

## Frequency Trends in the State Complaint Procedures under the IDEA\*

Alyssa I. Fairbanks, Natalie E. Jones, & Perry A. Zirkel\*\*

### Introduction

One of the most active areas of litigation in K-12 education is in special education, an area of litigation that has risen steadily since the 1980s.<sup>1</sup> While the primary focus for analyzing litigation trends has been court cases, the Individuals with Disabilities Education Act<sup>2</sup> (IDEA) provides two administrative, decisional dispute resolution mechanisms. The first, the due process hearings (DPH)<sup>3</sup> system, has received much of the attention and published analysis to date, in part, because DPHs are a preceding step to filing a case in court;<sup>4</sup> thus, trends in DPHs function as a direct indicator of litigation activity in its narrow sense of adjudication. Unlike DPH, the second decisional dispute resolution mechanism, the state complaint procedures (SCP)

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\*\* Alyssa Fairbanks, Esq., is the special education dispute resolution team leader at the Office of Superintendent of Public Instruction in Washington; Natalie E. Jones, Esq., is an education consultant and complaint investigator in the Bureau of Special Education at the Connecticut State Department of Education; and Perry A. Zirkel is university professor emeritus of education law at Lehigh University.

<sup>1</sup> See, e.g., Perry A. Zirkel & Brent L. Johnson, *The "Explosion" in Education Litigation: An Updated Analysis*, 265 EDUC. L. REP. 1 (2011). For analyses specific to special education, see Perry A. Zirkel & Anastasia D'Angelo, *Special Education Case Law: An Empirical Trends Analysis*, 161 EDUC. L. REP. 731 (2002) (finding an upward trend in litigation from 1977 to 1997 but, using three-year increments, a slight decline in 1998–2000) (finding a steady, rather dramatic increase on a decade-by-decade basis from the 1970s through 2010); Perry A. Zirkel & James Newcomer, *An Analysis of Judicial Outcomes of Special Education Cases*, 65 EXCEPTIONAL CHILD. 469 (1999) (finding a marked increase from 1975 and 1995).

<sup>2</sup> 20 U.S.C. §§ 1400 *et seq.* (2018).

<sup>3</sup> The full version is "impartial due process hearing." 20 U.S.C. § 1415(f) (2018). However, the legislation alternatively uses the more concise "due process hearing." *E.g., id.* § 1415(b)(7)(B), 1415(c)(2)(E), 1415(e)(2)(A), 1415(f)(1)(B)(ii), 1415(f)(3)(B), 1415(f)(7)(B).

<sup>4</sup> The IDEA requires exhaustion of administrative proceedings, i.e., due process, prior to the availability of judicial review. See, e.g., Lewis 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, 361 (2009).

system,<sup>5</sup> which is an investigative rather than adjudicative avenue, has garnered far less attention than DPH.<sup>6</sup> An exploration of frequency trends in SCP is warranted as an initial step for improved information about this alternative decisional mechanism as part of the systematic efforts for more effective dispute resolution in the special education context.

### **Literature Review**

Presenting various commonalities, but with significant differences from DPH, SCP is the much less known IDEA decisional dispute resolution avenue at the administrative level.<sup>7</sup> Only incidentally mentioned in the IDEA legislation,<sup>8</sup> SCP is primarily addressed in the IDEA regulations.<sup>9</sup> Moreover, in contrast with these respective adjudicative and investigative avenues, mediation, the third expressly established dispute resolution mechanism under the IDEA,<sup>10</sup> is not

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<sup>5</sup> Neither the IDEA legislation nor its regulations provide a specific label for this process, but the regulations use this generic wording for the heading of the relevant sections. 34 C.F.R. §§ 300.151–300.153 (2019).

<sup>6</sup> The lack of attention may be because many jurisdictions do not have an appeal process as part of SCP and the regulations do not state a parent must exhaust SCP to enforce a due process decision in court; thus, SCP does not function as an indicator of litigation activity in the way that DPHs do. *See, e.g.,* Perry A. Zirkel, *A Comparison of the IDEA's Dispute Resolution Processes: Complaint Resolution and Impartial Hearings: An Update*, 369 EDUC. L. REP. 550, 554 (2019).

<sup>7</sup> *See generally id.* (identifying in a comprehensive and systematic chart the similarities and differences between the two decisional dispute resolution processes under the IDEA, including the much lower costs for parents in terms of time, money, and confrontation).

<sup>8</sup> 20 U.S.C. § 1411(e)(2)(B)(i) (2018) (authorizing use of IDEA funds for SCP); *id.* §§ 1412(a)(10)(A)(v), 1412(a)(14)(E) (providing exclusive jurisdiction for SCP for particular disputes, such as private school consultation complaints); *id.* § 1415(f)(3)(F) (clarifying that impartial hearing does not preclude parents from accessing SCP).

<sup>9</sup> 34 C.F.R. §§ 300.151–300.153 (2018).

<sup>10</sup> 20 U.S.C. § 1415(e) (2018). Mediation is available in conjunction with DPH and SCP. 20 U.S.C. § 1415(f)(1)(B)(i)(IV) (DPH); 34 C.F.R. §§ 300.152(a)(3)(ii) (SCP). It is also available more generally. *Id.* § 300.506(a). Although the IDEA specifically provides for these three alternatives, it does not prohibit—and state authorities, with federal encouragement, have explored—various other dispute resolution options, such as IEP facilitation. *See, e.g.,* CADRE, The Center for Appropriate Dispute Resolution in Special Education, <https://www.cadeworks.org/>; *see also* U.S. GOVERNMENT ACCOUNTABILITY OFFICE, IMPROVED PERFORMANCE MEASURES COULD ENHANCE OVERSIGHT OF DISPUTE RESOLUTION 17–19 (2014), <https://www.gao.gov/products/GAO-14-390> (summarizing results of survey of 60 states and territories for frequency of alternate dispute resolution methods).

decisional.<sup>11</sup>

The literature on the DPH process is extensive. In addition to the nonempirical literature, which has focused on policy recommendations,<sup>12</sup> and quasi-empirical articles, which have systematically analyzed selected IDEA issues,<sup>13</sup> various empirical analyses have examined the frequency and outcome trends of DPHs.<sup>14</sup> A leading example, which serves as an approximate

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<sup>11</sup> In addition, for the latest agency policy guidance concerning the DPH, SCP, and mediation processes under the IDEA, see Dispute Resolution Procedures Under Part B of the Individuals with Disabilities Education Act, 61 IDELR ¶ 232 (OSEP 2013).

