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PREDICTORS OF TIMELINESS OF IDEA DUE PROCESS HEARING DECISIONS WITH AND WITHOUT NEW YORK^{a1}**Introduction**

Since its inception in 1975,¹ the federal Individuals with Disabilities Education Act (IDEA) guarantees eligible students a free appropriate public education (FAPE) as documented in the student's individualized education program (IEP).² When conflicts arise between families and schools about the school's compliance with the procedural and substantive requirements of the IDEA, either party may request an administrative adjudication called a due process hearing (DPH)³ to promptly resolve the dispute.⁴ However, ***706** considerations of practical implementation and the demands of fundamental fairness create a potential dilemma in achieving the mandate for prompt dispute resolution.⁵ As DPHs become more judicialized in the name of promoting fairness,⁶ the timeliness of DPHs decreases,⁷ potentially leaving students without their statutorily guaranteed educational entitlements for longer periods of time and increasing the dispute resolution costs, both in money and time, for school districts and parents.

Despite the documentation of various procedural elements in DPHs associated with judicialization,⁸ research has not addressed the specific influence of each in lengthening the time period from the filing of a due process complaint to the issuing of the impartial hearing officer's (IHO) decision. This article serves as an exploratory empirical analysis of the multiple procedural factors that potentially relate to the timeliness of DPH decisions, thereby contributing to the identification of leverage points for better balancing of the requirements for procedural fairness with the IDEA's mandate for promptness. Part I provides the legal ***707** context for the study, including an overview of the IDEA's regulatory timeline for DPHs, and factors potentially related to the extent of compliance with that timeline. Part II explores previous empirical findings of DPH timeliness. Part III describes the methodology of the study, including the sample selection, data collection, and analytical procedures. Part IV shares the findings of the analysis, and Part V offers a discussion of the findings. Part VI concludes with implications of the study as well as policy recommendations.

I. Overview of the Legal Context**A. DPH Timelines Under the IDEA**

As codified in the 2004 amendments, the IDEA sets forth a two-phase process for the timeline of standard DPHs.⁹ The district's receipt of the complaint starts the resolution phase, a 30-day window for the two parties to resolve the complaint without a hearing. Within this window, the parties, with limited exceptions (e.g., joint written waiver), must meet for a resolution session within 15 days of the filing of the complaint.¹⁰

For the second phase, the IDEA regulations set forth a 45-day hearing period in which the IHO must issue a final decision,¹¹ unless a party requests and the IHO grants a specific extension.¹² Therefore, the commonly referenced “75-day rule” (i.e., 30 days for the resolution period plus 45 days for the hearing phase) approximates the mandated timeline for the DPH.¹³

B. Factors Related to the Timeliness of DPHs

Within this 75-day timeline, the IDEA authorizes certain procedures that may significantly lengthen the actual filing-to-decision time period for DPHs. More specifically, the IDEA regulations permit not only the aforementioned discretionary extensions to the timeline¹⁴ but also, in specified circumstances, amended complaints, which restart the timeline.¹⁵ Next, some of the corollary state laws not only refine or limit the extension option¹⁶ but also permit other pre-hearing judicialized procedures, such as motions practice or discovery,¹⁷ which may have the net effect of extending the length of the DPH process. An increasing number of states also incorporate additional alternative dispute resolution (ADR) options¹⁸ beyond the IDEA provision for mediation.¹⁹ States also vary in their requirements for IHOs, ranging from part-time attorneys to specialized adjudicative law judge (ALJ) panels.²⁰ Finally, the overall volume of filings and the filing-to-adjudication ratio²¹ for each state may contribute to the efficiency of the process.

Given the increased judicialization of the DPH,²² legal representation of the parties may be another factor in the length of the pre-hearing and hearing processes.²³ Although parents may proceed *pro se* in DPHs,²⁴ research rather conclusively shows an outcomes advantage for parents who retain legal representation.²⁵ Yet, whether parties are represented by legal counsel may influence whether the DPH is completed within the 75-day timeline.

II. Predecessor Empirical Analysis of DPH Timeliness

Although the federally funded Center for Appropriate Dispute Resolution in Special Education (CADRE) produces regular reports that include national data on various aspects of DPHs, the only time-related categories in these reports are the number of fully adjudicated DPH decisions “within 45-day timelines” and “with extended timelines.”²⁶ The only national empirical research specific to the length of DPH decisions was the predecessor to the present analysis. The predecessor analysis assembled a database of DPH decisions from the 50 states and the District of Columbia²⁷ for the six-year period from 2013 to 2018 that included 9,858 standard (as compared to expedited) DPH decisions. Based on systematic screening for specified criteria of “fully adjudicated” status and weighting for the most active states, led by New York,²⁸ the representative sample consisted of 2,512 decisions. The major finding of this predecessor analysis was that the average length from filing to decision for this *709 six-year period was 200.1 days.²⁹ On a longitudinal basis, the average length of the increase from 2013 to 2018 was forty-nine days.³⁰ Overall, only 15% of these decisions were issued within the 75-day timeline, and approximately 76% of these decisions markedly exceeded this timeline.³¹ Finally, the results varied considerably by state, ranging from eighty-one days in New Hampshire to 391 days in Tennessee.³²

A separate follow-up analysis that focused on the outcomes of this national sample of fully adjudicated DPH decisions found that New York, for which New York City's separate IHO system accounted for 95% of the decisions, constituted a distinct outlier from the other fifty jurisdictions.³³ The reasons included not just its predominance in frequency, with the state accounting for twice as many of the decisions than all of the other 50 jurisdictions combined, but also the distinctive issues and outcomes of these decisions, which were markedly attributable to continuing problems in the New York City special education and DPH system.³⁴

III. Method

The purpose of this study was to determine the extent that potentially contributing factors explained the number of days from filing-to-decision for fully adjudicated DPH decisions in the recent six-year period from 2013 to 2018,³⁵ nationally, both with and without New York as an outlier.³⁶ Specifically, the research question was:

What is the strength of the relationship, both overall and excluding the New York decisions, between the outcome variable of the number of days from filing-to-decision date and each of the following potentially contributing variables:³⁷

a. Participants:

i. Filing party³⁸

ii. Parties' legal representation³⁹

b. Hearing procedures

i. Amendments to complaints⁴⁰

ii. Number of extensions⁴¹

iii. Number of hearing sessions⁴²

*710 iv. Time interval from first to last hearing day⁴³

v. Written closing submissions⁴⁴

c. State context

i. Annual DPH filings⁴⁵

- ii. Filing-to-adjudication ratio⁴⁶

- iii. IHO status⁴⁷

- iv. ADR availability⁴⁸

- v. Pre-hearing conference availability⁴⁹

- vi. Discovery availability⁵⁰

A. Designated Population and Period

For this investigation, we used the sample population of 2,512 standard decisions⁵¹ issued from 2013 to 2018 from the predecessor analysis⁵² representing publicly available decisions⁵³ from the fifty states and the District of Columbia.⁵⁴ We then applied the weighting factor calculations⁵⁵ to re-balance the random samples for the four high-volume states back to their original proportions in the national database.

