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IDEA Data Brief: Written State Complaints

Center for Appropriate Dispute Resolution in Special Education | September 2017

KEY FINDINGS

1. WSC activity is more evenly dispersed across states and has remained stable over time.
2. The WSC is used less frequently than IDEA's other dispute resolution options.
3. A WSC is more likely to be resolved through an investigation and final report while a DPC is likely to be resolved through a fully adjudicated hearing.
4. Approximately two-thirds of WSCs result in findings of noncompliance.
5. WSC reports are more likely to be issued without extension to the regulatory timeline than DPC decisions.



The Individuals with Disabilities Education Act (IDEA) requires states and entities receiving funds under Part B to make available the following dispute resolution options: mediation, written state complaint (WSC), and due process complaint (DPC). These mandatory options offer mechanisms for resolving disputes that arise under IDEA. Among these options, the WSC is the only one available to an organization or an individual who is not the child's parent. Additionally, it is the only option that can be initiated on behalf of a group of children to address systemic noncompliance.

A WSC may be considered less adversarial than a DPC because the State Educational Agency is responsible for conducting the investigation, and parties are not required to gather and present their own evidence through sworn testimony, cross-examination, and expert witnesses. A WSC may also be less costly than a DPC because it typically requires less involvement from attorneys.

States are required to annually report activity and performance on dispute resolution activity to the U.S. Department of Education's Office of Special Education Programs (OSEP). This brief on WSCs is one in a series that examines eleven years of IDEA dispute resolution activity based on data reported to OSEP by the states.

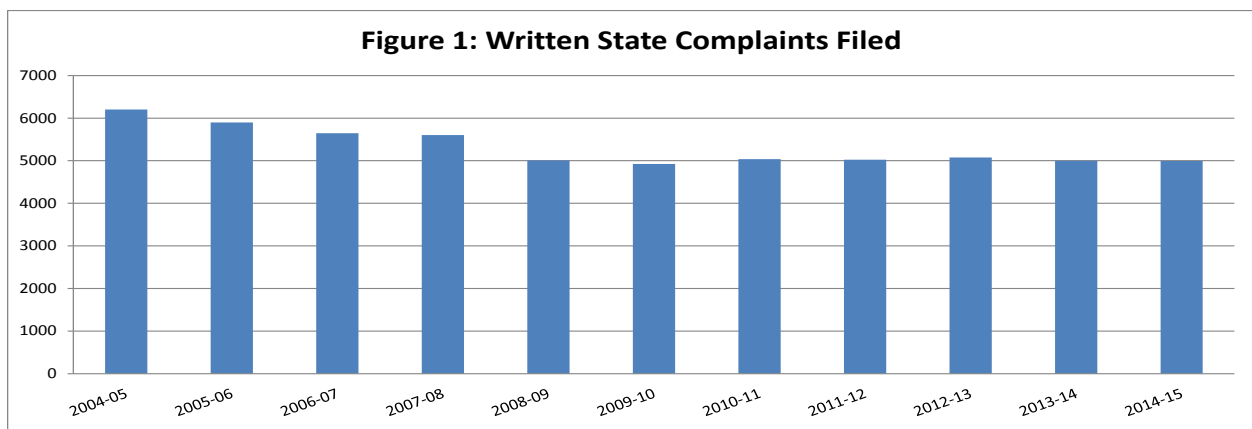
¹ 20 USC 1400 et seq; 34 CFR part 300.

² The terms "states" and "states and entities" are used interchangeably to refer to all 60 Part B grant recipients. Grant recipients include the 50 states, the District of Columbia, the Bureau of Indian Education (BIE), Puerto Rico, the Virgin Islands, American Samoa, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

WSC activity is more evenly dispersed across states and has remained stable over time.