<sup>12</sup> E.g., SASHA PUDELSKI, *RETHINKING SPECIAL EDUCATION DUE PROCESS* (2013), [http://www.aasa.org/uploadedFiles/Policy\\_and\\_Advocacy/Public\\_Policy\\_Resources/Special\\_Education/AASARethinkingSpecialEdDueProcess.pdf](http://www.aasa.org/uploadedFiles/Policy_and_Advocacy/Public_Policy_Resources/Special_Education/AASARethinkingSpecialEdDueProcess.pdf); Elizabeth A. Shaver, *Every Day Counts: Proposals to Reform IDEA's Due Process Structure*, 66 CASE W. RES. L. REV. 143 (2015); Mark C. Weber, *In Defense of IDEA Due Process*, 29 OHIO ST. J. ON DISP. RESOL. 495 (2014); Perry A. Zirkel, *Over-Due Process Revisions for the Individuals with Disabilities Education Act*, 55 MONTANA L. REV. 403 (1994); Cali Cope-Kasten, Note, *Bidding (Fair)well to Due Process: The Need for a Fairer Final Stage in Special Education Dispute Resolution*, 42 J.L. & EDUC. 501 (2013) (proposals for legislative reform); Perry A. Zirkel, *Balance and Bias in Special Education Hearings*, 22 J. DISABILITY POL'Y STUD. 67 (2013) (explanation of impartiality issue); Perry A. Zirkel, *Of Mouseholes and Elephants: The Statute of Limitations for Impartial Hearings Under the Individuals with Disabilities Education Act*, 35 J. NAT'L ASS'N ADMIN. LAW JUDICIARY 305 (2016) (discussion of limitations period).

<sup>13</sup> E.g., Cathy 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. LAW JUDICIARY 283 (2015) (burden of proof); Perry A. Zirkel, *The Legal Boundaries for Impartiality of IDEA Hearing Officers: An Update*, 21 PEPPERDINE DISP. RESOL. L.J. 257 (2021) (impartiality); Perry A. Zirkel, Zorka Karanxha, & Anastasia D'Angelo, *Creeping Judicialization in Special Education Hearings?: An Exploratory Study*, 27 J. NAT'L ASS'N ADMIN. LAW JUDICIARY 27 (2007) (judicialization); Andrew M.I. Lee & Perry A. Zirkel, *State Laws for Due Process Hearings under the Individuals with Disabilities Education Act: The Prehearing Stage*, 40 J. NAT'L ASS'N ADMIN. L. JUDICIARY 1 (Spring 2021); Perry A. Zirkel, *State Laws for Due Process Hearings under the Individuals with Disabilities Education Act: The Posthearing Stage*, 40 J. NAT'L ASS'N ADMIN. L. JUDICIARY 1 (Spring 2020); 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 1 (Spring 2018) (state laws); Jennifer F. Connolly, Perry A. Zirkel, & Thomas A. Mayes, *State Due Process Hearing Systems under the IDEA: An Update*, 30 J. DISABILITY POL'Y STUD. 156 (2019) (state systems).

<sup>14</sup> E.g., Tracy Gershwin Mueller & Francisco Carranza, *An Examination of Special Education Due Process Hearings*, 22 J. DISABILITY POL'Y STUD. 131 (2011); Perry A. Zirkel & Cathy Skidmore, *National Trends in the Frequency and Outcomes of Hearing and Review Officer Decisions under the IDEA: An Empirical Analysis*, 29 OHIO ST. J. ON DISP. RESOL. 525 (2014) (national frequency and outcomes analyses); William H. Blackwell & Vivian V. Blackwell, *A Longitudinal Study of Special Education Due Process Hearings in Massachusetts*, 5 SAGE OPEN 1 (Jan.–Mar. 2015), <http://sgo.sagepub.com/content/5/1/2158244015577669>; Ruth Colker, *California Hearing Officer Decisions*, 32 J. NAT'L ASS'N ADMIN. LAW JUDICIARY 461 (2012); Lisa Lukasik, *Special Education Litigation: An Empirical Analysis of North Carolina's First Tier*, 118 W. VA. L. REV. 736 (2016); Kristen Rickey, *Special Education Due Process Hearings: Student Characteristics, Issues, and Decisions*, 14 J. DISABILITY POL'Y STUD. 46 (2003); George F. Schultz & Joseph R. McKinney, *Special Education Due Process: Hearing Officer Background and Case Variable Effects on Decision Outcomes*, BYU EDUC. & L.J. 17 (2000); Michael B. Shuran &

analogous template for needed research on SCP, is a pair of analyses of the DPH frequency trends among the fifty states and two additional jurisdictions.<sup>15</sup> Focusing on the period from 2012-13 to 2017-18 these analyses looked at trends in DPH filings, adjudications, and the corresponding ratio between these two variables. The first article compared this six-year period (2012-13 to 2017-18) to the prior period of 2006-07 through 2011-12, finding that adjudications formed an uneven plateau that continued the trend line from the last three to four years of the prior six-year period, while filings increased slightly overall with continuing fluctuation.<sup>16</sup> As a result, relative to the prior period, the ratio of filings to adjudications moved from a relatively intermediate level for the first half of the period to a higher level during the second half, with the overall average ratio showing that filings are generally high in relation to adjudications.<sup>17</sup> Focusing on adjudications, the top six jurisdictions remained the same between the two periods, with a few shifts in ranking.<sup>18</sup> For the states below the top six, there were relatively limited changes in the respective rankings for adjudications and filings, although the ratios shifted considerably.<sup>19</sup> The second article re-analyzed the results upon adjustment to a per capita basis in

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M.D. Roblyer, *Legal Challenge: Characteristics of Special Education Litigation in Tennessee Schools*, 96 NASSP BULL. 44 (2012) (state-specific frequency and outcomes analyses).

<sup>15</sup> Gina L. Gullo & Perry A. Zirkel, *Trends in Impartial Hearings under the IDEA: A Comparative Enrollments-Based Analysis*, 382 EDUC. L. REP. 454 (2020) (hereinafter referred to as “Comparative Enrollments-Based Analysis”); Perry A. Zirkel & Gina L. Gullo, *Trends in Impartial Hearings under the IDEA: A Comparative Update*, 376 EDUC. L. REP. 870 (2020) (hereinafter referred to as “Comparative Update”). The two additional jurisdictions were (1) the District of Columbia due to its integral relationship to and prominent activity under the IDEA and (2) Puerto Rico due to its unusually high DPH activity.

<sup>16</sup> *Comparative Update*, *supra* note 15, at 872–74.

<sup>17</sup> *Id.* at 872–75 (finding the overall average ratio of filings to adjudications is almost 20:1 for the most recent period).

<sup>18</sup> *Id.* at 873 (finding the top six jurisdictions were Puerto Rico, District of Columbia, New York, California, Pennsylvania, and New Jersey; with shifts in ranking in all but Puerto Rico and California—first and fourth respectively).

