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**MONTANA FIRST JUDICIAL DISTRICT COURT,  
LEWIS & CLARK COUNTY**

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<p>The MONTANA QUALITY EDUCATION COALITION; DISABILITY RIGHTS MONTANA,</p> <p style="text-align: right;"><i>Plaintiffs,</i></p> <p style="text-align: center;">vs.</p> <p>STATE OF MONTANA, <i>et al.</i>,</p> <p style="text-align: right;"><i>Defendants,</i></p> <p style="text-align: center;">and</p> <p>SUE VINTON, in her official capacity as a member of the Montana House of Representa- tives and Sponsor of HB 393,</p> <p style="text-align: right;"><i>Intervenor-Defendant.</i></p>	<p style="text-align: center;">Cause No. ADV 2024-44</p> <p style="text-align: center;"><b>Intervenor-Defendant’s Response in Opposition to Plaintiffs’ Motion for Preliminary Injunction</b></p>
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## I. INTRODUCTION

Creating an education savings account (“ESA”) program for children with special needs, HB 393 vindicates the Montana constitutional mandate of equal educational opportunities for all students. ESAs allow parents dissatisfied with public school opportunities to afford other, more individually appropriate, options. ESAs also benefit Montana both by encouraging public schools to compete with better special-needs offerings and by encouraging other providers who can relieve stress on public schools to address every special need imaginable.

Plaintiffs challenge HB 393 only because they disagree with the program. The public-school funding formula already allocates state and local revenue based on enrollment instead of fixed costs. A student who leaves a school district for *any* reason—for a private school, a different public school, or a different state altogether—decreases enrollment and (ultimately) the school’s entitlements. Yet Plaintiffs do not challenge that feature of the school funding formula generally; they challenge it only for students aided by the ESA Program. If state and local revenue may fund interdistrict transfer, it may also fund ESA Program transfer.

Plaintiffs’ remaining arguments about appropriations and program structure also fail. Montana law has long authorized statutory appropriations, and Plaintiffs’ citation of a Nevada case is inapposite owing to unusual features of the Nevada Constitution not relevant here. And the Superintendent, whose ESA oversight establishes sufficient state control, is limited by canons of statutory interpretation to approving items like those listed in HB 393. Nor do Plaintiffs argue a plausible violation of local control guarantees. The school funding formula already tells districts how to assess and spend taxes for schools; Plaintiffs offer no reason such directions in the ESA Program are legally different.

Finally, an injunction should be denied on the equities because it would deny equality of educational opportunity to special education students who have applied for ESAs.

## II. BACKGROUND

### A. Montana's ESA Program

HB 393 creates an ESA Program for “qualified students” aged 5-19, meaning any “child with a disability” under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400–1482. *See* Pls’ Ex. 1, Enrolled House Bill 393 (hereinafter “HB 393”) § 3(7)(a)-(b). Qualified students must also meet one of three additional criteria: (1) the student was part of the ANB funding count the previous school year, (2) the student did not reside in the state the previous school year, or (3) the student is eligible to enter kindergarten the current year. *Id.* § 3(7)(c)(i)-(iv).

Parents may use the ESA for twelve different educational expense categories, including “qualified tuition, fees, textbooks, software, other instructional materials or services,” “curriculum,” and “educational therapies or services.” *Id.* § 4 (1)(a)-(l).

The Montana Office of Public Instruction has published a Parent Handbook explaining ESA Program eligibility, listing permissible expenses, and describing processes for renewal and withdrawal. *See generally* Ex. A, *Montana Education Savings Account for Students with Special Needs Parent Handbook*, Montana Ofc. of Pub. Instruc. The Parent Handbook explains that OPI accepts applications during May 1 through June 1 of 2024 and will issue contracts to qualified applicants during June. *See id.* Parents can submit expenses for reimbursement beginning July 1, 2024. *See id.*

### B. Funding for the ESA Program

The Montana legislature has adopted a public-school funding formula that grants specified dollars to each school district per student enrolled the prior school year. *See* §§ 20-9-306, 20-9-311, MCA. The legislature funds the ESA Program, in turn, with only some of the same per-student amounts as the public-school funding formula. HB 393, § 3(2)(c). The result is that, when a student



uses an ESA, the student's public school district retains a portion of the state funding for that student even as it averts the entire marginal cost of educating the student.

More specifically, the funding formula provides nine categories of state grants to public school districts, only some of which the legislature channels into the accounts of ESA users: (1) basic entitlement, (2) enrollment entitlement, (3) special education payments, (4) guaranteed tax-base aid, (5) data-for-achievement payment, (6) Indian education for all payment, (7) quality educator payment, (8) at-risk student payment, and (9) American Indian achievement gap payment. *See* § 20-9-306(2), MCA. For an ESA student, the legislature redirects most of the state and local revenue from the first six categories (excepting reimbursement for disproportionate special education costs). HB 393, § 3(2)(c). The ESA Program leaves the remaining three categories of aid with the ESA student's district. *Id.*

Because it is modeled after interdistrict transfer, the ESA Program causes some, but not all, of the money in this enrollment-based formula to follow the student. When a student transfers to a different public school, the sending school redirects part of the per student money to the receiving school as tuition. *See* § 20-5-323, MCA. The ESA Program works similarly, using some of the per-student amount for the receiving provider and some for the sending school.

### **C. The ESA Program Benefits Real Families, Like the Grilleys**

Clifton and Angela Grilley, residents of Power, Montana, have applied to the ESA Program on behalf of two of their sons, W.G. and E.G., who attend Choteau Public Schools. *See* Ex. B, Declaration of Clifton Grilley, at ¶¶ 1–2, 21. W.G. and E.G. each has an Individualized Education Plan (IEP) approved by Choteau, but receive services at Big Sky Cooperative, of which Choteau is a member, instead of at Choteau itself. *Id.* at ¶ 11.

The Grilleys applied to the ESA program because they are dissatisfied with their current services at Big Sky. *Id.* at ¶¶ 18–22. After Clifton Grilley retired from the U.S. Navy and returned home

to Montana, Choteau Public schools gutted services from W.G.'s IEP, causing him to regress while enrolled in that school district. *Id.* at ¶¶ 5–13. E.G. receives some services but does not receive all he needs for a quality education. *Id.*

The Grilleys intend to use the ESA Program to provide better educational opportunities to their sons through a hybrid homeschool program, beginning as early as July 2024. *Id.* at ¶ 22. The Grilleys understand the ESA Program may not suffice to pay for all the services their sons require, but the Program will make it affordable enough for them to pay the difference in cost. *Id.*

### III. ARGUMENT

Because Plaintiffs are unlikely to succeed on their claims and because the balance of equities favors equal educational opportunity for special education students over their illusory claims of irreparable harm, Plaintiffs cannot meet the standard for a preliminary injunction.

#### A. Plaintiffs are unlikely to succeed on their claims

*First*, the ESA Program is necessary to provide equality of educational opportunity to special education students. Plaintiffs' grievances about per-student funding are issues with the funding formula generally, not the ESA Program, and they cannot succeed in showing that a uniform per-student approach to funding leads to a different result on constitutionality here.

*Second*, the funding mechanism, *i.e.*, the statutory appropriation, is constitutional. Statutory appropriations are just as constitutional in the educational context as in the (many) other contexts where they are used. The Superintendent's authority to use those statutory appropriations is limited by relevant canons of statutory interpretation, and the ESA Program otherwise meets the Montana Supreme Court's test for sufficient state control over a program with private beneficiaries.

*Third*, the state *already* controls the calculation, collection, and spending of local taxes for education, so Plaintiffs cannot succeed in showing that state control over local revenue somehow undermines the constitutionality of the ESA Program.

**1. The ESA Program advances equality of educational opportunity**

The ESA Program provides equality of educational opportunity to special education students, and Plaintiffs are unlikely to succeed in challenging it under the equality of educational opportunity clause. The ESA Program empowers all parents and provides a universal system for special education students that is better than the existing system, which mostly benefits wealthy parents or urban residents. Plaintiffs’ suggestions that Montana parents will not pick good special education opportunities for their children are unjustified and unsupported by evidence. The ESA Program adheres to the per-student model that the funding formula uses (including in public school transfers), so Plaintiffs’ grievances about that approach prove too much and cannot justify invalidation of the ESA Program without also taking down the funding formula. Accordingly, this claim will not succeed.

**a. The ESA Program provides opportunities for all special education students, not just wealthy, urban families**

Absent the ESA Program, state and federal promises of a Free Appropriate Public Education (“FAPE”), §§ 20-7-401(2), 20-7-414(1), MCA; 20 U.S.C. §§ 1401(9), 1412(a)(1)(A), are meaningful only to affluent parents. When a public school fails to provide a FAPE, successful complaints often require legal representation and expert witnesses—a potential cause of disproportionate usage in high income districts. *See* Ex. C, Gov’t Accountability Ofc., *IDEA Dispute Resolution Activity in Select States Varied Based on School Districts’ Characteristics*, GAO-20-22, Nov. 2019, at 1, 15-20.

The ESA Program sets aside the wealth-advantaged FAPE litigation system in favor of a program that empowers all parents to shop for a school that provides a quality education for their child. It improves equality of educational opportunity particularly in sparsely populated areas by using the

same model as interdistrict transfer. Some school districts deny equal educational opportunity to special education students because they lack qualified staff to hire in their geographic area. *See* Motion to Intervene, Vinton Decl. (Dkt. 14) at ¶¶ 8–9. Neither money nor FAPE program complaints can create qualified staff where none exist. *Interdistrict transfer* helps ensure access when the best staff to address a child’s needs work at a nearby public school. *Id.* at ¶ 11. Similarly, the *ESA Program* ensures access when the best staff work somewhere other than a public school. *Id.* at ¶¶ 13–16.

Plaintiffs unjustifiably assume that parents will use ESA dollars to move their children to low-quality schools. Montana’s ESA Program is the sixth ESA program nationally for students with disabilities. *See* Ann Marie Miller, *Unlocking Potential: How Choice Transforms Education for Students with Disabilities*, EdChoice, Mar. 28, 2024.<sup>1</sup> (summarizing ESA programs in Florida, Indiana, Mississippi, North Carolina, and Tennessee). The five other similar programs enroll over 95,000 students. *See* John Kristof, *School Choice Participation by Students with Disabilities*.<sup>2</sup> Yet Plaintiffs cannot muster a single example of parents abusing a special-needs ESA. Like parents elsewhere, Montana parents care about finding quality education for their children with special needs—and the ESA Program would help.

Plaintiffs also argue that the ESA Program denies educational quality because it does not go *far enough*, implying they would deem it constitutional if only each account had enough money to afford the most expensive schools in Bozeman. First, however, no family is compelled to use the ESA. If, for financial reasons or otherwise, a family with a special-needs student is best served by the local school district, that remains an option, rendering any supposed insufficiency of the ESA amount moot.

Second, when making their affordability point, Plaintiffs cherry-pick schools in Bozeman, which are more expensive than the Montana average. But even there, private schools with tuition

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<sup>1</sup> <https://www.edchoice.org/engage/unlocking-potential-how-choice-transforms-education-for-students-with-disabilities/>

<sup>2</sup> <https://www.edchoice.org/engage/school-choice-participation-by-students-with-disabilities/>

under \$6,000 are available. *See, e.g.,* 2024-2025 Tuition & Admissions, Emerge MT<sup>3</sup> (\$3,238 per year); Tuitions, Grants & Scholarships, Bozeman Field School<sup>4</sup> (average tuition of \$4,700 per year). Elsewhere, ESAs can cover private school tuition entirely. *See, e.g.,* Tuition and Fees 2023-2024, Five Falls Christian School<sup>5</sup> (\$4,000 per year); Tuition & Fees, Holy Spirit Catholic School (\$3,800 per year).<sup>6</sup>

Regardless, ESAs also help parents in other ways. For some, it may fund the gap between what the family can afford and the tuition amount. For others, it might finance education other than at a traditional private school, particularly if the availability of ESAs incentivizes new special education providers to enter the market. For example, hybrid programs combine private school and homeschool options to allow families to pay part-time tuition, meaning they could use remaining ESA funds to purchase curriculum for home or acquire other tutors or services as needed. *See, e.g., About Us, Montana Hybrid Academy.*<sup>7</sup> As the Grilleys explain, they plan to use the ESA in this manner, defraying costs for a hybrid program and other services. Ex. B at ¶ 22. Online programs also offer group or self-paced learning for Montana students with special needs at tuition rates lower than brick-and-mortar private schools. *See, e.g., Tuition and Fees, Legacy Online School.*<sup>8</sup>

In sum, the ESA Program provides equal educational opportunities to all special education students, not merely ones from wealthy families or urban areas, and it is just as effective in Montana as in five other states at providing quality education. Plaintiffs' contrary assumptions are no basis to deny equality of educational opportunities to special education students in Montana.

