

# *The Complaint Procedures Avenue of the IDEA: Has the Road Less Traveled By Made All the Difference?*

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- **The professional literature has not provided sufficient information about the state education agencies' complaint procedures (CP) mechanism under the Individuals with Disabilities Education Act.**
- **A systematic comparison of the frequency, outcomes, and remedies of the CP rulings with those of the much more well-known hearing officer (HO) mechanism for five of the most active states reveals practically significant differences both on an overall basis and among the five states.**
- **For example, parents had a significantly higher success rate in CP rulings than in HO rulings, yet the CP remedies tended to be less weighty for the individual child while extending more collectively to other, similarly situated children.**
- **Moreover, the issue categories, success rates, and remedial orders varied rather widely among these particularly active states. For example, the parent success rates were dramatically different between CP and HO rulings in states C and D, but not in state B. Moreover, for the HO decisions, the parent success rate for both ICs and cases was particularly low in states C and E and relatively high in state B, yet for CP decisions, the parent success rate was particularly low in state E and relatively high in state D.**
- **The CP forum merits more concerted attention from (a) stakeholders, including school district special education directors; (b) policy makers, including state education agency leaders; and (c) researchers.**

In his famous poem, Robert Frost wrote about walking in the woods until the way diverged into two roads, whereupon he stopped to consider taking the less traveled one as "having perhaps the better claim, because it was grassy and wanted wear." Parents treading in the thick forest of the Individuals of the Disabilities Education Act (IDEA, 2013) face a similar "Y" in the road although they may or may not notice the grassier route.

Depending on their experience, local special education directors may be familiar with the complaint procedures (CP) avenue that the IDEA requires each state education agency (SEA) to provide. Yet most special education professors and many parents of students with disabilities have negligible knowledge about this avenue of decisional dispute resolution under the IDEA, especially compared with the other alternative—the hearing officer (HO) route.

One of the reasons for this lack of knowledge is the limited attention to the CP avenue in the special education literature. For example, many of the texts in special education law do not mention, much less explain, the CP process (e.g., Osborne & Russo, 2016; Weber, Mawdsley, & Redfield, 2013), and others accord it tertiary attention in comparison to the HO process (e.g., Guernsey & Clare, 2008; Yell, 2016).

The purpose of this article is to provide an empirical analysis of the CP system in comparison to the HO system with regard to the issue categories (*explained below*), outcomes, and remedies in their respective written decisions. The data are from five of the most active states, and the comparison is not only between these two systems for the total sample but also among the five state subsamples. An earlier law review article (Zirkel, 2017) serves as the foundation for the overall CP–HO comparison and as the springboard for the follow-up interstate findings.

## Legal Framework

The IDEA is the most active source of litigation within the K–12 school context (e.g., Zirkel & Johnson, 2011). The adjudicative avenue under the IDEA starts at the administrative level with the HO forum. Although the IDEA (§ 1415[g]) also provides the option of a second, review officer level, most states have chosen a one-tier system of administrative adjudication preceding court action (Zirkel & Scala, 2010).

The alternative administrative avenue for deciding disputes under the IDEA is the CP system. This process, which is primarily addressed in the IDEA regulations (2013, §§ 300.151–300.153), is investigative rather than adjudicative. As canvassed elsewhere (Zirkel, 2016), the various other differences from the HO system include the following:

- Filing by any individual or organization except the district (in comparison to the HO system's limitation to the parent or the district)
- A minimal burden on complainants, particularly parents, including avoidance of the needs for an attorney and the tribulations of a hearing
- A "look back" limitation period of 1 year from date of filing
- A 60-day period for processing (in comparison to the 75 days for the HO processing, which includes 30 days for the resolution meeting)
- In the majority of jurisdictions, no right to judicial appeal

Conversely, the similarities between the CP and HO systems include almost the same (a) subject matter jurisdiction; (b) requirements for the written complaint and a resulting written decision; (c) remedial authority, which for CP expressly includes for denial of free appropriate public education (FAPE), "compensatory services or monetary reimbursement" as well as prospective corrective actions (§ 300.151[b]); and (d) according to long-standing agency policy (e.g., Letter to Chief State School Officers, 2000; Letter to McWilliams, 2015), determination of not only procedural, but also substantive, issues (Zirkel, 2016).

