



# **Making a Difference? Trends in Dispute Resolution and Upstream Activity**

CADRE's Sixth National Symposium  
October 22, 2015  
Eugene, OR

*Presented by*

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Richard W. Zeller, *Senior Policy Analyst*, CADRE



# Workshop Overview

- Intro to CADRE
- “Upstream” Conflict Resolution – What It Is
- National Dispute Resolution Data & Recent Trends
- Examples of Successful Upstream Conflict Resolution Programs
- Q & A Time



# CADRE is...

## The National Center for Appropriate Dispute Resolution in Special Education

We provide technical assistance to:

- State Education Agencies
- Early Intervention Lead Agencies
- Parent Training and Information Centers
- Local Education Agencies/School Districts
- Others, such as educators, advocates, families, and researchers



# The National Center on Dispute Resolution in Special Education

*"Encouraging the use of mediation and other collaborative strategies to resolve disagreements about special education and early intervention programs."*

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State Dispute Resolution Resource Showcase

Parent Dispute Resolution Resource Showcase

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Calendar



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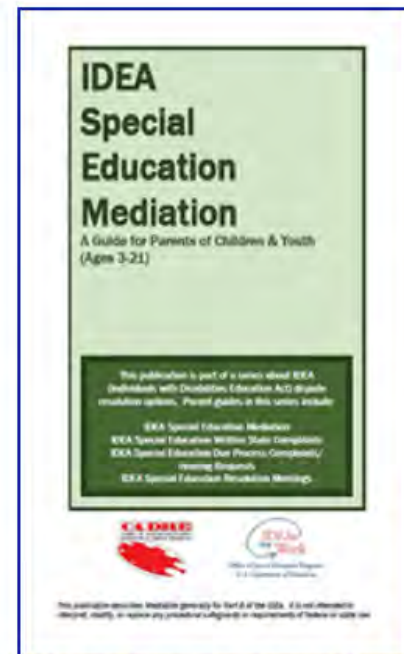
**New!** Two upcoming CADRE Webinars:

[Vamos a Prepararnos para la reunión del IEP \(Let's Prepare for the IEP Meeting\)](#)

29 de octubre de 2015 de 11:30 am-12:45pm PDT (October 29, 2015 from 11:30am-12:45pm PDT) and

[Using Trauma-Sensitive Strategies to Support Family Engagement and Effective Collaboration](#) Presented by

Dr. Elizabeth Meeker on December 3, 2015 from 11:30am-12:45pm PST



[IDEA Dispute Resolution Parent Guides in English and Spanish](#)



[Click Here for State Dispute Resolution Data](#)

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# “Upstream” Conflict Resolution

CADRE Continuum of Dispute Resolution Processes & Practices																		
Stages of Conflict	Stage I			Stage II		Stage III			Stage IV		Stage V							
Levels of Intervention	Prevention			Disagreement		Conflict			Procedural Safeguards		Legal Review							
Assistance/ Intervention Options	Parent Engagement	Participant & Stakeholder Training	Stakeholder Council	Collaborative Rule Making	Parent to Parent Assistance	Case Manager	Telephone Intermediary	Facilitation	Mediation Models	Ombudsman	Third-Party Opinion/Consultation	Resolution Meeting	Mediation under IDEA	Written State Complaints	Due Process Hearing	Hearing Appeal (Two-Tier Systems)	Litigation	Legislation
	Dimensions that help clarify placement of the options along the Continuum	Third-Party Assistance			Third-Party Intervention						Third-Party Intervention							
		Decision Making by Parties			Decision Making by Third-Party						Decision Making by Third-Party							
		Interest-Based			Rights-Based						Rights-Based							
		Informal & Flexible			Formal & Fixed						Formal & Fixed							

“Upstream” =  
To the left of  
the CADRE  
Continuum



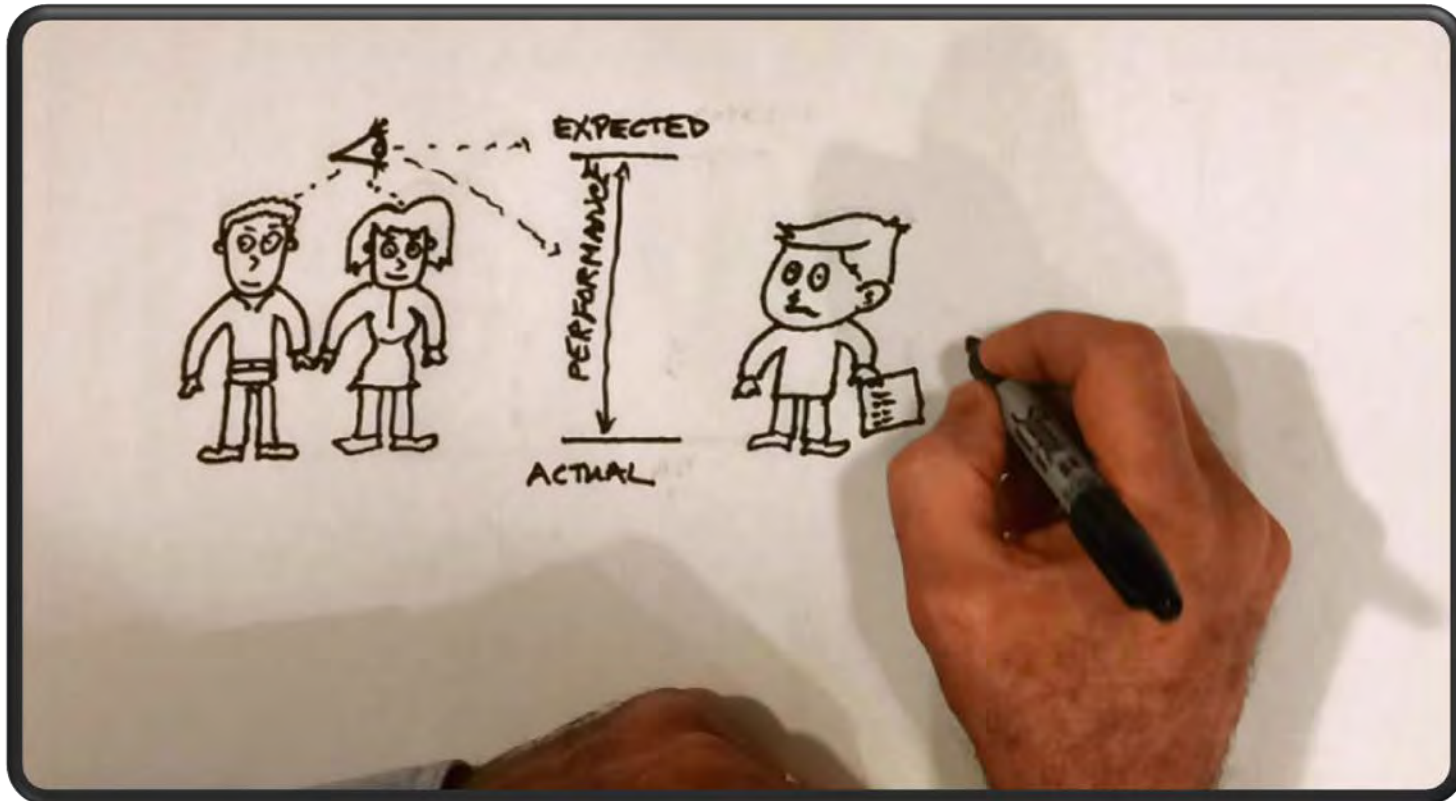
# What is

# “Upstream” Conflict Resolution?

Ways to prevent, manage, or resolve conflict that are typically:

- Collaborative/Cooperative
- Based on communication and problem-solving principles
- Creative
- Oriented toward relationship-building
- Informal
- Optional/Voluntary

# When “Concern” Becomes “Action”





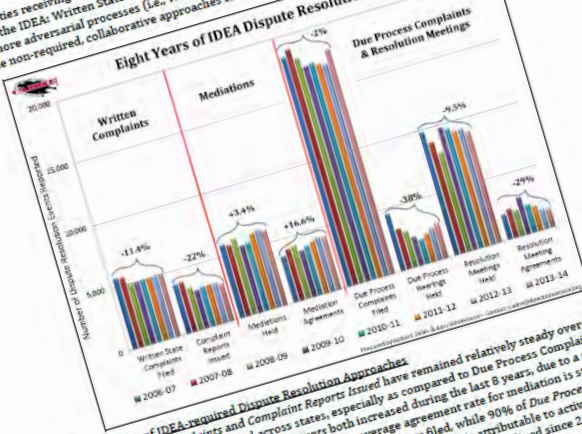
# IDEA Dispute Resolution Data & Trends

## Trends in Dispute Resolution under the Individuals with Disabilities Education Act (IDEA)

Updated October 2015

States and entities receiving IDEA Part B funds are required to offer four processes to resolve disagreements arising under the IDEA: Written State Complaints, Mediation, Resolution Meetings, and Due Process Complaints. Since 2006, more adversarial processes (i.e., Written State Complaints, Due Process Complaints) have been on the rise, decline, while non-required, collaborative approaches to resolving disputes, such as IEP facilitation, are on the rise.

### Eight Years of IDEA Dispute Resolution Activity



### Trends in the Use of IDEA-required Dispute Resolution Approaches

- Written State Complaints and Complaint Reports Issued have remained relatively steady over the past 6 years. Activity is broad-based across states, especially as compared to Due Process Complaint activity.
- Mediations Held and Mediation Agreements both increased during the last 8 years, due to a nearly 20% increase in due process-related activity. The average agreement rate for mediation is steady at 70%.
- Overall, 7 states account for 80% of Due Process Complaints filed, while 90% of Due Process Hearings Held were in 5 states. The recent uptick in due process-related activity is attributable to activity in 2 states.
- Resolution Meetings Held and Resolution Agreements have both declined since 2006-07, with the agreement rate dropping to 16% in 2013-14, from a peak of 30% in 2009-10.
- Most (84%) Due Process Complaints filed each year are withdrawn, dismissed, or resolved without a hearing (67%), or pending at the end of the school year (17%).