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<sup>3</sup> <http://www.emergemt.com/admissions-tuition>

<sup>4</sup> <http://bozemanfieldschool.org/prospective/#tuition>

<sup>5</sup> <http://www.fivefalls.org/tuition>

<sup>6</sup> <http://www.holyspiritgfschool.org/admissions/tuition-fees/>

<sup>7</sup> <https://www.montanahybridacademy.com/about-us>

<sup>8</sup> <https://legacyonlineschool.com/tuition-and-fees>

**b. Plaintiffs' grievances with the funding formula's per-student approach are no basis to enjoin the ESA Program**

Plaintiffs seem to argue that per-student funding is constitutional *except* when applied to the ESA Program. As discussed above, the core elements of the funding formula are entitlements determined by enrollment. Under the funding formula, a school that loses fifteen special education students loses the enrollment-based funding for those students, regardless whether they move away or use an ESA to attend a private school. *See id.* Indeed, it expressly provides that, where a student transfers public school districts without moving, the student's residential boundary school pays tuition to the public school the student attends. § 20-5-323, MCA (eff. July 1, 2024). The ESA Program functions the same way: where a student uses an ESA to attend a private school, the student's residential boundary school pays tuition to the receiving private school—yet also leaves some funds with the public school while reassigning all marginal costs of educating the student to the private school.

Plaintiffs complain that the funding formula will not pay their fixed costs when a student uses the ESA Program. But the funding formula does not adjust for fixed costs when students move away or transfer, either. *See id.* How the funding formula responds to student transfers is not a function of HB 393, and there is no constitutional requirement that the funding formula account for fixed costs, let alone a requirement that it account for fixed costs in the ESA context alone.

Plaintiffs also argue, based only on some calculations regarding Great Falls, that the ESA Program uses more than the per-student funding-formula allotment. Pls' Br. at 16; Pls' Ex. D at ¶¶ 56–62. While the allotment includes both state and local funds, Pls' Ex. D at ¶ 54, it is unclear whether Plaintiffs argue based on *total* allotment or based on the *state portion* of it.

Regardless, Plaintiffs' math is not correct and cannot provide a credible basis for their constitutional claim. Their expert Tammy Lacey makes multiple calculation errors. She omits the funding in line 12, 13, 17, and 18 of her own table when calculating total state funds. *See* Pls' Ex. D at Fig. 2, Line

21. She does not account for the decrease per student in the state ANB amount. *See* 20-9-306(13), MCA. She also calculates state funds based on an entitlement that she testifies includes local funds. *Compare* Pls' Ex. D at ¶ 54, *with id.* at Fig. 2. Thus, the alleged harm is based on faulty math, which is particularly important because, if a school district ceases *all* services to a student but reallocates only *some* of the funding formula amount for that student (including state and local funds), it may realize a marginal financial benefit.

Even more fundamental, basing ESA funding on the funding formula does not violate Article X section 1 of the Montana Constitution, which requires only equitable funding of the basic school system. The funding formula meets that obligation through a per-student method of funding, and nothing prohibits the legislature from using that same funding model for additional educational programs. *See* Mont. Const. art. X, § 1. Equitable funding under the constitution simply funds schools according to the number of students they serve. In short, the ESA Program is based on student enrollment because the entire funding formula is based on student enrollment. Plaintiffs offer no reason that per-student funding is constitutional in every other context except the ESA Program.

Plaintiffs also cite a statute prohibiting use of local funds to increase provided services. *See* § 1-2-113, MCA. That statute has no application here because (1) it targets mandates that school districts provide new educational content, which the ESA Program does not do, and (2) the ESA Program actually *decreases* public-school services by requiring participants to waive FAPE services.

Plaintiffs' argument about fractional ANB students suffers from the same problem. When a part-time homeschool student enrolls full time in a public school, that school receives funds only for a fractional student for the first year because the funding formula relies on *prior* year enrollment instead

of current year enrollment. *See* § 20-9-311, MCA.<sup>9</sup> The public school must educate the student full time despite fractional revenue.

The ESA Program merely takes the existing formula's assumptions and moves the costs of educating the student elsewhere. Plaintiffs do not challenge the funding formula's reliance on prior-year enrollment numbers, so they cannot succeed in challenging the ESA Program for simply adhering to the funding formula's method of funding enrollment. If the funding formula can constitutionally require a school to fund a full education for a fractional student, the location of that education is not constitutionally significant.

## **2. The funding mechanism for the ESA Program is constitutional**

Plaintiffs are unlikely to succeed in challenging the funding mechanism for the ESA Program. HB 393 creates a statutorily appropriated special needs equal opportunity education savings trust that OPI distributes solely under state contracts between OPI and families. Distributions from a trust are permissible statutory appropriations, and the per-student funding of the trust is otherwise consistent with appropriations for education. The Superintendent's discretion in approving expenses is limited by the list in the statute, as she can only approve items that are "similar in nature" to the express list in the statute. *Briese v. Montana Pub. Employees' Ret. Bd.*, 2012 MT 192, ¶ 26, 366 Mont. 148, 155–56, 285 P.3d 550, 556 (quoting *Mattson v. Montana Power Co.*, 2009 MT 286, ¶ 32, 352 Mont. 212, 226, 215 P.3d 675, 685). Finally, because a state contract with OPI is controlled by OPI, it meets the test for permissible programs with private beneficiaries.

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<sup>9</sup> The formula uses current year enrollment only for increases exceeding 10%. *See* § 20-9-166, MCA.



**a. Statutory appropriations are permissible in Montana, and Nevada law is inapposite**

Plaintiffs contend that the ESA Program violates the constitutional requirement that money paid from the treasury must be “upon an appropriation made by law.” Mont. Const. art. VIII, § 14. To fund the ESA Program, however, the legislature appropriates money via the funding formula *and* a properly enacted statutory appropriation for the ESA trust, so the expenditure of funds is valid.

The ESA Program’s funding structure involves three movements of funds, all of which are valid under the Appropriations Clause. *First*, the funding formula pays local districts. *Second*, local districts deposit funds into the trust. *Third*, the trust distributes funds to parents of qualified students. Plaintiffs do not challenge the first two moves. (And surely no one disputes the proper appropriation of money for the funding formula or argues that the local district payment is subject to the Appropriations Clause even though it is not paid out of the treasury.)

The only potential dispute is the third move. But for that, a Montana appropriations statute authorizes “spending by a state agency without the need for a biennial legislative appropriation or budget amendment.” § 17-7-502(1), MCA. That statute permits agencies to “pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana.” *Id.* 17-7-502(3). HB 393 *amended* the appropriation statute, adding the funding and administration of the Special Needs Equal Opportunity ESAs to statutory appropriations. *See* HB 393 §§ 9(b), 11. If the appropriations statute constitutionally authorizes payments on financial obligations, then as amended it constitutionally authorizes payments under the ESA Program. Plaintiffs can point to no constitutional distinction between authorization to pay existing obligations and authorization to pay a new program.

Plaintiffs' citation to Nevada precedent is inapposite because the Nevada ESA law had material differences and the Nevada Constitution has a provision that does not exist in the Montana Constitution.

*First*, the Nevada ESA program was not properly appropriated because it directed the state treasurer to deposit money into ESAs without specifying any source of funds. *See* Nev. Rev. Stat. § 353B.860 (2015);<sup>10</sup> *Schwartz v. Lopez*, 382 P.3d 886, 892 (Nev. 2016). In contrast, HB 393 uses funds already appropriated as part of the public-school funding formula, and it creates a statutorily appropriated trust. *See* HB 393 § 9. Plaintiffs do not explain how Montana's statutory appropriations process for trusts is unconstitutional in this context.

*Second*, Nevada could not fund its ESA program through its public-school funding formula because of a constitutional provision that does not exist in Montana. The Nevada Constitution specifies that "before any other appropriation is enacted to fund a portion of the state budget for the next ensuing biennium, the Legislature shall enact one or more appropriations to provide the money the Legislature deems to be sufficient, when combined with the local money reasonably available for this purpose, to fund the operation of the public schools in the State." Nev. Const. art. XI, § 6(2). It further provides that any appropriation in violation of that requirement is void. *Id.* § 6(5). Under that clause, the appropriation for the operation of public schools had to be prior to, and separate from, funds for any other purpose, including ESAs. *See Schwartz*, 382 P.3d at 901.

Montana has no similar clause in its Constitution. To the contrary, the Montana Constitution expressly provides that, in addition to funding public schools, "[t]he legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable." Mont.

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<sup>10</sup> The law was subsequently repealed, but the original text is available online. *See* 2015 Statutes of Nevada at 1827, <https://www.leg.state.nv.us/Statutes/78th2015/Stats201517.html>.

Const. art. X, § 1(3). The ESA Program is one such “desirable” program, and its interrelationship with the funding formula creates no constitutional problems.

**b. The Superintendent’s discretion is limited by canons governing statutory construction**

Plaintiffs’ argument that the ESA Program improperly delegates authority to the Superintendent’s unlimited discretion, relying on Mont. Const. art. V, § 1, omits relevant precedent imputing limits on the Superintendent’s discretion.

Since at least 1912, Montana courts read statutes using the canon *eiusdem generis*, which holds “that when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed.” *State v. Hren*, 2021 MT 264, ¶ 22, 406 Mont. 15, 24, 496 P.3d 949, 955 (quoting *Eiusdem generis*, Black’s Law Dictionary (11th ed. 2019)); *see Mattson*, 2009 MT 286, ¶ 34 n.7, 352 Mont. at 226 n.7, 215 P.3d at 686 n.7 (collecting cites). Under that canon, the general phrase at the end of a list includes only “items that are ‘similar in nature’ to those listed.” *Briese*, 2012 MT 192, ¶ 26, 366 Mont. at 155–56, 285 P.3d at 556 (quoting *Mattson*, 2009 MT 286, ¶ 32, 352 Mont. at 226, 215 P.3d at 685).

Here, the relevant section of HB 393 contains a list of eleven categories of permissible expenses to approve, including “qualified school tuition,” “curriculum,” “tutoring,” and “transportation allowed for another allowable educational service.” *See* HB 393 § 4(a)–(k). Then, it adds a provision at the end permitting “any other educational expense approved by the superintendent of public instruction.” *Id.* § 4(l). In the context of the list, the general language “other educational expense” embraces limits implied by the preceding list. *See Mattson*, 2009 MT 286, ¶ 34, 352 Mont. at 226–27, 215 P.3d at 686 (explaining that *eiusdem generis* applies if the general words are associated with specific words through terms like “otherwise”).

That is, the Superintendent may only approve “educational expenses” comparable to, or of a kind with, tuition, curriculum, tutoring, and transportation to such services. Accordingly, the Superintendent’s discretion is limited, which is why the Superintendent does not offer reimbursement for day care fees, home furnishings, playground equipment, or real property. *See* Ex. A at 8–9.

**c. A contract for expenditures under the control of OPI is a program under the “control of the State”**

Plaintiffs misunderstand the private beneficiary language in Article V, Section 11(5) of the Montana Constitution because they disregard the operative words at the end: “control of the state.” Mont. Const. art. V, § 11(5). The provision states in full, “No appropriation shall be made for religious, charitable, industrial, educational, or benevolent purposes to any private individual, private association, or private corporation *not under control of the state.*” *Id.* (emphasis added). The Montana Supreme Court has explained that private benefits are permissible so long as the *funds* are sufficiently under the control of the state. *See Grossman v. State, Dep’t of Nat. Res.*, 209 Mont. 427, 455–56, 682 P.2d 1319, 1334 (1984) (“As long as the provisions relating to the expenditures of the funds derived from the proceeds of the bonds are under the control of the state, the constitutional mandate is satisfied.”)

The state control test for Article V, Section 11(5) has two elements in case law. *First*, does the state or a private party decide whether to permit the expenditure? *See Douglas v. Judge*, 174 Mont. 32, 38, 568 P.2d 530, 533 (1977). If the state decides, then the program is constitutional. *See id.* *Second*, does the state or a private party bear the risk of cost overruns? *See White v. State*, 233 Mont. 81, 86, 759 P.2d 971, 974 (1988). If the private party bears the risk, the program is constitutional. *See id.*

Two Montana Supreme Court cases illustrate permissible state programs with private beneficiaries under this test. In one case, the court held that the Housing Board could make low interest mortgages available to private persons of low income. *See Huber v. Groff*, 171 Mont. 442, 445, 558 P.2d 1124, 1126 (1976). The court explained that the program was permissible because the funds were

under the control of the Housing Board, which was a public corporation. *See id.* In another case, the court held that the Board of Natural Resources and Conservation could make loans to farmers for renewable resources. *See Douglas*, 174 Mont. at 37, 568 P.2d at 533. Because “the loans may be made only upon the proper application and recommendation of the Department of Natural Resources and Conservation,” the “[t]otal control over the granting of these loans is vested in the Department of Natural Resources and Conservation.” *Id.*

The Montana Supreme Court has distinguished these cases only when the state bore the burden of cost overruns. In both *White* and *Hollow*, the Court held that a program was not under state control when the statute obligated the state to extend credit for private costs regardless of funds available. *See White*, 233 Mont. at 86–87, 759 P.2d at 974; *Hollow v. State*, 222 Mont. 478, 486, 723 P.2d 227, 232 (1986). The flaw in those programs was that they “pledge[d] the credit of the state” beyond existing funds to cover private costs. *See Hollow*, 222 Mont. at 486, 723 P.2d at 232.

The ESA Program has sufficient state control and is constitutional under this precedent. The decision whether to permit an expense from the ESA is committed to the Superintendent, not the private person. HB 393 describes the type of expenditures the Superintendent may approve, which is no different from the program in *Douglas*, which described approval for renewable resource loans. *See Douglas*, 174 Mont. at 37, 568 P.2d at 533.

