

Complaint Procedure Systems Under the IDEA: A State-by-State Survey

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- **The professional literature is largely lacking with regard to current information about state systems for complaint procedures (CP) as compared with the much more common knowledge of the due process hearing mechanism of the Individuals with Disabilities Education Act.**
- **Overall, almost two thirds (63%) of CP filings nationwide resulted in a decision letter, and a similar majority (62%) of these letters found violations, which suggests that districts should focus on not only more effective compliance but also early resolution.**
- **More than half (56%) of CP investigators have an educational background in special education and about a quarter (26%) have an educational background in law, which may result in a gap in the needed skill sets for effective investigation and decision writing.**
- **Training most often is in the form of attendance at a national-level conference (75%) or various forms of in-house training (61%), but respondents acknowledged the need for improved professional development, especially training tailored to the needs of CP investigators.**
- **The most common practices among CP systems are (a) the use of a template for CP decisions, (b) the authoring of CP decisions by the investigator, and (c) supervisory review of CP decisions by a supervisor, although additional responses suggested the need for broader systemic efficiencies, such as more user-friendly information and alternative dispute resolution.**
- **The relatively infrequent and thus wider disuniformity of other practices—namely, (a) the use of a two-part test for procedural issues, (b) the resolution of substantive issues, and (c) provision of a mechanism for appealing CP decisions—poses problems for school districts that warrant policy consideration at the national, state, and local levels.**

• **Key words: Complaint Procedures, Dispute Resolution, Legal Issues.**

The Individuals with Disabilities Education Act (IDEA; 2013), requires school districts to provide a free appropriate public education (FAPE) to eligible students with disabilities. The vehicle for FAPE is an individualized education program (IEP). If parents and educators disagree about whether the IEP is appropriate for the student, the IDEA requires states to make available, along with the nondecisional mechanism of mediation, two decisional dispute resolution mechanisms: state complaint procedures (CPs) and due process hearings (DPHs). Because its features and outcomes are much less known than those of the DPH mechanism (e.g., Zirkel & Scala,

2010; Zirkel & Skidmore, 2014), the CP system is the focus of this article.

The IDEA regulations (2014) establish the requirements for each state education agency's (SEA's) CP mechanism (§§300.151–300.153). For example, anyone, including an organization, may file a complaint that meets certain filing requirements, including (a) a statement, with supporting facts, claiming an IDEA violation within the past year; (b) the signature and contact information of the complainant; (c) the contact information for the student if the complaint is in regard to a specific student; and (d) a proposed remedy. The SEA has 60

days to investigate and issue a written decision. During the investigation, the school district has an opportunity to respond, and the complainant may provide additional information. The SEA then reviews all relevant information and makes an independent determination as to whether the school district has violated the IDEA regulations. The written decision must include findings, conclusions, and the reasons for the SEA's final decision. If the SEA finds a violation, it must order a remedy that addresses the needs of the student named in the complaint and the future provision of services for all students with disabilities.

Unlike the DPH alternative, the CP mechanism is investigative rather than adjudicative. Even with this difference, CP has various similarities with DPH, such as (a) the issues that they may address, (b) the requirement to issue a written decision that includes findings of facts and conclusions of law, and (c) remedial authority, including compensatory education and prospective orders. However, as also canvassed elsewhere (Zirkel, 2016), CP has other features that are significantly different from DPH, including (a) the aforementioned scope of the filing parties; (b) the clear authority to resolve systemic, not just student-specific, issues; (c) much less burdensome procedures for complainants; and (d) in the majority of jurisdictions, the lack of the right to judicial appeal.

This article begins with an overview of the professional literature, including prior research, concerning CP. The subsequent sections sequentially summarize the method, findings, and discussion of our survey of SEA CP systems.

Published Information

Textbooks

In dramatic contrast with DPH, special education law texts have largely neglected the CP. Many of these texts do not mention, much less explain, CP (e.g., Osborne & Russo, 2014; Weber, Mawdsley, & Redfield, 2013), and others accord it tertiary attention in comparison to the DPH (e.g., Guernsey & Clare, 2008; Yell, 2016).

