

3-15-2021

State Laws for Due Process Hearings under the Individuals with Disabilities Education Act III: The Pre-Hearing Stage

Andrew M.I. Lee

Perry A. Zirkel

Follow this and additional works at: <https://digitalcommons.pepperdine.edu/naalj>

 Part of the [Administrative Law Commons](#), [Civil Rights and Discrimination Commons](#), [Disability Law Commons](#), and the [Education Law Commons](#)

Recommended Citation

Andrew M.I. Lee and Perry A. Zirkel, *State Laws for Due Process Hearings under the Individuals with Disabilities Education Act III: The Pre-Hearing Stage*, 40 J. Nat'l Ass'n Admin. L. Judiciary 1 (2020)
Available at: <https://digitalcommons.pepperdine.edu/naalj/vol40/iss2/1>

This Article is brought to you for free and open access by the Caruso School of Law at Pepperdine Digital Commons. It has been accepted for inclusion in Journal of the National Association of Administrative Law Judiciary by an authorized editor of Pepperdine Digital Commons. For more information, please contact Katrina.Gallardo@pepperdine.edu, anna.speth@pepperdine.edu, linhgavin.do@pepperdine.edu.

State Laws for Due Process Hearings under the Individuals with Disabilities Education Act III: The Pre-Hearing Stage

Andrew M.I. Lee & Perry A. Zirkel*

© 2021

I.	INTRODUCTION	2
II.	LITERATURE OVERVIEW.....	3
III.	IDEA FOUNDATIONAL REQUIREMENTS.....	5
IV.	METHOD AND RESULTS	8
Table 1: State Law Additions to the IDEA Pre-hearing		
	Provisions for DPHs	10
A.	Complaint.....	12
B.	Party Resolution.....	15
C.	Hearing Preparations.....	17
V.	DISCUSSION AND RECOMMENDATIONS.....	22
VI.	APPENDIX: CITATIONS FOR STATE LAWS SPECIFIC TO PRE-HEARING STAGE	25

* Andrew M.I. Lee, J.D., is an associate director of editorial content at Understood, a social impact organization focused on education. Perry A. Zirkel, J.D., Ph.D., LL.M., is university professor emeritus of education and law at Lehigh University.

I. INTRODUCTION

The Individuals with Disabilities Education Act (IDEA)¹ is the primary federal law governing special education in schools. It provides “extensive procedural safeguards”² for children with disabilities and their parents. One of the law’s most powerful safeguards is the right to a due process hearing (DPH)³ for complaints related to the “identification, evaluation, or educational placement of the child,” which ultimately includes the school district’s obligation to provide the child with a free appropriate public education (FAPE).⁴

Since the enactment of the IDEA in 1975,⁵ the volume of litigation related to the IDEA has increased substantially. By the 2000s, the number of federally reported special education cases outnumbered the total of all other education cases.⁶ Like other federal education laws, the IDEA uses a model of “cooperative federalism”—states have the responsibility of educating children with disabilities within a federal legal framework of requirements set by Congress.⁷ This model permits states to supplement, via adding to but not subtracting from, the IDEA’s requirements for DPHs, which various states have done.⁸

The purpose of this article is to follow up on two previous articles in this journal that canvassed state laws that have added to the basic procedural rules in the IDEA for DPHs.⁹ Those articles focused on the *hearing* and *post-hearing* stages of the DPH. In this article, we extend the examination to state law additions to the procedures for the *pre-hearing* stage of DPHs, using the same analytical framework and organization in the previous articles.

Part I of this article offers a review of the literature in this area. Part II lays out the current pre-hearing DPH requirements in the IDEA and its accompanying federal regulations. Part III describes the method for and the results of our analysis. Part IV concludes with a discussion of the findings and suggestions for further research.

¹ 20 U.S.C. §§ 1400–1482 (2018).

² Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 182 (1982) [hereinafter referred to as *Rowley*]; *see also* Andrew F. v. Douglas Cnty. Sch. Dist. RE-1, 137 S. Ct. 988, 994 (2017) (referring to the IDEA’s “detailed set of procedures”).

³ 20 U.S.C. § 1415(b)(2) (2018).

⁴ *Id.* § 1415(b)(1)(E).

⁵ The original name of the IDEA is the Education for All Handicapped Children Act, Public Law 94-142.

⁶ Perry A. Zirkel & Brent L. Johnson, *The "Explosion" in Education Litigation: An Updated Analysis*, 265 EDUC. L. REP. 1 (2011) (revealing the upward trajectory of IDEA litigation within the relatively level trend of K–12 litigation within the past three decades).

⁷ Schaffer *ex rel.* Schaffer v. Weast, 546 U.S. 49, 52 (2005) (citing Little Rock Sch. Dist. v. Mauney, 183 F.3d 816, 830 (9th Cir. 1999) and *Rowley*, 458 U.S. at 183). Congress put in place a similar federalism model for the Elementary and Secondary Education Act, which is known as the Every Student Succeeds Act. 20 U.S.C. §§ 6301 *et. seq.* (2018) (establishing, among other things, a federal framework for school accountability within which states may act).

⁸ *See infra* notes 63–155 and accompanying text.

⁹ Perry A. Zirkel, *State Laws for Due Process Hearings Under the Individuals with Disabilities Education Act II: The Post-Hearing Stage*, 40 J. NAT’L ASS’N ADMIN. L. JUDICIARY 1 (2020) [hereinafter *Post-Hearing Stage*]; 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 (2018) [hereinafter *Hearing Stage*].

II. LITERATURE OVERVIEW

The literature on DPHs tends to fit into four broad groups: (1) narrative rhetoric, (2) empirical research, (3) specific legal questions about DPHs, and (4) surveys of state law additions to the IDEA.

The first group has generally identified problems of DPHs. These problems include the high costs to schools and families,¹⁰ the damage to family-school relationships,¹¹ and the length and complexity of the hearing process.¹² The proposed solutions include the additional or alternative use of individualized education program (IEP) facilitation¹³ and arbitration.¹⁴

The second group consists of empirical research that seeks to analyze the frequency and outcomes of DPH decisions.¹⁵ More specifically, the frequency

¹⁰ E.g., Elisabeth Hyman, Dean Hill Rivkin, & Stephen A. Rosenbaum, *How IDEA Fails Families Without Means: Causes and Corrections from the Frontlines of Special Education Lawyering*, 10 J. GENDER, SOC. POL'Y & L. 107 (2011) (identifying prevailing problems and possible solutions for parents in poverty).

¹¹ E.g., AM. ASS'N OF SCH. ADM'RS, *RETHINKING SPECIAL EDUCATION DUE PROCESS* 6–9 (2016), https://www.aasa.org/uploadedFiles/Policy_and_Advocacy/Public_Policy_Resources/Special_Education/AASARethinkingSpecialEdDueProcess.pdf (citing various sources that identify parties' perceived dissatisfaction).

¹² E.g., Perry A. Zirkel, *Over-Due Process Revisions for the Individuals with Disabilities Education Act*, 55 MONT. L. REV. 403, 405 (1994) (identifying the cumbersome length of DPHs as one of the main problems of the process).

¹³ E.g., Reece Erlichman, Michael Gregory, & Alisia St. Florian, *The Settlement Conference as a Dispute Resolution Option in Special Education*, 29 OHIO ST. J. ON DISP. RESOL. 407 (2014) (recounting the pioneering alternatives in Massachusetts that includes not only the Spedex and advisory opinion options but also a customized settlement conference mechanism); Tracy G. Muller, *IEP Facilitation: A Promising Approach for Resolving Conflicts Between Families and Schools*, 41 TEACHING EXCEPTIONAL CHILD. 60 (Jan. 2009) (describing a process that utilizes an outside facilitator for resolving disagreements at IEP meetings); Elizabeth A. Shaver, *Every Day Counts: Proposals to Reform IDEA's Due Process Structure*, 66 CASE W. RES. L. REV. 143 (2015) (recommending, *inter alia*, IEP facilitation in lieu of the current pre-DPH resolution session procedure).

¹⁴ E.g., S. James Rosenfeld, *It's Time for an Alternative Dispute Resolution Procedure*, 32 J. NAT'L ASS'N ADMIN. L. JUDICIARY 544 (2012) (providing for an additional dispute resolution option akin to the tripartite model of labor arbitration for impasses, here consisting of an expert in the child's disability, a special education administrator with experience in the child's disability, and an attorney familiar with special education law); Spencer J. Salend & Perry A. Zirkel, *Special Education Hearings: Prevailing Problems and Practical Proposals*, 19 EDUC. & TRAINING MENTALLY RETARDED 29 (1984) (proposing an alternative model akin to grievance arbitration in the labor context, consisting of a single impartial expert).

¹⁵ E.g., Perry A. Zirkel & Gina L. Gullo, *Trends in Impartial Hearings under the IDEA: A Comparative Update*, 376 EDUC. L. REP. 870 (2020) (analyzing the frequency of DPH filings and decisions for the most recent available six-year period); Perry A. Zirkel & Cathy A. Skidmore, *National Trends in the Frequency and Outcomes of Hearing and Review Officers under the IDEA: An Empirical Analysis*, 29 OHIO ST. J. ON DISP. RESOL. 525 (2015) (providing comprehensive literature review and systematic findings specific to frequency and outcomes of DPH decisions). For more recent frequency or outcomes analyses on specific issues, *see, e.g.*, Cathy A. Skidmore & Perry A. Zirkel, *Has the Supreme Court's Schaffer Decision Placed a Burden on Hearing Officer Decision-Making under the IDEA*, 35 J. NAT'L ASS'N ADMIN. L. JUDICIARY 304 (2015) (finding that *Schaffer v. Weast* has had a minor effect on DPH decisions); Perry A. Zirkel, *Manifestation Determinations under IDEA 2004: An Updated Legal Analysis*, 29 J. SPECIAL EDUC. LEADERSHIP 32 (2016) (finding similar frequency and outcome pattern after, as compared

analyses focus on the longitudinal trends for the volume of pertinent decisions, while the outcomes analyses examine the corresponding distribution of rulings in favor of the parents and those in favor of districts.

The third group are legal analyses of specific aspects of DPHs, like burden of proof,¹⁶ impartiality,¹⁷ and remedial authority.¹⁸

The fourth group is the research most relevant to our current analysis. This literature has examined state laws that have added to the IDEA's requirements for other areas, including the identification of students with specific learning disabilities,¹⁹ behavior strategies in special education,²⁰ and the state complaint process.²¹ In tandem with a systematic snapshot of the current state systems for DPHs,²² the most salient to the present article are the two-aforementioned²³ state-by-state analyses in this journal of state law additions to the IDEA for the other two stages of DPHs.

with before, 2004 IDEA amendments); Perry A. Zirkel, *Are the Outcomes of Hearing (and Review) Officer Decisions Different for Pro Se and Represented Parents?*, 34 J. NAT'L ASS'N ADMIN. L. JUDICIARY 263 (2015) (finding a significant difference but questioning causality); Perry A. Zirkel, *Adjudicative Remedies for Denials of FAPE under the IDEA*, 33 J. NAT'L ASS'N ADMIN. L. JUDICIARY 214 (2013) (determining frequency and outcomes of compensatory education and tuition reimbursement).

¹⁶ E.g., Perry A. Zirkel, *Who Has the Burden of Persuasion in Impartial Hearings under the Individuals with Disabilities Education Act?*, 13 CONN PUB. INT. L.J. 1 (2013) (categorizing state laws into the three groupings after *Schaffer v. Weast*: silent, default, on-district).

¹⁷ E.g., Perry A. Zirkel, *The Legal Boundaries for Impartiality of IDEA Hearing Officers: An Update*, 21 PEPPERDINE DISP. RESOL. L.J. (forthcoming May 2021) (providing an updated synthesis of the most recent thirteen years of case law culminating in a proposal for an overall standard for hearing officer impartiality that is customized to the purposes of the IDEA).

¹⁸ E.g., Perry A. Zirkel, *The Remedial Authority of Hearing and Review Officers under the Individuals with Disabilities Education Act: An Update*, 37 J. NAT'L ASS'N ADMIN. L. JUDICIARY 506 (2018) (canvassing the case law and related authority for the various remedies available to IDEA hearing and review officers).

¹⁹ E.g., Laura Boynton Hauerwas, Rachel Brown & Amy N. Scott, *Specific Learning Disability and Response to Intervention: State-Level Guidance*, 80 TEACHING EXCEPTIONAL CHILD 101 (2013); Perry A. Zirkel & Lisa B. Thomas, *State Laws and Guidelines for Implementing RTI*, 43 TEACHING EXCEPTIONAL CHILD 60 (Sept./Oct. 2010) (tracking states' official responses to the IDEA 2004 provision for changing the requirements for eligibility under the classification of specific learning disabilities).

²⁰ E.g., Perry A. Zirkel, *State Special Education Laws for Functional Behavioral Assessments and Behavior Intervention Plans: An Update*, 45 COMMUNIQUÉ 4 (Nov. 2016) (finding continuing pattern of skeletal additions to IDEA for functional behavioral assessments and behavior intervention plans).

²¹ E.g., Perry A. Zirkel, *State Laws and Guidance for Complaint Procedures under the Individuals with Disabilities Education Act*, 368 EDUC. L. REP. 24 (2019) (tabulating the state laws and their related policy guidance for various aspects of the alternative decisional avenue for dispute resolution under the IDEA).

²² Jennifer Connolly, Thomas Mayes, & Perry A. Zirkel, *State Due Process Hearing Systems under the IDEA: An Update*, 30 J. DISABILITY POL'Y STUD. 156 (2019) (reporting a survey of the key features of the various state systems for IDEA DPHs).

²³ See *supra* note 9.

III. IDEA FOUNDATIONAL REQUIREMENTS

The IDEA's DPH process encompasses three overlapping stages: *pre-hearing*, *hearing*, and *post-hearing*. The main actors in the DPH are the parties—with the parent and local educational agency (LEA) taking the roles of either complainant and respondent—and the hearing officer (HO), with a limited supporting role for the state educational agency (SEA).