In addition, HB 393 burdens the private party with cost overruns and pledges no state credit for them. As Plaintiffs themselves explain, the fixed amounts permitted for ESAs in HB 393 may not cover the costs for all students that might be eligible for ESAs. *See Pls’ Br.* at 15 & *Pls’ Ex. D* at ¶¶ 33–43 (explaining that the ESAs would not cover some private costs for an example student). HB 393 does not pledge the credit of the state to cover those marginal costs; it provides only a fixed sum.

Thus, HB 393 creates a program under the control of the state, with the state determining permissible costs and the private party bearing the risk of extra costs. Such control means that the program is permissible under Article V, Section 11(5).

### **3. A statewide funding formula does not violate local control**

Plaintiffs cannot succeed in arguing that the ESA Program violates the local districts constitutional provision, which states that that “[t]he supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.” Mont. Const. art. X, § 8. This provision has long permitted the public-school funding formula to tell local school districts how to assess and spend taxes for schools. *See* §§ 20-9-302–20-9-380, MCA. Plaintiffs offer no argument of how the ESA Program’s use of that same authority is suddenly unconstitutional.

For example, state law directs that “the county commissioners of each county shall levy an annual basic county tax of 33 mills,” *id.* § 20-9-331(1), and “22 mills,” *id.* § 20-9-333(1), for elementary and high school funding, respectively. Districts must remit surplus funds to the state general fund. *Id.* §§ 20-9-331(1)(b); 20-9-333(1)(b). The state also directs local revenue from several other sources toward education, such as fines for violations of law, oil and natural gas production taxes, and federal forest reserve funds. *Id.* §§ 20-9-331(2); 20-9-332(2); *see also id.* § 20-9-141.

Moreover, state law controls how local districts spend their education dollars. The trustees of a district must spend at least the amount of tax revenue that the state determines is a BASE budget. *Id.* § 20-9-308. They also must match every \$3 of certain state special education grants with their own local revenue. *Id.* § 20-9-321(6). If they want to adopt a budget higher than BASE amount, they must follow state-ordered processes for adopting such a budget. *Id.* § 20-9-353.

Because the state can order property tax levies and expenditures in the funding formula, it can exercise materially the same authority with the ESA Program.

**B. The balance of equities and the public interest disfavor an injunction that irreparably harms education opportunities for students with special needs**

The remaining preliminary injunction factors disfavor an injunction because of the harm to special education students, such as the Grilleys' sons. The right to equal educational opportunity is an individual right belonging to "each person of the state." Mont. Const. art. 10, § 1(1). That right encompasses all educational programs as the Legislature deems necessary, including the ESA Program. *Id.* § 1(3). Halting the ESA Program would deny those special education students their right to equal opportunity of education and deprive students like W.G. and E.G. of funding for needed services.

Equity also favors prioritizing the right of education of students who applied to the ESA Program over the budgets of Plaintiff MQEC's members. When conflicting constitutional rights are at issue, the Court must analyze the competing rights in the context of specific facts. *Havre Daily News, LLC v. City of Havre*, 2006 MT 215, ¶ 24, 333 Mont. 331, 341, 142 P.3d 864, 872. A facial injunction is inappropriate because it affects factual situations not before the Court. *See id.* Plaintiffs address only one district, Great Falls, and do not explain how one district can justify a statewide injunction that would harm students and families. This conflict matters because no neutral option exists here: a facial injunction would deny the right of education to students who have already applied to the ESA Program. Plaintiffs do not justify why W.G. and E.G. or other applicants deserve to be harmed through an injunction. Equity disfavors harming all those students without considering their specific situations.

The balance of equities also disfavors Plaintiff DRM, which seeks an injunction that might theoretically benefit *some* members at the expense of *other* members. DRM claims to represent a client that opposes the ESA Program. *See* Pls' Ex. D at ¶ 20. But its statutory mandate is to represent *all* students with disabilities, including W.G. and E.G. *See* 42 U.S.C. § 15043. Its members have applied for ESAs, indicating their current schools are not meeting their needs and they want to look elsewhere.

For example, W.G. and E.G. are not receiving special education services they need and are currently being denied an educational opportunity equal to other students. *See* Ex. B at ¶¶ 10–18.

The result is that if Plaintiff DRM achieves an injunction here, DRM’s members who need ESAs may claim the State and MQEC have denied them educational opportunity. Such potential for conflicting liability tips the balance against an injunction.

**C. Any injunction requires a bond.**

If the court grants a preliminary injunction, the court should require Plaintiffs to post a bond against the denial of equal educational opportunity to ESA applicants. The relevant ESA amounts are on OPI’s website, and as DRM has indicated, the cost of a private tutor to supplement missing services is \$3600 annually. *See* Pls’ Ex. D at ¶ 29. Accordingly, if any injunction is issued, Plaintiffs should post a bond to cover the ESA amount and cost of a private tutor for every student who applies this year, protecting against potential litigation claims that result from the injunction.

**IV. CONCLUSION**

For the reasons set forth above, Intervenor-Defendant Sue Vinton respectfully requests that this Court deny Plaintiffs’ Motion for Preliminary Injunction.

Respectfully submitted,

/s/ Thomas M. Fisher

Thomas M. Fisher\*

EdChoice Legal Advocates

/s/ Dale Schowengerdt

Dale Schowengerdt

Timothy Longfield

Landmark Law, PLLC

*Attorneys for Intervenor-Defendant*

\*Admitted *Pro Hac Vice*



**EXHIBIT**

**A**



**Montana**

**Education Savings Account**

**for Students with Special Needs**

**Parent Handbook**

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# Contact Info & Resources

## OPI Employees are here to help:

- Whitney Williams, ESA Program Budget Analyst: [opiesa@mt.gov](mailto:opiesa@mt.gov) or 406-444-3408
- Kiera Moog, Family Engagement Specialist: [kiera.moog@mt.gov](mailto:kiera.moog@mt.gov) or 406-594-7135
- John Gorton, Special Ed School Improvement Unit Manager: [john.gorton@mt.gov](mailto:john.gorton@mt.gov) or 406-459-4281
- Mandi Gibbs, Early Assistance Program Director: [mgibbs@mt.gov](mailto:mgibbs@mt.gov) or 406-444-5664

## Resources:

- [OPI's Education Savings Account Website](#)
- [Legislation HB 393](#)
- [Application](#)

# Education Savings Accounts for Students with Special Needs

The Education Savings Account is a reimbursement program for parents of a qualified student with a disability under the Individuals with Disabilities Education Act, 20. U.S.C 1400, et seq. The purpose of this program is to provide flexibility for parents in their child's education. Find more information on the Students with Special Needs Equal Opportunity Act [HERE](#).

## Education Savings Account Steering Committee

Thank you to the Education Savings Account Steering Committee for their input and assistance. The committee provided strategic advisory support to ensure the administrative process of the ESA program meets the needs of students and families enrolled in the program. Read more about the committee in the [Steering Committee Overview](#).

### Committee members:

- Alba Pimentel, Parent/Guardian from Billings
- Amanda Christofferson, Education Service Provider from Havre
- Brad Tschida, Educator from Missoula
- Chas Haggerty, Education Service Provider from Billings
- Clifton Grilley, Parent/Guardian from Power
- Jean Curtiss, Community Member from Missoula
- Jennifer Duray, Parent/Guardian from Billings
- Katherine Walter, Parent/Guardian from White Sulphur Springs
- Lisa Gunderson, Parent/Guardian from Choteau
- Louisa Libertelli Dunn, Community Member from Great Falls
- Rebecca Richards, Parent/Guardian from Great Falls
- Robin Urbaska, Parent/Guardian from Billings
- Sarah Whitney, Parent/Guardian from Great Falls
- Stephanie Keeth, Parent/Guardian from Billings
- Sue Furey, Educator from Missoula

# Eligibility

To be eligible to participate in the ESA program, a student must meet the following requirements as stated in law:

A "Qualified student" means a resident of the state who meets the requirements of (a) (b), and (c) below:

- (a) In the current school year:
  - (i) is identified as a "child with a disability" under the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.; **and**
  - (ii) is between the ages of 5 and 19 on September 10;
- (b) is not currently enrolled in a school operating for the purpose of providing educational services to youth in department of corrections commitment programs or in the Montana school for the deaf and blind; **and**
- (c)
  - (i) was counted during the previous school year for purposes of school district ANB funding;
  - (ii) was enrolled during the previous school year in a program listed in subsection (7)(b); **or**
  - (iii) is eligible to enter a kindergarten program pursuant to 20-7-117, MCA.

To determine student eligibility, the OPI will request an evaluation report, IEP, or private place-service plan during the program application process.

**The information provided to the Office of Public Instruction is intended only for the purposes of the Education Savings Account application. All information provided will be kept secure and confidential to protect privacy.**

## **Federal Individuals with Disabilities Education Act (IDEA):**

Under the federal law a child is eligible if their school performance is “adversely affected” by a disability in one of the 13 categories below.

Autism  
Deafness  
Other Health Impairment  
Developmental Delay  
Emotional Disturbance  
Specific Learning Disability  
Cognitive Delay  
Hearing Impairment  
Speech Language Impairment  
Deaf-Blindness  
Orthopedic Impairment  
Traumatic Brain Injury  
Visual Impairment

# How to Participate

A parent who chooses to participate in the program is required to notify to the Office of Public Instruction (OPI) by submitting an online application (paper copy available upon request). Once the student is determined eligible, the parent will sign a contract with OPI.

- The application includes:
  - Parent and student names, student birthdate, student state school ID number, resident district, district enrolled in prior year.
- An example of the application can be found in the Appendix and the fillable application will be available upon request.
- An example of the contract can be found in the Appendix.
- If a parent would like a paper application, please contact Whitney Williams at [opiesa@mt.gov](mailto:opiesa@mt.gov) or 406-444-3408.

## Timeline:

- Applications will be accepted beginning on May 1, 2024
- Application deadline is June 1, 2024
- OPI will notify parents within 30 days of the close of the application window and will provide a contract for the parent of an eligible student to sign.
- Upon receipt of the signed contract, parents can begin to submit receipts for allowable expenses incurred on/after July 1, 2024.
- By August 1, 2024, OPI will notify districts of families participating in the program.
- Contact/questions: Whitney Williams, [opiesa@mt.gov](mailto:opiesa@mt.gov).

## Reimbursement process:

### How to Submit Reimbursement Requests:

Upon receipt of the signed contract, parents may begin to submit receipts for allowable expenses incurred on/after July 1, 2024.

Parents will utilize an Electronic Management System to submit reimbursement requests for students.

To ensure timely processing, **all reimbursement requests must be completed and submitted to OPI by the 25<sup>th</sup> of the month for processing after the 10<sup>th</sup> of the following month.** This timeline allows OPI to review all receipts for accuracy or request additional information as necessary.

The first round of reimbursements submitted to OPI will be processed after September 10<sup>th</sup> and will occur on a monthly basis thereafter.

## Required Documentation for Reimbursement

When submitting a reimbursement request through the Electronic Management System, parents must upload all allowable receipts when submitting to the OPI. Parents will be required to submit a signed W-9 form with their contract. This W-9 form is for Montana state administrative purposes only and is not considered taxable income.





# Expenses

## Allowable Expenses:

Below are examples of generally allowable expenses for reimbursement under the ESA program. Expenses must only be for the benefit of the qualified student for whom the account was created. All expenses are subject to the Office of Public Instruction approval.

- Qualified school tuition, fees, textbooks, software, or other instructional materials or services.
- Electronic educational program or course or distance learning programs.
- Curriculum materials
- Tutoring
- Educational therapies including occupational, behavioral, physical, speech, and audiology therapies from a licensed or certified provider.
- State of nationally recognized assessment tests, advanced placement exams, entrance exams for eligible post-secondary institutions.
- Services provided by a public school in the state, including classes and extracurricular activities.
- Eligible postsecondary institution tuition, books, online course, or certain fees.
- No more than \$50 annually in consumable education supplies such as paper, pens, and markers.
- Transportation required for another allowable education service. Transportation costs will be reimbursed at the federal per diem rate.
- Fees for a cooperative educational program.

## Unallowable Expenses:

Expenses must be for educational purposes. The following types of expenses are generally unallowable for reimbursement under the ESA program. This list is not exhaustive. The Office of Public Instruction reserves the right under statute to deny unallowable expenses.

- Entertainment
- Primarily noneducational devices
- Televisions
- Telephones
- Video game consoles and accessories
- Home theater and audio equipment
- Amusement Park tickets
- Baby grand pianos
- BBQ Grills, Smokers & Fixed fire pits
- Bounce houses & Water slides
- Commercial grade items
- Day care fees
- Fuel (Outside the mileage reimbursement for transportation required for allowable education services)
- Garden sheds
- Gift cards of any kind
- Go-carts, Motorized scooters, kayaks
- Home furnishings & Fixtures
- Hotel, Lodging, Groceries

- Inappropriate explicit material
- Jewelry & Precious metals
- Land / Real property
- Large appliances
- Large chicken coops & Runs
- Large green houses
- Large outdoor shade structures
- Large trampolines
- Live animals
- Medical services & Supplies

- Medications, Vitamins & Supplements
- Pizza ovens
- Planes, Automobiles, Motorcycles & Boats
- Playground & Lawn equipment
- Restaurants
- Solar panels or Systems
- Swimming pools, Saunas & Ponds
- Trailers (of any kind)
- Weapons & Ammunition

### **Unallowable Therapies and Services:**

- Acupuncture
- Blood work (labs)
- Chiropractors
- Craniosacral Therapy
- Dental exams or Services
- Eye exams
- Health exams
- Hyperbaric Oxygen Therapy
- Massage Therapy
- Medical Equipment / Services
- Nutritionists
- Physical exams

### **Fraud:**

If an individual believes he/she has knowledge or evidence of fraudulent or inappropriate use of Education Savings Account funds they should contact the OPI legal team.