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Empirical Analyses: CP Frequency and Outcomes and System Contours

Frequency and Outcomes. Similarly, CP has been subject to very limited empirical research. In comparison, as Zirkel and Skidmore's (2014) literature shows, DPH has been the subject of a much longer and wider line of corresponding empirical analyses. The recent research concerning CP has focused on the frequency and outcomes of its issues.

First, the Government Accountability Office (2003) report focused largely on the DPH and mediation mechanisms, although citing generally higher filing levels for CP in the late 1990s and early 2000s. This early report otherwise failed to address CP, lacking, for example, (a) differentiation between filings and decisions and (b) corresponding outcomes data for CP.

Second, limited to 97 CP decisions concerning students with autism for a Midwestern state during the 5-year period from 2004 to 2009, White (2013) found that the majority (71%) of the complaints concerned the child's IEP and that almost half of the decisions (46%) were in favor of the district. However, in addition to the limitations to one IDEA disability classification in a single state, the issue identification and outcomes analyses were clearly questionable in terms of their precision and accuracy.

Next, Colker (2014) analyzed 81 CP decisions in Ohio during the 1-year period from 2012 to 2013. In a three-outcomes categorization, she found that the distribution was as follows: parent prevailed on every issue = 22%, mixed (i.e., parent prevailed on some issues and district prevailed on others) = 42%, and district prevailed on every issue = 36%. Colker did not define *prevail* beyond explaining that it did not take into account whether the parent received the requested relief. She also explained that her study did not extend to a systematic categorization and quantitative analysis of the issues. She attributed her decision not to engage in a direct comparison with the DPH decisions for the same limited period to (a) the limited number of CP decisions and (b) what she characterized as the SEA's slow and "sloppy" action (p. 399) to make them available. Her tentative conclusion was that in Ohio, the CP mechanism appeared to be more efficient and fair than the DPH mechanism while expressly recognizing the need for more extensive research within and beyond Ohio and for a longer period.

At the national level, the federally funded Center for Appropriate Dispute Resolution in Special Education's (2016) frequency analysis of the SEAs' reported data to the U.S. Department of Education's Office of Special Education Programs for the 9 school years ending with 2014–2015 revealed that (a) the national total of CP *filings* was less than one third of the corresponding total of DPH filings; (b) because of the much higher rate of settlements and withdrawals for DPH filings, the national total of CP *decisions* was closer to the corresponding total for DPH decisions; and (c) at least partially attributable to mediations, these CP and DPH totals modestly dropped for the first part and remained relatively level for the second part of this 9-year period. In addition, according to supplementary data from the center's director (P. Moses, personal communication, December 1, 2016), a relatively limited number of states accounted for the bulk of these totals; although the CP activity was less concentrated than the DPH activity, approximately one third of the states and other jurisdictions, such as the District of Columbia and Puerto Rico, accounted for approximately three quarters of the CP total.

Finally, Zirkel (2017) reported the results of a systematic analysis of 250 CP decisions from five of the most active jurisdictions with a corresponding random sample of 250 DPH decisions, specifically addressing the frequency, outcomes, and remedies of the "issue categories" (ICs) in these decisions. Serving as the primary unit of analysis, the ICs were child find, eligibility, FAPE procedural, FAPE substantive, FAPE implementation, least restrictive environment, tuition reimbursement, compensatory education, and discipline. For the five states together, his findings included that (a) the parents' "success rate," meaning the proportion of IC rulings in their favor rather than in the school districts' favor, was 50% for CP and 24% for DPH; (b) CP had a higher frequency and success rate than DPH for procedurally oriented ICs; and (c) the CP remedies tended to be shallower and broader, such as delegating the determination of the amount, if any, of compensatory education to the IEP team and ordering policy reviews or personnel training. For the interstate comparison, he found notable differences in IC frequencies, success rates, and remedial trends.

System Contours. The research concerning the nature of the state systems for CP has been even less comprehensive and current. More specifically, it has

been limited to a single, early survey of SEA representatives (Suchey & Huefner, 1998), which had a response rate of 70%. This early survey found that 27 (77%) of the 35 respondents reported investigating substantive, not just procedural, violations; 32 (91%) reported addressing systemic violations; and 28 (80%) reported providing training for investigators. They also found that the respondents had a prevailing perception that school district personnel had limited awareness of the CP in comparison to DPH.

