

# **New Jersey Department of Education**

## **Special Education Ombudsman Annual Report to the State Board of Education**

July 1, 2020 to June 30, 2021

New Jersey Department of Education

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## Background

The Special Education Ombudsman was created in 2016 pursuant to N.J.S.A. 18A:46-2.4. The Special Education Ombudsman serves as a neutral resource charged with providing information and support to parents/caregivers, advocates, educators and students with disabilities regarding special education rights and services. In addition to this role, the statute requires the Special Education Ombudsman to make an annual report to the State Board of Education and the Commissioner of Education that includes a summary of the services the Special Education Ombudsman provided during the year, along with recommendations concerning the state's implementation of special education procedures and services. This document serves that function for SFY 2021, covering the period from July 1, 2020 through June 30, 2021.

## Role and Responsibilities

The duties of the Special Education Ombudsman, as set forth in the statute, include the following:

- Serve as a source of information for parents, students, educators, and interested members of the public to help them better understand State and federal laws and regulations governing special education;
- Provide information and support to parents of students with disabilities in navigating and understanding the process for obtaining special education evaluations and services;
- Provide information and communication strategies to parents and school districts for resolving a disagreement regarding the identification, evaluation, classification, placement, provision of a free, appropriate public education, or disciplinary action, of a student with a disability; and to educate parents on the available options for resolving such disputes, including due process hearings, mediation, and other alternative dispute resolution processes;
- Work neutrally and objectively with all parties to help ensure that a fair process is followed and that the special education system functions equitably and as intended;
- Identify any patterns of complaints that emerge regarding special education rights and services, and to recommend strategies for improvement to the Department of Education;
- Assist the Department of Education in creating public information programs designed to acquaint and educate parents and the public about the ombudsman's duties; and
- Serve as a resource for disability-related information and referrals to other available programs and services for individuals with disabilities, including early intervention and transition to adult life.

## Key Terms and Acronyms

**Approved Private School for Students with Disabilities (APSSD)** – incorporated entity approved by the Department of Education to provide special education and related services to students with disabilities placed by the district board of education responsible for providing their education.

**Child Study Team (CST)** - A multidisciplinary group of professionals, consisting of a school psychologist, a school social worker, a learning disability teacher-consultant, and often a speech-language specialist, dedicated to identifying and helping students with special needs.

**Classification** – A determination of whether a child is eligible for special education and related services.

**Complaint Investigation** - A complaint is an allegation that a local education agency has violated federal or state special education law. A complaint may be initiated on behalf of an individual child or on behalf of a group of children. A complaint may be filed with the New Jersey Department of Education for an independent review of the alleged violation(s).

**Due Process Hearing** - A due process hearing is a legal process in which the resolution of a disagreement between a parent and the school district is decided by an administrative law judge (ALJ) from the Office of Administrative Law (OAL).

**Evaluation** - The tests and other assessment procedures, including a review of information, that are used to decide whether a child is eligible for special education services.

**Extended School Year (ESY)** - A program which may provide a student with a disability special education and related services when the school is not normally in session, for example, during summer or holiday breaks.

**Facilitated IEP meeting (FIEP)** - A program offered by the SPDR where a state-sponsored, specially trained IEP facilitator assists the parties in the development of an appropriate IEP that is student centered. This program is designed to minimize state-level procedural protections and interventions that often result from ineffective IEP meetings.

**Free, Appropriate Public Education (FAPE)** - Special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet state and federal requirements; include preschool, elementary school or secondary school education; and are provided according to an IEP.

**Identification** - The decision to evaluate a child to determine whether special education services are needed.

**Individuals with Disabilities Education Act (IDEA)** – The statute enacted by the United States Congress which ensures that students with disabilities are provided a free appropriate public education.

**Individualized Education Program (IEP)** - A written plan which sets forth present levels of academic achievement and functional performance, measurable annual goals and short-term objectives or benchmarks and describes an integrated, sequential program of individually designed instructional

activities and related services necessary to achieve the stated goals and objectives. This plan shall establish the rationale for the student's educational placement, serve as the basis for program implementation and comply with the mandates set forth in applicable law and regulations.

**Least Restrictive Environment (LRE)** – To the maximum extent appropriate, children with disabilities are educated with children who are not disabled and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature and severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

**Local Education Agency (LEA)** – A school district; an entity which operates local public primary and secondary schools in the United States.

