

DUE PROCESS HEARING AND WRITTEN STATE COMPLAINT ACTIVITY FOR COVID-19 ISSUES:

A Six-Month Snapshot

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October 2020

Forward

CADRE, the Center for Appropriate Dispute Resolution in Special Education, endeavors to inform the field by sharing relevant and timely content on emerging issues. This Briefing Paper is a continuation of this effort.

CADRE and the authors acknowledge and appreciate Alyssa Fairbanks, Dispute Resolution Team Leader of the Washington Office of the Superintendent of Public Instruction, and Thomas Mayes, General Counsel of the Iowa Department of Education, for their reviews of this Briefing Paper.

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Published by :



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CADRE produced this document under U.S. Department of Education, Office of Special Education Programs Cooperative Agreement CFDA No. H326X180001, Carmen M. Sánchez, Project Officer. The views expressed herein do not necessarily represent the positions or policies of the Department of Education. No official endorsement by the U.S. Department of Education is assumed.

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This document is also available at: www.cadeworks.org

Introduction

In addition to the alternative forms of dispute resolution under the Individuals with Disabilities Education Act (IDEA), the two decisional avenues are adjudicative and investigative. The adjudicative avenue starts with a due process hearing (DPH) and culminates in court proceedings. The investigative avenue is the written state complaints (WSC) process, which provides for judicial appeals in only the minority of states (e.g., Zirkel, 2019).

COVID-19 represents a new context of the ongoing issues that are subject to resolution in these two decisional avenues. It is both practically and legally “unprecedented.” The purpose of this briefing paper is to provide a snapshot of the DPH and WSC activity specific to COVID-19 issues based on a state-by-state survey at the approximate six-month point of the pandemic. The succeeding sections provide (a) the overall legal framework; (b) a synthesis of baseline and concurrent legal activity; (c) the method and findings of the survey; and (d) a discussion including interpretation and implications of these findings.

Section 1: Legal Framework

For P–12 students with disabilities, the primary legislation, along with its regulations and corollary state special education laws, is the IDEA. Under the IDEA, the primary issues that have particular potential application as a result of the COVID-19 pandemic are, in sequence, (a) child find and, on an overlapping basis connected by evaluation, eligibility; (b) the central obligation of free appropriate public education (FAPE) along with the overlapping component of the least restrictive environment (LRE), and (c) remedies, including but not limited to reimbursement and compensatory education (e.g., Zirkel, 2015). Among the four faces, or dimensions, of FAPE, the most prominent is the recently refined substantive standard for FAPE in *Endrew F. v. Douglas County School District RE-1* (2017). Yet, the two that are most likely to be at issue under COVID-19 are based on alleged procedural violations and failure to implement the individualized education program (IEP) (e.g., Zirkel, 2017a). For the first, procedural FAPE, the adjudicative avenue, which starts with DPHs, applies a two-step analysis: (a) did the district violate one or more IDEA procedural requirements, and, if so, (b) did the violation result in a substantive loss to the student or a significant interference with participation of the student’s parents? For failure to implement (FTI), the predominant adjudicative approach is the materiality standard first established in *Van Duyn v. Baker School District 5J* (2007), which requires proof of a material, or more than a minor, shortfall. However, for the WSC mechanism, these approaches are not binding, allowing for the more parent-friendly standards of a one-step analysis of procedural FAPE and a per se, or more than negligible, standard for FTI (e.g., Zirkel, 2017b).

Beyond the DPH and WSC mechanisms of the IDEA, the framework for courts extends to Section 504 and its sister statute, the Americans with Disabilities Act (ADA), which provide overlapping and generally broader coverage than does the IDEA (e.g., Zirkel, 2017c). Additionally, the Fourteenth Amendment equal protection clause occasionally arises in COVID-19 cases at the court level. Although these alternate legal bases, unlike the IDEA, provide for the remedy of money damages, they face various litigation hurdles, including exhausting the DPH avenue before proceeding in court (e.g., Zirkel, in press) and proving a proxy for intentional discrimination, such as bad faith or deliberate indifference (Zirkel, 2018).

