

# *Frequency Trends of Court Decisions Under the Individuals With Disabilities Education Act*

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- The purpose of this analysis is to provide systematic and up-to-date data on the frequency of the Individuals with Disabilities Education Act (IDEA, 2012) court decisions on a state-by-state basis, not only overall, but in relation to special education enrollments.
- This empirical analysis revealed notable differences among state rankings in the frequencies of court decisions under the IDEA on overall and per capita bases for the period of 1979–2013.
- The findings reveal that on an overall basis, 10 jurisdictions, led by New York, Pennsylvania, and the District of Columbia, accounted for almost two thirds of the IDEA court decisions, while the 10 jurisdictions with the fewest number of decisions, led by North Dakota, Wyoming, and Utah, accounted for less than 3% of decisions.
- The findings fill an existing gap in the research and provide special education administrators and policy makers the most comprehensive available data on the frequency of the judicial decisions, which is the most costly level of dispute resolution under the IDEA.
- The primary policy recommendation is to put a concerted priority on the limited number of jurisdictions in the high frequency per capita group rather than investing efforts on revising the adjudicative procedures in the next IDEA reauthorization.
- The primary research recommendation is for follow-up studies to identify the factors that contribute to the wide variation in frequency of judicial litigation rates among and within the states.

The Individuals with Disabilities Education Act (IDEA, 2012) represents federal policy that provides partial funding to states in exchange for providing special education to eligible students (Neal & Kirp, 1985). Originating with the passage of the Education for All Handicapped Children's Act in 1975, the successive funding reauthorizations, including the amendments in 1990 that changed the name of the legislation to the IDEA, added to the length and complexity of the procedural requirements, including those specific to adjudication. For example, the 2004 amendments added special requirements, including a resolution session and notice pleading, for the administrative level of adjudication. While the majority of complaints are resolved prior to or during a formal due-process hearing, some cases result in multiple decisions in state or district courts, courts of appeals, and, in very few instances, the Supreme Court

(Newcomer & Zirkel, 1999). The two primary litigation-specific developments that appear to contribute to the number of decisions per case are (a) the 1986 amendments providing attorneys' fees for prevailing parents and (b) the 2004 amendments introducing reverse attorneys' fees for frivolous cases (e.g., Saia, 2008).

The legalized structure of the IDEA represents a policy of "cooperative federalism" (*Bay Shore Union Free School District v. Kain*, 2007, pp. 733–734), which allows states to heighten and broaden—not subtract from—the IDEA foundational floor. Thus, for the administrative level of adjudication, each state must provide an impartial due process hearing, but may determine the nature of the hearing officer system, including whether to have a second review officer level prior to judicial proceedings (20 U.S.C. § 1415[f]). The results vary widely, although states seem to be gradually gravitating to a one-tier system of full-time

hearing officers (Zirkel & Scala, 2010). Similarly, for judicial proceedings, the IDEA provides for the concurrent jurisdiction of state as well as federal courts, thus providing for variety as well as uniformity.

While the causes are unclear, litigation under the IDEA is on the rise (e.g., Samuels, 2011). It is costly in terms of not only fiscal resources (e.g., Andren, 2010; Dalton, 2013) but also parent–district relationships (Lanigan, Audette, Dreier, & Kobersy, 2001).

Although far less frequent than due process hearings, judicial appeals are far more costly with an estimated annual expenditure per court case at approximately 9 times that for each due process hearing (Chambers, Harr, & Dhanani, 2003). Accurate data are needed to identify solutions to the increasing litigation and ensure students with disabilities receive a free and appropriate education. Unfortunately, empirical research at the judicial level—where the costs are highest and the precedents are set—has been largely limited to aggregate national data without any adjustment for the corresponding number of special education students for each time period and/or jurisdiction (Zirkel & Johnson, 2011). Furthermore, recent analyses suggest that failing to account for enrollment in frequency analyses, at least at the hearing officer level, provides policy makers and practitioners an inaccurate picture of the extent of the frequency of special education litigation. For example, Zirkel (2014a) found that while six states accounted for 90% of the hearing officer adjudications in recent years, many of these states were considered average in terms of frequency of decisions when special education enrollments were taken into account. In contrast, some smaller states with overall lower frequencies were found to have significantly higher frequencies of decisions when considered per capita.

