Trends in Impartial Hearings under the IDEA: A Comparative Enrollments-Based Analysis*

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Previous issues of the EDUCATION LAW REPORTER (Ed.Law Rep.) tracked the trends of DPH under the Individuals with Disabilities Education Act (IDEA)[1] for two successive six-year periods. The DPH indicators for each jurisdiction were: (1) filings, which represent the initiation of this hearing process[2]; (2) adjudications, which represent the completion of the process via a final written decision[3]; and, based on their combination, (3) the ratio of filings to adjudications.[4]

The first pair of articles analyzed these variables for the period from the school year 2006–07 through 2011–12.[5] The first article examined the annual average per jurisdiction[6] for each

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[1] 20 U.S.C. §§ 1400–82 (2017). The corresponding regulations are at 34 C.F.R. Parts 300 and 303 (2018). For the provisions for DPHs, see 20 U.S.C. § 1415(f)–(g) (2017); 34 C.F.R. §§ 300.507–300.514 (2018).

[2] This variable is rather clear-cut, representing a count of the written complaints requesting a DPH per the applicable regulatory requirements. 34 C.F.R. §§ 300.507–300.508 (2018).

[3] "Adjudications" herein is a short form of "fully adjudicated hearings," as used in the U.S. Department of Education (USDE) annual survey of state education departments, which is the source of the data in the successive analyses of CADRE and this article. U.S. Department of Education, E*MAPS* User Guide: IDEA Part B Dispute Resolution Survey (2019), https://www2.ed.gov/about/inits/ed/edfacts/index.html. Although not as precise as applied as it appears on its face, the unchanged definition of "fully adjudicated" that USDE has provided to the state education agencies for this annual collection is as follows: "[the] hearing officer conducted a DPH, reached a final decision regarding matters of law and fact and issued a written decision to the parties." *Id.* For this same variable, the various CADRE national reports https://www.cadreworks.org/resources/data-resources/national-data sometimes use the alternative shorthand term "hearings held."

[4] This calculation of dividing the number of filings by the number of adjudications serves an indicator of the completion rate or, obversely and more significantly, the proportion of cases that do not reach the end of this process due to withdrawal/abandonment, settlement, or summary decision, such as dismissal without a hearing for lack of jurisdiction .

[5] For simplicity, the remaining references to the respective six-year periods will be via the first of each academic-year pair, thus being 2006–11 and 2012–17.

[6] The jurisdictions consisted of the 50 states plus the District of Columbia, Puerto Rico, and the Virgin Island. For overall comparison purposes, the analysis included the respective cumulative total in addition to the annual average per jurisdiction for each of the three designated variables.

indicator on an absolute basis, i.e., without any adjustment for the special education enrollments in the state,[7] whereas the sequel reanalyzed the adjudications and filings on a per capita basis, i.e., with absolute numbers multiplied by 10,000 and then divided by the number of special education students to reflect the number of adjudications and filings per 10,000 students.[8] The principal findings of the combination of this pair of analyses for 2006–11 included the following: (1) adjudications declined overall, while filings remained relatively stable during this period,[9] (2) a relatively small number of jurisdictions accounted for most of the activity for this period, with the District of Columbia being an outlier in this predominant subgroup,[10] and (3) ranks differed pervasively and for some jurisdictions dramatically upon re-calculating to a per capita basis.[11]

For the more recent six-year period, the first of a second pair of articles analyzed the three DPH indicators for 2012–17 on an absolute, or unadjusted, basis, including a comparison to the parallel results for the first of the previous pair of analyses.[12] The major findings included (1) adjudications formed an uneven plateau that remained within the range of the last four years of the prior six-year period,[13] (2) the filings stayed within the same range as the prior period, with a slightly ascending trajectory within this range,[14] (3) with relatively limited changes, the small

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[7] Perry A Zirkel, *Longitudinal Trends in Impartial Hearings under the IDEA,* 302 Ed.Law Rep. 1 (2014).

[8] Perry A Zirkel, *Trends in Impartial Hearings under the IDEA: A Follow-up Analysis,* 303 Ed.Law Rep. 1 (2014).

[9] Leading examples include and the District of Columbia dropping from about 1,900 adjudications in 2006–07 to under 300 in 2011–12, Puerto Rico dropping from nearly 1,300 adjudications in 2006–07 to under 400 in 2011–12, and New York dropping from just over 800 adjudications in 2006–07 to under 700 total adjudications in 2011–12. *See* Zirkel, *supra* note 7, at 6.

[10] The top six jurisdictions—in alphabetical order being California, the District of Columbia, New Jersey, New York, Pennsylvania, and Puerto Rico—accounted for 90% of adjudications and 80% of filings for 2006–11, representing a continuation of the "two worlds" of DPHs. As the outlier, the District of Columbia alone accounted for 71% of the adjudications). *Id*. at 7.

[11] For adjudications, for example, the top six jurisdictions all changed their rankings, with the most dramatic change being for California dropping from fourth to thirteenth position and Pennsylvania dropping from fifth to eighth. *See* Zirkel, *supra* note 8, at 19. For filings, the top six jurisdictions also all changed positions, with the California dropping from second to sixth and Pennsylvania from sixth to eleventh. *Id*. at 16.

[12] Perry A Zirkel & Gina L. Gullo, *Trends in Impartial Hearings under the IDEA: A Comparative Update,* 376 Ed.Law Rep. 870 (2020).

[13] *Id*. at 872.

