

## Trends in Impartial Hearings under the IDEA: A Comparative Update\*

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A previous issue of the EDUCATION LAW REPORTER<sup>1</sup> included a trends analysis of due process hearings (DPHs) under the Individuals with Disabilities Education Act (IDEA).<sup>2</sup> The three variables for the analysis were (1) filings, which represent the initiation of this hearing process; (2) adjudications, which represent the completion of the process via a final written decision<sup>3</sup>; and, based on their interaction, (3) the ratio of filings to adjudications. The analysis of these variables was for the six-year period from 2006–07 through 2011–12<sup>4</sup> based on 52 jurisdictions, which included in addition to the 50 states, the District of Columbia and Puerto Rico.<sup>5</sup> The principal findings for that six-year period were that 1) the overall trend was a decline in DPH adjudications and, to a lesser extent, DPH filings, resulting in an increased filings-to-

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<sup>1</sup> Perry A. Zirkel, *Longitudinal Trends in Impartial Hearings under the IDEA*, 302 Ed. Law Rep. 1 (2014).

<sup>2</sup> 20 U.S.C. §§ 1400–1482 (2017). The corresponding regulations are at 34 C.F.R. Parts 300 and 303 (2018). For the provisions for this system of administrative adjudication, see 20 U.S.C. § 1415(f)–(g) (2017); 34 C.F.R. §§ 300.511–300.514 (2018).

<sup>3</sup> “Adjudications” herein is a short form of “fully adjudicated hearings,” as used in the U.S. Department of Education (USDE) annual survey of state education departments, which is the source of the data in the successive analyses of CADRE and this article. Although not as precise as applied as it appears on its face, the unchanged definition of “fully adjudicated” that USDE has provided to the state education agencies for this annual collection is as follows: “[the] hearing officer conducted a due process hearing, reached a final decision regarding matters of law and fact and issued a written decision to the parties.” U.S. Department of Education, *EMAPS User Guide: IDEA Part B Dispute Resolution Survey* (2019), available at <https://www2.ed.gov/about/inits/ed/edfacts/index.html>. The various CADRE national reports <https://www.cadeworks.org/resources/data-resources/national-data> sometimes use the alternative shorthand term “hearings held.”

<sup>4</sup> For brevity, the subsequent references herein to this period will be via the start of the each school year, thus being “2006–11.”

<sup>5</sup> The Appendix included, as an addition for possible interest, the Virgin Islands, which averaged 2 adjudications per year. Zirkel, *supra* note 1, at 10. However, the analyses were all based on the 52 jurisdictions, which extended to Puerto Rico and the District of Columbia due to their exceedingly high numbers of adjudications. For the most recent six-year period, the Virgin Islands average adjudications was close to zero.

adjudications ratio<sup>6</sup>; 2) the top six jurisdictions in DPH adjudications were, in descending order, 1-Puerto Rico, 2-District of Columbia, 3-New York, 4-California, 5-Pennsylvania, and 6-New Jersey,<sup>7</sup> with a different sequence among them for filings<sup>8</sup>; and 3) the overall decline in adjudications was largely attributable to the District of Columbia's reduction.<sup>9</sup>

Published analyses of the years prior to 2006–11 only provide a limited basis for comparison of these trends.<sup>10</sup> For example, the leading analysis on the national level was limited to adjudications, as reported in surveys of the 50 state directors of special education, thus not including filings for the District of Columbia and Puerto Rico.<sup>11</sup> In that analysis, which covered the period 1991–2005, the total number of adjudications rose during the first six years followed by a relative plateau for the remainder of the period.<sup>12</sup> The top four states for adjudications were, in rank order, 1-New York (43%), 2-New Jersey (13%), 3-Pennsylvania (7%), and 4-California (5%).<sup>13</sup>

The purpose for this article is to provide an update for the six-year period from 2012–13

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<sup>6</sup> *Id.* at 3.

<sup>7</sup> *Id.* at 6. Together, these six jurisdictions accounted for 90% of the adjudications for the 52 jurisdictions.

<sup>8</sup> *Id.* For example, New York, California, and the District of Columbia were in the first, second, and third positions, respectively, for filings. *Id.* Moreover, the ratio of filings to adjudications ranged widely, ranging from Puerto Rico (1.8) and the District of Columbia (2.5) to California (28.9), with the remaining three jurisdictions having ratios at a relatively intermediate level of 10.7–15.6). *Id.*

<sup>9</sup> *Id.* at 6. Puerto Rico and New York had notable oscillations, with successively lower net reductions, whereas the other three jurisdictions—California, Pennsylvania, and New Jersey had relatively stable annual numbers of adjudications during this period. *Id.*

<sup>10</sup> Most of the previous analyses that included longitudinal frequency of IDEA due process hearings were limited to adjudications in a single state, with the focus primarily on other variables. *E.g.*, William H. Blackwell & Vivian V. Blackwell, *A Longitudinal Study of Special Education Due Process Hearings in Massachusetts*, SAGE OPEN 1, 5 (Jan.-Mar. 2015); Lisa Lukasik, *Special-Education Litigation: An Empirical Analysis of North Carolina's First Tier*, 118 W. VA. L. REV. 735, 751 (2016); Angela L. Balsley, *Special Education Directors' Experiences Preventing and Responding to Requests for Due Process Hearings 54* (May 4, 2018) (unpublished Ed.D. dissertation, Indiana University).