In contrast to both of these systems, mediation, which is the third expressly established dispute resolution mechanism under the IDEA, is not decisional. However, per the IDEA regulations, mediation is available on a voluntary basis in conjunction with both the CP and HO processes (§§ 300.152[a][3][ii] and 300.506[b]). Although

mediation and various other nondecisional dispute resolution alternatives, such as individualized education program (IEP) facilitation, contribute to settlements before and during the CP and HO processes in many cases, they are beyond the scope of this empirical examination.

## Previous Research

The previous research specific to the IDEA's CP mechanism is limited in scope and currency. For example, it does not extend to (a) the perceptions of parents, parent attorneys, and special education directors; (b) the use and impact of alternate dispute resolution procedures; and (c) current policies and practices for the qualifications and training of CP personnel and for the scope and nature of their investigations and decision writing. Moreover, most of the available research has focused on the overall frequency or outcomes of the CP forum without a systematic analysis of the content of the decisions and a comparison with the corresponding results from the HO forum.

The earliest published analysis was a survey of SEA representatives specific to selected aspects of their CP systems (Suchey & Huefner, 1998). This early study found that 27 (77%) of the 35 respondents reported investigating substantive, not just procedural, violations; 32 (91%) reported addressing systemic violations; and 28 (80%) reported providing training for investigators. They also found a prevailing perception that school district personnel had limited awareness of the CP in comparison to the HO process. The literature lacks follow-up research as to these issues in light of more recent policies. For example, as to the extent of more general awareness, the 2006 IDEA regulations added a requirement that the district's procedural safeguards notice for parents include a "full explanation of. . .[t]he difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures" (§ 300.504[c][5][iii]). Subject to further research, it may well be that this revised notice may not have made a dramatic difference due to the dense content and extensive coverage required by this regulation.

Similarly, more recent published research has been scant with regard to CP issues and outcomes. For example, limited to 97 CP decisions concerning students with autism for a Midwestern state during

the 5-year period 2004–2009, White (2013) found that the majority (71%) of the complaints concerned the child’s IEP and that almost half of the decisions (46%) were in favor of the district. However, in addition to the limitations to one IDEA classification in a single state, the issue identification and outcomes analysis were clearly questionable in terms of precision and accuracy.

In a law review article, Colker (2014) analyzed 81 CP decisions in Ohio during the 1-year period of 2012–2013. In a three-outcomes categorization, she found that the distribution was as follows: parent prevailed on every issue, 22%; mixed (i.e., parent prevailed on some issues and district prevailed on others), 42%; and district prevailed on every issue, 18%. Colker did not define “prevail” beyond explaining that it did not take into account whether the parent received the requested relief, and her study did not extend to a systematic categorization and quantitative analysis of the issues. She explained her decision not to engage in a direct comparison with the HO decisions for the same limited period due to their small number and what she characterized as the SEA’s slow and “sloppy” action (p. 399) to make them available. Her tentative conclusion was that in Ohio the CP process appeared to be more efficient and fair than the HO process while expressly recognizing the need for more extensive research within and beyond Ohio.

At the national level, a federally funded center’s (CADRE, 2016) frequency analysis of the SEA’s data to the U.S. Department of Education’s Office of Special Education Programs for the nine school years ending with 2014–2015 revealed that (a) the national total of CP *filings* was less than one third of the corresponding total of HO filings and (b) both of these totals dropped modestly during this period, but due to the much higher rate of settlements and withdrawals for HO filings, (c) the national total of CP *decisions* was closer to the corresponding total for HO decisions. Moreover, partially attributable to the increase of mediations requested, mediations held, and mediation agreements, the national total of decisions dropped for both processes during the first few years of this period, particularly for the HO decisions, resulting in plateaus during the most recent part of the period at a similar level. Additionally, according to supplementary data from the center’s then director (P. Moses, personal communication, December 1, 2016), 12 states and

other U.S. jurisdictions—California, Connecticut, District of Columbia, Illinois, Maryland, Massachusetts, Michigan, New Jersey, New York, Pennsylvania, Puerto Rico, and Texas—accounted for approximately 80% of this total of CP and HO activity.