**Mediation** – A voluntary meeting conducted by a qualified and impartial mediator who is trained in effective dispute resolution techniques, and assists parties in reaching an agreement.

**New Jersey Department of Education (“NJDOE” or “the Department”)** – The State agency that administers State and federal aid programs affecting more than 1.4 million public and non- public elementary and secondary school children in the state of New Jersey.

**Office of Special Education** – The Office within the NJDOE that administers the special education dispute resolution system, which includes requests for due process hearings and mediation conferences. The Office coordinates the scheduling of mediation conferences.

**Parent** – The natural or adoptive parent, the legal guardian, foster parent when willing to so serve, or surrogate parent who has been appointed according to N.J.A.C. 6A:14.2.2(a) through (i), a person acting in the place of a parent (such as a grandparent or stepparent with whom the student lives or a person legally responsible for the student's welfare). Unless parental rights have been terminated by a court of appropriate jurisdiction, the parent retains all rights under this chapter. The term “parent” shall include the adult student.

**Parental Rights in Special Education (PRISE)** – a document prepared by the SPDR which describes the state and federal laws affecting the provision of special education and parental rights in the special education process.

**Related Services** – Any supportive service a student with a disability needs in order to benefit from special education. Examples of related services include: counseling; speech-language therapy (SLT); occupational therapy (OT); and physical therapy (PT). Transportation is also a related service. This list is not exhaustive.

**Special Education** – Defined in accordance with the definition of the term set forth in IDEA and its implementing regulations as well as the regulations governing special education in New Jersey, set forth at N.J.A.C. 6A:14.

**Special Education Ombudsman** – a neutral resource to provide information and support to parents/caregivers, advocates, educators and students with disabilities regarding special education rights and services.

**Student** – A person age three through 21 who is entitled to receive educational programs and services in accordance with Federal or State law or regulation.

**Student with a Disability** – A student who has been determined to be eligible for special education and related services according to N.J.A.C. 6A:14-3.5 or 3.6.

**Transition** – Transition refers to the process of a student moving from school into the adult world. New Jersey regulations require that transition planning begins to be addressed in the IEP that will be in a place for the school year in which your child reaches 14 years of age, or younger if determined appropriate by the IEP team.

## Summary of Services

The vast majority of the services provided by the Special Education Ombudsman during SFY 2021 involved responding to inquiries concerning the delivery of special education services to students with disabilities during the COVID-19 global pandemic. During SFY 2021, the Special Education Ombudsman responded to approximately 646 inquiries. Throughout the pandemic, emails and telephone calls were submitted by parents, guardians, caregivers, advocates, educators, and students with disabilities. Figure 1, below, depicts a comparison of the number of inquiries over the last three years.