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Policy makers and practitioners need current systematic and up-to-date data on the frequency of IDEA court decisions on a state-by-state basis not only overall but also in relation to special education enrollments. The purpose of this study is to help fill this gap in available data. Using "states" generically

to extend to the District of Columbia and Puerto Rico, the specific research questions are:

- Which states account for the most court decisions under the IDEA (a) on an overall basis and (b) on a per capita basis (i.e., adjusted for each 10,000 students in special education)?
- Which states account for the fewest court decisions under the IDEA (a) on an overall basis and (b) on a per capita basis (i.e., adjusted for each 10,000 students in special education)?

## Trends in IDEA Litigation

Previous frequency analyses of IDEA decisions focused on two primary levels of adjudication: (a) administrative and (b) judicial. At the administrative level, the exclusive national publisher is LRP ([www.lrp.com](http://www.lrp.com)), which selects—based on what it receives from the states, current issues, and geographic diversity—hearing and review officer decisions for its hard-copy publication, the *Individuals with Disabilities Education Law Report* (IDELR) and for its broader, electronic database, Special Ed Connection®. At the judicial level, various competing sources report court decisions nationally, although it is generally understood that the officially published decisions have more precedential weight. In the context of special education, Special Ed Connection® provides the most extensive sampling of court decisions under the IDEA, far exceeding the number of cases that are officially published.

## Administrative Level

The relevant research has been more comprehensive and current at the administrative level of IDEA adjudication. In an early study of IDELR-published hearing and review officer decisions from 1977 to 2000, Zirkel and D'Angelo (2002) found an overall upward trend, particularly in the second half of this 14-year period. However, they limited their jurisdictional comparisons to the regions of the federal circuit courts of appeals, finding the highest frequency of IDELR-published decisions in the states in the circuits in the Northeast and far West. Upon adjusting these numbers in relation to special education enrollments, they found that the District of Columbia was the leader, with the states in the Second Circuit—Connecticut, New York, and Vermont—accounting together for a distant second place.

More recent national analyses have focused on the first tier (i.e., hearing officer decisions). For the leading analysis limited to IDELR-published decisions, Zirkel and Skidmore (2014) found the following rank order of frequency of hearing and review officer decisions among the states for the period 1978–2012: 1) California, 2) New York, and 3) Massachusetts, Pennsylvania, and Texas (tie).

Other national frequency analyses more completely extended to all hearing officer decisions, although the results were dependent upon the accuracy of state reporting of these data. First, updating Ahearn's (2002) survey, Zirkel and Gischlar (2004) tabulated the number of adjudicated hearings per state, not including the District of Columbia, for 1991–2005 on both an overall and per 10,000 students in special education basis. They found that the following five states in rank order accounted for 80% of the hearing officer decisions on an overall basis: 1) New York, 2) New Jersey, 3) Pennsylvania, 4) California, and 5) Maryland. Upon recalculating the frequencies on a per capita basis, they found the following changes in rankings: 1) New York, 2) New Jersey, 3) Hawaii, 4) Connecticut, and 5) Maryland.

In more recent analyses based on the U.S. Department of Education's database for school years 2005–2006 through 2010–2011, Zirkel (2014b) found that the overall rankings changed when the analysis was extended to the U.S. territories. More specifically, Puerto Rico and District of Columbia moved to first and second place, respectively, while New York, California, and Pennsylvania moved to third, fourth, and fifth place. However, similar to earlier analyses, the rankings changed when ranked on a per capita basis: 1) District of Columbia, 2) Puerto Rico, 3) Virgin Islands, 4) Hawaii, and 5) New York.

## Judicial Level

The empirical, national frequency analyses of judicial decisions in special education are much more limited, particularly in terms of state-by-state activity. A few studies found a continuing upward trend of IDEA court decisions nationally (e.g., Newcomer & Zirkel, 1999; Zirkel & D'Angelo, 2002; Zirkel & Johnson, 2011), but their analyses did not extend to a state-by-state comparison.

More pertinent, a pair of early analyses by staff members of the publisher of IDELR addressed state frequencies, although reaching partially conflicting results and not extending to per capita calculations.