[14] *Id*.

group of jurisdictions continued to account for the vast majority of both the adjudications and filings,[15] and (4) the filings to adjudications ratio moved from the first half to the second half of the six-year period from a level within to a level higher than the range for the prior period.[16]

As the sequel to first 2011–17 analysis, this article provides a reanalysis on a per capita basis, thus comparable not only to the prior, unadjusted analysis in this pair but also the corresponding per capital analysis for the prior period. Specifically, the research questions were:

1) For the period from 2012–17, what are the differences, if any, in the jurisdictional rankings for each of the following DPH indicators upon adjustment from an absolute to a per capita basis:[17] (a) adjudications and (b) filings?
2) On this enrollment-adjusted basis, to what extent, if any, did the rankings for each of the following DPH indicators for 2012-17 change from the prior six-year period: (a) adjudications, (b) filings, and (c) filings-to-adjudications ratios? [18]

RESULTS

In response to question 1(a)-(b), appendices 1 and 2 provide the adjudications and filings on an unadjusted and adjusted basis for all 52 jurisdictions. Additionally, Tables 1 and 2 show the corresponding comparisons for the small predominant group of the top six jurisdictions.

For adjudications, Appendix 1 shows that the clear majority of the jurisdictions differed

[15] On the same unadjusted basis as the corresponding analysis for the earlier period, for adjudications, Puerto Rico stayed in the top position, with the rest of the top six remaining within one rank of their prior position. For filings, New York and California retained their first and second positions, although among the rest the District of Columbia dropped out of the group to nearby seventh place, and Massachusetts became the new member of the group, moving into sixth place. *Id*. at 873.

[16] *Id*. at 872.

[17] For simplicity, the remainder of this article will refer to the absolute basis as "unadjusted" and the per capita basis as "adjusted."

[18] This follow-up analysis for the enrollment-adjusted comparison dropped the original 53rd jurisdiction, the U.S. Virgin Islands, because its adjudications had been negligible for the 2012–17 period.

markedly in their ranking upon adjustment.[19] For example, Texas and Florida dropped more than twenty places in their respective rankings, while Vermont and New Hampshire were among the states that moved up considerably in their position relative to the other jurisdictions. Focused on the top jurisdictions, Table 1 shows the more restricted changes, including the District of Columbia's ascendance to the first position, Hawaii's movement into this group, and California's move out of it.[20]

Table 1. Comparison Between Unadjusted and Adjusted Averages in DPH Adjudications for the Top Jurisdictions, 2012–17

Unadjusted Adjudications			Adjusted Adjudications		
Jurisdiction	Rank	Total	Jurisdiction	Rank	Rate
Puerto Rico	1	1,114	District of Columbia	1	121.9
New York	2	673	Puerto Rico	2	90.1
District of Columbia	3	151	New York	3	13.9
California	4	113	Hawaii	4	3.7
New Jersey	5	56	New Jersey	5	2.4
Pennsylvania	6	55	Pennsylvania	6	1.8
Hawaii	13	7	California	8	1.6

Appendix 2 shows more moderate ranking differences for filings than adjudications.[21] The jurisdictions with the most dramatic drops in relative rankings included Indiana, while the corresponding marked movements upward included Arkansas. Focused on the top group, Table 2 shows the District of Columbia's and Hawaii's particularly pronounced ascents from positions outside the group into first and sixth positions, respectively, and Pennsylvania's and Massachusetts' less dramatic descents from inside to outside the top group.

[19] More specifically, almost two thirds, specifically 65%, of the jurisdictions changed five or more ranks for adjudications upon adjustment.

[20] The shaded area demarcates the top six jurisdictions, and the arrowed lines show the movements within and out of these positions from the earlier to the most recent period via solid and broken lines, respectively.

[21] For filings, in comparison to adjudications (*supra* note 19), 54% of the jurisdictions shifted five or more ranks upon adjustment.

Table 2. Comparison Between Unadjusted and Adjusted Averages in DPH Filings for the Top Jurisdictions, 2012–17

Unadjusted Filings			Adjusted Filings		
Jurisdiction	Rank	Total	Jurisdiction	Rank	Rate
New York	1	6,091	District of Columbia	1	383.8
California	2	4,274	Puerto Rico	2	166.0
Puerto Rico	3	2,040	New York	3	125.2
New Jersey	4	1,157	California	4	58.8
Pennsylvania	5	788	New Jersey	5	49.5
Massachusetts	6	530	Hawaii	6	36.9
District of Columbia	7	476	Massachusetts	8	31.4
Hawaii	19	71	Pennsylvania	9	25.9

In response to question 2(a)-(c), Appendices 3, 4, and 5 list the adjudications, filings, and filings-to-adjudications ratios[22] on an adjusted basis for all 52 jurisdictions, and Tables 3–5 show the corresponding comparisons for the small, but predominant group of the top six jurisdictions. First, for the overall comparison on an enrollment-adjusted basis for all 52 jurisdictions together, the bottom line of Appendices 3–5 shows that adjudications decreased dramatically from an annualized average of 17.1 to 4.9, filings decreased to a lesser but still considerable extent from an annualized average of 49.5 to 22.2, and the resulting ratio increased moderately from 14.6 to 19.3. The reductions in adjudications and filings were largely attributable to a few "top" jurisdictions, particularly the District of Columbia.[23]

[22] The adjustment comparisons do not include filings-to-adjudications ratios because enrollment adjustment of both the filings and adjudications applies the same calculation to each indicator, thus maintaining the exact same ratio value.