Figure 1

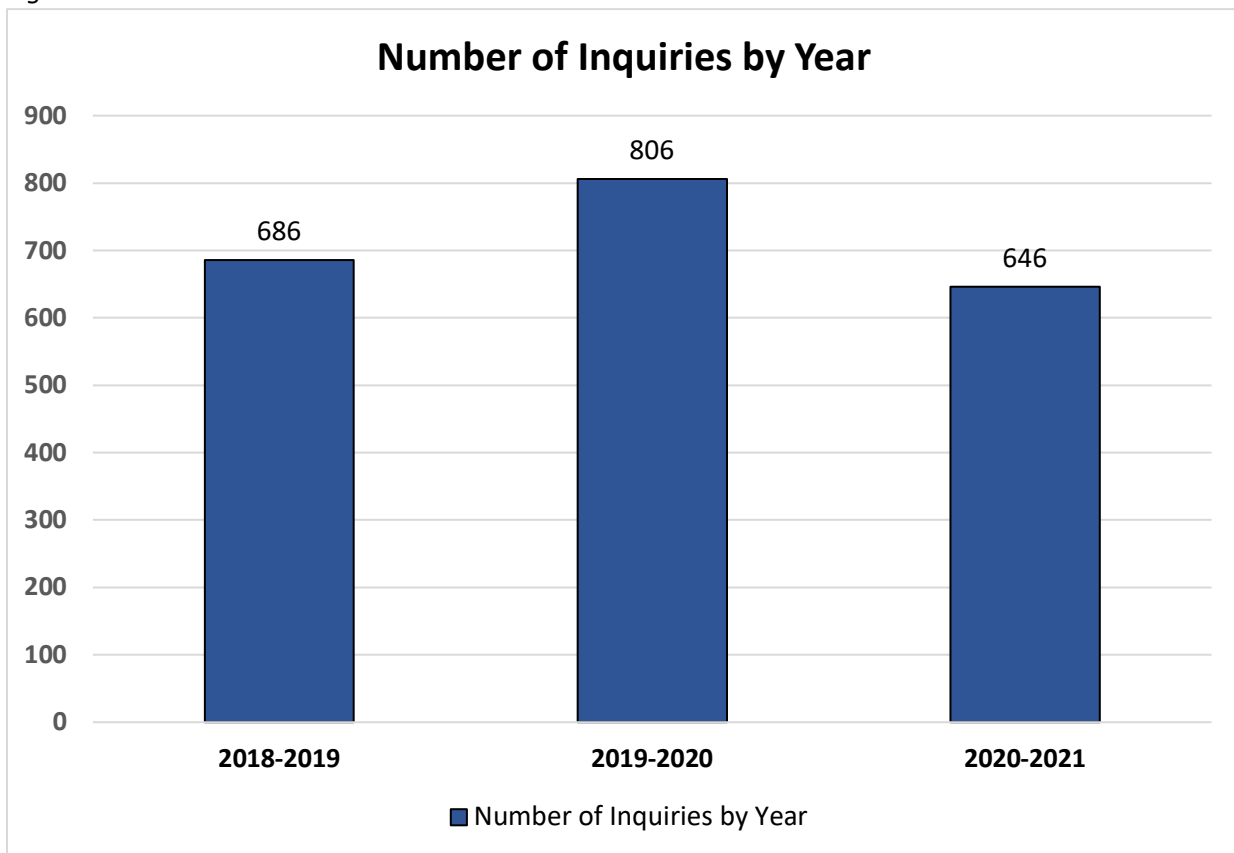


Figure 2, below, depicts the number of inquiries submitted from each representative group between July 1, 2020 and June 30,, 2021. The majority of inquiries came from parents of students with disabilities. The “Other/Not Specified” category includes individuals who wished to remain anonymous and the remaining include, but are not limited to, friends or relatives, private and non-profit companies or organizations, out of state agencies, social service agencies, and researchers.