For P-12 students more generally, the various sources applicable at the court level for COVID-19 issues include the federal and state constitutions, various civil rights laws, and the federal Administrative Procedures Act (APA).

Section 2: DPH-WSC Baseline and Concurrent Judicial Activity

As a pre-COVID-19 baseline, in recent years (2012-13 to 2017-18), the level of DPH activity has moderated to average approximately 320 filings and 24 decisions per state per year, with relatively few states (interpreted broadly to include the District of Columbia but not Puerto Rico) accounting for most of the activity (e.g., Zirkel & Gullo, 2020). The corresponding level of WSC activity during the same period was approximately 100 filings and 65 decisions per state per year (CADRE, 2019), although less concentrated in a few jurisdictions (e.g., Zirkel, 2017b).

Under COVID-19, the major legal developments started with guidance from the U.S. Department of Education (USDE). Rejecting broad waivers of the FAPE obligation, the initial guidance in March 2020 included interpretations that during distance learning “schools must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student’s IEP developed under IDEA, or a plan developed under Section 504” and that upon resumption of school the IEP or 504 team “must make an individualized determination whether and to what extent compensatory services may be needed, consistent with applicable requirements, including to make up for any skills that may have been lost” (USDE, 2020b). This guidance referred to a distance learning plan (DLP) but only as permissive rather than mandatory and then, without further explanation, only as “in a child’s IEP” (USDE, 2020b). The only regulation that USDE issued was an interim final rule for allocating the CARES Act funding to private school students (USDE, 2020a), thus only tangentially related to the IDEA. Finally, state education agencies (SEAs) issued guidance concerning both general education and special education in response to COVID-19 that added variation to the demarcation and application of the legal framework.

Leading the legal activity during the initial months of the pandemic, the courts were the scene of various lawsuits concerning the closing of the schools generally and the issues for students with disabilities specifically. The general education filings included, for example, successive challenges to the governor's order in the state of Washington to close schools and to provide full funding for continuous learning plans. The suits on behalf of students with disabilities claimed violations of the IDEA, Section 504/ADA, and, to a lesser extent, the Fourteenth Amendment, including class actions in Hawaii and Pennsylvania. However, the most prominent example thus far has been *J.T. v. de Blasio* (2020), a nationwide class action suit, naming every school district and SEA in the country as defendants. The complaint provides a shotgun of claims under the IDEA and alternative federal bases. However, it seeks much more immediate and potentially widespread injunctive relief based on the “stay-put” provision of the IDEA. This provision requires the school district to maintain the child’s “then current placement” from the filing of the DPH until the end of adjudicative proceedings, which is at least until the first level of judicial appeal (e.g., Zirkel, 2016). The requested immediate relief is in the form of “pendency vouchers” for compensatory education. The case has engendered a flurry of activity on two fronts: (a) DPH filings in the states of the multiple and increasing members of the asserted class of parent-plaintiffs, and (b) in the federal district court in New York, which is where the case was filed, including currently pending show-cause court orders that raise critical threshold issues of jurisdiction and venue.

In the meanwhile, the courts have already issued more than a handful of decisions, often as a result of motions for preliminary injunctions, which warrant expedited resolution pending full court proceedings. In general education, for example, three different federal courts have granted injunctions against USDE's aforementioned interim rule regarding private school's allocation of CARES Act funding, and Secretary DeVos has announced that the administration will not appeal. Closer to special education, a federal court in Rhode Island denied a school district's motion to dismiss a First Amendment suit of a special education teacher who, as the union's president, claimed that the district terminated her for demanding negotiations on the district's remote learning arrangements (*Mullen v. Tiverton School Committee*, 2020). Similarly straddling general and special education, a federal court in New Mexico rejected the broad-based class action challenge to distance learning; however, the court granted part of the requested IDEA relief for the parent of a special education child, ordering an amendment to her IEP under *Andrew F.* to allow for in-person instruction to the extent allowed under the state's health regulations (*Hernandez v. Grisham*, 2020). Finally, specifically within special education and illustrating the potential significance of this seeming incidental IDEA adjudicative issue, various federal courts have addressed stay-put during the pandemic. Bridging the pre-COVID-19 period, a federal court granted a preliminary injunction for enforcement of a hearing officer's September 2019 stay-put order against New York City. Due to the long delay before

and after the COVID-19 closing of schools, the court ordered the district to provide the ABA and various related services in person via its own personnel or private providers within the safety guidelines of health authorities (*L.V. v. New York City Department of Education*, 2020). Other federal courts addressed stay-put within the COVID-19 context, with mixed outcomes (*J.C. v. Fernandez*, 2020; *Killoran v. Westhampton Beach School District*, 2020; *L.A. v. New York City Department of Education*, 2020).