<https://opi.mt.gov/Leadership/Management-Operations/Legal-Division>

If an individual believes that the fraud is Medicaid related, please contact DPHHS.

- To report Medicaid Member/Client Fraud call DPHHS, Fraud Hotline: (800) 201-6308
- <https://dphhs.mt.gov/montanahealthcareprograms/fraudandabuse>

# Renewal & Withdrawal

## Withdrawal or Termination

Parents may re-enroll their student in public school at any time, which will effectively terminate the ESA.

The Office of Public Instruction will remove a student from eligibility under the following circumstances:

- If a student re-enrolls in a public school district. Under this circumstance, the parent should notify OPI of the new enrollment.
- If a parent fails to comply with the terms of the signed contract.
- If a parent knowingly misuses account funds.
- If a parent knowingly fails to comply with the term of the contract with the intent to defraud.

## Termination Process:

Under the above circumstances, the parent will be notified in writing that the student may be terminated from the program and no further reimbursements will be allowed after termination. The notification will include the reason for the termination.

The parent has 10 business days to respond. A parent may appeal OPI's decision by notifying the OPI in writing. A parent may also appeal OPI's decision under the Administrative Procedure Act.

If the parent refuses or fails to contact OPI within the 10-day period, then the student will be removed from the program.

Fraudulent use of account funds may result in the case being referred to the Attorney General for investigation.

# FAQ

1. What if I have two qualified students who want to participate from the same household?

A parent may have more than one student enrolled in an ESA program. The parent will need to submit an application for each student, and sign a contract for each individual student, as well as submit reimbursements for individual students. Funds cannot be shared between students.

2. What happens if a student is determined ineligible for the ESA program?

The legislation does not allow for an appeal process for eligibility. Parents may reapply during the next application window.

3. If we lived in Montana, and my student was not enrolled in a MT public school the prior year, what are my options for participating?

- a. The law requires that a student was counted during the previous school year for purposes of school district ANB funding;

- i. was enrolled during the previous school year in a program listed in subsection (7)(b);
- ii. did not reside in the state in the previous school year; or
- iii. is eligible to enter a kindergarten program pursuant to 20-7-117.

4. What happens if an expense is denied reimbursement?

If a parent believes that an expense was incorrectly determined ineligible, the parent may request a review by informing OPI in writing within 10 days of denial. The parent may provide additional documentation to show eligibility of the expense. OPI's decision will be final for reimbursement determinations.

5. My child doesn't have an IEP but has a designation/ diagnosis for a disability, are they eligible?

To determine eligibility, the OPI will review documentation that confirms a child's IDEA designation. This documentation is either an evaluation report, IEP, or private place service plan.

6. What is the status of my application?

The parent will receive an email confirming the receipt of the application. OPI will notify the parent of eligibility within 30 days of the application window closing date. If the parent does not receive notification of receipt of a determination within 30 days of the application window closing, please contact Whitney Williams at [opiesa@mt.gov](mailto:opiesa@mt.gov).

7. How will I be notified?

Parents will be notified via email for the receipt of application and confirmation or denial of eligibility. Parents will receive a contract to sign upon confirmation of eligibility. Postal mail notifications can be provided if requested by the parent. If a parent is determined ineligible, OPI will notice the parent in writing.

8. How much money is available per year for allowable reimbursement?

- a. The ESA student amount is outlined in 20-7-1703, MCA.
- b. OPI prepared a table with sample amounts depending on student resident district. It is included in the appendix. (Student amount available to parents is subject to an administrative fee per 20-7-1703, MCA. )

# Glossary & Appendix:

*Appendix documents are subject to change*

## Glossary:

### Qualified school:

- A nonpublic school serving any combination of grades kindergarten through 12.
- It must be in compliance with applicable local health and safety regulations.
- Hold an occupancy permit (if required by the municipality)
- Does not discriminate on the basis of race, creed, religion, sex, marital status, color, age, disability, or national origin.
- Requires that an employee who has unsupervised access to children be subject to a criminal background check.
- Meet requirements for Montana nonpublic schools.

**Eligible Postsecondary Institution:** An accredited postsecondary institution located in Montana.

**ANB (Average Number Belonging):** means a student count used for school funding purposes. It is the formula based on factors that include enrollment on two count dates, PIR days, and an average school year of 180 days.

**Parent:** means a biological parent, adoptive parent, legal guardian, custodian, or other person with legal authority to act on behalf of a qualified student, and whose parental rights have not been terminated.

**Resident school district:** means the school district in which a student resides.

Sample Application:



Education Savings  
Account Program Ap

Sample Contract:



Sample Contract  
MT OPI Spring 2024.

ESA Student Amounts per Resident District

**EXHIBIT**

**B**

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**MONTANA FIRST JUDICIAL DISTRICT COURT,  
LEWIS & CLARK COUNTY**

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The MONTANA QUALITY  
EDUCATION COALITION;  
DISABILITY RIGHTS MONTANA,  
  
*Plaintiffs,*  
  
vs.  
  
STATE OF MONTANA, *et al.*,  
  
*Defendants,*  
  
vs.  
  
SUE VINTON, in her official capacity as a  
member of the Montana House of  
Representatives and Sponsor of HB 393,  
  
*Intervenor-Defendant.*

---

Cause No. ADV 2024-44  
  
**Declaration of Clifton Grilley**

---



State of Montana                    )  
  ) ss.  
First Judicial District    )

I, Clifton Grilley, declare as follows:

1. My wife Angela and I are residents of Power, Montana. I am an adult over the age of 18 years, have personal knowledge as to all matters contained herein, and am fully competent to make this declaration.

2. We are the parents of three sons, two of whom have special needs. W.G. is an eleven-year-old boy and a sixth grader at Choteau Public Schools, and E.G. is a thirteen-year-old boy and seventh grader at Choteau Public Schools.

3. My wife and I have sole legal and physical custody of our children.

4. I served in the United States Navy for 22 years, retiring with the rank of E-7 (Chief Petty Officer) in May of 2022. I currently maintain inactive reserve status with the United States Navy.

5. After I retired from the U.S. Navy, we returned with our family to Montana, where I grew up. In Montana I farm and serve as a water district superintendent. Angela works as a homemaker.

6. Our son W.G. is a high functioning child with autism.

7. Our son E.G. is a child with dysgraphia.

8. While in public school in San Diego, W.G. had an Individualized Education Program (“IEP”) under the federal Individuals with Disabilities Education Act (IDEA).

9. W.G.’s IEP provided occupational therapy among other accommodations to improve his typing, handwriting, sensory sensitivity, and general regulation of behavior.

10. When we transferred W.G.’s IEP to Choteau Public Schools, school staff changed his IEP, including removing the occupational therapy services. They reduced his services without performing the needed evaluation.

11. While W.G. has been enrolled at Choteau Public Schools, a co-op system called Big Sky Cooperative—and not Choteau Public Schools—has provided W.G.’s IEP services. Accordingly, W.G. spends half of each school day in a regular classroom and half with para-professionals providing IEP services.

12. After revisiting W.G.’s IEP with school staff, we were able to add some occupational therapy, but the therapy offered is mainly provided by unqualified para-professionals at Big Sky Cooperative.

13. W.G. has regressed over the last three-and-a-half years with the diminished services provided. His agitations have returned including hitting himself, kicking, and exhibiting meltdowns.

14. No one at Choteau Public Schools or Big Sky Cooperative had the training necessary to address W.G.’s needs. At our insistence, they have made some attempts to address his needs, but the services are not as good as he needs.

15. E.G. received an IEP from Choteau Public Schools. While the school has classified him as having dysgraphia, I believe autism is a more accurate classification. The different classification may be contributing to the lack of services offered to him.

16. Under the diagnosis for dysgraphia, he is provided with additional time to take tests and afforded the use of a resource room which is a quiet area where he can ask questions to a classroom monitor.

17. The occupational therapist at Big Sky Cooperative determined that E.G. would not benefit from her services. However, it is our belief that the school could address his handwriting difficulties and other issues in occupational therapy.

18. We have been frustrated with the uphill battle with the local school district to obtain needed services for our sons. We believe that many existing services and interventions were achieved only through our advocacy and that the services are still lacking compared to what our sons need.

19. We also recognize that Choteau Public Schools has a higher-than-average number of special education students and that they are overwhelmed with the needs of their students.

20. We previously attempted to transfer our sons to a different public school that offers the services they need. We enrolled in the school and their current school sent the IEPs, but the day before school started, the school informed us that it was at capacity and could not accept our sons.

21. In May 2024 we applied to the Montana Office of Public Instruction for both W.G. and E.G. to participate in the Montana Special Needs Equal Opportunity Education Savings Account Program.

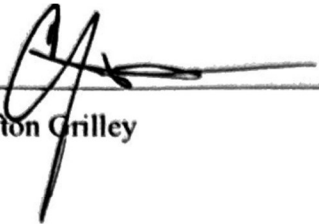
22. We intend to use the ESA funds available to us under HB 393 to educate our sons through a hybrid homeschool program where they will have better resources available to them. We see this as the best option due to the geographical location of our home and services available. We also intend to obtain needed services, such as occupational therapy or speech therapy, even if the ESA funds do not cover all costs. We intend to begin the hybrid homeschool program for both boys as soon as ESA funds are available in July 2024.

23. The ESA option allows us as parents to find the right programs for our special-needs children when our local public school does not have the time, space and expertise to provide the appropriate programs.

24. We generally believe in the ideals of public education and want our local school district to succeed in improving its services for special needs students. We hope the Montana special needs ESA program will not only help our sons acquire an appropriate education, but also will enable competition

that will prompt public schools to improve their offerings so that other families will have better choices for their children with special needs.

I declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
Clifton Grilley

17 MAY 2024  
Date

POWER, MT  
\_\_\_\_\_  
City and State

**EXHIBIT**

**C**



November 2019

# SPECIAL EDUCATION

## IDEA Dispute Resolution Activity in Selected States Varied Based on School Districts' Characteristics

## Why GAO Did This Study

Almost 7 million children aged 3 to 21 received special education services under Part B of the Individuals with Disabilities Education Act (IDEA) in school year 2016-17. IDEA contains options parents and school districts may use to address disputes that arise related to the education of a student with a disability. These options include mediation and due process complaints, which can be used by parents and school districts; and state complaints, which can be used by any organization or individual, including the child's parent, alleging an IDEA violation.

GAO was asked to review parents' use of IDEA dispute resolution options. This report examines (1) how often IDEA dispute resolution options are used, and whether use in selected states varies across school district-level socioeconomic or demographic characteristics; and (2) what challenges parents face in using IDEA dispute resolution options and how Education and selected states help facilitate parents' use of these options.

GAO reviewed publicly available data on dispute resolution at the state level and collected data at the school district level from five states—Massachusetts, Michigan, New Jersey, Ohio, and Pennsylvania—selected based on the number of disputes initiated and school district characteristics, among other factors. GAO also reviewed relevant federal laws, regulations, and Education and state documents; and interviewed Education officials, state officials, staff from organizations providing technical assistance in these five states, and other national advocacy organizations.

View [GAO-20-22](#). For more information, contact Jacqueline M. Nowicki at (617) 788-0580 or [nowickij@gao.gov](mailto:nowickij@gao.gov).

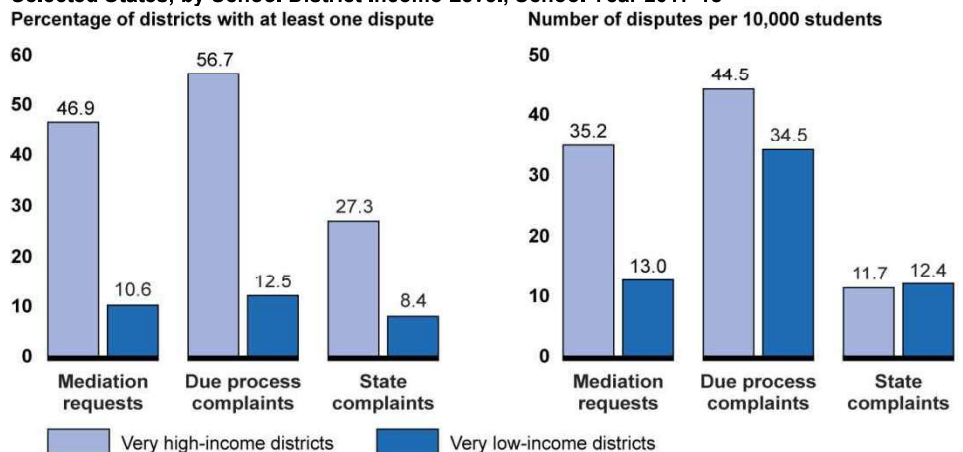
## SPECIAL EDUCATION

### IDEA Dispute Resolution Activity in Selected States Varied Based on School Districts' Characteristics

#### What GAO Found

In school year 2016-17, 35,142 special education disputes were filed nationwide, and in five selected states GAO reviewed, dispute resolution options varied across school districts with different socioeconomic and demographic characteristics. The Individuals with Disabilities Education Act (IDEA) provides parents several ways to file and resolve disputes about plans and services that school districts provide to students with disabilities. A greater proportion of very high-income school districts had dispute resolution activity as well as higher rates of dispute activity than very low-income districts in most of the five states GAO reviewed. GAO also found that in most of these states, a smaller proportion of predominately Black and/or Hispanic districts had dispute resolution activity compared to districts with fewer minority students; however, predominately Black and/or Hispanic districts generally had higher rates of such activity. Technical assistance providers and others told GAO that parents used dispute resolution most often for issues related to school decisions about evaluations, placement, services and supports, and discipline of their children.

