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# IDEA Data Brief: Due Process Complaints/Hearings

Center for Appropriate Dispute Resolution in Special Education | May 2017

## KEY FINDINGS

1. A small number of states account for the majority of due process complaints filed and hearings held.
2. Although due process complaints are filed more frequently than written state complaints or mediation requests, fewer than 20% result in a fully adjudicated hearing.
3. The number of due process complaints filed has decreased over time as the number of mediation requests has increased.
4. For the majority of states, resolution meetings ended in written settlement agreements slightly more than half of the time.
5. The due process related mediation agreement rate has been more than three times as high as the resolution meeting agreement rate over the last three years.



The Individuals with Disabilities Education Act (IDEA)<sup>1</sup> requires states and entities<sup>2</sup> receiving funds under Part B to make available the following dispute resolution options: mediation, written state complaint (WSC), and due process complaint (DPC). The resolution meeting was introduced as a collaborative feature within the due process complaint procedures in 2004 and is not available outside due process under the federal regulations.

These mandatory options offer mechanisms for resolving disputes that arise under IDEA. A due process complaint or “hearing request” is perceived to be the most adversarial and potentially costly of IDEA’s dispute resolution options due to specific features of the proceeding, such as presentation of evidence, sworn testimony, the use of expert witnesses, and cross-examination.

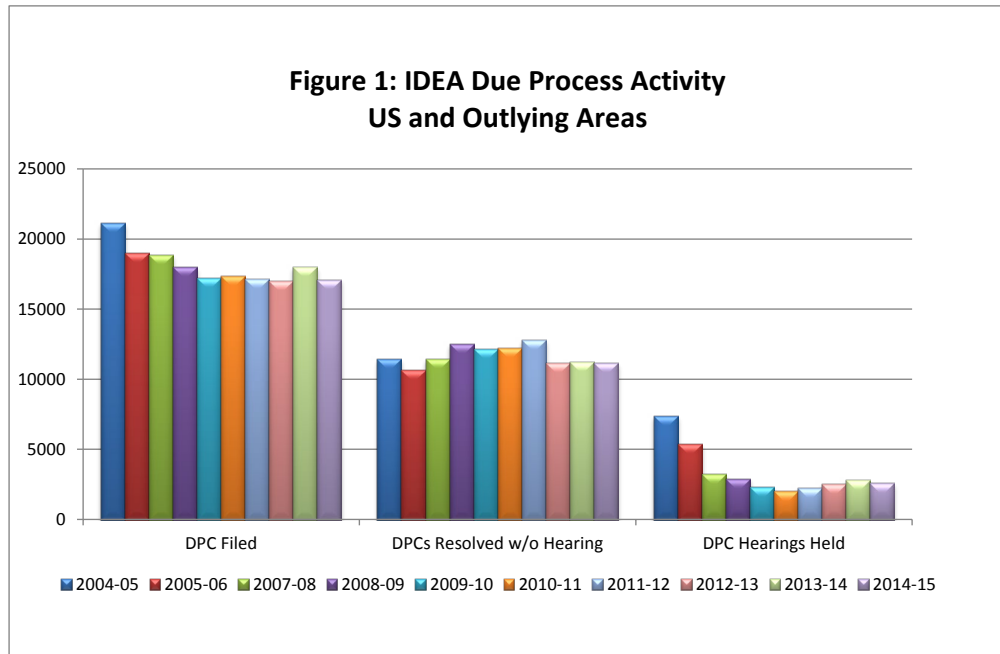
States are required to report activity and performance on these dispute resolution options to the U.S. Department of Education’s Office of Special Education Programs (OSEP) annually. Data presented in this brief on DPCs include dispute resolution data reported to OSEP by the states. This brief is one in a series that examines eleven years of IDEA dispute resolution activity, concluding in 2014-15.

<sup>1</sup> 20 USC 1400 et seq; 34 CFR part 300.