The IDEA sets forth specific provisions that are largely separable for each stage. For the last stage—post-hearing—the IDEA has provisions for (1) the hearing decision²⁴, (2) its appeal,²⁵ and (3) attorneys' fees.²⁶ For the middle stage—during the hearing—the IDEA has provisions for (1) HO impartiality,²⁷ (2) HO qualifications,²⁸ (3) party rights to representation,²⁹ witnesses,³⁰ and the hearing record,³¹ (4) HO authority,³² and (5) timelines.³³

The focus here is on the first stage—*pre-hearing*. Although the lines between pre-hearing and the hearing stage are inevitably blurry, this division provided us with a focal framework for this third analysis of state laws that supplement the IDEA provisions for DPHs. For the pre-hearing stages, the following outline identifies the areas³⁴ in which state law potentially adds to the relevant requirements in the IDEA's legislation and regulations:

²⁴ 20 U.S.C. § 1415(f)(3)(E) (stating that a decision shall be made based on whether a child with a disability received a free appropriate public education), 1415(i)(1)(A) (2018) (providing for the finality of the decision). The only addition from the regulations for the IDEA is a requirement for written or electronic “findings of fact.” 34 C.F.R. § 300.512(a)(5) (2019).

²⁵ 20 U.S.C. § 1415(g) (allowing an appeal of a DPH decision to the SEA), 1415(i)(2) (2018) (providing for the right to bring a civil action).

²⁶ *Id.* § 1415(i)(3) (describing awards of attorneys' fees to the prevailing party).

²⁷ *Id.* § 1415(f)(3)(A)(i) (stating that the HO may not be “an employee of the SEA or the LEA that is involved in the education or care of the child” and may not have “a personal or professional interest that conflicts with the person’s objectivity in the hearing”). The regulations clarify that “[a] person who otherwise qualifies to conduct a hearing . . . is not an employee of the agency solely because he or she is paid by the agency to serve as a [HO].” 34 C.F.R. § 300.511(c)(2) (2019).

²⁸ 20 U.S.C. § 1415(f)(3)(A)(ii)–(iv) (2018) (requiring the HO to have knowledge of the law, how to conduct hearings, and how to write and render decisions). The regulations additionally require the relevant public agency to maintain a list of the HOs with a statement of their qualifications. 34 C.F.R. § 300.511(c)(3) (2019).

²⁹ 20 U.S.C. § 1415(h)(1) (2018) (giving parties the right to be advised and accompanied by counsel and other experts).

³⁰ *Id.* § 1415(h)(2) (giving parties the right to present evidence and confront, cross-examine, and compel the attendance of witnesses).

³¹ *Id.* § 1415(h)(3) (giving parties the right to a record of the hearing, as well as findings of fact and decisions). The regulations state that this record is provided “at no cost to parents.” 34 C.F.R. § 300.512(c) (2019).

³² *E.g.*, 20 U.S.C. § 1415(f)(3)(B) (2018) (limiting the issues raised at a due process hearing to those in the original complaint, with an exception if the other party agrees).

³³ *E.g.*, 34 C.F.R. § 300.515(a) (2019) (providing 45-day period from completion of pre-hearing resolution phase to completion of the hearing process with a decision).

³⁴ In the absence of a specific sequential framework in the IDEA of headings and subheadings, this choice for the organizing framework has the advantage of practical coherence. Although providing for clearer boundaries than the role-based organizing framework of the other two analyses (Zirkel, *supra* note 9), some overlap and imprecision is inevitable.

1. Complaint

- Model Form³⁵
- Parent Information³⁶
- Content and Confidentiality³⁷
- Notice³⁸
- Amendments³⁹
- Filing Deadline, or Statute of Limitations (SOL)⁴⁰
- Response⁴¹

2. Party Resolution

- Resolution Session⁴²
- Mediation⁴³

³⁵ 20 U.S.C. § 1415(b)(8) (2018) (requiring SEA to develop a model form “to assist parents in filing a complaint and due process complaint notice”); 34 C.F.R. § 300.509 (2019) (clarifying that the SEA or LEA “may not require the use of the model forms”).

³⁶ 34 C.F.R. § 300.507(b) (2019) (requiring the public agency to inform parents of “any free or low-cost legal and other relevant services available in the area,” if requested or upon receiving complaint for hearing).

³⁷ 20 U.S.C. § 1415(b)(6)(A) (offering the opportunity to present a complaint related to “identification, evaluation or placement” of a child with a disability, or the “provision of a [FAPE]” to the child), 1415(b)(7)(A) (stating that the complaint “shall remain confidential”), 1415(b)(7)(A)(ii) (2018) (requiring the complaint to include the name and address of the child, the name of the school, a description of the problem, and a proposed resolution).

³⁸ *Id.* § 1415(b)(7)(A)–(B) (requiring the filing party to provide notice to the other party and forward a copy of the notice to the SEA); 34 C.F.R. § 300.508(a)(2) (2019) (clarifying that the filing party must “forward a copy of the due process complaint to the SEA”).

³⁹ 20 U.S.C. § 1415(c)(2)(E) (2018) (requiring for amending the complaint either the other party’s written consent and opportunity for a resolution meeting, or the HO’s permission at least 5 days before the hearing).

⁴⁰ *Id.* § 1415(b)(6)(B), (f)(3)(C)–(D) (requiring filing within two years of the date that the parent “knew or should have known” (KOSHK) unless state law specifies otherwise, with two exceptions).

⁴¹ *Id.* § 1415(c)(2)(A) (requiring written objection to both complainant and HO within 15 days), 1415(c)(2)(C)–(D) (requiring HO to issue a sufficiency determination within 5 days after receiving the objection); *see also id.* § 1415(c)(2)(B)(i) (requiring the LEA to either provide prior written notice or, within 10 days of the complaint, four parallel, specified contents regarding the issues raised in a complaint), 1415(c)(2)(B)(ii) (requiring, within 10 days, parents to specifically address the issues in a complaint filed by the LEA).

⁴² *Id.* § 1415(f)(1)(B)(i) (requiring, within 15 days of notice, the LEA to convene a resolution meeting between parents and a school official with decision-making authority, without attorneys unless parents decide to bring one; allowing parties to agree to waive the meeting or use mediation instead; stating that if complaint is not resolved to parents’ satisfaction within 30 days of filing, the due process hearing “may” occur), 1415(f)(1)(B)(iii)–(iv) (specifying requirements for a resolution settlement agreement, including 3-day review period); 34 C.F.R. § 300.510(a)(2) (clarifying that the purpose of the resolution meeting is for the parent to discuss the complaint and underlying facts, so the LEA has an opportunity to resolve the complaint), 300.510(a)(4) (stating that parent and LEA determine the relevant members of the IEP team to attend the resolution meeting), 300.510(b)(4) (2019) (allowing LEA to seek dismissal of the complaint for parent non-participation in the resolution meeting).

⁴³ 20 U.S.C. § 1415(e)(1)–(2)(A), (D)–(E), (G) (requiring states to create a free, voluntary and confidential mediation process that does not deny or delay a due process hearing and that is offered in a timely and convenient manner), 1415(e)(2)(C) (requiring state to maintain a list of mediators who are knowledgeable of laws and regulations for special education), 1415(e)(2)(F)

- Alternative Dispute Resolution (ADR)⁴⁴

3. Hearing Preparation

- Recusal⁴⁵
- Disclosure⁴⁶
- Pre-Hearing Conference⁴⁷
- Additional Case Management
- Motion Practice
- Discovery⁴⁸

Making clear the scope of our analysis depends not just the specification of the contents but also the identification of the exclusions. This article is limited to Part B of the IDEA, which covers children with disabilities above age 3, thus not extending to Part C of IDEA, which applies to eligible children aged 0 to 3.⁴⁹ Additionally, our analysis excludes the IDEA's expedited due process procedures, which are limited to the special situation of disciplinary changes in placement.⁵⁰

(2018) (providing for a confidential mediation settlement agreement that is enforceable in court.); 34 C.F.R. § 300.506(b)(1)(iii) (requiring mediators to be "trained in effective mediation techniques"), 300.506(c) (stating that mediators may not be an employee of SEA or LEA, or have a conflict of interest), 300.506(b)(3)(ii) (2019) (requiring mediators to be chosen on an impartial, such as random or rotational, basis).

⁴⁴ 20 U.S.C. § 1415(e)(2)(B) (2018) (permitting states to set up an optional alternative ADR process for parents and LEAs who choose not to use mediation).

⁴⁵ 34 C.F.R. § 300.511(c)(i)(A)–(B) (2019) (stating that the HO must not be an LEA or SEA employee or have a "personal or professional interest that conflicts with [their] objectivity in the hearing").

⁴⁶ 20 U.S.C. § 1415(f)(2) (2018) (requiring disclosure of evaluations and evaluation recommendations at least five days before hearing, and allowing HO to bar evidence if not disclosed); 34 C.F.R. § 300.512(a)(3) (2019) (giving both parties the right to prohibit any evidence not disclosed by the other party at least five business days before the hearing). This disclosure subcategory overlaps with the discovery subcategory (*infra* text accompanying note 48), but they are sufficiently distinct to treat separately. *Cf.* B.H. v. Joliet Sch. Dist., 54 IDELR 21, 2010 U.S. Dist. LEXIS 28658, at 7 (N.D. Ill. March 19, 2010) (distinguishing between IDEA 5-day disclosure and "the sort of extensive discovery that occurs in litigation").

⁴⁷ The IDEA legislation or regulations do not address these three procedural areas—pre-hearing conference, additional case management, and motion practice. However, they are frequent subjects of state law additions to pre-hearing DPH procedures, thus clearly warranted for this overall analysis.

⁴⁸ The IDEA discovery provisions are limited to the parties' right to compel the attendance of witnesses, which indirectly refer to subpoenas and which are not specific to the pre-hearing stage. *See* 34 C.F.R. § 300.512(a)(2) (2019).

⁴⁹ 20 U.S.C. §§ 1431–1444 (2018). The dispute resolution procedures under Part C of IDEA include Mediation, State Complaint, and Due Process. *See id.* § 1439(a); 34 C.F.R. § 303.430 (2019). For disputes involving infants and toddlers, states may choose to use the dispute resolution procedures under Part B or Part C. 34 C.F.R. § 303.430(d) (2019).

⁵⁰ 20 U.S.C. § 1415(k)(3)(A) (stating that the parent of a child may request a hearing to dispute a placement or manifestation decision and that the school may request a hearing if "the current placement of the child is substantially likely to result in injury to the child or to others"), 1415(k)(4)(A) (2018) (requiring an expedited hearing for these types of appeals); *see, e.g.*, Mass. Dep't of Elementary & Secondary Educ., Hearing Rules for Special Education Appeals 8–9 (Mar. 2019), <https://www.mass.gov/service-details/bsea-issues-revised-hearing-rules-for-special-education-appeals> (specifying rules for a 30-day hearing process).

IV. METHOD AND RESULTS

Our search for state law additions to the IDEA's pre-hearing procedures sifted through three overlapping sources. The first source is the official website for the department of education in each state. The selection from these websites was limited to linked special education statutes and regulations for the state⁵¹ and policy manuals that appeared to have the force of law,⁵² as compared with interpretive guidance and technical assistance.⁵³

The second source was the official website, if any, for laws and regulations in each state.⁵⁴ Several states have passed an Administrative Procedures Act (APA)⁵⁵ that is a customized variation of the federal model, and our selection was limited to provisions for general hearing procedures that appeared applicable to IDEA DPHs.⁵⁶

⁵¹ See, e.g., Va. Dep't of Educ., Special Education, State Regulations, Laws & Policies, http://www.doe.virginia.gov/special_ed/regulations/state/index.shtml (last visited Sept. 1, 2020) (providing links to Virginia special education laws and regulations).

⁵² See Idaho State Dep't of Educ., Idaho Special Education Manual (2018), <https://www.sde.idaho.gov/sped/files/shared/Idaho-Special-Education-Manual-2018-Final.pdf> (incorporated by reference by IDAHO ADMIN. CODE r. 08.02.03.004 (2018)); MASS. GEN. LAWS ch. 71B, § 2A (2017) (noting that the SEA "may issue regulations establishing minimum standards for the dispute resolution system for special education"); Mass. Dep't of Elementary & Secondary Educ., Hearing Rules for Special Education Appeals (Mar. 2019); Utah State Bd. of Educ., Special Education Rules (Oct. 2016), <https://www.schools.utah.gov/file/bff61848-ae42-4265-a654-6dae5f398507>; Sup. Ct. of Va., Hearing Officer Systems Rules of Administration (2019), http://www.vacourts.gov/programs/ho/rules_of_admin_1_1_2019.pdf; W. Va. Dep't of Educ., West Virginia Procedures Manual for the Education of Students with Exceptionalities (2017), https://wvde.state.wv.us/osp/Policy2419_2017.pdf (incorporated by reference by W. VA. CODE R. § 126-16-3 (2017)); 7 WYO. CODE R. § 7 (2018) (requiring the SEA to adopt "dispute resolution policies and/or procedures"); Wyo. Dep't of Educ., Wyoming Policy and Procedure Manual for Special Education (2010), https://edu.wyoming.gov/downloads/special-ed/SpecEd_Policy_and_Procedure_Manual_v_1_1FINAL_8-20-2010.pdf.