<sup>19</sup> *Id.* at 874.

relation to the special education population for each jurisdiction. Within the more recent of the two six-year periods, the top group of jurisdictions remained largely the same for adjudications, with limited shifts in position, and only moderately the same for the top group for filings, with more shifts in rankings, but the remaining jurisdictions changed their positions to a more marked extent.<sup>20</sup> Upon comparing the adjusted results with those of the prior period, the top jurisdictions remained largely stable for adjudications, even more uniform for filings, and more varying for filings/adjudications ratios, but the remaining jurisdictions included more extensive changes in position.<sup>21</sup>

In contrast, the SCP mechanism has received limited scholarly attention. The early analyses consisted of a survey of forty-five SCP managers at state education agencies<sup>22</sup> and subsequent outcomes analyses of SCP decisions in single states.<sup>23</sup> A more recent and comprehensive outcome analysis based on a random sample of fifty SCP decisions for each of the five most active states during the seven-year period starting in 2010 revealed that the

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<sup>20</sup> *Comparative Enrollments-Based Analysis*, *supra* note 15, at 456.

<sup>21</sup> *Id.* at 458–59.

<sup>22</sup> Nicole Suchey & Dixie Snow Huefner, *The State Complaint Procedure under the Individuals with Disabilities Education Act*, 64 *EXCEPTIONAL CHILD*. 529, 535 (1998) (reporting, *inter alia*, that 27 (77%) reported investigating substantive, as compared to procedural, violations; 32 (91%) reported addressing systemic violations; and 28 (80%) reported providing training for investigators).

<sup>23</sup> Ruth Colker, *Special Education Complaint Resolution: Ohio*, 29 *OHIO ST. J. ON DISP. RESOL.* 371, 377 (2014) (finding for eighty-one SCP decisions in Ohio in 2012–13 the following outcomes distribution: parent prevailed on every issue – 22%; parent prevailed on some issues and district prevailed on others – 42%; and district prevailed on every issue – 18%); Stacy E. White, *Special Education Complaints Filed by Parents of Students with Autism Spectrum Disorder in the Midwestern United States*, 29 *FOCUS ON AUTISM & OTHER DEVELOPMENTAL DISABILITIES* 80 (2013) (finding, *inter alia*, for seventy-nine SCP decisions in 2004–09 concerning students with autism in an unidentified midwestern state that that almost half (46%) were in favor of the district).

outcomes of the issue category rulings (ICRs)<sup>24</sup> were evenly split between parents and districts.<sup>25</sup>

A follow-up analysis revealed a marked variance of the outcomes of the ICRs and, on a conflated basis, the cases among the five states.<sup>26</sup> The most recent frequency and outcome analysis was limited for SCPs to school district income and minority characteristics in five states for the school year 2017-18.<sup>27</sup>

Finally, in addition to the aforementioned<sup>28</sup> systematic and comparative profile of the SCP mechanism, recent comprehensive analyses canvass the state systems for SCP<sup>29</sup> and the corresponding state laws and guidance for SCP.<sup>30</sup> The other recent sources were limited to advocacy critiques of the SCP systems in particular states<sup>31</sup> and commentaries about the

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<sup>24</sup> Perry A. Zirkel, *The Two Dispute Decisional Processes under the Individuals with Disabilities Education Act*, 16 CONN. PUB. INT. L.J. 169, 179 (2017). This unit of analysis was more precise than the overall case for both claims disaggregation and outcomes analysis. *Id.* at 174. Overall, the overall average of ICRs per case was 2.04. *Id.* at 178.

<sup>25</sup> Additionally, the distribution of ICR outcomes was significantly higher for parents in SCP (50%) and in DPH (24%). *Id.* at 179.

<sup>26</sup> Perry A. Zirkel, *The Complaint Procedures Avenue of the IDEA: Has the Road Less Travelled By Made All the Difference?* 30 J. SPECIAL EDUC. LEADERSHIP 88, 91 (2017) (finding that the parents' success rate per state ranged from 32% for ICRs and 36% for cases on a best-for-complaint basis to 64% and 92%, respectively).

<sup>27</sup> U.S. GOVERNMENT ACCOUNTABILITY OFFICE, SPECIAL EDUCATION: DISPUTE RESOLUTION ACTIVITY IN SELECTED STATES VARIED BASED ON DISTRICT CHARACTERISTICS 15–17, 19 (2019), <https://www.gao.gov/products/GAO-20-22> (finding that the frequency of SCPs, when adjusted for the number of special education students, was slightly higher in very low-income than very high-income school districts and twice as high for very high-minority than for very low-minority districts and that the proportion of SCPs with findings of noncompliance were also higher for both very low-income and very high-minority districts).

<sup>28</sup> Zirkel, *supra* note 6.

<sup>29</sup> Kirsten Hansen & Perry A. Zirkel, *Complaint Procedure Systems under the IDEA: A State-by-State Survey*, 31 J. SPEC. EDUC. LEADERSHIP 108, 111–13 (2018) (reporting the results of a survey of the fifty states and D.C. as to the prevailing features and practices of their SCP systems).

<sup>30</sup> Perry A. Zirkel, *State Laws and Guidance for Complaint Procedures under the Individuals with Disabilities Education Act*, 368 EDUC. L. REP. 24, 31–39 (2019) (providing a chart of the SCP additions in state laws and guidance to the IDEA's regulatory requirements).

<sup>31</sup> Emily B. Garcia, Note, *Complaints Conflicts: How Michigan's State Complaint Oversight Fails to Protect Students with Disabilities*, 97 U. DET. MERCY L. REV. 101 (2019) (proposing reforms in Michigan's SCP system in terms of independent investigations and enforcement of findings of noncompliance); Northeastern University School of Law, *From Complaint to Compliance: Catalyzing Corrective Action to Hold Massachusetts School Districts*

interrelationship of the SCP and DPH systems.<sup>32</sup>

To close the information gap for the SCP avenue, as compared with the DPH avenue, a useful starting point would be conducting a longitudinal analysis of the number of filings and decisions for an extended period along with a jurisdictional analysis for the most recent period of the frequency of decisions on both an unadjusted and per capita basis.<sup>33</sup>

### Method

The purpose of this article is to provide the SCP frequency trends that selectively parallel the published findings for DPHs for the fifty states and the District of Columbia.<sup>34</sup> Similar to findings for DPHs, this article analyzes the jurisdictional frequency trends with respect to (a) filings and decisions (the equivalent of filings and adjudications in DPHs, respectively),<sup>35</sup> (b) the ratio between filings and decisions, and (c) the changes in these trends upon adjustment to a per capita basis.<sup>36</sup> Overlapping with the corresponding DPH analyses, this article examines the SCP frequency trends for the eleven-year time period from 2008–09 through 2018–19, based on the most recently available data from the Center for Appropriate Dispute Resolution in Special

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Accountable (2020) (analyzing Massachusetts' 118 SCP decisions for two years and providing issue-specific complaints) (on file with third author).