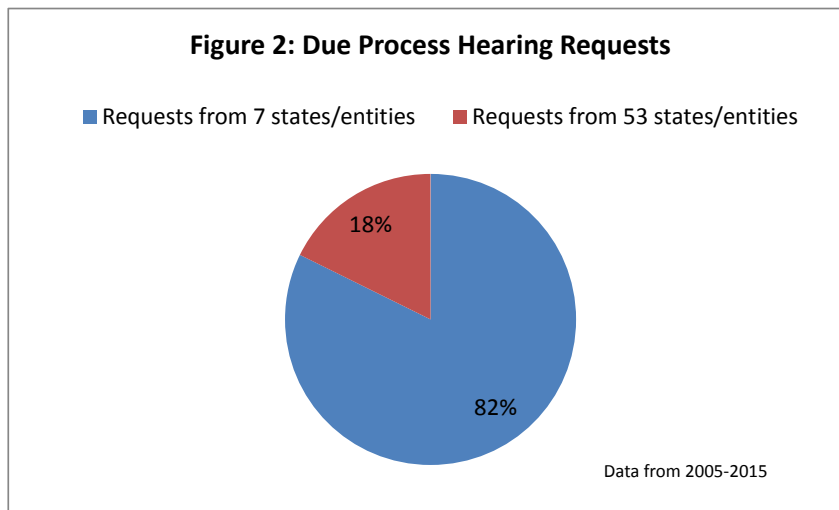
<sup>2</sup> The terms “states” and “states and entities” are used interchangeably to refer to all 60 Part B grant recipients. Grant recipients include the 50 states, the District of Columbia, the Bureau of Indian Education (BIE), Puerto Rico, the Virgin Islands, American Samoa, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

**A small number of states account for the majority of due process complaints filed and hearings held.**

The national perspective on the relative use of IDEA’s formal dispute resolution options is skewed by the concentration of due process activity in a few states and is therefore not necessarily representative of what most states experience. Figure 1 illustrates national due process activity over the last ten years.



Between 2004-05 and 2014-15, activity in twelve states accounted for 90%, or nine out of every ten, DPCs filed.<sup>3</sup> As illustrated in Figure 2, seven states consistently accounted for 82% of all DPCs filed.<sup>4</sup>



<sup>3</sup> CA, CT, DC, FL, IL, MA, MD, NJ, NY, TX, PA, and PR.

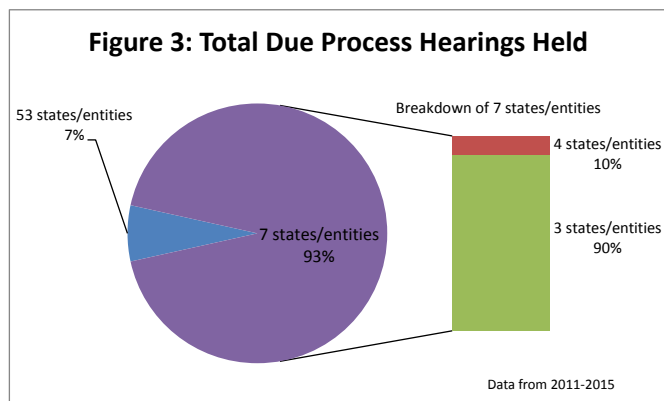
<sup>4</sup> CA, DC, MA, PA, NJ, NY, and PR.

**Although due process complaints are filed more frequently than written state complaints or mediation requests, fewer than 20% result in a fully adjudicated hearing.**

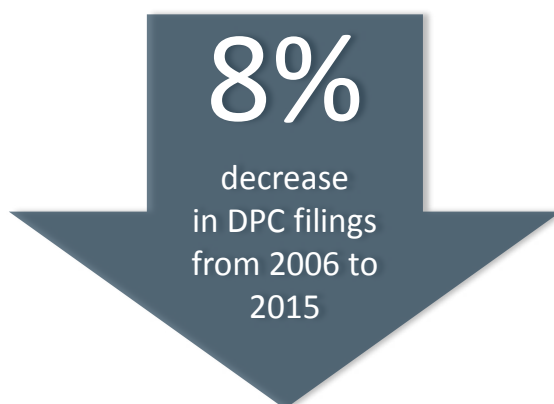
For the past eleven years, the number of DPCs filed has far exceeded the number of WSCs filed and requests for mediation. Between 2004-05 and 2014-15, a total of 199,231 DPCs were filed. During this same period, 58,398 WSCs were filed and 98,815 mediation requests were reported, making the number of DPCs filed over three times that of WSCs filed and over twice that of mediation requests.