B. Coding and Analysis

As the starting point for the data collection, we retained from the predecessor analysis the number of days elapsed from filing-to-decision.⁵⁶ Next, we collaboratively determined the set of potentially contributing factors based on the available empirical literature and our combined professional knowledge. We grouped these variables into the aforementioned categories of the DPH participants, the IDEA-specific hearing procedures, and the state-specific differences.⁵⁷

Third, we developed uniform criteria for coding each variable, designating specific marginal inclusion or exclusion examples.⁵⁸ Initially, we identified these criteria and examples via a pilot coding process with a limited number of randomly selected decisions. *711 At this initial stage, each author independently coded the pilot decisions in a shared Google Sheet,⁵⁹ and then we collectively discussed and documented our coding choices. Subsequently, we repeated this process until obtaining an inter-rater agreement of 90 percent.

Fourth, each of us coded an assigned share of the 2,512 standard hearing decisions on a shared Google Sheet, including bi-weekly meetings to discuss and resolve the limited number of remaining difficult coding choices.

Upon completion of the coding, we used the Automatic Linear Modelling (ALM) function in the Statistical Program for the Social Sciences (SPSS) software⁶⁰ to create a stepwise forward multiple linear regression⁶¹ model. The data preparation mechanism converts categorical variables to binary numerical codes⁶² and eliminates outliers that would skew the analysis.⁶³

The analytical process adds the potentially contributing variables, one at a time, to build a predictive model for explaining the variance⁶⁴ in the number of days from filing to decision as measured by the adjusted R² value.⁶⁵ The R² value ranges from 0 (no variance explained) to 1 (100% of variance explained).⁶⁶ Using a significance level of *p*.05, we ranked the potentially contributing variables based on their relative importance in explaining the variance in time interval from filing-to-decision and noted the direction and *712 magnitude of the regression coefficient to gain a relative comparison of each potential contributing variable's explanatory power.⁶⁷ Because the New York decisions as a group have an outsized and outlier influence on the overall trends,⁶⁸ we calculated the forward stepwise linear regression for both all decisions and for all decisions excluding New York.

IV. Findings

Applying the aforementioned re-weighting for the four dominant states to the 2,512 coded decisions yielded a sample size of 9,858 decisions, of which approximately two-thirds originated in New York.⁶⁹ The average period from filing-to-decision was as follows: (a) all decisions--200.1 days, and (b) all decisions excluding New York--159.8 days.

The stepwise forward multiple linear regression⁷⁰ analysis yielded best-fit models with an adjusted R² = .50 for all states and R² = .49 for all states excluding New York.⁷¹ Thus, both models explain approximately half of the variance in the mean number of days from filing-to-decision, which accounts for approximately 100 days (with New York) and 80 days (without New York).⁷² Table 1 lists the potentially contributing variables ranked, on the basis of their importance in predicting the outcome variable of time interval from filing to decision, from 1 (most important) to 13 (least important) in the model.⁷³

*713 Table 1

Relative Predictive Strength of Potentially Contributing Variables for Weighted Decisions

POTENTIALLY CONTRIBUTING VARIABLE	RANK AND DIRECTION: ⁷⁴ ALL STATES	% OF R ² EXPLAINED: ALL STATES (N=9,858)	RANK AND DIRECTION: ⁷⁵ NY EXCLUDED	PERCENT OF R ² EXPLAINED: NY EXCLUDED (N=3,430)
Participants				
Filing Party	8(-)	2.3%**	7(-)	4.5%**
Parties' Legal Representation ⁷⁶	3(+)	4.0%**	12(+)	1.5%**
Hearing Procedures				
Amendments to Complaints	4(+)	3.9%**	4(+)	9.7%**
Number of Extensions	2(+)	8.0%**	3(+)	11.7%**
Number of Hearing Sessions	11(+)	1.0%**	11(+)	2.4%**
First-to-Last Hearing Day	1(+)	69.0%**	1(+)	34.5%**
Written Closing Submissions	9(+)	1.5%**	10(+)	3.0%**
State Context				

Annual Due Process Filings ⁷⁷	12(-)	0.5%**	13(+)	0.2
Filing-to-Adjudication Ratio	7(+)	2.4%**	5(+)	7.5%**
IHO Status	13(+)	0.2%*	9(+)	3.4%**
ADR Availability	5(+)	3.4%**	2(+)	12.6%**
Pre-Conference Availability	6(-)	2.8%**	6(-)	5.4%**
Discovery Availability	10(-)	1.0%**	8(-)	3.4%**
*p<.05; **p<.001				

[The preceding image contains the references for footnotes ⁷⁴, ⁷⁵, ⁷⁶, ⁷⁷]

A review of this table reveals that “Participants”--the category explaining the least fraction of the variance--explained only 6.3% of the variance for all states and 6.0% when excluding New York. The Filing Party variable, while remaining approximately in the middle of the group in terms of rank, doubled its explanatory importance upon the exclusion of the New York cases. Although Parent Legal Representation ranked third for the all-states group, the variance in time interval explained was only 4.0%, with the coefficient indicating an increase in the time interval from filing-to-decision if the parent had legal representation. However, excluding New York decreased the rank to 12 and the explained variance to 1.5%.

Conversely, the “Hearing Procedures” variables explained the largest fraction of the variance in the time interval from filing-to-decision, specifically, 83.4% for all states and 61.3% when excluding New York. The highest ranked potentially contributing variable, the Interval from First-to-Last Hearing Session, explained two-thirds of the variance in the filing-to-decision period for all states and one-third of the variance when excluding New York⁷¹⁴; the positive coefficients for both verify the corresponding increase in time interval from filing-to-decision. The hearing procedures category also contained two other variables ranked highly--Extensions and Amendments to the Complaint. Combined, these two variables accounted for 12% of the explained variance for all states and 22% when excluding New York, with the coefficient directions and ranks demonstrating that both multiple extensions and an amendment to the complaint markedly increased the time interval from filing-to-decision.

The last category of factors, “State Context,” accounted for 10.3% of the explained variance for all states and 32.3% when excluding New York. For all states, ADR was the highest-ranked predictor in this cluster, but the variable only explained 3.4% of the time interval variance; however, when excluding New York, the percent variance explained rose to 12.5%. For the model excluding New York, the Filing-to-Adjudication ratio explained 7.5% of the variance, with the related coefficient direction increasing the time interval proportional to any increase in the ratio.

V. Discussion

Inherent in the IDEA's dispute resolution framework is a delicate balance between efficient adjudication and fairness. The statutory and regulatory framework mandates timely adjudication of disputes but with sufficient procedural elements and protections to ensure that the results of those adjudications accord with due process. However, as the findings demonstrate, the factors that contribute most strongly to the prolonged length of DPHs-- undermining their timeliness--often are not the factors likely aimed at improving their outcomes by promoting a fairer process. Two of the most significant contributors to the length of DPHs, accounting for 77% of the variance explained in our model for all states and 46.2% of the variance when excluding New York, were the Time Interval between the First and Last Hearing Day and the number of Extensions granted by the IHO. Neither of these factors is aimed broadly at promoting fairness (though they may in individual cases), and both undermine the timely adjudication of DPHs. Instead, these factors are indications of how the process itself is susceptible to external limitations, namely, a lack of resources. Thus, rather than being solely an intentional balance of efficiency and fairness, there is a third

competing consideration within the IDEA's dispute resolution process: accommodation of a system that often lacks the resources of time, talent, and institutional support required to fully realize the delicate balance of timeliness and fairness contemplated by the IDEA.⁷⁸ This balancing of fairness and efficiency with the system's available resources often results in hearing delays. We next turn to a discussion of the potential contributory variables we analyzed with an eye toward the interplay between efficiency, fairness, and accommodation.