In comparison, the DPH mechanism has been the subject of two successive survey "snapshots," which addressed such system features as (a) whether states had selected the IDEA option of one tier, which is limited to a hearing officer, or two tiers, which added a review officer level, and (b) whether the hearing officers were attorneys. Both surveys extended to all 50 states and the District of Columbia and had a 100% response rate. The first survey, which provided a limited baseline, found, for example, that half of the states had one-tier systems and that the hearing officers were attorneys in only slightly more than one third of the states (Katsiyannis & Klare, 1991). The second survey (Zirkel & Scala, 2010), which was more detailed, found that the number of one-tier jurisdictions increased to 41, the jurisdictions with hearing officers who were attorneys increased even more dramatically to 45, and, as additional variables, the hearing officers were part-time in the majority ($n = 33$) of states, and their assignment was in direct or random sequential order in most ($n = 43$) states.

In the absence of similar systemic information about the CP, the purpose of this study is to obtain a current picture of the CP system across the 50 states and D.C. with regard to the volume of filings and decisions, the personnel for investigating the complaints, the training for these personnel, the prevailing practices for CP decisions, and the issues of concern for improvement.

Survey Method

The coauthors collaborated with an experienced SEA CP coordinator¹ to draft the survey form to provide customized systemic information corresponding to the Zirkel and Scala (2010) survey of state DPH systems. The second step was pilot testing of the initial draft of the survey instrument in D.C., Ohio,

¹ The authors acknowledge with appreciation Bernadette Laughlin, dispute resolution specialist of the Ohio Department of Education, for her assistance in the initial planning of this research project, including the development of the survey questionnaire.

Table 1: Staff members who perform CP investigations

Staff members	Total No.	With law degree	With special education degree
SEA employees who do CP investigations on a part-time basis	123	20%	68%
SEA employees who do CP investigations full-time	100	30%	42%
Outside contractors who do CP investigations part-time	67	30%	54%
Outside contractors who do CP investigations full-time	5	60%	40%
Total	295	26%	56%

Note. CP = complaint procedure; SEA = state education agency.

and Utah, obtaining specific feedback along with the item responses. Next, incorporating the feedback from the pilot testing, the authors developed a final version of the survey instrument, which included reformatting for ease of responses. In February 2017, the National Association of State Directors of Special Education e-mailed the instrument to the special education director of every state and D.C. After follow-up e-mails and, where necessary, phone calls to the state special education directors and their dispute resolution coordinators, the authors obtained a 100% response rate by April 2017.

The instructions directed the respondents to base their answers to the initial survey items on the data from the most recent completed year, whether on a calendar, fiscal, or school basis. The reason was because SEAs do not use a uniform period for such annual tabulations. The subsequent survey item related to trainings instructed respondents to indicate trainings attended in the past 2 years. Not necessitating a defined period, the survey questions related to CP investigators and prevailing practices requested information based on *current* personnel and practices. Finally, each survey item had space for optional clarifying comments.

Major Findings

Summarizing the results of the first survey item, *Figure 1* depicts the overall volume of CP filings and the proportion of (a) those not resulting in a decision,

Table 2: Training provided to CP investigators during the most recent 2 years

Training	Percentage
Attendance at national-level conference	75
Other formal in-house training	61
Mentor assigned to new CP investigator	55
National level-trainer in-house presentation	49

Note. CP = complaint procedure.

(b) those resulting in a decision finding one or more violations, and (c) those resulting in a decision finding no violation.

