

EDUCATION LAW INTO PRACTICE

NATIONAL FREQUENCY TRENDS IN DUE PROCESS HEARINGS UNDER THE IDEA: FILINGS AND DECISIONS*

by

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The initial step in the adjudicative process under the Individuals with Disabilities Education Act (IDEA) is the due process hearing (DPH).¹ Given this entry gate and the reinforcing exhaustion requirement,² stakeholders have a continuing interest in DPH trends, including the frequency of activity at the national level.³ This analysis provides three improvements in the rather extensive previous research on the frequency trends at the national level for the starting and ending points of this decisional dispute resolution under the IDEA: filings and decisions.⁴

First, this analysis extends the longitudinal scope to include all the years currently available for the U.S. Department of Education's annual collection of DPH data, which amounts to the twenty-year period from 2004–05 to 2023–24. The source of these data is the federally funded Center for Appropriate Dispute Resolution in Special Education (CADRE).⁵

Second, the decisions data have been adjusted to take into account those DPH cases that are categorized as “pending” during the annual data collection and that do not carry over for their ultimate disposition in the subsequent survey and reporting years.⁶ The publication with

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1. 20 U.S.C. §§ 1415(c)(2) & 1515(f). For the related regulations, see 34 C.F.R. §§ 300.507–300.515.

2. See, e.g., Louis Wasserman, *Delineating Administrative Exhaustion Requirements and Establishing Federal Courts' Jurisdiction under the Individuals with Disabilities Education Act*, 29 J. NAT'L ADMIN. L. JUDICIARY 349 (2009) (delineating the rather robust exhaustion requirement for IDEA claims).

3. The other trend of primary interest, which is not the focus here, is that of the outcomes of DPHs. See, e.g.,

Perry A. Zirkel & Diane M. Holben, *Due Process Hearing Decisions under the IDEA: A Follow-Up Outcomes Analysis with and without New York*, 431 EDUC. L. REP. 394 (2025).

4. The annual federal collection of these and other DPH variables refers to these two respective points as “due process complaints” and “fully adjudicated hearings.” See, e.g., U.S. DEP'T OF EDUC., *EMAPS USER GUIDE: IDEA DISPUTE RESOLUTION SURVEY* 38–39 (Sept. 2023).

5. For CADRE's website, see <https://cadreworks.org/>. For the handy customizable data analysis mechanism, see National and State DR Dashboard, <https://cadreworks.org/national-state-dr-data-dashboard>.

6. This category amounts to a substantial but varying proportion of the cases each year. For example, CADRE's latest posted dispute resolution summary shows that the proportion of pending cases ranged during the years 2012–13 to 2022–23 from 19% to 53%. CADRE, *IDEA DISPUTE RESOLUTION SUMMARY FOR U.S. AND OUTLYING AREAS* 14 (2024), <https://cadreworks.org/resources/cadre-materials/2021-22-dr-data-summary-national>.

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the procedure and rationale for this adjustment only appeared two years ago.⁷

Third, per the legal literature’s variously identified outliers for DPHs—Puerto Rico, the District of Columbia, and New York⁸—these national trends for both filings and decisions are presented for four successively narrower versions of “national”: (1) the U.S. and outlying areas, such as Puerto Rico; (2) the U.S. and the District of Columbia; (3) the fifty states of the U.S., and (4) the fifty states except for New York.

This compact article provides a concise review of previous analyses, the methodology for arriving at the data collection and analysis, the resulting four successive national trend graphs, and a discussion providing interpretation and limitations of these results.

Previous Analyses

Overall, the previous national frequency analyses for DPHs have been relatively few in number, limited in time period, and not sufficiently thorough in relation to foregoing recommendations.⁹

CADRE’s successive national dispute resolution summaries provide the data for “U.S. and outlying areas,”¹⁰ covering the latest available year and the previous ten years for not only DPHs,¹¹ but also for mediations and state complaints procedures.¹² For DPHs, the various data analyses cover filings, decisions, and various intervening categories prescribed in the federal instructions, such as “withdrawn or dismissed” and “written settlement

7. Perry A. Zirkel & Elizabeth Zagata, *CADRE’s National Data on the Frequency of Due Process Decisions: Suggested Adjustments*, 422 EDUC. L. REP. 24, 27–28 (2024).