⁵³ Using this rationale, we discounted several state policy manuals. PA. DEP'T OF EDUC., PENNSYLVANIA SPECIAL EDUCATION DISPUTE RESOLUTION MANUAL (2017), <https://odr-pa.org/wp-content/uploads/pdf/Dispute-Resolution-Manual.pdf>; PA. OFFICE OF DISP. RES., PENNSYLVANIA UNIFORM PRE-HEARING DIRECTIONS (Sept. 8, 2017) <https://odr-pa.org/wp-content/uploads/pdf/Pre-hearing-Directions.pdf>; OKLAHOMA STATE DEP'T OF EDUC. and SPECIAL EDUC. RES. CENTER OKLA. STATE UNIV., DUE PROCESS IN SPECIAL EDUCATION, GUIDELINES FOR PARENTS AND SCHOOL ADMINISTRATORS (2010), <https://sde.ok.gov/sites/ok.gov.sde/files/SpecEd-DueProcess.pdf> (not approved per email dated July 8, 2018 from Colin Raley at the Oklahoma State Department of Education, on file with second author); S.C. STATE DEP'T OF EDUC., POLICIES AND PROCEDURES IN ACCORDANCE WITH THE INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT (Mar. 2011), <https://ed.sc.gov/districts-schools/special-education-services/fiscal-and-grants-management-fgm/grants/sc-policies-and-procedures-for-special-education/> (referenced by S.C. CODE ANN. REGS. 43-243(II) (2016), but merely guidance not law per discussion by second author with several attorneys in South Carolina about local practice).

⁵⁴ E.g., WIS. STAT. §§ 115.001 *et seq.* (2017), <http://docs.legis.wisconsin.gov/statutes/statutes/115>.

⁵⁵ For footnoted citations to statutes and regulations, we have added "APA" in parenthesis to indicate those that fit within our applicable boundaries but are in this broader category beyond the state's special education laws.

⁵⁶ E.g., IDAHO ADMIN. CODE rr. 04.11.01.417–04.11.01.600 (2018) (APA). Some states only apply their APA to DPHs when state special education law specifically references it. See Email from Mark Ward, Spec. Educ. and Title Serv's, Kansas Dep't of Educ., to Perry A. Zirkel (Jan. 27,

The third and culminating source for our search was the Westlaw database, from which we checked for the latest version of the applicable statutory and applicable provisions as of September 1, 2020. Thus, our analysis is based on provisions within our aforementioned⁵⁷ scope in (1) state special education law and regulations, (2) state APAs, and (3) legally binding state policy manuals as of this date. Given our focus on state laws, the analysis did not extend to court decisions applicable to DPH procedures.⁵⁸

Reviewing these sources through the lens of the foregoing framework, the first step was to determine the fit of the various state law provisions. Given the overlap at the blurry boundaries between stages, we chose to include provisions within the pre-hearing scope even if it also appeared in either of the two previous DPH state law analyses. For example, the content here includes SOL provisions but with a closer examination than its treatment in the previous, hearing stage analysis.⁵⁹

The second step, based on a customization of the model in the preceding pair of articles, was the development of a chart showing the extent of state law additions to the IDEA provisions for the pre-hearing stage. The columns correspond to the categories and subcategories of the foregoing template.⁶⁰ For each subcategory, the coded entries represent four approximate, Likert-type levels: (x) = partial; x = without any specific limitation or detail; X = relatively detailed or forceful; and **X** = unusual.⁶¹ The comments column provides clarifying and additional information for the entries, cross-referenced to the letter of the applicable subcategory. The following table provides this chart, which for manageable size, reserves the listing of the source-citations to the Appendix.

2020) (stating that the Kansas APA “applies only when a statute specifies its application”) (on file with second author). In Virginia, the state’s special education regulations expressly incorporate the state supreme court’s rules of administration. However, the SEA has interpreted APA provisions as inapplicable to DPHs. E-mail from Patricia Haymes, Director, Dispute Resolution and Administrative Services for Virginia Department of Education, to Perry A. Zirkel (Mar. 3, 2020, 12:54 EST) (“due process hearings are not subject to the APA”) (on file with second author).

⁵⁷ See *supra* notes 35–48 and accompanying text.

⁵⁸ See, e.g., E.P. v. Howard Cnty. Pub. Sch. Sys., 2017 WL 3608180 (D. Md. Aug. 21, 2017), *aff’d mem.*, 727 F. App’x 55 (4th Cir. 2018) (interpreting procedural requirements under the IDEA to allow the HO to exercise discretion to admit documents that the parties had not disclosed within the prescribed limits). For a compilation of court decisions, agency interpretations, and other legal authority specific to DPHs, see Perry A. Zirkel, *Impartial Hearings under the IDEA: Legal Issues and Answers*, 38 J. NAT’L ASS’N ADMIN. L. JUDICIARY 33 (2018).

⁵⁹ *Hearing Stage*, *supra* note 9, at 21–22. Other areas of overlapping treatment include but are not limited to discovery and pre-hearing conferences. *Id.* at 20.

⁶⁰ See *supra* notes 35–48 and accompanying text.

⁶¹ A Likert scale represents relative levels of strength and/or specificity without quantitative uniformity for the size or weight of each level. Often used in qualitative analyses, it is an ordinal, rather than interval, scale.

Table 1: State Law Additions to the IDEA Pre-hearing Provisions for DPHs

State	Complaint					Party Res.			Hearing Preparations					Comments				
	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P		
AL	Model Form	Parent Info	Content & Confidentiality	Notice to SEA	Amendments	Filing Time (SOL)	Response	Resolution Session	Mediation	ADR	Recusal	Disclosure	Pre-Hearing Conference	Additional Case Management	Pre-Hearing Motions	Discovery		
AK		(x)		X		x	x		X	(x)							L-witness list, presence of child; M-mandatory 5 days before hearing to identify issues; N-mandatory, lengthy list of HO responsibilities	
AZ								(x)		X			(x)				C-signature required; F-1 yr. (parent), 60 days (school); I-HO may not act as mediator; K-HO decision; M-optimal for scheduling, administrative and settlement matters; N-mandatory notice of hearing to parent, HO may supplement pre-hearing procedures	
AR	X								X	x	X	X	X	(x)			K-party may file motion to disqualify; M-mandatory for scheduling and administrative matters, and to decide if "legitimate due process complaint", detailed pre-hearing conference HO powers; P-documents only	
CA	(x)							X	(x)	X	(x)	X	(x)	(x)			A-mandatory hearing request form; I-mandatory confidentiality pledge, 7-day time limit suggested; K-disclosure, HO and SEA decision; L-mandatory party meeting to review documentary evidence and create hearing binder; M-optimal to determine issues and evidence, parties may request; N-HO may require prehearing briefs; P-documents only	
CO								(x)		X	X	x	(x)	X	X		B-description of qualifications for free or low-cost services; I-no attorneys, 30-day time limit, 40 hours of mediator training; J-informal superintendent meeting; K-disclosure, mandatory recusal; L-witness list, copies of documents; M-upon party request, conference may result in HO order on evidence and issues; O-motion to exclude witnesses; P-documents upon showing of "reasonable necessity"	
CT									X	(x)	X			X			H-no extension of resolution period; K-disclosure, mandatory recusal; L-mandatory prehearing statement with witness, expert, and exhibit lists; M-mandatory to identify issues, N-HO can establish procedures and scheduling, O-detailed motion procedures, P-same as in court (Colorado Rules of Civil Procedure)	
DE			X														J-advisory opinion process; L-witness list; M-mandatory for scheduling and administrative matters; O-detailed motion procedures, including motion to dismiss for failure to state claim	
FL											X	x	X	X			E-notice to school board verified in writing by board president	
GA										X	(x)	X	X	X	x		M-optimal for evidentiary, procedural matters, and to clarify issues; N-mandatory notice of hearing, HO may issue orders; O-detailed motion procedures, all requests must be by motion; P-same as in court but no contempt (Florida Rules of Civil Procedure)	
HI										(x)	X	x	X	X	(x)		K-disclosure, mandatory recusal, specifics; L-witness list; M-optimal, HO may require written briefs; N-list of broad powers; O-detailed formal motion procedures, including summary judgment; P-documents and depositions	
ID									X	X	(x)	X	X	x	X		H-presumably HO decision; I-identify all persons with material knowledge; M-mandatory to identify issues; N-list of broad powers; O-in writing with affidavits if facts not in record; P-documents only	
IL		X	X							x	x	X	x		(x)		I-detailed guidelines with 21 day suggested time limit; J-IEP facilitation, informal conflict resolution; K-one disqualification w/o cause, HO decision; L-list of witnesses, copies of exhibits; M-optimal for evidentiary, scheduling matters, and to clarify issues; N-broad powers over scheduling and procedure, O-HO may hear motions; P-same as in court (Idaho Rules of Civil Procedure)	
IN								(x)		X	x		X	(x)	x		D-within 5 days; E-once a right within 5 days of initial complaint; K-mandatory disclosure and recusal in limited circumstances; L-witness list, document list with descriptions; M-mandatory 14 days before hearing; N-extensions of time, evidentiary rulings; P-documents only	
IO										X	X		x		X	X	G-challenger must identify insufficiency; I-mediation agreement enforceable through state complaint; K-HO decision, but may be appealed; M-mandatory on party request, detailed procedures; N-notice of hearing; O-HO may hear motions including summary judgment; P-same as in court (Iowa Rules of Civil Procedure)	
KS		X								(x)	(x)				X		F-within 5 days; K-HO decision, parents may disqualify proposed HOs at outset; M-mentioned without detail; P-HO may allow discovery but not depositions	
KY					X			X		x		X	x	(x)			F-3 yrs., with third exception for failure to provide PWN or PS notice; I-60-day time limit; K-grounds, agency head decision; M-optimal with broad powers, if held must result in prehearing order; N-notice of hearing, optional prehearing order on pleadings; P-mentioned without detail	
LA	X				X					X		X	(x)	x	X		B-assistance for parents who are not literate or have a communication disability; F-1 yr.; K-Dept of Admin. Law decision, parties must challenge within 3 days of appointment; mandatory disqualification; M-mandatory with detailed requirements; N-notice of hearing; O-must be in writing; P-same as in court (Louisiana Code of Civil Procedure), HO limit for good cause	
ME								x	X			X		x	(x)		H, I-agreements enforceable through state complaint; I-7-day notice to bring attorney or advocate, LEA may have one present if parents have one; M-general mandatory to clarify issues and witnesses; O-must be in writing; P-documents only, HO may limit if unreasonable	
MD										x	x	X		X	X	(x)	I-party right to bring attorney; J-various confidential ADR listed w/o detail, e.g., "neutral case evaluation"; K-mandatory disqualification; M-optimal with broad HO powers, must result in prehearing order; N-broad powers over pre-hearing process, including dismissal; O-detailed motion procedures including dismissal and summary judgment; P-documents only, HO may limit	
MA			X	X					X	x		(x)	X	X	X		C-signature and relationship to student required; E-14 days to file amended complaint if dismissed as insufficient; F-issues not in original complaint use amendment date for SOL; I-30-day time limit; J-various ADR, e.g. "problem resolution system"; HO may conduct ADR; L-witness list and copies of documents; M-mandatory 10-min scheduling and discovery conference after complaint, plus optional prehearing conference; N-35/20 day hearing schedule for parent/LEA complaint, detailed notice of hearing and HO assignment within 5 days of complaint; O-detailed motion practice; P-documents, interrogatories and depositions with detailed procedures, sanctions available for failure to comply	
MI		X	X							X		X	X	X	x		C-signature required; D-by mail, fax, or in person with statement of how complaint was delivered to other party; K-disclosure, HO decision, grounds, limited waiver; M-optimal with broad HO powers, must result in prehearing order; N-list of broad powers; O-detailed motion practice, including summary judgment and extensions; P-documents and depositions, but only if HO approves	
MN		X	X	X						X	x	x	X	x	X		B-burden of proof explanation, names and phone numbers of low-cost legal and advocacy services; C-when LEA files complaint, it must provide parents with the IEP, evaluation plan and any progress information; D-within 2 days by LEA; J-various ADR listed, e.g. "IEP facilitation," but unclear if it applies after complaint filed; K-chief judge decision; L-within 10 days of request, disclose witness list and summary of testimony, and exhibit list before hearing; M-mandatory for scheduling, administration, and identification of issues within 5 days of HO appointment; N-brief list of powers, HO may dismiss for failure to comply with orders; O-must be in writing; P-same as in court (Minnesota Rules of Civil Procedure)	
MS																	No significant pre-hearing procedures that differ from IDEA	
MO								X		X		x					I-30-day time limit, no lawyers and no more than three additional persons per party; L-before resolution session, parent shall have access to any relevant evaluations or materials; N-general broad authority over process;	
MT			X						X		x		X	X	x		D-electronic and mail filing; I-30-day time limit, with SEA appointing mediator if parties do not agree; K-state superintendent decision, grounds; M-mandatory prehearing scheduling conference within 5 days of response, second mandatory prehearing conference for identification of issues, results in pre-hearing order; N-notice of hearing, continuances, informal disposition; O-evidentiary objections 3 days before hearing; P-documents, depositions, and written interrogatories, within HO discretion	
NE		X	x	X								X	x		X		C-material factual allegations, requested action and signature required; D-in person or mail, service on other party by U.S. mail return receipt; E-HO has discretion to allow amendments; M-optimal, with broad HO powers for scheduling, administration, identification of issues and evidence; N-continuances + informal dispositions allowed; P-documents, depositions and interrogatories (in accordance with Nevada Rules of Civil Procedure) by motion	
NV	(x)									x				(x)			A-must be posted online; K-HO decision; P-documents only	