**Percentage of School Districts with Dispute Resolution Activity and Rates of Activity in Five Selected States, by School District Income Level, School Year 2017-18**



Source: GAO analysis of dispute data provided by the five states and Department of Education's Common Core of Data. | GAO-20-22

Note: "Very high-income" districts are those in which 10 percent or fewer of students are eligible for free or reduced-price school lunch (FRPL). In "Very low-income" districts, 90 percent or more of students are eligible for FRPL.

Parents may face a variety of challenges in using IDEA dispute resolution, and the Department of Education and states provide several kinds of support that, in part, may address some of these challenges. Stakeholders cited challenges such as paying for attorneys and expert witnesses at a due process hearing, parents' reluctance to initiate disputes because they feel disadvantaged by the school district's knowledge and financial resources, and parents' lack of time off from work to attend due process hearings. Education and state agencies provide technical assistance to support parents' understanding of their rights under IDEA and to facilitate their use of dispute resolution options, for example, by providing informational documents and phone help lines to parents.

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## Abbreviations

CADRE	Center for Appropriate Dispute Resolution in Special Education
CCD	Common Core of Data
Education	U.S. Department of Education
FAPE	free appropriate public education
FRPL	free or reduced-price lunch
HHS	U.S. Department of Health and Human Services
IDEA	Individuals with Disabilities Education Act
IEE	Independent Educational Evaluation
IEP	individualized education program
LEA	local educational agency
OSEP	Office of Special Education Programs
P&A	Protection and Advocacy
PTI	Parent Training and Information Center
SEA	state educational agency
SY	school year

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November 4, 2019

The Honorable Patty Murray  
Ranking Member  
Committee on Health, Education, Labor, and Pensions  
United States Senate

The Honorable Robert C. "Bobby" Scott  
Chairman  
Committee on Education and Labor  
House of Representatives

During school year 2016-17, almost 7 million children aged 3 to 21 received special education services under Part B of the Individuals with Disabilities Education Act (IDEA), the primary federal special education law. Under IDEA, states must ensure that school districts make a free appropriate public education (FAPE) available to all children with disabilities who qualify for special education services. At times, parents and school districts disagree over whether the school district is meeting this obligation. IDEA requires states to make several dispute resolution options available through which districts and parents may resolve any disputes that arise about a child's eligibility for or receipt of special education services. These options include mediation, due process complaints, and state complaints filed with the state educational agency (SEA).<sup>1</sup>

There is a well-established link between racial and ethnic minorities and poverty, and studies have noted concerns about this segment of the population that falls at the intersection of poverty and minority status in schools and how this affects their access to quality education.<sup>2</sup> Our prior work has also discussed the association between poverty and race or ethnicity.<sup>3</sup> We have found that high schools with a relatively large

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<sup>1</sup>We use "parents" throughout this report to include parents and legal guardians. We refer to "local educational agencies" (LEA) as "school districts" in this report.

<sup>2</sup>For example, U.S. Department of Education, Office for Civil Rights, 2013-2014 Civil Rights Data Collection: A First Look: Key Data Highlights on Equity and Opportunity Gaps in Our Nation's Public Schools (Issued June 7, 2016; Revised October 28, 2016).

<sup>3</sup>GAO, *K-12 Education: Better Use of Information Could Help Agencies Identify Disparities and Address Racial Discrimination*, [GAO-16-345](#) (Washington, D.C.: Apr., 21, 2016).

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proportion of students in poverty also tend to have a higher proportion of minority students, students with disabilities, and English learners.<sup>4</sup> In part based on these issues, you asked us to review parents' use of IDEA dispute resolution options. This report examines (1) how often IDEA dispute resolution options are used, and whether use in selected states varies across school district-level socioeconomic or demographic characteristics; and (2) what challenges parents face in using IDEA dispute resolution options and how Education and selected states help facilitate parents' use of these options.

To address our first objective, we obtained publicly available dispute resolution data at the national and state levels. To address how often dispute resolution options are used, we reviewed data from the Center for Appropriate Dispute Resolution in Special Education (CADRE).<sup>5</sup> We found CADRE's data to be reliable for the purposes of this report. In addition, to understand the reasons parents filed disputes, we interviewed staff from Education's Parent Training and Information Centers (PTI), Protection and Advocacy (P&A) agency staff, and SEA officials in each of our five selected states.<sup>6</sup> We also interviewed various national advocacy organizations representing parents and school districts.

To determine whether the use of dispute resolution options varied across school districts with different characteristics, we analyzed data on the

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<sup>4</sup>GAO, *K-12 Education: Public High Schools with More Students in Poverty and Smaller Schools Provide Fewer Academic Offerings to Prepare for College*, GAO-19-8 (Washington, D.C.: Oct. 11, 2018).

<sup>5</sup>CADRE is funded by Education's Office of Special Education Programs (OSEP). CADRE produces reports on the use of dispute resolution options based on data collected by Education and produces informational materials. In addition, CADRE encourages the use of mediation, facilitation, and other collaborative processes as strategies for resolving disagreements between parents and schools about children's educational programs and support services. According to its website, CADRE also supports parents, educators, administrators, attorneys and advocates to benefit from the full continuum of dispute resolution options that can prevent and resolve conflict and ultimately lead to informed partnerships that focus on results for children and youth. For more information on CADRE, see: <https://www.cadeworks.org/>.

<sup>6</sup>PTIs are organizations funded by discretionary grants under Education under IDEA. They provide training and information to parents of children with disabilities. P&A agencies are funded by the U.S. Department of Health and Human Services and provide legal support to traditionally unserved or underserved populations to help them navigate the legal system to achieve resolution and to encourage systems change. P&As also provide information and referrals, as well as training and technical assistance to individuals with disabilities and their families, service providers, state legislators, and other policymakers.

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number and types of dispute resolution options used from selected states at the school district level. We collected dispute data at the school district-level from five states—Massachusetts, Michigan, New Jersey, Ohio, and Pennsylvania. We selected these states based on a combination of factors, including the level of dispute activity within the state (that is, the number of mediations, due process complaints, and state complaints), the number of school districts in the state with highly homogenous student populations (to allow us to compare across school districts with different student populations), and states' ability to provide reliable school district-level data on disputes. To compare these homogeneous student populations we focused our analyses on school district income and race/ethnicity. We describe districts as "very low-income" if at least 90 percent of students were eligible for free or reduced-price school lunch and as "very high-income" if no more than 10 percent of students were eligible for free or reduced-price school lunch.<sup>7</sup> Similarly, we describe districts as "very low-minority" if no more than 10 percent of students are Black and/or Hispanic, and as "very high-minority" if at least 90 percent of students are Black and/or Hispanic.

We then matched the districts' dispute data to school district level socioeconomic, race and ethnicity, and population density data from the Department of Education's (Education) Common Core of Data (CCD), and analyzed whether the frequency of use or the types of dispute resolution options used varied across school districts with different characteristics. We determined that the dispute data from states and the CCD data were reliable for the purposes of this report. The results from our five states are not generalizable to all states.

For both research objectives, we reviewed relevant federal laws and regulations and Education documents. We also reviewed PTI and other Education funded technical assistance provider documents.

We interviewed Education officials, PTI, P&A, and advocacy organization staff, and SEA officials from the five states from which we collected data

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<sup>7</sup>The Department of Agriculture's National School Lunch Program provides low-cost or free lunches to children in schools. Children are eligible for free lunches if their household income is below 130 percent of federal poverty guidelines or if they meet certain automatic eligibility criteria, such as eligibility for the Supplemental Nutrition Assistance Program or Temporary Assistance for Needy Families. Students are eligible for reduced-price lunches if their household income is between 130 percent and 185 percent of federal poverty guidelines. For example, the maximum household income for a family of four to qualify for free lunch benefits was \$31,980 in school year 2017-18.

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to understand the challenges parents face using dispute resolution options and what Education and the states do to help facilitate parents' use of these options. See appendix II for more information on our objectives, scope, and methodology.

We conducted this performance audit from June 2018 to November 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

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### Dispute Resolution Options

Congress appropriated \$12.8 billion in federal funds under Part B of IDEA for fiscal year 2019.<sup>8</sup> Under IDEA, Education awards funds to state educational agencies (SEA), which provide these funds to local educational agencies (LEA). SEAs also monitor Part B implementation by the school districts. As a condition of receiving IDEA funds, states are required to have policies and procedures in effect that are consistent with IDEA requirements, including requirements related to procedural safeguards and due process procedures. IDEA requires states to make dispute resolution options available,<sup>9</sup> which parents may use to resolve

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<sup>8</sup>IDEA contains four parts: (1) Part A outlines IDEA's general provisions, including the purpose of IDEA and the definitions used throughout the statute; (2) Part B authorizes formula grants to assist states in providing special education and related services in the least restrictive environment to children with disabilities ages 3 through 21; (3) Part C authorizes formula grants to assist states in implementing and maintaining a system to provide early intervention services for infants and toddlers with disabilities birth through age 2 and their families; and, (4) Part D includes provisions related to, and funding for, discretionary grants to support state personnel development, technical assistance and dissemination, technology, and parent-training and information centers. The focus of this report is on students served by Part B of IDEA.

<sup>9</sup>We use the term "options" in this report to indicate the various dispute resolution procedures, i.e., mediation, due process complaints, and state complaints, which are available to parents under IDEA and its implementing regulations. The use of this term is not, however, meant to imply that each option is available to all individuals. For instance, a concerned citizen with no relationship to a child with disabilities may file a state complaint, but would not be able to file a due process complaint, because under IDEA only parents and LEAs may do so.

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disagreements regarding a school district's decisions related to the identification, evaluation, and educational placement of their child with a disability, or the provision of a free appropriate public education (FAPE) to the child.<sup>10</sup> These options include:

- **Mediation.**<sup>11</sup> Mediation is a confidential, voluntary process in which a trained, qualified, and impartial mediator, paid for by the SEA, works with the parents and school district to try to reach an agreement about the IDEA-related issue in dispute. Mediations can be initiated by either the parent or the school district to resolve any dispute related to IDEA, including matters that arise before filing of a due process complaint. If agreement is reached through the mediation process, the parties must execute a legally binding agreement.
- **Due process complaint.**<sup>12</sup> A due process complaint is a request for a formal due process hearing. A due process hearing is conducted before a qualified and impartial hearing officer and involves presentation of evidence, sworn testimony, and cross-examination. It often involves attorneys and expert witnesses, and thus may be more costly than other dispute resolution options for all parties involved. Because a due process hearing is a formal proceeding, it may be more adversarial in nature than other dispute resolution options. Either party can appeal a hearing officer's decision by bringing a civil action in any state court of competent jurisdiction or in a U.S. district court.<sup>13</sup> Not all due process complaints result in a due process hearing. For example, some due process complaints may be withdrawn by the parents or not meet the requirements for a filing a complaint under IDEA regulations. In addition, in some cases, the parents and school district may resolve the complaint through alternative means, such as mediation.

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<sup>10</sup>There are a total of 60 Part B grant recipients. Grant recipients include the 50 states, as well as American Samoa, the Bureau of Indian Education, the District of Columbia, the Federated States of Micronesia, Guam, the Northern Mariana Islands, Puerto Rico, the Republic of the Marshall Islands, the Republic of Palau, and the Virgin Islands. For purposes of this report all recipients are referred to as states. IDEA's mediation, due process, and state complaint procedures are available to parents under both Part B and Part C of IDEA.

<sup>11</sup>See 20 U.S.C. § 1415(e).

<sup>12</sup>See 20 U.S.C. § 1415(f).

<sup>13</sup>In some states, an appeal must be brought before the SEA before appealing to a state or federal court.



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The 2004 IDEA reauthorization added the requirement for a resolution meeting to the due process complaint process to try to resolve the issues in a parent's due process complaint collaboratively before the parties may proceed to the formal and often costly due process complaint hearing procedure. A resolution meeting must take place within 15 days of a parent filing a due process complaint and before any due process hearing involving a hearing officer, unless both parties agree in writing to waive the meeting or agree to use the IDEA's mediation process.<sup>14</sup> Settlement agreements reached through resolution meetings must be in writing and are legally binding.

- **State complaint.**<sup>15</sup> An individual or an organization, including one from another state, may file a complaint with the SEA alleging that a public agency has violated a requirement of Part B of IDEA or its implementing regulations.<sup>16</sup> Once the SEA receives such a complaint, it must engage in specified procedures to resolve the complaint, including conducting an on-site investigation, if the SEA determines that it is necessary.<sup>17</sup> Generally, the SEA must issue a written decision within 60 calendar days unless exceptional circumstances warrant an extension or the parties agree to extend the timeline to engage in an alternative dispute resolution procedure. The SEA's written decision must include findings of fact and conclusions and the reasons for the SEA's final decision. The state's complaint procedures must include steps for effective implementation of the SEA's final decision, including any corrective actions to achieve compliance, if needed.

