

COMMENTARY

STATE LAWS AND GUIDANCE FOR COMPLAINT PROCEDURES UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT*

by

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Under the Individuals with Disabilities Education Act

-Abstract-

In contrast with the adjudicative avenue under the Individuals with Disabilities Education Act, which starts with a “due process hearing, the IDEA’s alternative decisional dispute resolution avenue, which is investigative and referred to as “complaint procedures,” has received only limited scholarly attention. This article provides a systematic canvassing of the major additions in state statutes and regulations to the minimum requirements in the IDEA specific to the complaint procedures mechanism. Providing a basis for evaluation and experimentation by policymakers and practitioners, the results vary from merely mirroring the IDEA regulatory requirements, as Hawaii, Mississippi, Nevada, North Dakota, and Oklahoma illustrate, to rather extensive addition to the federal template, as Alaska, California, Indiana, Louisiana, and Ohio less extremely demonstrate. From, “State Laws and Guidance for Complaint Procedures Under the Individuals with Disabilities Education Act,” by Perry A. Zirkel, Ph.D., J.D., LL.M., university professor emeritus at Lehigh University.

Most of the attention to decisional¹ dispute resolution under the Individuals with Disabilities Education Act (IDEA)² focuses on the adjudicative avenue, which starts with the impartial due process hearing (DPH) and culminates in judicial review.³ The literature has accorded only limited and

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This qualifier excludes mediation and alternative dispute resolution mechanisms, such as IEP facilitation, which are adjuncts to these two avenues. For a control-finality comparison of mediation with the two decisional dispute resolution mechanisms under the IDEA, see Thomas A. Mayes, *A Brief*

Model for Explaining Dispute Resolution Options in Special Education, 34 OHIO ST. J. ON DISP. RESOL. 153, 160–61 (2019). For explanations of and resources for the full continuum of the various dispute resolution mechanisms under the IDEA, see the website of the federally funded Center for Appropriate Dispute Resolution in Special Education, <https://www.cadreworks.org/about-us>.

2. 20 U.S.C. §§ 1400 *et seq.* (2017).

3. For reviews of the extensive literature specific to DPHs, see, e.g., 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 3, 5–7 (2018). For empirical analyses of the frequency and outcomes of the judicial case law, see, e.g., Zorka Karanxha & Perry A.

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belated attention to the alternative administrative avenue of the state complaint procedures (CP).⁴

Similar to the primary mechanism for resolving student disputes under Section 504⁵—filing a complaint with the U.S. Department of Education’s Office for Civil Rights (OCR)—CP is based on investigation by an agency official that results in a voluntary or formal resolution.⁶ The difference is that the IDEA delegates the CP process to each state education agency (SEA), with variation within the boundaries of the IDEA framework.⁷

Although not established in the IDEA legislation,⁸ the applicable framework, since 1992,⁹ has been directly in the IDEA regulations.¹⁰ Generally, the

Zirkel, *Trends in Special Education Case Law: Frequency and Outcomes of Published Court Decisions 1998–2012*, 27 J. SPECIAL EDUC. LEADERSHIP 55 (2014); Tessie Rose Bailey & Perry A. Zirkel, *Frequency Trends of Court Decisions under the Individuals with Disabilities Education Act*, 28 J. SPECIAL EDUC. LEADERSHIP 3 (2015); Perry A. Zirkel & Anastasia D’Angelo, *Special Education Case Law: An Empirical Trends Analysis*, 161 Ed. Law Rep. 731 (2002).

4. For instance, the special education law texts have accorded negligible or nonexistent attention to CP. *E.g.*, NIKKI MURDICK, BARBARA GARTIN & GERARD FOWLER, *SPECIAL EDUCATION LAW* (2014); PETER LATHAM, PATRICIA LATHAM & MYRNA MANDLAWITZ, *SPECIAL EDUCATION LAW* (2007); ALLAN G. OSBORNE & CHARLES J. RUSSO, *SPECIAL EDUCATION AND THE LAW* (2014); MARK C. WEBER, RALPH MAWDSLEY & SARAH REDFIELD, *SPECIAL EDUCATION LAW* (2013); PETER WRIGHT & PAMELA DARR WRIGHT, *WRIGHTSLAW: SPECIAL EDUCATION LAW* (2007); MITCHELL YELL, *THE LAW AND SPECIAL EDUCATION* (2016). The relatively few exceptions provide brief coverage that does not extend to state laws and guidance. *E.g.*, LARRY D. BARTLETT, SUSAN ETSCHIEDT & GREG R. WEISENSTEIN, *SPECIAL EDUCATION LAW AND PRACTICE IN PUBLIC SCHOOLS* 252–53 (2007); THOMAS GUERNSEY & KATHE KLARE, *SPECIAL EDUCATION LAW* 251–252 (2008); DIXIE SNOW HUEFNER & CYNTHIA HERR, *NAVIGATING SPECIAL EDUCATION LAW AND POLICY* 152–53 (2012); LAURA ROTHSTEIN & SCOTT JOHNSON, *SPECIAL EDUCATION LAW* 255–56 (2014).

5. 29 U.S.C. § 794 (2017).

6. For an overview showing CP and OCR mechanisms along with the administrative adjudicative avenues under the IDEA and Section 504, see Perry A. Zirkel & Brooke L. McGuire, *A Roadmap to Legal Dispute Resolution for Parents of Students with Dis-*

abilities, 23 J. SPECIAL EDUC. LEADERSHIP 100 (2010).

7. For a systematic survey of the CP systems of the 50 states and the District of Columbia, see Kristin Hansen & Perry A. Zirkel, *Complaint Procedure Systems under the IDEA: A State-by-State Survey*, 31 J. SPECIAL EDUC. LEADERSHIP 108 (2018).
8. The only references to CP in the IDEA legislation are brief and indirect. *E.g.*, 20 U.S.C. § 1415(f)(3)(F) (caveat in the provision for due process hearings that the nothing in it “shall be construed to affect the right of a parent to file a complaint with the State education agency). Identifying three legislative references to CP and the legislative history, the comments accompanying the current regulations observed: “Although Congress did not specifically detail a State complaint process in the Act, we believe that the State complaint process is fully supported by the Act and necessary for the proper implementation of the Act and these regulations.” Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, 71 Fed. Reg. 46,450, 46,600 (Aug. 14, 2006).
9. The genesis prior to the appearance in the 1992 IDEA regulations was in the generic EDGAR regulations, starting in 1977. *Id.* at 46,600; *see also* Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities, 61 IDELR ¶ 232 (OSEP 2013) at B–1.
10. Nicole Suchey & Dixie Snow Huefner, *The State Complaint Procedure under the Individuals with Disabilities Education Act*, 64 EXCEPTIONAL CHILD. 529, 530–31 (1998). For the period previous to 1992, the General Administrative Regulations contained the applicable procedures. *Id.*

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current IDEA regulations continue—with limited revisions—the requirement for each SEA to adopt written procedures that provide for broad dissemination and complainants, prescribed complaint contents, and formal resolution within 60 days.¹¹

Previous Literature

The limited previous literature includes early examinations of state CP systems and their results¹²; scattered subsequent single-state analyses of CP decisions¹³; and ongoing governmental tracking of longitudinal CP activity.¹⁴ In recent years, a line of research has sequentially examined the legal contours of CP¹⁵; the comparative features of CP and DPHs¹⁶; and the 50-state systems for implementing CP.¹⁷

However, unlike the recent systematic analysis of state laws for DPHs,¹⁸ the literature lacks a corresponding examination of state laws for CP. The purpose of this article is to provide such a state-by-state canvassing of the state CP additions to the IDEA regulatory template for use by both policymakers and stakeholders, including but not limited to parents and school districts.¹⁹ Moreover, in light of the markedly higher use of SEA

11. 34 C.F.R. § 300.151–300.153 (2018). For the full regulatory template, including the applicable citations, see *infra* notes 28–39 and accompanying text.

