 2024	114	177	84	2023-2024

IV. Hypothesis of Causes and Barriers

Several different hypotheses and barriers are presented when examining the due process hearing data in New Jersey for timeliness with the 45-Day Rule.

1. No uniform data collection or record keeping system exists to track due process hearing requests from filing through to conclusion.
2. NJDOE and OAL have not readily shared data on the status of due process cases. NJDOE has typically received very little information about a case after transmittal, and OAL knows little about a case before transmittal.
3. Case transmittal requirements were loosely defined based on an assumption that transmittal could be delayed if the parties requested to defer transmittal to a later date or until a settlement conference was scheduled. Transmittal must occur after the conclusion of the resolution period or immediately upon a public agency request for due process. No clear conclusion of the resolution period resulted in late transmittals or no transmittals, which caused difficulty in determining the decision deadline.
4. Some data collection points have historically been undefined in New Jersey (for example, the date when mediation concludes is sporadically noted, and if the case settles in mediation, there is no end date concluding the matter noted in the data). OAL's system of data collection for IDEA cases has been limited to manual file notes or other informal methods. The data submissions from OAL had to be gathered from emails, file notes, paper documents, etc.
5. OAL has not tracked timelines consistent with the federal requirements with respect to the granting of adjournments or extensions. No formal record existed until the Adjournment Form was introduced in July 2024.
6. NJDOE does not track the "age" of a due process case. No data is reported on the length of time from filing to closure of a due process case. Until use of the Adjournment form commenced, it was impossible to verify the length of an adjournment, negating a true calculation of the age of a case and whether the 45 day timeline had been properly extended.

V. Summary of NJDOE Actions to Address Noncompliance to Date

The August Compliance Plan provided recommendations for NJDOE and OAL to incorporate into their respective IDEA due process hearing systems. The recommendations included:

1. **NJDOE/OAL contemporaneous notice of case filing.** The Court Monitor recommends that NJDOE provide notice of filing of each new case to the OAL at the same time the case is filed at NJDOE. The following components are also recommended:
 - a. Because NJDOE rules require formal “transmittal” of the case at the conclusion of the resolution period, the recommended initial notice would precede formal transmittal and serve to alert OAL of a new case to begin the scheduling of settlement conferences.
 - b. OAL immediately opens the file and commences tracking all timelines associated with the case. OAL assigns the case for settlement conference as appropriate and commences scheduling of that conference.
 - c. Any requests for mediation continue to be handled by NJDOE, but do not automatically extend the 45 day due process timeline unless specifically requested by the parties either through an adjournment request or through extending resolution for the purpose of engaging in mediation consistent with 34 C.F.R. §§300.510(b) and (c), and 300.515(a).
2. **Immediate transmittal upon public agency filing.** The Court Monitor recommends that NJDOE immediately transmit each case for due process when the matter is filed by a public agency. No resolution period exists in these cases, requiring immediate transmittal. No other delays are permissible.
3. **NJDOE and OAL track and monitor the resolution period.** The Court Monitor recommends formal transmittal of the case to OAL at the conclusion of the resolution period to comply with N.J.A.C. 6A:14-2.7(h)4. No other delays are permissible.

4. **Use of an adjournment form.** The Court Monitor recommends that OAL use an adjournment form with all minimum components as required by the Settlement Agreement in all cases to make a continuous and permanent record of the original 45 day timeline, any adjournments for a specific amount of time, the reasons for the adjournment, the requesting party, and the new decision deadline based on the properly extended 45 day timeline.
5. **Distribution list.** The Court Monitor recommends that OAL include NJDOE on the distribution list for copies of all adjournments, orders, and decisions in each case.
6. **Data collection.** The Court Monitor recommends that NJDOE and OAL track all data fields identified in the data request for subsets #1, 2, and 3. Current data collection practices may need to be expanded in order to comply with this recommendation.