Although DPCs are filed more frequently than IDEA’s other formal dispute resolution options, relatively few requests are ultimately resolved by the specific process invoked, that is, a fully adjudicated hearing. Over the last eleven years, 64% of all DPCs filed were resolved without a hearing and only 19% resulted in a fully adjudicated hearing.<sup>5</sup>

As illustrated in Figure 3, seven states<sup>6</sup> have consistently accounted for 93% of the hearings held over the last five years. Moreover, three of these states account for nearly 84% of all hearings held.<sup>7</sup>



By contrast, the other two IDEA dispute resolution options, WSC and mediation, are more likely to conclude through the very process initially requested, i.e., a written report or mediation session. For the last eleven years, 66% of all WSCs filed concluded through a final written report, and 67% of all mediation requests concluded through a mediation session.



**The number of due process complaints filed has decreased over time as the number of mediation requests has increased.**

Between 2006-07 and 2014-15, the number of DPCs filed has decreased by 8.3%.<sup>8</sup> Although the use of due process has declined over time, the downward trend was disrupted in 2013-14 when four states with consistently high activity reported increased filings.<sup>9</sup> The downward trend resumed in 2014-15. For the last five years, at least one state with a high rate of activity has significantly contributed to this downward trend by reducing the number of DPCs filed from 1527 in 2010-11 to 457 in 2014-15.<sup>10</sup>

<sup>5</sup> Because 16% of DPCs filed were pending at the end of the school year, the combined percentage of hearings fully adjudicated and DPCs resolved without a hearing does not equal 100%.

<sup>6</sup> CA, DC, MA, PA, NJ, NY, and PR.

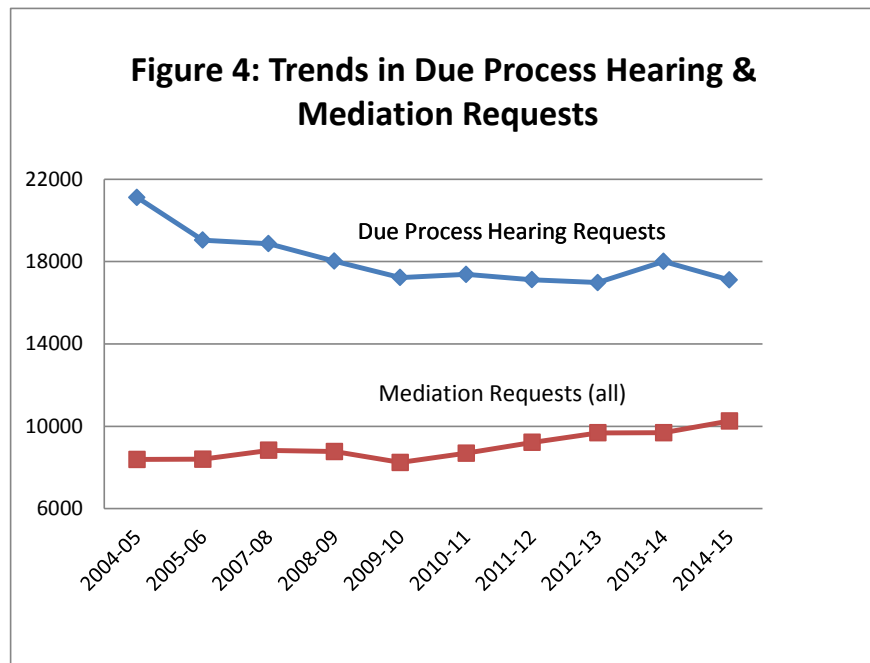
<sup>7</sup> DC, NY, and PR.

<sup>8</sup> Percent change was calculated using an average slope over nine years.

<sup>9</sup> DC, MA, NY, and PR.

<sup>10</sup> DC.

As illustrated in Figure 4, DPCs have decreased over time, while mediation requests have increased by 19.5%.<sup>11</sup> Over the last five years, 51% to 57% of all mediations held have been related to a DPC.

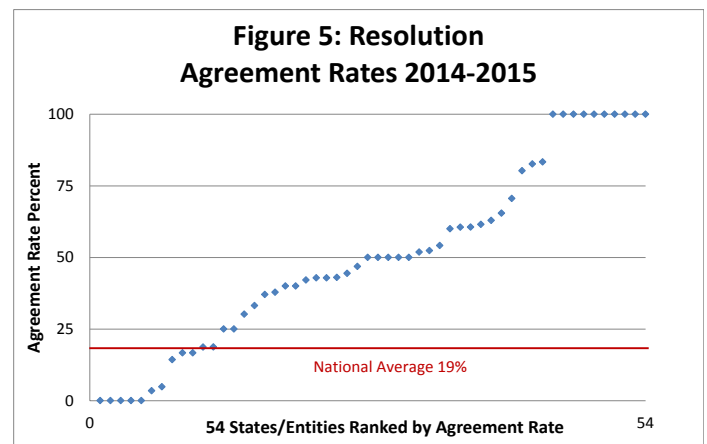


**For the majority of states, resolution meetings ended in written settlement agreements slightly more than half of the time.**