The first set of variables related to the Participants in the DPH accounted for only 6.3% of the variance for all states and 6% when excluding New York. Within this category, if the school district filed the complaint, those DPHs were on average quicker than if the parent filed. There are likely two explanations for this. First, districts typically only file non-expedited complaints under two limited circumstances that are often more straightforward than other potential IDEA claims: to defend an evaluation in opposition to a request for an independent educational evaluation (IEE) or to proactively declare the sufficiency of an IEP.⁷⁹ Second, the obverse of the imbalance of information for parents who file complaints and must ***715** obtain evidence from the school, districts typically have access to the information they need to succeed at the DPH. The other variable within the participants category--Legal Representation--indicates that parental legal representation minimally increases the length of the DPH, though this increase is more marked when New York is included in the analysis.⁸⁰ Prior research has consistently found that children and their families experience better due process outcomes when they are represented by legal counsel.⁸¹ This finding appears to be an explicit tradeoff between efficiency and fairness. Although parental legal representation does add time to the DPH, it also ensures that parents are better able to navigate this process.

Next, the hearing procedures variables accounted for the majority of the identified variance in the timeliness of DPHs. For all states, this category accounted for 83.4% of the explained variance, with the vast majority of that stemming from the Time Interval from First to Last Hearing Day (69%). Excluding New York, the hearing variables category accounted for 61.3% of the explained variance, more equally split between Time Interval from First to Last Hearing (34.5%), Number of Extensions (11.7%), and Amendments to the Complaint (9.7%). For both groups, Amendments to the Complaint had a modest impact on the timeliness of the DPHs, ranking fourth among the states, with or without New York. Under the IDEA, amendments to the complaint reset the timeline,⁸² increasing the time to reach a decision, though they often contribute to fairness as a necessary measure to address further development of the factual record, particularly as parents gain access to information maintained exclusively by the district. Two other variables within the hearing procedures category, the Number of Hearing Sessions and Written Closing Submissions, minimally increased the length of the DPHs. As an additional procedural step, the modest increase of time for the submission of closing writings could be offset by the impact these writings have on fairness and even efficiency, as they reallocate the necessary investment of time to synthesize the case and the application of law from the IHOs to the parties.

The minimal impact of the Number of Hearing Sessions takes on additional significance when juxtaposed with the single most influential variable, the Time Interval from First to Last Hearing Day, which substantially increased the time for adjudication. To contextualize this delay and demonstrate the stark impact of New York's case volume and procedural dysfunction, the mean number of hearing sessions for all states, including New York, was three days. However, the Time Interval from the First to Last Hearing Day was markedly different: 22 days when excluding New York as compared to 62 days when including New York. Therefore, it is not the number of hearings that most increases the time, but rather how those hearings are scheduled. Although scheduling multiple days of hearings across a wider time frame may allow for further factual development or discovery, these delays most likely represent the difficulties inherent in scheduling around the busy (perhaps even overburdened) schedules of attorneys, families, district personnel, and hearing officers. Yet, the IDEA only requires that the hearings be scheduled at a time and place convenient to the parents and children involved.⁸³ Implementing state-level limits on the number of hearing sessions ***716** allowed may partially resolve this issue,⁸⁴ but at the potential expense of fairness in presenting all relevant evidence. Therefore, delays between multiple hearing sessions add significant time to DPHs, but it is unclear whether these delays advance either efficiency or fairness for the parties, as opposed to acting as an accommodation for an overburdened system.

To a lesser extent, the number of extensions also adds delays to DPHs as an accommodation for systemic limitations rather than in furtherance of fairness or efficiency. The number of extensions explained 8% of the variance for all states, increasing to 11.7%

when excluding New York and ranking second and third respectively among the variables we analyzed. Admittedly, extensions may be necessary due to fairness or efficiency considerations, such as (a) to give the parties time to engage in ADR; (b) to further develop and digest the factual record; or (c) to give the IHO time to sufficiently synthesize the case and write an opinion. However, many extensions likely are necessary due to the difficulties of scheduling, especially as it relates to attorneys, IHOs, mediators, and other individuals within the ADR process, which again potentially prioritizes accommodating an overburdened system rather than the IDEA's explicit goals of fairness and efficient adjudication.

The IDEA allows for extensions at the discretion of the IHO upon request of either party,⁸⁵ though there is little guidance on how IHOs ought to exercise that discretion. The only limitation from the regulations is that the extensions should be for "specific extensions of time," suggesting that an extension cannot be for an undetermined length but must have a specified end date. States and individual IHOs, though, have vastly different practices related to the approval and length of extensions.⁸⁶ Because the granting of extensions is one of the variables contributing most strongly to delays in DPHs, states should consider adding greater procedural clarity as to when extensions are appropriate under the IDEA to ensure that extensions further the dual goals of efficiency and fairness.

The final category of variables, which relates to the state context, accounted for 9.8% of the variance explained by our model for all states and 32.3% when excluding New York, again demonstrating the significant impact that New York has on the all-states analysis based on its outlier status and sheer volume of complaints. As a preliminary matter, the gross number of yearly due process filings had almost no impact on the timeliness of DPHs. This suggests that states have created comparably capable systems to handle their state's unique volume of complaints, which vary widely across states. Although the total number of annual filings had a negligible effect on timeliness, the filing-to-adjudication ratio had a moderate effect, ranking seventh for all states and fifth for all states except New York. As the filing-to-adjudication ratio increased, meaning that there were more complaints relative to adjudications and that any given complaint was less likely to be fully adjudicated, the time from filing to decision increased. There are several potential explanations for this observation. *717 First, fewer adjudications relative to filings could indicate a greater local emphasis on using ADR to resolve complaints, which can often be a lengthy process itself. Potentially, then, the complaints that do get to a hearing are only those that are most contentious, complicated, or that involve the most intractable issues, all of which could extend the time necessary to fully adjudicate the complaint. Conversely, for states that have relatively more complaints per adjudication, full adjudications are likely more novel, and novel situations within the law often take longer, like for example when an inexperienced IHO's potential lack of familiarity with the established practices or procedures may decrease the efficiency of the process. This suggests that states, particularly those who have significantly more complaints filed than are fully adjudicated, ought to prioritize systems for institutionalizing knowledge and experience for how to effectively adjudicate cases to guide IHOs who may not have a complaint that progresses to a full adjudication all that often.

Interestingly, the status of the IHO--whether the IHO was a part-time attorney, a central panel ALJ, or a specialized panel ALJ--had only a small impact on the timeliness of the DPH, accounting for only 0.2% of the variance for all states and 3.4% when excluding New York. Within this variable for all states, all other things being equal, hearings with part-time attorneys were adjudicated more quickly than those with central panels, which were adjudicated more quickly than those with specialized panels. When excluding New York, complaints with part-time attorney IHOs and specialized panels were adjudicated more quickly than those with central panels. This finding suggests that the more specialized knowledge that IHOs have regarding the IDEA, the more efficient they are when adjudicating cases.

