

EDUCATION LAW INTO PRACTICE

CADRE'S NATIONAL DATA ON THE FREQUENCY OF DUE PROCESS HEARING DECISIONS: SUGGESTED ADJUSTMENTS*

by

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INTRODUCTION

Within the context of P–12 schools, special education has been the primary locus of “legalization.”¹ The predominant basis for this legalization has been federal law, particularly the Individuals with Disabilities Education Act (IDEA), which originated in 1975.² Indeed, since the 1970s, the public school litigation in federal courts specific to special education students has exceeded that specific to general education students.³

The adjudicative avenue under the IDEA starts in most cases with filing for a due process hearing (DPH).⁴ Within the framework specified in the IDEA regulations,⁵ the state laws and systems for DPHs vary.⁶

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1. See, e.g., Perry A. Zirkel, *The Role of Law in Special Education*, 31 EXCEPTIONALITY 308, 310, 315 (2023) (citing for this initial characterization David Neal & David L. Kirp, *The Allure of Legalization: The Case of Special Education Reconsidered*, 48 L. & CONTEMP. PROBS. 63 (1985)).

2. 20 U.S.C. §§ 1401–19. For a systematic comparison of the IDEA with the successively less contributing federal laws, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, see Perry A. Zirkel, *The Latest Comprehensive Comparison of the IDEA and Section 504/ADA*, 416 EDUC. L. REP. 1 (2023). For a historical overview by the U.S. Department of Education, see *A History of the Individuals with Disabilities Education Act*, <https://sites.ed.gov/idea/IDEA-History>.

3. Perry A. Zirkel & Ben Frisch, *Longitudinal Trends of* [24]

Judicial Rulings in K–12 Education: The Latest Look, 407 EDUC. L. REP. 409, 413 (2023).

4. 20 U.S.C. § 1415(f). Not to be confused with the IDEA provision and subsequent case law specific to non-IDEA claims on behalf of IDEA-eligible students, the courts have established a rather robust exhaustion requirement for direct IDEA claims. See, e.g., Lewis M. Wasserman, *Delineating Administrative Exhaustion Requirements and Establishing Federal Courts' Jurisdiction Under the Individuals with Disabilities Education Act: Lessons from the Case Law and Proposals for Congressional Action*, 29 J. NAT'L ASS'N ADMIN. L. JUDICIARY 349 (2009). The alternate decisional dispute resolution avenue under the IDEA is the state complaint process, which is investigative rather than adjudicative. 34 C.F.R. §§ 300.151–300.153. For a systematic analysis of the differences and commonalities, see Perry A. Zirkel, *The Two Dispute Decisional Processes under the IDEA: An Empirical Comparison*, 26 CONN. PUB. INT. L.J. 169 (2017).

5. 34 C.F.R. §§ 300.507–300–515.

6. See, e.g., Jennifer F. Connolly et al., *State Due Process Hearing Systems under the IDEA: An Update*, 30 J. DISABILITY POL'Y STUD. 156 (2019) (canvassing the features of the state systems); Perry A. Zirkel, *State Laws for Due Process Hearings under the Individuals with Disabilities Education Act*, 38 J. NAT'L ASS'N ADMIN. L. JUDICIARY 1, 21 n.93 (2018) (representing one of a series of four articles charting state law

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The DPH mechanism has been subject to ongoing debate.⁷ One of the data-based considerations for policymakers and practitioners is a longitudinal analysis of the frequency of DPH decisions. However, as the federal government acknowledged,⁸ the early frequency analyses were hampered by a paucity of accurate national data.⁹

CADRE DATA

Although occasional national frequency analyses of DPHs were based on a clearly incomplete database,¹⁰ the federally funded Center on Appropriate Dispute Resolution in Special Education (CADRE), which started in 1998,¹¹ has filled the gap for approximately the last two decades. More specifically, among its plethora of useful resources,¹² CADRE annually provides national as well as state-by-state data concerning various indicators of