8. See, e.g., *id.* at 27; Perry A. Zirkel & Diane M. Holben, *The Outcomes of Fully Adjudicated Impartial Hearings under the IDEA: A Nationally Representative Analysis with and without New York*, 44 J. NAT’L ASS’N ADMIN. L. JUDICIARY 126, 137–42 (2023) (identifying New York); Joseph B. Tulman et al., *Are There Too Many Due Process Cases?: An Examination of Jurisdictions with Relatively High Rates of Special Education Hearings*, 18 U.D.C. L. REV. 249, 253–54 (2019) (identifying the District of Columbia, New York, and Puerto Rico). The primary reason for the District of Columbia, which appears to have been resolved by about fifteen years ago, was its early backlog of DPH cases. See, e.g., Perry A. Zirkel & Gina L. Gullo, *Trends in Impartial Hearings under the IDEA: A Comparative Update*, 376 EDUC. L. REP. 870 (2020) (finding that District of Columbia’s average annual number of decisions in 2013–20 was one fifth that in 2006–12). The primary reason for Puerto Rico, beyond its insular status, separate language/culture, and disaster-fueled economic distress, was that most of the DPH cases were attributable to a 1980 class action that resulted in a 2002 consent decree, which very recently seems to have dissipated. Tulman et al., at 271–72. See, e.g., *Velez v. Dep’t of Educ.*, 2022 WL 1173753 (P.R. Apr. 4, 2022), *further proceedings*, 2025 WL 2886534 (P.R. Sept. 9, 2025). Finally, the

outlier status for New York continues in the latest data analysis, with the attribution being almost entirely to New York City. Zirkel & Holben, *supra* note 3, at 395.

9. *Supra* text accompanying notes 5–8.

10. *Supra* note 6. The outlying areas include the U.S. Virgin Islands, American Samoa, the Bureau of Indian Education, the Federated States of Micronesia, the Northern Mariana Islands, Palau, Puerto Rico, and the U.S. Virgin Islands. CADRE also provides corresponding summaries for each of the fifty states, the District of Columbia, and these outlying areas. CADRE, STATE (PART B) DISPUTE RESOLUTION DATA SUMMARIES (2022), <https://cadreworks.org/resources/cadre-materials/state-part-b-dispute-resolution-data-summaries>. The numbers are relatively considerable for Puerto Rico and largely negligible for the other outlying areas. *Id.*

11. For the IDEA requirement for states to provide to the U.S. Department of Education prescribed annual performance data, including DPH filings and decisions, mediations, mediated settlement agreements, and “any other information required by the [Department],” see 20 U.S.C. § 1418(a). Commonly referred to as “APR/Section 618 data,” they are publicly available for download at <https://data.ed.gov/dataset/idea-section-618-data-products>.

12. For the regulations for these two other dispute resolutions mechanisms, see 34 C.F.R. §§ 300.506 (mediation) and 300.151–300.153 (state complaints).

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agreements reached through resolution agreements.”¹³ The trend graph shows (a) a largely consistent and steep upward trajectory for filings, and (b) what appears to be an undulating plateau until a marked drop in 2020–21 and then successive upswings in the next two years for decisions, which are not adjusted for the “pending” category.¹⁴ The aforementioned Zirkel and Gullo analysis found approximately similar trends for filings and unadjusted decisions for an overlapping earlier period and effectively the same broad geographic scope.¹⁵ The very few other national frequency analyses were limited to earlier periods; only decisions, not filings; and, largely, less comprehensive databases.¹⁶ The coverage of the most recent analysis ended in 2012, and its source was a commercial database that only included a limited selection of decisions from the various jurisdictions.¹⁷