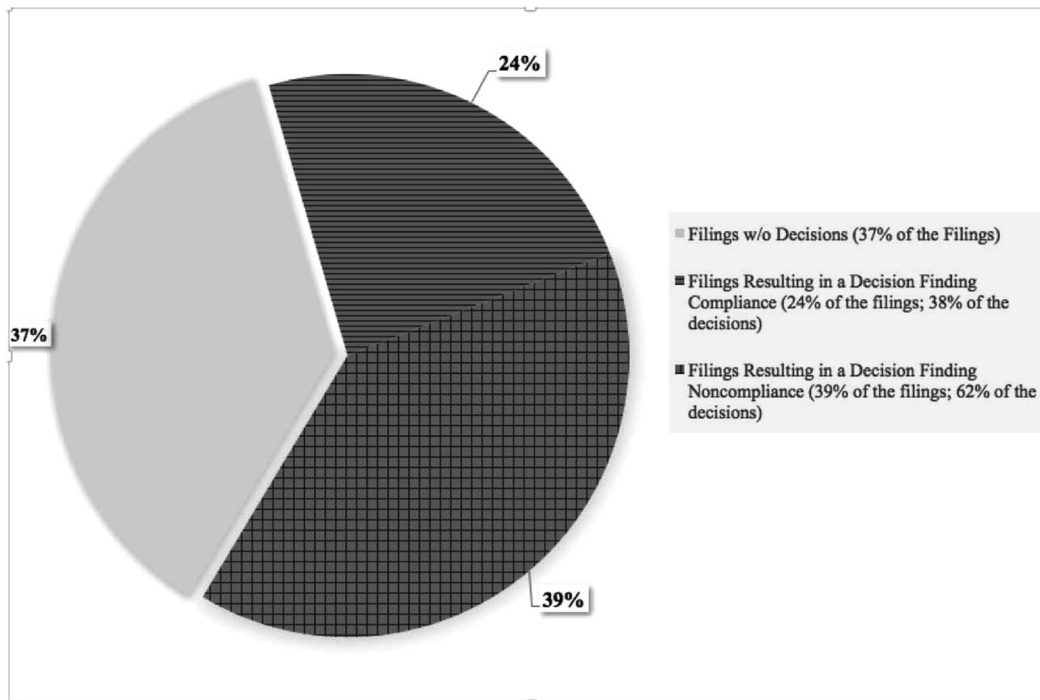
Figure 1 shows that the nationwide total volume for the most recent completed year was slightly more than 5,300 CP filings nationwide and that almost two thirds (63%) resulted in a decision letter. Moreover, within those ending in a decision, those with the findings of noncompliance (62%) were far more frequent than those with no such findings (38%). The respondents' accompanying comments identified three principal reasons for the filings that did not result in a decision: (a) the parties' resolution via mediation, (b) the complainants' acceptance of resolutions proposed by the school district, and (c) failure of the complaint to meet the filing requirements.

Summarizing the responses to the second survey item, *Table 1* summarizes the employment status and educational background of the CP investigators.

A review of *Table 1* shows the majority of CP investigators are regular SEA employees who perform this work as either part of or, to a lesser extent, the entirety of their duties. Moreover, the educational background in special education predominates (56%) as compared with law (26%). The percentages of investigators with law degrees and special education degrees do not total 100% for each row because some, although few, investigators have neither degree or both degrees. Moreover, the respondents' clarifying comments added that (a) some states purposely have a mix of some investigators with law degrees and others with special education degrees and (b) in a few states, a staff member with a law degree supervises or reviews the decisions of investigators without a law degree.

Table 2 displays the percentage of states that have provided various specified categories of training for their CP investigators. These percentages do not add

Figure 1. Overall distribution of CP filings (n = 5326).



up to 100% because many states have provided more than one type of training.

Table 2 shows that attendance at a national-level conference is the most common single category of training, although states often use various forms of in-house training.

Figure 2 shows the frequency of particular practices for investigating complaints and writing CP decisions across the states and D.C.

... attendance at a national-level conference is the most common single category of training [for CP investigators], although states often use various forms of in-house training.

As Figure 2 reveals, three of the specified practices are nearly universal across the jurisdictions: (a) the use of a template for CP decisions, (b) the authoring of CP decisions by the investigator, and (c) review of CP decisions by a supervisor. At the other extreme, less than one third of the states provide a mechanism for appealing CP decisions. The intermediate range included the reported frequencies for the use of a two-part test for procedural issues, which the survey form explained as requiring (a) a violation of a