NH			x	X		X	X	x	X	X	(x)	D-within 2 days; F-KOSHK wording of "was or reasonably should have been discovered," or within 90 days of a private unilateral placement for reimbursement; I-30-day time limit, with guidance for what mediation should cover; J-detailed ADR, e.g. "neutral conference"; L-witness list with descriptions and labeled documentary evidence; M-mandatory half-day conference within 17 days after resolution meeting for scheduling, administration, identification of issues and evidence; N-specific times allowed for prehearing conference and hearing; P-voluntary "good faith" production, with motion to compel document production if needed				
NJ		X	X		x	X	X	x	X	x	(x)	C-due process complaint can be used for section 504 disputes; E-HO has discretion to amend complaint; H-parent may bring advocate without triggering school right to bring attorney; I-detailed procedures, with 30-day time limit; K-mandatory, grounds; L-summaries of testimony; M-optional, HO may issue detailed pre-hearing order; N-adjournments allowed; O-authorizing emergency relief, detailed motion practice; P-informal exchange of information				
NM	x	X				x	x		X	X	x	(x)	B-inform parent of attorneys fees in civil action; C-signature required, SEA must delete personal information from due process decisions; due complaint may be used for disputes about gifted services; I-formal written request required; J-facilitated IEP meeting may replace resolution session; L-parties submit joint stipulation of facts before hearing; M-mandatory within 14 days of complaint for scheduling, establishing jurisdiction, identification of issues and evidence, HO must issue a summary of the conference to parties and SEA; N-broad case management powers; O-motions mentioned; P-only documents, HO ensures parents have access to records and information under LEA's control			
NY	X	x	x		x				X	X			B-HO may assist unrepresented party with information about hearing process; C-HO may consolidate due process complaints E-specific process for parties to withdraw and refile a complaint; I-IEP must be modified to match any mediation agreement; M-optional for scheduling, administration, identifying issues and evidence; N-hearing or pre-hearing conference within 14 days after HO appointment for LEA complaint or end of resolution period for parent complaint; detailed process for extensions, merging complaints			
NC		x		X		X	X		X	X	X		C-HO may consolidate related cases; F-1 yr.; I-detailed mediated settlement conference guidelines; J-mediated settlement conference with HO presiding; M-optional at request of HO or any party for scheduling, administration, evidence and identifying issues, HO may require parties to file prehearing statements; N-broad civil action-like powers to schedule and administer hearing, including sanctions; O-same as in court (N.C. Rules of Civil Procedure); P-same as in court (N.C. Rules of Civil Procedure)			
ND							x		X	X	X	x	K-HO decision, but may be reviewed by director or agency head decision; M-optional for scheduling, administration, evidence and identification of issues, HO may require party briefs; N-broad authority over hearing and administration; O-detailed procedures requiring motions to state relief sought, authority relied upon and facts alleged; P-same as in court (North Dakota Rules of Civil Procedure)			
OH					X				X		(x)	(x)	G-if complaint is insufficient, HO must explain why, state that case is not dismissed and offer resources for parents; L-disclosure conference at least 5 days before hearing; N-HO responsibilities mentioned without detail; P-only documents mentioned from subpoenaed witnesses			
OK											(x)		P-documents only, witness subpoenas 10 days prior to hearing			
OR							(x)	x	X	X	X		J-various ADR mentioned, e.g. neutral fact-finder or arbitration; K-chief judge decision, first request automatically granted; M-mandatory for scheduling, administration and identification of issues with detailed guidelines, N-list of broad and detailed powers, including notice of hearing and scheduling; O-in writing, detailed motion procedures including summary judgment; P-documents, admissions and interrogatories, HO may authorize depositions			
PA							(x)				(x)		K-disclosure; P-HO authority to order additional evidence noted			
RI													No significant pre-hearing procedures that differ from IDEA.			
SC													No significant pre-hearing procedures that differ from IDEA.			
SD							(x)			x	X		K-mandatory but limited situation; O-motion for summary disposition; P-documents and depositions as in civil court			
TN							x	x	X	(x)	X		I-mediators receive training in sped law; K-HO decision; M-optional to simplify issues, limit witnesses, etc., HO may issue prehearing order; N-notice to parties of hearing 10 days prior; O-detailed motion procedures; P-same as in court (Tennessee Rules of Civil Procedure)			
TX					X			x	x	(x)	X	X	F-1 yr., tolled for military service; J-IEP facilitation; K-HO decision, grounds, 2nd HO may review decision; L-index of disclosed documents and witness list; M-mandatory to specify issues, limit witnesses, etc., and HO must issue scheduling and prehearing orders with specific contents; N-broad grant of authority; O-HO authority mentioned; P-documents, previous statements, potential witnesses, depositions under HO authority			
UT													No significant pre-hearing procedures that differ from IDEA.			
VT		x		X		x			x	X	X	(x)	C-in special circumstances, complaint need not be in writing; F-KOSHK wording of "was or reasonably should have been discovered," or within 90 days of a private unilateral placement for reimbursement, notice of SOL needed to trigger SOL, I-mediator assigned within 5 days of parties' request, parents may have family, support member, advocate and attorney attend; L-witness list with descriptions; M-mandatory half-day, detailed filing requirements for parties, results in prehearing order; N-within 5 days of complaint, mandatory initial telephone conference call to set dates; O-briefly mentioned; P-voluntary document production, with motion 7 days before prehearing conference to compel			
VA						x				X	X	(x)	I-confidentiality pledge may be required, HO monitors mediation; M-mandatory to clarify issues and scope of hearing unless HO deems unnecessary, HO must issue written prehearing report; N-many specific HO powers, but may not require briefs; P-documents only via HO subpoena			
WA							x		X	x	(x)		K-Chief Admin. Judge decision; M-optional for simplification of issues, scheduling and administration, HO must issue an order reciting prehearing decisions; N-notice of hearing, continuances; O-motion for summary judgment; P-documents only, may be issued by HO or quashed if unreasonable or oppressive			
WV	x					x	x					(x)	B-SEA must assist parents who are unable to submit written due process requests; I-signed request and confidentiality agreement required; J-facilitated IEP team meeting; P-documents only via HO subpoena, parties may move to quash			
WI					X		X				(x)		F-within 1-yr. of refusal or proposal by LEA; I-detailed mediation guidelines, including 21-day time limit to start; N-power to regulate hearing and hold conferences mentioned; P-only documents from witnesses compelled to attend			
WY						x				X	x	X	I-signed confidentiality pledge required, mediator destroys notes; M-mandatory within 5 days of end of resolution period, HO lays out full schedule and issues for hearing; N-power to regulate hearing process; P-same as in court (Wyoming Rules of Civil Procedure)			
2	6	10	8	5	9	2	3	23	12	27	18	37	34	27	40	
Model Form	Parent Info	Content & Confidentiality	Notice to SEA	Amendments	Filing Time (SOL)	Response	Resolution Session	Mediation	ADR	Reusal	Disclosure	Pre-Hearing Conference	Additional Case Management	Pre-Hearing Motions	Discovery	

This section provides a narrative synthesis of the entries for each of the successive categories, focusing on overall frequency per subcategory, without differential weighting for the entries, and illustrations of the unusual variations. Whenever salient or illuminating, we note how state law additions impact the responsibility or authority of various DPH actors, including the SEA, LEA, HO, and parties.

A. Complaint

For the complaint, the limited state law additions, in descending order of frequency, address content and confidentiality (n=10), filing deadline (SOL) (n=9), required notice to SEAs (n=8), parent information (n=6), amendments (n=5), model forms (n=2), and responses (n=2).

For the broad “content” component of the first subcategory,⁶² two states grant explicit authority to HOs to consolidate related complaints.⁶³ More unusually, Minnesota law has a detailed addition when an LEA files a complaint.⁶⁴ Nebraska specifies an additional requirement for the parent complainant.⁶⁵ Finally, a few states expand the jurisdiction of the DPH to complaints related to Section 504⁶⁶ or gifted education services.⁶⁷ In contrast, no state law appeared to have a notable addition to the IDEA’s accompanying confidentiality requirement⁶⁸ for DPH complaints.

For the IDEA’s SOL, which is two years from the KOSHK date unless state law specifies otherwise,⁶⁹ seven states have opted for shorter deadlines, with the most common being one year.⁷⁰ The remaining states in this shortened group have even more reduced filing periods but only for specified situations. Specifically, Alaska has a 60-day period for LEA filings;⁷¹ and two New England states—New Hampshire and Vermont—have a 90-day SOL for tuition reimbursement cases.⁷² Moreover, further evidencing policy interaction, these two states, for all other cases, share a variation for the IDEA KOSHK language—“the date on which the alleged violation was or reasonably should have been discovered.”⁷³ Only one state—Kentucky—has opted for a longer, three-year

⁶² See *supra* note 37 and accompanying text.

⁶³ N.Y. COMP. CODES R. & REGS. tit. 8, § 200.5(3)(ii)(a) (2018); N.C. GEN. STAT. § 150B-26 (2017).

⁶⁴ MINN. R. 3525.3900.3.H (2018) (requiring the LEA to provide the parent with the IEP, evaluation plan, and any progress information).

⁶⁵ 92 NEB. ADMIN. CODE § 55-004.06A (2017) (requiring the parent to include material factual allegations in the complaint).

⁶⁶ E.g., N.J. ADMIN. CODE § 6A:14-2.7(w) (2018).

⁶⁷ E.g., N.M. CODE R. § 6.31.2.13.I(3)(c) (LexisNexis 2020).

⁶⁸ See *supra* note 37.

⁶⁹ See *supra* note 40.

⁷⁰ ALASKA STAT. § 14.30.193(a) (2017); WIS. STAT. § 115.780 (2017) (providing that filing deadline is 12 months after written notice); LA. ADMIN. CODE tit. 28, §§ 507.A.2., 511.F (2017) (specifying that filing deadline is one year after party KOSHK); N.C. GEN. STAT. § 115C-109.6(b) (2017) (stating that filing deadline is one year after KOSHK date); 19 TEX. ADMIN. CODE § 89.1151(c)-(e) (2020) (stating that filing deadline is one year after party KOSHK, with a tolling exception for military service).

⁷¹ ALASKA ADMIN. CODE tit. 4, § 52.550(a) (2019) (stating that “a district must file a complaint for a due process hearing within 60 days after a parent takes the action or inaction that is the subject of the complaint”)

⁷² N.H. REV. STAT. ANN. § 186-C:16-b2 (2016); VT. STAT. ANN. tit. 16, § 2957(b) (2017). The triggering date for these two states is the time of unilateral placement.

⁷³ N.H. REV. STAT. ANN. § 186-C:16-b1 (2016); VT. STAT. ANN. tit. 16, § 2957(a) (2017). Yet, Vermont’s regulations use the IDEA’s KOSHK wording. See 22 000 006 VT. CODE R. § 2365.1.6.1 (2017).

SOL.⁷⁴ Beyond variations in the length of the period, other additions include an approach different from the KOSHK triggering date, such as a look-back period based on notice of filing.⁷⁵ Notably, Massachusetts goes out of its way to note that the SOL for issues raised in an amended complaint runs from the date of amendment.⁷⁶

With respect to notice to the SEA,⁷⁷ seven states have added time and service requirements for complaints.⁷⁸ Alone in this subcategory, Delaware law provides that when parents file a due process complaint they must additionally provide notice to the LEA school board, and the board president must verify receipt in writing to the parent.⁷⁹

For the parent information subcategory, the more numerous entries to notification of free or low-cost legal services in the area⁸⁰ come in two basic flavors. First, states must provide more detailed information to parents about low-cost legal services and DPHs.⁸¹ Second, states empower the SEA or HO to actively help certain parents file a complaint. Specifically, West Virginia and Louisiana authorize the SEA to assist parents who are unable to file a written DPH complaint;⁸² and New York authorizes HOs to provide information related to the DPH process to unrepresented parents at all stages of the hearing.⁸³

For the amendments subcategory, the additions to the IDEA requirement⁸⁴ are rather infrequent, varied, and minor. For example, two states give the HO

⁷⁴ KY. REV. STAT. ANN. § 157.224(6) (West 2017) (authorizing an SOL of three years with some exceptions, but without limiting the introduction of evidence).

⁷⁵ ALASKA. STAT. § 14.30.193(a) (2017); WIS. STAT. § 115.780 (2017).

⁷⁶ Mass. Dep’t of Elementary & Secondary Educ., Hearing Rules for Special Education Appeals 5 (Mar. 2019).

⁷⁷ See *supra* note 38.

⁷⁸ See ILL. ADMIN. CODE tit. 23, § 226.615 (2018); KAN. ADMIN. REGS. § 91-40-28(e) (2017) (requiring notice to the state within five days); MICH. ADMIN. CODE r. 340.1724f(3) (2020) (describing service requirements for the complaint when delivered to the state); MINN. R. 3525.3900 (2018); MONT. ADMIN. R. 10.16.3508(5) (2017) (requiring that the complaint be filed with the state and served both electronically and by mail); 92 NEB. ADMIN. CODE § 55-004.07 (2017) (requiring the complaint be filed with the state in person or by mail and served by mail with return receipt); N.H. CODE R. ANN. EDUC. 1123.06(b) (2020) (requiring notice to the state within two days).

⁷⁹ DEL. CODE ANN. tit. 14, § 3130 (2017). Interestingly, this is the only state law addition that Delaware has made to the IDEA’s pre-hearing procedural rules for DPHs.

⁸⁰ See *supra* note 36.

⁸¹ See CAL. EDUC. CODE § 56502(h) (West 2017) (stating that SEA must provide parents with a list of reduced or low-cost services along with a description of how to qualify); MINN. R. § 3525.3900.4.J (2018) (requiring that the notice of a due process hearing include name and phone numbers of free or low-cost legal services, as well as an explanation of the burden of proof for parents); N.M. CODE R. § 6.31.2.13.I.(7)(d) (LexisNexis 2020) (requiring the SEA to inform parents of the availability of attorneys’ fees for a prevailing party in a civil action).

⁸² See W. Va. Dep’t of Educ., West Virginia Procedures Manual for the Education of Students with Exceptionalities 111 (2017) (authorizing the SEA to assist in “alternative means of submitting due process Complaints” if parents are unable to file a written request); LA. ADMIN. CODE tit. 28, § 507.B.3 (2017) (stating that a parent who is illiterate or unable to communicate in writing shall be “afforded the opportunity for assistance”).

⁸³ N.Y. COMP. CODES R. & REGS. tit. 8, § 200.5(j)(3)(vii) (2018).