VI. Summary of NJDOE Future Actions to Rectify Noncompliance

In response to these recommendations, NJDOE proposed an implementation to address each recommendation made by the Court Monitor. Meetings are ongoing to facilitate implementation. NJDOE anticipates commencing immediate transmittal upon a public agency filing of a due process hearing request.

OAL has also expressed its willingness to make the necessary changes in order to implement the Court Monitor's recommendations. OAL commenced use of the Adjournment Form to track the length and reasons for each continuance. Of critical importance, OAL reported that a new docketing system is scheduled to be operational this fall. The new system will have the capacity to run reports tracking the needed data elements.

The NJDOE has committed to dedicating time, resources, and staff to making the necessary changes to bring the due process hearing system into compliance with the 45-Day Rule.

VII. Recommendations for Compliance

The Court Monitor reiterates the six recommendations made in the Compliance Plan issued in August 2024. In addition, NJDOE needs to track case ages from filing to

conclusion and reporting case age for each closed case. Whether the case, regardless of age, complies with the 45-Day Rule requires that a clear record be made regarding each step in the case, including resolution, mediation, adjournments, etc. Tracking the true age of a case for compliance with the 45-Day Rule will require implementation of some of the recommendations previously made.

VIII. Response to Comments

1. **Use of the Adjournment Form.** The class counsel team is concerned about inconsistent use of the Adjournment Request Form among the ALJs. We think it is important that parties and the ALJs are filling out the forms consistently. In particular, the intent was for the parties themselves to complete Section III, specifying the number of days for which an adjournment is requested, but we have received reports that some ALJs are completing that section of the form. We suggest that the enclosed instructions be provided to all parties and all ALJs to ensure consistency. In a prior email exchange, Defendants' counsel agreed to these instructions.

Response: Class counsel concerns regarding inconsistent use of the adjournment form and the varying methods for completion will be shared with NJDOE and OAL. As is expected with the introduction of any new practice, procedure, or form, consistent implementation requires time and feedback. Barriers to consistency will be explored with the intention of maximizing consistent implementation. Anticipate further and ongoing updates in this area.

2. **Accurate Identification of Settlement Conferences.** Currently, the OAL refers to settlement conferences as hearings when providing notice to the parties. OAL personnel have informed attorneys that all EDS (special education) case dates are denominated as "hearings" in OAL's case tracking system, whether or not those dates are hearing. This is inaccurate and potentially extremely confusing to pro se parties.

Response: The Court Monitor will share this concern at the next meeting with NJDOE and OAL. Anticipate further updates in this area.

3. **Status of Case Management/Tracking Software at OAL.** Members of the special education bar have received differing reports regarding when OAL will be

implementing its case management/tracking software. Is it confirmed that the computerized docketing system will be operational this fall? What is the projected date for the new system to be up and running?

Response: OAL reports that the work is ongoing. One identified area of delay is the migration of existing data to the new system. OAL is working with the vendor and IT to resolve issues and complete training on the new system. Although the most recent target launch date is mid-November, the actual launch date will depend on when the vendor, IT, and OAL can resolve the remaining issues.

4. **Data Question 1.** The data in the “NJDOE Monthly Data Summary” chart on page five of the Compliance Plan do not match the data in the “NJDOE Monthly Data Summary (updated)” chart on page four of the Report. To what extent is this attributable to the fact that NJDOE and OAL enhanced data collection efforts (Report at p.3) after providing the initial data to the Monitor and how would that cause the numbers of cases in some categories to decrease? For example, is there any indication as to how or why the total transmittals in June and July were so different between the Compliance Plan and the first Report?

Response: The initial data sets received from NJDOE and OAL were, in many instances, initial efforts at gathering the data, and the Compliance Plan represents the Court Monitor’s initial efforts at compiling and reporting the data. Once difference noted is the inclusion of cases filed by a public agency that should have been transmitted immediately after filing as opposed to the exclusion of cases filed by a public agency but not yet transmitted. (See the notations below each respective table.) The method of reporting used by the Court Monitor changed in anticipation of NJDOE’s acceptance of the Court Monitor’s recommendation to immediately transmit cases filed by a public agency. As recommendations are implemented, we will expect to see other fluctuations in the data.