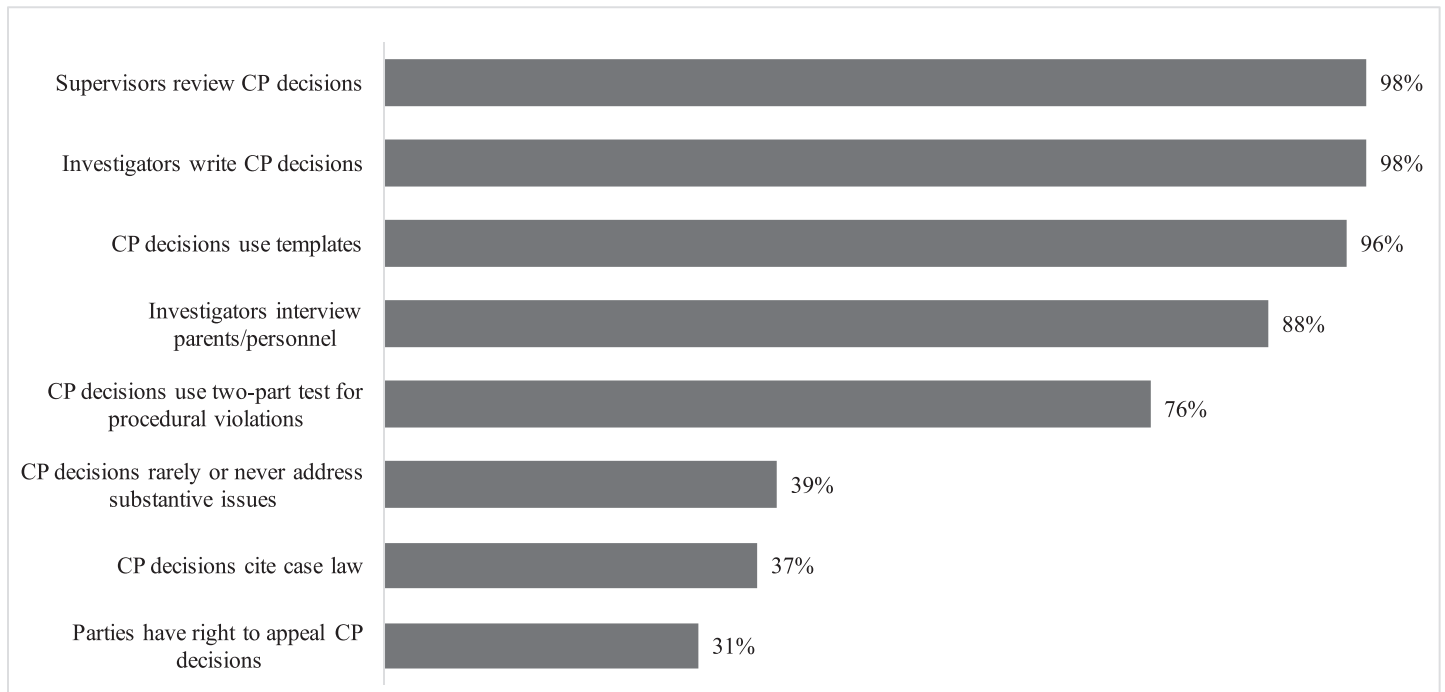
regulatory requirement and, if so, (b) a resulting loss of benefit to the child, to determine whether procedural claims amount to violations (76%), and the resolution of substantive issues (61%, which is the residual of the 39% who answered "rarely if ever").

The accompanying comments reported that—in contrast to case law—some states cite state policies and Office of Special Education Programs guidance in addition to federal and state regulations. The supplementary comments also clarified that in states that have a right to appeal, the appeal is at the SEA level, in state court, or both alternatives. Several other states reported that although they did not have an appeal process, they allowed parties to submit additional information and documentation to correct factual errors contained in the decision letter.

The final section of the survey contained open-ended items for recent improvements, top-priority problems, and suggested solutions. Several states responded to the first two of these inferably optional items.

For recent improvements, the most frequent responses were (a) increasing or improving training for investigators, (b) focusing on internal consistency through the use of templates and training, and (c) using new data systems to track complaints and resulting remedies. Other, less frequent responses

Figure 2. Investigative practices in descending order of percentage prevalence for the 51 jurisdictions.



included new filing systems or expanding information availability to make the system more user-friendly for parents and focusing on alternate dispute resolution mechanisms, including strengthened mediation, IEP facilitation, and hotline services, to reduce the number of formal complaints. Finally, a few states reported using the data from CP to better support school districts to improve student outcomes.