⁸⁴ See *supra* note 39.

discretion to allow amendments in specified situations.⁸⁵ Single states account for the few other variations.⁸⁶

For the model form subcategory, there are two limited state law additions to the IDEA provisions regarding SEA obligations. Specifically, as a minor addition to the aforementioned⁸⁷ IDEA requirement, Nevada requires the State Board of Education to post the model form on its official website, along with other information relating to DPHs.⁸⁸ Arkansas, on the other hand, has an unusual provision that requires the party filing for a DPH to complete an SEA “hearing request form.”⁸⁹ Although the Arkansas SEA makes available on its website a form labeled “Required,”⁹⁰ the applicable IDEA regulation makes clear that the public agency may not mandate the use of the model form.⁹¹ In what appears to be an awkward attempt at compliance, Arkansas’ regulations state that parents must “[n]ot be denied or delayed receipt of any hearing when the hearing request form is not completed.”⁹²

Finally, state law additions to IDEA’s limited specifications for the response to the complaint⁹³ are not extensive, with one of the two state law additions only amounting to a minor clarification regarding sufficiency.⁹⁴ Unusually, Ohio’s law provides that if the HO determines the complaint to be insufficient, the HO must explain the reasons and clarify that the case has not been dismissed. The HO also may not proceed until the insufficiency is corrected and must offer resources to assist *pro se* parents with correcting the insufficiency.⁹⁵

⁸⁵ 92 NEB. ADMIN. CODE § 55-006.04 (2017) (identifying situations where HO may allow amended pleadings); N.J. ADMIN. CODE § 6A:14-2.7(i) (2018) (describing when a HO may allow amended complaints).

⁸⁶ 105 ILL. COMP. STAT. 5 § 14-8.02a(g-15) (2018) (granting the complainant the right to amend once within five days of filing); Mass. Dep’t of Elementary & Secondary Educ., Hearing Rules for Special Education Appeals 14 (Mar. 2019) (allowing amendment within 14 days if a complaint was dismissed for insufficiency); *cf.* N.Y. COMP. CODES R. & REGS. Tit. 8, § 200.5(j)(6) (2018) (specifying a process for withdrawing and refileing a due process complaint).

⁸⁷ *See supra* note 35.

⁸⁸ NEV. REV. STAT. § 388.465.2(a) (2019).

⁸⁹ 005 ARK. CODE R. § 18.10.01.7.1 (2017).

⁹⁰ ARK. DEP’T OF EDUC., REQUEST FOR HEARING, <http://dese.ade.arkansas.gov/divisions/learning-services/special-education/dispute-resolution/due-process-hearings> (last visited Jan. 26, 2021).

⁹¹ 34 C.F.R. § 300.509 (2019) (clarifying that the SEA or LEA “may not require the use of the model forms”).

⁹² 005 ARK. CODE R. § 18.10.01.8.1.A (2017).

⁹³ *See supra* note 41. For the overlapping provisions for dismissal or other such summary dispositions, see “Pre-Hearing Motions” subcategory, *infra* notes 146–51 and accompanying text.

⁹⁴ 511 IND. ADMIN. CODE 7-45-4(b)(2) (2020) (requiring the respondent to “identify how the request is insufficient”).

⁹⁵ OHIO ADMIN. CODE 3301-51-05(K)(8)(c)(i)-(iv) (2019).

B. Party Resolution

For the rights and obligations that apply to both the complainant and respondent in efforts to resolve the matter after the complaint, the frequency order of the subcategories from high to low state law additions are: mediation (n=23), ADR (n=12), and resolution session (n=3).

For the mediation subcategory, the IDEA provides a rather detailed foundation,⁹⁶ and only a few of the many states with additions address it with similar breadth.⁹⁷ The rest of the state laws provide a variety of limited additions, such as steps to reinforce the IDEA's requirement of mediation confidentiality;⁹⁸ specification of time limits,⁹⁹ identification of who may or may not participate in mediation;¹⁰⁰ listing of training or other qualifications for mediators;¹⁰¹ requirements for the mediation request;¹⁰² and authorizing use of the state

⁹⁶ See *supra* note 43.

⁹⁷ Idaho State Dep't of Educ., Idaho Special Education Manual 232 (2018); N.H. REV. STAT. ANN. § 186-C:24 (2016); N.J. ADMIN. CODE § 6A:14-2.6 (2018); WIS. STAT. § 115.797 (2017). North Carolina's APA has detailed provisions for mediation. N.C. GEN. STAT. § 7A-38 (2017); 26 N.C. ADMIN. CODE 3.0201 (2017) (APA). However, the IDEA's requirement for mediation being voluntary likely preempts North Carolina's provision allowing the HO to order mediation.

⁹⁸ 005 ARK. CODE R. § 18.10.01.13H (2017) (requiring the parties to sign confidentiality pledge); Wyo. Dep't of Educ., Wyoming Policy and Procedure Manual for Special Education 39–40 (2010) (adding related requirement for destroying all notes at end of mediation); 8 VA. ADMIN. CODE § 20-81-190 (2017); W. Va. Dep't of Educ., West Virginia Procedures Manual for the Education of Students with Exceptionalities 111 (2017) (authorizing the mediator to require parties to sign a confidentiality pledge).

⁹⁹ 603 MASS. CODE REGS. 28.8(4) (2018); MO. REV. STAT. § 162.959 (2017); MONT. ADMIN. R. 10.16.3506 (2017); N.H. REV. STAT. ANN. § 186-C:24(b) (2016) (requiring the mediation to start within thirty days of request or agreement); 22 000 006 VT. CODE R. § 2365.1.4 (2020) (requiring assignment of the mediator within five days of request); WIS. STAT. § 115.797 (2017) (requiring the mediation to start within twenty-one days of mediator's appointment); CAL. EDUC. CODE § 56500.3(e) (West 2017) (requiring that mediation start within fifteen days of a request and be completed within thirty days); 707 KY. ADMIN. REGS. 1:340.9(4)(a) (2018) (limiting the mediation period to sixty days).

¹⁰⁰ ALASKA ADMIN. CODE tit. 4, § 52.550(g) (2019) (prohibiting HOs from acting as mediators); CAL. EDUC. CODE § 56500.3(a) (West 2017) (prohibiting attorneys from attending mediation); MO. REV. STAT. § 162.959 (2017) (specifying also a limit of three additional persons per party); 05-71-101 ME. CODE R. § XVI.3.B(7) (LexisNexis 2018) (requiring seven days advance notice for parent to bring an attorney and allowing LEA to bring an attorney if parents do); MD. CODE ANN., EDUC. § 8-413(b)(4) (West 2018) (permitting any party to bring an attorney); 22 000 006 VT. CODE R. § 2365.1.4 (2020) (permitting parents to bring family, support members, and advocates without triggering LEA to bring an attorney).

¹⁰¹ CAL. CODE REGS. tit. 5, § 3019.1 (2018) (requiring forty hours of mediation practice and legal training and twenty hours continuing education each year); TENN. COMP. R. & REGS. 0520-01-09-.17 (2017) (incorporating detailed training and qualification requirements from TENN. SUP. CT. R. 31); TENN. CODE ANN. § 49-10-605 (2020) (requiring mediator also to have training in special education law).

¹⁰² 05-71-101 ME. CODE R. § XVI.2.A (LexisNexis 2018) (requiring a written request for a mediation only when there is no pending due process or other complaint); N.M. CODE R. § 6.31.2.13.G.(2)(b) (LexisNexis 2020) (requiring the request for mediation to be in writing and to include a statement of the nature of the dispute and attempts to resolve it); N.H. REV. STAT. ANN. § 186-C:24 (2016) (requiring that the request for mediation must be in writing).

complaint process to enforce mediation agreements.¹⁰³

For the ADR subcategory, the state law additions to the IDEA's brief and generic authorization to alternatives to mediation,¹⁰⁴ range from a brief listing of various ADR options, such as IEP facilitation, settlement conferences, advisory opinion procedures, and neutral fact finding or case evaluation¹⁰⁵ to the additional or alternative brief authorization of a single procedure.¹⁰⁶ A few state laws provide detailed descriptions, usually focused on IEP facilitation.¹⁰⁷ More novel, three state laws include detailed provisions for an advisory process in which a neutral hears from the parties and gives an opinion on what the outcome might be.¹⁰⁸ Finally, the various state law ADR provisions require confidentiality.

For the resolution session subcategory, perhaps because the IDEA specifies this stage of the pre-hearing process in detail,¹⁰⁹ the number and nature of state law additions is negligible.¹¹⁰ For example, New Jersey's minor additions include a clarification that parents may bring an advocate to the resolution session without triggering the LEA's right to bring an attorney,¹¹¹ which is conditional upon the parent doing so.¹¹²

¹⁰³ 05-71-101 ME. CODE R. § XVI.3.B(8) (LexisNexis 2018); 511 IND. ADMIN. CODE 7-45-2(i) (2020).

¹⁰⁴ *See supra* note 44.

¹⁰⁵ MD. CODE REGS. 28.02.01.18 (2020) (APA); MINN. STAT. § 125A.091 (2019); OR. ADMIN. R. 137-003-0510(2) (2019) (APA); *cf.* MASS. GEN. LAWS ch. 71B, § 2A (2017) (listing options with HO participation, including settlement conferences and advisory opinion procedure); N.M. CODE R. § 6.31.2.13.I.(3)(b) (LexisNexis 2020) (authorizing facilitated IEP meeting or mediation to serve in the place of the resolution session).

¹⁰⁶ CAL. EDUC. CODE § 56502(g) (West 2017) (providing for an "informal meeting" at the request of the parent and conducted by an LEA administrator with authority to resolve the issue); 603 MASS. CODE REGS. 28.08(1) (2018) (encouraging local school districts to create "problem resolution procedures").

¹⁰⁷ Idaho State Dep't of Educ., Idaho Special Education Manual, 232 (2018); 19 TEX. ADMIN. CODE §§ 89.1196–1197 (2020); W. Va. Dep't of Educ., West Virginia Procedures Manual for the Education of Students with Exceptionalities, 103-04 (2017); *cf.* MINN. STAT. § 125A.091.7 (2019) (describing "conciliation meetings").

¹⁰⁸ CONN. AGENCIES REGS. § 10-76h-6 (2018) (setting forth a detailed process for a simulated due process hearing with an HO that leads to a nonbinding advisory opinion); N.H. REV. STAT. ANN. § 186-C:23 (2016) (describing a "neutral conference" in which the parties present facts to a neutral party who offers a recommendation); 26 N.C. ADMIN. CODE 03.0201 (2016) (describing a mediated settlement conference with the HO presiding).

¹⁰⁹ *See supra* note 42.

¹¹⁰ COLO. CODE REGS. § 301-8:2220-R-6.02(7.5)(d)(ii)(A) (2016) (prohibiting the HO from extending the time period for a resolution session); 05-71-101 ME. CODE R. § XVI.11.F (LexisNexis 2018) (authorizing use of the state complaint process to enforce resolution agreements); N.J. ADMIN. CODE § 6A:14-2.7(h) (2018) (providing various additions, such as disallowing audio or video recording of the meeting and reserving resolution of any disputes about the resolution session exclusively to the HO).

¹¹¹ N.J. ADMIN. CODE § 6A:14-2.7(h) (2018).

¹¹² 20 U.S.C. § 1415(f)(1)(B)(i) (2018).

C. Hearing Preparations

Although the IDEA does not address hearing preparations beyond HO objectivity, overall disclosure, and indirect subpoena provisions,¹¹³ this category has been subject to the most numerous state law additions. The subcategories in descending order of frequency are discovery (n=40), pre-hearing conferences (n=37), additional case management (n=34), recusal (n=27), pre-hearing motions (n=27), and disclosure (n=18).

For the discovery subcategory, several states provide the HO with more direct subpoena authority or the more limited authority for discovery of documents,¹¹⁴ and others extend further to varying degrees.¹¹⁵ At the most extensive end, some state laws provide for what may be regarded as full discovery by using state rules of civil procedure or civil law more generally as the frame of reference.¹¹⁶ In contrast, a few state laws merely encourage discovery on a voluntary basis.¹¹⁷

¹¹³ See *supra* notes 45, 46, and 48.

¹¹⁴ 005 ARK. CODE R. § 18.10.01.27.1 (2017); HAW. CODE. R. § 16-201-19 (2020) (APA); 105 ILL. COMP. STAT. 5 § 14-8.02a(g-40) (2018); KY. REV. STAT. ANN. § 13B.070 (West 2020) (APA); 05-71-101 ME. CODE R. XVI.7.A (LexisNexis 2018); MD. CODE REGS. 28-02.01.12 (2020) (APA); NEV. REV. STAT. § 388.469 (2019); N.H. CODE R. EDUC. 1123.14(a) (LexisNexis 2020); N.M. CODE R. § 6.31.2.13.I(9)(c) (LexisNexis 2020); OHIO ADMIN. CODE 3301-51-05(K)(12)(c) (2019); OKLA. ADMIN. CODE § 210:15-13-6 (2020); W. Va. Dep’t of Educ., West Virginia Procedures Manual for the Education of Students with Exceptionalities 114 (2017) (allowing the HO to issue subpoenas for documents); *cf.* CAL. CODE REGS tit. 5, § 3082(c)(2) (2018) (allowing subpoenas of documents upon showing of “reasonable necessity”); 8 VA. ADMIN. CODE § 20-81-210.P.3 (2017); WASH. ADMIN. CODE § 10-08-120(4) (2017) (APA) (authorizing the HO to quash a subpoena for documents if it is unreasonable or oppressive); WIS. STAT. § 115.780(5)(a) (2017) (authorizing document discovery only from witnesses compelled to attend); *cf.* S.C. CODE ANN. § 59-33-90 (2019) (noting that subpoenas are available consistent with the IDEA).