- additions for the various stages and types of DPH hearings under the IDEA).
7. See, e.g., Sasha Pudelski, *RETHINKING SPECIAL EDUCATION DUE PROCESS* (2013), <https://www.aasa.org/resources/resource/rethinking-the-special-education-due-process-system> (proposing to replace the due process hearing with a consultancy mechanism); S. James Rosenfeld, *It's Time for an Alternative Dispute Resolution Process*, 21 J. NAT'L ASS'N ADMIN. L. JUDICIARY 544, 546-47 (2012) (proposing the addition of an alternative of voluntary, binding arbitration); Elizabeth A. Shaver, *Every Day Counts: Proposals to Reform IDEA's Due Process Structure*, 66 CASE W. RES. L. REV. 143 (2015) (recommending elimination of the review officer option and replacement of the resolution session with a strengthened IEP facilitation option); Mark C. Weber, *In Defense of IDEA Due Process*, 29 OHIO ST. J. ON DISP. RESOL. 495 (2014) (contending that the criticism has been erroneous or overstated, instead suggesting that modest reforms suffice); Jane R. Wettach & Bailey K. Sanders, *Insights into Due Process Reform: A Nationwide Survey of Special Education Attorneys*, 20 CONN. PUB. INT. L.J. 239 (2021) (recommending improved training and compensation for hearing officers, clearer and more comprehensive rules for DPHs, and providing parents with support for expert witnesses and low-cost legal services); Perry A. Zirkel, *Over-Due Process Revisions for the Individuals with Disabilities Education Act*, 55 MONT. L. REV. 403 (1994) (suggesting restricting judicial review and streamlining the hearing process); Cali Cope-Kasten, Note, *Bidding (Fair)well to Due Process: The Need for a Fairer Final Stage in Special Education Dispute Resolution*, 42 J.L. & EDUC. 501 (2013) (recommending unspecified but major structural reform to improve subjective and objective fairness).
 8. GOV'T ACCOUNTABILITY OFF., *SPECIAL EDUCATION: NUMBERS OF FORMAL DISPUTES ARE GENERALLY LOW AND STATES ARE USING MEDIATION* 12 (2003), <https://www.gao.gov/products/gao-03-897> (recognizing that "national data are limited and inexact").
 9. See, e.g., Perry A. Zirkel & Karen Gischlar, *Due Process Hearings under the IDEA: A Longitudinal Frequency Analysis*, 21 J. SPECIAL EDUC. LEADERSHIP 22 (2008) (relying on survey of state education agencies while partially mitigating the limitations the NASDSE 2001 analysis due to incomplete response rate).
 10. E.g., Perry A. Zirkel & Cathy Skidmore, *National Trends in the Frequency and Outcomes of Hearing and Review Officer Decisions under the IDEA: An Empirical Analysis*, 29 OHIO ST. J. ON DISP. RESOL. 525, 540-41, 557 n.161 (2014); Perry A. Zirkel & Anastasia D'Angelo, *Special Education Case Law: An Empirical Trends Analysis*, 161 EDUC. L. REP 731 (2002) (using the commercial database Special Ed Connection® but recognizing its limited representativeness). The primary reason for using this database is that these longitudinal analyses extended beyond frequency to outcomes. For outcomes, it was only recently that a representative national database of DPH decisions was assembled, and it is limited to the six-year period from 2013 to 2018. See Perry A. Zirkel & Diane M. Holben, *The Outcomes of Fully Adjudicated Impartial Hearings under the IDEA: A Nationally Representative Analysis with and without New York*, 44 J. NAT'L ASS'N ADMIN. L. JUDICIARY 126, 132 (2023).
 11. See, e.g., Philip Moses, *Dispute Resolution in Special Education*, 22 DISPUTE RESOL. MAG. 34, 36 (Spring 2016); see also GOV'T ACCOUNTABILITY OFF., *supra* note 8, at 10 n.14 ("CADRE supports parents, educators, and administrators to benefit from the full continuum of dispute resolution options that can prevent and resolve conflicts."); Shaver, *supra* note 7, at 154 ("[CADRE] is an invaluable resource for statistics and other information about special education dispute resolution.").
 12. For the various available services (e.g., technical assistance, trainings, workgroups) and products (e.g., videos, family guides, online courses) for CADRE's purpose of "supporting the prevention and resolution of disputes through partnership and collaboration," see the CADRE website, <https://www.cadreworks.org/>

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dispute resolution activity under the IDEA, including the number of DPH decisions.¹³ The first year of these annual accounts was 2004.¹⁴ The primary source of these data is the annual Section 618 report¹⁵ that each state is required to submit to the U.S. Department of Education's Office of Special Education Programs (OSEP).¹⁶ Recently, CADRE announced the availability of a dashboard that allows users to access and analyze on a customized basis the national and state dispute resolution data since 2004.¹⁷

For the DPH process, the CADRE data includes successive indicators required and defined in the OSEP instructions for Section 618 reports.¹⁸ In turn, the indicators for DPHs, include “fully adjudicated hearings,”¹⁹ which are referred to herein more generically and succinctly as “DPH decisions.”²⁰

Various published analyses have used the CADRE data for DPH decisions²¹ or other dispute resolution indicators.²² The purpose of this short article is to suggest two adjustments