12. Joy Markowitz, Eileen Ahearn & Judy Schrag, *Dispute Resolution: A Review of Systems in Selected States* 2–6 (June 2003), <https://www.adrcal.org/wp-content/uploads/2019/01/DFR-0391.pdf>; Suchey & Huefner, *supra* note 10.

13. Ruth Colker, *Special Education Complaint Resolution: Ohio*, 29 OHIO ST. J. ON DISP. RESOL. 371 (2014) (analyzing the issues in 81 CP decisions in Ohio for a one-year period); Stacy E. White, *Special Education Complaints Filed by Parents of Students with Autism Spectrum Disorder in the Midwestern United States*, 29 FOCUS ON AUTISM & OTHER DEVELOPMENTAL DISABILITIES 80 (2013) (examining the issues of 97 CP decisions specific to students with autism in a Midwestern state during a five-year period); cf. Emily B. Garcia, *Complaint Conflicts: How Michigan's State Complaint Process Fails to Protect Students with Disabilities*, 97 U. MERCY L. REV. 101 (2019) (critiquing a single state's CP system from an advocate's point of view).

14. CADRE, National Dispute Resolution Data Summary for U.S. and Outlying Areas 2004–05 to 2016–17, [https://www.cadeworks.org/sites/default/files/resources/2016–17 DR Data Summary – National.pdf](https://www.cadeworks.org/sites/default/files/resources/2016-17%20DR%20Data%20Summary%20-%20National.pdf) (revealing relatively level frequency of CP filings and decisions since 2008 and the outcomes ranging from 58% to 72% with findings of violations, which is different

from the more fluctuating level of filings, much lower proportion of decisions, and lesser level of parent success for DPHs).

15. Perry A. Zirkel, *Legal Boundaries of the IDEA Complaint Resolution Process: An Update*, 313 Ed. Law Rep. 1 (2015).

16. Perry A. Zirkel, *The Two Dispute Decisional Processes under the Individuals with Disabilities Education Act: An Empirical Comparison*, 16 CONN. PUB. INT. L.J. 169 (2017) (finding, based on a comparison of CP and DPH decisions for five active states, generally similar issues but a higher parental success rate for CRP); Perry A. Zirkel, *The Complaint Procedures Avenue of the IDEA*, 30 J. SPECIAL EDUC. LEADERSHIP 88 (2017) (follow-up analysis finding wide variance among the five states in issue categories, success rates, and remedial orders); Perry A. Zirkel, *A Comparison of the IDEA's Dispute Resolution Complaint Procedures and Due Process Hearings*, 326 Ed. Law Rep. 1 (2016) (identifying various similarities and differences based on a comprehensive comparison of the CP and DPH mechanisms).

17. Hansen & Zirkel, *supra* note 7 (finding, *inter alia*, that complaint investigators had a special education background much more often than legal training and varied considerably in their approach to procedural and substantive FAPE complaints).

18. Zirkel, *supra* note 3.

19. The repeated references to “districts” herein is simply shorthand for the IDEA

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documents for CP that do not amount to legislation, regulations, or even policies adopted by state boards of education,²⁰ the scope extends to SEA guidance for CP.

Search and Tabulation Method

The primary source for the state laws was a Boolean search of the statutes and regulations content categories in the Westlaw database, using varying combinations of the search terms “complaint procedures” and “state complaints” in combination with “special education” and “exceptional students.”²¹ For related official CP documents, which primarily amounted to guidance, the search extended to the SEA websites.²² For a limited number of states, the application of the aforementioned dividing line between law and guidance²³ was less than clear-cut and warranted further refinement. The categorization of law, as compared with guidance, extended to SEA CP website documents for which the pertinent state statutory or regulatory provisions were limited to an authorization of or delegation to SEA CP issuance.²⁴ Nevertheless, the differentiation in a few states remained subject to question.²⁵ As the two-sided compilation of citations in the Appendix

regulatory specification of “public agencies,” which extends more generally to various other governmental entities“ involved in the education of children with disabilities,” including intermediate units and the SEA itself. 34 C.F.R. § 300.2(b).

20. For previous use of this boundary line, see, e.g., *id.* at 11–12; Perry A. Zirkel & Lisa B. Thomas, *State Laws and Guidelines for Implementing RTI*, 43 TEACHING EXCEPTIONAL CHILD. 60, 61 (Sept./Oct. 2010).

21. The variations included the use of the Westlaw root expander “!” and the Westlaw “Advanced Search” mechanism. As a secondary procedure to identify pertinent state laws, the search extended to the Westlaw tags for each of the state DPH laws identified in the predecessor article, Zirkel *supra* note 3.

22. For this purpose, the search used “complaint procedures,” “written complaints,” and “state complaints” within the special education section of each SEA website.

23. See *supra* note 20 and accompanying text.

24. Additionally, for states where the authorization or delegation appeared to be missing or ambiguous, the author contacted the SEA special education dispute resolution coordinator and obtained further information. *E.g.*, E-mail from Colin Raley, Dispute Resolution Specialist for the Special Education Division of the Oklahoma State Department of Education, July 8, 2019, 2:34 pm EST (explaining that the Oklahoma Special Education Handbook has not been submitted to the state board of education

for adoption or approval); E-mail from Thomas Mayes, Legal Counsel for the Division of Learning and Results of the Iowa Department of Education, July 5, 2019, 12:12 pm EST (clarifying that the SEA CP serves only as guidance); E-mail from Kerri Sorenson, Dispute Resolution Specialist, Office of Student, Community, and Academic Supports of the Rhode Island Department of Education, June 30, 2019 (clarifying that the SEA CP is currently being updated to align with the new Rhode Island regulations for CP); E-mail from Candace Hawkins, Director of General Supervision and Monitoring for Exceptional Student Services at the Colorado Department of Education, to Perry A. Zirkel (June 26, 2019, 3:12 pm EST) (relying on the Colorado regulation that contingently refers to the SEA CP policies); E-mail from Mary Jean Schierberl, Legal and Education Consultant of the Bureau of Special Education in the Connecticut Department of Education, to Perry A. Zirkel, June 21, 2019, 8:02 am EST (confirming that Connecticut does not have any legislation or regulation concerning CP); E-mail from Lori Bird, Chief of Dispute Resolution for the Arizona Department of Education, July 9, 2019, 5:52 pm EST (clarifying that the website guidance is currently being updated to align with the applicable state CP regulations) (on file with author).

25. For Colorado, the reason for question is that the enabling legislation provides that the SEA “recommend[]” the CP rules to the

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reveals, the relatively few questionable entries are designated with double asterisks.²⁶

Per the customized model of the predecessor article,²⁷ the basis for the charting of state CP provisions was an organized synthesis of the federal foundation in the IDEA. Specifically, the following template of the IDEA CP regulations served as the baseline minimum for additions in state laws or guidance:

1. General
 - a. dissemination²⁸
 - b. deferral²⁹
2. Complaint
 - a. any individual or organization³⁰
 - b. required contents:³¹
 - general: violation, facts, signature and contact info
 - individual child: name school, problem, and proposed resolution
 - c. copy to LEA upon filing with SEA³²
3. Procedure³³
 - a. option of on-site investigation
 - b. complainant opportunity to provide additional information, including orally
 - c. district opportunity to resolve the complaint
 - d. mutual opportunity for mediation
 - e. review all relevant information

state board of education. COLO. REV. STAT. § 22–20–104. For North Carolina, the reason is the ruling in *North Carolina State Board of Education v. North Carolina Rules Review Commission*, 814 S.E.2d 54, 355 Ed.Law Rep. 571 (N.C. 2018) that the rulemaking requirement of the APA, including the Rules Review Commission’s approval, constitutionally applies to the state board of education’s policies.