<sup>32</sup> *E.g.*, Thomas A. Mayes, *A Brief Model for Explaining Dispute Resolution Options in Special Education*, 34 OHIO ST. J. ON DISP. RESOL. 153, 161 (2019) (explaining as part of a four-quadrant model that SCP and DPH share the same high finality, low control quadrant but that parties have even less control in SCP “because they do not have the same detailed rights that parties have in [DPHs] such as the right to examine and cross-examine witnesses”); Perry A. Zirkel, *Questionable Initiation of Both Decisional Dispute Resolution Processes under the IDEA: Proposed Regulator Interpretations*, 49 J.L. & EDUC. 99, 109 (2020) (proposing that a) if a school district files for DPH in response to an ongoing parent-initiated SCP on the same issues, the preclusive effect of the set-aside provision of SCP should not apply, and b) if either party files for DPH in response to a completed and adverse SCP decision, the appellate effect of DPH should not apply).

<sup>33</sup> *Supra* notes 15–24 and accompanying text.

<sup>34</sup> *Id.*

<sup>35</sup> The terminology for SCP decisions varies, depending on the jurisdiction, with the variations including “report,” “reports issued,” “finding,” and “decision or finding letter.” For the sake of simplicity, we use the generic term “decision” in accordance with the applicable IDEA regulation. *See infra* note 39 and accompanying text.

<sup>36</sup> For the meaning of “per capita” in the context of this article, see *infra* note 41-42 and accompanying text.

Education (CADRE).<sup>37</sup> The terminology for the identified measures is as follows:

- Filing: a signed, written document submitted to the state education agency by an individual or organization that alleges a violation of an IDEA regulatory requirement.<sup>38</sup>
- Decision: the written result issued after the investigation that determines any violations and, if so, corrective actions.<sup>39</sup>
- Filings/Decisions Ratio: the figure obtained by dividing the number of filings by the number of decisions.<sup>40</sup>
- Per Capita: adjusting the number of filings or decisions in relation to the special education population (via dividing their number by the child count of students with

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<sup>37</sup> CADRE, State (Part B) Dispute Resolution Summaries, <https://www.cadeworks.org/resources/cadre-materials/state-part-b-dispute-resolution-data-summaries>. In turn, the CADRE data is based on the state education agency annual reports to the U.S. Department of Education. See *infra* n. 45. Thus, we rely on the federal departmental instructions to state education agencies in our definitions of these terms where useful to resolve ambiguities.

<sup>38</sup> 34 C.F.R. § 300.153 (specifying “filing” including the requirements for the complaint); U.S. Department of Education, *EDFacts* Submission System (ESS), *EMAPS* User Guide: IDEA Part B Dispute Resolution Survey, Release 10.0 6 (September 2020), <https://www2.ed.gov/about/inits/ed/edfacts/emaps-idea-part-b-dispute-resolution-user-guide.pdf> (defining “written, signed complaints,” as “a signed, written document submitted to the state education agency (SEA) by an individual or organization (complainant) that alleges a violation of a requirement of Part B of IDEA of 34 CFR Part 300, including cases in which some required content is absent from the document”).

<sup>39</sup> 34 C.F.R. § 300.152(a)(5) (requiring a “written decision” that includes “findings of fact and legal conclusions” and *id.* § 300.152(b)(2) (requiring, if needed for effective implementation, “corrective actions to achieve compliance”).

<sup>40</sup> The ratio is an important indicator because in many jurisdictions a minority of filings do not result in a decision. This minority consists of (1) withdrawals by the complainant (including settlements, following mediation agreements, and as a result of other informal dispute resolution); (2) dismissals for insufficiency; and, due to the federal procedure for the data collection, (3) a “pending” category. Because the ultimate source data (*supra* note 37) is for the purpose of annual, not longitudinal reporting, “pending” refers to filings that are still under investigation or those for which any allegations in the complaint is the subject of a DPH that has not yet been resolved within the reporting year. U.S. Department of Education, *EDFacts* Submission System (ESS) 31 (September 2020), <https://www2.ed.gov/about/inits/ed/edfacts/emaps-idea-part-b-dispute-resolution-user-guide.pdf>.



IEPs in units of 10,000).<sup>41</sup>

The specific questions for this analysis are:

1. For the period of 2008–2019, did the overall trend of SCP filings, decisions, and the corresponding ratio between the filings and decision increase?
2. For the most recent segment of 2013–2019, what are the differences, if any, in the jurisdictional rankings for the annual average of SCP (a) filings and (b) decisions, upon adjustment from an absolute to a per capita basis?<sup>42</sup>

## Results

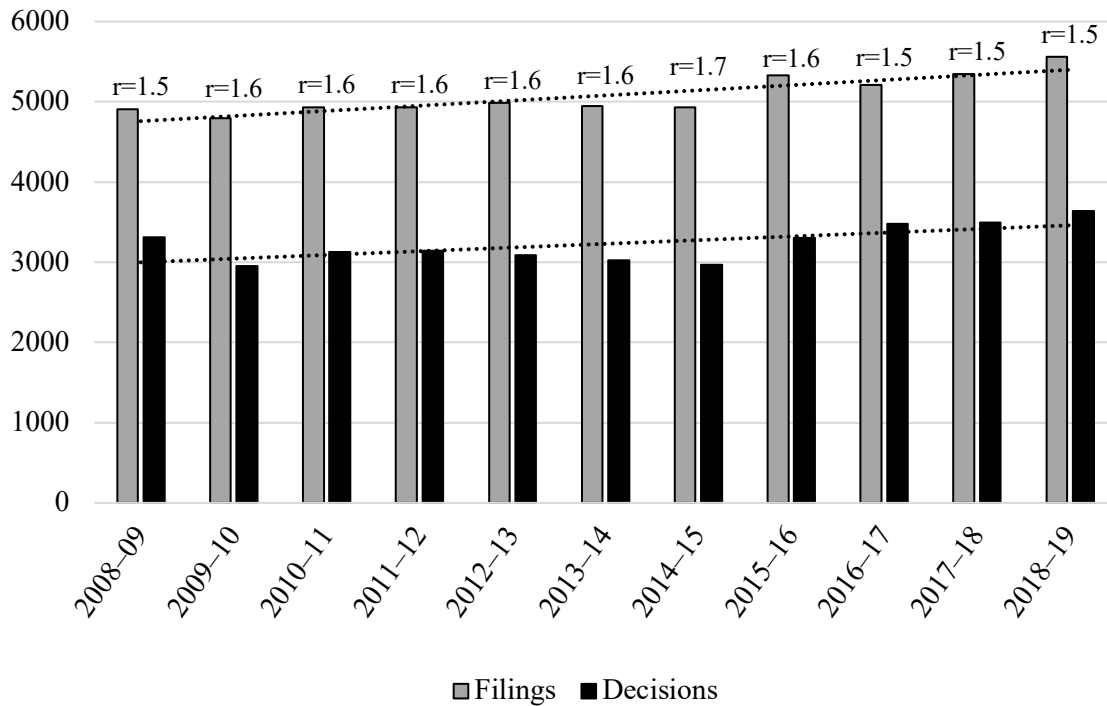
### Question 1

Figure 1 shows the eleven-year trend for the total number of complaints filed, the number of decisions issued, and the ratio of the filings to decisions.