The most influential variable within the state context category for both all states and all states excluding New York was the Availability of ADR within the state, accounting for 3.4% and 12.6% of the variance respectively. Importantly, this variable considered whether state law provides for additional ADR options above those contemplated by the IDEA; it does not reflect whether any specific complaint made use of these procedures prior to being fully adjudicated. As state law provides for additional ADR options, DPHs become less timely, likely because more complaints go through various ADR processes, adding time and steps before they reach adjudication. This is perhaps the most complicated interplay between efficiency and fairness. First, these additional ADR options both promote and inhibit efficiency. They add time to fully adjudicated complaints, but they also preserve judicial resources by providing more opportunities for complaints to settle or narrow the issues prior to

a full adjudication. Conversely, these additional ADR options likely promote fairness by encouraging mutual resolution of complaints (albeit recognizing that each party has different incentives for resolving complaints at this stage and that there can be asymmetrical bargaining power and resources between parents and districts).⁸⁷

The last two variables in the state context category, pre-hearing conference availability and discovery availability, were the rare variables in our analysis that actually contributed to quicker adjudications. Together, these variables accounted for 3.8% of the variance in timeliness for all states and 8.8% when excluding New York. For all states, where state statute mandated a pre-hearing conference, adjudications were quicker than if pre-hearing conferences were optional or not mentioned in state statute. For all states excluding New York, when pre-hearing conferences were optional, these adjudications took less time than when *718 pre-hearing conferences were not mentioned in state law. Although coded at the state statute level rather than representing a specific case, the findings suggest that pre-hearing conferences can facilitate timely adjudication, perhaps by establishing a shared record or narrowing the issues, whether factual or legal, that must be addressed through a hearing. The same pattern emerged for the availability of various discovery procedures. Where state law provided for more specific and additional discovery options, complaints were adjudicated more quickly. This may seem counterintuitive because additional discovery could increase the pre-hearing preparation time, but additional discovery may also correct the information imbalance commonly experienced by parents and alert both parties to evidence causing them to narrow the necessary scope of hearings, and thereby increasing their efficiency.⁸⁸ Additional discovery options as well as pre-hearing conferences, then, may provide the best marriage of efficiency and fairness through increasing the timeliness of hearings while promoting procedural fairness through increasing parental access to information.

Although this study provides valuable insight into the variables that affect the timeliness of adjudicating DPHs, there are some notable limitations. First and foremost, this analysis was limited by the information contained in the written decisions of IHOs. The format and depth of procedural content in these written decisions vary widely between states and even between IHOs within the same state. This inconsistency dictated both the variables we could analyze and the options for coding them. For example, many decisions lacked sufficient procedural histories to accurately identify the number and duration of extensions, limiting the coding to none, one, multiple, or not mentioned, rather than coding a specific number of extensions or the length of each extension. Relatedly, because of the uneven way these decisions document the procedural history, we were unable to code various state-level procedural elements, such as ADR, pre-hearing conferences, or discovery, using the individual case as the unit of analysis. This is an area deserving of additional research as our findings identify pre-hearing conferences and discovery as potential levers to ensure more timely adjudications of DPHs. Finally, by relying on the written decisions of IHOs, our analysis does not account for variations among states and IHOs in the implementation of similar terms or practices within the IDEA framework or state-level statutes.

VI. Conclusion and Recommendations

Although the IDEA dispute resolution framework provides guidance as to the required participants and procedures for DPHs, these guidelines are operationalized at the state level. This exploratory analysis provides a first step to understanding the factors that delay DPHs beyond the IDEA-mandated timelines. Although the aforementioned limitations on the procedural history content of DPH decisions limited the coding of some variables,⁸⁹ the findings provide strong support for additional study. We recommend follow-up studies to more deeply understand the degree to which the hearing procedures variables and the state context variables may impact the timeliness of DPH decisions. We also recommend that, given the outlier status of New York, national studies of DPHs should exclude New York as not representative of the rest of the country's experience.

Based on the findings from this investigation, states should strive to meet the twin goals of efficiency and fairness through review and revision of their DPH procedures, especially those related to (a) efficiently scheduling of hearing sessions; (b) limiting extensions to truly unavoidable delays; and (c) effectively employing pre-conference hearings, discovery *719 procedures, and ADR procedures as tools for narrowing the evidence to be presented and the issues requiring adjudication at a hearing. Additionally, states should review the resources, both human and financial, that they provide to support the due process system

to decrease delays related to the availability of personnel. Although some aspects of the DPH process will always remain subject to individual human behavior, addressing these controllable sources of delay should improve the timeliness of DPH decisions and thereby increase efficiency without sacrificing fairness.

APPENDIX A: POTENTIALLY CONTRIBUTING VARIABLE CRITERIA

The following classification was the basis for defining and coding each explanatory variable.⁹⁰

Participants:

- *Filing Party*: The coding categories were “Parents,” “District,” or “Both.”⁹¹ The frequency distribution for all decisions was as follows: parents - 94%, districts - 33.5%, and both - 2.5%. Excluding New York, the distribution was: parents - 84%, districts - 10%, and both - 6%.

- *Parties' Legal Representation*: For each party, we assigned a code of “Yes” if the party was represented by an attorney.⁹² The frequency distribution for all decisions was as follows: parents - 72% yes and districts - 49% yes. Excluding New York, the distribution was: parents - 74% yes and districts - 99% yes.

Hearing Procedures:

- *Amendments to Complaints*: If either party filed at least one amendment to the complaint,⁹³ the coding entry was “Yes.” The frequency distribution was no - 88% and yes - 12%, both with and without New York.

- *Number of Extensions*:⁹⁴ The coding categories for this factor were “None,” “One,” “More than One,” and “Not Mentioned.”⁹⁵ The frequency distribution for all states was *720 none - 7.5%, one - 17%, multiple - 39.5%, and not mentioned - 36.0%. Excluding New York, the corresponding distribution was: none - 17.3%, one - 30.0%, multiple - 18.1%, and not mentioned - 34.7%.

- *Number of Hearing Sessions*: This variable represented the total number of hearing days used for opening and closing arguments, witness testimony, and presentation of exhibits. The weighted national mean was 3 hearing sessions per complaint, both for all-states and excluding New York.

- *Time Interval from First to Last Hearing Day*: This factor amounted to the number of days between the first hearing date and the last hearing date.⁹⁶ The weighted national mean was 62 days for all-states and 22 days with New York excluded.

- *Written Closing Submissions*: The coding categories for this factor were “No,” “Yes,” and “Not Mentioned” depending on whether the decision reported that at the close of the hearing either or both parties submitted a written brief, proposed findings of fact, or other written supplements to the record. The frequency distribution for all states was: no - 46%, yes - 37%, and not mentioned - 17%. Excluding New York, the corresponding distribution was: no - 18%, yes - 53%, and not mentioned - 29%.

State Context:

• *Annual Due Process Filings*: This variable constituted the average annual number of due process filings in each state during the six-year period of our decisions from 2012 to 2017.⁹⁷ The weighted national mean was 4,331 for all decisions and 1,054 upon excluding New York.