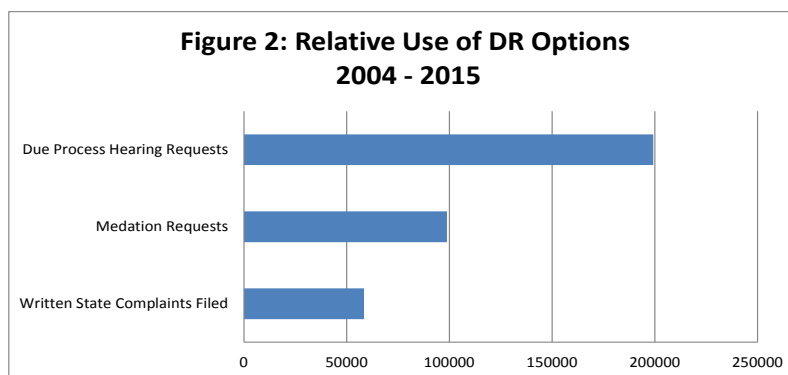
WSC activity is more evenly dispersed among the states and entities than DPC activity. Over the last eleven years, the six most active states accounted for less than 50% of all WSC activity. Although one state accounted for 19% of national WSC activity, the next five most active states individually accounted for only 5-7% of WSC activity. By comparison, seven states have consistently accounted for 82% of all DPCs filed.

Although WSC activity has decreased, from 6,201 WSCs filed in 2004-05 to 4,991 filed in 2014-15, activity has remained stable over time. As illustrated in Figure 1, WSC activity has fluctuated by only 1% over the last seven years.



The WSC is used less frequently than IDEA’s other two dispute resolution options.

Between 2004-05 and 2014-15, a total of 58,398 WSCs were filed. During this same period, 199,231 DPCs were filed and 98,815 mediation requests were reported. Between IDEA’s two decisional dispute resolution options, three times as many DPCs were filed as WSCs. Figure 2 illustrates the relative use of the three options.

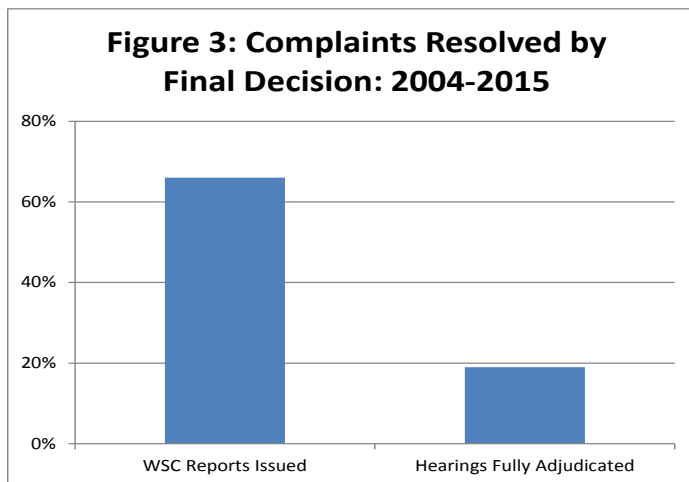


³ CA (19%), MA (6%), NJ (5%), NY (5%), PA (6%), TX (7%).

⁴ CA, DC, MA, PA, NJ, NY, and PR.

Due to the concentration of DPC activity in a few states, however, the national distribution of DPC to WSC activity is not necessarily representative of what most states experience.⁵ For example, the WSC option is used with similar or greater frequency than the DPC option in at least 35 states and entities.

A WSC is more likely to be resolved through an investigation and final report while a DPC is likely to be resolved through a fully adjudicated hearing.



Over the last eleven years, 66% of all WSCs were resolved through an investigation and final report. By comparison, only 19% of DPCs were resolved through a fully adjudicated hearing during this same time.⁶ Figure 3 illustrates the percentage of DPCs and WSCs that are resolved by a third-party through a final decision or report.

Although a WSC is more likely to be resolved through an investigation and final report than a DPC is to be resolved through a hearing, the number of final reports issued has declined over time, from 71% in 2004-05 to 60% in 2014-15.

Approximately two-thirds of WSCs result in findings of noncompliance.