[23] The following table shows that successive removals of the most active jurisdictions resulted in successively smaller decreases for adjudications and filings, with an ultimate reversal of the direction upon removal of four of the top jurisdictions:

	Adjudications		Filings	
	2006–11	2012–17	2006–11	2012–17
All Jurisdictions	17.1	4.9	49.5	22.1
Without DC	3.0	2.6	15.3	15.0
Without DC and PR	1.2	0.8	12.3	12.0
Without DC, PR, NY	1.0	0.6	9.8	9.7
Without DC, PR, HI, NY	0.7	0.5	8.7	9.2

For adjudications on the adjusted basis, Appendix 3 reveals that most of the jurisdictions' rankings remained moderately stable, with the most pronounced downward shifts being for Louisiana, Mississippi, and Arizona and the most pronounced upward shifts being for Missouri and Montana. Overall, slightly less than half of the jurisdictions changed more than five places in their ranked position.

Table 3. Comparison Between 2006–11 and 2012–17 in Adjusted DPH Adjudications for the Top Jurisdictions[24]

2006–11			2012–17		
Jurisdiction	Rank	Rate	Jurisdiction	Rank	Rate
District of Columbia	1	736.6	District of Columbia	1	121.9
Puerto Rico	2	91.2	Puerto Rico	2	90.1
Hawaii	3	14.3	New York	3	13.9
New York	4	12.6	Hawaii	4	3.7
New Hampshire	5	4.3	New Jersey	5	2.4
New Jersey	6	2.3	Pennsylvania	6	1.8
Pennsylvania	7	2.3	New Hampshire	7	1.8

Review of Table 3 reveals that for the top jurisdictions: (a) the reduction in the enrollment-based rate for adjudications was modest with the exception of first-place District of Columbia and (b) the shifts in rank were relatively limited.[25]

For filings on the enrollment-adjusted basis, Appendix 4 shows more stability in rankings from the previous period to the most recent period than the corresponding results for adjudications. Less than one-fourth of the jurisdictions changed their relative ranking five or more positions, with the most pronounced differences being Idaho's downward shift and Arkansas' upward shift. For the top jurisdictions, as Table 4 displays, the shifts were limited to

[24] The Virgin Island ranked third in the enrollment-adjusted analysis for 2006-11, but it was not included in the analyses for 2012-17. *See supra* note 18.

[25] Except for the aforementioned outlier of the Virgin Islands (*supra* note 18), the only shift in rank of more than one position in the top group was the reduction for New Hampshire from fifth to seventh place.

movement within positions 4–6 attributable to Hawaii's drop from fourth to sixth place. Moreover, although the District of Columbia remained in first place, its precipitous decline in the enrollment-based rate was not only the major contributing factor to the overall reduction in adjusted filings[26] but also counter to the direction of two other members of the top group.

Table 4. Comparison Between 2006–11 and 2012–17 in Adjusted DPH Filings for the Top Jurisdictions[27]

2006–11			2012–17		
Jurisdiction	Rank	Rate	Jurisdiction	Rank	Rate
District of Columbia	1	1,791.8	District of Columbia	1	383.8
Puerto Rico	2	166.4	Puerto Rico	2	166.0
New York	3	134.2	New York	3	125.2
Hawaii	4	62.9	California	4	58.8
California	5	40.0	New Jersey	5	49.5
New Jersey	6	36.4	Hawaii	6	36.9

For the resulting filings-to-adjudications ratios on an adjusted basis, Appendix 5 reveals that, within the aforementioned moderate overall increase,[28] the differences in rankings were considerable, with slightly more than half of the jurisdictions shifting up or down by five or more positions.[29] The leading examples of upward shifts included Indiana and West Virginia, while the leading examples of downward shifts included Montana, Missouri, and Kansas. For the top group, Table 5 further reflects and reinforces this considerable fluctuation in both directions, with only three jurisdictions remaining in the top six and, within the three them, Tennessee moving into first place.

[26] *See supra* note 23 and accompanying text.

[27] For the change in jurisdictional scope, see *supra* note 18.

[28] Rank shifts are more common in ratio data due to the very small values of each ratio, resulting in rank changes due to minor numerical differences.

[29] Across the 52 jurisdictions, 37 increased and 15 decreased in adjusted filings-to-adjudications ratios.

Table 5. Comparison Between 2006–11 and 2012–17 in Adjusted DPH Filings-to-Adjudications Ratios for the Top Jurisdictions

2006–11			2012–17		
Jurisdiction	Rank	Rate	Jurisdiction	Rank	Rate
Nevada	1	44.4	Tennessee	1	93.3
Tennessee	2	34.1	Nevada	2	56.5
Montana	3	33.9	Massachusetts	3	50.3
Missouri	4	31.4	Arizona	4	45.2
Alabama	5	29.4	Alabama	5	43.7
California	6	28.9	Connecticut	6	37.8
Massachusetts	7	28.4	California	7	37.7
Connecticut	18	14.9	Missouri	35	10.1
Arizona	23	13.3	Montana	38	9.7

DISCUSSION

This follow-up analysis on an enrollment-adjusted basis provides a reexamination of the previous three "snapshots" of DPH indicators in two identified ways—comparing the corresponding unadjusted data for the 2012–17 period and comparing the equivalent adjusted data for the prior period. These two comparisons represent the results for questions 1 and 2. However, the interpretation of these findings warrant one major caveat: the data from which these analyses derive may not be 100% accurate. This potential inaccuracy derives from: (1) dependence on jurisdiction self-reporting of data,[30] and (2) for adjudications, the ambiguity and broadness of the USDE definition of "fully adjudicated" cases.[31] Self-reported data risks inaccuracies due to both human error and self-interest while ambiguous definitions can lead to reporting of subjective,

[30] *See* 20 U.S.C. § 1418(a)(1)(F)-(G) (providing requirement for reporting of filings and adjudications). The IDEA requires SEAs to report annual data on due process hearing and adjudications to OSEP.

[31] *See supra* note 3.

rather than objective, data indicators.[32] Nonetheless, the current data were deemed reliable for government reports examining equity[33] and performance measures[34] related to DPH indicators; thus, indicating data use in this examination as appropriate.