• *Filing to Adjudication Ratio*: This ratio is the average for a comparable period between the number of filings and the number of fully-adjudicated DPH decisions for each state.⁹⁸ The weighted national mean was 12.5:1 for all decisions and 18.8:1 excluding New York.

• *Hearing Officer Status*: The coding categories based on a survey of state IHO systems⁹⁹ were “Part-Time Attorney,” “Central Panel,” or “Specialized Panel.” The frequency distribution for all decisions was as follows: part-time attorney - 70%, central panel - 24%, and specialized panel - 6%. Excluding New York, the distribution was part-time attorney - 13%, central panel - 68%, and specialized panel - 18%.

• *ADR Availability*: Per a published analysis of state special education laws,¹⁰⁰ the coding categories were as follows: “IDEA Requirements Only,” “Brief Reference to an ADR Option Beyond the IDEA,” “Listing of ADR Options Beyond the IDEA,” “Detailed Provisions Describing One or More Well-Known ADR Options (e.g., IEP Facilitation),” or “Unusual, Forceful State Law ADR Option (e.g., Advisory Opinion or Neutral Hearing).” The frequency distribution for all decisions was as follows with and without New York: IDEA requirements only - 89% & 69%; brief reference to ADR option not in IDEA - 6% & 17%; listing of ADR options outside IDEA - 4% & 11%; detailed provisions - .2% & .5%; and unusual, forceful options - .8% & 2.3%.

*721 • *Pre-Hearing Conference Availability*: Per the same state law analysis,¹⁰¹ the pre-hearing conference availability coding categories were “Optional,” “Mandatory,” and “Not Mentioned.” The frequency distribution for all decisions was as follows: optional - 77%, mandatory - 7%, and not mentioned - 16%. Excluding New York, the corresponding distribution was optional - 33%, mandatory - 21%; and not mentioned - 47%.

• *Discovery Availability*: Per the same source,¹⁰² the coding options were “IDEA 5-Day Rule Only,” “Addition of Document Discovery,” “Addition of Document Plus Other Means of Discovery (e.g., Depositions or Interrogatories),” and “Discovery as Available in a Court of Law.” The frequency distribution for all decisions was IDEA 5-day rule only - 76%, addition of document discovery - 18%, documents and other means - 0.8%, and court-like discovery - 4.5%. Excluding New York, the distribution was IDEA 5-day rule only - 32%, addition of document discovery - 53%, documents and other means - 2%, and court-like discovery - 13%.

APPENDIX B: UNSTANDARDIZED REGRESSION COEFFICIENTS

In Table 1, we ranked each contributing variable by the fraction of the adjusted R2 explained and identified the direction of the change using the unstandardized regression coefficient, a directional multiplier applied to the value of each potentially contributing variable. The sum of these individually calculated variable value-regression coefficient products is a predictor of the outcome variable,¹⁰³ days from filing-to-decision. Quantitative contributing variables receive one coefficient multiplier applied to the actual value of the variable (e.g., a hearing sessions coefficient of 4.2 days/session x 3 hearing sessions = 12.6 days added to the outcome variable). Conversely, categorical contributing variables receive a coefficient for each mutually exclusive value, with one value assigned a baseline coefficient of zero (e.g., Amendments to Complaint = No adds 0 days to the outcome variable, but Amendments to Complaint = Yes adds 32.8 days (with NY) or 42.7 days (without NY)). The table below provides the unstandardized regression coefficients for each contributing variable, both overall and excluding New York.

POTENTIALLY CONTRIBUTING VARIABLE	UNSTANDARDIZED COEFFICIENTS ALL DECISIONS	UNSTANDARDIZED COEFFICIENTS ALL DECISIONS EXCLUDING NY
Participants		
Filing Party:		
Parent	-20.1***	-3.9***
District	-65.7**	-41.4
Both	0.0	0.0
Parent Legal Representation:		
No	0.0	0.0
Yes	25.1***	14.7***
Hearing Procedures		
Amendments to Complaint:		
No	0.0	0.0
Yes	32.8***	47.1***
Number of Extensions:		
None	0.0	0.0
One	42.0***	13.1**
Multiple	61.4***	55.5***
Not Mentioned	25.1***	16.6***
Hearing Sessions:	4.2***	6.4***
First-to-Last Hearing Session Days	0.86***	1.8***
Written Closing Submissions:		
No	0.0	0.0
Yes	14.1***	24.3***
Not mentioned	-4.8	9.6**
State Context		
Annual Due Process Filings	-0.01***	-0.003
Filing to Adjudication Ratio	2.2***	1.6***
IHO Status:		
Part-time attorney	0.0	0.0
Central Panel	13.9**	26.3***

Specialized panel	17.5*	0.0
ADR Availability:		
IDEA only	0.0	0.0
Options list	49.7***	52.7***
Detailed/unusual options	-19.5	-6.8
Court-like options	72.7***	74.2***
Pre-Conference Availability:		
Not mentioned	0.0	0.0
Optional	30.4***	-44.6***
Mandatory	.42.4***	0.0
Discovery Availability:		
IDEA only	0.0	0.0
IDEA + documents	-17.0	-55.7**
Documents + other options	-53.1***	-21.0
Court-like	-0.6	-16.7***
* $p < .05$; ** $p < .01$; *** $p < .001$		

Footnotes

- a1 The views expressed are those of the author and do not necessarily reflect the views of the publisher or the Education Law Association. Cite as 419 Educ. L. Rep. 705 (March 28, 2024).
- aa1 Dr. Diane Holben is associate professor of professional and secondary education at East Stroudsburg University. Atty. Lee is an attorney in New York City. Dr. Thomas is assistant professor of educational leadership and policy at the University of Florida. Dr. Zirkel is an emeritus professor of education law at Lehigh University who shares his work at perryzirkel.com. He is a past president of the Education Law Association.
- 1 Congress enacted the Education for All Handicapped Children Act, 20 U.S.C. §§ 1400-82, following federal consent decrees in *Mills v. Board of Education of District of Columbia*, 348 F. Supp. 866 (D.D.C. 1972), and *Pennsylvania Association for Retarded Children v. Pennsylvania*, 343 F. Supp. 279 (E.D. Pa. 1972). Since its inception, the statute, now known as the IDEA, has been reauthorized with major amendments four times, most recently in 2004. See Dixie S. Huefner & Cynthia M. Herr, *Navigating Special Education Law and Policy* 43-49 (2012).
- 2 20 U.S.C. §§ 1400-82. As per statute and case law, a FAPE includes specially designed instruction and related services to provide a student with a disability with meaningful benefit from their education. See *Andrew F. v. Douglas Cnty. Sch. Dist.*, 580 U.S. 386 (2017); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 5 Educ. L. Rep. 34 (1982). The IEP is a written document, annually revised, that describes the student's disability-related needs, annual goals, specially designed instruction and supplementary aids and services, and educational placement. 20 U.S.C. § 1414(d).
- 3 Although the full designation is “[i]mpartial due process hearing,” 20 U.S.C. § 1415(f), the legislation alternatively uses the more concise “due process hearing.” E.g., *id.* § 1415(b)(7)(B), 1415(c)(2)(E), 1415(e)(2)(A), 1415(f)(1)(B)(ii), 1415(f)(3)(B). The IDEA allows, subject to state law, either the local education agency or the state agency to conduct the hearing. *Id.* § 1415(f)(1)(A). Moreover,

if the state law provides for the local education agency to conduct the hearing, the IDEA allows states the option of a second, administrative tier. *Id.* § 1415(g)(1). The number of states with a two-tier system has dwindled from twenty-six in 1991 to eight in 2019. Jennifer F. Connolly, Perry A. Zirkel, & Thomas A. Mayes, *State Due Process Hearing Systems under the IDEA: An Update*, 30 J. Disability Pol'y Stud. 156, 158 (2019) (identifying Kansas, Kentucky, Nevada, New York, North Carolina, Ohio, and South Carolina as states with a two-tier system); *see also* Lisa Lukasik, *Special-Education Litigation: An Empirical Analysis of North Carolina's First Tier*, 118 W. Va. L. Rev. 735, 745 n.38 (2016) (identifying Oklahoma as an additional state with a review officer tier).