<sup>11</sup> Perry A. Zirkel & Karen Gischlar, *Due Process Hearings under the IDEA: A Longitudinal Frequency Analysis*, 21 J. SPECIAL EDUC. LEADERSHIP 21 (2008). The successive surveys were by the National Association of State Directors of Special Education and, for the more recent segment of this period, by Zirkel and Gischlar, with extrapolations for missing data. *Id.* at 24.

<sup>12</sup> *Id.* at 26.

<sup>13</sup> *Id.* at 27. Thus, these four states accounted for slightly more than two thirds of the adjudications for the 50 states (without D.C. or P.R.).

to 2017–18,<sup>14</sup> aligned with the overall scope and source of the aforementioned<sup>15</sup> immediately prior analysis. The specific questions for this analysis were:

- 1) Did the downward trend of adjudications and filings and the upward trend of ratios for the previous six-year period continue during this more recent six-year period?
- 2) Were the top six jurisdictions the same as for the previous period?
- 3) Have the results for the remaining jurisdictions changed notably from the prior period to this more recent period?

## RESULTS

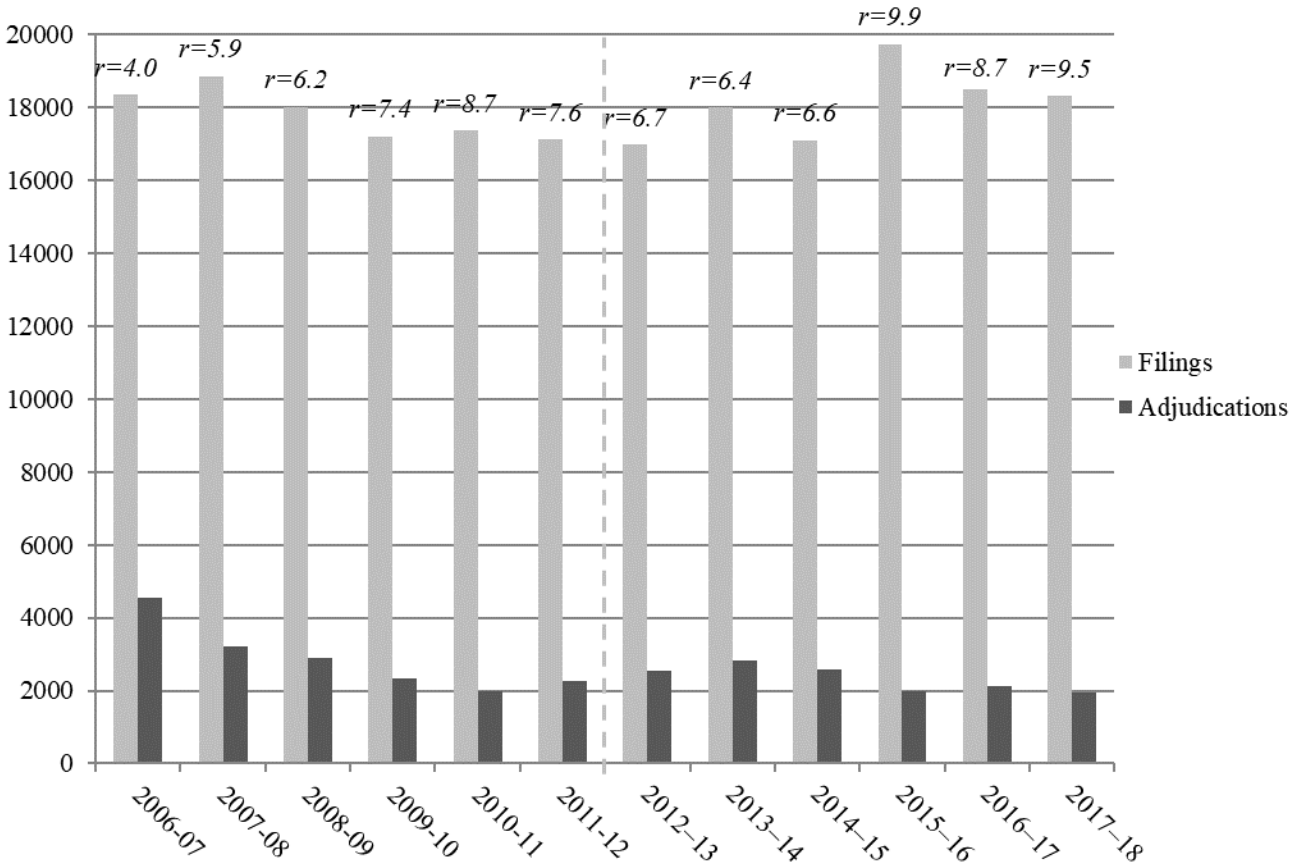
In response to question 1, Figure 1 provides the longitudinal trend for the three variables starting with the prior six-year period and, after the dotted vertical line, extending to the most recent six-year period.