Finally, a law review article (Zirkel, 2017) provided a detailed analysis comparing 250 CP decisions with 250 HO decisions from five “states” (including the other identified jurisdictions) in the aforementioned top 12 group. Four of these five states were in the East with the remaining one in the West. The analysis specifically addressed the frequency, outcomes, and remedies of the “issue categories” (ICs) in these decisions. Serving as the primary unit of analysis, ICs refer to groupings of issues according to a systematic typology, including, for example, child find, eligibility, FAPE procedural, FAPE substantive, FAPE implementation, least restrictive environment, and discipline. The primary categories for remedies were declaratory only, prospective order(s), compensatory education, and tuition or other reimbursement. Due to the relative inconvenience of this source for special education leaders with regard to accessibility and style, the purposes of the present article are (a) to summarize the primary findings of the Zirkel (2017) law review account and (b) to extend the comparative analysis to examining differences among the five states.

## Extended Design

As detailed in the earlier account (Zirkel, 2017), the initial steps for data collection were (a) obtaining a random sample of the 50 CP and 50 HO decisions for the period 2010–2016 from each of five states in the most active group; (b) developing an initial coding protocol from a previous study (Zirkel & Skidmore, 2014); (c) training a recent law school graduate, who had participated in a special education clinic, for coding procedures and IDEA concepts; (d) conducting a pilot test until reaching inter-rater agreement of at least 90%; and (e) coding the cases on a master spreadsheet according to the refined protocol. For each decision, the entries were three-column sets representing each IC, its outcome (i.e., ruling for parent or ruling for district), and, if applicable, the remedy (e.g., reimbursement, compensatory services, and/or prospective order). The original analysis was limited to comparing the CP and HO forums for the five states taken together,

but the extension here was to examine the differences among the five states. The primary unit of analysis was the IC, but the outcomes extended on a secondary basis to the cases. Similarly, although the approach was primarily quantitative, a qualitative analysis provided a supplementary perspective.

## Major Findings

### Overall Sample

For the original analysis, which was for the five states taken together as an approximate national sample, both the CP and HO forum averaged two ICs per decision. However, the CP forum was significantly more favorable to parents; their “success rate,” meaning the proportion of IC rulings in their favor rather than in the school district’s favor, was 50% for CP and 24% for HO. Moreover, counting each case in terms of the most parent-favorable IC, the parents’ success rate was 66% for CP compared with 32% for HO. Conversely, for the 35 (14%) of the 250 HO decisions in which the district was the filing or counterclaiming party, the parents’ success rate was only 8%; thus, 92% of those IC rulings were in favor of the district. Most of these district-initiated ICs were either to defend refusals to pay for independent educational evaluations (IEEs) or to seek authorization for an evaluation, reevaluation, or change in placement.

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The two forums also differed in their frequency and outcomes of ICs. For example, the CP forum had a markedly higher proportion of FAPE procedural ICs, such as lack of required IEP elements (e.g., measurable goals) or required IEP team members, and FAPE implementation rulings, which concerned whether the district had provided to the child all of the services specified in the IEP. In contrast, FAPE substantive rulings, which concerned the adequacy of the IEP, were much more frequent in the HO forum. As for outcomes, the CP forum resulted in particularly parent-favorable rulings for procedurally

oriented ICs, such as notices, evaluation, and FAPE procedural, and for FAPE implementation.

Similarly, when adjusting for differences in success rate and related variables, the remedies that were much more frequent for the CP forum were (a) delegating compensatory education to the IEP team and (b) prospective orders that extended beyond the complainant parent’s child to other, similarly situated children. In contrast, the HO forum had a much higher relative frequency of reimbursement orders, especially for tuition, and prospective placement orders.