In the first one, Maloney and Shenker (1995) ranked all 50 states and the District of Columbia according to their respective frequencies of IDELR-published decisions for the period from 1975 to early 1995. They provided negligible information about their methodology, including the specific boundaries for selection, thus leaving the precision of their results in question. Within this overall limitation, they found eight jurisdictions accounted for 49% of the 1,142 decisions: 1) New York, 2) Pennsylvania, 3) Illinois, 4) District of Columbia and New Hampshire (tie), 6) California, 7) Virginia, and 8) Massachusetts. In contrast, the eight jurisdictions with the lowest frequencies accounted for only 1% of the total decisions. For the 51 jurisdictions, Alaska ranked last, while Wyoming and Nevada tied for 49th; Utah, New Mexico, and Idaho tied for 46th; and South and North Dakota tied for 44th.

....

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Second in this pair, Gorn's (1996) analysis for approximately, although not exactly, the same period provided at least some methodological information—specifically that the scope excluded "opinions from class-action cases raising more 'purely' legal disputes, cases in which parents are not parties (for example, interagency disputes) and those small number of opinions that, for one reason or another did not truly advance a position advocated by either party" (p. 31). Similar but not identical to Maloney and Shenker's (1995) results, Gorn found the following rankings for the high frequency group, which accounted for 50% of the 1,001 reviewed decisions: 1) New York, 2) Illinois, 3) District of Columbia, 4) Pennsylvania, 5) Virginia, 6) California and New Hampshire (tie), and 8) Tennessee. Moreover, Gorn's findings for the lowest frequency jurisdictions differed further from Maloney and Shenker's. Based on the addition of Puerto Rico to the 51 jurisdictions, Gorn's bottom group in ascending order was as follows: Nevada, New Mexico, and Alaska: tie for last place; Utah: 49th; Puerto Rico and North Dakota: tie for 47th; and Hawaii and Colorado: tie for 45th. However, Gorn's limited information about her selection criteria and her identification of

approximately 7% of her total as being “non-IDEA claims” (p. 33) similarly suggest caution regarding her findings.

More recently, Karanxha and Zirkel (2014) examined trends in IDEA litigation on both a longitudinal and jurisdictional basis. The findings indicated that the Second Circuit region (New York, Vermont, and Connecticut) had the highest volume and the Tenth Circuit (Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming) had the lowest volume of these decisions. The relevance of findings are limited, however, as the authors restricted their analyses to the frequency of officially published decisions, rather than those in the broader database of Special Ed Connection®, and focused solely on federal circuit court regions, rather than the separate states within them.

More up-to-date analyses of the IDEA judicial activity on a state-by-state basis, especially in light of the 1997 and the 2004 amendments of the IDEA, are not available. Moreover, none of the previous state-by-state frequency analyses of court decisions under the IDEA provide the corresponding data and rankings in relation to special education enrollments.

## Uncovering Trends in IDEA Court Decisions

The time frame for the pertinent decisions analyzed in this study was from January 1, 1979, to December 31, 2013. The starting point allowed for the initial implementation of the original legislation, which was the Education for All Handicapped Children Act in 1975, and its regulations, which went into effect in 1977. Among the successive alternatives of using (a) the case, (b) the decisions for the case, and (c) the claim rulings within the decision, depending on the purpose of the research (Zirkel & Lyons, 2011), the unit of analysis selected for this study was the decision. The reason was that each court decision has associated costs and other impacts on districts and families.

The source of decisions was LRP’s Special Ed Connection®. Due to this electronic database’s system limits of 1,000 decisions per search, we conducted separate searches for each year from 1979 to 2013. We limited the search to IDEA judicial decisions via the search string “(Individuals with Disabilities Education Act) or (Education for All Handicapped Children Act).” The search resulted in a total of 5,055 state and federal court decisions for the 50 states,

Puerto Rico, and the District of Columbia. For decisions at the federal appellate levels—the Circuit Courts of Appeal and the Supreme Court—we identified the state where the case arose for the state-by-state tabulations; the citation for the other cases expressly revealed the state designation.