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<sup>41</sup> The CADRE calculations, which served as our source, used the child count for IDEA-identified students aged 3–21 for each of the reported school years. CADRE, National IDEA Dispute Resolution Summary 2018-19, <https://www.cadreworks.org/resources/cadre-materials/2018-19-dr-data-summary-national>, at 12. The data that each jurisdiction reports annually to the U.S. Department of Education Office of Special Education Programs (OSEP) (available at <https://www2.ed.gov/programs/osepidea/618-data/static-tables/index.html#partb-cc>) serve as the basis for these year-by-year calculations. E-mail from Melanie Reese, Director, CADRE, to Natalie Jones (Oct. 3, 2021 12:40 p.m. EST).

<sup>42</sup> For simplicity, the remainder of the article will refer to the absolute basis as “unadjusted” and the per capita basis as “adjusted.”

**Figure 1. Longitudinal Trend of Complaint Filings and Decisions**

Examination of Figure 1 reveals that for this extended period the overall trajectory for both filings and decisions was gradually upward, with limited downward fluctuations for some years that were partially different between filings and decisions within an overall range of approximately 5,000–5,500 for filings and approximately 3,000–3,500 for decisions.<sup>43</sup> The ratios, which took into consideration the variations in both the filings and decisions, were largely stable at approximately 1.6, with a slight decline to 1.5 for the last three years. Thus, the short answer to question 1 as to whether each variable increased is “only slightly for filings and decisions and not enough for the resulting overall ratio to increase.”

## Question 2

In response to question 2, the focus first is on the top jurisdictions and then extends to all

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<sup>43</sup> The downward fluctuations were slightly more frequent for decisions than for filings.

fifty-one jurisdictions. For the illustrative purpose of the focused analysis, the “top” jurisdictions were those that accounted cumulatively for approximately two-thirds of all unadjusted filings or decisions, respectively.<sup>44</sup> Tables 1 and 2 provide the results of this focused analysis for filings and decisions, respectively. As represented by the shaded area of each table, there were twelve top jurisdictions for filings and ten top jurisdictions for decisions.

**Filings.** Table 1 shows the movement in and out of the top jurisdictions for SCP filings.

**Table 1. Comparison Between Unadjusted and Adjusted Averages for SCP Filings for the Top Jurisdictions, 2013–2019**

<i>Unadjusted Filings</i>			<i>Adjusted Filings</i>		
Jurisdiction	Rank	Average	Jurisdiction	Rank	Average
California	1	934.7	Massachusetts	1	31.0
Massachusetts	2	531.0	Connecticut	2	23.8
Texas	3	305.3	District of Columbia	3	17.9
New Jersey	4	248.8	Maryland	4	13.7
New York	5	240.0	California	5	12.7
Michigan	6	230.0	Mississippi	6	12.4
Pennsylvania	7	221.3	New Hampshire	7	12.2
Connecticut	8	180.8	Michigan	8	11.6
Ohio	9	174.3	New Jersey	9	10.6
Florida	10	159.7	Idaho	10	9.2
Maryland	11	146.7	New Mexico	11	9.2
Georgia	12	141.7	Maine	12 (tie)	8.5
			Minnesota	12 (tie)	8.5
Minnesota	16	108.8	Pennsylvania	18	7.2
Mississippi	20	84.0	Georgia	20	6.8
New Mexico	25	46.3	Ohio	21 (tie)	6.7
New Hampshire	28	35.5	Texas	24	6.4
Maine	32	28.3	New York	34	4.8
Idaho	33	28.2	Florida	39	4.2
District of Columbia	37	22.8			

<sup>44</sup> Although the jurisdictions and the time period largely overlapped with those for the predecessor DPH analyses, their corresponding top group for filings and decisions was more limited due to the more pronounced overall skew. In the DPH analyses, six jurisdictions together accounted for an even higher proportion than the two-thirds guideline used here for SCP. *Comparative Enrollments-Based Analysis, supra* note 15, at 3–4.

Review of Table 1 reveals that nine of the top twelve jurisdictions for filings differed markedly in their rankings upon adjustment, with “markedly” representing a change of at least five ranks after adjustment to a per capita basis. Moreover, six jurisdictions descended out of the top twelve, with the descent being particularly dramatic for Florida, New York, and Texas, each dropping more than twenty places in their respective rankings. Although their movement was less pronounced, the six jurisdictions that remained in the top twelve upon adjustment all changed positions either up or down. Specifically, the descending states were California (1→5), New Jersey (4→9), and Michigan (6→8), whereas the ascending group consisted of Massachusetts (2→1), Connecticut (8→2), and Maryland (11→4). Conversely, seven states moved up into the top group upon adjustment, with the District of Columbia showing the most dramatic ascent by moving from 37<sup>th</sup> to third place.

Appendix 1 shows the ranking for filings before and after per capita adjustment for all fifty-one jurisdictions. All jurisdictions differed in their ranking upon adjustment, with 73% moving markedly, as represented by a change of five or more ranks. The direction of the movement was split between 57% of the jurisdictions moving up and 43% moving down after per-capita adjustment. The most pronounced movements included the ascents of Idaho, Maine, and New Hampshire, each ascending twenty or more positions, and the corresponding leading descents of Texas, New York, Florida, and Illinois.

**Decisions.** Table 2 shows the respective top jurisdictions for decisions before and after adjustment to a per capita basis.

**Table 2. Comparison Between Unadjusted and Adjusted Averages for SCP Decisions for the Top Jurisdictions, 2013–2019**

<i>Unadjusted Decision</i>			<i>Adjusted Decisions</i>		
Jurisdiction	Rank	Average	Jurisdiction	Rank	Average
California	1	735.5	Massachusetts	1	24.0
Massachusetts	2	412.0	District of Columbia	2	14.5
Michigan	3	168.5	Connecticut	3	11.0
New York	4 (tie)	145.5	Maryland	4	10.3
Texas	4 (tie)	145.5	California	5	9.9
Maryland	6	109.8	Michigan	6	8.5
New Jersey	7	103.0	Mississippi	7 (tie)	7.1
Pennsylvania	8	101.2	New Hampshire	7 (tie)	7.1
Ohio	9	97.8	Idaho	9	7.0
Florida	10	90.5	Minnesota	10	6.3
District of Columbia	31	18.5	New Jersey	16	4.4
Connecticut	12	83.2	Ohio	23	3.8
Mississippi	23	48.0	Pennsylvania	25 (tie)	3.3
New Hampshire	30	20.7	New York	33 (tie)	3.0
Idaho	29	21.8	Texas	33 (tie)	3.0
Minnesota	13	80.5	Florida	38	2.4

Focusing on the top ten jurisdictions for decisions, Table 2 shows that six of the jurisdictions differed markedly in their rankings upon adjustment, changing five or more ranks after recalculation on a per capita basis. Moreover, six states descended out of the top ten, with Florida, New York, and Texas accounting for the most dramatic downwards movement. The four jurisdictions that remained in the top ten upon adjustment showed less pronounced movement either up or down. Specifically, California (1→5) and Michigan (3→7) descended while Massachusetts (2→1) and Maryland (6→4) ascended within this top group.