### Support for More Collaborative Dispute Resolution Approaches

- States continue to make investments in early conflict resolution activities that are not required by the IDEA:
  - 43 states currently provide IEP facilitation, or are developing or exploring its use;
  - 29 of these states currently offer early resolution activities, such as local capacity building, stakeholder training, ombudspersons, advisory opinions, stakeholder councils, and other innovative approaches.
  - At least 25 states that offer facilitators for Resolution Meetings have averaged a combined training, ombudspersons, advisory opinions, stakeholder councils, and other innovative approaches.
- Over the last eight years, six states that offer facilitators for Resolution Meetings have averaged a combined resolution meeting agreement rate of 57%, compared to the national average rate of 23%.
- Early evidence suggests a correlation between decreased use of formal dispute resolution processes and the use of collaborative approaches, which may lead to better school-family relationships.

Center for Appropriate Dispute Resolution in Special Education  
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## IDEA Dispute Resolution Data Summary for: U.S. and Outlying Areas 2004-05 to 2013-14

The Individuals with Disabilities Education Act (IDEA) requires states and entities receiving IDEA grants to make available four dispute resolution processes and report annually on each to the U.S. Department of Education Office of Special Education Programs (OSEP). The four dispute resolution processes include written state complaints, mediation, due process complaints, and resolution meetings associated with due process.

The purpose of this summary is to provide an historical look at dispute resolution data to assist with the identification of trends and changes in the use of the IDEA dispute resolution processes over time. Additional summaries can be found on the CADRE Website at: <http://www.dirctionservices.org/cadrewebfiles>.

This summary features data for school years ("SY" July 1-June 30) 2004-05 through 2013-14 drawn from CADRE's National Longitudinal Database, which comes from the following sources: (1) from SY 2004 to the present, dispute resolution activity reported in states' Annual Performance Reports (APRs), first as Attachment 1 and later as Table 7, (2) from SY 2006 to the present, Section 618 Data collected by the Data Accountability Center (DAC) and as of SY 2011, reported to OSEP; (3) data published in OSEP's Annual Report to Congress; and (4) data adjustments collected from states by CADRE after OSEP and DAC data were located. Where OSEP and DAC data were located, OSEP and DAC data were used; otherwise, OSEP and DAC data were used.

IDEA examines dispute resolution data for internally inconsistent values (based on report element definitions), when inconsistent values are found, they are worked through with OSEP. States are encouraged to submit notes or questions regarding any conditions, anomalies, or corrections relating to the data included herein. In addition, invite readers to provide input on the usefulness of these reports, including suggestions and adjustments.

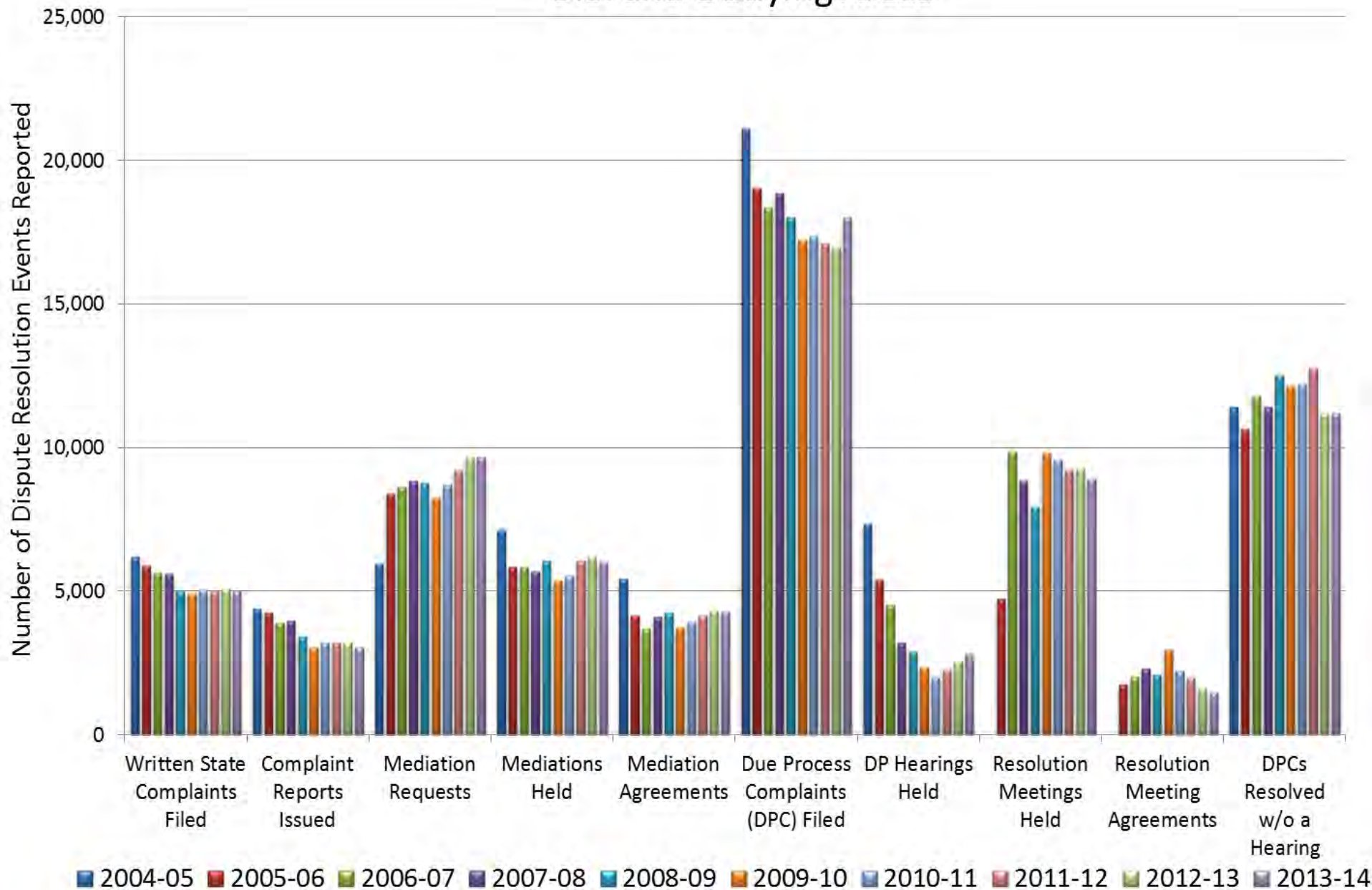
- The following charts:
  - IDEA Dispute Resolution Activity
  - Dispute Resolution Activity per 10K Childcount
  - Use of Dispute Resolution Activity by State/Entity per 10K Childcount: 2013-14
  - Use of Dispute Resolution Options
  - Complaint Activity per 10K Childcount
  - Mediation Activity per 10K Childcount
  - Resolution Meetings Activity per 10K Childcount
  - Due Process Complaints per 10K Childcount
  - Due Process Complaints

For more information or assistance, contact:  
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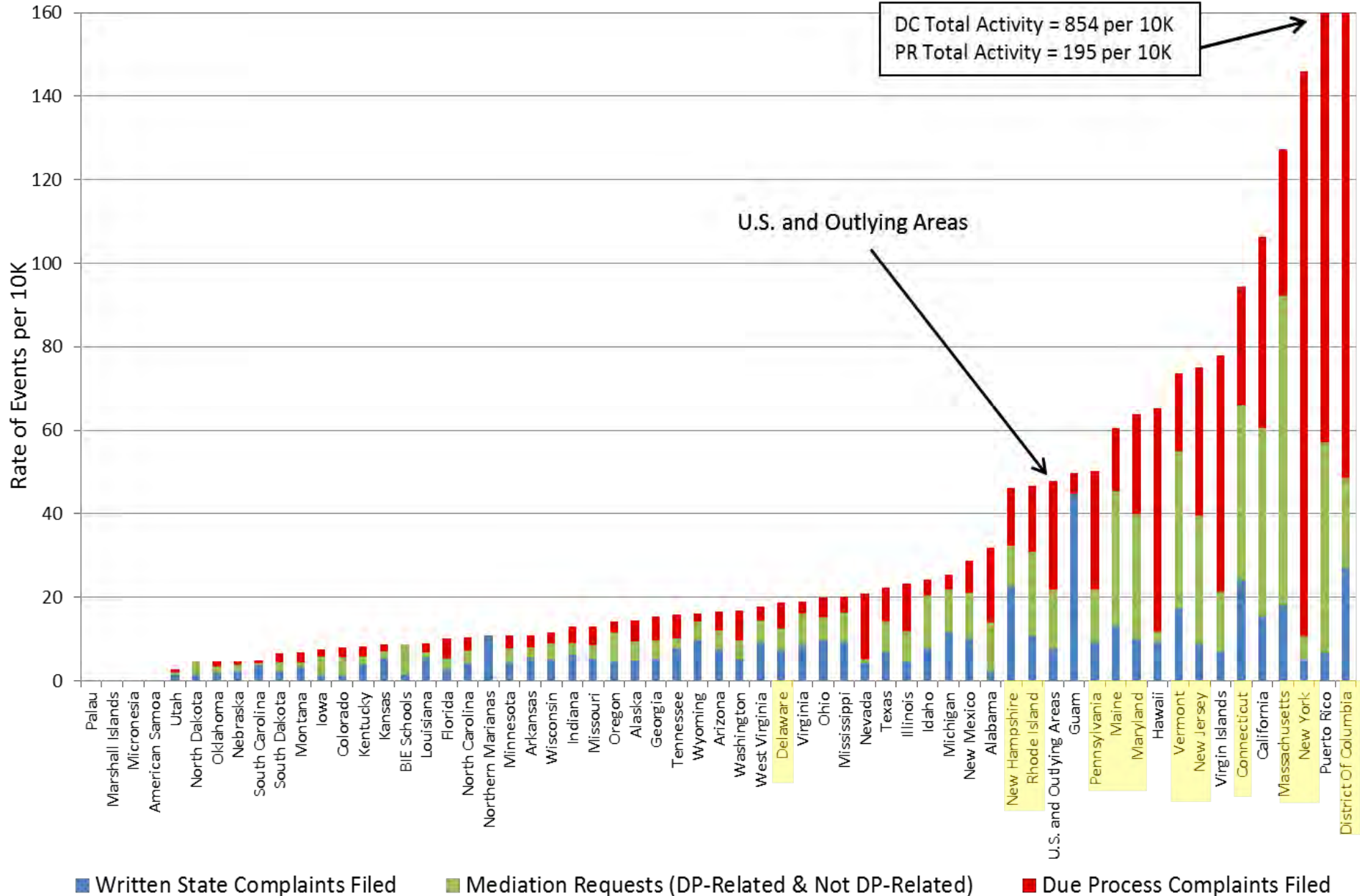