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<sup>14</sup> Per the prior abbreviated style (*supra* note 4), subsequent references herein to this most recent period will be “2012–17.”

<sup>15</sup> *Supra* notes 1–9 and accompanying text.

**Figure 1. Longitudinal Trend of Filings, Adjudications, and Ratios for the Successive Six-Year Periods**



Note:  $r = \text{filings/adjudications ratio}$

Figure 1 shows that (a) the adjudications during the most recent six-year period formed an uneven plateau that remained within the range of last four years of the prior six-year period,<sup>16</sup> while (b) the filings largely stayed within the same range as the prior period, with a slightly ascending overall level.<sup>17</sup> As a result, the ratio of filings to adjudications for the most recent period moved from a relatively intermediate level for its first half relative to the range of the

<sup>16</sup> Alternatively viewed in successive three-year segments for the entire length of Figure 1, the pattern appears to be a downward trajectory for the initial segment followed by a level trajectory for the second segment, and then, in relation to the second segment, a slightly higher and very slightly lower level trajectories for the third segment and fourth segments.

<sup>17</sup> Alternatively viewed in three-year segments, the second segment was at a lower and more stable level than the first segment, followed by more variable and successively higher levels for the most recent two segments ending at a level slightly higher than that of the first segment.

prior period to a new higher level during its second half.<sup>18</sup>

In response to question 2, Table 1 shows the top six jurisdictions for adjudications in 2012–17, with the comparative entries for 2006–11 identified in italicized smaller font.

**Table 1: Top Six Jurisdictions for Adjudications for 2006–11 and 2012–17, Along with Their Filings and Ratios\***

	Adjudications		Filings		Filings/ Adjudications
	Rank	Av'g. per Yr.	Rank	Av'g. per Yr.	Ratio <sup>19</sup>
Puerto Rico	<i>1</i> 1	<i>1,009</i> 1,114	<i>6</i> 3	<i>1,860</i> 2,040	<i>1.8</i> 1.8
New York	<i>3</i> 2	<i>569</i> 673	<i>1</i> 1	<i>6,078</i> 6,091	<i>10.7</i> 9.1
District of Columbia	<i>2</i> 3	<i>817</i> 151	<i>3</i> 7	<i>2,007</i> 476	<i>2.5</i> 3.2
California	<i>4</i> 4	<i>93</i> 113	<i>2</i> 2	<i>2,694</i> 4,274	<i>28.9</i> 37.9
New Jersey	<i>6</i> 5	<i>55</i> 56	<i>5</i> 4	<i>854</i> 1,157	<i>15.6</i> 20.5
Pennsylvania	<i>5</i> 6	<i>67</i> 55	<i>4</i> 5	<i>776</i> 788	<i>11.6</i> 14.5

\* The figures in smaller, italicized font denote data for 2006–12, which are included for comparison purposes.

Review of Table 1 with a primary focus on adjudications reveals that the top six jurisdictions remained the same as for the previous period, but with a few notable changes among them. The major change was for the District of Columbia, which dropped dramatically to approximately one fifth of its annual average for adjudications (and also filings) for the prior six-year period. As a result, the District of Columbia moved from a relatively close second to a distant third

<sup>18</sup> More specifically, the averages for the successive three-year segments were as follows: 5.4, 7.9, 6.6, and 9.4.