Figure 2

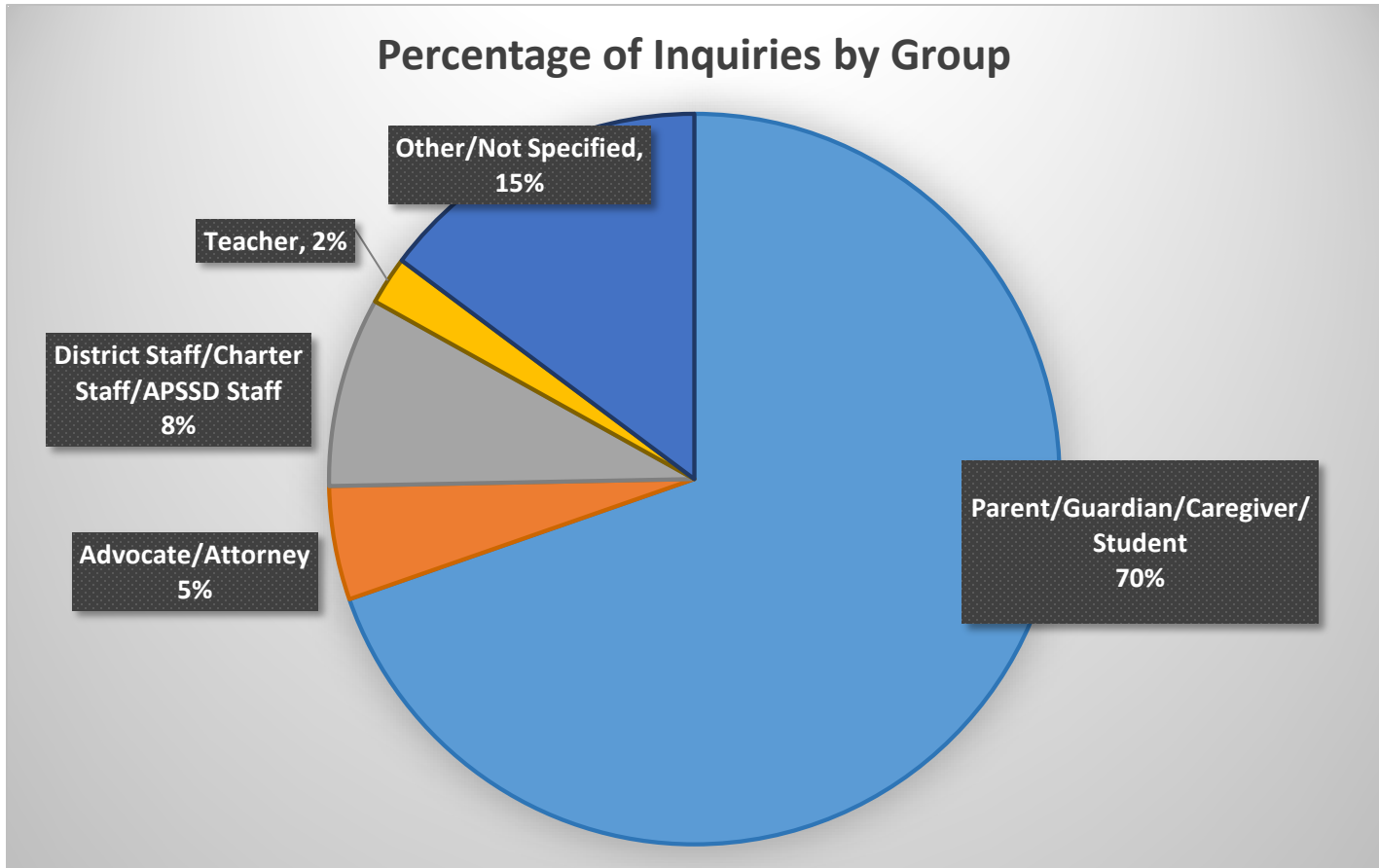
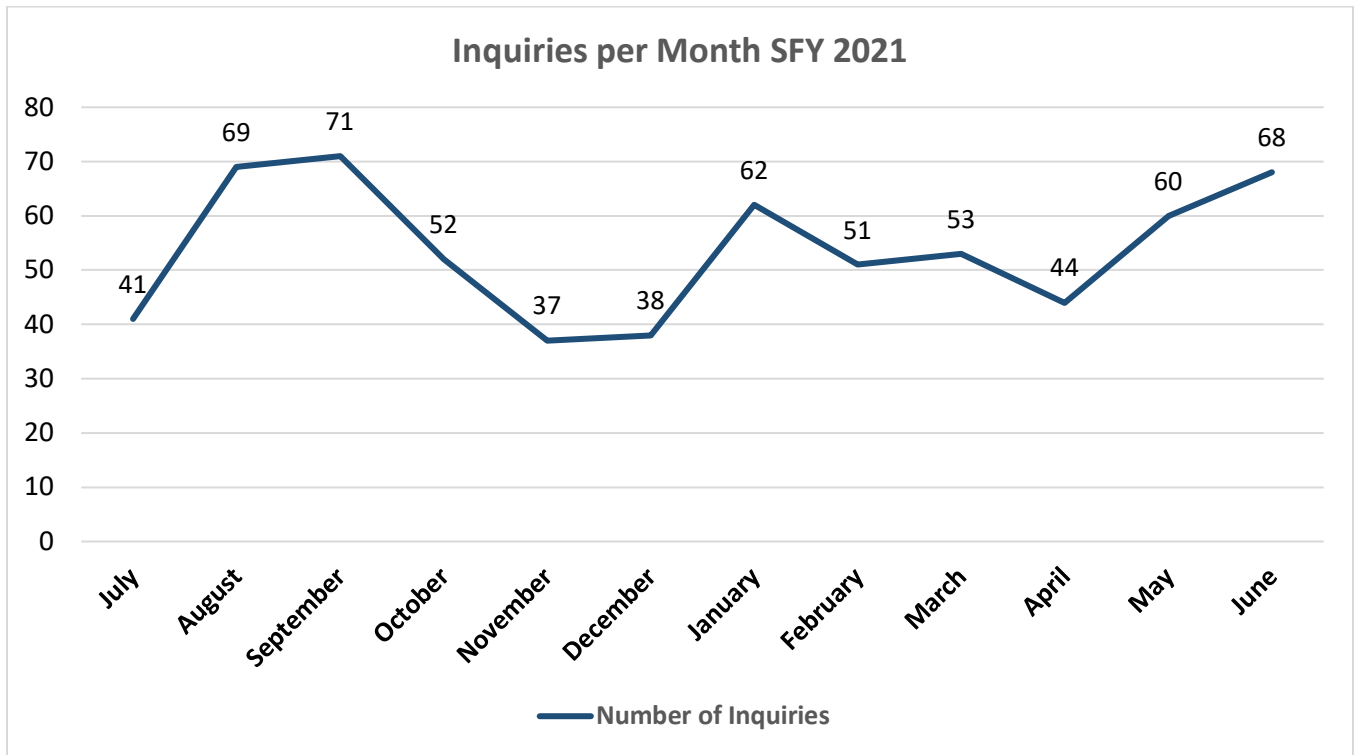