26. Conversely, as the Appendix also shows, if the cited state law was entirely limited to an authorization of or delegation to SEA policies (or to an incorporation of the IDEA regulations alone, without any such authorization or delegation), the designation accompanying the citation is a single asterisk.

27. Zirkel, *supra* note 3, at 9–10.

28. 34 C.F.R. § 300.151(a)(2) (“wide[] disseminat[ion] to parents and other interested individuals, including parent training and information centers, protection and advoca-

cy agencies, independent living centers, and other appropriate entities”).

29. *Id.* § 300.152(c) (“If a written complaint is received that is also the subject of a [DPH], or contains multiple issues of which one or more are part of that [DPH], the State must set aside any part of the complaint that is being addressed in the [DPH] until the conclusion of the [DPH].”).

30. *Id.* § 300.151(a)(1) (including from another state). For the exclusive jurisdiction for equitable services issues (other than child find), see *id.* § 300.140(b)-(c).

31. *Id.* § 300.153(b). For the related requirement of the SEA offer of a model form, see *id.* § 300.509.

32. *Id.* § 300.153(d). In turn, the LEA has the obligation to provide the parent with the procedural safeguards notice upon the first complaint in the school year, see *id.* § 300.504(a)(2).

33. *Id.* § 300.152(a)(1)–(5).

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f. independent determination as to whether district violated a requirement of IDEA

g. issue written decision

4. Written Decision³⁴

a. findings of fact

b. conclusions

c. reasons

5. Time Limits

a. filing within one year of date of receipt³⁵

b. decision within 60 days³⁶ unless exceptional circumstances or mutually agreed upon mediation or other alternative means of dispute resolution³⁷

6. Corrective Action/Enforcement

a. compensatory plus prospective if failure to provide FAPE³⁸

b. implementation³⁹

The Table consists of the side-by-side law-and-guidance entries for additions to this federal template.⁴⁰ For differentiation, the entries in brackets designate the guidelines.⁴¹ Customized for the lesser range of nuance in comparison with the corresponding state-by-state provisions for DPHs,⁴² the entries consisted of three approximately ascending levels: x ' limited strength or specificity; X ' stronger and/or more detailed provision; and X ' unusual provision.⁴³ Similarly, for the sake of economy of entries, additions that do not fit within one of the subcategories are entered in the first column of each category, with this difference designated with "also" in the Comments column.⁴⁴ The Comments column provides a concise explanation of each entry starting with the letter of the respective subcategory column and including various abbreviations.⁴⁵ The bottom row shows the total frequency

34. *Id.* § 300.152(a)(5).

35. *Id.* § 300.153(c).

36. *Id.* § 300.152(a).

37. *Id.* § 300.152(b)(1).

38. *Id.* § 300.151(b) (the SEA remedies "must address (1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and (2) Appropriate future provision of services for all children with disabilities").

39. *Id.* § 300.152(b)(2) ("procedures for effective implementation . . . , if needed, including (i) Technical assistance activities; (ii) Negotiations; and (iii) Corrective actions to achieve compliance").

40. Although not scientifically precise, the entries are limited to distinguishably notable additions; thus, blanks indicate either incorporation or repetition, with the same or

similar language, of the template IDEA requirements.

41. In the few instances where both the state law and the state guidelines address the subject area of a particular column, the two entries are in tandem with each other (e.g., Michigan's "X[x]" for column T).

42. Zirkel, *supra* note 3, at 14 (using four Likert-type levels).

43. Although specificity ranges from mere mention to detailed provisions, strength typically differentiates permissive from mandatory provisions. This differentiation is only approximate because these two dimensions are not consistently in the same direction, and, like the designation of unusual, context and judgment were integral factors.

44. Columns G and N predominate as examples for the "also" entries.

45. The abbreviations include the following: ADR ' alternate dispute resolution; APA '

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per column without differentiation for the source (i.e., law v. guidelines) or strength/specificity (i.e., font size), of the entries; however, for the aforementioned⁴⁶ dual-purpose columns, the “+” separates the subtotals for the column-specific and the “also” entries. Additionally, per the aforementioned caveats,⁴⁷ the Appendix provides the citations of the corresponding laws and SEA guidance documents.

administrative procedures act; CAP ’ corrective action plan; DPH ’ due process hearing; FAPE ’ free appropriate public education; FAQ ’ frequently asked questions; FIEP ’ facilitated IEPs (or IEP facilitation); ID ’ identification; IHO ’ impartial hearing officer; IU ’ intermediate unit; LEA ’ local education agency (i.e., school district);

MSA ’ mediated settlement agreement; SEA ’ state education agency; TRO ’ temporary restraining order.

46. See *supra* note 44 and accompanying text.

47. See *supra* notes 23–26 and accompanying text.

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Table: State Additions to IDEA CP Provisions: Law and Guidance

	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	Comments	
State	General				Complaint		Procedure							Decision			Deadlines		Outcome		Misc.	
	Dissemination	Deferral	Complainant	Contents	Copy to LEA	On-Site Inv.	Complainant Oppy.	LEA Oppy.	Mediation Oppy.	Review Rel. Info.	Indep. Determ.	Written Decision	Findings	Conclusions	Reasons	Filing	Decision	Remedy	Enforcement			
AL					x	X		X					[X]							x		F-phone call or FAX first w. ID and nature of complaint; G-prior notice; I- mandatory written response [within 15 days]; N-also summary of issues, LEA response, and sources; U-no appeal
AK																				X		E-parent only for enforcement of DPH decision plus separate for each specific child+dates, tel. no., LEA+ sufficiency; G-also interviews option; H-incl. mediation; N-also summary of complaint and investigation+remedy; S-broader than only for denial of FAPE; T- documented compliance; U-appeal via DPH or, if not within DPH jurisdiction, state court
AZ					[X]	[X]							[X]							[X]		E-SEA assistance if needed; G-also acknowledgement letter within 10 days; N-also other avenues for issues beyond CP jurisdiction; U-appeal via state APA
AR						X					x		x				X		x			G-also SEA shall appoint 2-to-5 member team, with notification to parties, within 10 days plus other specified options for investigation (e.g., interviews); L-by team; N-also summary of complaint and investigation+ID of complaint; R- written notice of extension w. reasons

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																					appeal? (indirect mention)
ME																					G-also stay-put; O-alternative of 2 yrs. for comp. ed. claim; T-possible withholding of funds+mandatory referral to AG; U-training and tort immunity of complaint investigators+ jurisdiction includes MSAs
MD																					E-fax+sufficiency; N-includes allegations; T-verification notification; U-excludes enforcement of settlements+ reconsideration procedure+appeal via DPH
MA																					D-also telephone option prior to formal complaint; I-mandatory; N-also limited to procedural and implementation FAPE only?; U-no appeal via DPH+limited correction procedure
MI																					B-also mandatory LEA CP including offer to assist with state CP; D-rep for parent must prove authority; E-sufficiency + dismissals; F-issue letter; G-also investigation and monitoring with IU+stay-put; J-alternative of problem solving ADR process; O-procedural FAPE→substantive; T-close monitoring +strong specified variety of sanctions [+detailed procedures including RAP teams]
MN																					E-dismissal; O-IHO 2-part test for procedural FAPE applies to CP; S-training as example; U-judicial appeal +website PowerPoint w. audio for explanation of the process
MS																					(Mississippi's authorized policies track IDEA w/o any notable addition)

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[illegible]

[36]

[illegible]