As summarized in Special Supplements #4 and #5 (Zirkel, 2020), the available DPH and WSC decisions are too limited for generalization. For the initial DPH, the primary issues have been stay-put and FTI, with limited decisional latitude although not at all approaching a waiver or broad excusal of IDEA obligations (e.g., *Los Angeles Unified School District*, 2020; *Pleasanton Unified School District*, 2020). Although more frequent than the DPH decisions, the WSC decisions are similarly too limited to yield definitive characterization. Thus far, they appear to adhere to the usual standards of the regulations of the IDEA and corollary state law, with mixed outcomes. The variation in outcomes appears to depend on whether the decision (a) relied on the limited flexibility of federal or state guidance, or (b) applied the standards with implicit flexibility based on feasibility limitations. For the decisions that found violations, the corrective action tended to be broad relief, such as personnel training and policy revision (e.g., *In re Student with a Disability*, 2020; *North Montgomery Community School Corporation*, 2020). For the less frequent remedy of compensatory education, the order tended to be limited (e.g., *Brookings School District*, 2020).

The limited sampling of available DPH and WSC activity raised the question of the number and category of filings and decisions on a systematic national and state-by-state basis. The purpose of this briefing paper is to report a survey that provided a snapshot of this DPH and WSC activity as of August 31, 2020.

Section 3. Survey Procedures

As the first step, the co-authors drafted two alternative versions of a questionnaire to determine the extent of SEA dispute resolution activity for issues arising under and specific to COVID-19 as of the end of August 2020. One version included issue categories, such as FTI, and the other was limited to the total numbers of filings and decisions without differentiation of issue categories. The second step was to send these preliminary drafts to three SEA dispute resolution coordinators¹ for suggestions about the choice of version and its specific wording. Based on this feedback, the last step was the finalization of the recommended version, which requested the number of filings and decisions per issue category, with a format and wording that appeared to be most efficient for both the individuals receiving the survey form and the individuals interested in the results. The final form of the questionnaire (as shown in Appendix

¹ The authors acknowledge with appreciation Clare O'Shaughnessy (Vermont), Alyssa Fairbanks (Washington), and Kerri A. Sorensen (Rhode Island) for their assistance with the development of the survey questionnaire.

1) requested the number of (a) filings and (b) decisions for (1) DPHs and (2) WSCs per primary COVID-19 issue category as of August 31, 2020. In early September 2020, after compiling a list of SEA representatives responsible for DPHs and WSCs based on a review of SEA websites and related sources, we emailed the questionnaire to the intended respondents in the 50 states and the District of Columbia. Via the cooperation of the National Association of State Directors of Special Education, we also notified the SEA special education directors of the survey to facilitate the response from the appropriate representatives. Upon receiving immediate questions about the issue categorization, we issued the revised directions (as shown in Appendix 1) to clarify that the requested coverage was for any cases in which the complaint expressly identified one of more issues for the pandemic period, regardless of whether it also included issues before the pandemic period, and that for cases with more than one express COVID-19 issue the requested identification was by primary category. After follow-up emails and, where necessary, telephone calls, 47 (92%) of the SEAs provided complete or, in a few states (indicated in Table 2), partial responses.

Section 4. Survey Findings

Table 1 represents a summary of the responses overall (i.e., for all of the responding SEAs taken together), including the totals for each issue category per the respective DPH and WSC dispute resolution mechanisms. Per the instructions on the survey questionnaire (Appendix A), the “filings” are those that have not yet resulted in decisions; thus, the number of decisions is separate from, rather than a subset of, the number of filings.