13. *E.g.*, CADRE, IDEA DISPUTE RESOLUTION DATA SUMMARY FOR U.S. AND OUTLYING AREAS: 2011–12 TO 2021–2022 (2023), <https://www.cadreworks.org/resources/cadre-materials/2021-22-dr-data-summary-national>. These reports provide indicators for mediation and the state complaint process as well as the DPH process, including resolution meetings, for each school year defined as July 1 of the calendar year to June 30 of the following calendar year. *Id.* at 1. The purpose of the national summaries is “to provide a historical look at dispute resolution data and to assist with the identification of trends and changes in the use of the IDEA dispute resolution processes over time.” *Id.*

14. For the first longitudinal national summary, which started in 2004–05, see IDEA DISPUTE RESOLUTION DATA SUMMARY FOR U.S. AND OUTLYING AREAS: 2004–05 TO 2014–15 (2016), <https://www.cadreworks.org/sites/default/files/2014-15%20DR%20Data%20Summary%20U.S.%20%26%20Outlying%20Areas.pdf>

15. The core basis these yearly reports is the IDEA provision, originally numbered Section 618, which requires each state to report within each year a wide array of data, including the number of “due process complaints filed” and “hearings conducted.” 20 U.S.C. § 1418(a). Although the dispute requirements of this statutory provision extend to mediations, including resulting settlement agreements, and expedited hearings, the dispute resolution items in the Section 618 reports extend to other indicators of the DPH avenue as well as to largely parallel indicators for the state complaint avenue. For the latest Section 618 reports, see IDEA Section 618 Data Products: Data Displays – Part B (2023), <https://data.ed.gov/dataset/idea-section-618-data-products-data-displays-part-b>.

16. More specifically, CADRE provided this summary of the data collection sources and process:

Data are collected from the following sources: (1) Section 618 data reported by states to [OSEP's ED

Facts Submission System]; (2) data published in OSEP's Annual Report to Congress; and (3) data adjustments collected from states by CADRE after OSEP data were locked. CADRE examines dispute resolution data for internally inconsistent values (based on report element definitions). When inconsistent values are found they are reconciled with OSEP. States are encouraged to submit notes or explanations regarding any conditions, anomalies, or corrections relating to the data included herein.

CADRE, *supra* note 13, at 1.

17. CADRE, National & State DR Dashboard (Jan. 2024), <https://www.cadreworks.org/national-state-dr-data-dashboard>.

18. *Supra* notes 13 and 15. For the instructions, which includes definitions for equivalent terminology, see U.S. DEP'T OF EDUC., *EMAPS USER GUIDE: IDEA PART B DISPUTE RESOLUTION SURVEY* (2023), <https://www2.ed.gov/about/inits/ed/edfacts/index.html> (“EMAPS IDEA Part B Dispute Resolution User Guide”).

19. *Id.* at 22. This manual of instructions provides the following definition for “hearing fully adjudicated”: “A hearing officer conducted a due process hearing, reached a final decision regarding matters of law and fact and issued a written decision to the parties.” *Id.* at 39. The other indicators specific to DPHs are, in successive order, (a) due process complaints filed, (b) resolution meetings held, (c) settlement agreements in resolution period, (d) DPH decisions within 45-day timeline, (e) DPH decisions within extended timeline, (f) due process complaints pending, and (g) due process complaints withdrawn, dismissed, or resolved without a hearing. *Id.* at 22.

20. This term herein does not include the relatively small number of expedited DPHs, for which the CADRE data separately reports the parallel indicators.

21. *E.g.*, Gina L. Gullo & Perry A. Zirkel, *Trends in*

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in the use of CADRE’s DPH decision data, with the first adjustment specific to national analyses and the second adjustment also applicable for analyses at the state level.

SUGGESTED ADJUSTMENTS

The first adjustment is specific to considering CADRE’s national DPH decision data. Specifically, this suggestion is to use the new dashboard to subtract the DPH decisions from New York from the national totals, thus providing for examining trends on a differentiated basis—i.e., with and without New York.²³ As explained in more detail elsewhere,²⁴ the reason for doing so is this state’s outlier status based on the New York City DPH decisions, which (1) account for approximately 95% of the state’s DPH decisions and amount to close to two-thirds of the national total, (2) are distinctive in their issues and outcomes, and (3) emanate from the City’s separate DPH system, which is beset by a staggering backlog and a daunting shift from private attorneys on a part-time basis to full-time administrative law judges.²⁵ Overlapping with New York City’s huge numbers and staggering backlog, added reasons for the suspect accuracy of the state’s dominant share of the national data are the inadequacy of its data-collection system²⁶ and the delays in reaching and reporting decisions.²⁷ As a result, it is worthwhile to examine the national data both with and without New York.