<sup>19</sup> Annual averages for adjudications and filings in Table 1 reflect values rounded to the nearest whole number. The ratios are the result of the more precise calculation using the corresponding figures without rounding. Thus, the reported ratios, rounded to the nearest tenth, are slightly different from what one would obtain by dividing the rounded filing and adjudication numbers reported in the table.

position for adjudications (and from third to seventh place for filings).<sup>20</sup> The more modest change for adjudications was that New Jersey and Pennsylvania exchanged their fifth and sixth positions. Extending the focus more broadly, the other change was that the range of filings/adjudications ratios increased, marked at the upper end by California's ratio moving up from 28.9 to 37.9.<sup>21</sup>

In response to question 3 and more generally, the Appendix shows the annual averages for adjudications, filings, and ratios, respectively, for each of the 52 jurisdictions. First, starting with the bottom line of the Appendix, the overall average for the two successive six-year periods show a reduction in adjudications, a lesser increase in filings, and a resulting higher ratio for the most recent period.<sup>22</sup> Second, examination of the entries in the Appendix for the states below the top six reveals relatively limited changes in their respective levels for adjudications, filings, and ratios. More specifically, the adjudication levels for most states below the aforementioned top six remained largely similar, especially in light of their relatively restricted range, within the overall reduction. The most notable relative increases were in Arkansas, Missouri, and Montana and, to a lesser extent, Colorado and Kentucky.<sup>23</sup> The corresponding decreases were much more frequent, led by Hawaii, which dropped out of the top ten in ranking upon moving from 29 to 7 in its annual average for adjudications.<sup>24</sup> Next, the filing levels for most states beyond the top six also remained largely similar, with the notable changes on an absolute rather than

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<sup>20</sup> As the Appendix reveals, Massachusetts, which ranked ninth for adjudications (n=11), moved into sixth place for filings (n=530) for this most recent period.

<sup>21</sup> The bottom of the range of the ratios for the top six jurisdictions remained at 1.8 for Puerto Rico. The ratios for the five other jurisdictions went in the same upward direction as California, but to a varying extent and with the exception of the slight decrease in New York. Moreover, as the Appendix shows, a handful of states had ratios for this period that exceeded California's 37.9, with the leaders being Tennessee (93.6), Nevada (57.2) and Massachusetts (50.4).

<sup>22</sup> However, the first and more fine-grained longitudinal finding in response to question 1 (*supra* notes 16–17 and accompanying text) provides a more precise trend analysis.

<sup>23</sup> The increases for these districts based on unrounded values were Arkansas (2.69), Colorado (1.57), Kentucky (1.60), Missouri (2.50), and Montana (2.00); however, low annual averages inflate these figures.

<sup>24</sup> The others in the top ten in 2005–11 (Illinois, Maryland, and Texas in alphabetical order) had less dramatic decreases, thus remaining in the top ten in 2012–17 in light of the overall reduction.

proportional basis being the increases in Alabama, Connecticut, Florida, and Nevada and the decreases in Hawaii, Illinois, Maryland, and Massachusetts.<sup>25</sup> Finally in relation to the jurisdictions below the top six,<sup>26</sup> the resulting filing/adjudication ratios fluctuated much more often on the increased side both on an absolute<sup>27</sup> and proportional<sup>28</sup> basis.

## DISCUSSION

The first major finding of this latest update is that, contrary to longer range comparisons,<sup>29</sup> the overall trend in adjudications for the 2012–17 period is largely a continuation of the trend line for the last three to four years of the prior six-year period. Thus, the prevailing perception, as reflected and reinforced in the literature,<sup>30</sup> that “fully adjudicated hearings” are on a continuing declining trajectory needs reconsideration when examined on a more fine-grained basis than simply six-year averages. Two corollary conclusions serve as cautionary limitations. First, the seemingly simple definition of fully adjudicated hearings<sup>31</sup> is susceptible to widely varying interpretations among the state education agency personnel who are the source of the data that OSEP and CADRE provided for analyses. For example, lack of uniformity is inevitable

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<sup>25</sup> On a proportional basis, excepting those already identified for absolute changes and those in the lowest group because their very small averages were particularly susceptible to such changes, Arkansas led the corresponding increases and New Hampshire led the corresponding decreases.

<sup>26</sup> For the “top six,” see *supra* Table 1.

<sup>27</sup> The leading states on the basis of the difference in ratios regardless of proportionality included Arizona, Connecticut, Massachusetts, and Tennessee.

<sup>28</sup> The leading states on a proportional basis included Arizona, Tennessee, and West Virginia, but this basis was more susceptible due to very small annual averages.

<sup>29</sup> *E.g.*, U.S. GOV’T ACCOUNTABILITY OFF., GAO-20-22, SPECIAL EDUCATION: IDEA DISPUTE RESOLUTION ACTIVITY IN SELECTED STATES VARIED BASED ON SCHOOL DISTRICT CHARACTERISTICS 9–10 (2019) (characterizing the trend as a sharp decline but doing so by comparing 2016–17 to 2004–05).