# IDEA Dispute Resolution Activity: U.S. and Outlying Areas



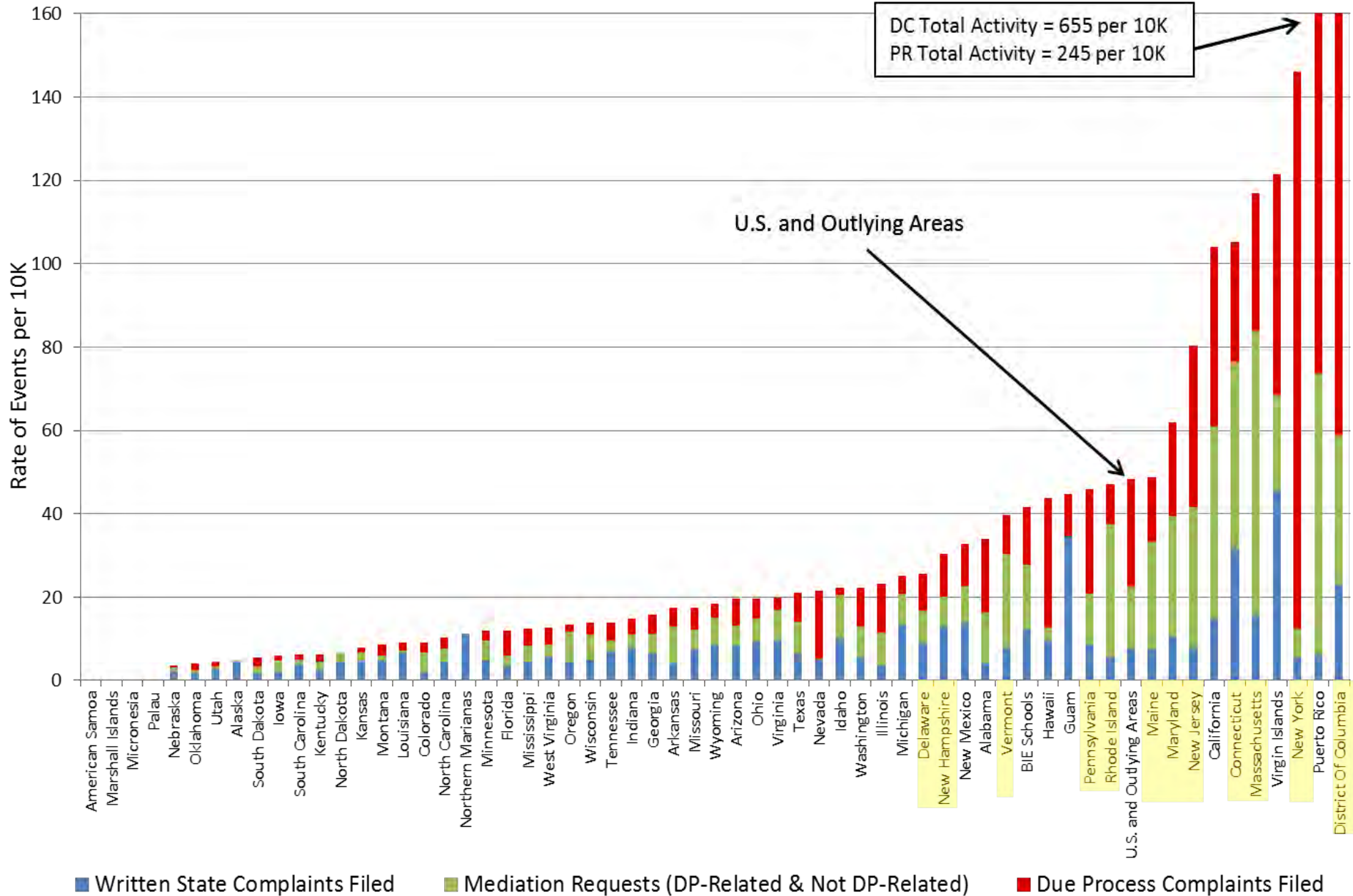


# IDEA Dispute Resolution Activity by State/Entity per 10K Childcount: 2011-12



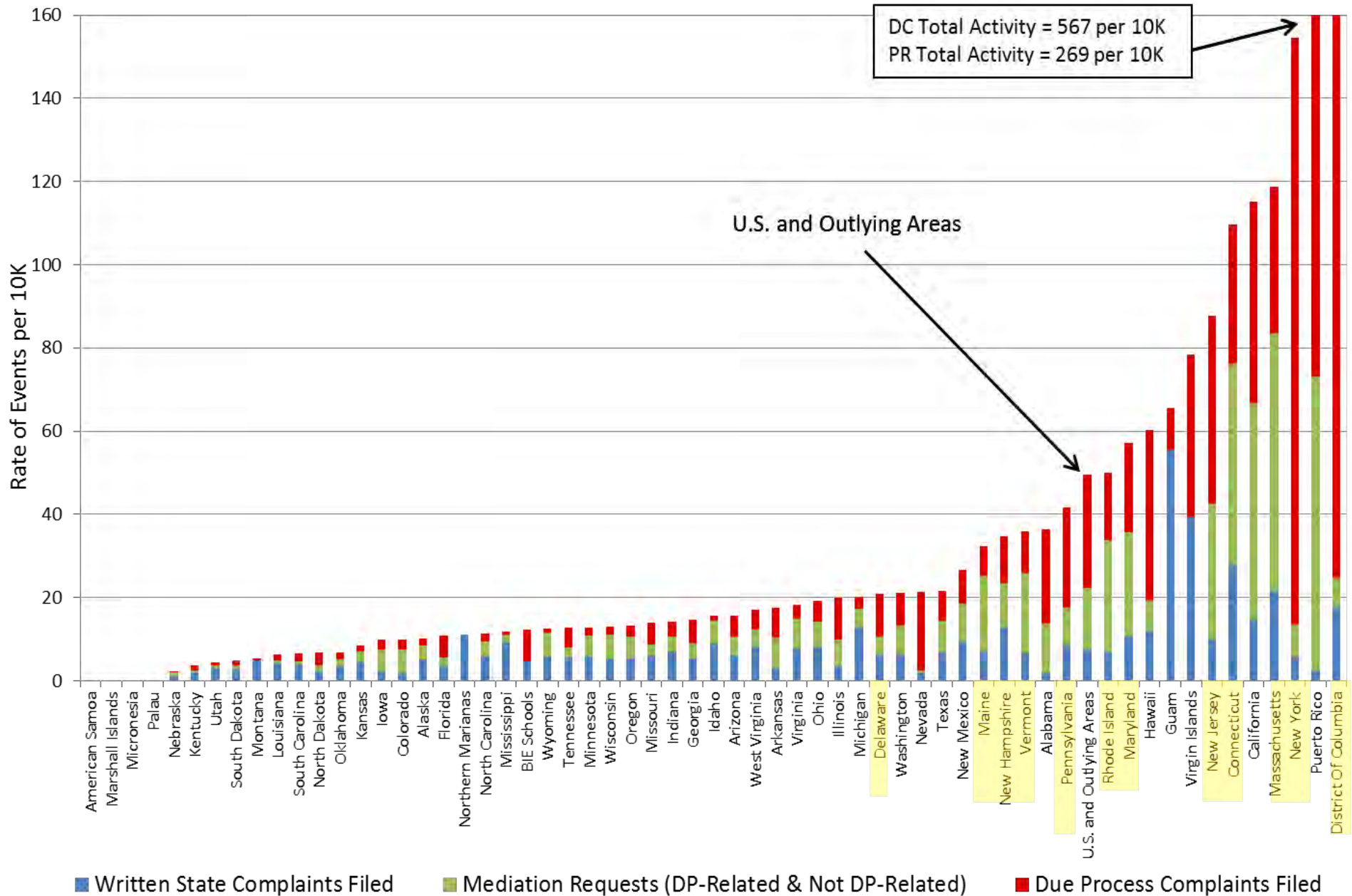


# IDEA Dispute Resolution Activity by State/Entity per 10K Childcount: 2012-13





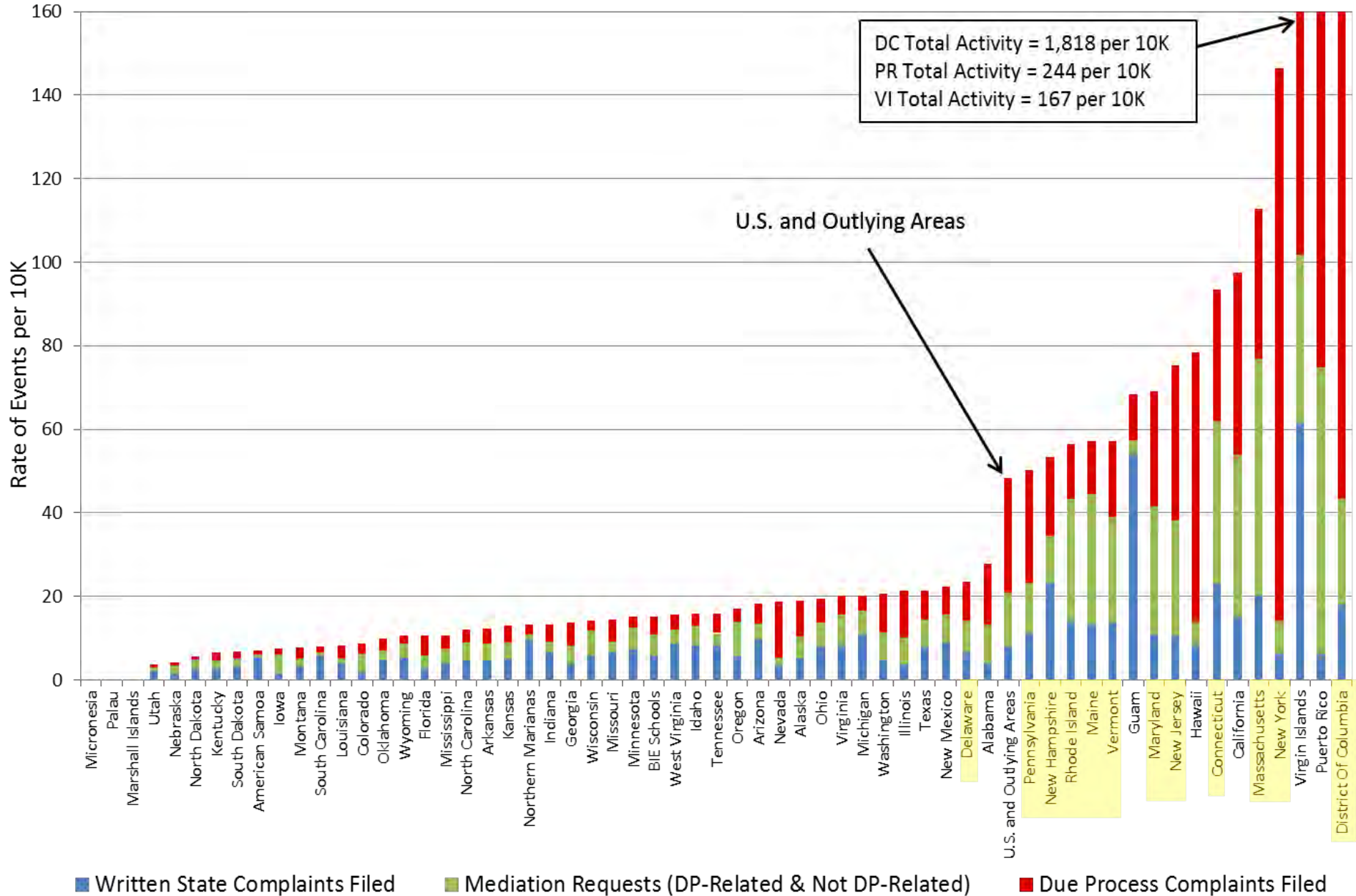
# IDEA Dispute Resolution Activity by State/Entity per 10K Childcount: 2013-14