Table 1: Overall Summary of SEA Dispute Resolution Survey Results

PRIMARY ISSUE	DUE PROCESS HEARINGS		WRITTEN STATE COMPLAINTS	
	Filings	Decisions	Filings	Decisions
FAPE-Procedural: <i>evaluation timeline</i>	12	1	10	6
FAPE-Procedural: <i>IEP meetings/review</i>	15	0	7	3
FAPE-Procedural: <i>prior written notice</i>	1	0	3	6
FAPE-Procedural: <i>other</i>	13	0	10	7
FAPE-Substantive: <i>Endrew F.</i>	38	1	13	13
FAPE-Implementation	144	3	104	52
Miscellaneous Other	84	4	4	2
TOTAL NO. FOR EACH COLUMN²	432	11	230	207

² These overall totals include the responses from the two states (Massachusetts and New York) that provided only their totals for DPH and WSC filings and decisions. Thus, the bottom line for each column is larger than the sum of the entries for the issue categories.

Review of Table 1 reveals that the predominant issue category for both DPHs and WSCs thus far has been FTI. The other issue categories have been subject to rather limited activity. Moreover, although the total filings for DPH have been almost double those for WSC during this period, the total number of DPH decisions has been rather negligible, especially relative to the total number of WSC decisions.

Appendix B provides the survey results for each SEA, including its reported numbers for each issue category. The light gray bars show the extent of nonresponses.

First, as a threshold matter of the specific extent of responses, Appendix B shows the partially responding states were in two small subgroups—(a) those that provided issue-by-issue responses for only DPHs (Florida) or WSCs (California and Oklahoma), and (b) those that provided only totals, without issue-by-issue categorization for DPHs and WSCs (Massachusetts and New York)—and that four states (Illinois, Kansas, Maryland, and Minnesota) were nonrespondents.

Second, for the respondents, those with the highest activity levels for DPHs were, in descending order: 1-New York, 2-New Jersey, 3-Texas, and 4 (tie) Pennsylvania and Washington. Moreover, as noted in the Comments column, for first-place New York, 113 (97%) of its 116 DPH filings were from New York City. For total WSC activity, the corresponding top states, in descending order, were: 1-Massachusetts, 2-Washington, 3-Texas, and 4-Michigan. Conversely, 15 states reported a combination of five or less WSCs and DPHs, and seven states reported no such dispute resolution activity at all.

Third, within the DPH activity, states that appeared to have relatively high proportions for an issue category other than the generally predominant FTI included: Florida for Procedural FAPE-Other; Texas for FAPE-Substantive; and New Jersey, D.C., and Connecticut for Miscellaneous Other. Within the corresponding WSC activity, states that appeared to have relatively high proportions for an issue category other than the generally predominant FTI included Texas for Procedural FAPE-Other and Virginia for FAPE-Substantive.

Finally, some states prominently differed from the overall almost balanced levels within this limited period total DPH activity total WSC activity. More specifically, states that had disproportionately high total DPH activity (n=443) and as compared with this overall equilibrium included, in addition to the leading example of New York (DPH-116:WSC-9), D.C. (11:0), New Jersey (55:10), and Pennsylvania (38:2). Conversely, states that had disproportionately high WSC activity compared with the overall balance included, in addition to the leading example of Massachusetts (WSC-188:DPH-7), Arizona (8:2), Georgia (15:5), Nebraska (7:1), North Carolina (18:4), and Virginia (13:5).

Section 5. Interpretation and Implications

The findings of this brief survey merit consideration of the limits of such research, including the extent of nonrespondents, accuracy of the respondents, and brevity of the questionnaire. Moreover, the data represents a snapshot at the approximate six-month point in the pandemic, which is already in the rearview mirror of a quickly moving car. This section discusses major findings of the overall (Table 1) and then the state-by-state (Table 2) analyses.