Because the state-by-state tabulations were akin to a cross-sectional snapshot rather than a longitudinal movie, the analyses for both research questions were based on an average of enrollments for the entire period. More specifically, we averaged each state’s IDEA enrollment data for 1976 (U.S. Department of Education, 1995), 1993 (U.S. Department of Education, 1995), and 2010 (Technical Assistance and Dissemination, n. d.). The average special education enrollments represented 1976–2010 but the corresponding frequency of court decisions represented the years of decision, 1979–2013. Despite the perceived discrepancy, the 1976 data represents the only complete state-by-state enrollment data available prior to 1992, when the Office of Special Programs changed its reporting criteria (U.S. Department of Education, 1995). In addition, the three-year adjustment creates an estimated filing date that corresponds more directly with the enrollment data. The rounded approximation was based on Zirkel’s (2011) finding, the only of its kind, of an average of 2.8 years between initial filing of a complaint and a final judicial decision. To calculate each state’s per capita ratio per 10,000 students (e.g., Zirkel, 2014b; Zirkel & Gischlar, 2004), the average enrollment for 1976 to 2010 served as the denominator and the overall number of decisions arising in the state for the entire period served as the numerator.

## Frequency Trends State-by-State Judicial Decisions

This section reports the results of separate state-by-state analyses in relation to the two research questions. For the more complete view, the *Appendix* provides the frequency overall and per capita for the 50 states, the District of Columbia, and Puerto Rico. These results reveal notable differences in the rankings among these 52 jurisdictions between the frequency of court decisions overall and the frequency per capita per 10,000 students in special education.

**Table 1:** Jurisdictions with highest frequency of court decisions for 1979–2013 overall and per capita

Rank	Jurisdiction	Decisions overall <sup>a</sup> (%) <sup>b</sup>	Jurisdiction	Decisions per capita <sup>c</sup>
1	New York	595 (11.8%)	District of Columbia	742.4
2	Pennsylvania	496 (9.8%)	Hawaii	153.1
3	District of Columbia	478 (9.5%)	New Hampshire**	53.6
4	California*	375 (7.4%)	Maine**	31.8
5	Illinois*	274 (5.4%)	Delaware**	26.3
6	New Jersey*	258 (5.1%)	Connecticut	23.4
7	Hawaii	216 (4.3%)	Pennsylvania	22.9
8	Texas*	151 (3.0%)	Vermont**	19.9
9	Connecticut	146 (2.9%)	New York	18.3
10	Virginia*	139 (2.7%)	Rhode Island**	15.2
Total		3,128 (61.9%)		

<sup>a</sup> Overall refers to the gross number.<sup>b</sup> (%) refers to the proportion of the grand total of the court decisions for all of the jurisdictions, not just the top ten of them.<sup>c</sup> Per capita refers to the gross number divided by 10,000 students in special education.

\* Designates jurisdictions ranked in the top 10 in frequency overall but not in frequency per capita.

\*\* Designated jurisdictions ranked in the top 10 in frequency per capita but not in overall frequency.

In response to the first research question, *Table 1* identifies the states with the highest frequency of judicial decisions overall and per capita.

**Table 2:** Jurisdictions with lowest frequency of court decisions from 1979–2013 overall and per capita

Rank	Jurisdiction	Decisions overall <sup>a</sup>	Jurisdiction	Decisions per capita <sup>b</sup>
42 (tie)	Alaska*	15	Texas**	4.5
42 (tie)	Oklahoma	15	Colorado**	4.4
44 (tie)	Nebraska	14	Florida**	4.3
44 (tie)	Nevada*	14	Nebraska	4.2
46	South Carolina	13	Kentucky**	3.7
47 (tie)	Idaho*	11	Puerto Rico**	3.4
47 (tie)	South Dakota*	11	Iowa**	2.8
49	Montana*	9	Arizona**	2.6
50	Utah	8	Oklahoma	2.2
51	Wyoming*	7	South Carolina	1.7
52	North Dakota*	5	Utah	1.6
Total		122 (2.4%)		

<sup>a</sup> Overall refers to the gross number.<sup>b</sup> Per capita refers to the gross number divided by 10,000 students in special education.

\* Designates jurisdictions ranked with lowest frequency of court decisions overall but not having lowest frequency per capita;

\*\* Designates jurisdictions ranked as lowest frequency per capita but not in overall frequency.

As identified at the left side of *Table 1* and as specifically quantified in the *Appendix*, 10 jurisdictions—led by New York, Pennsylvania, and the District of Columbia—accounted for 61.9% of the 5,055 decisions under the IDEA for this 34-year period. However, a comparison with the right side of *Table 1*, which takes into account the average special education enrollments for each state, reveals that the rank-order positions changed, with only half of these states remaining in the top 10 on a per capita basis.