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Finally, a supplementary qualitative analysis, based on observations recorded in the “comments” column of the spreadsheet, revealed the following distinguishing characteristics of the CP decisions as compared with their HO counterparts: (a) They were generally devoid of any express recognition and application of court decisions, instead using the applicable IDEA and any corollary state regulations as the sole decisional framework; (b) they tended to use a compliance-oriented, strict standard for FAPE-procedural ICs rather than the two-step, harmless error approach that Congress has mandated for the HO forum, which requires not only a violation but also a resulting loss to the child or the parents; (c) they also tended to use a strict standard for FAPE implementation ICs rather than the more relaxed shortfall analysis that the limited case law thus far has adopted, which requires that any failure to implement the IEP be substantial or significant (*Van Duyn v. Baker School District 5J*, 2007) or, additionally, having resulted in loss of benefit to the child (*Bobby R. v. Houston Independent School District*, 2000); (d) they tended to be more activist in terms of going beyond the complaint to identify and address additional ICs uncovered during the investigation; and (e) their remedies tended to be broader and shallower, such as rather routinized orders extending beyond the individual child for memos to staff, policy

**Table 1:** Parents' state-by-state success rate for ICs and, via best-for-plaintiff approach, cases

State	Unit of analysis	Hearing officer	Complaint procedure	<i>p</i>
A	ICs	29%	53%	**
	Cases	32%	56%	*
B	ICs	44%	44%	ns
	Cases	64%	74%	ns
C	ICs	6%	53%	***
	Cases	10%	70%	***
D	ICs	32%	64%	***
	Cases	36%	92%	***
E	ICs	9%	32%	***
	Cases	14%	36%	*

\* *p* < .05.  
 \*\* *p* < .01.  
 \*\*\* *p* < .001.

reviews, personnel training, and, in some cases, compensatory education to similarly situated students.

### Interstate Comparison

Beyond the original analysis, the following tables extend the comparison to examining the differences among the five states, designated here alphabetically as states A through E. *Table 1* summarizes the parents' success rates for the CP and HO forums in each of the five states. The success rate, representing the percentage in favor of the parent, for ICs as the primary unit of analysis are to the left for the HO and CP forums with the corresponding percentage for the cases to the right. The final column, labeled "*p*" for probability, condenses the results of 2 × 2 chi-square analyses for each forum-by-outcomes comparison with a single asterisk representing the conventional minimum level for statistical significance.

The results in *Table 1* reveal notable interstate differences both between and within the two alternative forums. First, examined in terms of the between-forum comparison, *Table 1* reveals that the parent success rate was higher for CP than for HO at a statistically significant level, i.e., likely not due to measurement or sampling error, for every state except state B. This pattern applied both for the primary unit of analysis, which was ICs, and, after conflation on a best-for-parent basis, for cases. Second, examined

vertically, i.e., within each forum, *Table 1* reveals that (a) for the HO forum, the parent success rates for both ICs and cases was particularly low in states C and E and relatively high in state B, and (b) for the CP forum, the parent success rates was particularly low in state E and relatively high in state D.

...the [ICs] tended to be more activist in terms of going beyond the complaint to identify and address additional ICs uncovered during the investigation. . .

Due to both length limitations for the article and the mostly small per-state numbers within each IC, the table for the separate ICs is limited to those with an *n* of at least 50, which were the three dimensions of FAPE: procedural, substantive, and implementation. More specifically, for these three major ICs, *Table 2* identifies the states with a particularly high or particularly low (a) relative frequency, which here is the percentage share of *n*, and (b) success rate, which is the percentage of rulings in favor of the parent, for the CP or HO forums. For relative frequency, the cutoff levels were 15% or less at the low end and 30% or above at the high end. For success rate, the cutoffs were 15% or less at the low end and above 50% at the high end. Moreover, *Table 2* does not include results for the CP forum for FAPE substantive and for the HO forum for FAPE implementation because their *ns* were too small to be meaningful when subdivided into the state-specific level.

Although limited to the three major ICs and only the forums with respective *ns* of more than 50, *Table 2* reveals that the states vary widely in their relative frequencies and success rates per IC not only between, but also within the CP and HO forums. For example, for procedural FAPE, which is the only IC with the requisite *n* for both CP and HO, the low and high frequency positions have no commonality among the states except for state B. Similarly, the low and high success rate positions for procedural FAPE vary across the states except that state C is high for CP and low for HO.