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TN	x			X								X	X	X	E-Internet filing w. presumed signature [+examples of disqualifications]; I- notification within 5 days and mandatory response within 15 subsequent days; S+15+ days; S-implementation within 10 days unless extension; T-determination within 10 days and violations publication identifying district, not student, within 30 days
TX	x			X								[x]		X	E-"by mail, hand-delivery, or facsimile" +examples] G-also specified acknowledgement letter to both parties; I-mandatory written response; N-per issue; S-examples; U-reconsideration procedure
UT														x	E-by U.S. mail or fax; U-no appeal
VT	[x]			X										x	E-sufficiency+email option; G-also hearing option; H-within 15 days of acknowledged receipt; U-no appeal
VA	x[x]			X									X[X]	X	E-notification within 7 business day including sufficiency]-release if adult status]; I-mandatory written response within 10 business days (w. second chance within 7 business days) unless settlement w. documentation; J- ombudsman option; N-also issues; T- CAP within 30 business days [or possible hearing]-withholding of federal funds; U-SEA appeal procedure
WA	x			X										x	B-including website, training, and at statewide conferences; G-also procedure for complaint against SEA; I-mandatory written response within 20 days w. specified contents; N-includes each allegation; T-sanctions including fund withholding
WV															J-options of FIEP and early resolution (w. verification)

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	WT	X										[X]	[N]		
															G-also acknowledgement letter including notification of 5-day follow up and 7/10-day records submission, w. reliance on allegations if not submitted; R-examples; T-CAP generally within 30 days
												X			G-also acknowledgement notification within 10 days including requested documents within 10 subsequent days; R-examples of acceptable and non-acceptable circumstances
														29	
														21	Enforcement
														12	Kennedy
														10	Decision
														2	Filing
														0	Reasons
														1	Conclusions
														3+ 12	Findings
														1	Written Decision
														1	Indep. Determ.
														2	Review Rel. Info.
														13	Mediation Oppty.
														19	LEA Oppty.
														8	Complainant
														5+ 18	On-Site Inv.
														2	Copy to LEA
														24	Contents
														4	Complainant
														0	Deterral
														3	Dissemination

Findings and Discussion

The following summary and interpretation of the results in the Table sequentially address each of the headings from General to Outcomes. The focus is on the overall frequency and special features for each column within

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each of these overall categories. As a secondary, background matter, coverage extends to related IDEA agency policy interpretations and court decisions for a fuller picture.

General

The state CP laws and guidance add negligibly to the federal requirements for wide dissemination of the CP process and deference to concomitant DPH activity.⁴⁸ More specifically, the only notable additions, which are both limited to the dissemination column, appear to be Michigan's requirement for school districts (and other public agencies) to have in place a procedure for responding to oral complaints and Washington's requirement to extend dissemination to websites, training, and conferences. Although states have not provided notable additions to the IDEA's deference provision, the U.S. Department of Education's Office of Special Education Programs (OSEP) has issued policy interpretations concerning its application.⁴⁹

Complaint

The state additions to the IDEA's requirements for the complaint phase of CP are almost all specific to the contents of the complaint. The most frequent of these additions are provisions for a sufficiency procedure, which vary not only in their strength and specificity but also in their wording (e.g., "dismissal" or "disqualification"). More generally, OSEP has interpreted such a procedure, with "proper notice," as within SEA discretion.⁵⁰ The other

48. See *supra* note 28–29 and accompanying text. In response to the suggestion to extend the mandatory examples in the IDEA's wide dissemination regulation, OSEP commented: "There is nothing in these regulations that would prevent a State from disseminating information about the State complaint procedures to school personnel, teacher organizations, or representatives of private schools or residential facilities. However, we believe this decision is best left to the States." Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, 71 Fed. Reg. 46,450, 46,601 (Aug. 14, 2006).

49. Dear Colleague Letter, 65 IDELR ¶ 151 (OSERS/OSEP 2015) ("A [district's] filing of a due process complaint after the parent has filed a State complaint on the same issues may unreasonably deny a parent the right to use the State complaint process. . . . The Department strongly believes that it is in the best interest of parents and school districts to respect the parents' choice of forum for resolution of their disputes."); Letter to Deaton, 65 IDELR ¶ 241 (OSEP 2015) (opining that the SEA may not postpone corrective actions upon completion of CP when parent files for impartial hearing

on some or all of same issues in the interim).

50. Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities, 61 IDELR ¶ 232 (OSEP 2013) at B–15 ("an SEA could provide notice indicating that the complaint will be dismissed for not meeting the content requirements or that the complaint will not be resolved and the time limit not commence until the missing content is provided"). For the limited exception for the proposed resolution of the complaint, see *id.* at B–16 (unless clearly demonstrated that complainant knew it at the time of filing). For a judicial ruling that upheld an SEA's dismissal based on the express sufficiency authority in state law, see *Bickford v. Alaska Department of Education & Early Development*, 155 P.3d 302, 218 Ed.Law Rep. 717 (Alaska 2007). For a court decision that upheld an SEA's discretion to apply sufficiency without notice in its law or guidelines, see *Larson v. Independent School District No. 361*, 39 IDELR ¶ 66 (D. Minn. 2003) (upholding refusal to investigate a complaint after complainant's failure to provide sufficient information despite repeated requests).

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issue that various entries in the contents column addresses concerns the permissibility or non-permissibility of electronic submissions, which OSEP has also interpreted as largely within SEA discretion.⁵¹ In contrast, not treated as an addition here is the explicit recognition in state law or guidance of the general understanding, which is implicit in the IDEA regulatory specified contents “if alleging violations with a respect to an individual child”⁵² and which OSEP has repeatedly made clear,⁵³ that CP allows for systemic complaints.

Procedure

In relation to the purposely broad requirements of § 300.152,⁵⁴ the state additions to the federal minimum for the investigation process predominate on each side’s opportunity to provide additional information to, and engage in voluntary resolution of, the complaint. The most frequent additions are for the district’s response opportunity, with approximately a third of them making the response mandatory, with or without specified deadlines. The second most frequent addition is for alternatives to mediation, such as early complaint resolution or IEP facilitation.⁵⁵ The unusual features for the district’s side are Louisiana’s mandatory, detailed early resolution process and a few states’ authorizations, with varying scope,⁵⁶ of consequences for failure to respond. Within the broader scope of columns G–M, including the assorted variations added to column G,⁵⁷ other special features include Arkansas’ provision for a team to conduct the investigation; California’s more generic and interlocking requirement for a district-level CP mechanism; Maine’s and Michigan’s requirement for stay-put; Michigan’s delegation to the intermediate unit for joint investigatory responsibility, and Vermont’s hybridizing option of a hearing.

Decision

The state additions to the federal minimum contents for the CP decision are limited in both frequency and extent. Theses provisions are largely assorted additions, in column N,⁵⁸ to the IDEA-specified content categories, such as a summary of the allegations and investigation. The unusual additions

51. *Id.* at B–13 (permissible with due notice and “safeguards sufficient to identify or authenticate the complainant and indicate that the complainant approves of the information in the complaint”).

52. 34 C.F.R. § 300.153(b)(4).

53. *E.g.*, Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities, 61 IDELR ¶ 232 (OSEP 2013) at B–9; Letter to Anderson, 56 IDELR ¶ 270 (OSEP 2010).

54. Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, 71 Fed. Reg. 46,450, 46,602 (Aug. 14, 2006). (“The minimum State complaint procedures in § 300.152 are intended to be broad in recognition of the fact that States operate

differently and standards appropriate to one State may not be appropriate in another State.”).

55. In addition, a few states, such as South Carolina and Virginia, also provide for the alternative of an ombudsman.

56. California—default for either side’s failure to cooperate or engage in obstruction of the investigation; Colorado—discretionary admission of allegations for district’s failure to respond; North Carolina—noncompliance finding for district’s failure to respond. As a seemingly nondiscretionary variation, Wisconsin provides for reliance on the allegations and any other available information for the district’s failure to provide requested records.