Overall

The bottom line figures in Table 1 are generally consistent with the frequencies of filings and decisions of DPHs and WSCs relative to each other during recent years (CADRE, 2019). The more complicated question is whether these frequencies are higher or lower than expected based on the pre-pandemic period. On first glance, these figures are much lower than the corresponding aforementioned averages during recent years. Upon adjustment to six-month figures for CADRE-reported totals and to total filings that include decisions from Table 1, the comparative figures for the pre-pandemic and initial-pandemic periods are approximately as follows: DPH filings: 8160 v. 443; DPH decisions: 612 v. 11; WSC filings: 2550 v. 437; and WSC decisions: 1658 v. 207. However, part of the disparity is attributable to the different scope of the pre and post figures; the averages for the pre-pandemic period are for all cases, whereas those for this initial pre-pandemic period are limited to those cases with COVID-19 issues rather than all of the cases filed or decided during these months. Other contributing factors that must be taken into consideration include (a) the DPH filings for this initial pandemic period reflect the inflationary effect of the *J.T. v. de Blasio* lawsuit; (b) the length of this period varied among the states and school districts depending on when the school closure started but generally is less than the six-month rounding; (c) approximately 2-3 of the months were during the summer, when the DPH-WSC activity tends in many, but not all, states to be lower; (d) the statute of limitations of at least two years for DPH and one year for WSC means that some of the complaints specific to the initial pandemic period will not be filed, much less decided, until a later time; and (e) the interpretation in reporting of “decisions” for both periods not entirely uniform. Nevertheless, given the complications that arise in this unprecedented context, including the likely increased demand for eligibility and FAPE, the level of activity is less than may have been expected. It may be speculated that despite frustration of students and parents, the fears and fatigue during the pandemic have dampened such formal disputation. More specifically, some students and parents may have more immediately pressing concerns, such as employment, health care, and housing, and they may lack the resources and emotional capital to initiate a DPH or WSC. Perhaps, too, potential complainants are awaiting the results

of those already in the pipeline. In any event, whether there will be a belated boom in cases after the end of the pandemic is as wide open a question as when the pandemic will have definitely ended.

For the issue-category rows of Table 1, the predominance of FTI claims is not surprising in light of the general effects of the pandemic in the transition from in-person to distance learning in light of limitations in (a) the technology knowledge and capacity at both the school and home sides of transmission, (b) the concomitant constraints on the resources and health/safety of both educators and parents, and (c) the special needs of students with disabilities. Although the variance among school districts and students with disabilities caution against overgeneralization, it is undisputed many students with disabilities have received less services during the full or even hybrid phases of distance learning, including the sometimes sudden resumption of these phases, than during the pre-pandemic period. However, the legal resolution of FTI complaints includes the determination of not only the extent of any such shortfall but also, as a threshold matter, the reference point for measuring the shortfall. Is this baseline the previous IEP, as it would be in the typical pre-pandemic case, or what during the pandemic often is called a DLP? The answer may depend, at least in part, on whether the district was required to and, if so, did provide prior written notice and fulfilled the prescribed procedures for amending the IEP. Regardless of the reference point for the baseline, if the FTI determination is a shortfall, what is the extent and nature of this disparity? Applying the law to the answer for resolution of the FTI claim will ultimately depend in part on whether the forum is the DPH, which often relies heavily on case law with a harmful error perspective, or the WSC process, which often relies heavily on regulations with a compliance perspective (e.g., Zirkel, 2017b). To the extent that the fulcrum becomes the aforementioned *Van Duyn* standard, which prevails in various circuits, the decision will be in the parents' favor only if the shortfall is material, i.e., the district failed to substantially implement the significant provision of the IEP or DLP. Other potentially relevant factors include the role of the student's progress and the state's guidance.

The distant second place of the substantive FAPE category will trigger application and interpretation of the Supreme Court's decision in *Andrew F.*, which enunciated the applicable standard that the IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances" (p. 999). In the DPH forum and to the much more limited extent that the WSC applies this imprecise and individualized standard, the likely key will be whether the focus of the "circumstances" is limited to the individual child's needs or the wider limitations facing the school district. The other major contributing variable, similar to the aforementioned FTI analysis, is whether the reference point is the original IEP or the eventual DLP.

The intervening second place in Table 1 for the DPH forum of Miscellaneous Other likely includes to a prominent extent stay-put claims, as signaled by the immediate crux of the aforementioned *J.T. v. de Blasio* lawsuit. Although subject to rather extensive and nuanced case law (e.g., Zirkel, 2016), the likely critical questions, in the absence of a legally defensible amendment of the IEP, are whether the IDEA's (2017) requirement for maintenance of the child's "then current placement" (§ 1415[j]) starting with filing of the DPH (a) refers to the last IEP or the operant placement on that date and, if the last IEP, (b) whether the change to distance learning was fundamental for that child.