Upon adjustment, six states (District of Columbia, Connecticut, Mississippi, New Hampshire, Idaho, and Minnesota) moved upward into the top ten group. The District of Columbia demonstrated the most dramatic ascent into the top group by moving twenty-nine places from 31<sup>st</sup> to second. Similarly, Idaho and New Hampshire had particularly pronounced ascents of twenty or more places. Conversely, Minnesota accounted for the smallest difference

by only moving three places upwards from 13<sup>th</sup> to 10<sup>th</sup>.

Widening the scope to all fifty-one jurisdictions, Appendix 2 shows that all jurisdictions except Kansas differed in their ranking upon adjustment. Similar to the pattern for filings, 75% of the jurisdictions changed five or more ranks in decisions after adjustment. Also similar to the filings, the proportion of jurisdictions that changed upward (52%) was slightly more than for those that moved downward (48%).

## Discussion

### Bounding Limitations

A few potential limitations serve as a frame representing the broad boundaries for the interpretation of the findings. First, the accuracy and uniformity of the data depend primarily on the input of that data at the state education agency level. The intervening factors at that level include the turnover and diligence of the personnel delegated to perform this task, and the fidelity in following the federal instructions for the annual accountability reporting of which the dispute resolution data are only a limited part.<sup>45</sup>

Second, an overlapping and less obvious limitation is that because the purpose is annual accountability and not longitudinal analysis, the relevant data include an inconclusive category of “pending” cases.<sup>46</sup> Because the ultimate disposition of these filings as either decisions or the default category of “withdrawn or dismissed” are not part of the data collection, the pending cases are missing for the longitudinal purpose of this analysis. Although a major factor for

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<sup>45</sup> As part of its supervisory and monitoring efforts under the IDEA, OSEP requires SEAs to report annually specified dispute resolution data, including for SCP and DPH. *Supra* note 40.

<sup>46</sup> *Id.*

DPHs, the pending category represents a much smaller proportion of the SCP cases.<sup>47</sup> Thus, it is a rather minor limitation for interpreting the SCP findings but a potentially significant limitation for the comparison DPH analyses.

Third, the comparisons with the DPH analyses were slightly different in their time period and jurisdictional scope. The major differences were that the SCP analysis extended to one more recent year (2018-19), and the DPH analyses included one additional jurisdiction (Puerto Rico).<sup>48</sup>

### **Question 1**

The findings in response to the first question appear to reveal a more stable longitudinal trend for SCP than the undulating plateau for DPHs.<sup>49</sup> The overall stable trend of SCP filings increasing gradually upward may be attributable to the overall stability in the national number of students accessing special education services, which increased only slightly in the decade between 2009 and 2019.<sup>50</sup>

Moreover, the range of total SCP filings was much lower than the corresponding range for DPH filings, whereas the range of SCP decisions was moderately higher than that for DPH

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<sup>47</sup> For the eleven-year period from 2008-09 through 2018-19, the pending category accounted for 3% of the SCP filings and 23% of the DPH filings. CADRE, *supra* note 41, at 7, 9.

<sup>48</sup> The data for 2018-19 were not available at the time of the DPH analyses. However, the DPH analyses extended two years earlier for their comparison with the earlier six-year period. *Supra* note 15–17 and accompanying text. On the other hand, the jurisdictional scope for SCP did not extend to Puerto Rico, because the special justification for its inclusion in the DPH analysis (*supra* note 15) did not apply in the SCP context.

<sup>49</sup> *Supra* text accompanying notes 16 and 43. The aforementioned (*supra* notes 46–47 and accompanying text) pending category is unlikely to change the longitudinal trend for SCP but may well affect the corresponding trend for DPH.

<sup>50</sup> National Center for Education Statistics (NCES), “*The Condition of Education 2021: Students with Disabilities*” 1 (May 2021), [https://nces.ed.gov/programs/coe/pdf/2021/cgg\\_508c.pdf](https://nces.ed.gov/programs/coe/pdf/2021/cgg_508c.pdf) (“From the school year 2009-10 through 2019-20, the number of students ages 3-21 who received special education services under IDEA increased from 6.5 million, or 13 percent of total public school enrollment, to 7.3 million, or 14 percent of total public school enrollment.”).

decisions.<sup>51</sup> Given the much lower transaction costs and adversariness of SCP<sup>52</sup> and its generally higher success rate for parents,<sup>53</sup> it is surprising that parents do not utilize it more frequently as compared with DPH. The potential contributing factors for the dampened level and trajectory of SCP filing frequency include (1) the generally lower public awareness of this avenue as compared with DPH, (2) its less cathartic effect, (3) its much more limited connection to the judicial process, (4) the generally less “shallow” individual remedial relief; and (5) its relative disfavor among private parent attorneys,<sup>54</sup> but each of these factors warrants careful examination, including differences among and within states.

Finally, the ratio of filings to decisions for SCP (approximately 1.6) is much lower than the ratio for DPH (almost 20.0).<sup>55</sup> This wide disparity is likely attributable to (1) the shorter length of the filing to decision period for SCPs, which is revealed in the regulatory timelines<sup>56</sup> and in prevailing practice<sup>57</sup>; and, on an overlapping basis, (2) the lack of a required resolution

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<sup>51</sup> For filings, in comparison to the approximate 5,000–5,500 range for SCP, the approximate DPH range was 17,000 to 21,000 for the same period. CADRE, *supra* note 41. For decisions, the approximate respective ranges were 3,000–3,500 for SCP and 1,900–2,900 for DPH. *Id.* The disposition of the cases in the pending category presumably accounts for part of the gap for decisions. *Supra* notes 46–47 and accompanying text.

<sup>52</sup> *See, e.g.*, Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities, 61 IDELR ¶ 232, at \*2 (OSEP 2013) (“[SCP has] provided a very effective and efficient means of resolving disputes between parents and public agencies, without the need to resort to more formal, adversarial, and costly due process proceedings”).

<sup>53</sup> *Supra* notes 7 and 25.

<sup>54</sup> *See, e.g.*, Perry A. Zirkel, *The Complaint Procedures Avenue of the IDEA: Has the Road Less Traveled By Made All the Difference?*, 30 J. SPECIAL EDUC. LEADERSHIP 88, 94 (2017).

<sup>55</sup> *Supra* note 17 and Figure 1.