57. *See supra* note 44 and accompanying text.

58. *Id.*

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are Minnesota's statutory CP requirement of the two-part test for procedural FAPE that the IDEA applies only to DPH hearing officers⁵⁹ and Oregon's burden of persuasion guideline⁶⁰ that is contrary to OSEP guidance.⁶¹ Moreover, the Massachusetts law, to the extent that their ambiguous scope statement means a jurisdictional limit,⁶² present a potential conflict with OSEP interpretations.⁶³ Partially attributable to the non-availability of judicial review in many states,

Deadlines

The state additions to the IDEA minimum time periods are almost entirely absent for the filing deadline, or one-year limitations period,⁶⁴ and limited to approximately a dozen states for the decision deadline of 60 days except for two specified exceptions.⁶⁵ More specifically, although OSEP's commentary accompanying the regulations allowed for exceptional extensions beyond the one-year filing period,⁶⁶ only two state laws have done so,

59. 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2). In contrast with Minnesota's law, Michigan's guidelines incorporate this federal codification more as a distinction than a limitation. For the practice across the other states, in a national survey, the limited data are conflicting. More specifically, three quarters of the respondents reported using the two-part test for procedural violations (Hansen & Zirkel, *supra* note 7, at 113), but a systematic analysis of a representative sampling of CP decisions in five active states revealed that one-step test prevailed in most cases (Zirkel, *supra* note 16, at 189).

60. "If the evidence on both sides is equally persuasive, [the Oregon Department of Education] will not find a violation."

61. Letter to Reilly, 64 IDELR ¶ 219 (OSEP 2014) ("the Department believes that it is not consistent with the IDEA regulation for an SEA to treat a State complaint like a due process complaint and assign the burden of proof to either party").

62. "The Department can make findings on procedural issues and issues related to implementation of requirements."

63. Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities, 61 IDELR ¶ 232 (OSEP 2013) at B-6 and B-8 (not only procedures but also standards for eligibility and FAPE); 71 Fed. Reg. 46,601 (Aug. 14, 2006) ("We believe that an SEA, in resolving a complaint challenging the appropriateness of a child's educational program or services or the provision of FAPE, should not only determine whether the public agency has followed the required procedures to reach that determination, but also

whether the public agency has reached a decision that is consistent with the requirements in Part B of the Act in light of the individual child's abilities and needs"); Letter to Chief State Sch. Officers, 34 IDELR ¶ 264 (OSEP 2000) ("It is impermissible under [the IDEA] for an SEA to: (1) have a procedure that removes complaints about FAPE or any other matter concerning the identification, evaluation, or educational placement of the particular child or any other allegation of a violation of Part B or its implementing regulations from [its CP] jurisdiction.").

64. See *supra* note 35 and accompanying text.

65. See *supra* notes 36-37 and accompanying text.

66. Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, 71 Fed. Reg. 46,450, 46,606 (Aug. 14, 2006) ("We believe longer time limits are not generally effective and beneficial to the child because the issues in a State complaint become so stale that they are unlikely to be resolved. However, States may choose to accept and resolve complaints regarding alleged violations that occurred outside the one-year timeline, just as they are free to add additional protections in other areas that are not inconsistent with the requirements of the Act and its implementing regulations."). These previous exceptions no longer apply in the absence of a state law that provides them. Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities, 61 IDELR ¶ 232 (OSEP 2013) at B-18.

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resonating with the prior regulatory limitations period.⁶⁷ Rhode Island's two exceptions mirror those eliminated in the current IDEA regulations, and Maine provides only a partial residue, limiting its express exception to a two-year maximum for requests for compensatory education.

The more frequent variations of the 60-day deadline for the written decision include a few states with specified procedures for extensions and a handful of others that specify examples of qualifying or nonqualifying exceptional circumstances for extensions.⁶⁸ The unusual provisions are those for shorter periods for the decision, including 30 days in Kansas, a cumulative total of 30 days in Tennessee, and 40 days in Indiana.⁶⁹

Outcomes

Corrective action, referred to the Table under the shorter rubric of "remedy,"⁷⁰ and enforcement are relatively frequent subjects of state CP additions. However, the 12 additions for the remedy column are limited in extent. They generally provide operational details, such as timing in relation to the one-year regulatory timeline for the overlapping area of enforcement⁷¹ and, less frequently, specifications for voluntary district corrective action. As limited examples of unusual variations, California and Iowa laws both allow for recommended, in addition to required, corrective actions. The only relatively remarkable addition is the Oregon law's authorization for TRO-type interim relief.

The more frequent additions for enforcement are also largely limited to operational details or extend to relatively routine possible sanctions, such as withholding of funds. Indiana is more unusual, mandating rather than permitting funding sanctions upon noncompliance with the ordered corrective action. Similarly, Michigan law's enforcement provisions are relatively

67. The 1999 IDEA regulations provided two exceptions: continuing violations and, for a maximum of three years, compensatory education. Assistance to States for the Education of Children with Disabilities and the Early Intervention Program for Infants and Toddlers with Disabilities, 64 Fed. Reg. 12,406, 12,465 (Mar. 12, 1999).

68. For examples more generally, see Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities, 61 IDELR ¶ 232 (OSEP 2013) at B-21 (interpreting as nonqualifying circumstances: staff shortages and heavy case loads; school vacations and breaks; and use of alternative dispute resolution without mutual agreement to extend the deadline).

69. As another variation, which also contrasts with the prevailing look back approach from the filing date, Louisiana provides for a 45-day period from the end of its early resolution process.

70. For OSEP's use of this term, see, e.g., Letter to Zirkel, 74 IDELR ¶ 171 (OSEP

2019) (concluding that "an SEA has broad discretion when determining the appropriate remedy," including tuition reimbursement for the denial of appropriate services); Letter to Lipsitt, 72 IDELR ¶ 182 (OSEP 2018) (same conclusion including compensatory education).

71. 34 C.F.R. § 300.600(e) (the SEA "must ensure that . . . the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance"); see also Letter to Zirkel, 68 IDELR ¶ 142 (OSEP (2016) ("We recognize that in some circumstances providing the remedy ordered in the SEA's complaint decision could take more than one year to complete (e.g., the SEA orders an action, such as compensatory services, the provision of which, will extend beyond one year; the corrective action timeline is extended because the parent or adult student fails to take action that is essential to implementation of the SEA's decision; the parties mutually agree to extend the timeline for implementation.")).

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unusual, specifying a range of sanctions, including “withhold[ing], withdraw[ing], or suspend[ing] such endorsements, approvals, credentials, grants, or authorizations pertaining to special education personnel or projects . . .,” for not only lack of timely implementation of corrective action but also “fail[ure] to cooperate with the . . . investigation, . . . known falsification of fact, or . . . repetition of similar violations.” Additionally, Michigan’s guidelines provide for a local “review and analysis process” team for formulating the corrective action plan. Perhaps most unusually, Tennessee’s law requires publication on the SEA’s website of all violations, including the identification of the school district and the prescribed corrective action.