State-by-State

First, the response rate, even if calculated to exclude the partial respondents, was far more than typical for modern surveys (e.g., Lindermann, 2019). More specifically, the few partial and complete nonrespondents were generally not in the relatively few states that account for the vast majority of the DPHs and, to a lesser extent, WSCs. The limited exceptions for the nonrespondents were Maryland and Illinois, which were at the outer edge of the top group for DPHs in recent years (Zirkel & Gullo, 2020). For the partial respondents, the lack of WSC data for California and the lack of issue-by-issue data for Massachusetts and New York similarly warrant consideration.

Second, for the top groups for DPHs and WSCs, the state that appears to be unexpected in comparison to those typically within the limited cluster that accounts for the majority of the activity is Washington. Although traditionally in the upper end of the vast majority of states that are not in the top group, its top-four position for both DPH and WSC activity during this initial pandemic period is relatively surprising and is reportedly attributable in significant part to the organized activity of advocacy organizations and a particular parent-side law firm (A. Fairbanks, personal communication, October 16, 2020). Via its website, the law firm recounted a mobilizing effort of disability and youth organizations to file WSCs for compensatory education, preferably but not necessarily on June 12, 2020, and provided the SEA's model form, with the complaint initially filled in as "failing to make an appropriate education accessible to my child during the school closure" (<https://cassadylaw.org/cassady-law-pll/c/news-and-events/>).

The third finding of the relatively few states that have appear to have notable proportions of DPHs or WSCs in an issue category other than FTI is subject to speculation and requires even closer examination at the state level than that for the finding above for Washington. Moreover, the numbers are relatively low, based in part on the relatively limited period for these data.

Finally, the states that had disproportionately high DPH or WSC activity relative to the almost 1:1 ratio for the combined responding jurisdictions within this limited period merit further examination. One of the ways to do so is comparing their corresponding levels during the pre-pandemic period. For example, for this period New York, which had a DPH/WSC ratio of $116/9=12.8$, and Massachusetts had a converse WSC/DPH of $188/7=36.8$. In comparison, the data available on the CADRE website³ reveal that for filings (because they include decisions) during the latest year New York's DPH/WSC ratio was $7601/229=33.2$, and Massachusetts' converse WSC/DPH ratio was $593/481=1.2$. Such examination requires more intensive analysis for a longer period and considering multiple factors.

Final Note

In conclusion, this relatively brief survey is akin to an iPhone snapshot. It provides a surprisingly good picture, but lacks the fuller and more meaningful view of both a high-quality movie that covers a much longer period and a microscope-type examination of a particular state or locality. We have endeavored to provide an analysis that is relatively concise, impartial, and user-friendly for the various stakeholders in special and general education at the local, state, and national levels. Finally, we express our appreciation to the SEA respondents who took the time to provide the data for this report and to CADRE for making it available to interested individuals and organizations.

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* available as a downloadable PDF at perryzirkel.com

Appendix A: Survey Questionnaire

DUE PROCESS HEARING AND STATE COMPLAINT PROCEDURES COVID-19 ACTIVITY

This quick survey is to determine and share (only with responding state education agencies) the extent of dispute resolution activity for issues arising under and specific to COVID-19 as of the end of August. We will promptly compile the results and send the summary to each respondent.

PLEASE COMPLETE THIS FORM AND E-MAIL TO natalie.jones@ct.gov BEFORE SEPTEMBER 10, 2020. Please email any questions to perry.zirkel@lehigh.edu.

- A. Name of responding state: _____
- B. This item is for any cases that include one or more issues that the complaint expressly identifies for the pandemic period, regardless of whether these or other issues in the complaint extend to the period before the pandemic. Please fill in the number of filings (for cases not yet decided) and the number of decisions as of August 31 according to the COVID-19 issue. For cases with more than one COVID-19 issue, use the primary one for this purpose. Please use item C for clarification of your entries, including the identification of other notable COVID-19 issues. In the "Total" row, please insert zero for any columns that add up to "none."