In response to the second research question, *Table 2* identifies the states with the lowest frequency of judicial decisions overall and per capita. Review of the left side of *Table 2* reveals that 11 jurisdictions together accounted for 2.4% of the 5,055 decisions. Comparison with the right side of *Table 2* again reveals notable changes upon factoring in average special education enrollments. Only one state, Texas, appeared on both *Tables 1* and *2* due to its high ranking in total decisions but low number upon factoring in its relatively high average special education enrollments.

## Making Sense of IDEA Frequency Trends

The findings help fill a gap in the empirical literature concerning the frequency of IDEA litigation overall and per capita on a state-by-state basis. This final

section discusses the answers to the two research questions from the perspectives of both policymakers and practitioners and concludes with recommendations for follow-up research.

## Active States

The finding that 10 jurisdictions—led by New York, Pennsylvania, and the District of Columbia—accounted for almost two thirds of the overall IDEA court decisions for this 34-year period largely aligned with the incomplete patchwork of previous research. First, although the concentration among relatively few jurisdictions was more pronounced for hearing officer decisions (Zirkel, 2014a; Zirkel & Gischlar, 2008), it was comparable to the earlier frequency analyses for court decisions (Gorn, 1996; Maloney & Shenker, 1995). Second, despite the more limited duration and methodology, these earlier studies similarly identified New York, Pennsylvania, the District of Columbia, Illinois, and California in the leading group, albeit with differences in their specific sequence among other high-frequency jurisdictions.

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The more dramatic differences emerged upon factoring in special education enrollments. The only previous frequency analysis on a per capita basis was at the hearing officer level and was limited to the period of 2006–2011. In this analysis, the District of Columbia changed places with Puerto Rico for the top position and with other insular jurisdictions—Hawaii and the Virgin Islands—moving up into the top group from the 14th and 45th positions, respectively (Zirkel, 2014b). For court decisions, the elevated per capita positions of the District of Columbia and Hawaii reflect a confirming correlation of the corresponding hearing officer data. On the other hand, the absence of Puerto Rico in the per capita top group for court decisions raises questions about the reported impartial hearing rates. The likely alternative explanations are either inaccurate data

input from the education departments in its annual reports to the U.S. Department of Education or unusually low rates of judicial appeal. The differences from the overall to the per capita figures for the court decisions also included the elimination of half of the top group—particularly California, Illinois, and New Jersey—showing that their high special education enrollments are a significant intervening factor. Similarly, New York moved from the first to last position in the top 10 because of its relatively high number of students in special education. Thus, stereotypes about some states being litigious warrant reexamination when considering the rate, rather than the total, for IDEA litigation.

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Conversely, the new entries in the top group upon adjusting for special education enrollments—particularly New Hampshire, Rhode Island, and Vermont—are counter to their stereotypes as small, relatively quiescent states without notoriety for either low-quality or high-litigation in special education. Yet, the successive interstate frequency analyses of hearing officer decisions on a per capita basis (Zirkel, 2014b; Zirkel & Gischlar, 2007) partially portended such changes.

The preeminent position of the District of Columbia in the per capita analysis appears to be attributable to multiple factors, including the high concentration of attorneys, the pervasiveness of law, and the systemic problems in special education in this distinctive jurisdiction (*Blackman v. District of Columbia*, 2006/2011; Blum, 2002; Samuels, 2005). Although the relatively recent marked downturn in the frequency of hearing officer decisions (Zirkel, 2014a) may signal mitigation of this disproportionate litigation, its first-place rank is not likely to change for several reasons. First, the reasons for the decline in hearing officer adjudications may well be short-lived due to the District's persistent history of systemic problems and its high attrition in leadership

positions. Second, to the extent that the decrease in administrative adjudications may be attributable to improved selection, training, and evaluation of hearing officers, recent changes in the compensation and management point in the opposite direction. Finally, even if the District of Columbia's per capita ratio decreases significantly, it is so much higher than the second-place jurisdiction that its relative position is unlikely to change.

The second-place position of Hawaii upon conversion to a per capita metric suggests that one contributing factor, which it seems to share with the District of Columbia, is its separate status under the IDEA. One of the legally relevant features, in terms of the IDEA compliance structure, is that in these two insular jurisdictions the state education agency was historically coterminous with the local education agency. However, the explanation is much more complex than this factor. First, other jurisdictions, such as American Samoa, the U.S. Virgin Islands, and Puerto Rico share this insular-related characteristic, and, yet, have varying patterns of IDEA adjudicative activity at the hearing officer and court levels. Second, the District of Columbia now has several charter schools that are separate local education agencies, which changes its coterminous character. Other factors, such as the cultural disposition in relation to litigiousness and the availability of IDEA-specialized parent attorneys, are likely to help explain these differential positions.