Miscellaneous

The frequent entries in catchall final column of the Table largely consist of the minority of states that provide one or more of the following three successive levels of post-decision review, which are left to state discretion:⁷² (1) correction (MA, NJ, and NY); (2) reconsideration (CA, IN, LA, MD, NH, OR, PA, and TX), or (3) appeal (AK, AZ, CO, KS, KY, LA, MD, MN, NH, and OR). Conversely, various states (AL, CT, MO, NY, OH, SC, and VT) expressly deny the rights of reconsideration or appeal.⁷³ For the state laws that provide for appeals, some are internal within the SEA, with Kansas and Louisiana being the most detailed, and a few are via state court. Case law adds further, limited contours to the extent of a right to judicial review.⁷⁴

72. *E.g.*, Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, 71 Fed. Reg. 46,450, 46,607 (Aug. 14, 2006) (“The regulations neither prohibit nor require the establishment of procedures to permit an LEA or other party to request reconsideration of a State [CP] decision. We have chosen to be silent in the regulations about whether a State [CP] decision may be appealed because we believe States are in the best position to determine what, if any, appeals process is necessary to meet each State’s needs, consistent with State law.”). However, an OSEP condition for a state reconsideration procedure is “only if the [district’s] implementation of any corrective action is . . . not delayed pending the reconsideration process.” Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities, 61 IDELR ¶ 232 (OSEP 2013) at B-32.

73. However, those that do so via guidelines are not binding on DPHs or courts. Moreover, a few other states have more general laws that provide for the right to judicial appeal for any state agency order or decision. *E.g.*, MICH. COMP. LAWS § 600.631. In a national survey, 15 states reported having an appeal process for parents. Hansen & Zirkel, *supra* note 7, at 113. However, the results

were not sufficiently specific as to whether the appeal extended to districts, whether some of the respondents were referring generically to the correction or reconsideration process, and the extent to which the appeal was judicial rather than internal to the SEA.

74. In addition to state CP laws that specifically provide for judicial appeal, a few states have had court decisions concerning CP where jurisdiction was not at issue. *E.g.*, *Indep. Sch. Dist. No. 709 v. Bonney*, 705 N.W.2d 209, 202 Law Rep. 828 (Minn. Ct. App. 2005) (upholding state’s CP system); *cf. Bickford v. Alaska Dep’t of Educ. & Early Dev.*, 155 P.3d 302, 218 Ed.Law Rep. 717 (Alaska 2007) (upholding insufficiency determination without discussing whether, per state law, the matter was outside the jurisdiction of a DPH). In the few cases where such specific jurisdiction was at issue, courts have tended to uphold state laws that do not provide a right of appeal. *E.g.*, *Bd. of Educ. of Lenape Reg’l High Sch. Dist. v. N.J. Dep’t of Educ.*, 945 A.2d 125, 231 Ed.Law Rep. 331 (N.J. Super. Ct. App. Div. 2008); *Wolfe v. Lower Merion Sch. Dist.*, 801 A.2d 639, 167 Ed.Law Rep. 256 (Pa. Commw. Ct. 2002); *cf. Loudoun Cty. Sch. Bd. v. Commonwealth of Va. Bd. of Educ.*, 612 S.E.2d 210, 197 Ed.Law Rep. 900 (Va. Ct. App. 2005) (rejecting appellate jurisdiction under

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However, most unusually in light of the separate fact-finding processes and decisional standards, the laws in Colorado,⁷⁵ Maryland,⁷⁶ and, as an initial matter, Alaska provide for appeal of the CP decision via a DPH.⁷⁷ Unusual beyond the review process is Maine's express provisions requiring training for CP investigators and treating them as state employees entitled to coverage under Maine's official immunity legislation.

Conclusion

Consonant with the variety for experimentation and customization of the federal system generally⁷⁸ and the "cooperative federalism" of the IDEA specifically,⁷⁹ the state laws and guidance for CP represent an opportunity for not only practitioner awareness but also policymaker assessment. The state

the state's administrative procedures act of CP decision under state's previous but now repealed law for CP). Alternately, the courts are split as to whether the IDEA provides an implied private right of action to challenge a CP decision or the CP process. *Compare Va. Office of Protection & Advocacy v. Va. Dep't of Educ.*, 262 F. Supp. 2d 648, 177 Ed.Law Rep. 1079 (E.D. Va. 2003) (no); cf. *Fairfield-Suisun Unified Sch. Dist. v. Cal. Dep't of Educ.*, 780 F.3d 968, 315 Ed. Law Rep. 39 (9th Cir. 2015); *E. Ramapo Cent. Sch. Dist. v. King*, 11 N.Y.S 3d 284, 318 Ed.Law Rep 1078 (App. Div. 2015) (not for school districts at least), with *Beth V. v. Carroll*, 87 F.3d 80 (3d Cir. 1996); *S.A. v. Tulare Cty. Office of Educ.*, 51 IDELR ¶ 244 (E.D. Cal. 2009) (yes).

75. For a Colorado case that reached court via the DPH route, see *Nathan M. v. Harrison Central School District No. 2*, 73 IDELR ¶ 148 (D. Colo. 2018) (ruling that the district did not deny FAPE either procedurally or substantively contrary to the CP decision, although not mentioning the intervening status of the CP corrective action order).

76. For a Maryland case that reached court via the DPH route, see *Manalansan v. Bd. of Educ. of Baltimore City*, 35 IDELR ¶ 122 (D. Md. 2001) (denying SEA's dismissal motion based on the insufficiency of its investigation and conclusions).

77. This appellate route is distinct from the parent's and district's separate right to file for DPH, which may trigger the deferral requirement depending on timing. For example, Florida guidelines expressly identify this right, but not as an appellate mechanism. Massachusetts' guidelines go a step farther by expressly rejecting the use of DPH to appeal a CP decision. New York's law is ambiguous as to whether its provision for a subsequent DPH on the same issues

serves as an appeal. Whether as an appeal or a separate subsequent right, it would appear that the SEA may not permit the district to delay implementation of any CP-ordered corrective action. Letter to Deaton, 65 IDELR ¶ 241 (OSEP 2015). Finally, a court decision arising in Michigan agrees with OSEP that after a CP decision, the parties may raise the same subjects in a DPH; however, the ruling is ambiguous whether the DPH serves as an appeal or a separate decisional process where the state law does not make this matter clear. *Lewis Cass Intermediate Sch. Dist. v. M.K.*, 290 F. Supp. 2d 832, 183 Ed.Law Rep. 446 (W.D. Mich. 2003); see also *W. Baton Rouge Sch. Bd. v. Dehotel*, 63 IDELR ¶ 85 (M.D. La. 2014); *Grand Rapids Pub. Sch. v. P.C.*, 308 F. Supp. 2d 815, 187 Ed.Law Rep. 76 (W.D. Mich. 2004) (following *Lewis Cass* arguably as matter of subject matter jurisdiction, not necessarily appeal).

78. *E.g., Dep't of Revenue v. Davis*, 128 S. Ct. 1801, 1808 (2008); *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 127 S. Ct. 2738, 2786 n.28 (2007) (Thomas, J., concurring); *AT & T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 418 (1999); *EEOC v. Wyoming*, 460 U.S. 226, 264–65 (1983); *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 617 (1982) (Burger, C.J., dissenting). Justice Brandeis's dissenting opinion in *New State Ice Co. v. Liebmann*, 285 U.S. 262, 310–11 (1932), is usually credited with the conception of states as laboratories.

79. *E.g., Bay Shore Union Free Sch. Dist. v. Kain*, 485 F.3d 730, 733–34, 220 Ed.Law Rep. 190 (2d Cir. 2007); *Evans v. Evans*, 818 F. Supp. 1215, 1223, 82 Ed.Law Rep. 492 (N.D. Ind. 1993) (recognizing that states may add requirements to the IDEA's foundation).