Primary Issue	Due Process Hearings		State Complaints	
	Filings	Decisions	Filings	Decisions
1. FAPE-Procedural: evaluation timeline	_____	_____	_____	_____
2. FAPE-Procedural: IEP meetings/review	_____	_____	_____	_____
3. FAPE-Procedural: prior written notice	_____	_____	_____	_____
4. FAPE-Procedural: other (specify): _____	_____	_____	_____	_____
5. FAPE-Substantive: <i>Andrew F.</i>	_____	_____	_____	_____
6. FAPE-Implementation: insufficient delivery of IEP or its remote substitute	_____	_____	_____	_____
7. Other (specify): _____	_____	_____	_____	_____
8. Other (specify): _____	_____	_____	_____	_____
TOTAL # FOR EACH COLUMN (<i>with zero if none</i>)	_____	_____	_____	_____

- C. Optional comments, inserting for row # for those clarifying an entry above, such as specification of other issues, and inserting more general comments on the last two rows.

Row#	Row Specific Comments
General Comments	

- D. Identification of the SEA representative(s) to whom we should send the summary of the results:

Name: _____	E-mail: _____
Name: _____	E-mail: _____

Appendix B: State-by-State Survey Results

	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	Z	AA	AB	AC	AD	AE	AF	AG	AH	Comments	
	Due Process Hearings (DPHs)																Written State Complaint (WSCs)																Overall Total		V.B.: capital letter=column heading for referenced entry
	Filings							Total	Decisions							Total	Filings							Total	Decisions							Total			
	Procedural FAPE: Eval. Timeline	Procedural FAPE: IEP meetings	Procedural FAPE: Prior Written Notice	Procedural FAPE: Other	FAPE: Substantive	FAPE: Failure to Implement	Other: Miscellaneous	Total DPH Filings	Procedural FAPE: Eval. Timeline	Procedural FAPE: IEP meetings	Procedural FAPE: Prior Written Notice	Procedural FAPE: Other	FAPE: Substantive	FAPE: Failure to Implement	Other: Miscellaneous	Total DPH Decisions	Procedural FAPE: Eval. Timeline	Procedural FAPE: IEP meetings	Procedural FAPE: Prior Written Notice	Procedural FAPE: Other	FAPE: Substantive	FAPE: Failure to Implement	Other: Miscellaneous	Total WSC Filings	Procedural FAPE: Eval. Timeline	Procedural FAPE: IEP meetings	Procedural FAPE: Prior Written Notice	Procedural FAPE: Other	FAPE: Substantive	FAPE: Failure to Implement	Other: Miscellaneous	Total WSC Decisions			
Alabama					2		2									0																	0	2	
Alaska							0									0																	0	0	
Arizona					2		2									0	2					3			5	2				1			3	10	
Arkansas							0									0																	0	0	
California**																			1						1				1			1	2	U-access to records	
Colorado				1	3		4								0					1	2			3								0	7		
Connecticut	3		1		2	7	13						4	4								6			6							0	23	E-child find (n=1); H-all from JT v. de Blasio nationwide lawsuit; Q-DPH decisions include dismissals.	
District of Columbia	1			2		8	11								0									0								0	11	The respondent provided theWSC data with individual descriptors that we had to approximate into the seven category columns.	
Delaware							0								0									0								0	0		
Florida**	2		11		6		21								0																	21	E-child find (n=1); H-all from JT v. de Blasio nationwide lawsuit; Q-DPH decisions include dismissals.		
Georgia	1	1			3		5								0		1				11			12					3		3	20			
Hawaii					5		5								0									0								0	5		
Idaho							0								0									0								0	0		
Illinois***																																			
Indiana	2	3		1	11		17								0	1	1		1	1	9			13		1			1	2	4	34	U-access to records		
Iowa							0								0						1			1					1		1	2			
Kansas***																																			
Kentucky							0								0							0		0						1		1	1		
Louisiana	1			2	2	1	6	1						1	4			1	1	2	3	1		8		1		1		2	20	H-discipline; U-access to records; X-discipline			
Maine							0								0							0		0					1		1	1			
Maryland***																																			
Massachusetts*							7								0								72									116	195		
Michigan							0								0	1	1		1		10			13	1	1		1		6		9	22	U, AC: development of the IEP	
Minnesota***																																			
Mississippi							0								0							1		1								0	1		
Missouri							0								0									0								0	0		
Montana							0								0									0								0	0		
Nebraska				1			1								0					1	1			2	1	1	3				5	8			
Nevada					1	8	9								0							2		2							0	11	H="open cases issues not yet identified"		
New Hampshire							0								0	1					6		7	1					4		5	12			
New Jersey			1		7	6	41	55							0	1					6		7						3		3	65	H-compensatory education (n=35) and stay-put (n=6)		
New Mexico				3	2		5								0							2	1	3						1		1	9	X, AF-challenge to virtual DPHs	
New York*							116								0								7								2	125	I-mostly (n=113) from NYC		