Over the last eleven years, 68% of WSC reports resulted in findings of noncompliance, meaning that the written decision provided by the SEA in response to a WSC found the public agency to be out of compliance with one or more requirements of Part B of IDEA. This percentage may be slightly lower, however, due to improbable values reported by several states between 2005-06 and 2011-12 regarding the number of reports issued with findings of noncompliance.⁷ If you remove the questionable data, the percentage of reports resulting in findings of noncompliance drops from 68% to 64%.

WSC reports are more likely to be issued without extension to the regulatory timeline than DPC decisions.

Over the last eleven years, most WSC reports have been issued within 60 days of the date that the complaint was filed. Specifically, 87% of WSC final reports were issued within the 60-day timeline, 8% were issued within an appropriately extended timeline, and 5% were issued late or without an appropriate extension. Put another way, approximately nine out of every ten WSC reports were issued within 60 days. Notably, the percentage of WSC reports issued within 60 days has increased over time, from 70% in 2004-05 to 93% in 2014-15.

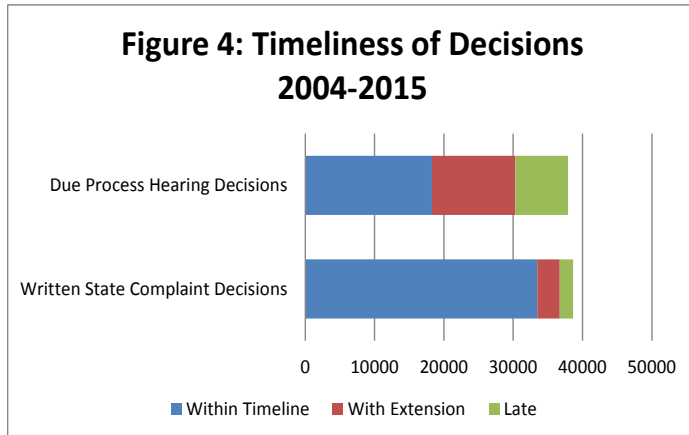
Compared with WSCs, fewer DPC decisions were issued within the regulatory timeline. Less than half, or 48%, of due process decisions were issued without extension to the 75 day timeline,

⁵ Seven states account for 82% of all DPC activity. See CADRE's [DPC Data Brief](#) for more information about DPC activity.

⁶ Because 16% of DPCs filed were pending at the end of the school year, the combined percentage of hearings fully adjudicated and DPCs resolved without a hearing does not equal 100%.

⁷ Five states with 30 or more WSC reports issued in a given year reported the exact same number for reports issued as reports issued with findings of noncompliance, with one state reporting such values for four different years. Although it is possible that every investigation resulted in a finding of noncompliance, it grows much less probable as the number of investigations increases.

while 32% were issued within a specific time extension granted by the hearing or reviewing officer.⁸ Figure 4 compares the timeliness of WSC and DPC final decisions.



While the percentage of WSC reports issued within the regulatory timeline has increased over time, the percentage of DPC decisions issued within the timeline and without extension has decreased from 58% in 2004-05 to 48% in 2014-15.

DATA SOURCES

Data for this brief is drawn from CADRE's National Longitudinal Database which is comprised of data from the following sources: dispute resolution activity reported in states' Annual Performance Reports (APR), first as attachment 1 and later as Table 7; Section 618 data; data published in OSEP's Annual Report to Congress; and data adjustments collected from states by CADRE after OSEP data were locked.

QUESTIONS FOR CONSIDERATION

1. How could data beyond what is required for federal reporting help states better understand and improve their dispute resolution systems? Although the dispute resolution data analyzed in this brief is limited to what states are annually required to report to OSEP, most states have access to additional dispute resolution data that may be of significant value. For example, national data suggests that WSCs are more likely to be resolved through an investigation and final report than a DPC. One possible explanation is that parties are not aware that mediation is available, even after a WSC has been filed.

Most states have a system for tracking dispute resolution activity that is more detailed than the federal reporting requirements and could more thoroughly describe why fewer WSCs are resolved without an investigation. Finer and more specific data may help a state better understand what is working as well as identify systemic features that may be contributing to the relative use of dispute resolution options. For example, a state may discover that parents or educators are not aware that mediation is available.