Question 1

For the first comparison, the primary finding was the marked difference adjudications, upon adjustment for the special education enrollments in each jurisdiction. Although the unadjusted averages are analogous, for example, to the overall levels of automobile fatalities, the adjusted averages reveal the rate of these fatalities upon taking the extent of traffic into direct consideration. Both are important factors, but the adjusted figures further equalize the basis for comparisons among jurisdictions.

Given the continuing distinction between the two worlds of DPH activity,[35] the focused view of the top jurisdictions in Table 1 shows that upon enrollment-based adjustment, the District of Columbia replaces Puerto Rico as the leader in adjudications. This ascendance of the District of Columbia parallels its emergence to first place upon the enrollments-based adjustment for the prior period.[36] This persisting premier position of the nation's capital in the rate of adjudications is likely attributable to the high concentration of attorneys, the continuing cadre of those attorneys specialized in representing parents at DPHs, and the special structure of this jurisdiction.[37] On the

[32] *E.g.,* U.S. Government Accountability Office (GAO), Education Needs to Address Significant Quality Issues with its Restraint and Seclusion Data 24–25 (2020), https://www.gao.gov/assets/710/706269.pdf (noting the risk of inaccuracies related to human error and interpretation in self-reported data).

[33] GAO, IDEA Dispute Resolution Activity in Selected States Varied Based on School Districts' Characteristics 2 (2019), https://www.gao.gov/assets/710/702514.pdf (concluding, based on interviews and data comparisons, that the data from 2004–05 to 2017–18 were acceptably reliable).

[34] GAO, Improved Performance Measures Could Enhance Oversight of Dispute Resolution 3 (2014), https://www.gao.gov/assets/670/665434.pdf (concluding, based on electronic testing of required data elements, interviews and other information, that the data from 2004–05 to 2011–12 were acceptably reliable).

[35] *See supra* note 10.

[36] *See* Zirkel, *supra* note 8, at 6. However, for the prior period, the seeming outlier before adjustment in relation to enrollments was New York rather than Puerto Rico. *Id.*

[37] This special structure includes not only the more direct role of Congress and the significant overlap between the Office of the State Superintendent and the District of Columbia Public Schools (DCPS). Although the

other hand, the reported improvements in the District of Columbia dispute resolution system,[38] which may extend to its local schools and its supervising state education agency, have not changed its overall rank in adjudications from the prior to the most recent six-year period.

For filings, the first comparison reveals a more moderate change in rankings upon enrollments-based analysis, but, as Table 2 illustrates, with an even more dramatic ascendance of the District of Columbia. This distinctive emergence of the District upon enrollment-based calculation also parallels the results for the prior period.[39]

Aside from the confirmation of two worlds and the non-state jurisdiction pattern, the volatility of ranks upon adjustment reflects the continued importance of per capita analyses. For both filings and adjudications, over half of the jurisdictions shifted five or more ranks upon adjustment. These rank changes are indicative of the impact of population size on DPH indicators, thus making the longitudinal analysis by adjusted DPH indicators provided in this article of paramount importance to an in-depth understanding of litigious trends in special education by jurisdiction.

Question 2

For the second comparison, which examines both of the successive six-year periods on an enrollment-adjusted basis, the primary findings started with the overall dramatic reductions in the respective averages for adjudications and, to a lesser extent, filings, with a corresponding moderate increase in the resulting ratios. These overall trends suggest that for both worlds of DPH activity, the alternate dispute resolution activities, which started with changes in the 2004

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second feature is shared even more distinctively in Hawaii, the advent of charter schools in the District of Columbia that are not within the umbrella of DCPS has introduced another contributing variable, because these schools often lack the institutionalized component of established procedures for special education compliance.

[38] *See* Zirkel, *supra* note 7, at 8 n.31.

[39] *See* Zirkel, *supra* note 8, at 6.

IDEA amendments[40] and which gathered momentum with implementation and expansion at the state level,[41] might have changed the previous trend in adjudications.[42] If so, they contributed to the resolution of disputes not only before the complaint stage, as reflected in the reduced level of filings, but also, as reflected in the rising filings-to-adjudications ratio, between the complaint and decision stages.

The remaining findings derive from the stability of the relative rankings for both adjudications and filings on the enrollment equalizing basis within these overall directional trends. For the dominant top group, the District of Columbia and Puerto Rico remained in first and second place in 2012–17, and the rest of these active jurisdictions remained within one or two positions of their rank in 2006–11.[43] The much more numerous and quiescent group of jurisdictions, with occasional exceptions, also largely stayed in the same overall order. Yet, the jurisdictional rankings for the resulting ratios varied much more widely between the two periods. Many rank shifts stemmed from the magnitude of change in a small number of jurisdictions. Of particular note, Montana and Missouri dropped from third and fourth, respectively, in 2006–11, to 38th and 35th in 2012–17. This drop caused many other jurisdictions to shift upwards in rank despite negligible differences between their own ranks with similar ranking jurisdictions as compared to the prior period. The remaining rank changes are probably attributable to the volatile effect of the relatively small *n*'s in the numerator and denominator for most jurisdictions. In

[40] *E.g.*, 20 U.S.C. §§ 1415(e)(1) (mediation prior to filing), 1415(e)(2)(B) (alternative of another disinterested party), and 1415(f)(1)(B) (resolution session).

[41] *E.g.*, CADRE's Exemplar Collection, https://www.cadreworks.org/resources/cadre-materials/cadres-exemplar-collection (identifying illustrative state mechanisms and practices for alternate dispute resolution in special education).