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<sup>14</sup>20 U.S.C. § 1415(f)(1)(B)(i).

<sup>15</sup>See 34 C.F.R. §§ 300.151-300.153.

<sup>16</sup>34 C.F.R. §§ 300.151(a)(1), 300.153(b)(1). State complaints can be filed by organizations or individuals who are not the child's parents, including an organization or individual from another state, and can also be filed on behalf of a group of children to address systemic noncompliance by a school district.

<sup>17</sup>34 C.F.R. § 300.152.

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IDEA also requires school districts to provide parents with a procedural safeguards notice, which explains all of the procedural safeguards available to them under IDEA.<sup>18</sup>

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## Education and State Responsibilities under IDEA

Education's Office of Special Education Programs (OSEP) administers IDEA, and is responsible for data collection and monitoring, among other responsibilities.

- Data collection. Under IDEA, SEAs are required to annually report to Education data on the use of mediation and due process procedures.<sup>19</sup> Specifically, SEAs report data to OSEP, including the total number of:
  - mediation requests received,
  - mediations held,
  - mediation agreements reached (related to a due process complaint or not related to a due process complaint),
  - due process complaints filed,
  - resolution meetings held,
  - resolution meetings that result in a written settlement agreement, and
  - due process hearings conducted.

Each state also reports data on the timely resolution of state complaints and timely adjudication of due process complaints. According to

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<sup>18</sup>20 U.S.C. § 1415(d). Among other procedural safeguards, IDEA requires that parents have the opportunity to examine all records related to their child and participate in meetings related to the identification, evaluation, and educational placement of their child, and the provision of a free appropriate public education to their child. Under IDEA parents also have the right to an independent educational evaluation of their child at public expense each time the school district conducts an evaluation of their child with which they disagree. In addition, IDEA requires school districts to provide written prior notice to parents within a reasonable time before the district proposes to initiate or change, or refuses to initiate or change upon a parent's request, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child. 20 U.S.C. § 1415(b)(1),(3). Education provides a model notice form that states may use.

<sup>19</sup>20 U.S.C. § 1418(a)(1)(F), (G), (H). IDEA specifically requires SEAs to report data on mediations and due process hearings. Education also requires SEAs to report data on the number of state complaints filed.

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Education officials, all dispute resolution data are aggregated at the state level and Education does not collect dispute resolution data at the school or district level. According to Education officials, Education's collection of state-level dispute resolution data is consistent with the manner in which grant awards are made for Part B of IDEA. Because states are the grantees, it is the states that report data to Education.

- Education's monitoring. IDEA requires Education to monitor SEAs to ensure they meet program requirements.<sup>20</sup> According to Education officials, Education uses multiple methods to monitor states' implementation of IDEA, including reviewing data submitted by the states in their state performance plans and annual performance reports, conducting on-site monitoring visits to some states each year, and following up on concerns raised via customer calls and letters. Based on its monitoring and review of state dispute resolution data, among other information, Education is required under IDEA to annually determine whether each state meets the IDEA requirements or needs assistance or intervention.<sup>21</sup>
- Education's technical assistance. In addition to providing technical assistance to states, Education provides technical assistance to parents and the general public through its Parent Training and Information Centers (PTI) and CADRE. PTIs are designed to help parents of children with disabilities participate effectively in their children's education. Education's technical assistance covers a range of topics, including IDEA dispute resolution options.
- States' responsibilities. While Education monitors states, IDEA requires states to monitor and conduct enforcement activities in their school districts.<sup>22</sup> States are also responsible for investigating state complaints and producing reports with the results of their investigation, as well as providing mediators as needed to mediate disputes between school districts and parents. States may also provide other support and direct services such as training and technical assistance among other activities.

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<sup>20</sup>20 U.S.C. § 1416(a)(1).

<sup>21</sup>20 U.S.C. § 1416(d).

<sup>22</sup>20 U.S.C. § 1416(a)(1)(C).

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## Dispute Resolution Options Were Used About 35,000 Times Nationally and Use Varied Across School Districts with Different Characteristics

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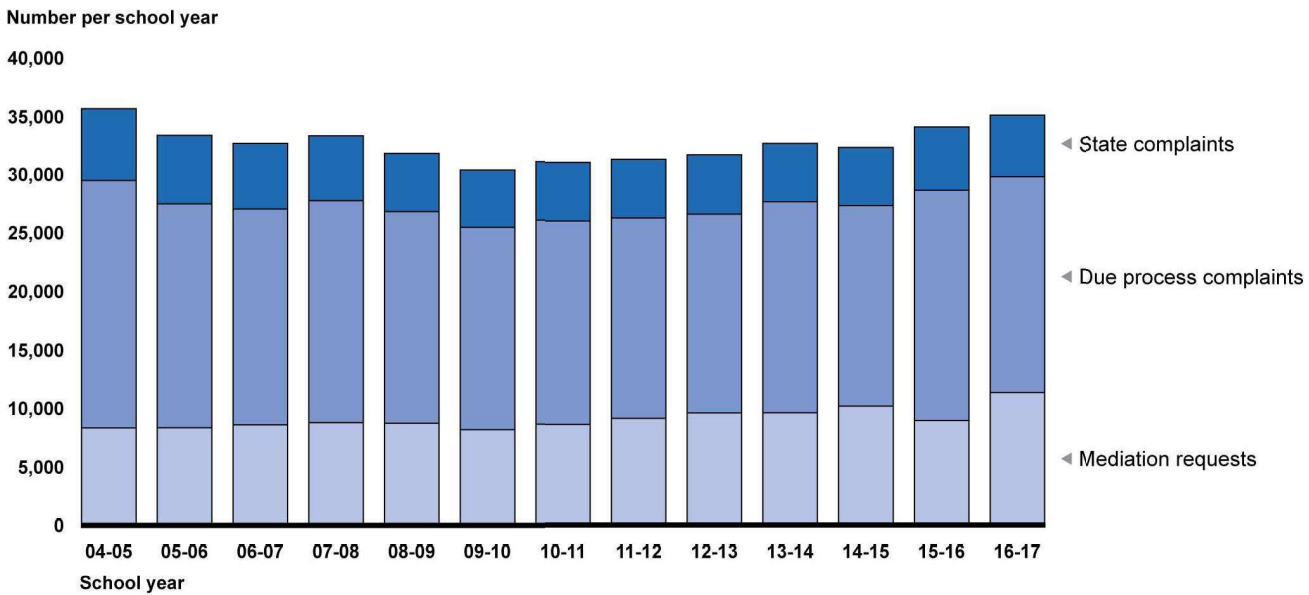
Due Process Complaints Were the Most Commonly Used Dispute Resolution Option, and Disputes Were Most Frequently Related to Evaluations, Placement, Services and Supports, and Discipline

For the 6.8 million students from ages 3 to 21 who were served under IDEA Part B in school year 2016-17, there were a total of 35,142 mediation requests, due process complaints filed, and state complaints filed nationwide. Over about the last decade, this total decreased by about 2 percent, according to data from the Center for Appropriate Dispute Resolution in Special Education (CADRE). In addition, the mix of dispute resolution options used has changed. Since school year 2004-05, the number of due process complaints declined, while the number of mediation requests increased.<sup>23</sup> However, due process complaints still made up more than half the total number of dispute resolution options used in school year 2016-17 (see fig. 1).

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<sup>23</sup>We used school year 2004-05 because it was the earliest year available and school year 2016-17 because it was the most recent year available in CADRE data. The number of due process complaints, mediation requests, and state complaints has fluctuated somewhat from school year 2004-05 to school year 2016-17.

**Figure 1: Use of Dispute Resolution Options, School Years 2004-05 to 2016-17**



Source: Individuals with Disabilities Education Act 618 data cited by the Center for Appropriate Dispute Resolution in Special Education. | GAO-20-22

Note: Because parents may use more than one dispute resolution option to try to resolve a single dispute, there may be overlap in the numbers of each option shown in this figure. Also, a single family may initiate more than one dispute during the course of a year, therefore, the number of disputes may not equal the number of families filing a dispute.

- **Due process complaints.** While the overall number of due process complaints has declined since school year 2004-05 (from 21,118 to 18,490) the percentage of fully adjudicated due process hearings (i.e., due process complaints that went all the way through the hearing process and a hearing officer rendered a decision) has declined more sharply.<sup>24</sup> In school year 2004-05, about 35 percent of all due process complaints were fully adjudicated; in school year 2016-17, 11 percent were fully adjudicated.<sup>25</sup>

<sup>24</sup>As a rate, this represents a decline from 31 to 27.2 due process complaints per 10,000 students served under IDEA. Due process complaints may be filed in one year and adjudicated in a subsequent year. According to Education officials, the number and percentage of fully adjudicated due process complaints were as of June 30 for each year, the end of the reporting period.

<sup>25</sup>GAO previously reported that the sharp decline in due process hearings was driven largely by a decline in hearings in three locations with relatively high rates of due process hearings: the District of Columbia, New York, and Puerto Rico. GAO, *Special Education: Improved Performance Measures Could Enhance Oversight of Dispute Resolution*, GAO-14-390 (Washington, D.C.: Aug. 25, 2014).

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Due process complaints may not be fully adjudicated for several reasons. For example, complaints may be withdrawn by the filer, dismissed by the hearing officer, or resolved through other means, such as a resolution meeting or an agreement to try to resolve the dispute through mediation. CADRE's data show that resolution meetings were held less than half the time due process complaints were filed in 6 of the 12 school years between 2005-06, the first year resolution meetings were used, and 2016-17.<sup>26</sup> When resolution meetings did occur, they resulted in resolution agreements less than 30 percent of the time in 10 of these 12 years.

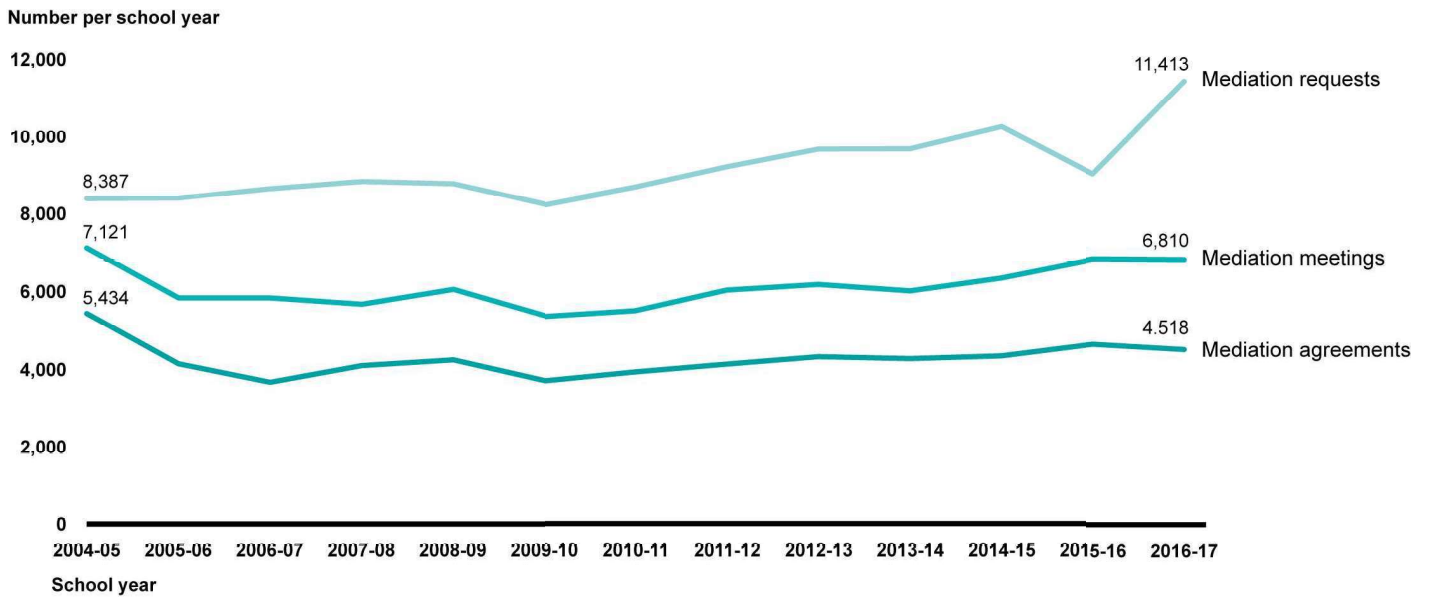
- Mediation. According to CADRE, mediation is viewed as less adversarial than due process hearings, in part, because parties work together to try to reach an agreement. CADRE also reports that mediation is generally believed to be less costly than due process hearings because it typically requires less time and may require less involvement from attorneys and other experts. The number of mediation requests increased from school year 2004-05 to 2016-17 as Education and the states encouraged dispute resolution options that stakeholders told us were less costly and confrontational. In school year 2016-17, there were 11,413 mediations requested, the largest number of requests from school year 2004-05 to 2016-17.<sup>27</sup> In addition, mediation requests resulted in mediation meetings at least 60 percent of the time in each of these school years. Those meetings resulted in agreements at least two-thirds of the time in every year but one (see fig. 2). Furthermore, more than half of the mediation meetings held stemmed from due process complaints that had been filed, which suggests that parties involved in the complaints may have been using mediation meetings to try to avoid a due process hearing.