The primary reported present problem area was meeting the 60-day timeline in light of the increased volume and complexity of complaints. This problem appeared to be particularly acute for systemic issues, “frequent filers,” and deteriorated relationships in some districts. Less frequently reported problems were the difficulty in devising meaningful remedies and the challenges to get school districts to implement remedies in a timely manner.

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Fewer states offered potential solutions to present problem areas. Those that did centered on increasing

the number of investigators and training resources and expanding early dispute resolution options and trainings available to local education agencies. One state even suggested changes to the IDEA’s regulatory 60-day timeline to allow a longer investigation period for more complex complaints, such as those addressing systemic issues.

Discussion

As a threshold caveat, even for a carefully constructed questionnaire and a 100% response rate, the accuracy of the survey results depends on the knowledge and candor of the respondents. Although social desirability was not a likely problem, the bureaucratic demands on SEA personnel and the repeated requests for their responses suggest that disuniform diligence in reporting may have been an additional limitation. Within this overall limitation, the following discussion sequentially addresses each of the major findings.

Frequency and Outcomes

For the overall volume and outcomes distribution of CP filings, as reported in *Figure 1*, the 37% without a decision approximates the nearest year of the Center

for Appropriate Dispute Resolution in Special Education (2016) national data. The respondents' supplementary comments clarified that this proportion was attributable to nonqualifying complaints and those resulting in settlements via mediation or district initiation. For the remaining 63% of filings, the respective segments of 39% noncompliance and 24% compliance represent an outcome distribution of 62 to 38% against and for districts upon converting the denominator from overall filings to those with a decision. This outcomes distribution is reasonably close to the 64 to 36% ratio that Colker (2014) found for Ohio and the 66 to 34% average that Zirkel (2017) found for five active states, with the limited overall variance likely attributable in major part to differences in state coverage and time period. Overall, this outcomes distribution suggests more parent-favorable odds than for DPH, which generally has the opposite ratio, but the mitigating factors include the significantly higher rate of both settlements and compensatory, including reimbursement, relief for DPH cases and the much more notable interstate variance that Zirkel (2017) found. Moreover, the survey category of decisions resulting in findings of noncompliance did not differentiate the extent and nature of these findings.

Finally, these overall frequency and outcome findings mask wide variance among states, revealed by the examination of their separate responses to this item. For example, as the obverse to the aforementioned skew that Center for Appropriate Dispute Resolution in Special Education reported among relatively few states for DPH and, to a lesser extent, for CP, this survey revealed that a handful of the states—Alaska, Montana, Nebraska, North Dakota, South Dakota, and Wyoming—each had fewer than 10 CP filings in a year, whereas California had more than 900 filings. This difference inevitably had an impact on other features of CP systems, including staffing levels.

Personnel Status and Background

Within these varying staffing levels, the results summarized in *Table 1* reveal that the CP investigators are largely regular SEA employees who have a predominantly special education, rather than legal, background. In contrast, as Zirkel and Scala (2010) found, the DPH adjudicators tend to be part-time contractors and, to an even more pronounced extent,

with primarily legal, rather than special education, training and experience. This orientation not only reflects the difference between these decisional processes but also affects their respective outcomes, because CP decisions tend to be limited to the relevant regulations, whereas DPH decisions extend to the more legalistic nuances of the applicable case law (Zirkel, 2017).

Professional Development

Although not drilling down to the specific content of the training, the survey results for training, as summarized in *Table 2*, reveal that attendance at national conferences is the most frequent form of training but with substantial and overlapping proportions for the other three types of training. More specific examination of the responses to this item revealed that slightly more than half of all the states used all four of these types of trainings during the past 2 years. Conversely, only one state, Maine, reported an absence of training for CP investigators during the past 2 years. This resource investment likely represents a significant improvement from the approximate 80% baseline finding in Suchey and Huefner (1998). However, although the limited clarifying comments accompanying the respondents' entries for this item and the nonspecialized focus of current national training opportunities suggest that the training may not be primarily targeted at CP investigators, the survey item was limited to the types, not content, of the training. The open-ended section of the survey revealed that several states propose increased training resources and opportunities specific to CP investigators.