## Quiescent States

The results for the second research question are less surprising on both an overall and per capita basis. Although seven of the 11 jurisdictions for each of these two measures of the bottom group are different between the two metrics, almost all of these 11 jurisdictions—as the *Appendix* reveals—are in the much larger and much more inactive one of the “two worlds” (Zirkel, 2014a, p. 8) of special education litigation. More specifically, they are an extension of the vast majority of jurisdictions that have a negligible level of adjudications at the underlying administrative level—namely, due process hearings (e.g., Zirkel, 2014a; Zirkel & Gischlar, 2008). Although the corresponding analyses of judicial activity (Gorn, 1996; Maloney & Shenker, 1995) are more limited in scope and specificity—for example, neither extending to per capita data nor more recent years—they found a similar, albeit less skewed, dichotomy. Thus, the

vast majority of jurisdictions are at a relatively quiescent level of adjudicative activity under the IDEA, with the overall and per capita figures so small that the changes in position between these two calculations are not practically significant.

In comparison to previous research, the limited exceptions for the bottom group were Texas and Florida. Texas was in the top group for overall decisions (eight in *Table 1* and *Appendix*) but in the bottom group for decisions per capita (tied for 42nd in *Table 2* and the *Appendix*). Similarly, Florida also had a relatively high rank (13th) in frequency of court decisions overall but a much lower position (44th) upon adjustment for average special education enrollments. These differences further highlight the importance of taking into consideration special education enrollments. It also reveals that reputations for litigiousness—in this case for Florida and Texas—may not be squarely fitting.

A more nuanced or complete set of contributing enrollment variables are the successive percentages of (a) school-age children in the total population of the state, (b) the percentage of students in category “A” attending public school, and (c) the percentage of students in category “B” receiving special education. For example, Texas has declining public school enrollments (Texas Education Agency, 2013) along with a relatively low percentage of students in special education (Scull & Winkler, 2011), yet it ranks approximately second in total special education enrollment (Technical Assistance and Dissemination, n. d.).

Additional variables may also account for these two limited exceptions. For example, despite its high rank in special education enrollments (Technical Assistance and Dissemination, n. d.), Florida’s high concentration of retirees contributes to limited tax rates for funding schools. Moreover, Florida’s McKay voucher program, under which parents appear to forfeit their IDEA adjudicative rights (Etscheidt, 2005, p. 158; Letter to Boswell, 2012), may also contribute to its relatively low adjusted rate for IDEA judicial activity.

The other jurisdiction in the low-frequency per capita group for court decisions that merits special mention is Puerto Rico. In recent years, Puerto Rico ranked high for due process hearing adjudications on both an overall basis (Zirkel, 2014a) and per capita calculation (Zirkel, 2014b). The reasons for the disparity between its positions for due process and judicial adjudications are not at all clear, especially in light of the absence of a cadre of parents’ attorneys

specialized in the IDEA, and merit further research. The difference between the limited period for the impartial hearing analyses and the much more complete period for this judicial analysis may be a contributing factor, but it is not likely to be close to the whole explanation. One contributing factor may be a long-class action case that is largely limited to hearing officer and unpublished state court enforcement. For example, a federal judge recently lamented: "How is it possible that the unacceptable problems of special public education have not been able to see closure after thirty-four years of state court litigation governed by [the class action] judgment entered on February 14, 2002" (*Colon-Vazquez v. Department of Education of Puerto Rico*, 2014, pp. 134–135).

## Limitations of the Analysis

Although the study design includes several limitations, they are largely a matter of nuances for precision rather than near-fatal concerns. First, the search was based on the most extensive and efficient database, Special Ed Connection®, because it includes court decisions not available in Westlaw and Lexis and it is relatively homogenous for more accurate electronic searches. Nevertheless, the identification of IDEA cases was inevitably imprecise. During the initial data collection phase, we identified several issues with the database's search features, including inaccurate results reported for decisions published prior to 1990. We consulted with the publisher's representatives, who reported resolution of these glitches. Although a follow-up analysis of a random sampling of the decisions appeared to confirm this resolution, limited instances of false negatives and false positives were unavoidable via this search strategy and source. An example of decisions that, depending on closer scrutiny, may have been inaccurately identified are those that additionally or alternatively relied on related provisions of state law or other legal frameworks, such as Section 504.