Due to the even smaller numbers for the remedies, which only applied in the minority of the decisions, and the multiple combination of remedies, which were disaggregated in scope (i.e., whether limited to the child or extending to other children) and specificity (e.g., tuition reimbursement vs. other

**Table 2:** Major issue categories (ICs): States with particularly high or low relative frequency and success rate

IC	Forum	Relative frequency Low/high		Success rate Low/high	
FAPE procedural	CP ( <i>n</i> = 205)	state A: 14%	state B: 30%		state D: 60%
		state E: 14%			state C: 52%
FAPE substantive	HO ( <i>n</i> = 105)	state D: 4%	state B: 37%	state C: 0%	
		state C: 15%		state E: 7%	
FAPE implementation	HO ( <i>n</i> = 135)	state B: 13%		state E: 10%	state B: 56%
FAPE implementation	CP ( <i>n</i> = 143)	state A: 9%	state D: 32%	state C: 11%	
		state E: 15%			state D: 69%
					state C: 69%
					state B: 64%

Note. FAPE = free, appropriate public education; HO = hearing officer; CP = complaint procedure.

reimbursement), the findings for remedies are summarized below based on the broader qualitative analysis for interstate differences. Based on their multiple appearances in the spreadsheet, these qualitative observations are listed below by state for the applicable forum as representing what may—upon more extensive research—prove to be systematically distinguishing characteristics:

- CP in state A: (a) labeling corrective actions as “recommendations,” which at times include proactive suggestions in addition to polite orders, and (b) using the two-step test for procedural FAPE although without any specific citation as to the applicable legal basis for doing so
- CP in state B: specifying a minimum amount in otherwise delegating the calculation of compensatory education to the IEP team
- CP in state D: using the prospective order of a memorandum to affected staff members
- HO in state D: using a nonunitary approach for substantive FAPE IC—in other words, rather than an absolute “yes” or “no” as to whether the district had provided FAPE, ruling in favor of the district contingent upon a limited, ordered revision to the IEP
- HO in states C and D: conflating the various claims of the parent’s complaint into one or two broad issues, such as FAPE procedural, rather than each alleged procedural violation separately
- HO: State A accounted for half of the 35 decisions in which the district was the filing or counterclaiming party with states C and D accounting equally for most of the rest and with state E accounting for none of them.

## Interpretation and Implications

### Overall

This empirical comparison of the two decisional dispute resolution routes under the IDEA sheds light on the much less well-known CP avenue, thus serving as a springboard for not only further scholarship and policy making, but also more careful practical consideration. On an overall basis, the significantly higher parent success rate for the CP route, whether measured on the basis of ICs or decisions, merits special attention from both parents and district personnel. Integrating the other major findings at the overall level, the overlapping contributing factors at the decisional stage for this outcome differential would appear to include (a) the compliance mission of the CP mechanism as reflected in its strict application of the regulations and its tendency not to be limited to the complaint with regard to either ICs or remedies; (b) the orientation of CP personnel more to the special education than the law side of decision making as reflected in the much less legalistic written decisions; (c) the skew in CP decisions toward procedural rather than substantive ICs as reflected in their different distribution from the HO decisions with regard to these two primary dimensions of FAPE; and (d) the avoidance in CP decisions of the courts’ relatively relaxed approach to not only procedural FAPE (e.g., Zirkel & Hetrick, 2016), but also the emerging third dimension of FAPE: implementation (e.g., Zirkel & Bauer, 2016). Another major contributing factor is at the predecisional stage—the more pronounced filtration effect of settlements, which tend more often to be the claims that are least defensible for districts. Reflecting

this differential skewing effect, the CADRE (2016) data show an overall ratio of filings to decisions of approximately 6 : 1 for HO and less than 2 : 1 for CP. Finally, given that the nature of the CP process makes attorney representation much less likely for parents, limiting the outcomes comparison to *pro se* parents may well yield a more dramatic disparity in favor of the CP avenue because the success rate for *pro se* parents in IHO decisions is significantly lower than that for parents with attorney representation (Lukasik, 2016; Zirkel, 2015).