<sup>30</sup> *E.g.*, G. Thomas Schandling et al., *Analysis of Special Education Hearings in Texas*, SAGE OPEN 1, 3 (Apr.-June 2017) (referring to an overall “subsequent decline” in inferably to the most recent trend in adjudications); Mark C. Weber, *In Defense of IDEA Due Process Hearings*, 29 OHIO ST. J. ON DISPUTE RESOL. 495, 408–09 (2014) (reporting continuing declines in adjudications).

<sup>31</sup> *Supra* note 3. This definition yields components that serve as criteria: (1) conducted a hearing and (2) issued a final written decision regarding facts and law.

in applying this definition’s criteria for both a hearing and a decision<sup>32</sup> to the following overlapping variations: rulings for insufficiency challenges, dismissals based on jurisdiction or statute of limitations, summary judgments, interim decisions, consent decrees, decisions based on stipulated facts, and expedited hearings. Thus, the underlying data are not entirely precise and reliable.

The second and even more weighty tempering caveat is based on the heavy concentration of the adjudications in a small and continuing cluster of jurisdictions.<sup>33</sup> As a result, exclusions of, or shifting numbers in, one or more of these jurisdictions causes a change in the overall trend analysis. For example, limiting the analysis to the 50 states would exclude Puerto Rico and the District of Columbia, which together accounted for at least half of all adjudications for both the 2006–11 and 2002–17 periods. Conversely, by including the District of Columbia, the dramatic reduction in its adjudications during the first of these two periods largely explained the overall decline during that period.<sup>34</sup> As another example, consider the issue of “outliers,” which arguably adds New York City to the District of Columbia and Puerto Rico.<sup>35</sup> Excluding New York City would eliminate most of the adjudications for the state<sup>36</sup> that is first by far for the 50 states.<sup>37</sup> Conversely, including New York City subjects the overall trend to the periodic crises in

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<sup>32</sup> *Id.*

<sup>33</sup> Table 1 in combination with the Appendix reveal that the two worlds of adjudications are (1) the top six, which accounts for the vast majority of the adjudications and which, for the most recent six-year period, has three distinct levels, each with two jurisdictions each) and (2) all of the other jurisdictions, which largely have only a handful of adjudications per year.

<sup>34</sup> *Supra* text accompanying note 9.

<sup>35</sup> Joseph B. Tullman, Andrew A. Feinstein, & Michele Kule-Korgood, *Are There Too Many Due Process Cases?: An Examination of Jurisdictions with Relatively High Rates of Special Education Hearings*, 18 UDC/DCSL 249, 266 (2015) (contending, with respective explanations for each of the jurisdictions, that in addition to Puerto Rico and the District of Columbia, the other “outlier . . . is not New York State, but rather New York City”).

<sup>36</sup> *E.g.*, *id.* at 262 n.9 (attributing more than 90% of the state’s cases to New York City).

<sup>37</sup> *Supra* Table 1.



its adjudications.<sup>38</sup>

The second major finding is that filings generally are very high in relation to adjudications, resulting in an overall average ratio of almost 20:1 for the most recent period.<sup>39</sup> Thus, the prevailing practice, albeit with wide variance among the jurisdictions, is to resolve the vast majority of the filings with a system akin to the predominance of nontrial dispositions in criminal courts.<sup>40</sup> For the disposition of filings without adjudication, the 2004 amendments of the IDEA<sup>41</sup> and various laws<sup>42</sup> and education agencies<sup>43</sup> have provided various mechanisms for alternative dispute resolution that largely fit in this filing–adjudication gap.<sup>44</sup>

The third major finding is that with the exception of relatively few jurisdictions, the overall level of adjudications and filings is within a very restricted range that results in varying

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<sup>38</sup> *E.g.*, YOAV GONIN, *SURGE OF COMPLAINTS BY PARENTS OF SPECIAL EDUCATION STUDENTS SPARKS CRISIS*, CHALKBEAT (May 28, 2019), <https://ny.chalkbeat.org/2019/5/28/21108256/surge-of-complaints-by-parents-of-special-education-students-sparks-crisis>.

<sup>39</sup> Review of the entries in the Appendix reveals that approximately one quarter of the 52 jurisdictions had ratios exceeding 20.0 for each of the two successive six-year periods; however, the ratio, as an average of averages, increased dramatically from the first to the second period due to the overall reduction in adjudications and increase in filings.

<sup>40</sup> Just as the dispositions in criminal court include not only plea bargaining and trials but also other dispositions, including dismissals and diversions, the filings that do not result in adjudications include not only settlements but also other dispositions, including withdrawals for other reasons and dismissals. For example, an analysis of a large sample of filings in New York found that settlements and other withdrawals accounted for most of the non-adjudications. Gilbert K. McMahon, NYS Special Education Impartial Hearing Outcomes (n.d.), <http://webcache.googleusercontent.com/search?q=cache:XomPn0TorlYJ:www.specialedlawadvocacy.com/NYS%2520Special%2520Education%2520Impartial%2520Hearing%2520Outcomes.pdf+&cd=1&hl=en&ct=clnk&gl=us>

<sup>41</sup> *E.g.*, 20 U.S.C. § 1415(f)(1)(B) (providing for a resolution session after filing and before hearing); *see also id.* §1415(e)(2)(B) (authorizing a third-party alternative to mediation).