¹¹⁵ ARIZ. REV. STAT. ANN. §§ 41-1092.07.C, 41-1092.04.F.4 (2020) (APA) (allowing subpoena for documents contingent upon a reasonable need and depositions if a witness is unable to attend); GA. COMP. R. & REGS. 616-1-2-.20 (2018) (APA) (allowing depositions); KAN. STAT. ANN. §§ 72-3419, 77-245 (2019) (APA) (allowing subpoena of documents and discovery under civil rules except for depositions); Mass. Dep’t of Elementary & Secondary Educ., Hearing Rules for Special Education Appeals 12-14 (Mar. 2019) (allowing document discovery, interrogatories, and depositions); 801 MASS. CODE REGS. 1.01(8)(i) (2018) (APA) (providing for a motion to compel discovery); MICH. ADMIN. CODE r. 792.11803 (2020) (authorizing of subpoena of documents as well as depositions); MONT. ADMIN. R. 10.16.3513 (2017) (allowing document production, depositions, and interrogatories within the discretion of the HO); OR. ADMIN. R. 137-003-0565, 137-003-0570, 137-003-0585 (2019) (APA) (allowing discovery of documents, admissions, interrogatories, and when HO authorizes, depositions); S.D. CODIFIED LAWS § 1-26-18 (2019) (APA) (authorizing discovery of documents and through depositions as in a civil case); 19 TEX. ADMIN. CODE § 89.1180(g) (2020) (allowing discovery of documents, previous statements, possible witnesses, and depositions under HO authority).

¹¹⁶ IDAHO ADMIN. CODE r. 04.11.01.520-521 (2018) (APA); IOWA ADMIN. CODE r. 481-10.13 (2020) (APA); LA. ADMIN. CODE tit. 1, § 521 (2020) (APA); MINN. R. 1400.6700.2 (2018) (APA); 92 NEB. ADMIN. CODE § 55-006.03 (2017); N.C. GEN. STAT. §§ 150B-27, 28, 29 (2017); N.D. ADMIN. CODE 98-02-02-06.1 (2019) (APA); TENN. CODE ANN. § 4-5-311 (2020) (APA); Wyo. Dep’t of Educ., Wyoming Policy and Procedure Manual for Special Education 48 (2010); *cf.* COLO. CODE REGS. § 104-1-9 (2020); *cf.* FLA. ADMIN. CODE ANN. r. 28-106-206 (2018) (APA) (allowing discovery as in a civil case, except for contempt as a penalty).

¹¹⁷ N.H. CODE R. EDUC. 1123.14(a) (LexisNexis 2020) (encouraging voluntary good faith production); N.J. ADMIN. CODE § 1:6A-10.1(d) (2018) (noting that discovery shall, to the greatest

For the similarly frequent pre-hearing conference subcategory, one of the major distinctions between states is between mandatory¹¹⁸ and optional¹¹⁹ provisions. Within both types of provisions, the level of specificity for the subjects and, much less frequently, the timing of the pre-hearing conference varies widely.¹²⁰ The majority of these provisions include a culminating requirement of an HO summary or order.¹²¹ Overlapping with the response subcategory,¹²² Arizona has an unusual provision requiring the HO at the pre-hearing conference to determine whether the complaint is a “legitimate due process Complaint.”¹²³

extent possible, be voluntary exchanges of information, and expressly disallowing interrogatories, admissions, and depositions); 22 000 006 VT. CODE R. § 2365.1.6.10 (2020) (encouraging voluntary production of information with a motion to compel within purview of HO).

¹¹⁸ ALA. ADMIN. CODE r. 290-8-9-.08(9)(c)12(i)(VII) (2013); ARIZ. ADMIN. CODE § R7-2-405H.1 (2018); ARIZ. REV. STAT. ANN. § 41-1092.05 (2020) (APA); COLO. CODE REGS. § 301-8 (2016) (Rules for the Administration of the Exceptional Children’s Educational Act 6.02 (7.5)(f)(iv)(C)); CONN. AGENCIES REGS. § 10-76h-7 (2018); HAW. CODE. R. § 8-60-65(e) (2019); 105 ILL. COMP. STAT. 5 § 14-8.02a(g-40) (2018); ILL. ADMIN. CODE tit. 23, § 226.640 (2018); 4 IND. ADMIN. CODE 21.5-3-18 (2019) (APA); LA. ADMIN. CODE tit. 28, § 511.I (2017); 05-71-101 ME. CODE R. § XVI.6.G (LexisNexis 2018); MINN. STAT. § 125.019.15 (2019); MINN. R. 3525.4110 (2018); MONT. ADMIN. R. 10.16.3510(1), R. 10.16.3512 (2017); N.H. CODE R. EDUC. 1123.02(e) (LexisNexis 2020); N.M. CODE R. § 6.31.2.13.I(10)(b) (LexisNexis 2020); OR. ADMIN. R. 581-015-2360(3) (2019); 19 TEX. ADMIN. CODE § 89.1180(b)-(d) (2020); 22 000 006 VT. CODE R. § 2365.1.6.4, 11 (2020); *cf.* Mass. Dep’t of Elementary & Secondary Educ., Hearing Rules for Special Education Appeals 9–11 (Mar. 2019) (requiring scheduling and discovery conference but leaving a full pre-hearing conference as optional); 8 VA. ADMIN. CODE § 20-81-210.O.3-4 (2017) (reserving exception if HO provides written explanation to parties).

¹¹⁹ ALASKA ADMIN. CODE tit. 4, § 52.550(a) (2019); 005 ARK. CODE R. § 18.10.01.28.1 (2017); CAL CODE REGS. tit. 1 § 1026 (2020) (APA); FLA. ADMIN. CODE ANN. r. 28-106-209 (2018) (APA); GA. COMP. R. & REGS. 616-1-2-.14(1) (2018) (APA); IDAHO ADMIN. CODE r. 04.11.01.510-512 (2018) (APA); IOWA ADMIN. CODE r. 481-10.16 (2020) (APA); KAN. STAT. ANN. § 72-3416(b)(6) (2019); KY. REV. STAT. ANN. § 13B.070 (West 2020) (APA); MD. CODE ANN., EDUC. § 8-413(e)(1)(ii) (West 2018); MD. CODE REGS. 28-02.01.07.C (2020) (APA); MICH. ADMIN. CODE r. 340.1725e (2020); MICH. ADMIN. CODE r. 792.10114 (2020) (APA); 92 NEB. ADMIN. CODE § 55-006 (2017); N.J. ADMIN. CODE § 1:6A-13.1 (2018); N.J. ADMIN. CODE § 1:1-9.1(d) (2018) (APA); N.Y. COMP. CODES R. & REGS. tit. 8, § 200.5(j)(3)(xi) (2018); 26 N.C. ADMIN. CODE 03.0108 (2017) (APA); N.D. ADMIN. CODE 98-02-02-09 (2019) (APA); TENN. CODE ANN. § 4-5-306(a) (2020) (APA); WASH. ADMIN. CODE § 10-08-130 (2017) (APA).

¹²⁰ At the most limited extent, Ohio’s provision is limited to the exchange of evidence, thus overlapping with the disclosure subcategory. *See infra* note 153–54 and accompanying text.

¹²¹ 4 IND. ADMIN. CODE 21.5-3-19(c) (2019) (APA); KY. REV. STAT. ANN. § 13B.070(2) (West 2020) (APA); MD. CODE REGS. 28-02.01.07.E (2020) (APA); MICH. ADMIN. CODE r. 792.10114 (2020) (APA); MONT. ADMIN. R. 10.16.3512(4) (2017); N.J. ADMIN. CODE § 1:1-13.2 (2018) (APA); N.M. CODE R. § 6.31.2.13.I(12)(m) (LexisNexis 2020); TENN. CODE ANN. § 4-5-306(a)(2), (b) (2020) (APA); 19 TEX. ADMIN. CODE § 89.1180(a), (e) (2020); 22 000 006 VT. CODE R. § 2365.1.6.11 (2020); WASH. ADMIN. CODE § 10-08-130 (2017) (APA).

¹²² *See supra* notes 93–95 and accompanying text.

¹²³ ARIZ. ADMIN. CODE § R7-2-405H.1 (2018).

In the residual subcategory of additional case management,¹²⁴ several states provide broad grants¹²⁵ or passing mention¹²⁶ of HO authority, while a few others set forth lengthy lists of HO responsibilities.¹²⁷ As another variation, some states focus on specific pre-hearing areas of authority, such as timelines,¹²⁸ continuances or adjournments,¹²⁹ pre-hearing party briefs,¹³⁰ orders,¹³¹ and notifications.¹³²

Recusal here refers generically to the procedures for disqualifying the HO, extending beyond the narrower meaning of the HO initiating or deciding the disqualification. The IDEA does not address the procedures to the extent differentiable from the criteria for recusal. Instead, the foundational provisions are limited to very basic prohibitions of conflict of interest,¹³³ which the hearing-stage article already canvassed.¹³⁴ Although the boundary is far from a bright line, the

¹²⁴ In some cases, the case management authority that an HO has under state law may blend into the authority that the HO has during a pre-hearing conference. Nevertheless, they are sufficiently distinct to warrant a separate subcategory of state law additions.

¹²⁵ GA. COMP. R. & REGS. 616-1-2-.14(2) (2018) (APA); HAW. CODE. R. § 16-201-17 (2020) (APA); IDAHO ADMIN. CODE r. 04.11.01.510 (2018) (APA); ILL. ADMIN. CODE tit. 23, § 226.660 (2018); MD. CODE REGS. 28-02.01.11, 28-02.01.17 (2020) (APA); MICH. ADMIN. CODE r. 792.10181-10183 (2020) (APA); MINN. R. 125.019.15 (2018); 26 N.C. ADMIN. CODE 03.0108 (2017) (APA) N.C. GEN. STAT. § 150B-33 (2017); N.D. ADMIN. CODE 98-02-02-09 (2019) (APA); OR. ADMIN. R. 137-003-0035, 0525 (2019) (APA); 19 TEX. ADMIN. CODE § 89.1170(e) (2020); Wyo. Dep’t of Educ., Wyoming Policy and Procedure Manual for Special Education 38 (2010).

¹²⁶ ALASKA ADMIN. CODE tit. 4, § 52.550(g) (2019); OHIO ADMIN. CODE 3301-51-05(K)(12) (2019); WIS. STAT. § 115.780(5)(a) (2017).

¹²⁷ ALA. ADMIN. CODE r. 290-8-9-.08(9)(c)12(i) (2013); ARIZ. REV. STAT ANN. § 41-1092.05 (2020) (APA); N.M. CODE R. § 6.31.2.13.I(9), (10) (LexisNexis 2020); 8 VA. ADMIN. CODE § 20-81-210.O.3-4 (2017).

¹²⁸ E.g., COLO. CODE REGS. § 301-8 (2016) (Rules for the Administration of the Exceptional Children’s Educational Act 6.02 (7.5)(f)(iv)); Mass. Dep’t of Elementary & Secondary Educ., Hearing Rules for Special Education Appeals 6 (Mar. 2019); N.H. CODE R. EDUC. 1123.02 (LexisNexis 2020); N.Y. COMP. CODES R. & REGS. tit. 8, § 200.5(j)(3)(iii)(a) (2018).

¹²⁹ E.g., FLA. ADMIN. CODE ANN. r. 28-106-209 (2018) (APA); Mass. Dep’t of Elementary & Secondary Educ., Hearing Rules for Special Education Appeals 10 (Mar. 2019); MONT. ADMIN. R. 10.16.3512(4) (2017); 92 NEB. ADMIN. CODE § 55-006.03 (2017); N.J. ADMIN. CODE § 1:6A-9.2 (2018).

¹³⁰ E.g., 005 ARK. CODE R. § 18.10.01.28.1 (2017) (authorizing the HO to require submission three days before the hearing of briefs on issues and arguments).

¹³¹ E.g., FLA. ADMIN. CODE ANN. r. 28-106-211 (2018) (APA) (empowering the HO to issue orders as necessary to manage the proceeding).

¹³² E.g., ALASKA ADMIN. CODE tit. 4, § 52.550(g) (2019) (requiring the HO to provide notice to the parent 10 days before the hearing); 4 IND. ADMIN. CODE 21.5-3-18(c) (2019) (requiring the HO to provide notice of pre-hearing conference); OR. ADMIN. R. 581-015-2360(4) (2019); TENN. CODE ANN. § 4-5-307 (2020) (APA) (specifying the hearing notice that the HO must give to the parties).

¹³³ See *supra* note 45. Although not the focus here, some state laws specify other or overlapping grounds for disqualification. E.g., 4 IND. ADMIN. CODE 21.5-3-10, 21.5-3-12 (2019) (APA); IOWA ADMIN. CODE r. 281-41.1004(1)(a) (2018); MD. CODE REGS. 28-02.01.07.E (2020) (APA) (applying judicial standard of impartiality); *see also* MO. REV. STAT. § 162.961.1 (2017) (elaborating on prohibited conflicts of interest); S.D. CODIFIED LAWS § 1-26-26 (2019) (APA) (requiring disqualification only where the HO participated in the investigation of the case). For systematic analysis of the related case law, *see generally* Zirkel, *supra* note 17.

¹³⁴ *Hearing Stage*, *supra* note 9, at 17.

focus here is on the recusal procedures that extend notably to the pre-hearing phase rather than those focused on the hearing stage.¹³⁵

Many of the state law recusal additions relate to actual or potential conflicts of interest. One group provides for disclosure.¹³⁶ Another group goes a step further by providing for mandatory recusal of an HO in the event of a conflict.¹³⁷ Other procedural additions focus on the format or timing of a party's request for recusal of the HO. For example, several states require the request to be a motion for recusal, typically in writing and supported by specific grounds.¹³⁸ Other states address the timing of such a request either generally¹³⁹ or specifically.¹⁴⁰

¹³⁵ Similarly, within the hearing-stage exclusion are state laws that address removal of HOs for matters that appear to be more a matter of competency than impartiality, such as for failure to fulfill their responsibilities. *E.g.*, Sup. Ct. of Va., Hearing Officer Systems Rules of Administration, Rule 4.A (2019).