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Yet, as the aforementioned CADRE (2016) national data reports show, parent filings for CP are much lower than for HO. In light of the more parent-friendly outcomes, why is it the road less traveled by? One reason may be that parents are even less aware of this path than the HO route due to the lack of attention in the mass media, advocacy organizations, and other information sources. A related reason is that parent attorneys may not promote or even may discourage this alternative because (a) they are not as needed for initiating and even less for implementing CP; (b) in most jurisdictions, attorneys' fees are not available for prevailing parents; and (c) both the fact-finding and legal conclusions do not fit with their normative standards, which tend to conform to the adjudicatory process. Finally, whether from the direct perspective of the parents or their indirect perspective via attorneys, the generally lighter remedies, particularly for the individual child, may well be a tempering factor. Many parents are more immediately concerned with obtaining significant relief for their child than systemic reform, especially given the limited effects of orders for policy review or personnel training that lack rigorous quality standards for implementation and enforcement. Incidentally, the entire lack of CP filings by organizations or individuals other than parents in our random sampling would seem to suggest a lost opportunity for more systemic reform.

On the practical side, the overall outcomes difference increases the potential for forum-shopping and gamesmanship that is not exclusive to the

parents' side. For example, the one-directional requirements in the IDEA regulations for CP deferral to HO (§ 300.152[c][1]) and for the binding effect of HO (§ 300.152[c][2]) has already led to offensive district gamesmanship to foreclose the advantageousness of the CP avenue. Recognizing the use of this tactic, the IDEA's administering agency has sought to discourage it as follows:

A [district's] filing of a due process complaint after the parent has filed a State complaint on the same issues may unreasonably deny a parent the right to use the State complaint process . . . The Department strongly believes that it is in the best interest of parents and school districts to respect the parents' choice of forum for resolution of their disputes (Dear Colleague Letter, 2015).

Another practical consideration that extends to special education directors is that the remedial relief that parents obtain upon a ruling in their favor tends to be broader but shallower in the CP as compared with the HO forum. For example, corrective actions often extend beyond the child via orders for personnel training or policy review, but the standards and scrutiny for such orders are often perfunctory rather than rigorous. Conversely, the retrospective remedy of tuition reimbursement is a rare bird in the CP context, and its delegated approach to compensatory education has a similarly district-advantageous effect. Yet, in comparison to the HO process, the lack of the rights (a) to limit the source of the complaint and the scope of the investigation and, perhaps even more significantly, (b) in most states, to appeal the decision, including the remedial orders, is of major concern to special education directors.

More incidentally, the conversely very high (92%) district success rate when it is the filing or counterclaiming party is largely attributable to (a) the limited scope of these ICs, which often amount to overriding parental consent for evaluation or reevaluation or exercising the regulatory requirement for district filing upon refusing a request for an IEE at public expense (§ 300.502[b][1]); and (b) the limited scope of the resulting remedy, which is typically declaratory relief, such as authorization for the district's intended action.

## Interstate

The consistent differential in parental success for the CP forum was not surprising in light of the

contrasting nature of the forums, but the limited exception for state B merits more intensive follow-up research. This jurisdiction is the smallest in size with relatively pronounced state-level influence, thus possibly accounting for the relative homogeneity. Moreover, the relatively parent-friendly IDEA court decisions in its federal circuit may have contributed to its high HO position in parental success, thus closing the gap with the more moderate parent success rates in the CP forum (Karanhxa & Zirkel, 2014). However, other factors, such as the background and training of the HO adjudicators and CP investigators, may be in play.

The much more extensive diversity in parental success rates among the five states for the HO forum and CP forums, respectively, similarly warrants careful consideration. One likely contributing factor is the ratio of filings to decisions because high ratios generally signal a substantial screening effect via settlements that may skew the cases that go to decision toward the district-favorable side; the assumption is that districts are more likely to settle those cases that they are more likely to lose. However, the opposite effect of withdrawals and abandonments and the imprecise predictability of case outcomes and other contributing factors to settlements temper this skewing assumption. In any event, the filings-to-decisions ratios for the HO forum in these five states vary widely from approximately 2.5 to 28.5 (Zirkel, 2014). The CADRE (2016) data show much lower ratios for CP than HO but, nevertheless, with notable variance among the states.