- 4 The expectation of prompt dispute resolution is evident as early as *Mills*, 348 F. Supp. at 881 (specifying a seventy-five-day completion timeline), and *Pa. Ass'n for Retarded Child.*, 343 F. Supp. at 304-05 (providing for a fifty-day timeline with extensions for good cause). *See also* *Muth v. Cent. Bucks Sch. Dist.*, 839 F.2d 113, 124-25, 44 Educ. L. Rep. 1037 (3d Cir. 1988), *rev'd on other grounds sub nom. Dellmuth v. Muth*, 491 U.S. 223, 53 Educ. L. Rep. 792 (1989) (reasoning, based on its "stringent" regulatory timeline for DPH decisions, that the IDEA "reflect[s] the importance ... of prompt resolution of disputes over the proper education of a [child with a disability]").
- 5 *See, e.g., Cory D. v. Burke Cnty. Sch. Dist.*, 285 F.3d 1294, 1299, 163 Educ. L. Rep. 594 (11th Cir. 2002) ("The most effective means of ensuring disabled children receive an education tailored to meet their specific needs is to provide prompt resolution of disputes over a child's IEP."); *C.M. v. Bd. of Educ. of Henderson Cnty.*, 241 F.3d 374, 380, 151 Educ. L. Rep. 157 (4th Cir. 2001) (reasoning that quick dispute resolution ensures the central purpose of the IDEA); *Livingston Sch. Dist. Nos. 4 & 1 v. Keenan*, 82 F.3d 912, 916-17, 109 Educ. L. Rep. 38 (9th Cir. 1996) ("[A]pplying a relatively short judicial review limitations period is consistent with the IDEA's policy of prompt resolution of questions resolving a disabled student's education."); *Spiegler v. District of Columbia*, 866 F.2d 461, 467 (D.C. Cir. 1989); *Adler v. Educ. Dep't of N.Y.*, 760 F.2d 454, 460, 24 Educ. L. Rep. 726 (2d Cir. 1985) (citing the IDEA's legislative history that emphasizes prompt dispute resolution).
- 6 *E.g., Perry A. Zirkel et al., Creeping Judicialization in Special Education Hearings?: An Exploratory Study*, 27 J. Nat'l Ass'n Admin. L. Judiciary 27, 29-30 & 44-45 (2007) (finding various indicators of increasing judicialization in an empirical analysis of DPH decisions in Iowa). Across the states, there is a gradual shift from a minority to a large majority of IHOs who are attorneys. *Compare* Thomas Smith, *Status of Due Process Hearings*, 48 Exceptional Child. 232, 233 (1981) (finding that 55% of the IHOs were non-lawyers with inferable expertise in special education), *with* Connolly et al., *supra* note 3, at 159 (finding that in forty-one states and D.C. 100% of the IHOs were lawyers, with Delaware as the only state with less than a majority of attorney IHOs). Similarly, approximately nineteen states employ full-time IHOs as opposed to the early prevailing model of part-time IHOs. *See* Connolly et al., *supra* note 3, at 158. Further, the IDEA 2004 amendments codify these shifts by (a) establishing competence criteria for IHOs that focused on legal rather than special education practice (*see* 20 U.S.C. §§ 1415(f)(3)(A)(ii)-(iv) (detailing knowledge and ability for IDEA legal interpretations, conducting hearings, and writing decisions)); (b) introducing complaint sufficiency procedures that may contribute to lengthier hearings (*see* Mark C. Weber, *In Defense of IDEA Due Process*, 29 Ohio St. J. on Disp. Resol. 495, 512 (2014) (arguing that the added pleading requirements increase paperwork and promote delay)); and (c) requiring school districts to conduct a resolution session (*see* 20 U.S.C. §§ 1415(f)(1)(B) (describing the requirement to hold the session within fifteen days of the filing of the due process complaint and the right of either party to waive the resolution session). At the state level, the expanded applicability of state administrative procedure acts (APAs) correlated with the shift toward central panel administrative law judges (ALJs) as DPHs, expanding from six states in 1991 to twenty states in 2018. Finally, the state supplementary laws for special education added various adjudicative formalities including discovery and motion practice that tend, on a net basis, to lengthen the DPH time period for completion of the process. *See* Connolly et al., *supra* note 3, at 157-58; *see generally* Andrew M.I. Lee & Perry A. Zirkel, *State Laws for Due Process Hearings under the Individuals with Disabilities Education Act: The Pre-Hearing Stage*, 40 J. Nat'l Ass'n Admin. L. Judiciary 1 (2021).
- 7 Diane M. Holben & Perry A. Zirkel, *Due Process Under the Individuals with Disabilities Education Act: Justice Delayed*, 73 Admin. L. Rev. 833, 854 (2021).
- 8 *See supra* note 6 and accompanying text.

- 9 As per the statute, a small number of issues, primarily related to the disciplinary change of placement for students with disabilities, use an expedited timeline for due process. *See* 34 C.F.R. 300.532. In accordance with Holben & Zirkel, *supra* note 7, at 837 n.17 and accompanying text, we will refer to all due process hearings that are not expedited as “standard” hearings.
- 10 20 U.S.C. § 1415(f)(1)(B); 34 C.F.R. § 300.515(a)-(b).
- 11 34 C.F.R. § 300.515(a).
- 12 *Id.* § 300.515(c) (“A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.”).
- 13 *See, e.g.,* Oskowis v. Ariz. Dep’t of Educ., No. CV-17-08215-PCT-JJT, 2020 WL 3396776, at *3 (D. Ariz. June 19, 2020).
- 14 *See supra* note 12 and accompanying text.
- 15 34 C.F.R. § 300.508(d)(3)-(4).
- 16 *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, 21-22 (2018) (canvassing state laws that address the notice and reasons for extensions).
- 17 *See, e.g.,* Lee & Zirkel, *supra* note 6, at 16-18, 21-22; Jane R. Wettach & Bailey K. Sanders, *Insights into Due Process Reform: A Nationwide Survey of Special Education Attorneys*, 20 Conn. Pub. Int. L. J. 239, 267-70 (2021).
- 18 Lee & Zirkel, *supra* note 6, at 16.
- 19 20 U.S.C. § 1415(e); 34 C.F.R. § 300.506. Although the laudable intent is to resolve the dispute without a hearing or at least a decision, when unsuccessful, ADR may lengthen the filing-to-decision period.
- 20 Geoffrey F. Schultz & Joseph R. McKinney, *Special Education Due Process: Hearing Officer Background and Case Variable Effects on Decision Outcomes*, 2000 BYU Educ. & L. J. 17 (2000); Perry A. Zirkel & Gina Scala, *Due Process Hearing Systems Under the IDEA: A State-by-State Survey*, 21 J. Disability Pol’y Stud. 3 (2010).
- 21 Perry A. Zirkel & Gina L. Gullo, *Trends in Impartial Hearings Under the IDEA: A Comparative Update*, 376 Educ. L. Rep. 870, 876-78 (2020).
- 22 *See, e.g.,* Zirkel, *supra* note 6.
- 23 Lukasik, *supra* note 3, at 771-777; Kevin Hoagland-Hansen, *Getting Their Due (Process): Parents and Lawyers in Special Education Due Process Hearings in Pennsylvania*, 163 U. Pa. L. Rev. 1805 (2015).
- 24 *See* Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 219 Educ. L. Rep. 39 (2007) (interpreting the IDEA as providing parents with the right to proceed *pro se* in DPHs).