	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	Z	AA	AB	AC	AD	AE	AF	AG	AH	
	Due Process Hearings (DPHs)															Written State Complaint (WSCs)													Comments					
	Filings							Total	Decisions							Total	Filings					Total	Decisions					Total	Overall Total					
	Procedural FAPE: Eval. Timeline	Procedural FAPE: IEP meetings	Procedural FAPE: Prior Written Notice	Procedural FAPE: Other	FAPE: Substantive	FAPE: Failure to Implement	Other: Miscellaneous	Total DPH Filings	Procedural FAPE: Eval. Timeline	Procedural FAPE: IEP meetings	Procedural FAPE: Prior Written Notice	Procedural FAPE: Other	FAPE: Substantive	FAPE: Failure to Implement	Other: Miscellaneous	Total DPH Decisions	Procedural FAPE: Eval. Timeline	Procedural FAPE: IEP meetings	Procedural FAPE: Prior Written Notice	Procedural FAPE: Other	FAPE: Substantive	FAPE: Failure to Implement	Other: Miscellaneous	Total WSC Filings	Procedural FAPE: Eval. Timeline	Procedural FAPE: IEP meetings	Procedural FAPE: Prior Written Notice	Procedural FAPE: Other	FAPE: Substantive	FAPE: Failure to Implement	Other: Miscellaneous	Total WSC Decisions	Overall Total for DPHs and WSCs Combined	V.B.: capital letter=column heading for referenced entry
North Carolina					4		4								0	2	1				5	1		9	1		1	3		4		9	22	AC-access to records; X-cost for an electronic device
North Dakota							0								0									0								0	0	
Ohio					4		4								0		2				3			5					2		2	11		
Oklahoma**																								0								0	0	
Oregon							7	7							0									0								0	7	H-all from J.T. v. de Blasio nationwide lawsuit
Pennsylvania	6			1	4	21	5	37						1	1				1		1			2								0	40	E-access to records; H-ESY (n=1) and evaluation appropriateness/IEE at public expense (n=4); U-parental participation
Rhode Island					1	1	2								0									0								0	2	H-denial of FAPE related to ESY services
South Carolina					9		9								0						1			1								0	10	
South Dakota							0								0						1			1					1			1	2	
Tennessee					1		1					1			1						2			2					1			1	5	
Texas	2	2			12	21	6	43							0	1	2	1	5		7	1		17			1	3		1	1	6	66	H-including LRE (n=3) and predetermination (n=3); AF-LRE; AC-Not specified
Utah					3		3								0						1			1						3		3	7	
Vermont							0								0						1			1								0	1	
Virginia					5		5								0					6	1			7					6			6	18	
Washington		3				34		37					1		1	1					15			16					19			19	73	
West Virginia					1		1								0									0								0	1	
Wisconsin							0								0						2			2					1			1	3	
Wyoming							0								0					2	1			3					2			2	5	
Totals	12	15	1	13	38	144	84	432	1				1	3	4	11	10	7	3	10	13	104	4	230	6	3	6	7	13	52	2	207	880	

*Designates SEA that provided only totals for DPH and WSC filings and decisions. **Designates SEAs that provided for only DPHs or WSCs. ***Designates SEAs that were nonrespondents.