[42] *E.g.*, Perry A. Zirkel & Karen Gischlar, *Due Process Hearings under the IDEA: A Longitudinal Frequency Analysis*, 21 J. SPECIAL EDUC. LEADERSHIP 21 (2008) (finding that the total number of adjudications rose during the first six years followed by a relative plateau for the remainder of the period 199–2005, but limited to the 50 states, thus not including the District of Columbia or Puerto Rico).

[43] *See supra* Tables 3 and 4.

contrast, the District of Columbia, who was in the top position for both adjudications and filings, was in the bottom position for the ratio indicator.

As seen in the prior longitudinal analysis, the District of Columbia served as an outlier for both adjusted adjudications and filings.[44] The District's outlier status continued into the present period, but at a much less pronounced level,[45] stemming from a massive decrease in adjudications and filings in the District of Columbia. Indeed, this decline largely accounts for the decreases in adjudications and filings across the combined 52 jurisdictions.[46] Decreases in the adjusted adjudications and filings and increases in filings-to-adjudications ratios for the District of Columbia might be attributable to previously noted[47] improvements in the District of Columbia dispute resolution system, such as the establishment of the State Advisory Panel on Special Education for the District of Columbia in April 2012.[48]

Further Considering High-Ranking Jurisdictions per Question 2

The inclusion of the District of Columbia and Puerto Rico in the top three ranking DPH adjudications and filings when adjusted and unadjusted (despite their smaller population sizes) suggests something insular about these non-state jurisdictions leading to more filings and adjudications. Earlier findings, where non-state and non-contiguous jurisdictions ranked in the top groups for adjusted adjudications,[49] also indicated insularities. The shift in the percentage of

[44] *See* Zirkel, *supra* note 8, at 6-7.

[45] In the period from 2006–12, the adjusted adjudications and filings for the District of Columbia exceeded eight and ten-times, respectively, that of second-place Puerto Rico. From 2012–17, the District of Colombia surpassed Puerto Rico by 1.4 times for adjudications and 2.3 times for filings.

[46] *See supra* note 23.

[47] *See supra* note 38 and accompanying text.

[48] Mayor's Order 2012-48, Establishment of State Advisory Panel on Special Education for the District of Columbia (2012), https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/2012-48%20Establishment%20-%20State%20Advisory%20Panel%20on%20Special%20Education%20for%20the%20District%20of%20Columbia.pdf

[49] *See* Zirkel, *supra* note 8, at 4 (finding that the top jurisdictions include, in alphabetical order, the District of Columbia, Hawaii, Puerto Rico, and the Virgin Islands).

students served under Part B of the IDEA as it relates to the changes in adjusted adjudications and filings between the two six-year periods from 2006–11 and 2012–17 indicates continued anomalies in these non-state jurisdictions. While the District of Colombia had a massive decrease in filings and adjudications between the two periods, the jurisdiction experienced only a moderate decrease in the percentage of students served. [50] Conversely, Puerto Rico had a minimal change in adjudications and filings between 2006–11 and 2012–17, but had a drastic increase in the percentage of students served under Part B of the IDEA;[51] thus, the District of Columbia's decreases and Puerto Rico's increases were not a matter of a growing percentage of students served, but rather changes in the use of due process in each jurisdiction.

New York, another jurisdiction where adjusted adjudications and filings remained high between the two time periods, follows the pattern seen in Puerto Rico where the percentage of students served under Part B of the IDEA increased, but the average annual filings decreased; however, in New York the average annual adjudications increased.[52] Logically, an increase in adjudications but not filings would indicate that the ratio of filings-to-adjudications is decreasing, as is demonstrated in the present data.[53] However, many filings are miscategorized as withdrawals when cases are settled prior to hearings.[54] As such, this ratio might reflect a change in adjudication trends, improving reporting standards, the impact of litigious challenges such as long wait times until hearings or inefficient IHO appointments,[55] to change. Thus, trend data for

[50] NCES, Digest of Educational Statistics, Annual Report Table 204.70, https://nces.ed.gov/programs/digest/ (reporting a decrease for the District of Columbia from 16.1% in 2006–11 to 15.3% in 2012–17).

[51] *Id.* (reporting an increase for Puerto Rico from 22.7% in 2006–11 to 30.9% in 2012–17).

[52] *Id.* (reporting an increase for New York from 16.4% in 2006–11 to 17.7% in 2012–17).

[53] The filings-to-adjudications ratio for New York decreased from 10.7 in 2006–11 to 9.0 in 2012–17.

[54] Gilbert K. McMahon, NYS Special Education Impartial Hearing Outcomes (2011), http://www.specialedlawadvocacy.com/NYS%20Special%20Education%20Impartial%20Hearing%20Outcomes.pdf (noting that many cases in New York City are settled and improperly classified as "Withdrawn").

[55] Deusdedi Merced, External Review of the New York City Impartial Hearing Office 42–44 (2019), https://www.spencerwalshlaw.com/wp-content/uploads/2019/05/External-Review-of-the-New-York-City-

New York remains interpretable only under this caveat.

Further complicating the interpretation of trends stemming from New York, the majority of DPH indicators for the jurisdiction reflect filings and adjudications from New York City alone.[56] This value is so high that the adjusted filings for New York City in 2017–18 are greater than that of the combined lower 35 jurisdictions for that year.[57] Without New York City, New York would rank around 17th for filings per capita rather than its current 3rd place position. Thus, interpretations stemming from New York must consider the influence of New York City on the greater New York jurisdictional area.