5. **Data Question 2.** Does the “Number of New Filings” category include “District Filed Requests with NO transmittal?” Does the “Late Transmittals” category include District filed requests that were not immediately transmitted? Are you

calculating the date the case should have been transmitted or are you relying upon NJDOE's calculation?

Response: The data table includes a column accounting for district filed cases that were not transmitted upon filing. 100% of these cases were deemed a late transmittal. Keep in mind that there is no single source of case information from origination to completion. As noted in the body of this report, it is impossible to ascertain case ages, including properly extended resolution sessions and decision deadlines due to the data being kept in two different data tracking systems. The contemporaneous and open sharing of information between NJDOE and OAL should help in maintaining accurate records. Further refinements in this area are ongoing.

6. **Reset Cases.** Do we know how many of the reset cases have exceeded the 45-day deadline since April 11, 2024? Is there a way to determine the number of adjournment forms used in the reset cases in July and August 2024? Is there a way to determine the number of the reset cases that have been closed?

Response: The Court Monitor requested a status update on each of the reset cases. Anticipate further updates in the future once the data is received and compiled.

7. **Comparison of Transmittals Between OAL and NJDOE.** The updated NJDOE Data Summary indicates that there were 24 non-expedited transmittals during June 2024. The OAL Data Summary indicates that there were 114 transmittals. Were there 90 expedited transmittals? Why are the numbers so different between NJDOE's transmittal data and OAL's transmittal data?

Response: As explained in the report, the data keeping methods and timeframes are distinct between NJDOE and OAL. NJDOE's case filing data is kept chronologically, linked to the date of filing. The number of cases transmitted likely include cases from preceding months, depending on the length of the extended resolution period. OAL's data, on the other hand, is a chronological list of cases linked to the date of transmittal, not filing. As was frequently the case, NJDOE did not transmit a matter in the same month it was filed. Therefore, it was possible for more cases to be transmitted in any given month than the

number of cases filed, depending on the number of previous cases with an extended resolution period. In short, it is impossible at this point in time to compare the number of filings in the NJDOE data with the number of transmittals to OAL. Expect further progress updates in this area.

8. **Delays Due to Filing of Summary Decision Motions.** There are no timelines for motion practice in OAL rules for special education cases. The uniform administrative procedure rules provide 20 days for a response, 10 days for a reply, and 45 days for a decision from the due date for the last permitted responsive filing. Have ALJs been advised that the filing of a summary decision motion does not toll the running of the 45-calendar day deadline? Some practitioners are reporting significant delays due to the filing of summary decision motions.

Response: The timing of due process hearings from filing to decision continues to be a focus of NJDOE, OAL, and the Court Monitor. Anticipate further updates in this area.

9. **Coordination Between NJDOE and OAL.** In addition to contemporaneous notices of filing, so that OAL can begin tracking cases at its end, have there been any discussions about the sharing of additional information (such as when the parties opt for early transmittal or agree to extend the resolution period) that would allow OAL to more accurately anticipate when the resolution period will end and when to start scheduling settlement conferences?

Response: Yes. NJDOE and OAL agree in principle to the open sharing of information on case filings in due process hearings. Anticipate further and ongoing updates in this area as procedures are developed.

10. **NJDOE Implementation for Second Monitoring Period.** We were glad to read that NJDOE has proposed an implementation for every recommendation made by you (Report at p. 7). Has NJDOE shared how it will measure or assess the success of its actions in the second monitoring period (as referenced in ¶ 29 of the Consent Order)?

Response: Cooperative implementation efforts between NJDOE and OAL are ongoing. It is important to note that both entities are committed to the

improvement process consistent with the Court Monitor's recommendations.

Data collection and reporting will improve over time with the cooperative efforts of NJDOE and OAL.

Respectfully submitted this 21st day of October 2024.



Lenore Knudtson
Court Monitor