Second, the U.S. Department of Education enrollment data contained imprecision attributable to not only errors in local and state data reporting but also the inexact chronological correspondence to the court decisions. For the state-by-state per capita analysis, given the limited access to complete state enrollment data prior to 1992, the averaging methodology was a practical but imperfect procedure.

Finally, the use of the decision rather than the case as the unit of analysis represented a trade-off as

a measure of judicial activity under the IDEA. Although more precise as a metric of transaction costs, the nature of each decision may vary considerably in the parties' time, money, adversariness, and other resource stakes. For example, those limited to interlocutory rulings, such as whether to allow additional evidence under the IDEA (§ 1415[i][2][C]), or those subsequent to the ruling on the merits, such as whether to award attorneys' fees under the IDEA (§ 1415[i][3]), may differ significantly from those specific to the issues in the case.

## Future Impact of IDEA on Special Education Litigation

This study is merely one more step forward in understanding the implications of the IDEA in terms of both policy and practice. The major advance, or "take away," is that the resulting litigation activity merits careful assessment in terms of state-by-state analysis on both an overall and an enrollment-adjusted basis. The state and local leadership in the limited number of jurisdictions in the high-frequency per capita group need to place a special priority on examining and improving their special education systems and their alternative dispute-resolution mechanisms so as to maximize their limited resources on effective education rather than costly litigation. The first place position of the District of Columbia for frequency per capita basis merits particular attention in terms of both policymaking and research attention. Less otherwise evident, Hawaii, some of the small states in the New England, and Puerto Rico also merit more careful attention in terms of their per capita judicial frequency levels. Conversely, some of the jurisdictions generally regarded as being in the first world of IDEA adjudicative activity, such as Texas, warrant much more tempered concern when enrollments are factored into consideration.

In contrast, proposals for national changes may be clearly questionable from an objective, empirical viewpoint. For example, the American Association of School Administrators (2013) proposed replacing due process hearings with mandated individualized education program facilitation and expert consultancy as the prerequisite to resorting to court proceedings under the IDEA. Although the relatively few high-frequency jurisdictions, whether on an overall or per capita basis, may find such additions to this new provision of the IDEA 2004 amendment as

meriting consideration, incorporating them in the next reauthorization of the IDEA may well be wasted effort that would only result in shifting the skewed adjudicative balance (e.g., Zirkel, 2013) further in favor of school districts.

The key question for follow-up research, which should guide more tailored policymaking at the federal and state levels, is what are the causal factors for the judicial activity under the IDEA in the high- and low-frequency jurisdictions? Part of the explanation would appear to be the litigious culture that appears endemic to major metropolitan areas, but findings from this study suggest there is more to the story. Further research is necessary not only at the state but also at the intrastate level. At the state level, for example, follow up research should explore why some jurisdictions with high enrollment have relatively low decisions per capita—such as Texas (second vs. 42nd) and Florida (fourth vs. 43<sup>rd</sup>). At the intrastate level, for example, to what extent are the contributing factors specific to the school system, such as quality of special education services and mechanisms for parental participation, versus those specific to the intersecting intrastate contexts, such as the wealth and culture within and across local districts? The number and nature of the specialized attorneys representing districts and parents is an intervening and interacting factor that similarly merits systematic examination.

Other suggested lines of inquiry to further advance the understanding and assessment of the adjudicative dimension of the IDEA include: (a) adding the metric of judicial filings to the analysis (Bagenstos, 2009); (b) focusing more intensively on the underlying, otherwise hidden levels of IDEA litigation (Zirkel & Machin, 2012), including settlements; (c) ascertaining the distribution of outcomes of IDEA court decisions on a state-by-state basis, including possible relationships with frequency and enrollments; and (d) examining the extent and dynamics of the settlement process, including jurisdictional differences. These suggestions reveal that initial explorations provide a starting point for all of these areas of recommended research.