The second suggestion, which extends to trends analysis on the state as well as national level, concerns the aforementioned²⁸ “pending” category. Specifically, due to the inferably longstanding interpretation of the IDEA’s annual reporting requirement,²⁹ the DPH filings that do not reach a decision or the other identified disposition of “withdrawn, dismissed, or resolved without a hearing” within the specified period of a school year are categorized as

Impartial Hearings under the IDEA: A Comparative Enrollments-Based Analysis, 382 EDUC. L. REP. 454 (2020); Perry A. Zirkel & Gina L. Gullo, *Trends in Impartial Hearings under the IDEA: A Comparative Update*, 376 EDUC. L. REP. 870 (2020); Perry A. Zirkel, *Trends in Impartial Hearings under the IDEA: A Follow-Up Analysis*, 303 EDUC. L. REP. 1 (2014); Perry A. Zirkel, *Longitudinal Trends of Impartial Hearings under the IDEA*, 302 EDUC. L. REP. 1 (2014).

22. E.g., Eloise Pasachoff, *Special Education, Poverty, and the Limits of Private Enforcement*, 86 NOTRE DAME L. REV. 1413, 1428 (2011); Samantha Pownall, *Education Delayed Is Education Denied*, 63 N.Y.L. SCH. L. REV. 95, 100 (2018/2019); Joseph B. Tulman, Andrew E. Feinstein, & Michele Kule-Kurgoood, *Are There Too Many Due Process Cases?: An Examination of Jurisdictions with Relatively High Rates of Due Process Hearings*, 18 U.D.C. L. REV. 249, 252 (2015); Weber, *supra* note 7, at 508–09 (citing DPH filings data); J. Katherine McMurtrey, *The IDEA and Use of Mediation and Collaborative Dispute Resolution in Due Process Disputes*, 2016 J. DISP. RESOL. 187, 197 (2016) (using mediation data); GOV’T ACCOUNTABILITY OFF., SPECIAL EDUCATION: IDEA DISPUTE RESOLUTION ACTIVITY IN SELECTED STATES VARIED BASED ON SCHOOL DISTRICTS’ CHARACTERISTICS 31 (2019), <https://www.gao.gov/products/gao-20-22> (using DPH filings, mediations, and state complaint filings).

23. *Supra* note 17 and accompanying text.

24. Zirkel & Holben, *supra* note 10, at 137–42.

25. E.g., Reema Amin, *As Special Education Complaints Soar in NYC, the State Wants Hearing Officers to Take More Cases*, CHALKBEAT (Nov. 15, 2021), <https://ny.chalkbeat.org/2021/11/15/22784104/nyc-special-education-complaints-backlog-hearing-officers> (reporting a backlog of more than 16,300 cases as of November 9, 2021, which was an increase of 34% from the previous year and which was three months before the start of the shift to the new system).

26. See, e.g., Pownall, *supra* note 22, at 107 (referring to the state’s data system as “inadequate at best”). The suspect dramatically up-and-down pattern of the reported adjudicated and pending decisions seems to reflect this inadequacy. *Infra* note 40.

27. The delays have caused a pending class action lawsuit. *J.S.M. v. N.Y.C. Dep’t of Educ.*, No. 20-cv-705 (E.D.N.Y. filed Feb. 7, 2020). For the complaint and related filings including an order on motion for partial summary judgment on Sept. 6, 2023, see *J.S.M. v. New York City Department of Education* (1:20-cv000705), Ct. LISTENER (last updated Nov. 6, 2023), <https://www.courtlistener.com/docket/16820426/jsm-v-new-york-city-department-of-education/>.

28. *Supra* note 19.

29. *Supra* note 15 and accompanying text.

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“pending.”³⁰ Inasmuch as the complaints filed for that year that reach a decision after the June 30th end of that year are not included in the reports for the following years, they remain in limbo, serving as potentially significant missing data in the yearly accounting of DPH decisions. Due to the generally pronounced delays from filing to decision for the DPH avenue,³¹ the percentage of DPH filings in the pending category from 2011–12 to 2021–22 has averaged approximately (i.e., without weighting for the base number each year) 30% and reflects an overall upward trajectory.³²

The suggested adjustment, as a rather simple estimated extrapolation, is to increase the reported number of DPH decisions for the given year by an amount calculated by multiplying the number of pending cases for that year by the effective adjudication rate for the subsequent year.³³ More specifically, the effective adjudication rate is the percentage based on the numerator being the number of DPH decisions for the following year and the denominator being the number of filings for that year minus the number of pending cases for that year. For example, CADRE’s dispute resolution summary for the U.S. and outlying areas reported that in 2016–17 the number of DPH decisions was 2,119 and the pending cases was 4,517.³⁴ For the adjustment, the effective adjudication rate for the following year (2017–18) was that year’s number of DPH decisions (1,933) divided by the net figure of 13,602, which is the number of filings (19,544) minus the number of pending cases (5,942). The resulting effective adjudication rate is 14.2%. Multiplying this adjudication rate to the 4,517 pending cases for 2016–17 results in an adjustment increase of 641. This increase adjusts the reported number of DPH decisions for 2016–17 from 2,119 to 2,760.³⁵