¹³⁶ 005 ARK. CODE R. § 18.10.01.23.1 (2017) (stating that HO "shall disclose all personal or professional activities or relationships involving any party to the hearing"); CAL. CODE REGS tit. 5, § 3099(a)-(b) (2018) (requiring HO to disclose actual and potential conflicts that could raise a question about impartiality); COLO. CODE REGS. § 104-2-3 (2020) (APA) (noting in the commentary that the HO must disclose the basis for possible disqualification); GA. COMP. R. & REGS. 160-4-7.12(3)(l)(5) (2018) (providing the HO may disclose when any factor impairs or appears to impair HO's impartiality); 105 ILL. COMP. STAT. 5 § 14-8.02a(f-5) (2018) (requiring HO to disclose certain conflicts); IOWA ADMIN. CODE r. 481-10.9(2) (2020) (APA) (requiring HO to disclose any conflicts); *see also* MICH. ADMIN. CODE r. 792.10106(4) (2020) (APA) (allowing the HO to disclose possible conflicts and parties may agree that the HO not be disqualified); 22 PA. CODE § 14.162 (2017) (requiring the HO to inform parties if there is a prior relationship with either party). *But cf.* N.J. ADMIN. CODE § 1:1-14.12(c) (2018) (APA) (stating that an HO may not avoid disqualification by disclosing a conflict).

¹³⁷ CAL. CODE REGS tit. 5, § 3099(d) (2018) (noting that if there is an actual or potential conflict, the HO must recuse); COLO. CODE REGS. § 104-2-3 (2020) (APA) (stating that the HO shall recuse if impartiality might reasonably be questioned); GA. COMP. R. & REGS. 616-1-2-.32(6) (2018) (APA) (stating that HO shall be recused if impartiality may reasonably be questioned); 105 ILL. COMP. STAT. 5 § 14-8.02a(f-5) (2018) (requiring the HO to recuse for certain conflicts); IOWA ADMIN. CODE r. 481-10.9(1) (2020) (APA) (requiring the HO to withdraw for lack of impartiality); LA. ADMIN CODE tit. 28, § 511 (2017) (requiring disqualification if "doubt exists" as to impartiality); MD. CODE REGS. 28-02.01.11.C (2020) (APA) (requiring the HO to withdraw for any bias or lack of impartiality, or appearance of impropriety); N.J. ADMIN. CODE § 1:1-14.12(a) (2018) (requiring the HO to withdraw in certain conflict circumstances); S.D. CODIFIED LAWS § 1-26-26 (2019) (APA) (requiring disqualification in limited circumstances).

¹³⁸ ALASKA ADMIN. CODE tit. 4, § 52.560(c) (2019); GA. COMP. R. & REGS. 616-1-2-.32(6) (2018) (APA); KY. REV. STAT. ANN. § 13B.040(2) (West 2020) (APA); MICH. ADMIN. CODE r. 792.10106(5) (2020) (APA); MONT. ADMIN. R. 10.16.3509(3) (2017); 19 TEX. ADMIN. CODE § 89.1170(g) (2020) (requiring a motion in writing and with specific support); *cf.* N.J. ADMIN. CODE § 1:1-14.12(d) (2018) (APA); *see also* MINN. R. 1400.6400 (2018) (APA) (providing that the good faith filing of an affidavit of prejudice triggers requirement for a recusal decision).

¹³⁹ *E.g.*, HAW. CODE. R. § 16-201-20(b) (2020) (APA) (requiring the disqualification motion to be filed before the evidentiary portion of the DPH); 105 ILL. COMP. STAT. 5 § 14-8.02a(f-5) (2018) (permitting a motion for recusal at any time before or during DPH).

¹⁴⁰ *E.g.*, LA. ADMIN CODE tit. 28, § 511.D (2017) (requiring parties to request disqualification within three days of HO appointment); MINN. R. 1400.6400 (2018) (APA) (requiring an affidavit of prejudice to be filed no later than five days before the DPH); MONT. ADMIN. R. 10.16.3509(3) (2017) (requiring motion be made within ten days of HO appointment); WASH. ADMIN. CODE § 10-08-050 (2017) (APA) (requiring parties to file motion of prejudice 3 days before first discretionary ruling by HO); *cf.* MICH. ADMIN. CODE r. 792.10106(4) (2020) (APA) (requiring a

Finally, various state law additions in the recusal subcategory address who has the authority to make the recusal decision. Several states make explicit what is otherwise presumed—that the HO has this authority at least as an initial matter.¹⁴¹ For such HO decisions, a few state laws add an appellate step.¹⁴² Alternatively, other states provide for the initial recusal decision by a person or entity other than HO.¹⁴³ Finally, overlapping with the criteria for recusal, a few states provide procedures for limited peremptory recusal either indirectly¹⁴⁴ or directly.¹⁴⁵

In the similarly frequent subcategory of pre-hearing motions, which overlaps with the discovery subcategory,¹⁴⁶ some state laws focus on a particular type of motion.¹⁴⁷ Others grant HOs blanket motion authority, either with detailed

party recusal motion “promptly” after either the HO appointment or the discovery of the factual basis for disqualification); NEV. ADMIN. CODE § 388.310.18(d) (2020) (providing that the HO “shall timely rule” on the motion); N.J. ADMIN. CODE § 1:1-14.12(d) (2018) (APA) (requiring party to move for recusal “as soon as practicable after a party has reasonable cause to believe that grounds for disqualification exist”); OR. ADMIN. R. 471-060-005(3) (2019) (APA) (disallowing request if party did not do so upon reasonable opportunity to request recusal); TENN. CODE ANN. § 4-5-302(b) (2020) (requiring petition for HO disqualification “promptly” after discovery of the grounds for it).

¹⁴¹ ALASKA ADMIN. CODE tit. 4, § 52.560(c) (2019); 005 ARK. CODE R. § 18.10.01.23.3 (2017); KAN. STAT. ANN. § 72-3416(f)(2) (2019); N.D. CENT. CODE § 28-32-27.4 (2020) (APA); TENN. CODE ANN. § 4-5-302(c) (2020); *cf.* IDAHO ADMIN. CODE r. 04.11.01.412 (2018) (APA); 4 IND. ADMIN. CODE 21.5-3-9(d) (2019) (APA) (adding requirement for facts and reasons for decision); NEV. ADMIN. CODE § 388.310.18 (2020); 19 TEX. ADMIN. CODE § 89.1170(g) (2020) (adding requirement for written order).

¹⁴² 4 IND. ADMIN. CODE 21.5-3-9(e) (2019) (APA) (providing for agency review); MICH. ADMIN. CODE r. 792.10106(6) (2020) (APA) (allocating this step to a supervising administrative law judge); N.D. ADMIN. CODE 98-02-02-15 (2019) (APA) (similarly according this authority to the director or head of the administrative agency); 19 TEX. ADMIN. CODE § 89.1170(g) (2020) (allocating the appellate authority to a second HO); Sup. Ct. of Va., Hearing Officer Systems Rules of Administration, Rule 4.B (2019) (providing this authority to executive secretary of the state supreme court, which administers the HO system).

¹⁴³ ARIZ. REV. STAT. ANN. § 41-1092.07 (2020) (APA); 005 ARK. CODE R. § 18.10.01.25.1 (2017); KY. REV. STAT. ANN. § 13B.040(2) (2020) (APA); MONT. ADMIN. R. 10.16.3509(3) (2017) (allocating the decision to the SEA head); LA. ADMIN. CODE tit. 28, § 511 (2017); MINN. R. 1400.6400 (2018) (APA) OR. ADMIN. R. 471-060-005(3) (2019) (APA); WASH. REV. CODE § 34.12.050(1) (2020) (APA) ((allocating the decision to the chief ALJ).

¹⁴⁴ MONT. ADMIN. R. 10.16.3509(1)(b) (2017) (allowing parties to rank proposed HOs in order of preference before appointment); NEV. REV. STAT. § 388.469 (2019) (providing for the assignment of the HO according to the complainant’s ranking of the proposed HOs).

¹⁴⁵ IDAHO ADMIN. CODE r. 04.11.01.412 (2018) (APA) (providing for one disqualification without cause for any party); 105 ILL. COMP. STAT. 5 § 14-8.02a(f-55) (2018) (allowing each party one substitution of an HO as a matter of right); KAN. ADMIN. REGS. § 91-40-28(d) (2017) (granting parents the right to disqualify proposed HOs before appointment); OR. ADMIN. R. 471-060-005(3) (2019) (APA) (providing for automatic granting of either party’s first recusal request).

¹⁴⁶ *See infra* notes 152–54 and accompanying text.

¹⁴⁷ CAL. CODE REGS tit. 5, § 3082(c)(3) (2018) (motion to exclude witnesses); 4 IND. ADMIN. CODE 21.5-3-24 (2019) (APA) (motion for summary judgment); MINN. R. 3525.4110.3 (2018) (dismissal for failure to comply with orders); N.J. ADMIN. CODE § 1:6A-12.1 (2018) (motion for emergency relief); S.D. CODIFIED LAWS § 1-26-18 (2019) (APA) (summary disposition); WASH. ADMIN. CODE § 10-08-135 (2017) (APA) (summary judgment).

procedures¹⁴⁸ or limited formalities.¹⁴⁹ Others are limited only to passing mention.¹⁵⁰ Finally, providing full discovery authority, one state treats motions within DPHs the same as in other civil proceedings.¹⁵¹

For the disclosure subcategory, various state laws add to the IDEA's five-day rule.¹⁵² Most of these additions are limited to making more specific the nature or form of the disclosure, such as requiring the exchange of the witness list with descriptions and labeled documentary evidence.¹⁵³ More unusually, Ohio requires a "disclosure conference" five days prior to the hearing.¹⁵⁴

V. DISCUSSION AND RECOMMENDATIONS

Insofar as this article is the third in the triad of the analyses of state law additions to the IDEA provisions for the successive stages of DPHs,¹⁵⁵ the conclusions of the two previous articles provides a starting point for this discussion. More specifically, a primary conclusion of the hearing-stage analysis was that "state law additions to the IDEA's foundational requirements for DPHs form a pattern characterized by variety and complexity."¹⁵⁶ On an overlapping basis, the over-arching conclusion of the post-hearing analysis was that in applying "the Janus-like trade-off between the benefits of 'legalization' and the costs of 'the arid formality of legalism,' the key is to retain the benefits of the judicialization of DPHs, but with careful customization of the structure and purpose of the IDEA."¹⁵⁷

The findings for the state law additions to the pre-hearing stage not only intensify and illustrate but also supplement this interpretation. First, consistent

¹⁴⁸ COLO. CODE REGS. § 104-1-10 (2020) (APA); FLA. ADMIN. CODE ANN. r. 28-106-209 (2018) (APA); CONN. AGENCIES REGS. §§ 10-76h-7, 8, 18 (2018); GA. COMP. R. & REGS. 616-1-2-.14(2) (2018) (APA); MD. CODE REGS. 28-02.01.12 (2020) (APA); Mass. Dep't of Elementary & Secondary Educ., Hearing Rules for Special Education Appeals 14 (Mar. 2019); MICH. ADMIN. CODE r. 792.10105, 10115, 10129 (2020) (APA); N.J. ADMIN. CODE § 1:1-12 (2018) (APA); N.D. ADMIN. CODE 98-02-02-08 (2019) (APA); OR. ADMIN. R. 137-003-0580, 137-003-0630 (2019) (APA); TENN. COMP. R. & REGS. 1360-04-01-.09 (2017) (APA).

¹⁴⁹ IDAHO ADMIN. CODE r. 04.11.01.565 (2018) (APA); HAW. CODE. R. § 16-201-17 (2020) (APA) (requiring that motions be in writing with supporting memoranda if a question of law at issue and supporting affidavits if facts not in record); IOWA ADMIN. CODE r. 481-10.15 (2020) (APA); LA. ADMIN. CODE tit. 1, § 517 (2020) (APA); 05-71-101 ME. CODE R. § XVI.8 (LexisNexis 2018); MINN. R. 1400.6600 (2018) (APA) (requiring that motions be in writing); *cf. MONT. ADMIN. R. 10.16.3512(3) (2017)* (providing timeline for objections to evidence).

¹⁵⁰ E.g., N.M. CODE R. § 6.31.2.13.I(12)(k) (LexisNexis 2020); 19 TEX. ADMIN. CODE § 89.1170(e) (2020).

¹⁵¹ N.C. GEN. STAT. § 150B-33(b)(3a) (2017).

¹⁵² *See supra* note 46. The wording of the statutory and regulatory versions differs significantly in scope and strength. *Id.*

¹⁵³ N.H. CODE R. EDUC. 1123.15(b) (LexisNexis 2020).

¹⁵⁴ OHIO ADMIN. CODE 3301-51-05(K)(12)(b) (2019).

¹⁵⁵ *See supra* note 9 and accompanying text.

¹⁵⁶ *Hearing Stage*, *supra* note 9, at 25.

¹⁵⁷ *Post-Hearing Stage*, *supra* note 9, at 24–25 (citing David Neal & David L. Kirp, *The Allure of Legalization: The Case of Special Education Reconsidered*, 48 L. & CONTEMP. PROBS. 63, 82 (1985) and Perry A. Zirkel et al., *Creeping Judicialization in Special Education Hearings?: An Exploratory Study*, 27 J. NAT'L ASS'N ADMIN. L. JUDICIARY 1 (2007)).

with the experimentation objective of federalism,¹⁵⁸ the entries in and explanation following Table 1 display the variety that state laws opt to fill gaps among and beyond the IDEA’s skeletal lattice for the pre-hearing stage.¹⁵⁹

Second, state law additions to for the pre-hearing stage suggest a conclusion not identified in the earlier analyses. The frequency of additions appears to correlate inversely with the level of detail and directly with the express allowance for variation in the federal foundation. The prime examples of the inverse relationship is for the subcategories in which the IDEA provides no or negligible pre-hearing requirements, specifically for pre-hearing conferences, case management, motions, and discovery.¹⁶⁰ These subcategories are subject to extensive state law additions.¹⁶¹ The major example for the direct correlation is for the SOL subcategory, in which several states have opted under the IDEA’s express allowance to “specify otherwise” instead of the two-year KOSHK period.¹⁶² However, both of these correlations are far from complete,¹⁶³ suggesting that various other factors, including the policy priorities of the stakeholders, which include and extend significantly beyond HOs, come into play.