Conclusions

The results reinforce the conclusions of the earlier adjusted analysis such that litigiousness remains seemingly attributable to several factors rather than primarily population density. These factors, subject to further research, bear repeating here:

> (1) the particular culture within each jurisdiction, (2) the availability of specialized attorneys representing parents, (3) the nature of both the education governance structure and the IDEA administrative adjudicatory system, (4) the level of quality and compliance of the jurisdiction's special education system, (5) the effect of the outcome trend of not only the hearing/review process but also the court decisions under the IDEA in each jurisdiction, and (6) the socioeconomic level of the jurisdiction. . . . [58]

Further reinforced is the importance of analyzing DPH filings and adjudications using both an unadjusted and adjusted calculation:

> [H]igh numbers of DPH filings and adjudications requires attention in terms of both the system. . . and resources for its transaction costs. . . On the other hand, the per capita rate requires attention to the jurisdictions otherwise hidden, or masked, by their relatively low overall numbers but that have relatively high

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Impartial.pdf (noting timely appointment of IHOs but subsequent recusals, questionable extensions, and late decision issuance in the IDEA impartial hearing process in New York City).

[56] *Id*. at 11 (finding that New York City accounted for 91% of filings for the entire population of New York in 2018).

[57] Jurisdictions ranking 18th through 52nd summed to an annual average 123.4 filings per capita. Moreover, 91% of New York State's 145.6 filings per capita resulted in 132.5 filings per capita in New York City.

[58] *See* Zirkel, *supra* note 8, at 8–9 (omitting footnotes from this quoted source).

> numbers in relation to their special education enrollments.[59]

Once again, the supported factors and the necessity of such a dual-analysis reflect the previous conclusion:

> Progress toward more precise and nuanced research on dispute resolution under this leading statutory source of education litigation, including the nature and interactions of the contributing factors, is both necessary and appropriate for policymakers and practitioners.[60]

In addition to the repeated conclusions, major findings of the present analysis include: (1) several changes in jurisdictional ranks upon enrollment-based adjustment of adjudications and, to a lesser extent, filings; (2) a decrease in adjusted adjudications and filings in the present period highly influenced by a respective drop in the District of Columbia, (3) overall stability in jurisdictional ranks by adjusted adjudications and filings over time, and (4) a moderate increase in filings-to-adjudications ratios between the 2006–11 and 2012–17 time periods. These trends indicate a shifting landscape in special education law, where progress towards alternatives to DPHs such as mediation and resolution meetings potentially becomes a reality.[61] While some stakeholders have emphasized the problems in the due process system in proposals for change[62] and others have emphasized alternative dispute resolution without changing the DPH avenue,[63] these overall decreases could indicate the start of a less litigious approach to special education complaints. Further research should explore the continued trends and patterns at the DPH and interrelated judicial levels with more depth, including the contributing factors, to determine the

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[59] *Id.,* at 9.

[60] *Id.*

[61] *See supra* note 41 and accompanying text.

[62] *E.g.,* Sasha Pudelski, Rethinking Special Education Due Process (2016), https://www.aasa.org/uploadedFiles/Policy_and_Advocacy/Public_Policy_Resources/Special_Education/AASARethinkingSpecialEdDueProcess.pdf (noting several negative impacts such as teacher stress, inappropriate accommodations, and excessive legal fees as reasons to consider alternative to the traditional due process systems and proposing research-based alternative).

[63] *E.g.*, Tracy Gershwin Mueller, *Litigation and Special Education: The Past, Present, and Future Direction for Resolving Conflicts Between Parents and School Districts*, 26 J. DISABILITY POL'Y STUD. 135 (2015).

need and direction for systemic improvements.

In any event, this follow-up analysis of adjusted DPH indicators serves to reinforce the importance of both overall and per capita analyses. While absolute comparisons offer a gateway into understanding trends in filing and adjudication patterns, enrollment-adjustment allows for comparison between jurisdictions based on activity levels rather than sheer numbers. Continued study of trends using this more precise and individualized method of analysis and interpretation remains necessary especially in light of the continually changing representation of students receiving special education services in each jurisdiction.[64] With this nuanced measure, policymakers and practitioners progress towards a more thorough understanding of the litigation process and contributing factors.

[64] *See supra* notes 50–53.

Appendix 1. Annual DPH Adjudications for 52 Jurisdictions in 2012–17: Unadjusted and Adjusted Averages*

	Unadjusted		*Adjusted*	
Jurisdiction	Rank**	Average	Rank**	Average
Puerto Rico	1	1,114	2	90.1
New York	2	673	3	13.9
District of Columbia	3	151	1	121.9
California	4	113	8	1.6
New Jersey	5	56	5	2.4
Pennsylvania	6	55	6	1.8
Maryland	7	14	9	1.4
Texas	8	13	29	0.3
Massachusetts	9	11	17	0.6
Florida	10	9	32	0.3
Illinois	10	9	27	0.3
Washington	10	9	16	0.7
Hawaii	13	7	4	3.7
Ohio	13	7	30	0.3
Virginia	13	7	23	0.4
Connecticut	16	6	12	0.9
Arkansas	17	6	13	0.9
Missouri	17	6	21	0.5
Georgia	19	6	31	0.3
New Hampshire	20	5	7	1.8
Alabama	21	4	22	0.4
Colorado	21	4	24	0.4
Maine	23	4	11	1.1
Michigan	23	4	39	0.2
Indiana	25	3	36	0.2
Wisconsin	26	3	33	0.3
New Mexico	27	3	18	0.6
Rhode Island	28	3	10	1.1
Minnesota	29	2	41	0.1
South Carolina	29	2	38	0.2
Delaware	31	2	14	0.8
Idaho	31	2	19	0.6
Nevada	31	2	28	0.3
Arizona	34	2	45	0.1
North Carolina	34	2	48	0.1
Kansas	36	1	37	0.2
Kentucky	36	1	43	0.1
Mississippi	38	1	40	0.2

Oregon	38	1	42	0.1
Alaska	40	1	20	0.5
Vermont	40	1	15	0.7
West Virginia	40	1	34	0.2
Louisiana	43	1	47	0.1
Iowa	44	1	46	0.1
South Dakota	44	1	26	0.3
Tennessee	44	1	50	0.1
Oklahoma	47	1	51	0.0
Utah	47	1	49	0.1
Wyoming	47	1	25	0.4
Montana	50	< 1	35	0.2
Nebraska	51	< 1	52	0.0
North Dakota	51	< 1	44	0.1
All Jurisdictions		**45**		**4.9**

*The unadjusted and adjusted averages are respectively rounded to the nearest whole number and nearest tenth, but the rankings for each are based on their exact values.