<sup>42</sup> *E.g.*, Perry A. Zirkel, *State Laws for Due Process Hearings under the Individuals with Disabilities Education Act*, 38 J. NAT'L ASS'N ADMIN. L. JUDICIARY 3, 23 n.112 (2018) (identifying state laws with provisions for IEP facilitation and advisory opinions).

<sup>43</sup> *E.g.*, Pennsylvania's Office for Dispute Resolution, Alternate Dispute Resolution, <https://odr-pa.org/alternative-dispute-resolution/overview/> (offering options of IEP facilitation, hearing officer settlement conference, and resolution meeting facilitation). For a national survey of state offerings of alternative dispute resolution alternatives, see U.S. GOV'T ACCOUNTABILITY OFF., GAO-14-390, SPECIAL EDUCATION: IMPROVED PERFORMANCE MEASURES COULD ENHANCE OVERSIGHT OF DISPUTE RESOLUTION 15–21 (2014)

<sup>44</sup> For more in-depth information and the broader continuum, see Center for Dispute Resolution in Special Education (CADRE), CADRE Continuum, <https://www.cadeworks.org/cadre-continuum> (providing a database organized into five stages of conflict intervention). The stages in this continuum and the mechanisms within it are more fluid than fixed. For example, Stages III and IV appear to correspond for the filing-adjudication period, but the outer border lines only imply the position points of the filing and the decision. Similarly, Stages III and IV imprecisely list “mediation models” and “mediation under the IDEA,” respectively. *Id.* However, the IDEA, as of the 2004 amendments, authorizes mediation before filing. 20 U.S.C. § 1415(e)(1).

but often high ratios.<sup>45</sup> Thus, unlike the characterization that often overgeneralizes the overall trends, the modus operandi in the vast majority of jurisdictions is low level of formal disputes, with most of them resolved short of a “fully adjudicated hearing.” The reasons are multiple, with the likely contributing factors being the scarcity of specialized parent attorneys,<sup>46</sup> the lack of litigiousness,<sup>47</sup> and the use of other formal avenues of decisional dispute resolution<sup>48</sup> in large parts of the country.<sup>49</sup>

This update tentatively suggests that policy makers and practitioners should provide more differentiated attention to the level of due process hearing activity in the state.<sup>50</sup> For example, in most states with a relatively low level of adjudications, is the highly judicialized and nonspecialized model of central panel administrative law judges the most effective way to conduct due process hearings?

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<sup>45</sup> Reflecting the aforementioned skewing effect of a limited number of jurisdictions, consider the overall variations of the bottom line of the Appendix (represented by “All 52 Jurisdictions” in the following table) as a result of these successive eliminations (represented by each of the rows below that for “All 52 Jurisdictions”):

	Adjudications		Filings		Ratios	
	2006–11	2012–17	2006–11	2012–17	2006–11	2012–17
All 52 Jurisdictions	55	45	343	352	14.5	19.3
Minus P.R. and D.C.	21	21	279	316	14.8	20.0
Minus P.R., D.C., and N.Y.	10	8	153	198	14.9	20.2
Minus Top Six Jurisdictions	6	4	77	76	14.9	19.9

<sup>46</sup> See, e.g., Kay H. Seven & Perry A. Zirkel, In the Matter of Arons: *Construction of the Lay Advocate’s Provision Too Narrow?*, 9 GEORGETOWN J. POVERTY L. & POL’Y 193, 218–19 (2002) (finding limited availability of parent attorneys for IDEA disputes, particularly at a low cost).

<sup>47</sup> See, e.g., Sandra Earnest, An Exploration of Factors Relating to Variation Among States in the Frequency of Due Process Hearings 86–87, 161–63 (1999) (unpublished Ed.D. dissertation, University of Tennessee) (exploring the relationship between various measures of litigiousness and IDEA adjudications).

<sup>48</sup> See, e.g., Perry A. Zirkel & Brooke L. McGuire, *A Roadmap to Legal Dispute Resolution for Students with Disabilities*, 23 J. SPECIAL EDUC. LEADERSHIP 100, 101 (2010) (identifying the four alternative decisional avenues for decisional resolution of disputes for K–12 students with disabilities, including the complaint investigation processes of state education agencies and the Office for Civil Rights under the IDEA and Section 504, respectively).