<sup>56</sup> The IDEA regulations provide for a 60-day completion period for SCP, with a limited extension allowance, and a 75-day completion period for DPH, with a more open-ended extension allowance. 34 C.F.R. § 300.152 (SCP) and §§ 300.510, 300.515 (DPH).

<sup>57</sup> *See, e.g.*, CADRE, *supra* note 41, at 7, 12 (much higher proportion of SCP than DPH decisions within timeline).



period<sup>58</sup> and (3) the much lower incidence of settlements, which result in withdrawn filings, in the SCP.<sup>59</sup>

## Question 2

Showing the importance of examining frequency trends data for state rankings not just as raw numbers but also in relation to the number of special education students, the primary finding was that both filings and decisions had marked changes either up or down<sup>60</sup> upon per capita adjustment in almost all jurisdictions. However, the varying extent of these changes suggests that population density is not the only factor that influences SCP activity within the fifty-one jurisdictions. Other potential contributing factors include the litigiousness of a particular jurisdiction, the general knowledge of SCP as an avenue for dispute resolution in a jurisdiction, and the assistance/intervention options<sup>61</sup> available at the state level. These factors are only illustrative directions for additional, more in-depth analysis.

The findings in response to question two reveal differences between SCP and DPH with regard to the “top” jurisdictions, as well as the shifting in rankings upon adjustment to a per capita basis. First, the total number of “top” jurisdictions was higher for SCP than for DPH in light of the wider dispersion of SCP among the fifty-one jurisdictions.<sup>62</sup> This wider dispersion of

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<sup>58</sup> *E.g.*, Zirkel, *supra* note 6, at 553 (identifying the IDEA regulations as being silent for a resolution period for SCP but requiring it for parent-filed DPHs unless jointly either waived or mediated, per 34 C.F.R. § 300.510(a)(3)).

<sup>59</sup> Although the specific extent and nature of the settlements are not clearly known, the adversarial and costly nature of the adjudicative process, including the active involvement of attorneys, accounts for much more frequent incidence of settlements for DPH proceedings.

<sup>60</sup> For filings, twenty-five jurisdictions moved up or down ten or more places, with nine of them changing more than twenty places. For decisions, twenty-two jurisdictions moved up or down ten or more places, with eleven of them changing more than twenty places.

<sup>61</sup> *See e.g.*, CADRE Continuum of Dispute Resolution Processes and Practices, <https://www.cadeworks.org/cadre-continuum>.

<sup>62</sup> *Supra* note 44 and accompanying text.

SCP activity, as opposed to a small number of jurisdictions accounting for the majority of DPH activity, may be attributable to the differences between these two decisional processes. More specifically, SCP is more accessible than DPH due to various factors, including the negligible cost to the complainant, the minimal involvement of the filing party, and the lesser need for attorney involvement in the SCP. Further, the wider dispersion may be explained by the attractiveness of the shorter period from filing to decision as compared with DPH, as the SCP may be more broadly appealing to families as it offers a faster resolution to disputes than DPH.<sup>63</sup> Finally, the wider dispersion could be due to the scope of individuals who can file in the SCP, which makes the SCP accessible to a great number of people, as compared to DPH.<sup>64</sup>

Second, the extent of change for the “top” jurisdictions in their rankings upon adjustment to a per capita basis are more dramatic for SCP than for DPH during the most recent six-year period.<sup>65</sup> The difference appears to be largely attributable to the much wider dispersion in the distribution of SCP as compared with DPH activity among the various jurisdictions. Despite the pronounced skew among a few jurisdictions, including New York and the District of Columbia, DPH was less vulnerable to change upon adjustment in relation to the special education population. Conversely, the wider dispersion of SCP filings and decisions contributed to more extensive ranking changes, especially for the broader top group, upon adjustment on a per capita basis.

Third, the top jurisdictions were only partially the same for SCP as they were for DPH during the most recent six-year period. For example, the only two states ranked 1–5 for both SCP

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<sup>63</sup> Zirkel, *supra* note 6.

<sup>64</sup> Any individual or organization can file in the SCP, including nonresidents if the alleged violation is in the state, whereas only the parent or school district can file a DPH. *Supra*, note 5-6.

<sup>65</sup> *Supra* text accompanying note 20 (DPH) and Tables 1–2 (SCP).

filings and decisions were Massachusetts and California, whereas New York and New Jersey were the only three states ranked 1–5 for both DPH filings and adjudications.<sup>66</sup> The comparisons of top jurisdictions for SCP and DPH reveal outliers, such as New York, Massachusetts, Mississippi, and the District of Columbia. While Massachusetts was one of two states that remained in the top five for both SCP filings and decisions, it was not in the top five for DPH filings or adjudications. New York remained in the top five for both DPH filings and adjudications, but markedly descended more than twenty places for SCP filings and decisions when adjusted for the special education enrollment. Mississippi ascended more than ten places to move into the list of top jurisdictions for both SCP filings and decisions when adjusted for special education enrollment but was never one of the top ranked jurisdictions for either DPH filings or adjudications, even when adjusted for the special education enrollment. The District of Columbia moved from third to first place for DPH adjudications and from seventh to first place for DPH filings when adjusted for special education enrollment. However, the District of Columbia was not in the top five for either SCP filings or decisions, but upon adjustment to a per capita basis, ascended more than thirty places to third place for SCP filings and more than 20 places to second place for SCP decisions.

Overall, the comparison of SCP and DPH activity varies depending on various factors, including the litigiousness of the jurisdiction, the respective outcome rates within the jurisdiction, intrinsic differences between the SCP and DPH processes (e.g., the significantly different scope of complainants), and the availability of other dispute resolution options at the

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<sup>66</sup> Puerto Rico also remained in the top five for filings and adjudications for DPH. *Comparative Enrollments-Based Analysis, supra*, note 15 at 4-5. The inclusion of Puerto Rico in the DPH jurisdictions and the one-year difference in the time periods limited this comparison. Moreover, extending the comparison beyond the top five and limiting it to filings or jurisdictions yield less dramatically different examples. Yet, the overall conclusion of only partial commonality of the top jurisdictions remains the same.

state level.

### **Conclusion**

This exploratory analysis of SCP filings and decisions is intended as a first step in providing more systematic and careful attention to this dispute resolution avenue comparable to the continuing analysis of the IDEA's DPH avenue. The next step should provide an analysis of SCP outcomes, which are available in the same CADRE source reports. Further steps include both quantitative and qualitative analyses of the SCP at both the national and state levels, including (a) the nature and efficacy of the state education SCP procedures and personnel, (b) the perceptions of the stakeholders, and (c) the availability of other dispute resolution options at the state level. Finally, those analyses in or including the near future will need to consider COVID-19's impact at both the national and state levels.