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<sup>26</sup>A resolution meeting would not take place if both parties agree to waive the meeting or agree to try to resolve the dispute through mediation.

<sup>27</sup>As a rate, this represents 16.8 mediation requests per 10,000 students served under IDEA, up from 12.3 in SY 2004-05.

**Figure 2: Number of Mediations Requested, Mediation Meetings, and Mediation Agreements, School Year 2004-05 to 2016-17**



Source: Individuals with Disabilities Education Act 618 data cited by the Center for Appropriate Dispute Resolution in Special Education. | GAO-20-22

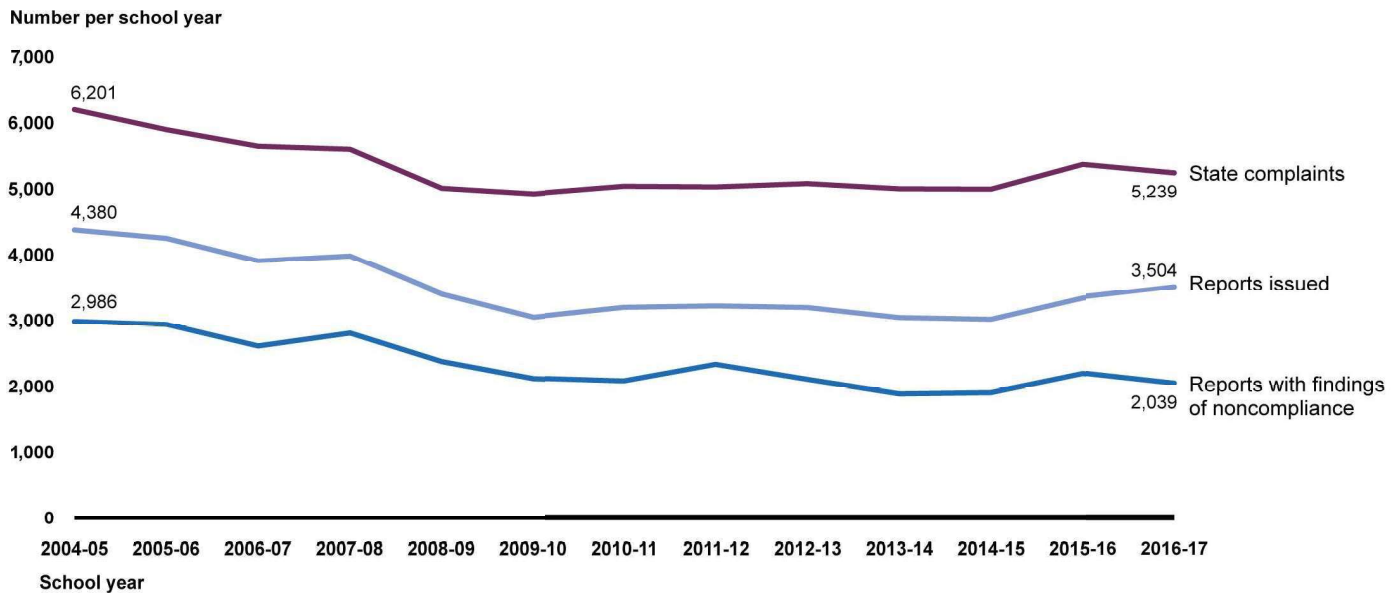
Note: A request for mediation may be withdrawn by the requester prior to the mediation meeting when, for example, the parties have reached an agreement prior to the formal meeting or one party refuses the mediation.

- **State complaints.** State complaints were the least commonly used dispute resolution option. There were 5,239 state complaints filed in school year 2016-17, down from 6,201 in school year 2004-05 (see fig. 3).<sup>28</sup> On average, from school year 2004-05 to 2016-17, approximately two-thirds of complaints filed resulted in the state issuing a report, and about two-thirds of those reports included findings of noncompliance with some aspect of IDEA on the part of the school district.<sup>29</sup> According to state officials we spoke with, a state that receives a complaint will issue a report unless the filer withdraws the complaint, the state determines that the complaint is not about an issue covered under IDEA, or the complaint is resolved through other means.

<sup>28</sup>As a rate, this represents 7.7 state complaints per 10,000 students served under IDEA, down from 9.1 in school year 2004-05.

<sup>29</sup>SEAs also issue a report outlining the complaint and the SEA's findings when it finds that the school district is in compliance with IDEA requirements.

**Figure 3: Number of State Complaints, State Reports Issued, and State Reports with Findings, School Years 2004-05 to 2016-17**



Source: Individuals with Disabilities Education Act 618 data cited by the Center for Appropriate Dispute Resolution in Special Education. | GAO-20-22

Note: In some cases, a state complaint does not result in a report. For example, the complaint may be withdrawn or the state may determine the issues raised in the complaint are not related to the Individuals with Disabilities Education Act (IDEA). Issued reports will only have findings of noncompliance if the state educational agency determines after its investigation that the school district is not in compliance with one or more IDEA requirements.

The rate at which all three dispute resolution options were used varied widely across states. Some states and territories had much higher rates of dispute resolution activity than others. In school year 2016-17, due process complaints were generally used at a higher rate nationwide than mediation requests and state complaints, according to CADRE data (27.2, 16.8, and 7.7 per 10,000 IDEA students served, respectively). However, the rate of due process complaints filed in states ranged from a high of 252.1 in the District of Columbia to a low of fewer than 1 per 10,000 IDEA students served in Nebraska, respectively.<sup>30</sup> Similarly, some states had much higher rates of mediation requests and state complaints filed than others.

<sup>30</sup>Two territories (American Samoa and the Northern Mariana Islands) reported no dispute resolution activity, including due process complaints, in school year 2016-17.



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Within states, the mix of dispute resolution options used also varied. In some states, due process complaints were used much more frequently than mediation requests and state complaints, while other states saw mediation requests or state complaints used most frequently.

According to state officials, Parent Training and Information Center (PTI) staff, Protection and Advocacy (P&A) agency staff, and other stakeholders we interviewed, parents most commonly engage in IDEA dispute resolution because of concerns they have about the evaluations, placement, services and supports, and discipline related to the educational services their child receives. For example, a dispute related to placement may arise if a parent wants their child to spend more time in a regular education classroom as opposed to a self-contained classroom with only special education students. A parent might also object if a school district wants to place their child in an alternative school. On the other hand, some parents may seek an out-of-district placement for their child if they feel that more services will be available. A dispute over services may center on a parent asking for services for their child that the school district refuses to provide, or a parent believing that the school district is not providing services that are included in their child's individualized education program. Research we reviewed generally supported what stakeholders told us were the main causes of disputes, although discipline issues were not reported as frequently.<sup>31</sup>

Other issues that led to disputes less frequently, according to those we spoke with, included, lack of progress on the part of the student, parental

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<sup>31</sup>For example, Schanding, et. al. found individualized education programs (IEP), evaluation, placement, and identification to be the top four issues identified in due process hearings (Schanding, T., et. al., *Analysis of Special Education Due Process Hearings in Texas*. Sage Open. April-June 2017: 1-6.). Blackwell and Blackwell reported development and content of IEPs, student placement, procedural safeguards, and evaluations were the most common issues addressed in due process hearings (Blackwell, W. and Blackwell, V., *A Longitudinal Study of Special Education Due Process Hearings in Massachusetts: Issues, Representation, and Student Characteristics*. Sage Open. January-March 2015: 1-11). Cope-Kasten found IEP, service provision, evaluations, and placement to be the top issues addressed in due process hearings (Cope-Kasten, C., *Bidding (Fair) Well to Due Process: The Need for a Fairer Final Stage in Special Education Dispute Resolution*. *Journal of Law & Education*, 2013, 423, 501-540). And Mueller and Carranza found placement, IEP and program appropriateness, assessment and evaluation, and eligibility, followed by behavior to be the top issues (Mueller, T.G. and Carranza, F., *An Examination of Special Education Due Process Hearings*, *Journal of Disability Policy Studies*, 22(3) 131-139).

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participation in decision making, transition services, and other accommodations for students.<sup>32</sup>

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### Dispute Resolution Activity Varied Based on the Income Level and Racial/Ethnic Characteristics of Districts in Selected States

When we analyzed five states' dispute resolution data we found that dispute resolution activity varied based on districts' income levels.<sup>33</sup> In general, a greater proportion of very high-income districts had dispute resolution activity, and these districts also had higher rates of dispute resolution activity than very low-income districts (see fig. 4.)<sup>34</sup>

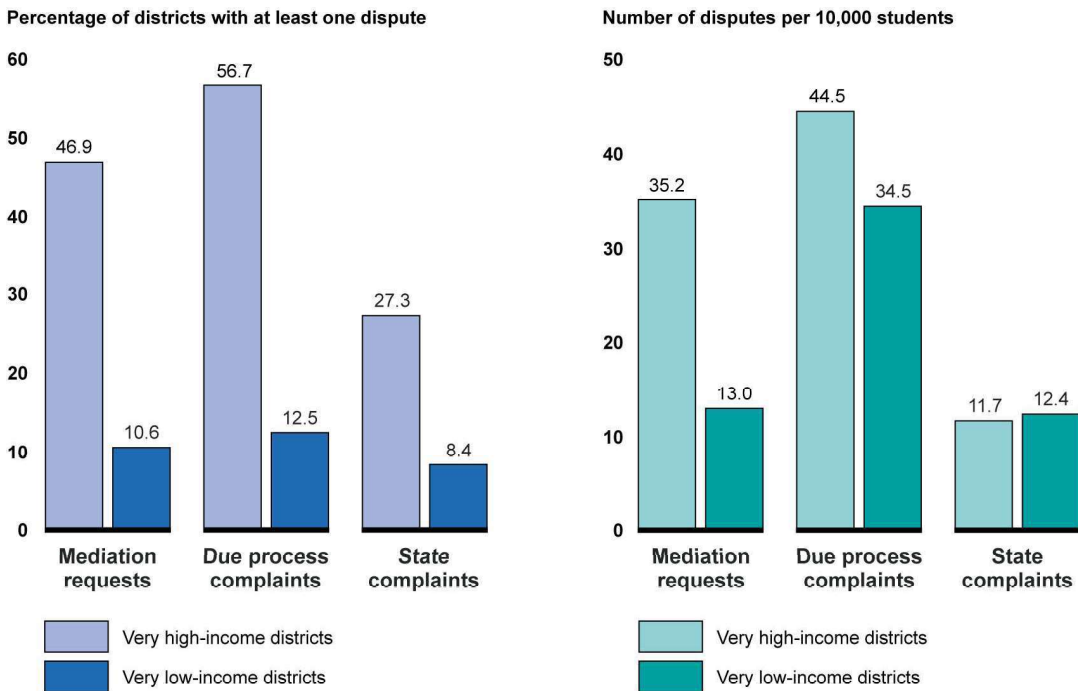
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<sup>32</sup>Education officials told us that Education does not collect data on the causes of disputes or data related to hearing officer decisions in due process cases. However, Education officials told us that Education does collect data related to the outcome of expedited due process decisions (i.e., whether the hearing officer ordered a change in the student's placement). Expedited due process hearings involve complaints related to disciplinary matters.

<sup>33</sup>States provided data on the number of mediation requests, due process complaints, and state complaints by school district. We refer to districts in which 10 percent or fewer of the students were eligible for free or reduced-price school lunch as "very high-income" and districts in which 90 percent or more of the students were eligible for free or reduced-price school lunch as "very low-income." We refer to districts in which 10 percent or fewer of the students are Black and/or Hispanic as "very low-minority" and districts in which 90 percent or more of the students are Black and/or Hispanic as "very high-minority." See appendix III for a state-by-state analysis. We also conducted our analyses at the low-income and high-minority levels (75 to 100 percent) and the high-income and low-minority levels (0 to 25 percent). The results of these analyses show patterns similar to those at the 10/90 levels and are also available in appendix III.

<sup>34</sup>Education collects dispute resolution data at the state level. However, it does not collect data at the school district level and so cannot determine where in a state disputes are most frequently arising.

**Figure 4: Percentage of Districts across Five States with Dispute Resolution Activity and Rate of Dispute Resolution Activity, by District Income Level, School Year 2017-18**



Source: GAO analysis of dispute data provided by Massachusetts, Michigan, New Jersey, Ohio, Pennsylvania, and the Department of Education's Common Core of Data. | GAO-20-22

Notes: We refer to districts in which 10 percent or less of the students were eligible for free or reduced-price school lunch as "very high-income" and districts in which 90 percent or more of the students were eligible for free or reduced-price school lunch as "very low-income." Dispute resolution data are from SY 2017-18; Common Core of Data are from SY 2016-17. In cases in which a state did not report data on free or reduced-price school lunch for SY 2016-17, we used data from a previous year.