Method

The mandated federal data available via CADRE’s dashboard was the source for the annual count of DPH filings, decisions, and pending cases for the period from 2004–05 through 2023–24.¹⁸ The aforementioned adjustment for pending cases was applied to the final annual frequency of decisions to take into account their estimated ultimate disposition.¹⁹ Next, starting at the outermost limit, the “U.S. and Outlying Areas,”²⁰ the authors calculated these frequencies for four successively narrower variations of approximately “national” scope. Finally, for each of the four successively narrower groups, the authors plotted the annual frequency of filings and adjusted decisions across the twenty-year period using Excel.²¹ Each of the four graphs includes Excel-generated linear trend lines for both filings and adjusted decisions. To facilitate comparison and ensure readability, each graph plots filings according to the scale in the vertical axis on the left and adjusted decisions along a secondary vertical axis on the right.²²

13. EMAPS USER GUIDE, *supra* note 4, at 22.

14. CADRE, *supra* note 6, at 4. The more recent national annual summary reports a notable continuation of the generally upward trajectory for filings and recent upswing for decisions. CADRE, IDEA DISPUTE RESOLUTION SUMMARY FOR U.S. AND OUTLYING AREAS 4 (2025) (on file with first author).

15. Zirkel & Gullo, *supra* note 4, at 872. The time period consisted of the twelve years from 2006–07 to 2017–18. The geographic scope included Puerto Rico but not the negligible contributions of the other outlying areas. The analysis used the same CADRE data source, but the basis was the average per year for two successive six-year segments.

16. See, e.g., Perry A. Zirkel & Cathy A. Skidmore, *National Trends in the Frequency and Outcomes of Due Process Hearing and Review Officer Decisions under the IDEA: An Empirical Analysis*, 29 OHIO STATE J. ON DISP. RESOL. 525, 529–30 (2014).

17. *Id.* at 551. Conversely, the coverage extended to review officer decisions, which for their most frequent state (New York) only negligibly included hearing officer decisions.

18. For these three variables and the dashboard, see

supra notes 4–6 and accompanying text. For the mandated data collection and its jurisdictional scope, see *supra* notes 10–11 and accompanying text.

19. Zirkel & Zagata, *supra* note 7, at 28. This adjusted decision count adds to the number of decisions CADRE reported for the year the number of pending cases reported for the year multiplied by the subsequent year’s effective adjudication rate, which amounts to the decisions divided by filings with pending cases removed for that subsequent year. Due to the absence of subsequent-year data for the final available year, the calculation for 2023–24 uses its own effective adjudication rate.

20. *Supra* note 10. For the outlying areas, the dataset only included the Federated States of Micronesia, Republic of the Marshall Islands, and Republic of Palau for the years starting in 2013–14, but these annual numbers are relatively negligible. More specifically, the combined total of these areas, which were other than Puerto Rico, accounted for less than a quarter of one percent of the total for the U.S. and outlying areas.

21. Microsoft Corporation, Microsoft Excel (2026), <https://www.microsoft.com/excel>.

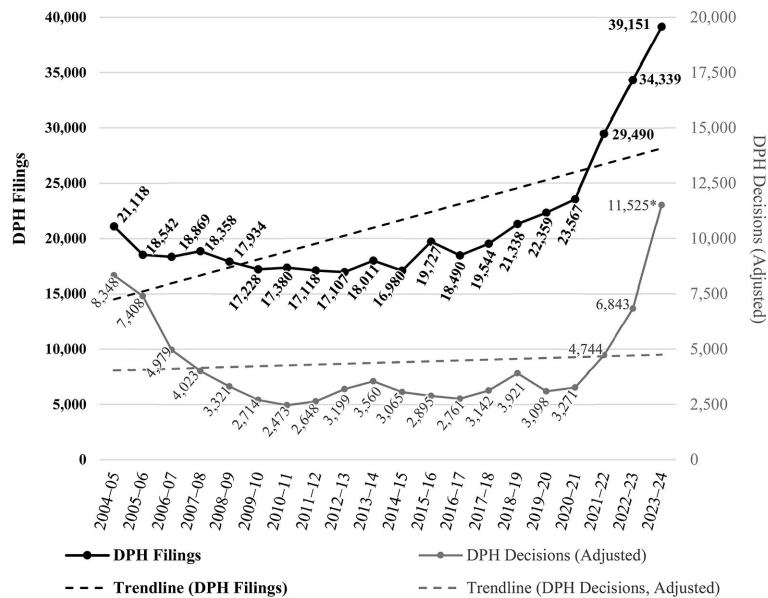
22. In each graph (*infra* Figures 1–4), the vertical axis