The basis for this adjustment estimate is that the average filing-to-decision period for “fully adjudicated hearings” is 200.1 days.³⁶ Thus, although some pending cases that ended in a decision after the year in question did not do so during the next 365+ days, with the variable “+” representing the number of days from filing the DPH complaint to the end of the year in question, these cases would be relatively few and, in any event, generally subject

30. *Supra* note 13; see also *EMAPS USER GUIDE*, *supra* note 18, at 23 (instructing the respondent state to enter the number of due process complaints “pending as of the end of the reporting [year]”).

31. See generally Diane M. Holben & Perry A. Zirkel, *Due Process Hearings under the Individuals with Disabilities Education Act: Justice Delayed . . .*, 73 ADMIN. L. REV. 833 (2021).

32. CADRE, *supra* note 13, at 14. Yet, the proportion of filings that ended in DPH decisions during the same year averaged 11% on an unweighted basis and reflected, on a more limited basis, a downward trajectory. *Id.* In contrast, due in part to the shorter limitations period and shorter specified period from filing to decision, the state complaint process has a much higher percentage of decisions within their timeline and, thus, a much lower percentage of in their pending category. *E.g., id.* at 8, 12.

33. The limited exception is for 2021–22, which uses the same year to calculate the adjustment rate, because the data for the following year were not yet available.

34. These figures were taken from CADRE’s “IDEA Dispute Resolution Data Summary for U.S. and Out-

lying Areas: 2011–2012 to 2021–2022.” available at <https://www.cadeworks.org/sites/default/files/resources/2023%20National%20Data%20Summary%20FINAL%20-%20Accessible.pdf>

35. This limited example is specific to the “U.S. and Outlying Areas” scope of the CADRE-published summary, and the resulting percentage increase will vary based on the number of pending cases for the year in question and the multiplier of the effective adjudication rate for the subsequent year. *Id.* As an alternative example more specifically based on CADRE data for the 50 states and the District of Columbia, available at the new dashboard, <https://www.cadeworks.org/national-state-dr-data-dashboard>.

| | 2012–13 | 2013–14 | 2014–15 | 2015–16 | 2016–17 |
|---------------------|---------|---------|---------|---------|---------|
| Pending Decisions | 3,192 | 3,782 | 3,330 | 5,931 | 4,466 |
| Adjudication Rate* | 11.8% | 12.4% | 8.2% | 8.0% | 9.9% |
| Adjustment Increase | 397 | 313 | 265 | 590 | 498 |

| | 2017–18 | 2018–19 | 2019–20 | 2020–21 | 2021–22 |
|---------------------|---------|---------|---------|---------|---------|
| Pending Decisions | 5,909 | 8,621 | 9,541 | 12,474 | 12,776 |
| Adjudication Rate* | 11.1% | 17.3% | 12.2% | 10.4% | 15.0%* |
| Adjustment Increase | 1,024 | 1,059 | 997 | 1,868 | 1,914 |

* based on following year except in 2021–22, which based the adjudication rate on the same year due to current lack of data for 2022–23.

36. Holben & Zirkel, *supra* note 31, at 853.

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to a rather similar multiplier. However, this second adjustment also warrants a “with and without” New York differentiation, because New York is already on the high side for its average filing-to-decision period,³⁷ and its backlog is bound to lengthen this average until the new hearing officer system sufficiently mitigates the problem.³⁸

Figures 1 and 2 illustrate the respectively suggested two adjustments for the period of the latest CADRE dispute resolution summary report, with two customized differences in the overall scope of cases: (a) limitation to the 50 states and the District of Columbia rather than the U.S. and outlying areas;³⁹ and (b) exclusion of the relatively few expedited decisions.⁴⁰

Figure 1 focuses on the first adjustment alone, thus limited to the CADRE data with and without New York.

37. *Id.* at 867–68 (reporting an average of 223 days, compared and contributing to the national average of 200 days).