<sup>49</sup> Income level and race/ethnicity are other factors, but their role depends in part on whether the analysis is on an absolute or per capita basis. See, e.g., U.S. GOV’T ACCOUNTABILITY OFF., *supra* note 29, at 16–17 (finding a very different relationship of filings with family income levels and with minority student levels on a per capita basis among five selected states). The filing/adjudication ratio for these two factors also at least partially different from prevailing expectations. *Id.* at 19.

<sup>50</sup> See, e.g., Perry A. Zirkel, *State Laws for Due Process Hearings under the Individuals with Disabilities Education Act*, 38 J. NAT’L ASS’N ADMIN. L. JUDICIARY 1, 27 (2018) (concluding that state laws for due process hearings under the IDEA lack customization to the relative level of adjudication activity).

The answer to such questions warrants continuing research for not only updated but also more in-depth information about the rather distinctive dispute resolution process under the IDEA.<sup>51</sup> Most immediately, to make this latest comparison more meaningful, a follow-up analysis on a per capita basis is warranted for a more complete understanding.<sup>52</sup>

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<sup>51</sup> For example, unlike the federal No Child Left Behind Act and its successor, the Education for Every Student Succeeds Act, along with various state laws in the K–12 context, such as those specific to bullying, dyslexia, and seclusion/restraint, the IDEA includes not only a private right of action but this pre-judicial adjudicatory system of dispute resolution.

<sup>52</sup> Serving as a model, the predecessor article (Zirkel, *supra* note 1) resulted in an ensuing analysis on a per capita basis. Perry A. Zirkel, *Trends in Impartial Hearings under the IDEA: A Follow-Up Analysis*, 303 Ed. Law Rep. 1 (2014).

**Appendix: Ranked Average Annual Filings and Adjudications for 2006–11 and 2012–17, with the Ratios for 52 Jurisdictions\***

<u>State</u>	<u>Adjudications</u>				<u>Filings</u>				<u>Ratio of Filings to</u>	
	<u>Rank</u>	<u>Rank</u>	<u>Av'g. per Yr.</u>		<u>Rank</u>	<u>Rank</u>	<u>Av'g. per Yr.</u>		<u>Adjudications</u>	
Alabama	23 (tie)	21 (tie)	4	4	16	13	107	161	29.1	44.0
Alaska	22	40 (tie)	4	1	43	46	15	6	3.6	6.0
Arizona	21	34 (tie)	4	2	24 (tie)	21	58	68	13.3	45.1
Arkansas	35 (tie)	17 (tie)	2	6	40	27	19	36	8.7	6.2
California	4	4	93	113	2	2	2,694	4,274	28.9	37.9
Colorado	32 (tie)	21 (tie)	2	4	38	29	22	33	9.3	9.0
Connecticut	12	16	14	6	11	11	211	24	14.9	37.9
Delaware	35 (tie)	31 (tie)	2	2	41	36 (tie)	16	19	7.4	11.1
District of Columbia	2	3	817	151	3	7	2,007	476	2.5	3.2
Florida	16 (tie)	10 (tie)	7	9	12	12	167	200+	22.7	21.4
Georgia	23 (tie)	19	4	6	17	15	101	114	27.5	20.8
Hawaii	7	13 (tie)	29	7	14	19	127	71	4.4	9.9
Idaho	38 (tie)	31 (tie)	2	2	45	47	10	5	5.9	2.9
Illinois	9	10 (tie)	21	9	8	9	340	300	16.3	32.1
Indiana	16 (tie)	25	7	3	20	18	73	74	10.0	22.2
Iowa	47	44 (tie)	1	1	46	39	10	17	14.3	25.0
Kansas	41 (tie)	36 (tie)	1	1	39	44	21	11	15.6	7.9
Kentucky	46	36 (tie)	1	1	36 (tie)	35	22	21	26.2	15.9
Louisiana	29	43	3	1	34	42	24	14	7.8	17.0
Maine	23 (tie)	23 (tie)	4	4	27	26	36	46	9.9	13.0
Maryland	10	7	21	14	10	10	278	240	13.4	16.8
Massachusetts	11	9	21	11	7	6	582	530	28.4	50.4
Michigan	20	23 (tie)	5	4	18	20	74	71	14.9	20.2
Minnesota	35 (tie)	29 (tie)	2	2	30	32	30	24	13.7	12.9
Mississippi	28	38 (tie)	3	1	35	43	23	14	7.3	11.6
Missouri	32 (tie)	17 (tie)	2	6	19	24	74	59	31.6	10.0
Montana	51	50	<1	<1	48	49	5	3	32.0	10.0
Nebraska	50	51 (tie)	<1	<1	49	50 (tie)	3	3	10.0	17.0