However, the variation among the states for these two respective forums is much more than a matter of filing-to-decisions ratios. Another major contributing factor is likely the institutional culture within the CP and HO forums in each state. This culture depends in part on past traditions, personnel selection, and—as exemplified by the gradual but far from uniform trend (Zirkel & Scala, 2010) for the HO forum toward full-time attorney adjudicators—system changes. Similarly, the level of parental satisfaction and district effectiveness in special education likely accounts for interstate variance.

The variance and its multifactor explanation are also reflected in the relative frequencies and success rates among the major ICs as reported in *Table 2*. It is not surprising in the light of previous analyses (e.g., Zirkel & Skidmore, 2014) that the major ICs would be three primary dimensions of FAPE. However, the absence, due to low *ns*, of FAPE substantive for CP

and FAPE implementation for HO reflects an overall interforum difference in the nature of the complaints filed and processed. This difference represents an interaction between the institutional inclination of the forum and the consumer-like choices of the parents. For example, despite the aforementioned long-standing agency policy (e.g., Letter to McWilliams, 2015), the CP forum tends to avoid substantive, as compared with procedural, FAPE, thus presumably inclining parents, especially those with legal representation, to gravitate to the HO process for substantive claims.

Yet the wide variance among the states for the remaining FAPE ICs, such as the relative frequency of FAPE implementation in the CP forum or the success rates for FAPE substantive in the HO forum, reinforces the interstate diversity upon drilling down from the overall level to the more specific subject-matter level for some of the ICs. At the same time, the blanks at the high or low ends of the columns in *Table 2* reflect the relative homogeneity or skew for other ICs by forum. For example, the lack of entries for the low success rates column in the first row is attributable to the generally moderate-to-high parental outcomes in all five states for FAPE procedural in the CP forum, and the corresponding blank for the high success rates column in the next row is attributable to the obverse skew for FAPE substantive in the HO forum.

## Concluding Recommendations

In sum, special education leaders need to provide more concerted attention to the CP forum, including but not limited to comparing its features and results with those of the HO forum within their particular state. Among the points of particular concern are whether the CP forum in their state is strict about procedural FAPE, not extending their analysis to a second, substantive step, and whether this forum differs from the HO model of addressing substantive issues and incorporating case law precedents, such as the Supreme Court's latest decision, *Andrew F. v. Douglas County School District RE-1* (2017). Upon examining the CP process in their state more closely, including but extending beyond the decisional differences revealed in this study, special education directors should not only improve their relevant communications with staff members and parents, but also individually and organizationally engage in a more concerted and cogent interactions with state



education agency and legislative representatives for revisions to the CP process that facilitate a more coordinated relationship with the HO process.

Finally, for both special education leaders and their university counterparts, the attention needs to extend to the much wider dispute resolution process, including mediation, for which the decisional focus of this analysis represents the visible “tip of the iceberg.” Although this tip, including its ultimate level of published court decisions, is significant in terms of considerable costs and legal precedents, maintaining the focus on the child’s education rather than the parties’ disputation depends on not only alternative dispute resolution mechanisms, such as mediation and IEP facilitation, but also preventive practices, such as effective communication, collaboration, and evidence-based best practices. For the mediation step alone, for example, the aforementioned CADRE (2016) data show that, on average, slightly less than half of the mediation requests result in mediation agreements and that the impact inferably is more for the HO than the CP process. This inference for this additional difference is attributable to the much higher ratio between HO filings and HO decisions, for which the resolution meeting process has also contributed, than between CP filings and CP decisions: approximately 7 : 1 as compared to approximately 2 : 1 (CADRE, 2016).

Obviously, more attention is warranted for the nuances of the CP forum as compared with its more well-known counterpart. As with Robert Frost’s choice of the grassier of the two roads that diverged in the woods, taking the one less traveled by may end the same way: “And that has made all the difference.”

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