**Appendix 1. SCP Filings for 51 Jurisdictions:  
Unadjusted and Adjusted Averages for 2013–2019**

<i>Unadjusted Filings</i>			<i>Adjusted Filings</i>		
Jurisdiction	Rank	Average	Jurisdiction	Rank	Average
California	1	934.7	Massachusetts	1	31.0
Massachusetts	2	531.0	Connecticut	2	23.8
Texas	3	305.3	District of Columbia	3	17.9
New Jersey	4	248.8	Maryland	4	13.7
New York	5	240.0	California	5	12.7
Michigan	6	230.0	Mississippi	6	12.4
Pennsylvania	7	221.3	New Hampshire	7	12.2
Connecticut	8	180.8	Michigan	8	11.6
Ohio	9	174.3	New Jersey	9	10.6
Florida	10	159.7	Idaho	10	9.2
Maryland	11	146.7	New Mexico	11	9.2
Georgia	12	141.7	Maine	12 (tie)	8.5
Virginia	13	131.8	Minnesota	12 (tie)	8.5
Indiana	14	128.5	Virginia	14	7.9
Illinois	15	113.8	Indiana	15 (tie)	7.4
Minnesota	16	108.8	Vermont	15 (tie)	7.4
North Carolina	17	104.7	Rhode Island	15 (tie)	7.4
Washington	18	92.3	Pennsylvania	18	7.2
Arizona	19	91.0	Wisconsin	19	7.0
Mississippi	20	84.0	Georgia	20	6.8
Wisconsin	21	81.8	Arizona	21 (tie)	6.7
Tennessee	22	74.3	Ohio	21 (tie)	6.7
Missouri	23	66.3	Washington	23	6.6
South Carolina	24	48.3	Texas	24	6.4
New Mexico	25	46.3	Hawaii	25	6.3
Oregon	26	43.5	Tennessee	26 (tie)	5.7
Louisiana	27	39.3	West Virginia	26 (tie)	5.7
New Hampshire	28	35.5	North Carolina	28	5.3
Oklahoma	29	34.8	Missouri	29	5.2
Colorado	30 (tie)	32.7	North Dakota	30 (tie)	5.1
Kansas	30 (tie)	32.7	Oregon	30 (tie)	5.1
Maine	32	28.3	Wyoming	32	5.0
Idaho	33	28.2	Delaware	33	4.9
West Virginia	34	26.0	New York	34	4.8
Utah	35	23.7	Louisiana	35 (tie)	4.7
Kentucky	36	23.2	South Carolina	35 (tie)	4.7
District of Columbia	37	22.8	Kansas	37	4.5

Arkansas	38	22.7	Alaska	38	4.4
Iowa	39	18.7	Florida	39	4.2
Rhode Island	40	17.3	Illinois	40	3.9
Alabama	41	13.2	South Dakota	41	3.6
Nevada	42	12.8	Colorado	42	3.3
Hawaii	43	12.2	Arkansas	43 (tie)	3.2
Vermont	44	10.7	Oklahoma	43 (tie)	3.2
Delaware	45	10.3	Montana	45	3.0
Nebraska	46	10.0	Utah	46 (tie)	2.9
Alaska	47	8.2	Iowa	46 (tie)	2.9
North Dakota	48	7.5	Nevada	48 (tie)	2.3
South Dakota	49	7.3	Kentucky	48 (tie)	2.3
Wyoming	50	7.2	Nebraska	50	2.1
Montana	51	5.2	Alabama	51	1.5

**Appendix 2. SCP Decisions for 51 Jurisdictions:  
Unadjusted and Adjusted Averages for 2013–2019**

<i>Unadjusted Decisions</i>			<i>Adjusted Decisions</i>		
Jurisdiction	Rank	Average	Jurisdiction	Rank	Average
California	1	735.5	Massachusetts	1	24.0
Massachusetts	2	412.0	District of Columbia	2	14.5
Michigan	3	168.5	Connecticut	3	11.0
New York	4 (tie)	145.5	Maryland	4	10.3
Texas	4 (tie)	145.5	California	5	9.9
Maryland	6	109.8	Michigan	6	8.5
New Jersey	7	103.0	Mississippi	7 (tie)	7.1
Pennsylvania	8	101.2	New Hampshire	7 (tie)	7.1
Ohio	9	97.8	Idaho	9	7.0
Florida	10	90.5	Minnesota	10	6.3
Georgia	11	86.3	Washington	11	5.4
Connecticut	12	83.2	Wisconsin	12	5.3
Minnesota	13	80.5	Rhode Island	13	5.1
Washington	14	75.0	New Mexico	14	4.8
North Carolina	15	70.0	Arizona	15	4.5
Arizona	16 (tie)	61.7	New Jersey	16	4.4
Wisconsin	16 (tie)	61.7	Vermont	17	4.3
Illinois	18	58.5	Georgia	18	4.2
Indiana	19	56.7	Missouri	19	4.1
Missouri	20	52.2	Alaska	20	4.0
Virginia	21	51.0	Hawaii	21 (tie)	3.9
Tennessee	22	50.8	Tennessee	21 (tie)	3.9
Mississippi	23	48.0	Ohio	23	3.8
South Carolina	24	32.0	North Carolina	24	3.5
New Mexico	25	24.5	Indiana	25 (tie)	3.3
Oregon	26	24.2	Pennsylvania	25 (tie)	3.3
Kansas	27	23.0	Kansas	27 (tie)	3.2
Oklahoma	28	22.5	Wyoming	27 (tie)	3.2
Idaho	29	21.8	Delaware	29 (tie)	3.1
New Hampshire	30	20.7	South Carolina	29 (tie)	3.1
District of Columbia	31	18.5	Virginia	29 (tie)	3.1
Colorado	32	18.2	West Virginia	29 (tie)	3.1
Utah	33	17.5	New York	33 (tie)	3.0
Kentucky	34	14.3	Texas	33 (tie)	3.0
West Virginia	35	14.0	South Dakota	35	2.9
Louisiana	36	13.0	Maine	36 (tie)	2.8
Arkansas	37	12.5	Oregon	36 (tie)	2.8

Rhode Island	38	12.0	Florida	38	2.4
Nevada	39	9.7	Utah	39	2.2
Maine	40	9.5	Oklahoma	40	2.1
Alabama	41	8.2	Illinois	41	2.0
Alaska	42 (tie)	7.5	North Dakota	42	1.9
Hawaii	42 (tie)	7.5	Arkansas	43 (tie)	1.8
Nebraska	42 (tie)	7.5	Colorado	43 (tie)	1.8
Delaware	45	6.7	Nevada	45	1.7
Vermont	46	6.2	Louisiana	46 (tie)	1.6
South Dakota	47	5.7	Montana	46 (tie)	1.6
Iowa	48	5.3	Nebraska	48	1.5
Wyoming	49	4.5	Kentucky	49	1.4
Montana	50 (tie)	2.8	Alabama	50 (tie)	1.0
North Dakota	50 (tie)	2.8	Iowa	50 (tie)	1.0