■ Written State Complaints Filed    
 ■ Mediation Requests (DP-Related & Not DP-Related)    
 ■ Due Process Complaints Filed



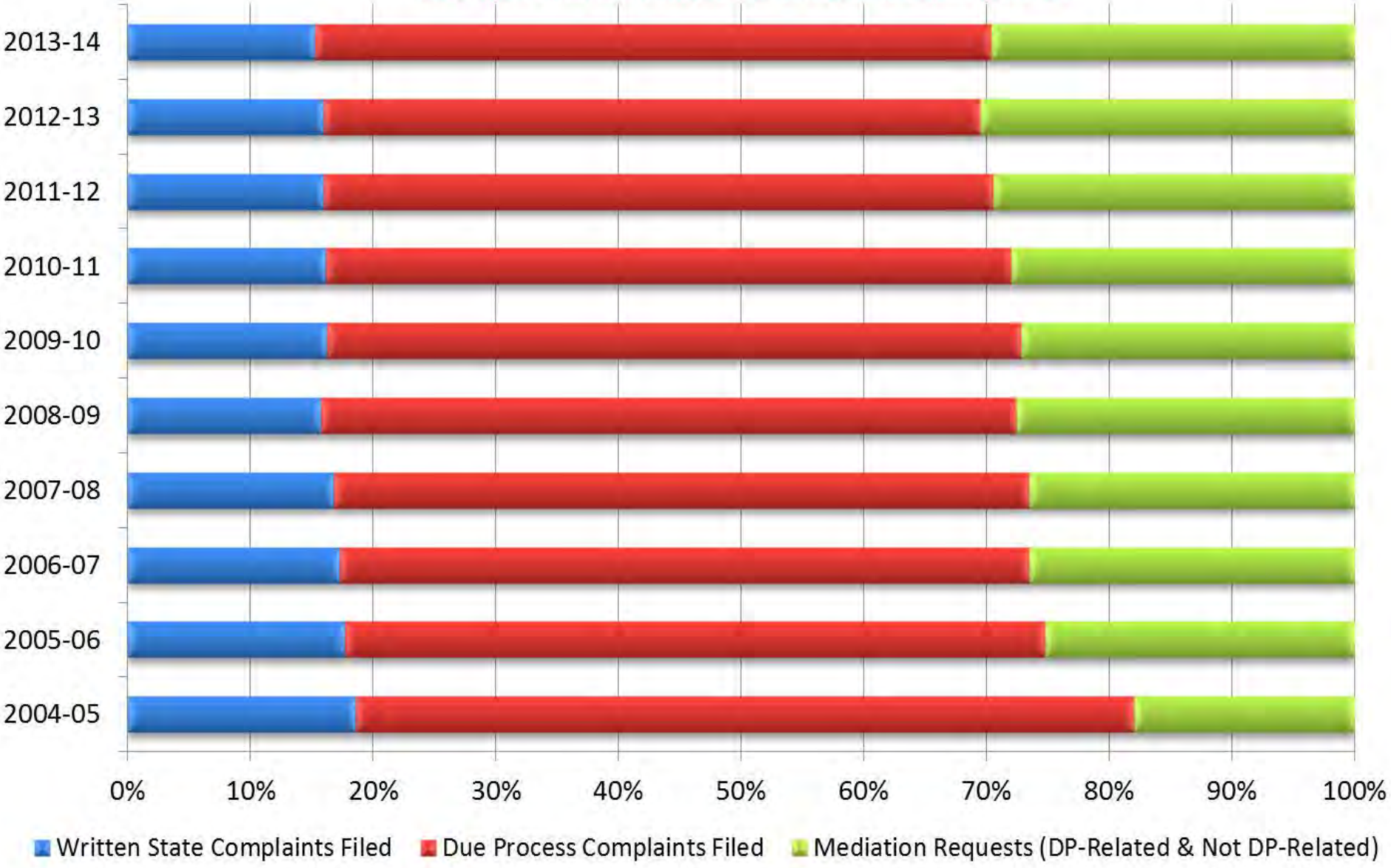
# IDEA Dispute Resolution Activity by State/Entity per 10K Childcount: Average Annual Rate per Year for 2004-2013





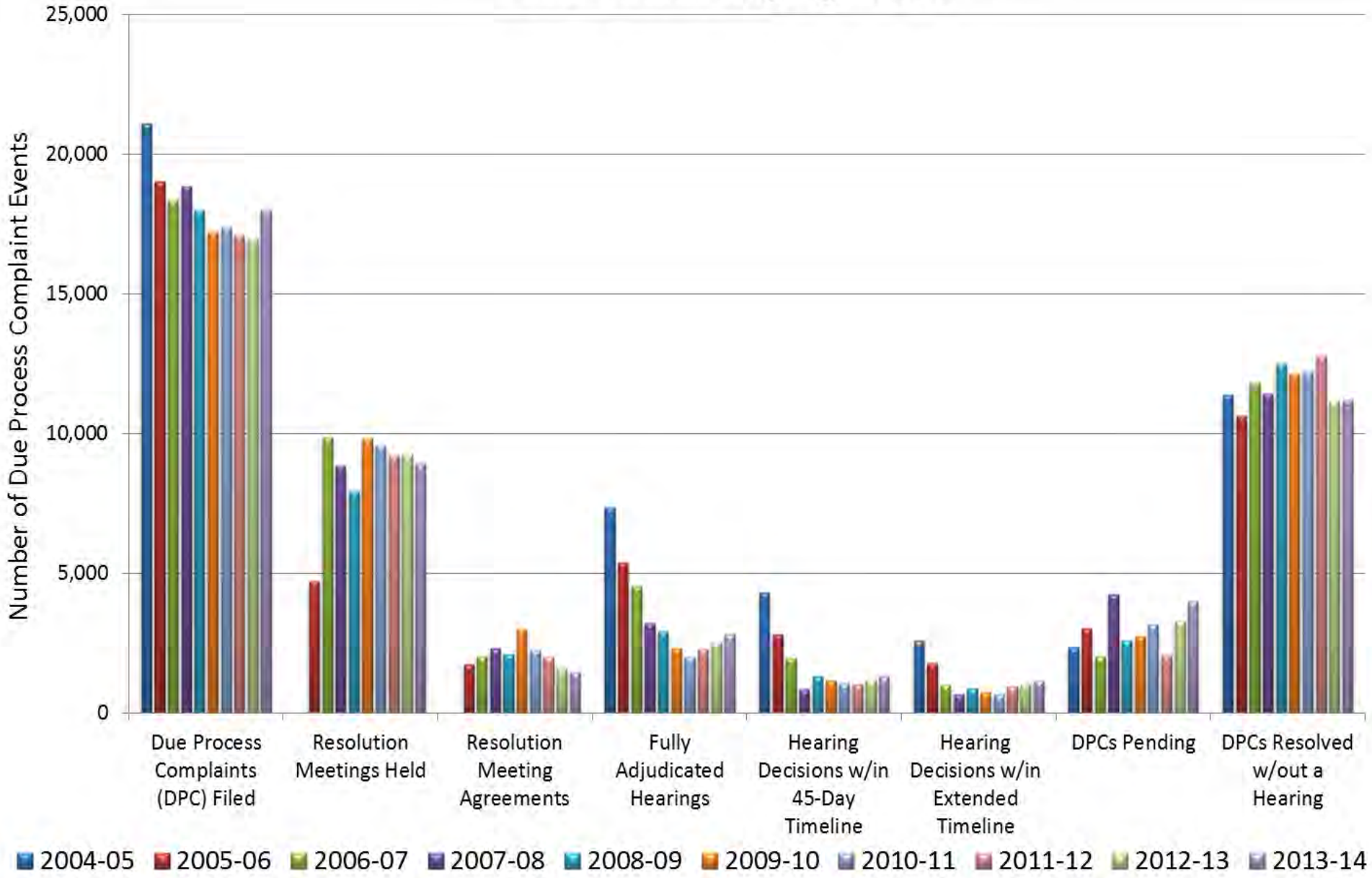
# Relative Use of Dispute Resolution Options: U.S. and Outlying Areas

Note: 100% = The sum of requests for all dispute resolution processes





# Due Process Complaint Activity: U.S. and Outlying Areas





# Due Process Activity

National numbers may hide more than they reveal

- Distribution of activity highly skewed to a few states:
  - 7 States account for 80% of all DPCs; 12 States account for 90%
  - 3 States account for 80% of hearings held; 5 States account for 90%
- DPC filings increased between 12-13 and 13-14 by 1,031—that increase is entirely attributable to 4 states (with increases totaling 1,219)





# Due Process Activity (cont'd)

- The increase in DP Hearings Held from 2012-13 to 2013-14 (274) can be attributed to just 2 states (287)
- Overall, more states have seen decreases in activity
- Reasons for filing a DPC may not include an expectation of an actual hearing (e.g., using the “stay put” provision; get school district’s attention)
- Many filings may result from frustration, a lack of “availability,” or lack of marketing/outreach for other conflict resolution options



# A Few Words about Resolution Meetings...

Since being introduced in 2005,  
**78,118** resolution meetings have been held  
**18,454** resulted in written settlement agreements  
...for a 9-year agreement rate of **23.6%**

Peak agreement rate **30%** (2009-10)  
Lowest agreement rate **16%** (2013-14)



# A Few More Words about Resolution Meetings...

In 2013-14...