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Results

Figure 1 provides a graphical analysis of the national trend for the aforementioned twenty-year period for the U.S. and outlying areas.²³ For this Figure and Figures 2–4, the darker solid line represents filings, plotted along the vertical axis on the left side. The lighter solid line represents decisions, adjusted for the pending category,²⁴ plotted along the vertical axis on the right side. The dashed darker and lighter lines are the average trends for filings and decisions, respectively.²⁵

Figure 1: U.S. States, DC, & All Outlying Areas



*Decision count adjusted using same-year values.

Overall, both filings and decisions have curvilinear trends consisting of (a) a gradual initial dip, (b) a relatively long and level intervening period, and then (c) a rather steep upward incline ending much higher than the initial starting point. The average trend line for the entire period is slightly upward for decisions but much more clearly upward for filings. Taking both the curvilinear solid lines and the straight dotted lines into consideration, the most notable trend is the marked growth during the last four years in comparison to most of the previous years. Yet, due to a deeper curvilinear pattern for decisions, the levels in the most recent years exceeded those of the initial year (2004–05) for all four years for filings, but only for the last year for decisions.

on the left side for filings is twice the scale of the vertical axis on the right side for adjusted decisions. The scaled ranges allow one to compare the general trends between filings and decisions while accounting for the staggering difference in the magnitude of the two indicators. For the first three Figures, the scales for filings and decisions range from 0 to 40,000 and 0 to 20,000, respectively. Due to New York's high volume, its removal in Figure 4 resulted in respective

scales of 0 to 14,000 and 0 to 7,000.

23. *Supra* note 20 and accompanying text.

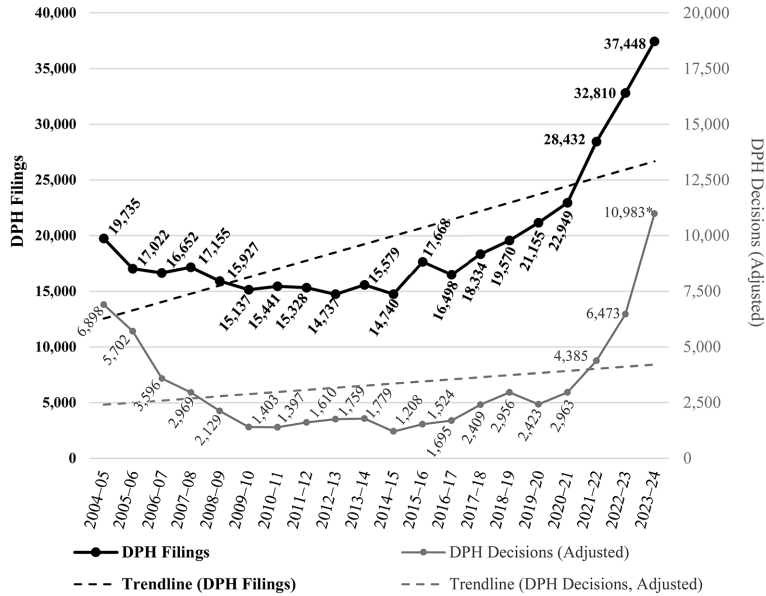
24. *Supra* note 19. For brevity, we refer hereafter to adjusted decisions as simply “decisions.”

25. “Average” trends in each Figure are based on the overall twenty-year period.

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Removing the outlier of Puerto Rico (along with the negligible effect of the other outlying areas),²⁶ Figure 2 provides the corresponding trends for the fifty states and the District of Columbia.

Figure 2: U.S. States with D.C.



*Decision count adjusted using same-year values.