- 25 For the citations and a synthesis of the various research analyses, which all found a significant outcome difference of legally represented as compared to *pro se* parents in DPHs, see Perry A. Zirkel, *District-Initiated Due Process Decisions under the IDEA: A Follow-Up Analysis*, 398 Educ. L. Rep. 584, 588 n.33 (2022).
- 26 See, e.g., CADRE, IDEA Dispute Resolution Data Summary for US and Outlying Areas: 2010-2011 to 2020--2021 10 (2022), <https://www.cadeworks.org/resources/cadre-materials/2020-21-dr-data-summary-national>. Moreover, these annual data are based on varying state education agency interpretations of the U.S. Department of Education's definition of "fully adjudicated" DPH decisions and do not include those decided subsequent to the year in which the complaint was filed. For the annual number in this "pending DPC" category, see *id.* For the Department's framework definition of fully adjudicated and pending and the related time period restriction, see U.S. Dep't of Educ., *EMAPS User Guide, IDEA Part B Dispute Resolution Survey 22-23*, 39 (Sept. 2023), <https://www2.ed.gov/about/inits/ed/edfacts/index.html>.
- 27 "States" in this context includes the District of Columbia. Puerto Rico was excluded from the database because its very high volume of due process decisions is largely attributable to ongoing enforcement of a consent decree as well as severe systemic economic issues affecting the school system. See, e.g., Joseph B. Tulman, Andrew A. Feinstein, & Michele Kule-Korgood, *Are There Too Many Due Process Cases*, 18 U.D.C. L. Rev. 249, 271-73.
- 28 Holben & Zirkel, *supra* note 7, at 867.
- 29 *Id.* at 853.
- 30 *Id.* at 854.
- 31 *Id.* at 854-855.
- 32 *Id.* at 856.
- 33 Perry A. Zirkel & Diane M. Holben, *The Outcomes of Fully Adjudicated Impartial Hearings under the IDEA: A Nationally Representative Analysis with and without New York*, 44 J. Nat'l Ass'n Admin. L. Judiciary 126 (2023) (demonstrating that the outcomes distribution for New York DPHs markedly differed from that of the remaining 49 states and the District of Columbia).
- 34 *Id.* For a synopsis of the ongoing litigation related to the New York City due process dysfunction, see Holben & Zirkel, *supra* note 7, at 841-842.
- 35 Holben & Zirkel, *supra* note 7 and accompanying text.
- 36 Zirkel & Holben, *supra* note 33 and accompanying text.
- 37 For the definitions of each explanatory variable and the coding scheme for each, see *infra* Appendix A.
- 38 *Id.* at note 97 and accompanying text.
- 39 *Id.* at note 98 and accompanying text.

- 40 *Id.* at note 99 and accompanying text.
- 41 *Id.* at note notes 100-01 and accompanying text.
- 42 *Id.* at note 102 and accompanying text.
- 43 *Id.* at note 103 and accompanying text.
- 44 *Id.*
- 45 *Id.* at note 104 and accompanying text.
- 46 *Id.* at note 105 and accompanying text.
- 47 *Id.* at notes 106-107 and accompanying text.
- 48 *Id.* at note 108 and accompanying text.
- 49 *Id.*
- 50 *Id.* at note 109 and accompanying text.
- 51 Holben & Zirkel, *supra* note 7, at 852.
- 52 *Id.* at 847-49.
- 53 Agency guidance stipulates that due process hearing officer decisions shall be publicly available for at least 5.5 years after their issuance. *See* to Anonymous (OSERS Feb. 27, 2017), <https://sites.ed.gov/idea/idea-files/policy-letter-february-27-2017-to-anonymous/>.
- 54 Holben & Zirkel, *supra* note 7, at 848.
- 55 *Id.* at 853 n.109 and accompanying text. The weighting factors represented a ratio for each state of the number of decisions in the entire database per decision coded. For the states in which all decisions were coded, the weighting factor was 1.0. For the four states in which we selected a random sample of cases to code, the weighting factors were as follows: New York - 17.8, District of Columbia - 3.6, Pennsylvania - 2.4, and California - 2.5. In the analysis of results, the weighting factor was used to re-weight the random sample back to its original proportion of the population of cases for the entire six-year period (i.e., restore the sample of 2,512 cases back to the original population of 9,858 cases).
- 56 Holben & Zirkel, *supra* note 7, at 853.
- 57 *Supra* notes 37-50 and accompanying text.