Figure 3 depicts a breakdown of the number of inquiries to the Special Education Ombudsman each month. As expected, the volume of inquiries increases leading up to the start of the new school year, leading into the second half of the school year, and at the end of the school year, after grades and progress reports have been distributed, and when programming for the following school year is being discussed.

Figure 3

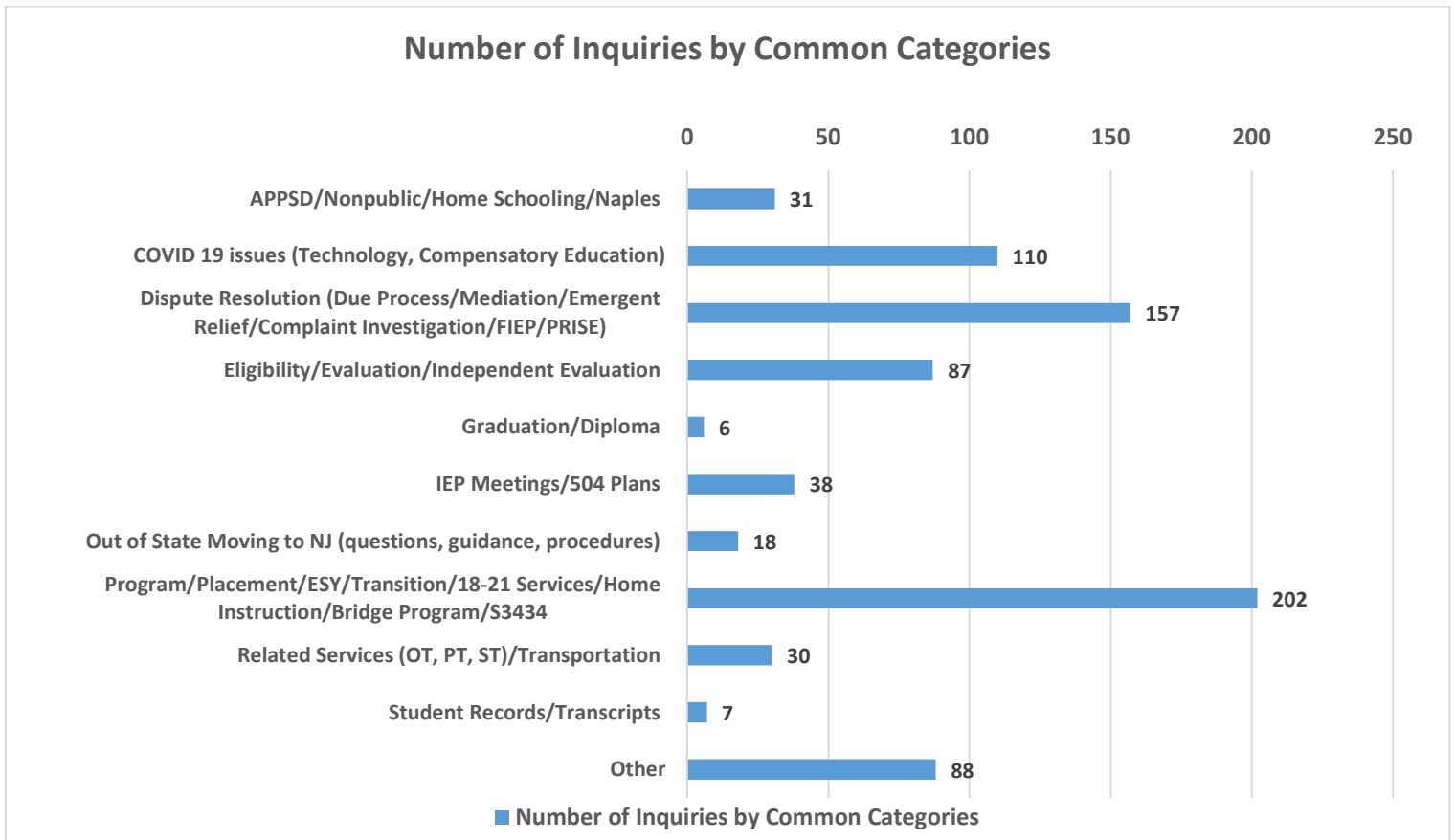


The inquiries involved a variety of issues and questions concerning the education of students with disabilities, such as:

- The process for initiating an evaluation of a student to determine eligibility for special education services;
- The development and implementation of student Individualized Education Programs (IEPs);
- The delivery of speech-language services, occupational; and physical therapies;
- Understanding the special education dispute resolution process; and
- Information and resources for post-secondary and transition to adult-life.

Figure 4 depicts the most common issues raised and the number of inquiries related to each issue. The most frequent issue raised is the program and/or placement of a student with a disability. There are also frequent inquiries about the dispute resolution options available to the parents of students with disabilities that range from the Facilitated IEP program through formal requests for mediation and due process hearings. For the 2020-2021 school year, there were many inquiries relating to the COVID-19 pandemic, which will be discussed in more detail below. It should be noted that many inquiries involve multiple issues related to special education; therefore, the number of issues exceeds the total number of inquiries each year.

Figure 4



Additionally, the Special Education Ombudsman receives many inquiries unrelated to special education. For example, the Special Education Ombudsman often receives inquiries related to teacher certification, personnel and building operations, and the process for the transfer and/or registration to a New Jersey school from out-of-state.

As the above table depicts, during the 2020-2021 school year, there were many inquiries related to the COVID-19 pandemic. It is important to note that at the beginning of the pandemic, many school districts buildings were closed and students initially did not have the resources or technology to move to full virtual learning. These issues impacted all students, however, there are additional issues specific to students with disabilities, such as remote instruction for students with more significant disabilities; the delivery of related services through remote platforms; and the ability to safely conduct evaluations during school building closures and the use of social distancing protocols. An example of commonly reported issues included:

- The delivery of instruction and/or related services (speech therapy, occupational therapy, physical therapy or counseling) through remote platforms was challenging for children due to learning differences or behavioral needs. Parents reported that the individualized and/or specialized instruction needed by their child was not effectively delivered through this process. Some parents were seeking an increase in either access to or the amount of time spent with in-person instruction or services;



- Implementation of student IEPs due to a shortened school day or reduction in in-person learning resulting from a hybrid or full-remote model of instruction;
- For students with disabilities with underlying health conditions and medical complexities which made in-person instruction more dangerous, many parents reported the desire to continue their children on virtual instruction, despite recommendations from their district that the student return to in-person instruction;
- Questions and concerns about mask requirements for children with disabilities due to the nature of the disability or services being provided, behavioral challenges, sensory issues, or medical issues or concerns;
- Delays and/or difficulty in conducting child study team evaluations, many of which needed to be conducted in-person to ensure reliability and validity. Delays occurred due to building closures, district staff inability to perform in-person evaluations, and/or parent hesitation to bring a student in for in-person evaluation;
- Concerns about students who were aged 18-21 and would be aging out of eligibility to receive special education and related services. This included parents who sought to have their children receive additional services after the age of 21 to address the loss of instruction due to COVID-19. Parents and advocates reported concern about the provision of appropriate transition services and/or community based instruction;
- Questions regarding district reopening plans. Parents expressed the need for re-opening plans to prioritize the return of students with disabilities; and
- The provision of recovery and/or compensatory education to address the periods of building closures and virtual and/or hybrid learning programs.