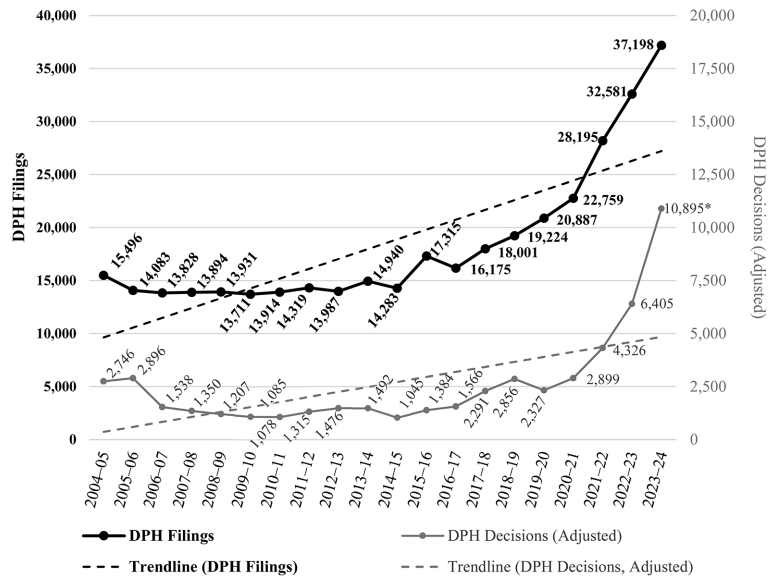
The removal of Puerto Rico does not appear to result in a significant change in the overall trend for filings and decisions. Although the number for each year in Figure 2 is clearly lower, the overall curvilinear pattern for the solid lines parallels that for the wider geographic scope of Figure 1, and the only difference in the dashed trend lines appears to be a slightly steeper trajectory for decisions in Figure 2 as compared to Figure 1.

Removing the potential outlier of the District of Columbia, Figure 3 is limited to the fifty states.

26. *Supra* notes 8 and 20.

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Figure 3: All U.S. States

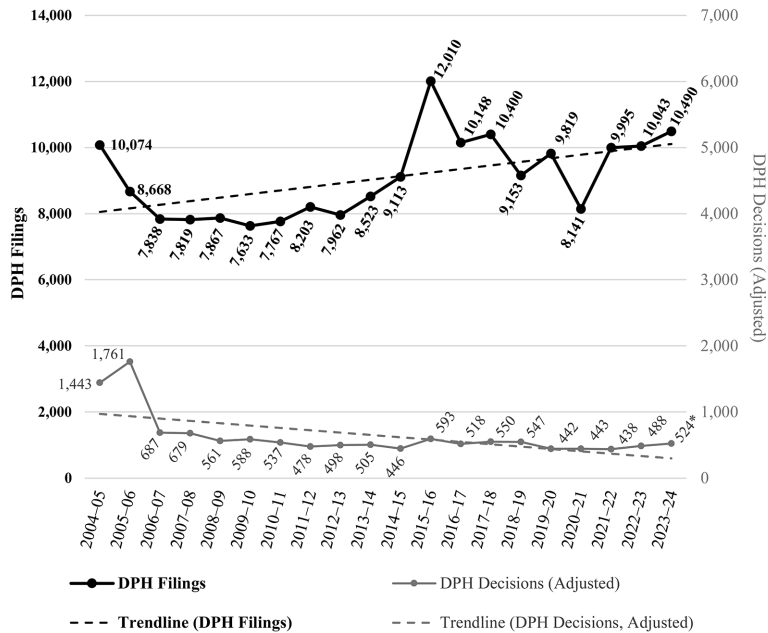


*Decision count adjusted using same-year values.

Here, the effect of removing the District of Columbia, other than the lowering of the numbers, particularly for decisions, appears to be limited to mitigating the dip during the initial few years.

Finally, Figure 4 removes the outlier of New York.

Figure 4: U.S. States without NY



*Decision count adjusted using same-year values.

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The effect of removing New York is more pronounced than that of the prior changes in jurisdictional scope. First, the solid trend line for filings loses its curvilinear pattern after the first half of the overall period, becoming rather jagged thereafter. More significantly, the steep upward trajectory in the dashed trend line for filings in Figures 1–3 changes in Figure 4 to a slight upward slope. Indeed, the starting and ending points are at similar levels, with the only higher peak limited to 2016–17. Second, for decisions, the previous curvilinear pattern in the solid line has changed to an almost level plane except for the initial two higher years. As a result, the dashed trend line that had a slight to moderate upward slope in Figures 1–3 has reversed to a slight downward slope for the nation without New York. Finally, removal of New York reveals the steep drop in filings during the COVID-19 pandemic in 2020–21 for the rest of the country, which was masked in the three previous Figures due to its dominant and different caseload.