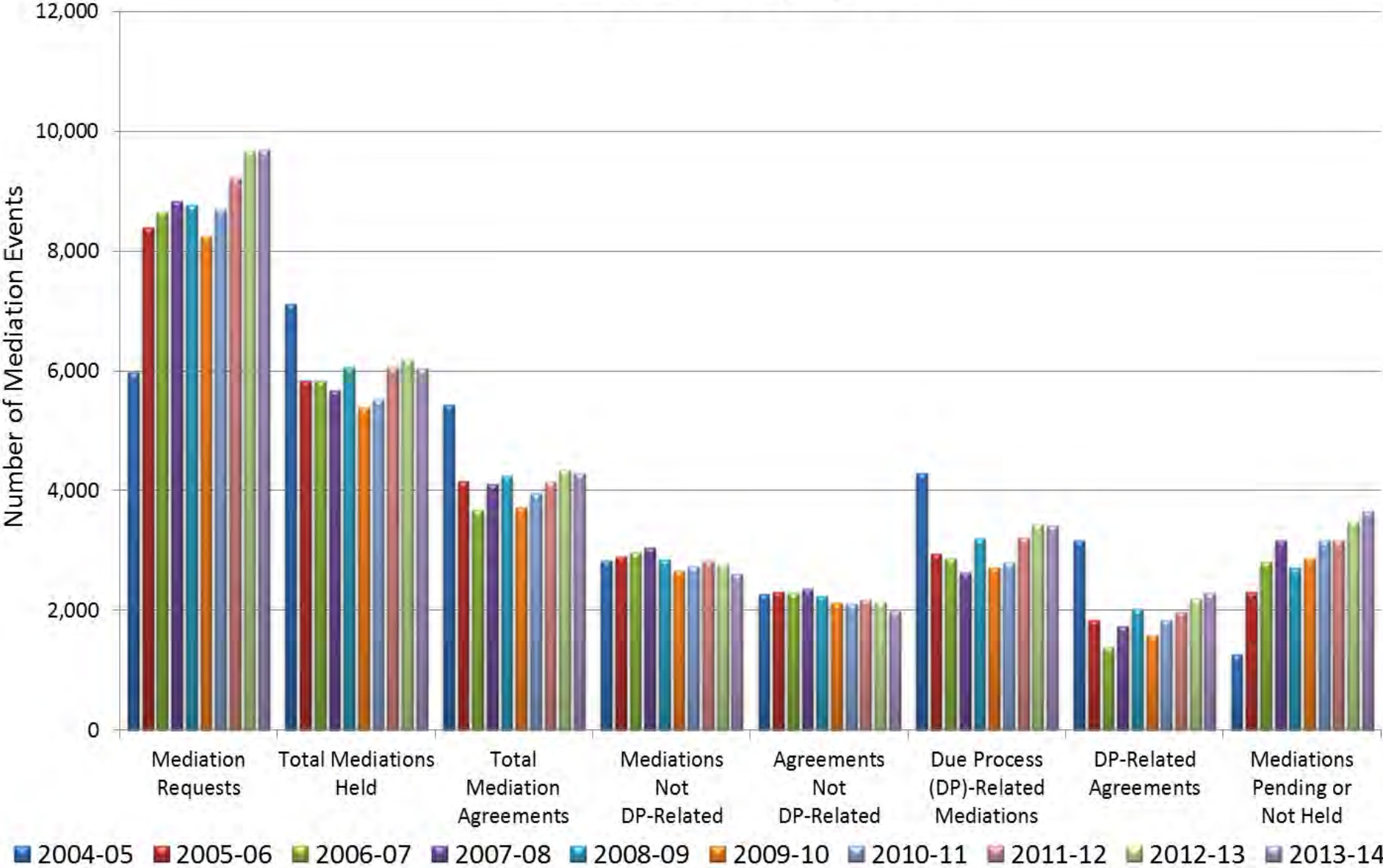
- Five states accounted for 82% of all Resolution Meetings, but only 64% of agreements—their agreement rates ranged from 10-45%
- 27 other states had >10 Resolution Meetings—the agreement rate for these ranged from 12-99%

From 2005-2013...

- The national agreement rate was 23%
- Six states that offer facilitators for Resolution Meetings have averaged a combined resolution meeting agreement rate of 57%



# Mediation Activity: U.S. and Outlying Areas





# Mediation Activity

- The average agreement rate for Mediation is steady at 70%.
- 12 states account for 90% of Mediations Held and Mediation Agreements
- The average rate of Mediation Requests for the past 8 years (13.5 per 10K) is about half the rate of DPCs Filed (27 per 10K) during the same period
- The rate of Mediations Held (9 per 10K) is about twice the rate of Hearings Held (about 4 per 10K)
- The decrease in Mediations Held from 2011 and 2012, attributable to 2 states

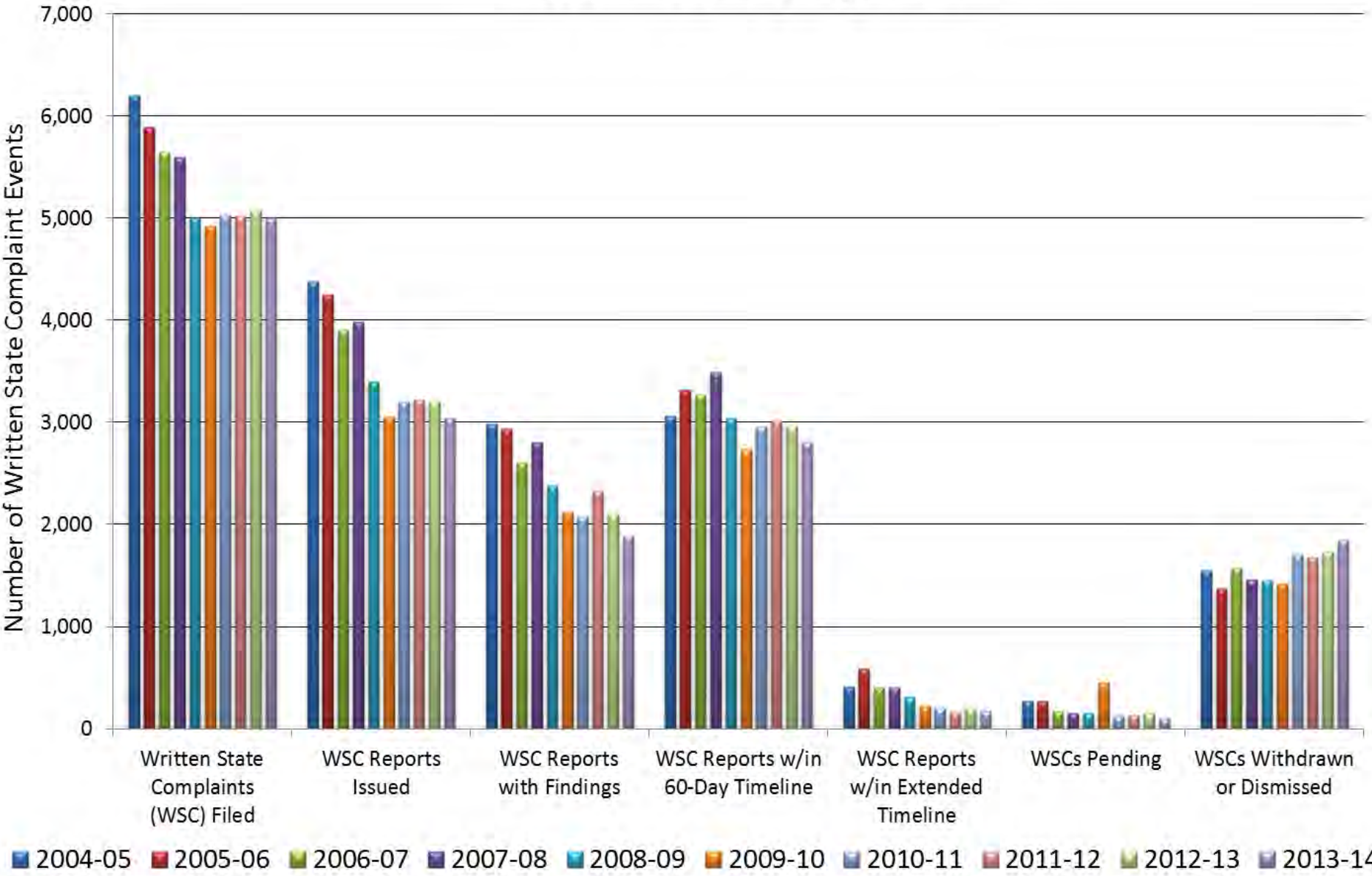


# Mediation Activity

- Drop in activity from 2004 to 2005 directly related to Resolution Meeting requirement (2005) → Note the big drop in DP-Related mediation and the slight increase in non-DP-Related mediation
- Mediations Held and Mediation Agreements both increased during the last 8 years → This is due to a nearly 20% increase in DP-Related Mediation.
- Mediations Pending or Not Held are rising at a faster rate than other Mediation events → 36 states have seen increases here



# Written State Complaint Activity: U.S. and Outlying Areas





# **A Few Words about Written State Complaints...**

Since 2004-05,

**53,412** Written State Complaints filed

**35,642** (66.7%) resulted in Reports...

**27,247** (51%) with Findings of Noncompliance

**15,798** (29.6%) were Withdrawn or Dismissed

**1,983** (3.7%) were Pending





# Written State Complaints

- Broadest distribution of DR activity across states (compared to mediation and DPC activity)
  - 28 States account for 90% of WSC filings
- Between 2004-2013, the total number of Written State Complaints filed was 1/3 the total number of Due Process Complaints filed.
- WSC is the least-used dispute resolution option, yet resulted in more reports (35,642) than Due Process Hearing Decisions (35,341)