**When jurisdiction's exact averages were equal, tied ranks are represented by using the same rank number.

Appendix 2. Annual DPH Filings for 52 Jurisdictions in 2012–17:
Unadjusted and Adjusted Averages*

	Unadjusted		*Adjusted*	
Jurisdiction	Rank**	Average	Rank**	Average
New York	1	6,091	3	125.2
California	2	4,274	4	58.8
Puerto Rico	3	2,040	2	166.0
New Jersey	4	1,157	5	49.5
Pennsylvania	5	788	9	25.9
Massachusetts	6	530	8	31.4
District of Columbia	7	476	1	383.8
Texas	8	333	20	7.2
Illinois	9	300	17	10.2
Maryland	10	240	10	22.8
Connecticut	11	240	7	32.3
Florida	12	200	24	5.4
Alabama	13	161	11	19.2
Ohio	14	153	22	5.9
Georgia	15	114	23	5.7
Washington	16	114	19	8.4
Nevada	17	95	12	17.4
Indiana	18	74	29	4.3
Hawaii	19	71	6	36.9
Michigan	20	71	32	3.6
Arizona	21	68	26	5.1
Virginia	22	66	31	4.0
Tennessee	23	62	27	4.8
Missouri	24	59	28	4.6
North Carolina	25	55	35	2.8
Maine	26	46	13	13.9
Arkansas	27	36	25	5.3
New Hampshire	28	34	14	11.7
Colorado	29	33	33	3.5
New Mexico	30	32	21	6.5
Rhode Island	31	27	15	11.4
Minnesota	32	24	42	1.9
Oregon	33	23	36	2.7
Wisconsin	34	22	43	1.9
Kentucky	35	21	39	2.1
Delaware	36	19	18	9.1
South Carolina	36	19	44	1.8
West Virginia	36	19	30	4.1
Iowa	39	17	38	2.6
Oklahoma	40	16	47	1.5

Vermont	41	16	16	11.4
Louisiana	42	14	45	1.7
Mississippi	43	14	40	2.0
Kansas	44	11	48	1.5
Utah	45	7	51	0.8
Alaska	46	6	34	3.2
Idaho	47	5	46	1.7
Wyoming	48	4	37	2.6
Montana	49	3	41	1.9
Nebraska	50	3	52	0.6
South Dakota	50	3	49	1.5
North Dakota	52	2	50	1.1
All Jurisdictions		**352**		**22.1**

* The unadjusted and adjusted averages are respectively rounded to the nearest whole number and nearest tenth, but the rankings for each are based on their exact values.

**When jurisdiction's exact averages were equal, tied ranks are represented by using the same rank number.

Appendix 3. Annual DPH Adjudications Per Capita for 52 Jurisdictions: 2006–11 and 2012–17*

	2006–11		*2012–17*	
Jurisdiction	Rank	Average	Rank	Average
District of Columbia	1	736.9	1	121.9
Puerto Rico	2	91.2	2	90.1
Hawaii	3	14.3	4	3.7
New York	4	12.6	3	13.9
New Hampshire	5	4.3	7	1.8
New Jersey	6	2.3	5	2.4
Pennsylvania	7	2.3	6	1.8
Alaska	8	2.3	20	0.5
Rhode Island	9	2.1	10	1.1
Connecticut	10	2.1	12	0.9
Maryland	11	2.0	9	1.4
California	12	1.4	8	1.6
Massachusetts	13	1.2	17	0.6
Vermont	14	1.2	15	0.7
Delaware	15	1.1	14	0.8
Maine	16	1.1	11	1.1
Washington	17	0.8	16	0.7
New Mexico	18	0.7	18	0.6
Wyoming	19	0.7	25	0.4
Illinois	20	0.7	27	0.3
Virginia	21	0.6	23	0.4
Idaho	22	0.6	19	0.6
Texas	23	0.6	29	0.3
West Virginia	24	0.5	34	0.2
Mississippi	25	0.5	40	0.2
Alabama	26	0.4	22	0.4
Indiana	27	0.4	36	0.2
Louisiana	28	0.4	47	0.1
Arizona	29	0.3	45	0.1
Arkansas	30	0.3	13	0.9
Colorado	31	0.3	24	0.4
South Dakota	32	0.3	26	0.3
Nevada	33	0.3	28	0.3
South Carolina	34	0.3	38	0.2
Ohio	35	0.3	30	0.3
Wisconsin	36	0.2	33	0.3
Michigan	37	0.2	39	0.2
Kansas	38	0.2	37	0.2
Georgia	39	0.2	31	0.3
Florida	40	0.2	32	0.3
Minnesota	41	0.2	41	0.1

North Carolina	42	0.2	48	0.1
Missouri	43	0.2	21	0.5
Oregon	44	0.1	42	0.1
Tennessee	45	0.1	50	0.1
Oklahoma	46	0.1	51	0.0
Iowa	47	0.1	46	0.1
Montana	48	0.1	35	0.2
Kentucky	49	0.1	43	0.1
Nebraska	50	0.1	52	0.0
Utah	51	0.1	49	0.1
North Dakota	52	0.0	44	0.1
All Jurisdictions		**17.1**		**4.9**

*The adjusted averages are rounded to the nearest tenth, but the rankings are based on their exact values.