Resolution meeting agreements have declined since 2006-07, with the national agreement rate dropping to 19% in 2014-15 from a peak of 30% in 2009-10. Because states with high resolution meeting activity and low agreement rates distort the national average, it is not reflective of what most states experience. For example, one state consistently responsible for nearly two-thirds of all resolution meeting activity also reported an agreement rate of 9% over the last six years.<sup>12</sup> If this state’s data are removed, the national resolution agreement rate increases from 22% to 34% during this time.

Recognizing that high activity states lower the national average, it is constructive to examine

what states report separately for the resolution agreement rate. Notably, the majority of states have consistently reported resolution agreement rates of 50% or higher. Across the last six years, the average state agreement rate has been 52%.<sup>13</sup> As further illustrated in Figure 5, twenty-eight states reported resolution agreement rates of 50% or higher, even though the national average for resolution agreements was 19% for 2014-15.



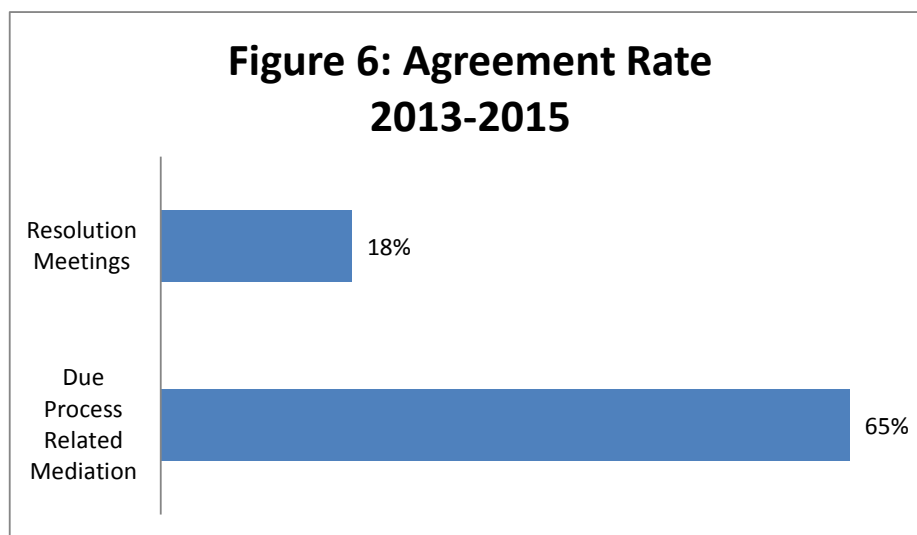
<sup>11</sup> Percent change was calculated using an average slope over nine years.

<sup>12</sup> NY.

<sup>13</sup> The “average of state agreement rates” is the combined average of each state’s agreement rate. For this calculation, all states contribute equally to the calculation, regardless of the level of activity.

**The due process related mediation agreement rate has been more than three times as high as the resolution meeting agreement rate over the last three years.**

In contrast to resolution meetings, mediation requires the assistance of a third-party neutral.<sup>14</sup> From 2005-06 to 2014-15, national resolution meeting agreement rates have ranged between 16% and 37% while due process related mediation agreement rates have ranged between 59% and 67%.<sup>15</sup> As illustrated in Figure 6, the resolution agreement rate for the last three years was 18% and the due process related mediation agreement rate was 65%, making the agreement rate for mediation three times higher than that of the resolution meeting. This suggests that the addition of a third-party neutral may improve the likelihood of agreement.



## QUESTIONS FOR CONSIDERATION

**1. How could data beyond what is required for federal reporting help states better understand and improve their dispute resolution systems?** Although the dispute resolution data analyzed in this brief is limited to what states are required to report to OSEP annually, most states have access to additional dispute resolution data that may be of significant benefit. For example, available data indicates that most DPCs are resolved without a hearing. Yet, the data reported to OSEP under the broad category of “withdrawn, dismissed, or resolved without a hearing” does not reveal why complaints were withdrawn or dismissed.