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CP laws vary from merely mirroring the IDEA regulatory requirements, as Hawaii, Mississippi, Nevada, North Dakota, and Oklahoma illustrate, to rather extensive addition to the federal template, as Alaska, California, Indiana, Louisiana, and Ohio less extremely demonstrate. The use of guidelines either alone, as Arizona, Connecticut, Florida, Massachusetts North Carolina, and Wisconsin exemplify, or in combination with laws, as Michigan and Oregon particularly illustrate, is an intersecting source of variation. Compounding the variance in this second source is the wide range in the dividing line from the narrow view of law limited to legislation and regulations⁸⁰ to the APA boundary between legislative and interpretive rules⁸¹ to the broad boundary used herein.⁸² It would appear that many states use guidance without making any distinction from law obvious, thus having the advantages of easy changeability and apparent forcefulness. In contrast, a few states, such as Alabama, Massachusetts, Tennessee, and Tennessee, are relatively clear via use of terms such as “guide” and “should.”⁸³ Oregon is probably the clearest example of the advantage of flexibility in being obvious about the nonbinding but normative status of guidelines, qualifying timelines and other specified practices with “typically” or “should.”

In any event, the state additions for CP are less extensive and dramatic than the counterpart canvassing for DPHs, the other decisional dispute resolution avenue under the IDEA.⁸⁴ The difference is attributable in part to (1) the belated, non-Congressional establishing of the IDEA CP avenue;⁸⁵ (2) the less legalized trend for CP as compared with DPH;⁸⁶ and (3) the much less attention that CP has received.⁸⁷ The trade-off between flexibility and specificity among the policy choices of no additions and detailed additions via either law or guidelines is a matter for careful state-by-state consideration, with this systematic synthesis facilitating customized and participatory choices.

Finally, the consideration should include the limits of law, whether via legislation or regulations or via guidelines that are or are not clearly only recommendations. Even if the choice is strictly binding, actual practice may be different. For example, only one state CP law provides for the two-part harmless error approach to procedural FAPE claims,⁸⁸ yet three-quarters of the SEA CP representatives reported using this approach.⁸⁹ Similarly, only

80. Even within this strict view, as illustrated by the Supreme Court’s landmark decision in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), regulations are subject to a hierarchical limitation in relation to the enabling legislation.

81. *E.g., Metro. Sch. Dist. v. Davila*, 969 F.3d 485, 490–92, 76 Ed.Law Rep. 386 (7th Cir. 1992).

82. *See supra* notes 20, 23–27 and accompanying text.

83. An occasional state, such as Florida, straddle the fence by using the term “guide,” but citing legal authority.

84. *See generally* Zirkel, *supra* note 3.

85. *See supra* note 8–9 and accompanying text.

86. *Compare* Hansen & Zirkel, *supra* note 7, at 111 (finding that the majority of complaint investigators have a special education background), *with* Jennifer Connolly, Thomas Mayes, & Perry A. Zirkel, *State Due Process Hearing Systems under the IDEA: An Update*, J. DISABILITY POL’Y STUD. (in press 2019) (finding that an overwhelming proportion of hearing officers are attorneys, with a increasing majority being full-time administrative law judges).

87. *See supra* note 4 and accompanying text.

88. *See supra* text accompanying note 59.

89. Hansen & Zirkel, *supra* note 7, at 113.

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one state law provides, and then only on a limited basis, an indication that its CP system does not address substantive FAPE,⁹⁰ yet, almost 40% of the SEA CP representatives report rarely or never addressing substantive issues.⁹¹

The overall goal is effective education for students with disabilities, with disputes resolved efficiently in light of the students' individual and notable needs and the limited resources of school districts. Both parties have a mutual interest in limiting the time and other transaction costs devoted to dispute resolution. As a parallel but distinctly different decisional avenue from DPH,⁹² CP is a “powerful tool”⁹³ that addresses disputes not limited to parent complaints,⁹⁴ is of negligible cost to the complaint,⁹⁵ and that is generally shorter than the adjudicative alternative.⁹⁶ This analysis of state laws and guidance for CP serves as a springboard step for both more nuanced scholarly research⁹⁷ and more refined state choices for this meaningful mechanism.

90. See *supra* text accompanying note 62.

91. Hansen & Zirkel, *supra* note 7, at 113.

92. See *supra* note 16 (detailed comparative analyses).

93. Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities, 61 IDELR ¶ 232 (OSEP 2013) at B-1.

94. The wide breadth is attributable in part to complaints against the SEA and other systemic violations (*id.* at B-9 and B-12), not just the open-ended scope of complainants (see *supra* note 30 and accompanying text). Indeed, the CP appears to extend to *sua sponte* action arising from the complaint based on the SEA's general supervisory obligation. OSEP's position is that if the SEA uncovers in the course of its investigation violations not in the complaint, it must enforce its obligations but need not address them in the resolution of the complaint. Letter to Anonymous (OSEP 2003), <https://www2.ed.gov/policy/speced/guid/idea/letters/2003-2/redact062603assess2q2003.pdf>; Letter to Nann, 36 IDELR ¶ 212 (OSEP 2001) (reaching the same conclusion based on the example of systemic complaints of FAPE violations); cf. Letter to Zirkel, 74 IDELR ¶ 235 (OSEP 2019) (extending this conclusion to incidental allegations about districts in a complaint against the SEA).

95. *Id.* at *2 (characterizing CP as “a very effective and efficient means of resolving disputes between parents and public agen-

cies, without the need to resort to more formal, adversarial, and costly due process proceedings”).

96. One commentator characterized CP as high finality in comparison to DPH. Thomas A. Mayes, *A Brief Model for Explaining Dispute Resolution Options in Special Education*, 34 OHIO ST. J. ON DISP. RESOL. 153, 160–61 (2019). This high finality is attributable to a much more restricted right of appeal and a much shorter limitations period (due to specified length, starting point, and remedial scope). Indeed, limiting the metric to decisions within the prescribed regulatory timeline without extensions or appeals, the respective proportions for 2016–17, which is the latest available year of national data, were as follows: CP—94% and DPH—41%. CADRE, *supra* note 14, at 12. Finally, the absence of appeal in most states is not unusual for analogous administrative investigatory procedures. For example, school districts' only route for judicial review of OCR orders appears to be indirect and quite limited—awaiting and defending an agency enforcement lawsuit. *E.g.*, United States v. Chili-Cent. Sch. Dist., 198 F. Supp. 3d 228, 339 Ed.Law Rep. 789 (W.D.N.Y. 2016).

97. The author welcomes corrections to the present entries in the table and the cited sources in the Appendix along with more in-depth qualitative and quantitative research to fill the gap in the professional literature specific to CP.

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Appendix: Citations for the State Laws and Guidance Specific to CP

	Laws	Guidance
AL	ALA. ADMIN. CODE r. 298-8-9-.08(9)(a)	Ala. Quick Tips for Dispute Resolution: Understanding the Complaint Process, https://www.alsde.edu/sec/sec/Dispute%20Resolutions/Dispute-Resolution-Complaints.pdf
AK	ALASKA ADMIN. CODE tit. 4, § 52.500	
AZ	ARIZ. ADMIN. CODE § R7-2-405.01	Ariz. State Complaint Procedures, http://www.azed.gov/disputeresolution/state-admincomplaintsystem/
AR	ARK. ADMIN. CODE R. § 005.18.12-12.01	
CA	CAL. EDUC. CODE § 56500.2; CAL. CODE REGS. tit. 5, §§ 4600-4687	
CO	COLO. REV. STAT. § 22-20-104*; 1 COLO. CODE REGS. § 301-8.2220-R-1*; Colo. State-Level Complaint Procedures, http://www.cde.state.co.us/sites/default/files/documents/spedlaw/download/statecomplaintprocedures2010.pdf **	
CT	CONN. AGENCIES REGS. § 10-76b-4(b)(3)*	Conn. Complaint Resolution Process, https://portal.ct.gov/-/media/SDE/Special-Education/Complaint-Resolution-Process-Rev-72517.pdf?la=en
DE	14 DEL. ADMIN. CODE §§ 923(51.0)-923(53.0)	Del. Special Education Complaint Procedures, https://www.doe.k12.de.us/cms/lib/DE01922744/Centricity/Domain/78/admin%20complaint%20procedures.pdf
FL	FLA. ADMIN. CODE r. 6A-6.0331(5); Fla. Notice of Procedural Safeguards, http://www.fl DOE.org/core/fileparse.php/3/urlt/procedural.pdf	Fla. State Complaints: General Information and FAQ, http://www.fl DOE.org/academics/exceptional-student-edu/dispute-resolution/
GA	GA. COMP. R. & REGS. 160-4-7-12(1)	
HI	HAW. CODE R. §§ 8-60-51 – 8-60-53	
ID	IDAHIO ADMIN. CODE r. 08.02.03.004(10)*; Idaho Special Education Manual, http://www.sde.idaho.gov/sped/files/shared/Idaho-Special-Education-Manual-2018-Final.pdf	Idaho Procedures for Resolving Complaints under the IDE/A, https://www.sde.idaho.gov/sped/dispute/files/state/Procedures-for-Resolving-Complaints.pdf
IL	105 ILL. COMP. STAT. 5/14-8.02e; ILL. ADMIN. CODE tit. 23, § 226.570	
IN	511 IND. ADMIN. CODE 7-45-1	
IA	IOWA ADMIN. CODE r. 281-41.151 – 281-41.153	Iowa Procedures for Special Education Complaints, https://educateiowa.gov/sites/files/ed/documents/ProceduresforSpe