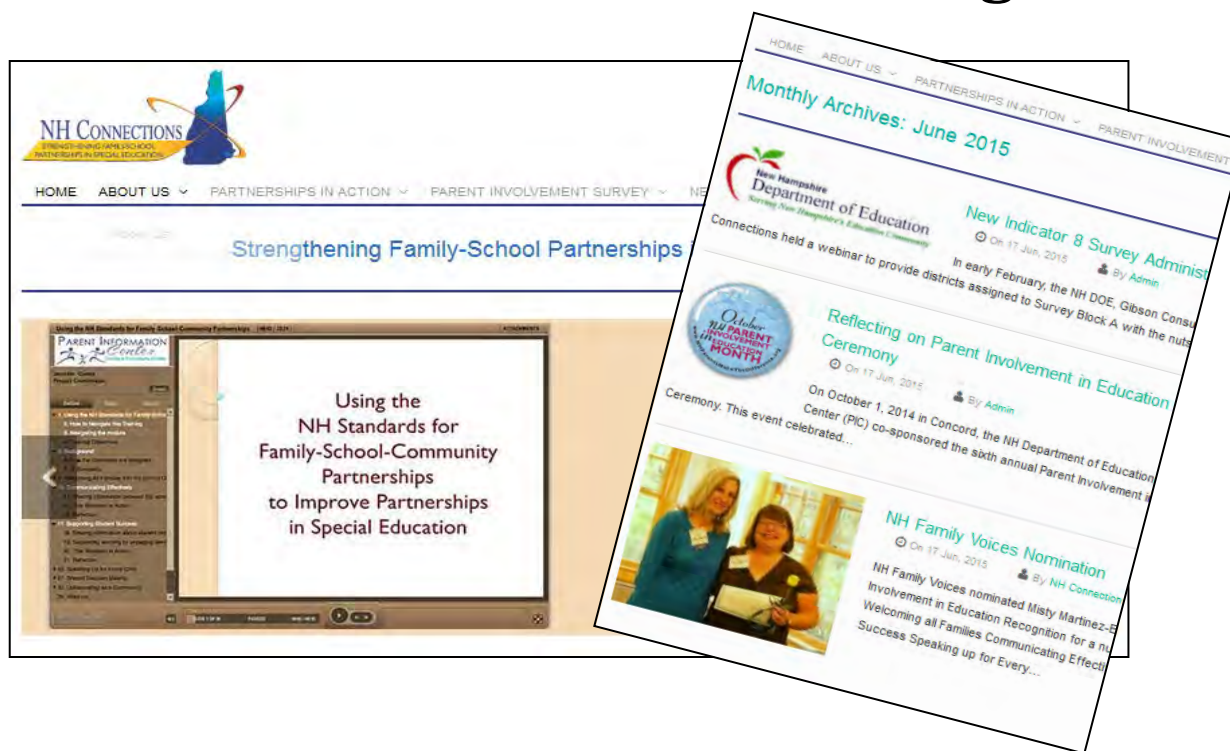
# Examples of “Upstream” Conflict Resolution

- Parent Engagement & Stakeholder Training
- Parent Liaison/Intermediary
- Third Party Advisory Opinion
- Facilitation
  - Ohio
  - Pennsylvania
  - Idaho



# New Hampshire: Parent Engagement & Stakeholder Training

Parents and family members are encouraged to participate meaningfully in their student's education. May be done in partnership between an SEA and Parent Information and Training Center.





# Washington: Parent Liaison/Intermediary

Helps parents and others connect to resources, clarify issues, and identify possible solutions. May also assist in resolving situations, when appropriate. Often connected to an SEA's Special Education Office.

A screenshot of the Washington State Office of Superintendent of Public Instruction (OSPI) website. The page is titled "Special Education" and is part of a "Need Assistance?" section. The left sidebar contains a navigation menu with links for "Special Education Home", "Laws &amp; Procedures", "Guidance for Families", "Data &amp; Reporting", "Dispute Resolution", "Funding &amp; Finance", "Program Review", "Resource Library", and "Contact Us". The main content area features the heading "Need Assistance?" followed by "Special Education Parent Liaison". Below this, there is text explaining the role of the liaison and providing contact information for Scott Raub, the Special Education Parent Liaison, including a phone number (360-425-2000). There are also links for "What can the Special Education Parent Liaison do for me?" and "What should I not expect from the Special Education Parent Liaison?".

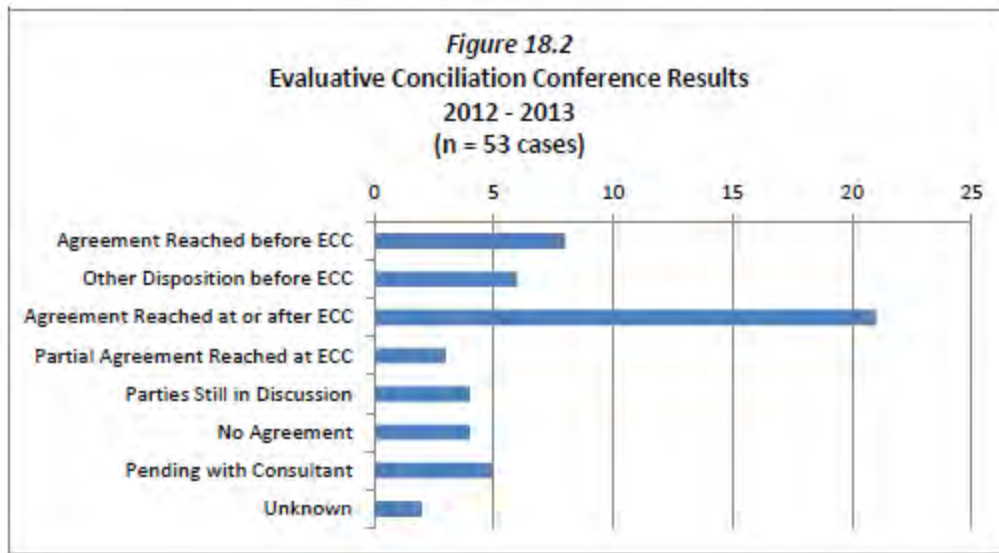


# Pennsylvania: Third Party Advisory Opinion



A non-binding opinion issued by a hearing officer after considering information presented by parents and a school district.

Either may use this information to decide whether to file a due process complaint/hearing request.





# Facilitation

A voluntary process that may be used when the participants/team members of an IEP or other special education meeting agree to have a neutral third party facilitate communication and problem-solving.

May be sponsored by an SEA or a local school district.



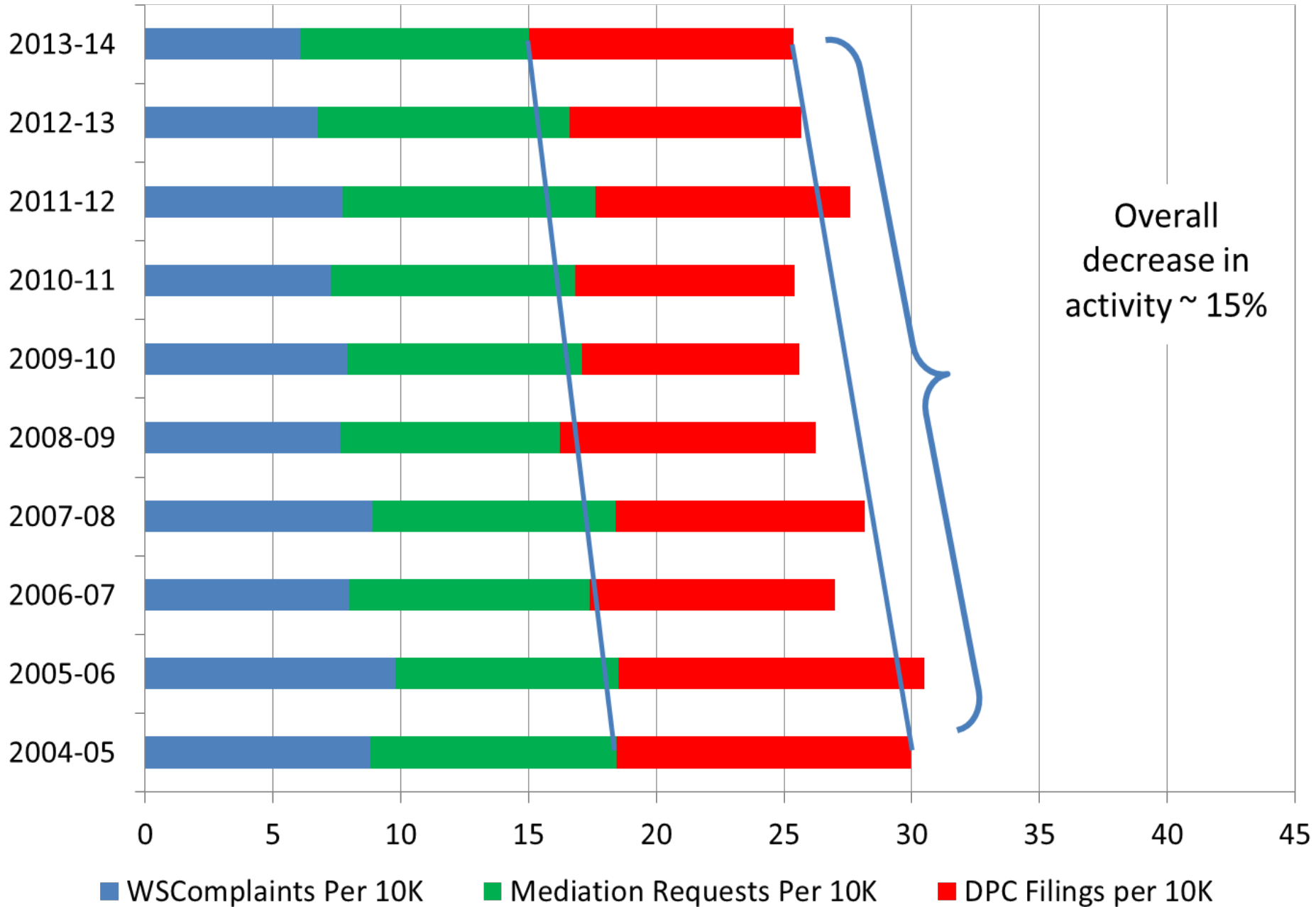


# **"Effects" of IEP Facilitation on Dispute Resolution Activity**

With CAUTION...