This study is only one small but stimulating step to expand our knowledge base concerning the legalization of special education, which starts with the detailed requirements of the IDEA legislation and regulations and culminates with case law at the judicial level (Neal & Kirp, 1985). It demonstrates the

variation in litigation among states and highlights the need for further analyses of contributing factors. In addition, it shows that more systematic and comprehensive empirical attention is needed to benefit both policymakers and practitioners. The extreme variations across states, both overall and per capita, raise questions about the future IDEA and its impact on special education litigation. The effects of the periodic IDEA reauthorization process may be one part of a complex interaction of not only the extensive provisions of the legislation and its accompanying regulations but also various other legal, economic, and educational factors within and across the states. Perhaps the field has reached a saturation or at least stabilization level in terms of the volume of its judicial activity subject to the next reauthorization of the IDEA. In any event, for vast parts of the country—with the contours depending on the overall or per capita metric—the case law frequency is largely more akin to the calm than the storm.

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**Appendix:** Frequency of IDEA court decisions from 1979–2013 overall and per capita for the 50 states, Puerto Rico, and District of Columbia ( $n = 52$ )

Jurisdiction	Decisions overall	Rank for decisions overall	Decisions per capita <sup>a</sup>	Rank for decisions per capita
Alabama	60	25	8.0	23
Alaska	15	42	11.9	15
Arizona	20	38	2.6	49
Arkansas	22	37	4.9	38
California	<b>375</b>	<b>4</b>	7.8	24
Colorado	27	35	4.4	43
Connecticut	<b>146</b>	<b>9</b>	<b>23.4</b>	<b>6</b>
Delaware	36	30	<b>26.3</b>	<b>5</b>
D.C.	<b>478</b>	<b>3</b>	<b>742.4</b>	<b>1</b>
Florida	103	13	4.3	44
Georgia	73	22	6.0	33
Hawaii	<b>216</b>	<b>7</b>	<b>153.1</b>	<b>2</b>
Idaho	11	47	5.5	34
Illinois	<b>274</b>	<b>5</b>	12.1	13
Indiana	97	16	8.2	21
Iowa	16	41	2.8	48
Kansas	33	32	7.0	28
Kentucky	27	34	3.7	46
Louisiana	48	27	6.1	32
Maine	84	20	<b>31.8</b>	<b>4</b>
Maryland	112	11	12.6	12
Massachusetts	97	15	7.1	26
Michigan	87	18	5.3	36
Minnesota	96	17	10.8	17
Mississippi	23	36	4.7	40
Missouri	81	21	7.7	25
Montana	9	49	6.7	30
Nebraska	14	44	4.2	45
Nevada	14	44	5.3	35
New Hampshire	104	12	<b>53.6</b>	<b>3</b>
New Jersey	<b>258</b>	<b>6</b>	14.5	11
New Mexico	34	31	10.2	18
New York	<b>595</b>	<b>1</b>	<b>18.3</b>	<b>9</b>
North Carolina	61	24	4.7	41
North Dakota	5	52	4.7	39
Ohio	103	14	5.1	37
Oklahoma	15	42	2.2	50
Oregon	45	28	8.4	19
Pennsylvania	<b>496</b>	<b>2</b>	<b>22.9</b>	<b>7</b>
Puerto Rico	20	39	3.4	47

**Appendix--Continued.**

Jurisdiction	Decisions overall	Rank for decisions overall	Decisions per capita <sup>a</sup>	Rank for decisions per capita
Rhode Island	30	33	15.2	10
South Carolina	<i>13</i>	<i>46</i>	<i>1.7</i>	<i>51</i>
South Dakota	<i>11</i>	<i>47</i>	<i>8.3</i>	<i>20</i>
Tennessee	86	19	8.2	22
Texas	<b>151</b>	<b>8</b>	<b>4.5</b>	<b>42</b>
Utah	<i>8</i>	<i>50</i>	<i>1.6</i>	<i>52</i>
Vermont	17	40	<b>19.9</b>	<b>8</b>
Virginia	139	10	12.0	14
Washington	62	23	7.0	27
West Virginia	42	29	11.3	16
Wisconsin	59	26	6.8	29
Wyoming	<i>7</i>	<i>51</i>	<i>6.5</i>	<i>31</i>

Note. <sup>a</sup> per capita refers to the number judicial decisions for each 10,000 students in special education. The 10 highest ranked jurisdictions for each column are in **bold**. The 10 lowest ranked jurisdictions for each column are in *italics*.