- 58 *See infra* Appendix A for the finalized variable and code definitions.
- 59 On file with the first author.
- 60 *See* IBM Statistical Program for the Social Sciences Software, <https://www.ibm.com/analytics/spss-statistics-software>.
- 61 Multiple linear regression is a statistical process designed to identify which independent potentially contributing variables are most influential in predicting the value of a dependent outcome variable. The forward stepwise variation adds the potentially contributing variables to the predictive model one at a time, recalculating the influence of all variables as each new one is introduced into the model and removing any variables that do not significantly contribute to explaining the variation in the outcome variable. *See* Mark H. Licht, *Multiple Regression and Correlation*, in *Reading and Understanding Multivariate Statistics* 19, 52-53 (Laurence G. Grimm & Paul R. Yarnold eds., 2018).
- 62 As part of the data preparation, SPSS converts any categorical variables into numerical values (e.g., the amended complaints values of Yes and No are converted to 0 and 1).
- 63 Outliers are data points that are so far removed from the mean that they exert undue influence on the calculation of the regression model. The ALM process uses a Cook's distance value greater than 1 to identify and exclude outlier data points. For a discussion of Cook's distance, *see* James Stevens, *Applied Multivariate Statistics for the Social Sciences* 108-109 (3d ed. 1996).
- 64 Variance represents the dispersion of values of the dependent variable around the mean of the variable. Using a dart board as a metaphor, the mean is at the center or "bullseye" position. The actual data points, similar to the darts thrown, are scattered around the mean, with some closer to a "bullseye" and others further away. The dispersion of the data points is characterized by whether the majority are close to the center (low dispersion) or further away from center (high dispersion). *See* Kevin P. Weinfurt, *Multivariate Analysis of Variance*, in *Reading and Understanding Multivariate Statistics* 245, 275 (Laurence G. Grimm & Paul R. Yarnold eds., 2018).
- 65 The adjusted R^2 value represents the effectiveness of the regression model in explaining the variation in data points. R^2 varies from 0 (no variance explained) to 1 (100% of variance explained). The higher the R^2 value, the better the fit between the independent potentially contributing variables and the dependent outcome variable. Maciej Taraday & Anna Wiczorek Taraday, *R²*, in *The Sage Encyclopedia of Educational Research, Measurement, and Evaluation* 1361, 1361-1362 (Bruce B. Frey ed., 2018). For the regression models in this analysis, the adjusted R^2 values are significant at $p < .001$, a very high degree of significance.
- 66 Although the determination of an acceptable R^2 value varies by discipline, in general social studies research accepts lower R^2 values than the experimental sciences due to the proportion of human behavior that the researcher cannot control. *Id.* Because social science research focuses not on the prediction of human behavior but rather on the effect of the explanatory variables on the dependent variable, a low R^2 value between 0.10 and 0.50 is acceptable provided that the explanatory variables themselves are statistically significant. Peterson K. Ozili, *The Acceptable R-square in Empirical Modelling for Social Science Research*, in *Social Research Methodology and Publishing Results* 134 (Candauda Arachchige Saliya ed., 2023).
- 67 For the unstandardized coefficients, or directional multipliers for each variable, *see infra* Appendix B. The potentially contributing variable value is multiplied by the coefficient to ascertain the number of days added or subtracted from the baseline value. Licht, *supra* note 61, at 38-42.
- 68 *See supra* notes 33-34 and accompanying text.

- 69 *Id.*
- 70 *See supra* note 61 and accompanying text.
- 71 *See supra* note 68 and accompanying text.
- 72 *See supra* note 67 and accompanying text.
- 73 *See supra* note 67 and accompanying text; *see also infra* Appendix B for the exact coefficient values for each potentially contributing variable.
- 74 The magnitude and direction of the change for each variable appear in the unstandardized regression coefficients in Appendix B. To represent direction in Table 1, we used the following indicators: (+) increases time interval and (-) decreases time interval.
- 75 *Id.*
- 76 Although both the parents' and the districts' legal representation were entered as variables, the final model included only the parents' legal representation because the district legal representation was not statistically significant.
- 77 This variable was not statistically significant without the NY decisions, so it is not included in the analysis for the rank, direction, and R^2 explained for columns 3 and 4.
- 78 Holben & Zirkel (2021), *supra* note 7, at 861-862 (proposing that effectively managed due process hearings can achieve a balance of efficiency and fairness for the child).
- 79 34 C.F.R. § 300.502(b) & 300.507(a).
- 80 New York City's use of part-time attorneys as IHOs has been under-resourced, stimulating the ongoing federal litigation and subsequent changes toward a system of central panel ALJs to manage due process cases. Zirkel & Holben (2023), *supra* note 33 at 137-138 (outlining the dysfunction in the New York City due process hearing system and the massive backlog of cases leading to federal class action litigation).
- 81 *Supra* note 25.
- 82 34 C.F.R. § 300.508(d)(3)-(4).
- 83 34 C.F.R. § 300.515(d); Zirkel & Holben (2023), *supra* note 33, at n. 53 and accompanying text (describing New York City's exploration of streamlining strategies such as reassigning cases from the part-time IHOs to full-time ALJs, bundling cases, direct testimony by affidavit, and oral closing arguments).
- 84 *See, e.g.*, Wettach & Sanders, *supra* note 17, at 284 (postulating that limiting the number of hearing days would cause parties to focus on the most important evidence and witnesses).
- 85 34 C.F.R. § 300.515(c).

- 86 State laws vary as to whether and how they address extensions. Zirkel, *supra* note 16, at 21-22. Within this framework, the DPH decisions demonstrated a range of practices related to the granting of extensions. At one extreme, although approximately one third of its decisions noted at least one extension, the District of Columbia had the second shortest average time interval from filing to decision (82 days). In comparison, approximately 85% of the Illinois decisions noted at least one extension, with a corresponding mean of 209 days from filing to decision. Because the data coding was limited by the inconsistent reporting of the frequency and length of extensions in the DPH decisions, it is unclear whether the frequency or length of extensions is more influential with respect to the DPH timeline.
- 87 *See, e.g.*, Joseph Fluehr, *Navigating Without a Compass: Incorporating Better Parental Guidance Systems into the IDEA's Dispute Resolution Process*, 8 *Drexel L. Rev.* 155, 170-71 (2015) (acknowledging the knowledge gap between school district staff and parents, particularly low-income parents lacking professional assistance in understanding the legal provisions of the IDEA).
- 88 *See, e.g.*, Wettach & Sanders, *supra* note 17, at 286 (citing the use of discovery as a tool for both parties to assess the expected evidence at hearing, which in turn may lead to a settlement or narrowing of the issues).
- 89 *Infra* notes 91-103 and accompanying text.
- 90 We determined the potentially contributing variables included based upon the literature review as well as a review of the IDEA requirements for due process hearings. *See supra* Parts I, II. As described *supra* in Part III, we employed an inter-rater reliability process to adjust each definition as needed to operationalize it.
- 91 The code of Both resulted from a case with consolidated complaints, at least one of which was filed by each party.
- 92 Legal representation does not include representation by a non-attorney advocate. Although the use of lay advocates is associated with parents, New York City Public Schools--which accounts for a significant proportion of all DPHs nationally--frequently uses such representatives instead of attorneys. *See* New York City Department of Education, Special Education Standard Operating Procedures Manual 121 (Nov. 16, 2021), <https://infohub.nyced.org/docs/default-source/default-document-library/specialeducationstandardoperatingprocedu-march.pdf> (last visited Jan. 16, 2024) (“Depending on the nature of the case and the student's school, the DOE may be represented at an impartial hearing by an attorney from the Office of Legal Services, a [lay] professional, or a trained non-attorney representative from the Impartial Hearing Representation Office.”).
- 93 *Supra* note 15 and accompanying text.
- 94 Because decisions varied in their specificity for the number of extensions, we could not calculate an exact total for each decision. Also, the extensions variable did not include those for submission of closing briefs or resetting the timelines upon submission of an amendment.
- 95 For the distinction, “not mentioned” was for decisions in which the IHO did not mention extensions, where “none” was for decisions in which the IHO explicitly denied any extensions.
- 96 The time interval was calculated using the Date and Time Wizard in SPSS, Version 29.
- 97 Zirkel & Gullo, *supra* note 21, at 871 (providing these ratios).
- 98 *Id.* at 87374.

- 99 Connolly et al., *supra* note 3, at 158.
- 100 Lee & Zirkel, *supra* note 6, at 16.
- 101 *Id.* at 18. “Not mentioned” in this context refers to the state law, not the DPH decision.
- 102 *Id.* at 17 & 22.
- 103 Licht, *supra* note 61.

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