Discussion

For both the previous and the current analyses, which have relied on the CADRE data, the primary limitation that needs to be taken into consideration is that the accuracy is limited to the inputting end of the data collection. The accuracy will vary among the states based in part on the diligence of the state education agency representatives who compile and report the numbers and their interpretation of the rather complicated and not entirely precise EMAPS categories.²⁷ Another contributing factor is the fluidity in the filing and decision categories upon interaction with the intervening categories. For example, some complainants, especially but not exclusively serial filers, withdraw and then refile due process complaints for strategic reasons or for insufficiency, and, conversely, in some cases the parties and/or the hearing officer consolidate more than one filing into one case.

An added, more subtle limitation to take into consideration is the inherent variability of the data in the interaction of jurisdictional scope²⁸ and school district characteristics.²⁹ For example, the current shortage of special education staff differentially impacts high- and low-income districts,³⁰ which may contribute to jurisdictional differences in the extent of due process hearing filings. More specifically, localized differences such as those between high- and low-income school districts³¹ or in the impact of a major ruling³² warrant more nuanced analyses of the data beyond the limited scope of the successive narrowing of “national” groups in the present analysis.

27. See, e.g., Diane M. Holben & Perry A. Zirkel, *Due Process Under the Individuals with Disabilities Education Act: Justice Delayed*, 73 ADMIN. L. REV. 833, 848–51 (2021) (describing the complicated and inevitably imprecise process of interpreting and applying the EMAPS instructions “fully adjudicated” hearings).

28. *Supra* note 8.

29. U.S. GOV’T ACCOUNTABILITY OFF., GAO-20-22, SPECIAL EDUCATION: IDEA DISPUTE RESOLUTION ACTIVITY IN SELECTED STATES VARIED BASED ON SCHOOL DISTRICTS’ CHARACTERISTICS 16 (2019), <https://www.gao.gov/products/gao-20-22> (finding, for five selected states, varying differences between very high and very low income school district in the frequency of mediation requests, due process complaints, and state complaints).

30. U.S. COMMISSION ON CIVIL RIGHTS, THE FEDERAL RE-

SPONSE TO TEACHER SHORTAGE IMPACTS ON STUDENTS WITH DISABILITIES 41 (2025), <https://www.usccr.gov/files/2025-09/teacher-shortage-report-final.pdf>; *The Impact of Teacher Shortages on Students with Disabilities: Briefing Before the U.S. Comm’n on Civil Rights* (Nov. 15, 2024) (testimony of Amanda L. Mazin, Ph.D.), <https://scholars.org/sites/scholars/files/2024-12/A.Mazin%20Written%20Statement%20.pdf>.

(highlighting that special education shortages both delay the identification of students for special education services and decrease students’ access to high-quality services once identified, with the severity of such impacts being higher in lower-income districts).

31. *Id.*

32. E.g., *supra* note 8 (specifically, the *Velez* decision in Puerto Rico).

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Although meriting careful consideration and follow-up research, these overall limitations are not at all fatal imprecisions when considered in the context of overall national longitudinal trends, because they tend to be relatively small and largely in common from year to year. While taking them into account, the primary conclusion from this set of graphical analyses is that the steep upward trajectory in filings for several years and the steep upward growth in decisions for the last two years that appears evident in the latest CADRE reports are not an accurate frame of reference for state and national policy makers.³³ Instead, with or without the District of Columbia and Puerto Rico, the comparisons need to be made with the aforementioned adjustment for pending decisions and without the outlier of New York.

In short, the two “worlds” of special education hearings may be boiled down to New York City and the rest of the country. Rather than what may seem to be alarming growth, both filings and decisions on the national level, except for New York, have nearly flat trend lines without any major changes in recent years. Instead, the most concerning trend may be the gradual and steady increase in the gap between filings and decisions, which emphasizes the need to examine more closely the trends in the categories within that gap, including settlements and withdrawals/abandonments.

33. *Supra* note 14 and accompanying text.