Third and most significantly, the state law additions at the pre-hearing stage make particularly prominent the role of state APA laws in assessing whether the procedural provisions for DPHs are sufficiently aligned with and customized to the nature and purposes of the IDEA. As by the parenthetical designations of “APA” in the footnotes, these laws have accounted for many of the frequent additions to the pre-hearing subcategories of recusal, discovery, motions, and mandatory—as compared with discretionary—prehearing conferences. The recusal additions generally import the judicial standard of appearance of bias, whereas the IDEA arguably warrants an actual bias standard akin to labor arbitration.¹⁶⁴ The other additions, especially discovery and motion practice pose the potential problems of (a) extending the time well beyond the expedient forty-

¹⁵⁸ See, e.g., *McDonald v. City of Chi.*, 561 U.S. 742, 783 (2010) (“the values of federalism and state experimentation”); *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 418 (1999) (“‘experimentation’ long though a strength of our federal system”). Many credit the dissenting opinion by Justice Brandeis in *New State Ice Co. v. Liebmann* for the notion that states can be laboratories of experimentation. 285 U.S. 262, 310–11 (1932) (“It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”). Indeed, the structure of federal education laws, such as not only the IDEA but also the Elementary and Secondary Education Act, require states to take certain actions within the ample boundaries of a federal foundational framework.

¹⁵⁹ See *supra* notes 62–154 and accompanying text.

¹⁶⁰ See *supra* notes 114–32, 146–51 and accompanying text.

¹⁶¹ See *id.*

¹⁶² See *supra* note 40.

¹⁶³ For example, for the inverse correlation, the high frequency of additions to the IDEA’s detailed provisions for the mediation subcategories does not fit this pattern, and for the direct correlation, the express allowance is limited to the SOL subcategory, and its frequency is not close to the most extensive areas of state law additions.

¹⁶⁴ See generally Zirkel, *supra* note 17.

five day period in the IDEA regulations;¹⁶⁵ (b) increasing the transaction costs to the parties, which include not only the limited resources of parents for legal representation but also the collective priority for school district expenditures for education;¹⁶⁶ (c) engendering an overlapping increase in the technical issues of adjudication at the expense of the substantive issue of special education;¹⁶⁷ and (d) using a generalized model of administrative adjudication instead of a customized model specifically aligned with the IDEA.¹⁶⁸

For follow-up research, our recommendations extend to applying the same state law analysis to expedited hearings¹⁶⁹ and adding a corresponding set of analyses for the applicable agency policy interpretations and court decisions. The previous recommendation for a differentiation in these state law analyses between the small minority that account for most of the DPHs and the vast majority of low activity states¹⁷⁰ extends to systematic comparisons of not only state laws but empirical results (a) among states with central panels, those with specialized panels, and those with non-ALJs¹⁷¹ and (b) between APA and non-APA states.

Finally, this completion of the full set of successive state law analyses ripens the prospect of developing a customized model code for DPH hearings, like the model rules developed in other areas of the law,¹⁷² that is subject to further refinement at the state level. Such efforts at achieving effective and efficient administrative adjudication under the IDEA will be beneficial to students with disabilities and the school districts that serve them.

¹⁶⁵ 34 C.F.R. § 300.515(a) (2019) (specifying 45 days from end of resolution period, which is when the HO comes to the fore, until the decision). This deadline is the aim, with extensions arguably allowed as the limited exception to the rule. *Id.* § 300.515(c).

¹⁶⁶ Some states allow full-blown discovery in DPHs with depositions and other vehicles. *See supra* note 116 and accompanying text.

¹⁶⁷ In Arizona, the pre-hearing conference provision in the state's special education law is supplemented by two APA provisions that add confusion. *Compare* ARIZ. ADMIN. CODE § R7-2-405(H)(1) (2018) (mandating that the HO "shall" hold a pre-hearing conference to clarify issues and schedule the hearing), *with* ARIZ. ADMIN. CODE § R2-19-112 (2018) (APA) (noting that the HO "may" hold a pre-hearing conference and may issue a prehearing order); *cf.* ARIZ. REV. STAT. ANN. § 41-1092 (2020) (APA) (authorizing the HO to hold a pre-hearing conference to, among other things, obtain stipulations and consider amendments to pleadings).

¹⁶⁸ *See supra* note 97 (observing that the North Carolina APA's provision for requiring mediation conflicts with IDEA's requirement that mediation be voluntary).

¹⁶⁹ 20 U.S.C. § 1415(k)(3)(A) (stating that the parent of a child may request a hearing to dispute a placement or manifestation decision and that the school may request a hearing if "the current placement of the child is substantially likely to result in injury to the child or to others"), 1415(k)(4)(A) (2018) (requiring an expedited hearing for these types of appeals).

¹⁷⁰ *Post-Hearing Stage*, *supra* note 9, at 25; *Hearing Stage*, *supra* note 9, at 27.

¹⁷¹ *See* Connolly et al., *supra* note 23.

¹⁷² *See, e.g.*, MODEL RULES OF PROF'L RESPONSIBILITY (AM. BAR ASS'N 2020); U.C.C. Art. 2 (AM. LAW INST. & UNIF. LAW COMM'N 1951).

Appendix: Citations for State Law Provisions Specific to Pre-Hearing Stage

	Special Education Laws	More General Hearing Laws (e.g., APAs)
AL	ALA. ADMIN. CODE r. 290-8-9-.08(9)(c) (2013)	
AK	ALASKA STAT. § 14.30.193 (2017); ALASKA ADMIN. CODE tit. 4, §§ 52.490, 52.550, 52.560 (2019)	
AZ*	ARIZ. ADMIN. CODE §§ R7-2-401, 405 (2018)	ARIZ. REV. STAT. ANN. § 41-1092 (2020); ARIZ. ADMIN. CODE § R2-19-112 (2018)
AR	005 ARK. CODE R. §§ 18.10.01.7 <i>et seq.</i> (2017)	
CA	CAL. EDUC. CODE §§ 56500, 56502 (West 2017); CAL. CODE REGS. tit. 5, §§ 3019, 3082, 3099 (2018)	
CO*	COLO. CODE REGS. § 301-8 (2016)	COLO. CODE REGS. §§ 104-1, 104-2 (2020)
CT	CONN. AGENCIES REGS. §§ 10-76h-6 to 10-76h-18 (2018)	
DE	DEL. CODE ANN. tit. 14, § 3130 (2017)	
FL*		FLA. ADMIN. CODE ANN. rr. 28-106-209, 28-106-211 (2018)
GA*	GA. COMP. R. & REGS. 160-4-7.12(3) (2018)	GA. COMP. R. & REGS. 616-1-2-.14, 616-1-2-.20, 616-1-2-.32 (2018)
HI*	HAW. CODE. R. § 8-60-65 (2019)	HAW. CODE. R. §§ 16-201-16 to 16-201-29 (2020)
ID*	Idaho State Dep't of Educ., Idaho Special Education Manual (2018), https://www.sde.idaho.gov/sped/files/shared/Idaho-Special-Education-Manual-2018-Final.pdf (incorporated by IDAHO ADMIN. CODE r. 08.02.03.004 (2018))	IDAHO ADMIN. CODE rr. 04.11.01.417–04.11.01.600 (2018)
IL	105 ILL. COMP. STAT. 5 § 14-8.02a (2018); ILL. ADMIN. CODE tit. 23, §§ 226.615, 226.640, 226.660 (2018)	
IN*	511 IND. ADMIN. CODE 7-45-2, 7-45-4, 7-45-7 (2020)	4 IND. ADMIN. CODE 21.5-3-9 to 21.5-3-24 (2019)
IA*	IOWA ADMIN. CODE rr. 281-41.1002, 281-41.1004 (2018)	IOWA ADMIN. CODE rr. 481-10.9 to 481-10.16 (2020)
KS*	KAN. STAT. ANN. §§ 72-3416, 72-3419 (2019); KAN. ADMIN. REGS. § 91-40-28 (2017)	KAN. STAT. ANN. § 77-245 (2019)
KY*	KY. REV. STAT. ANN. § 157.224 (West 2017); 707 KY. ADMIN. REGS. 1:340 (2018)	KY. REV. STAT. ANN. §§ 13B.040-070 (West 2020)
LA*	LA. ADMIN. CODE tit. 28, §§ 507, 511 (2017)	LA. ADMIN. CODE tit. 1, §§ 517, 521 (2020)
ME	05-71-101 ME. CODE R. §§ XVI.2–XVI.11 (LexisNexis 2018)	
MD*	MD. CODE ANN., EDUC. § 8-413 (West 2018)	MD. CODE REGS. 28.02.01.11–18 (2020)
MA*	MASS. GEN. LAWS ch. 71B, § 2A (2017); 603 MASS. CODE REGS. 28.8(4) (2018); Mass. Dep't of Elementary & Secondary Educ., Hearing Rules for Special Education Appeals (Mar. 2019), https://www.mass.gov/service-details/bsea-issues-revised-hearing-rules-for-special-education-appeals	801 MASS. CODE REGS. 1.01(8)(i) (2018)
MI*	MICH. ADMIN. CODE rr. 340.1724, 340.1725 (2020); MICH. ADMIN. CODE r. 792.11803 (2020)	MICH. ADMIN. CODE rr. 792.10105–792.10129, 729.10181–792.10183 (2020)
MN*	MINN. STAT. § 125A.091 (2019); MINN. RR. 3525.3750, 3525.3900, 3525.4110 (2018)	MINN. R. 1400.6400, 1400.6700 (2018)
MS		
MO	MO. REV. STAT. §§ 162.959, 162.961, 162.963 (2017)	
MT	MONT. ADMIN. RR. 10.16.3506–3512 (2017)	
NE	92 NEB. ADMIN. CODE §§ 55-004, 55-006 (2017)	
NV	NEV. REV. STAT. §§ 388.465, 388.469 (2019); NEV. ADMIN. CODE § 388.310 (2020)	
NH*	N.H. REV. STAT. ANN. §§ 186-C:16; 186-C:24 (2016); N.H. CODE R. EDUC. 1123.02, 1123.06(b), 1123.14, 1123.15 (LexisNexis 2020)	N.H. REV. STAT. ANN. § 541-A:31.V (2016)
NJ*	N.J. ADMIN. CODE §§ 1:6A-9 to 1:6A-13, 6A:14-2.7 (2018)	N.J. ADMIN. CODE §§ 1:1-12 to 1:1-14 (2018)
NM	N.M. CODE R. §§ 6.31.2.13.G, 6.31.2.13.I (LexisNexis 2020)	

NY	N.Y. COMP. CODES R. & REGS. tit. 8, § 200.5 (2018)	
NC*	N.C. GEN. STAT. §§ 115C-109.4(i), 150B-26 to 150B-33 (2017)	N.C. GEN. STAT. § 7A-38 (2017); 26 N.C. ADMIN. CODE 3.0108, 3.0201 (2017)
ND*		N.D. CENT. CODE § 28-32-27.4 (2020); N.D. ADMIN. CODE 98-02-02-6 to 98-02-02-15 (2019)
OH	OHIO ADMIN. CODE 3301-51-05(K) (2019)	
OK	OKLA. ADMIN. CODE § 210:15-13-6 (2020)	
OR*	OR. ADMIN. R. 581-015-2360 (2019)	OR. ADMIN. RR. 137-003-0035, 137-003-0510 to 137-003-0630, 471-060-005 (2019)
PA	22 PA. CODE § 14.162 (2017)	
RI		
SC		
SD*		S.D. CODIFIED LAWS §§ 1-26-18, 1-26-26 (2019)
TN*	TENN. CODE ANN. § 49-10-605 (2020); TENN. COMP. R. & REGS. 0520-01-09-.17 (2017)	TENN. CODE ANN. §§ 4-5-302 to 4-5-311 (2020); TENN. COMP. R. & REGS. 1360-04-01-09 (2017)
TX	19 TEX. ADMIN. CODE §§ 89.1151(c)–(e), 89.1170(g), 89.1180(b)–(d), 89.1196-1197 (2020)	
UT		
VT	VT. STAT. ANN. tit. 16, § 2957 (2017); 22 000 006 VT. CODE R. § 2365 (2020)	
VA**	8 VA. ADMIN. CODE §§ 20-81-190, 20-81-210 (2017); Sup. Ct. of Va., Hearing Officer Systems Rules of Administration (2019), http://www.vacourts.gov/programs/ho/rules_of_admin_1_1_2019.pdf	
WA		WASH. REV. CODE § 34.12.050(1) (2020); WASH. ADMIN. CODE §§ 10-08-050, 10-08-120, 10-08-130, 10-08-135 (2017)
WV	W. Va. Dep’t of Educ., West Virginia Procedures Manual for the Education of Students with Exceptionalities (2017), https://wvde.state.wv.us/osp/Policy2419_2017.pdf (incorporated by reference by W. VA. CODE R. § 126-16-3 (2017))	
WI	WIS. STAT. §§ 115.780, 115.797 (2017)	
WY	7 WYO. CODE R. § 7 (2018); Wyo. Dep’t of Educ., Wyoming Policy and Procedure Manual for Special Education (2010), https://edu.wyoming.gov/downloads/special-ed/SpecEd_Policy_and_Procedure_Manual_v_1_1FINAL_8-20-2010.pdf	

* Designates states that have APA legislation or regulations that, in addition to special education-specific laws, apply to IDEA DPHs; however, the cell for such states is blank when the APA provisions do not account for any additions to the prehearing stage.

** Designates special situation of incorporation of Supreme Court rules of administration, which the SEA interprets as not importing the rest of the APA.