Most states have a system for tracking dispute resolution activity that is more detailed than the federal reporting requirements and could more thoroughly describe the disposition of complaints that are resolved without a hearing. Finer and more specific data may help a state better understand what is working as well as identify systemic features that may be contributing to the relative use of dispute resolution options. More specific data may also help identify sources of family-educator conflict that could be used to inform conflict prevention activities.

<sup>14</sup> Some states offer facilitators for resolution meetings, including DC, IA, ID, OH, OK, and PA.

<sup>15</sup> Resolution meetings were introduced in 2004-05 and first reported in 2005-06.

**2. If only 19% of DPCs result in a fully adjudicated hearing, why is this dispute resolution option requested more frequently than WSC or mediation?** This finding suggests that many who file a DPC, or “request for hearing” may do so for reasons other than the expectation of a fully adjudicated hearing. A parent may choose due process over the other available dispute resolution options in an effort to resolve the dispute without disrupting their child’s current educational placement through an IDEA provision commonly referred to as “stay-put.”<sup>16</sup> Under federal regulation, “stay-put” is only available in due process. Consequently, a parent may choose due process over less adversarial options for this reason alone. At least five states allow “stay-put” for non-due process related mediation requests, and one state allows for “stay-put” in written state complaints.<sup>17</sup>

Parents may also file DPCs because they lack knowledge or awareness of other available dispute resolution options. For example, how dispute resolution information is presented or displayed on state websites may inadvertently direct parents to select due process because information about mediation and other options is more difficult to find.

**3. Considering the consistently higher agreement rate for mediation, could states improve the utility of the resolution session by offering a facilitator?** To improve performance or meet targets for Indicator 15,<sup>18</sup> the resolution meeting agreement rate, states may want to consider offering a neutral third-party to assist schools and families during the resolution meeting. At least six states currently offer facilitators for resolution meetings.<sup>19</sup>

**4. How is the dispute resolution landscape evolving to offer a continuum of options beyond those required by IDEA?** Today, most states are making investments in upstream dispute resolution options, such as stakeholder communication skill-building workshops, parent liaisons, ombuds programs, and Individual Education Program (IEP) facilitation. Indeed, most states currently offer at least one dispute resolution option in addition to the federal requirements. Collaborative approaches that emphasize cooperative problem-solving, such as mediation and IEP facilitation, keep educational decision making in the hands of those who know the student best. In contrast to processes such as DPC and WSC, collaborative approaches are more likely to build and strengthen the relationship between families and educators. Consistent availability and awareness of more collaborative approaches may provide an opportunity to resolve disputes before they become intractable, leading to improved outcomes for children with disabilities.

#### DATA SOURCES

Data for this brief is drawn from CADRE’s National Longitudinal Database which is comprised of data from the following sources: dispute resolution activity reported in states’ Annual Performance Reports (APR), first as attachment 1 and later as Table 7; Section 618 data; data published in OSEP’s Annual Report to Congress; and data adjustments collected from states by CADRE after OSEP data were locked.

<sup>16</sup> 34 CFR § 300.518.

<sup>17</sup> IA, IL, ME, PA, and NJ allow “stay-put” for mediation without filing due process. At this time, the impact that this may have on the number of due process filings is unclear.

<sup>18</sup> Indicator 15 is the performance indicator that documents the percentage of resolution meetings that result in written settlement agreements.

<sup>19</sup> Because data reported to OSEP does not include the number of resolution meetings where a facilitator was provided, the agreement rate for these six states may not accurately reflect the impact a facilitator has on the outcome and thus is not disaggregated here.

## SUMMARY

In general, the number of DPCs filed has been decreasing over the last eleven years, with most of the activity highly concentrated in a few states. At the same time that DPCs have decreased, requests for mediation have increased. Notably, the mediation agreement rate is consistently higher than the resolution agreement rate. Additional [National](#) and [State](#) dispute resolution data summaries, including the most recent [SPP/APR Indicator Summaries](#), are available on CADRE's website, [cadreworks.org](http://cadreworks.org).

Although this data brief on DPC highlights key findings based on data reported to OSEP, states have access to additional dispute resolution data that may be useful for understanding and improving a dispute resolution system. CADRE can assist states in examining their existing dispute resolution system, as well as offer technical assistance to states interested in building a broader [continuum](#) of dispute resolution options beyond IDEA requirements.