Additionally, states may want to explore the use of an early complaint resolution process similar to the one developed in Pennsylvania and

⁸ The due process hearing timeline is approximately 75 calendar days because a final decision must be reached no later than 45 days after the expiration of the 30 day resolution period, unless appropriately adjusted. 34 CFR §300.515

described more fully in Question 3 below. More specific data may also help identify sources and themes of family-educator conflict that could be used to further inform conflict prevention activities.

CADRE has developed a [Data Tool](#) that states can use to take a closer look at important information underlying their dispute resolution data.

2. Why is the DPC utilized more frequently than the WSC option? National data indicates that DPCs are filed more frequently than WSCs, even though the WSC is available to more parties and the process may be easier to initiate and less adversarial than a DPC. Additionally, a WSC is more likely to be resolved within a shorter time than a DPC. A lack of awareness and/or misperceptions about the WSC process may impact the relative use of this dispute resolution option. For example, states with similar characteristics, such as childcount, geographic region, and demographics, may experience a significant difference in WSC activity that may be useful to explore.

Additional data may help inform continuous improvement activities, program access and delivery, and public awareness and outreach activities for WSCs. CADRE’s [National](#) and [State](#) dispute resolution data summaries include per capita descriptions of WSC activity that can be used to compare dispute resolution activity across years and across states with different childcounts.⁹ In addition, CADRE has identified key function areas (systemwide oversight, program access, practitioner standards, public awareness and evaluation) to explore

when working to improve an individual process, such as WSC, or an entire dispute resolution system.

3. How is the dispute resolution landscape evolving to offer a continuum of options beyond those required by IDEA? Today, most states are making investments in early dispute resolution options, such as stakeholder communication skill-building workshops, parent liaisons, ombuds programs, and Individual Education Program (IEP) facilitation. Indeed, at least 44 states currently offer at least one early dispute resolution option in addition to the federal requirements.

Several states have explored the use of an early resolution process within the WSC, including Pennsylvania and Arizona. Notably, the Pennsylvania Department of Education has attributed a decrease in WSC activity to Consultline, the toll-free helpline staffed with specialists who connect parents and schools in an effort to resolve disputes early.¹⁰

Approaches that emphasize collaborative problem-solving, such as mediation and IEP facilitation, keep educational decision making in the hands of those who know the student best. Collaborative approaches are more likely to build and strengthen the relationship between families and educators. Consistent awareness and availability of more collaborative approaches may provide an opportunity to resolve disputes before they become intractable, reducing stress on individuals and systems and leading to improved outcomes for children with disabilities.

⁹ An “event rate per 10K” equals the number of events divided by childcount times 10,000. Childcount varies widely, from <1,500 in the Virgin Islands to >700,000 in California. While an event rate per 10K “equates” levels of activity across states, changes over time in low-childcount states/entities can be misleading. For example, a single added event in the Virgin Islands will increase the rate per 10K by 6.7, while a single added event in California would increase that state’s rate by only 0.014 per 10K.

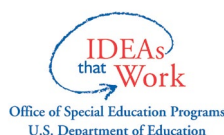
¹⁰ See [CADRE’s Pennsylvania--An Exemplary Dispute Resolution System in Special Education \(2010\)](#) for more information.



Overall, WSC activity is more evenly dispersed across states and has remained stable for the last seven years. Compared to DPCs, IDEA's other decisional dispute resolution option, WSCs are more likely to be resolved through an investigation and final report. In addition, it is more likely that the WSC process will conclude within the set regulatory timeline, i.e., without extension. Finally, approximately two-thirds of WSCs resulted in a finding of non-compliance.

Additional [National](#) and [State](#) dispute resolution data summaries, including the most recent [SPP/](#)

[APR Indicator Summaries](#), are available on CADRE's website, cadreworks.org. Although this data brief on WSCs highlights key findings based on data reported to OSEP, states have access to additional dispute resolution data that may be useful for understanding and improving a dispute resolution system. CADRE can assist states in examining their existing dispute resolution system, as well as offer technical assistance to states interested in building a broader [continuum](#) of dispute resolution options beyond IDEA requirements.



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