## Resolution

The assistance provided by the Special Education Ombudsman varies greatly depending on the inquiry; however, some of the more common ways the Special Education Ombudsman has assisted interested parties included:

- Provide the individual with resources to assist with their inquiry, including:
  - The [Parental Rights in Special Education \(PRISE\)](#), which is a document prepared by the SPDR which describes the state and federal laws affecting the provision of special education and parental rights in the special education process;
  - State and/or federal special education law and regulations
    - [Title 6A, Chapter 14](#)
    - [IDEA Statutes and Regulations](#)
  - [Department of Education](#) website. Specifically, [Special Education](#) website, including the [Learning Resources](#), such as: Assistive Technology, Autism, Dyslexia, and Positive Behavior Supports;
  - [The Road Back](#) and [The Road Forward](#) and other [resources](#) intended to guide the educational community through the COVID-19 pandemic;
  - [New Jersey Department of Education Broadcast memos](#)
    - [Providing Special Education and Related Services to Students with Disabilities During Extended School Closures as a Result of COVID-19](#)
    - [Providing Additional Services for Students with Disabilities Who Will Graduate or Exceed Eligibility for Special Education Services](#)
    - [Guidance for Summer Learning Programs](#)
    - [NJDOE Compensatory Education Guidance](#)
    - [Bridge Year](#)
    - [Spring 2021 Postponement of Statewide Assessment](#);
  - Other relevant guidance and information
    - [COVID-19 Guidance for IDEA Programs: A Self-Assessment Checklist for Local Education Agencies \(LEAs\)](#)
    - [NJDOE Special Education Memos](#)

- Contact the local education agency to discuss the concerns raised and help the parties facilitate a resolution, including providing communication strategies to parents and districts to help resolve disagreements;
- Assist with finding current district staff or district/school website links to help address specific questions/issues they may have with the district or school;
- Provide information about the [Facilitated IEP program \(FIEP\)](#), a program offered by the NJDOE where a state-sponsored, specially trained IEP facilitator assists the parties in the development of an appropriate IEP that is student centered. This program is designed to minimize state-level procedural protections and interventions that often result from ineffective IEP meetings;
- Where there is a dispute between the student’s parents and the local education agency concerning the education of a student with a disability, the parent will be referred to the formal dispute resolution procedures offered by the NJDOE. These parents may also be referred to an agency that can help provide advocacy or be provided with resources for Free and Low Cost Legal Representation. The formal procedures offered by the NJDOE include:
  - Requests for [Complaint Investigation](#)
  - Requests for [Mediation](#)
  - Requests for [Due Process Hearings](#)
- Refer the individual to other New Jersey Department of Education offices or staff members, when appropriate, including:
  - The [County Offices of Education](#)
  - The [Office of Controversies and Disputes](#)
- Refer the individual to other federal and state agencies and resources, including:
  - [Office for Civil Rights](#)
  - [Division of Development Disabilities \(DDD\)](#)
  - [Ombudsman for Individuals with Intellectual or Developmental Disabilities and Their Families](#)
  - [Early Intervention](#)
  - [Division of Vocational Rehabilitation Services \(DVRS\)](#)
  - [Commission for the Blind and Visually Impaired](#)
  - [Division of Deaf and Hard of Hearing](#)
  - [Catastrophic Illness in Children Relief Fund](#)
  - [NJ Children's System of Care](#)

- [Statewide Parent Advocacy Network](#)
- [Disability Rights of New Jersey](#)
- [Approved Clinics and Agencies](#)
- Provide information on NJDOE programs such as [New Jersey Tiered Systems of Support \(NJTSS\)](#), and the [Learning Resource Centers](#).

## Recommendations

- A review of the data collected over the last year revealed that inadequate communication between parties is often at the center of differences between school personnel and families. The Office of Special Education will work with partners to create and release a series of training webinars targeting parents and school personnel on effective communication strategies.
- The Special Education Ombudsman will present to the State Special Education Advisory Committee (SSEAC) and the County Special Education Specialists on IEP facilitation. IEP facilitation is a no-cost option available to districts and families to have a trained facilitator attend IEP meetings with the goal of encouraging effective communication.
- The Office of Special Education will create a “Resource Page” on the NJDOE website to house links and documents most frequently requested by parties contacting the Special Education Ombudsman.