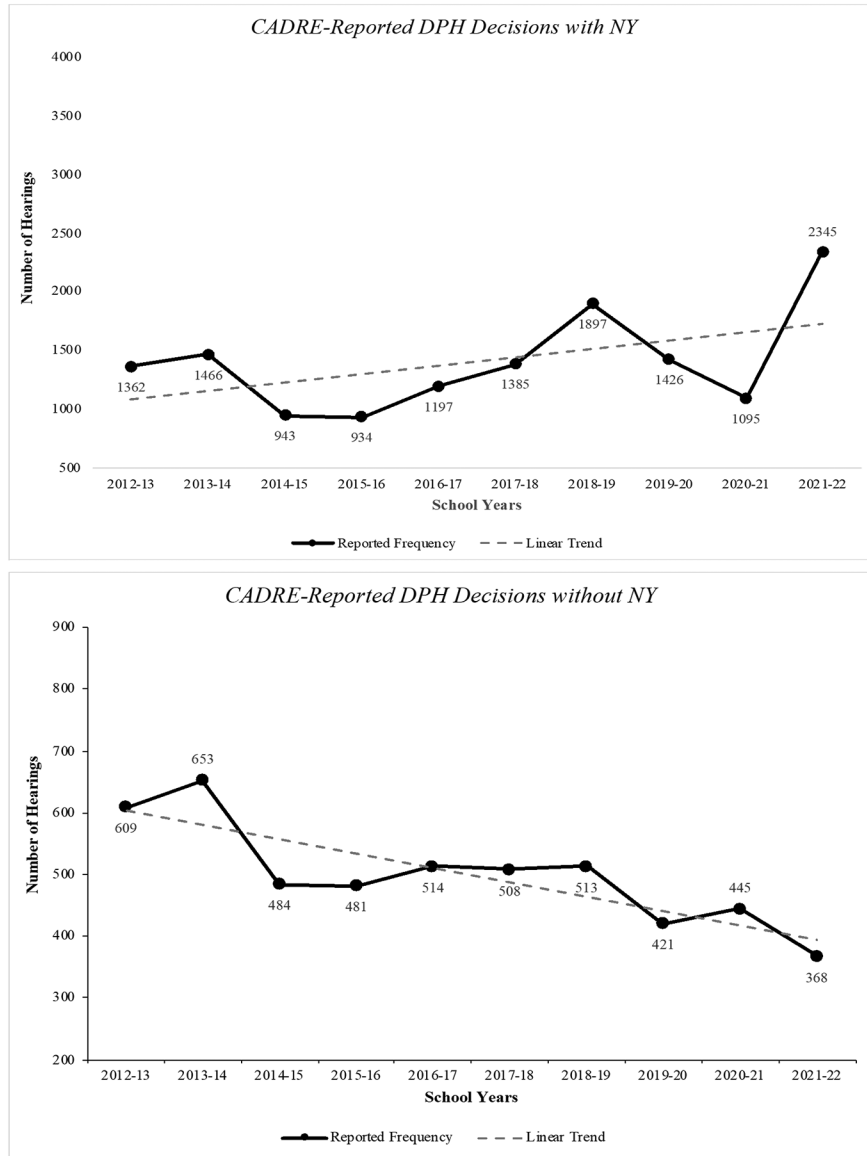
38. *Supra* note 25 and accompanying text. During the shift, the grandfathering of the previous part-time hearing officers, who had shockingly skewed caseloads, had to compound the transitional delays. *E.g.*, Alex Zimmerman & Yoav Gonen, *1,713 Cases, One Hearing Officer: How NYC’s Special Ed Complaint System Has Reached a Breaking Point*, CHALKBEAT, Dec. 19, 2019, <https://www.chalkbeat.org/newyork/2019/12/5/21121751/1-713-cases-one-hearing-officer-how-nyc-s-special-ed-complaint-system-has-reached-a-breaking-point/> (reporting that one of these hearing officers had 1,713 open cases and another had 574 cases at the end of 2019).

39. This more limited scope aligns with the usual focus of national trends analysis of DPH decisions. *Supra* note 21. Moreover, it avoids including Puerto Rico, which is even clearer outlier than New York. *See, e.g.*, Tulman et al. *supra* note 22, at 253 (characterizing the Puerto Rico, New York, and the District of Columbia as outliers). *But cf.* Zirkel & Gullo, *supra* note 21, at 873 (finding a major reduction in DPH decisions for the District of Columbia from 2006–11 to 2012–17, leaving Puerto Rico and New York as the two outliers).

40. This limitation also conforms to the usual scope of DPH analyses. *Supra* note 21.

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Figure 1. CADRE-Reported DPH Decisions from 2012-22



Comparing the top and bottom graphs of Figure 1 reveals rather dramatic differences between the national trend with and without New York for the ten-year period to the most recent currently available year of 2021–22. More specifically, the national trend of DPH decisions that includes New York with the other states and D.C. approximates an overall upward trajectory, whereas the corresponding trend after removing New York reveals an overall downward trend.⁴¹

41. The difference is attributable to the distinctive unevenly upward pattern of the New York cases, which was as follows:

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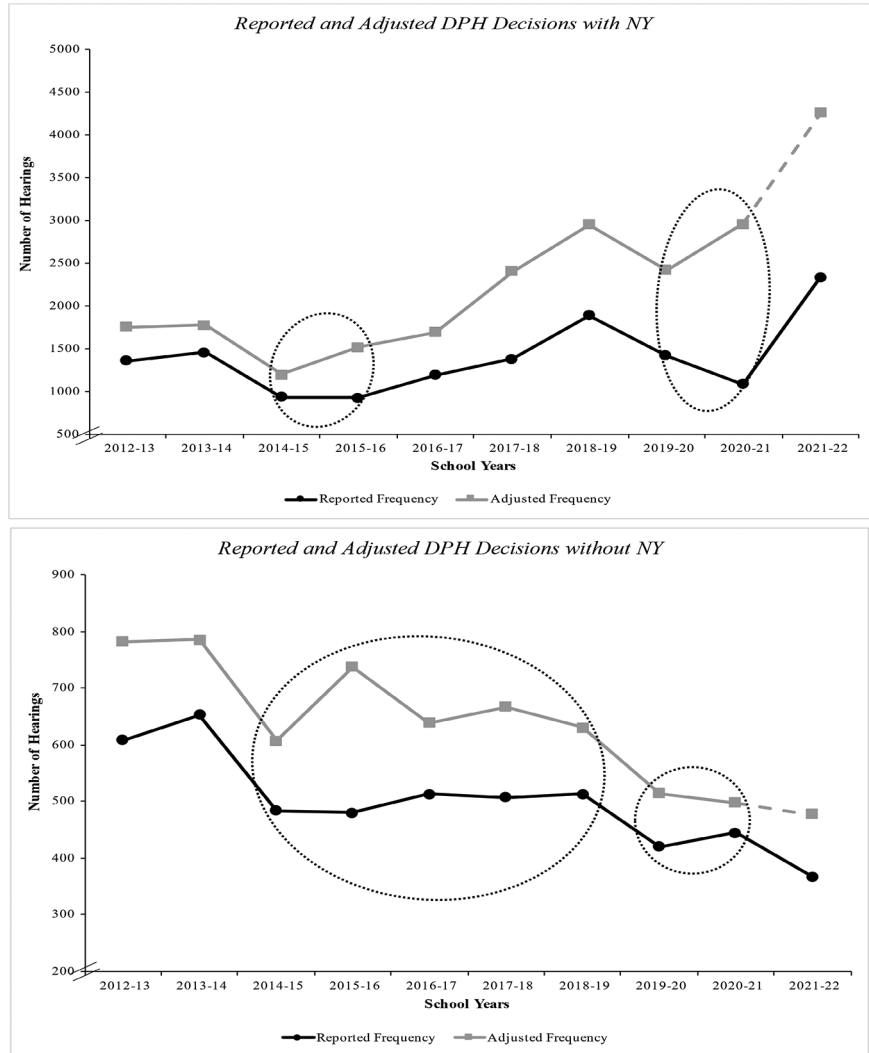
To illustrate the second adjustment on the national level both with and without New York, Figure 2 retains the same black lines for the CADRE data and adds (a) a gray line representing the adjusted estimate for the projected adjudication within the “pending” category and (b) light dotted ovals to identify notable changes for not just degree but also direction of the slope from one year to the next. The broken-gray line for the segment connecting to the final year, 2021–22, represents the limitation that the multiplier for that year is based on that same year’s effective adjudication percentage due to the current lack of availability of the 2021–22 data.⁴²

| | | | | | |
|---------------|---------|---------|---------|---------|---------|
| | 2012–13 | 2013–14 | 2014–15 | 2015–16 | 2016–17 |
| DPH Decisions | 753 | 813 | 394 | 453 | 683 |
| Pending Cases | 1,301 | 1,726 | 1,219 | 1,747 | 2,363 |
| | 2017–18 | 2018–19 | 2019–20 | 2020–21 | 2021–22 |
| DPH Decisions | 877 | 1,384 | 1,005 | 650 | 1,977 |
| Pending Cases | 370 | 6,229 | 8,022 | 11,343 | 10,446 |

42. *Supra* note 33.

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Figure 2. CADRE-Reported DPH Decisions with Adjustment for 2012—22



Note: The dotted ovals pinpoint deviations in direction, and the broken grey line indicates the limited adjustment note 33) for the final year.