Consequently, the various governmental and private organizations that address IDEA implementation should focus on meeting the needs of this relatively neglected avenue of dispute resolution. Although emphasis on earlier dispute resolution merits continued investment and more definitive recommendations await follow-up research, here is our initial nomination of issues that merit special training attention for CP investigators: (a) meeting the regulatory deadline at a time of increasing volume and complexity; (b) identifying best practices for systemic complaints, frequent filers, and remedial orders; and (c) improving decision writing, including the more legally oriented components of fact finding and legal conclusions.

Practices and Procedures

The results for the item asking the extent of various practices and procedures for CP, as depicted in *Figure 2*, were largely expected at the two ends of the frequency spectrum. For example, at the infrequency end, the CP results for the use of case law (37%) and the availability of an appellate mechanism (31%) respectively align with previous empirical research (Zirkel, 2017) and legal synthesis (Zirkel, 2016). In contrast, the surprising findings were for the more intermediate frequency for using the two-part test for procedural FAPE (76%) and addressing substantive issues (61%). The aforementioned direct empirical analysis showed that (a) for procedural FAPE, a strict one-step compliance approach predominates rather than the addition of a second-step substantive loss that is characteristic of adjudicative cases (Zirkel, 2017), and (b) substantive issues were notably infrequent. One contributing factor to the disparity for these two findings may be social desirability. For the two-part test, the respondents may not have recognized that the provision in the 2004 amendments of the IDEA for requiring a second step for procedural FAPE applied only to DPH. More evident for the second finding, the IDEA's administering agency, Office of Special Education Programs, has issued repeated reminders for CP to address substantive as well as procedural issues in response to reports of the failure to do so (e.g., Letter to Chief State Sch. Officers, 2000; Letter to McWilliams, 2015). This lack of uniformity within the CP system, as well as that between the CP and DPH systems, is problematic for local special education leaders.

Needs and Improvements

The identification of training as the primary perceived need is subject to interpretation in the absence of further detail. In light of the other survey responses, the likely implication is that the specialized skills for conducting investigations and writing decisions are lacking in the educational background of many CP investigators. More specifically, those with special education degrees (56%) often lack preparation in the formats for interview documentation and legal writing, whereas those with law degrees (25%) often lack preparation in the specialized subject matter of special education.

Although recruitment of personnel with both degrees is one means of mitigating these training needs, more customized approaches for attaining and sharpening the requisite skills, including experience-based mentoring and collegial sharing, appear to be warranted.

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The identification of meeting the 60-day timeline as the primary perceived problem is not surprising in light of the increased volume and complexity of complaints. However, the lower frequency of identified solutions is of concern, particularly in light of resource limitations at SEAs. Rather than simply adding more CP personnel, more attention is needed in terms of not only improved efficiencies but also more global improvements, such as strengthening early dispute resolution options and mining the results of investigations to identify and improve systemic compliance.

Concluding Implications and Recommendations

Researchers. The recommendations for researchers include (a) follow-up surveys that provide more in-depth information for selected features, such as the extent and nature of noncompliance; the content of the various types of training; and the frequency and approaches for procedural and substantive FAPE, and (b) complementary qualitative research studies, such as open-ended interviews with selected stakeholders and ethnographic studies of special cases.

Practitioners. These findings have several significant implications for special education leaders. First, the emphasis on not only district-wide compliance but also early resolution will decrease the burden of costly investigations and corrective actions. Early resolution consists of more responsive communications and problem solving as well as alternate dispute resolution mechanisms, such as facilitated IEPs.

Second, special education leaders need to foster professional development for both general and special education personnel in the CP process, including its differences from the DPH process. This information should include the appropriate responses to potential or actual complainants as well as to CP investigators.

Third, special education leaders at the local level need to collaborate on a more concerted and focused basis with corresponding SEA leaders to develop policies and procedures that provide (a) more predictable and effective uniformity within the CP system and (b) more extensive and efficient data mining from the CP decisions for systemic improvement. The more coordinated availability of alternate dispute resolution alternative at the state and local levels for both the CP system as well as the DPH alternative is of benefit to the various stakeholders.

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