Appendix 4. Annual DPH Filings Per Capita for 52 Jurisdictions: 2006–11 and 2012–17*

	2006–11		*2012–17*	
Jurisdiction	Rank	Average	Rank	Average
District of Columbia	1	1,791.8	1	383.8
Puerto Rico	2	166.4	2	166.0
New York	3	134.2	3	125.2
Hawaii	4	62.9	6	36.9
California	5	40.0	4	58.8
New Jersey	6	36.4	5	49.5
Massachusetts	7	34.8	8	31.4
Connecticut	8	30.8	7	32.3
Maryland	9	26.7	10	22.8
Pennsylvania	10	26.3	9	25.9
New Hampshire	11	19.3	14	11.7
Vermont	12	15.6	16	11.4
Alabama	13	12.8	11	19.2
Nevada	14	12.2	12	17.4
Rhode Island	15	11.8	15	11.4
Maine	16	10.9	13	13.9
Illinois	17	10.9	17	10.2
Washington	18	8.9	19	8.4
Delaware	19	8.3	18	9.1
Alaska	20	8.2	34	3.2
Texas	21	7.0	20	7.2
New Mexico	22	6.8	21	6.5
Ohio	23	5.9	22	5.9
Missouri	24	5.5	28	4.6
Georgia	25	5.5	23	5.7
Tennessee	26	4.7	27	4.8
Arizona	27	4.5	26	5.1
Florida	28	4.4	24	5.4
Virginia	29	4.3	31	4.0
Indiana	30	4.2	29	4.3
Mississippi	31	3.6	40	2.0
Idaho	32	3.5	46	1.7
Oregon	33	3.4	36	2.7
West Virginia	34	3.4	30	4.1
Michigan	35	3.3	32	3.6
Kansas	36	3.2	48	1.5
Montana	37	3.1	41	1.9
North Carolina	38	3.1	35	2.8
Arkansas	39	2.9	25	5.3
Louisiana	40	2.7	45	1.7
Oklahoma	41	2.7	47	1.5

Colorado	42	2.6	33	3.5
Minnesota	43	2.5	42	1.9
Wisconsin	44	2.3	43	1.9
Kentucky	45	2.1	39	2.1
Wyoming	46	2.0	37	2.6
Iowa	47	1.4	38	2.6
South Dakota	48	1.4	49	1.5
South Carolina	49	1.4	44	1.8
Utah	50	0.9	51	0.8
Nebraska	51	0.8	52	0.6
North Dakota	52	0.1	50	1.1
All Jurisdictions		**49.5**		**22.1**

*The adjusted averages are rounded to the nearest tenth, but the rankings are based on their exact values.

Appendix 5. Annual DPH Adjudications-to-Filings Ratios Per Capita for 52 Jurisdictions: 2006–11 and 2012–17*

	2006–11		*2012–17*	
Jurisdiction	Rank	Average	Rank	Average
Nevada	1	44.4	2	56.5
Tennessee	2	34.1	1	93.3
Montana	3	33.9	38	9.7
Missouri	4	31.4	35	10.1
Alabama	5	29.4	5	43.7
California	6	28.9	7	37.7
Massachusetts	7	28.4	3	50.3
Georgia	8	27.6	16	21.0
Kentucky	9	26.5	23	15.9
Oklahoma	10	25.5	10	31.7
Oregon	11	23.3	19	19.4
Ohio	12	23.2	15	21.1
Florida	13	22.7	14	21.4
North Carolina	14	17.3	8	36.8
Illinois	15	16.5	9	32.1
New Jersey	16	15.7	17	20.5
Kansas	17	15.6	43	7.8
Connecticut	18	14.9	6	37.8
Michigan	19	14.9	18	20.3
Iowa	20	14.4	11	25.2
Minnesota	21	13.7	28	12.9
Maryland	22	13.4	22	16.7
Arizona	23	13.3	4	45.2
Vermont	24	13.1	24	15.8
Utah	25	12.1	29	12.6
Texas	26	12.0	12	24.9
Pennsylvania	27	11.6	26	14.4
Washington	28	11.6	30	12.2
New York	29	10.7	41	9.0
Wisconsin	30	10.4	44	7.5
Maine	31	10.1	27	13.1
Nebraska	32	10.1	25	15.7
Indiana	33	10.0	13	22.1
Colorado	34	9.2	42	8.9
New Mexico	35	9.2	33	11.3
Arkansas	36	8.7	47	6.2
Louisiana	37	7.8	21	17.2
Delaware	38	7.4	32	11.6
Mississippi	39	7.3	31	11.7
Virginia	40	6.9	40	9.2

West Virginia	41	6.7	20	18.6
Idaho	42	5.8	51	2.9
Rhode Island	43	5.6	36	10.1
South Carolina	44	5.4	34	10.2
South Dakota	45	5.0	49	4.2
New Hampshire	46	4.5	46	6.6
Hawaii	47	4.4	37	9.9
Alaska	48	3.6	48	6.1
Wyoming	49	2.9	45	7.5
District of Columbia	50	2.4	50	3.1
Puerto Rico	51	1.8	52	1.8
North Dakota	NA**	NA**	39	9.5
All Jurisdictions		**14.6**		**19.3**

*The adjusted averages are rounded to the nearest tenth, but the rankings are based on their exact values.
**The lack of adjudications for North Dakota precluded calculation of its ratio.