First, examination of the black and grey lines of Figure 2 reveals that for both the “with” and “without” New York graphs the adjustment increases the number of DPH decisions each year to a notable and varying extent.⁴³ Second, this varying increase results in various changes in the slope of the adjusted totals represented by the gray line, with the dotted ovals

43. As *supra* note 35 shows, the varying but substantial extent of the percentage increases is attributable to not only the effective adjudication rates but also the sizable numbers of pending cases from year to year. More specifically, the following summary provides the extent of the percentage difference between the original and adjusted totals for with and without New York, respectively:

| | | | | | |
|------------------------|---------|---------|---------|---------|---------|
| | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 2016-17 |
| Increase for “with NY” | 29% | 21% | 28% | 63% | 42% |
| Increase for “w/o NY” | 29% | 20% | 26% | 53% | 24% |
| | 2017-18 | 2018-19 | 2019-20 | 2020-21 | 2021-22 |
| Increase for “with NY” | 74% | 56% | 70% | 171% | 82% |
| Increase for “w/o NY” | 31% | 23% | 22% | 12% | 29% |

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pinpointing these major differences in trajectory: (1) for the “without NY graph, the up-and-down movement in the corrected estimates from 2014–15 to 2018–19 rather than the relatively level trajectory in the original data for these same years and the opposing trajectories between the original and adjusted data for the segment from 2019–20 to 2020–21, and (2) for the “with NY” graph, the marked increases in the corrected estimate in the segments from 2014–15 to 2015–16 and from 2019–20 to 2020–21 rather than the respective level and decreasing trajectories in the original data for these years.

DISCUSSION

The generally limiting consideration is that these trends analyses are inevitably imprecise. First, the underlying CADRE-reported data are inexact despite the successive corrections by OSEP and CADRE.⁴⁴ Such relatively long government surveys, despite the major advantage of having an almost 100% response rate, are initially dependent on the knowledgeability and diligence of the agency representative who provides the data entries and their interpretation of the detailed instructions. For example, an analysis of selected data from a separate governmental survey found marked errors despite careful quality controls in the data collection process.⁴⁵ Similarly, in applying the OSEP manual that defined “fully adjudicated hearings,”⁴⁶ the co-authors of a more closely related published analysis found it necessary to engage in a time-consuming process to elaborate the criteria and apply them with relative consistency.⁴⁷ Second, the two suggested adjustments are similarly subject to question. For both adjustments, the exclusion of the U.S. “outlying areas” and the inclusion of the District of Columbia are intervening judgment calls. On an overlapping basis, the first adjustment’s differentiation of New York puts in question the lack of comparable treatment for Puerto Rico and, perhaps, D.C.⁴⁸ Finally, the second adjustment is only an extrapolated estimate, which was a judgment call for not only its use of the adjudication percentage of the next year as the multiplier but also its placement of the correcting addition to the original rather than the next year.

With this overall caution against overgeneralized precision, the differentiation of New York shows the value for both researchers and ultimate users, including policymakers, of examining national trends both with this undeniable major source of DPH decisions and for the remaining jurisdictions as a separable “world” in this context.⁴⁹ The recommendation is the differentiation, not deletion, of New York for this purpose.

Similarly, the suggested adjustment to calculate the estimated disposition of the relatively large “pending” category of DPH cases reveals rather significant increases and slope changes in the overall fully adjudicated trends. It represents an additional way to examine the longitudinal trends on either a national or state basis.⁵⁰ The advent of CADRE’s latest innovation, its dashboard, enables users to do such calculations on their own. Conversely, the

44. *Supra* note 16.

45. Perry A. Zirkel & Gina L. Gullo, *Public School Rates of § 504 Only Students: The Next Update*, 387 *EDUC. L. REP.* 1, 7–8 (2021) (finding examples of clearly questionable data in the “504-only” items in the Civil Rights Data Collection).

46. *Supra* note 19.

47. Holben & Zirkel, *supra* note 31, at 849–52.

48. *Supra* note 39.

49. *Cf.* Zirkel & Holben, *supra* note 10, at 142–43 (“Indeed, although previous analyses have concluded that special education litigation—at both the hearing officer and the court levels—amounts to ‘two worlds,’ with a small cluster of jurisdictions accounting for most of the frequency, this analysis demonstrates that New York City represents a distinct planet within the universe of DPH decisions.”).

50. Applying such an adjustment to the other decisional dispute resolution mechanism under the IDEA, the state complaint process, is less important due to the

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recommendation is not for OSEP to change the scope of its 618 reports, because the ongoing system has provided uniformity and the addition of another category is of questionable cost-benefit in terms of both accuracy and efficiency, especially in light of the already expansive supervisory responsibilities of state education agencies under the IDEA and their continuing cumbersome data submission and collection tasks.⁵¹ Hopefully, this second suggested adjustment will stimulate other interested individuals or organizations in the CADRE community to formulate an improved way to account for the disposition of the data in the pending category.

much more limited size of its pending category. *Supra* note 32.

cases reported in the pending category to check the numbers in our adjusted estimates to determine their specific extent of accuracy.

51. However, we would welcome any state education agencies that keep track of the eventual disposition of