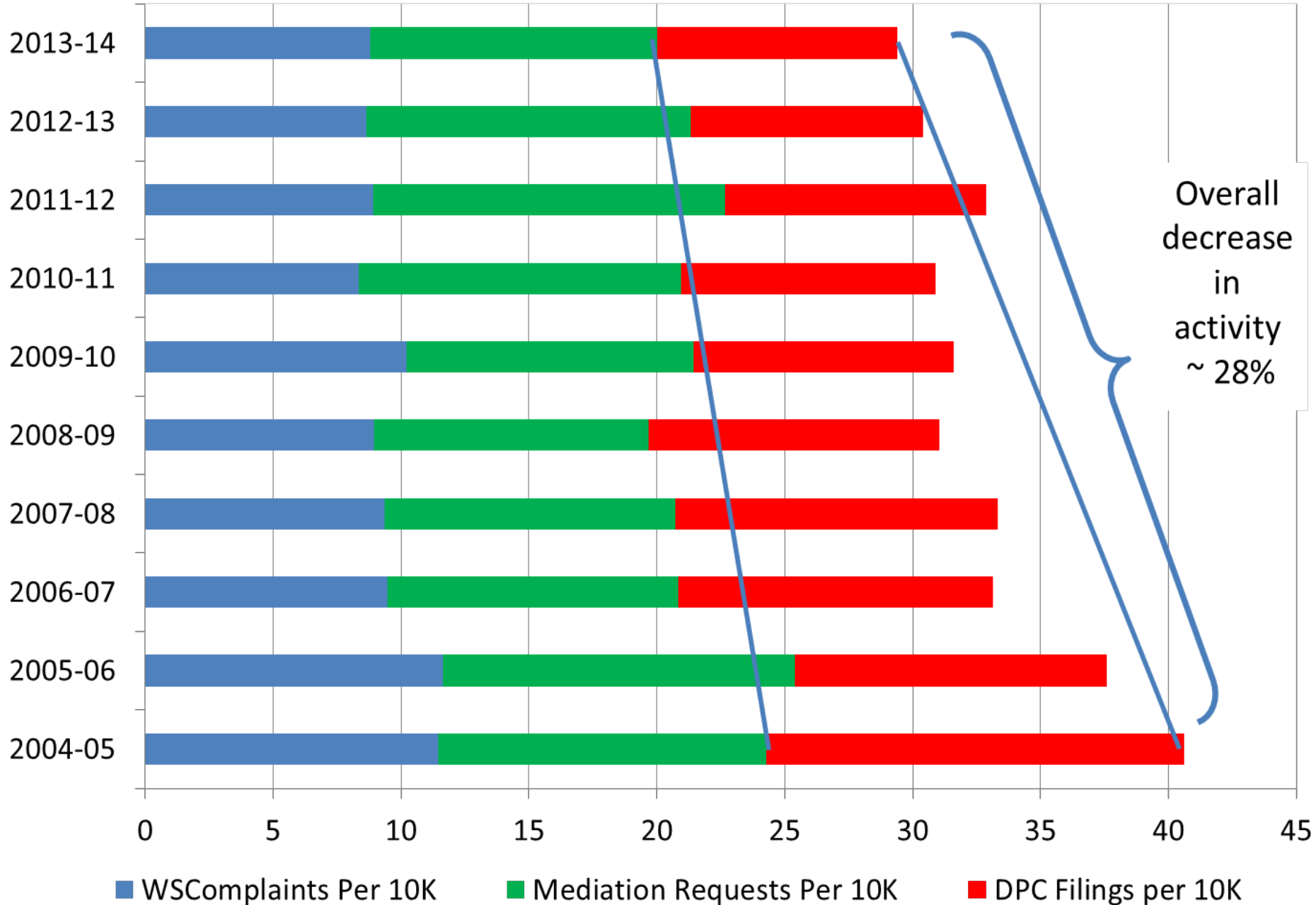
- Tried to match up like-sized states (i.e., child count, geographic region)
- (“Treatment Group”) The 13 states with IEP Facilitation available at the statewide level, that had systems in place by 2008-09
- (“Control Group”) 13 states that did not offer IEP Facilitation at the state level by 2008-09

# States without FIEP Systems in Place Before 2013





# States with FIEP Systems in Place by 2009



# Ohio: Facilitation

## Facilitation Information Sheet

Facilitation takes place in a team meeting such as an individualized education program (IEP) team meeting, evaluation planning meeting or an evaluation team meeting. The facilitator is a neutral, third party who is not a member of the team and does not make any decisions for the team. Having a facilitator assists the team in being productive and keeping the focus on the student. Facilitators are professional mediators who have been trained by the Office for Exceptional Children in special education processes.

### What are the benefits of facilitation?

#### The parents and the school:

- Keep the focus on the student;
- Are in control of the outcome;
- Move forward to write a document to which everyone can agree;
- Better understand the other's point of view;
- Can settle the issues more quickly; and
- Do not have to pay for it.

### How do we ask for a facilitator?

#### The parents and the school:

- Agree to ask for a facilitator;
- Contact the Office for Exceptional Children. It does not matter who contacts the office;
- Can contact the office's Dispute Resolution section and ask for the mediation/facilitation coordinator at 877-644-6338;
- Receive an explanation of the process and have questions answered by the mediator/facilitation coordinator;
- Get a letter from the mediation/facilitation coordinator explaining how to select a facilitator and receive information about the facilitators who are available;
- Agree to a facilitator and let the Office for Exceptional Children know their selection. The office will assign the selected facilitator;

- Receive assistance from the facilitator in scheduling the meeting; and
- Contact the office for other options, if the schedule of the team meeting is already set.

### What happens at the meeting?

#### The parents and the school:

- Begin the team meeting as they usually would. The facilitator will ask questions and help the team get back on track if the meeting is not focusing on the student or is not moving forward in a useful way;
- Can complete the individualized education program, planning form or evaluation team report at the meeting, schedule other meetings to complete the process or move on to some other process; and
- Are asked to evaluate the facilitation process and the facilitator to help the Office for Exceptional Children make the process better.

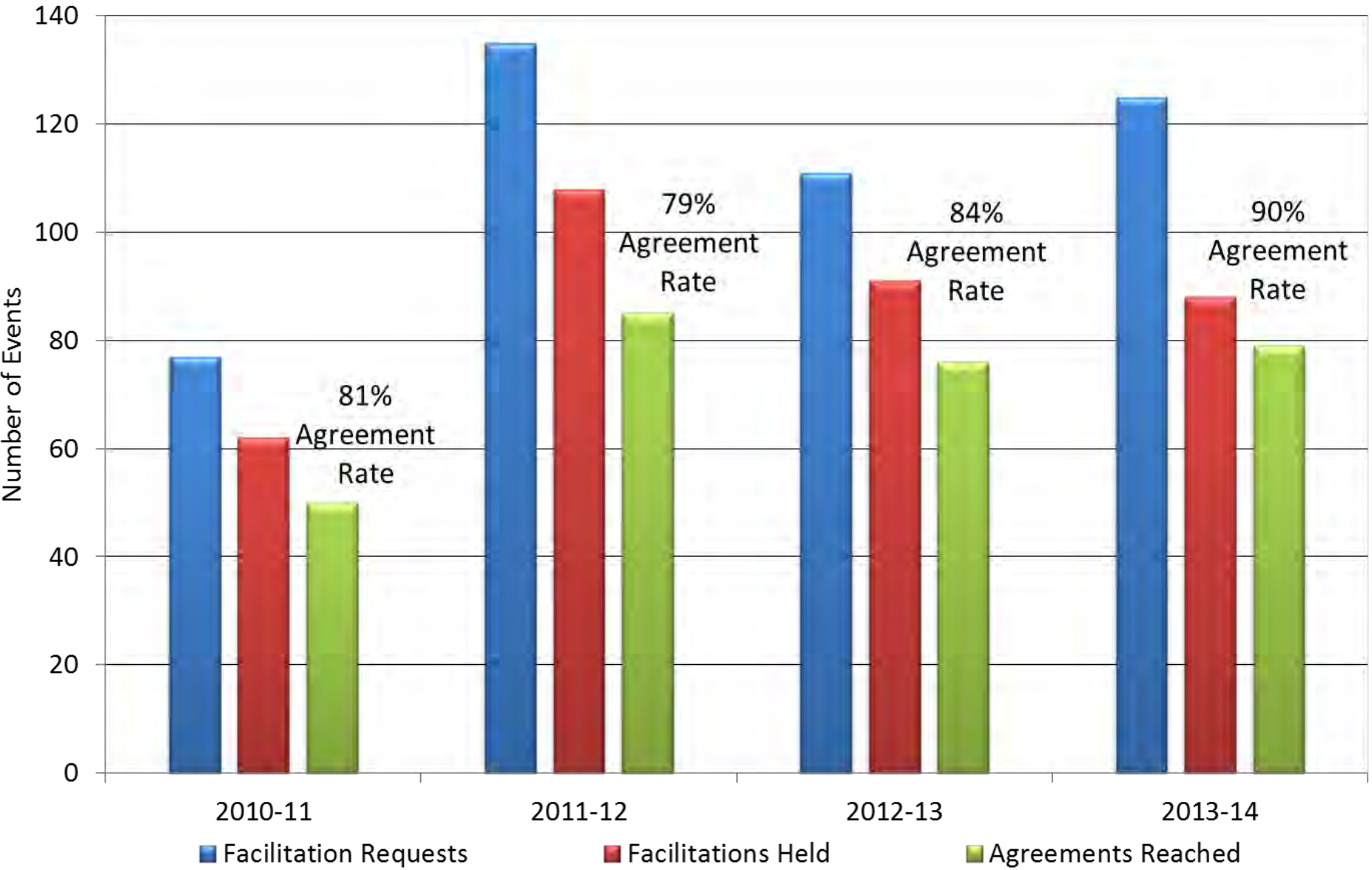


ODE Contact Info

**Ohio** | Department of Education



# Ohio Facilitation Data



# Pennsylvania: Facilitation

## IEP Facilitation Brochure



This brochure provides further information about IEP facilitation, including preparation tips and FAQs.