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KS	KAN. ADMIN. REGS. § 91-40-51		cialEducationComplaints-April2019.pdf Kan. Formal Complaint, http://www.ksde.org/Portals/0/SES/PH/PH-Ch11.pdf
KY	707 KY. ADMIN. REGS. 1:340, § 7		Ky. Special Education Procedures Manual, https://education.ky.gov/special/except/Document/Special_Education_Procedures_Manual.pdf
LA	LA. ADMIN. CODE tit. 28, Pt. XLIII, §§ 151-153 & Pt. LXI, §§ 501-513		
ME	ME. STAT. tit. 20-A, § 7206; 05-071-101 ME. CODE R. § XVI(4)		
MD	MD. CODE REGS. 13A.05.02.10* and 13A.05.01.15(A)		
MA	603 MASS. CODE REGS. 28.08(1)-(2)		
MI	MICH. ADMIN. CODE tit. 340.1851-340.1855		Mass. Problem Resolution System, http://www.doe.mass.edu/prs/guide/default.html
MIN	MINN. STAT. § 125A.091(28)		Mich. Complaint Procedures, https://www.michigan.gov/mde/0,4615,7-140-6598_88185---00.html
MS	MISS. CODE ANN. § 37-23-139*, 7-34 MISS. CODE R. §§ 300.151-300.153		Minnesota Special Education Complaints, https://education.mn.gov/MDE/fam/sped/conf/comply/004471#P46_1750
MO			Mo. Part B Child Complaint Procedures, https://dese.mo.gov/sites/default/files/se-cc-child-complaint-procedures-part-b.pdf
MT	MONT. ADMIN. R. 10.16.3662		
NE	92 NEB. ADMIN. CODE §§ 51-009.11		
NV	NEV. ADMIN. CODE § 388.318		
NH	N.H. CODE R. EDUC. 1121.01		
NJ	N.J. ADMIN. CODE § 6A:14-9.2		N.J. Complaint Resolution Procedures for Special Education Pamphlet, https://www.nj.gov/education/special/complaint/pamphlet.pdf
NM	N.M. CODE R. §§ 6.31.2.13(H)		
NY	8 N.Y. COMP. CODES R. & REGS. tit. 8, § 200.5(l)		N.Y. State Complaint Procedures: Questions and Answers, http://www.p12.nysed.gov/special/quality/complaintqa.htm
NC	N.C. GEN. STAT. §§ 107.2(b) and 107.4*, N.C. Policies Governing Services for Children with Disabilities, § 1501-10; https://ec.ncpublicschools.gov/conferences-profdev/march-institute/2018-march-institute-handouts/policy-updates-legal-trends/amendedmarch2018policy.pdf **		N.C. Formal State Complaint Procedures, https://ec.ncpublicschools.gov/parent-resources/dispute-resolution/formal-state-complaints/formal-complaint-procedure.pdf

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ND	N.D. ADMIN. CODE: 67-23-05-01		
OH	OHIO ADMIN. CODE 3301-51-05(K)(4)		Special Education Handbook, https://sde.ok.gov/sites/default/files/documents/files/Oklahoma%20Special%20Education%20Handbook%20%28live%29.pdf
OK	OKLA. ADMIN. CODE § 210-05-13.2(d)(3)*		
OR	OR. ADMIN. R. 581-015-2030		Or. Special Education Complaint Resolution Process: Questions and Answers, https://www.oregon.gov/ode/rules-and-policies/Documents/complaintqa-.pdf
PA	PA. CODE § 14.107*; Pa. State Special Education Complaint Resolution Procedures, https://odr-pa.org/wp-content/uploads/pdf/Complaint-Resolution-Procedures-English.pdf		
RI	200-20 R.I. ADMIN. CODE: R. § 30-6.5.6		R.I. Special Education State Complaint Procedures, http://ride.ri.gov/Portals/0/Uploads/Documents/Students-and-Families-Great-Schools/Special-Education/When-Schools-and-Families-Do-Not-Agree/RIIDE-Special-Education-Complaint-Procedures.pdf
SC	(S.C. CODE ANN. REGS. 43-243(II)); https://ed.sc.gov/districts-schools/special-education-services/fiscal-and-grants-management-fgm/grants/sc-policies-and-procedures-for-special-education/		S.C. Special Education Process Guide, https://ed.sc.gov/scdoe/assets/file/programs-services/173/documents/SEPG-03202013.pdf
SD	S.D. ADMIN. R. 24:05:15:07		
TN	TENN. CODE ANN. § 49-10-604		Tenn. Guide to Special Education Administrative Complaints, https://www.tn.gov/content/dam/tn/education/legal/legal-administrative-complaint-guide.pdf
TX	19 TEX. ADMIN. CODE § 89.1195		Tex. Special Education Dispute Resolution Systems Handbook, http://cdd.tamu.edu/sites/cdd.tamu.edu/files/SE%20Dispute%20Resolution%20Handbook%20March%202017%20%282%29.pdf
UT	Utah State Bd. of Educ. Special Education Rules, https://www.schools.utah.gov/file/bff61848-ae42-4265-a654-6dae5f398507		
VT	7-1 VT. CODE R. § 5:2365.1.5		Vt. Summary of Administrative Complaint Procedures, https://education.vermont.gov/sites/aoe/files/documents/edu-summary-administrative-complaint-process_0.pdf
VA	8 VA. CODE ADMIN. § 20-81-200		
WA	WASH. ADMIN. CODE: § 392-172A-0502		

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WV	W. VA. CODE R. § 126-16-3.1*, https://wvde.us/wp-content/uploads/2018/01/Policy2419_2017.pdf	Va. Complaint Resolution Procedures, http://www.doe.virginia.gov/special_ed/resolving_disputes/complaints/complaint_resolution_procedures.pdf
WI	Wis. STAT. § 115.762*	Wis. DPI Complaint Procedures, https://dpi.wi.gov/sped/dispute-resolution/complain
WY	7 WYO. CODE R. § 7, https://edu.wyoming.gov/downloads/special-ed/SpecEd_Policy_and_Procedure_Manual_v_1_1FINAL_8-20-2010.pdf	

* Statutes or regulations that limited to incorporating the IDEA requirements or authorizing CP-specific procedures
**CP procedures for which the legal status—law or guidance—is subject to question (see *supra* text accompanying note 23).