Nevada	<i>41 (tie)</i>	31 (tie)	<i>1</i>	2	<i>23</i>	17	<i>59</i>	95	<i>44.4</i>	57.2
New Hampshire	<i>13</i>	20	<i>13</i>	5	<i>22</i>	28	<i>59</i>	34	<i>4.5</i>	6.6
New Jersey	<i>6</i>	5	<i>55</i>	56	<i>5</i>	4	<i>854</i>	1,157	<i>15.6</i>	20.5
New Mexico	<i>26</i>	27	<i>4</i>	3	<i>29</i>	30	<i>32</i>	32	<i>9.0</i>	11.2
New York	<i>3</i>	2	<i>569</i>	673	<i>1</i>	1	<i>6,078</i>	6,091	<i>10.7</i>	9.1
North Carolina	<i>27</i>	34 (tie)	<i>3</i>	2	<i>24 (tie)</i>	25	<i>58</i>	55	<i>17.3</i>	36.6
North Dakota	<i>52</i>	51 (tie)	<i>&lt;1</i>	<1	<i>52</i>	52	<i>0</i>	2	<i>NA*</i>	9.0
Ohio	<i>18</i>	13 (tie)	<i>7</i>	7	<i>13</i>	14	<i>157</i>	153	<i>23.0</i>	21.3
Oklahoma	<i>44 (tie)</i>	47 (tie)	<i>1</i>	1	<i>33</i>	40	<i>26</i>	16	<i>25.5</i>	32.3
Oregon	<i>43</i>	38 (tie)	<i>1</i>	1	<i>32</i>	33	<i>27</i>	23	<i>23.4</i>	19.7
Pennsylvania	<i>5</i>	6	<i>67</i>	55	<i>6</i>	5	<i>776</i>	788	<i>11.6</i>	14.5
Puerto Rico	<i>1</i>	1	<i>1,009</i>	1,114	<i>4</i>	3	<i>1,860</i>	2,040	<i>1.8</i>	1.8
Rhode Island	<i>19</i>	28	<i>6</i>	3	<i>28</i>	31	<i>32</i>	27	<i>5.7</i>	10.1
South Carolina	<i>31</i>	29 (tie)	<i>3</i>	2	<i>44</i>	36 (tie)	<i>14</i>	19	<i>5.3</i>	10.1
South Dakota	<i>48 (tie)</i>	44 (tie)	<i>1</i>	1	<i>51</i>	50 (tie)	<i>3</i>	3	<i>5.0</i>	4.3
Tennessee	<i>38 (tie)</i>	44 (tie)	<i>2</i>	1	<i>26</i>	23	<i>57</i>	62	<i>34.0</i>	93.5
Texas	<i>8</i>	8	<i>27</i>	13	<i>9</i>	8	<i>318</i>	333	<i>11.8</i>	25.0
Utah	<i>48 (tie)</i>	47 (tie)	<i>1</i>	1	<i>47</i>	45	<i>6</i>	7	<i>11.7</i>	13.0
Vermont	<i>38 (tie)</i>	40 (tie)	<i>2</i>	1	<i>36 (tie)</i>	41	<i>22</i>	16	<i>13.1</i>	16.0
Virginia	<i>14</i>	13 (tie)	<i>10</i>	7	<i>21</i>	22	<i>71</i>	66	<i>6.9</i>	9.2
Washington	<i>15</i>	10 (tie)	<i>10</i>	9	<i>15</i>	16	<i>112</i>	114	<i>11.6</i>	12.2
West Virginia	<i>32 (tie)</i>	40 (tie)	<i>2</i>	1	<i>42</i>	36 (tie)	<i>16</i>	19	<i>6.7</i>	18.5
Wisconsin	<i>30</i>	26	<i>3</i>	3	<i>31</i>	34	<i>30</i>	22	<i>10.4</i>	7.4
Wyoming	<i>44 (tie)</i>	47 (tie)	<i>1</i>	1	<i>50</i>	48	<i>3</i>	4	<i>2.8</i>	7.3
<b>All Jurisdictions***</b>			<b>55</b>	<b>45</b>			<b>343</b>	<b>352</b>	<b>14.5</b>	<b>19.3</b>

\* The figures in smaller, italicized font denote data for 2006–12, which are included for comparison purposes. The figures for the annual averages of adjudications and filings are rounded to the nearest whole number, but the rankings for these two variables and the calculation of the ratios are based on their exact values.

\*\* This ratio was not applicable (NA) due to zero adjudications for this jurisdiction during 2006–12.

\*\*\* The bottom-line figures are an average of the averages of all 52 jurisdictions. Thus, the overall ratios of 14.5 and 19.3 for the respective periods is different from the results obtained by dividing the bottom-line average for filings by the bottom-line average for adjudications for each period.