## IEP Facilitation Video

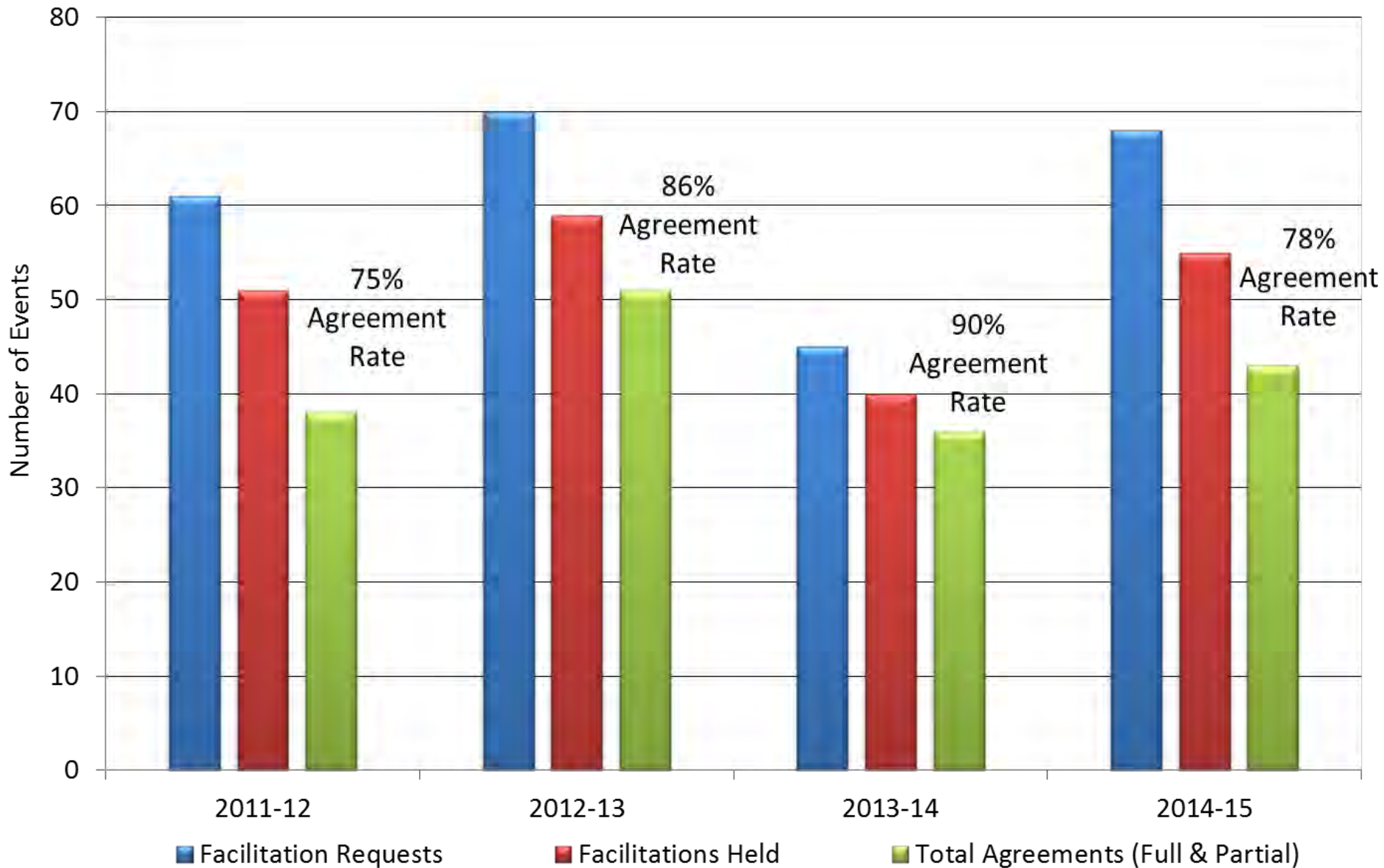


### IEP Facilitation Video

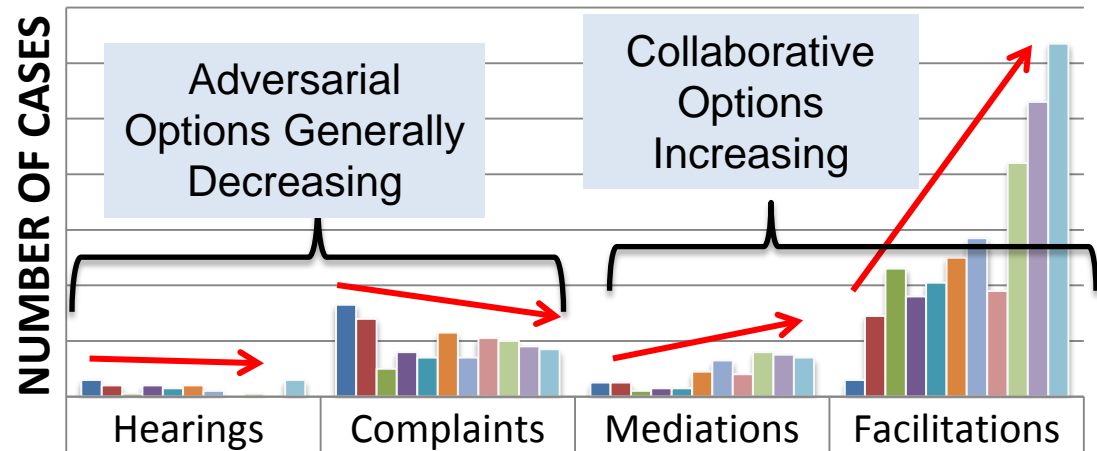
This video explains the IEP facilitation process, including what to expect, how you can prepare, and the benefits of IEP facilitation.



# Pennsylvania Facilitation Data



# Idaho: Dispute Resolution Trends



	Hearings	Complaints	Mediations	Facilitations
2005	6	33	5	6
2006	4	28	5	29
2007	1	10	2	46
2008	4	16	3	36
2009	3	14	3	41
2010	4	23	9	50
2011	2	14	13	57
2012	0	21	8	38
2013	1	20	16	84
2014	0	18	15	106
2015	6	17	14	127

**100%  
Agreements**

**91%  
Successful**

# Idaho: Facilitation Evaluation

## Two Separate Surveys

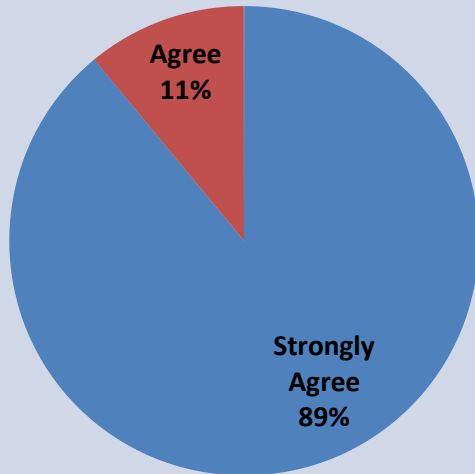
- ✓ Facilitation Participant Survey
  - 7 Questions on the Facilitator
  - 6 Questions about the Process
- ✓ Facilitator Self-Evaluation and Case Summary

## Results can be filtered by:

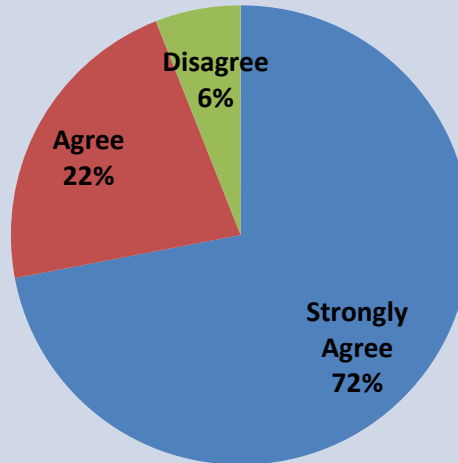
- ✓ Date
- ✓ District
- ✓ Facilitator
- ✓ Case Number

# Idaho: Facilitation Survey Results

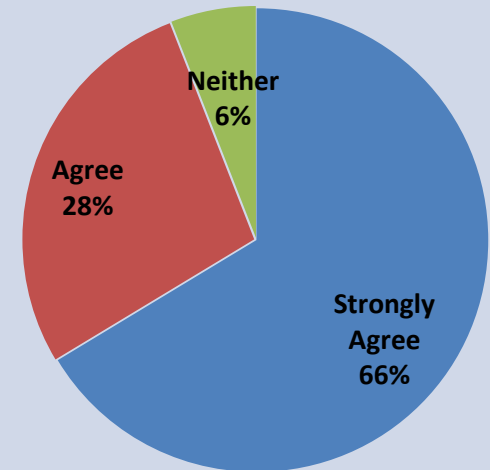
The Facilitator helped me feel comfortable during the Facilitation process.



The Facilitator helped to create an environment where I felt my opinions were respected.



The Facilitator kept the focus on the student's needs and the purpose of the meeting.





# Idaho: Facilitation Survey Comments

The facilitator was extremely professional.

He provided an environment that was positive and allowed the focus to be on the student.

Thank you very much!

The facilitator did a great job redirecting the staff to the necessary items, was very helpful for the parent (who did not know all the laws), and made sure that all the required components were addressed.

Facilitators always do a great job. The Facilitator is very impartial and has a calming presence.

# Questions?



# Comments?



# The CADRE Caucus

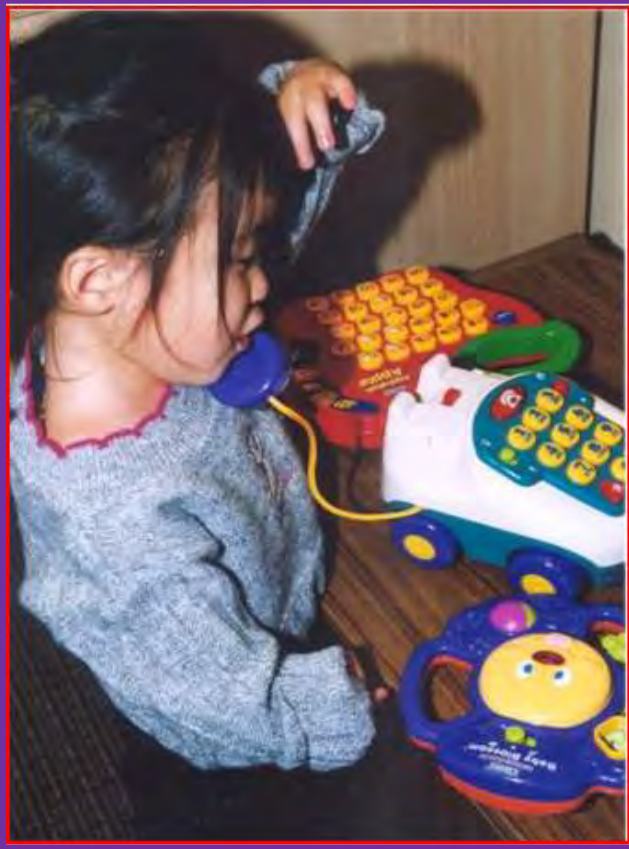
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# Contact Us!



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