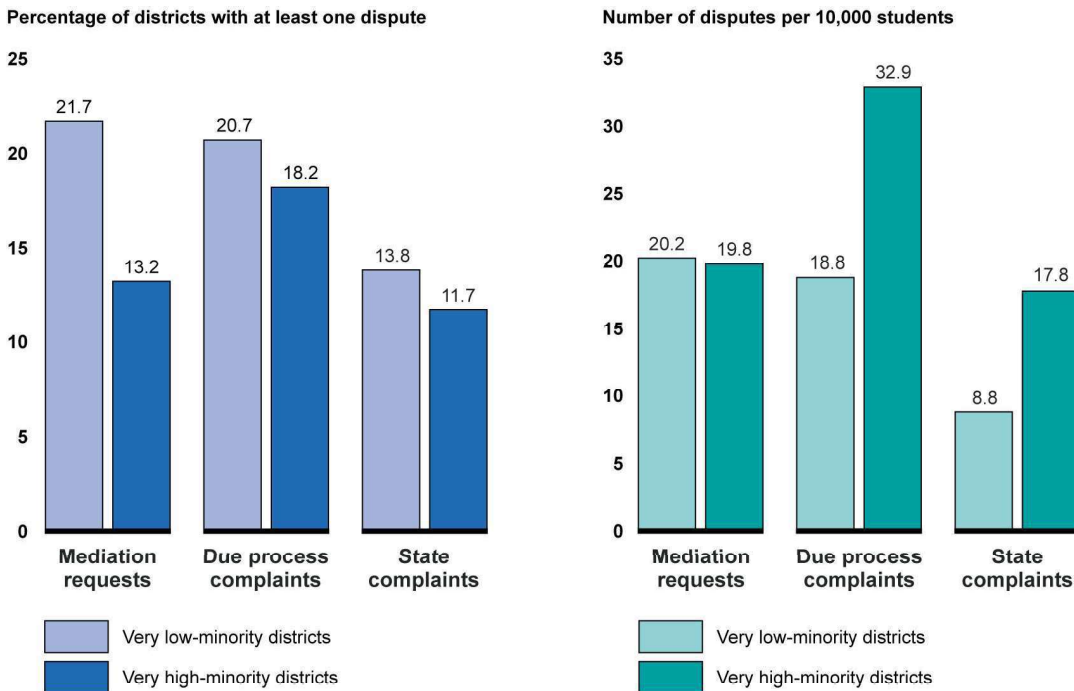
This pattern was mostly consistent for all three types of dispute resolution options. Specifically,

- **Mediation requests and due process complaints:** In all five states, a greater proportion of very high-income districts tended to have mediation or due process activity than very low-income districts. Similarly, very high-income districts generally had a higher rate of such activity than very low-income districts. (See app. III for data on the individual states.)
- **State complaints:** A greater proportion of very high-income districts had state complaint activity in four of the five states. In addition, very high-income districts also had a higher rate of state complaints

compared to very low-income districts in three of the five states.<sup>35</sup> (See app. III for data on the individual states.)

When we looked at districts' racial and/or ethnic characteristics in our five states, we found that a smaller proportion of very high-minority districts had dispute resolution activity than very low-minority districts, but generally had higher rates of activity (see fig. 5, and app. III for data by state).<sup>36</sup>

**Figure 5: Percentage of Districts Across Five States with Dispute Resolution Activity and Rate of Dispute Resolution Activity, by District Racial and/or Ethnic Characteristics, School Year 2017-18**



Source: GAO analysis of dispute data provided by Massachusetts, Michigan, New Jersey, Ohio, Pennsylvania, and the Department of Education's Common Core of Data. | GAO-20-22

<sup>35</sup>Although very high-income districts had a higher rate of state complaints in three of the five states, in one state, the rate of state complaints was much higher in very low-income districts. This resulted in a slightly higher overall rate of state complaints in very low-income states districts when data from all five states were combined.

<sup>36</sup>Results of our percentage and rate analyses also varied between urban, suburban, and rural districts; however, in most states a higher percentage of suburban districts had at least one mediation request, due process complaint, and state complaint, than urban or rural districts (see app. III for more information on urban, suburban, and rural districts).

Notes: We refer to districts in which 10 percent or less of the students were Black and/or Hispanic as “very low-minority” and districts in which 90 percent or more of the students were Black and/or Hispanic as “very high-minority.” Dispute resolution data are from SY 2017-18; Common Core of Data are from SY 2016-17.

We also analyzed the results of initiated disputes by districts’ income level and racial and/or ethnic characteristics—meaning the percentage of disputes that resulted in a meeting or an agreement for mediation requests, adjudication for due process complaints, and a report with findings for state complaints. As shown in tables 1-3, there was no consistent pattern in the results of dispute activity for all three types of disputes across districts with different income levels and racial/ethnic characteristics.

**Table 1: Number of Mediation Requests, Percent of Requests Resulting in Meeting, and Percent of Meetings Resulting in an Agreement in Five States, School Year 2017-18**

	Number of mediation requests	Percent of requests that resulted in a meeting	Percent of meetings that resulted in an agreements
<b>By income</b>			
Very high-income districts	392	61	71
Very low-income districts	121	66	78
<b>By race or ethnicity</b>			
Very low-minority districts	898	66	77
Very high-minority districts	161	64	81

Source: GAO analysis of data from Massachusetts, Michigan, New Jersey, Ohio, Pennsylvania, and the Department of Education’s Common Core of Data. | GAO-20-22

Notes: We refer to districts in which 10 percent or less of the students were eligible for free or reduced-price school lunch as “very high-income” and districts in which 90 percent or more of the students were eligible for free or reduced-price school lunch as “very low-income.” We refer to districts in which 10 percent or less of the students were Black and/or Hispanic as “very low-minority” and districts in which 90 percent or more of the students were Black and/or Hispanic as “very high-minority.” Data on mediation requests are from SY 2017-18; Common Core of Data are from SY 2016-17. In cases in which a state did not report data on free or reduced-price school lunch for SY 2016-17, we used data from a previous year.

**Table 2: Number of Due Process Complaints Filed and Percent of Complaints That Were Fully Adjudicated in Five States, School Year 2017-18**

	Number of due process complaints filed	Percent of complaints that went all the way through adjudication hearing process
<b>By income</b>		
Very high-income districts	495	3
Very low-income districts	320	5
<b>By race or ethnicity</b>		
Very low-minority districts	835	3
Very high-minority districts	267	7

Source: GAO analysis of data from Massachusetts, Michigan, New Jersey, Ohio, Pennsylvania, and the Department of Education's Common Core of Data. | GAO-20-22

Notes: We refer to districts in which 10 percent or less of the students were eligible for free or reduced-price school lunch as "very high-income" and districts in which 90 percent or more of the students were eligible for free or reduced-price school lunch as "very low-income." We refer to districts in which 10 percent or less of the students were Black and/or Hispanic as "very low-minority" and districts in which 90 percent or more of the students were Black and/or Hispanic as "very high-minority." Data on due process complaints are from SY 2017-18; Common Core of Data are from SY 2016-17. In cases in which a state did not report data on free or reduced-price school lunch for SY 2016-17, we used data from a previous year.

**Table 3: Number of State Complaints Filed and Percent of Complaints That Resulted in a Report with Findings in Five States, School Year 2017-18**

	Number of state complaints filed	Percent of complaints resulting in a report	Percent of reports containing findings of noncompliance	Percent of all complaints that resulted in a report with findings of noncompliance
<b>By Income</b>				
Very high-income districts	130	62	53	32
Very low-income districts	115	57	85	49
<b>By race or ethnicity</b>				
Very low minority districts	390	67	58	39
Very high-minority districts	145	48	77	37

Source: GAO analysis of data from Massachusetts, Michigan, New Jersey, Ohio, Pennsylvania, and the Department of Education's Common Core of Data. | GAO-20-22

Notes: We refer to districts in which 10 percent or less of the students were eligible for free or reduced-price school lunch as "very high-income" and districts in which 90 percent or more of the students were eligible for free or reduced-price school lunch as "very low-income." We refer to districts in which 10 percent or less of the students were Black and/or Hispanic as "very low-minority" and districts in which 90 percent or more of the students were Black and/or Hispanic as "very high-minority." Data on state complaints are from SY 2017-18; Common Core of Data are from SY 2016-17. In cases in which a state did not report data on free or reduced-price school lunch for SY 2016-17, we used data from a previous year. In some cases, a state complaint does not result in a report. For example, the complaint may be withdrawn or the state may determine the issues raised in the complaint are not related to the Individuals with Disabilities Education Act (IDEA). The data in this table indicate that complaints from very high-income districts and very low-minority districts in the five states resulted in a report in a higher percentage of cases than those from very low-income and

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predominately Black and/or Hispanic districts. However, in cases in which a report was issued, it contained findings of noncompliance in a higher percentage of complaints from very-low income and predominately Black and/or Hispanic districts.

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## Education and State Efforts Are Designed to Help Parents Who May Face Challenges

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### Parents May Face Challenges Using IDEA Dispute Resolution Options

Stakeholders we interviewed identified several types of challenges parents may face in using IDEA dispute resolution options, such as the cost of attorneys for due process hearings.

### Cost and Availability of Attorneys and Expert Witnesses

While parents may hire an attorney to help with dispute resolution, stakeholders consistently told us the cost of attorneys and expert witnesses was a significant barrier to parents' ability to use the due process complaint option in particular—especially low-income parents. Parents are not required to use an attorney at a due process hearing, but stakeholders told us that prevailing is difficult without legal representation and expert witnesses to testify on the parents' behalf.<sup>37</sup>

An Education official told us that school districts may provide a list of free and low-cost attorneys to parents. According to stakeholders we interviewed, in some cases, Protection and Advocacy agencies (P&A)—which are funded by the Department of Health and Human Services (HHS)—provide legal services to parents at no cost, or refer clients to other attorneys. In general, however, very few attorneys will work on a

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<sup>37</sup>Education officials told us that Education does not collect national data on the outcomes of parents with legal representation in due process hearings; however, states post due process decisions on their websites and some researchers have reviewed individual due process decisions to analyze outcomes. Research we reviewed shows that school districts prevail in the majority of cases, even when parents are represented by an attorney, but that parents' chances of prevailing are even smaller in cases in which they do not have an attorney. Schanding, T., et. al., *Analysis of Special Education Due Process Hearings in Texas*. Sage Open, April-June 2017: 1-6.; Blackwell, W. and Blackwell, V., *A Longitudinal Study of Special Education Due Process Hearings in Massachusetts: Issues, Representation, and Student Characteristics*. Sage Open, January-March 2015: 1-11; Cope-Kasten, C., *Bidding (Fair) Well to Due Process: The Need for a Fairer Final Stage in Special Education Dispute Resolution*. Journal of Law & Education, Summer 2013, Vol. 42, No. 3, 501-540.

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pro-bono basis to handle IDEA dispute cases, according to stakeholders. Further, under IDEA, a court may award parents reasonable attorney's fees and costs if they prevail in a due process hearing; however, parents cannot recoup expert witness costs regardless of the outcome.<sup>38</sup> Also, if parents do not prevail at a due process hearing, they may be responsible for the school district's legal costs in addition to their own, which can be a disincentive to going through a hearing.<sup>39</sup> Education regulations allow parents to be accompanied and advised in due process hearings by individuals with special knowledge about children with disabilities, and according to IDEA regulations, whether those individuals can legally represent them is determined by state law. According to Education officials, bringing non-attorneys to support them may help reduce costs. However, the school district is likely to still have legal representation.

The amount of direct legal services P&As provide varies across, and even within, states. P&A staff we interviewed in one state told us that their attorneys in one city spend most of their time assessing parents' cases, reviewing documentation, giving advice, answering questions, and conducting training for parents, but little time participating in actual hearings. In contrast, the P&A attorneys we spoke with in another city in the same state said that 50 to 70 percent of their work is direct representation at hearings. Staff at other P&As we spoke with work primarily on cases that fall within their priority areas or cases they believe will have wide-reaching or systemic effects.

The availability of attorneys can also be a challenge. According to stakeholders we interviewed, some areas, particularly rural ones, may have fewer available attorneys. However, Education officials told us that school districts in rural or sparsely populated areas may be more likely to have an incentive to resolve a dispute before it goes to a due process hearing because smaller school districts are unlikely to have in-house attorneys, and hiring an attorney is expensive.

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<sup>38</sup>20 U.S.C. § 1415(i)(3)(B). In 2006, the U.S. Supreme Court ruled that this statutory provision prohibits parents who prevail in actions against a school district from recovering fees for experts that they hire to assist them in IDEA proceedings. *Arlington Central School District v. Murphy*, 548 U.S. 291 (2006).

<sup>39</sup>Under certain circumstances, a court may award attorney's fees to school districts when, for instance, it determines the parent's complaint to be frivolous or that the complaint was intended to cause unnecessary delay or needlessly increase the cost of litigation. 20 U.S.C. § 1415(i)(3)(B)(i)(II), (III).



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Other Factors Affecting  
Parents' Willingness and Ability  
to Initiate Dispute Resolution

According to stakeholders, many parents feel they are at a disadvantage in a conflict with the school district due to an imbalance of power and so may be reluctant to engage in dispute resolution and take on the associated costs when they feel they are unlikely to prevail. Stakeholders also said that some parents who live in less populated and more rural areas may be reluctant to initiate dispute resolution out of concern for their privacy and because, for example, in these communities they and their children are more likely to see the teachers, principals, and district officials at the grocery store or at church, which may be awkward.<sup>40</sup> Furthermore, these families may have no other educational options in the area to turn to if the dispute becomes too contentious. In some cultures, according to stakeholders, it is less common to challenge an authority figure, such as a school district official or teacher. In addition, according to stakeholders, parents may fear the school district will retaliate against their children or them if the parents initiate a dispute, such as by threatening to stop providing services. Stakeholders also told us that they are aware of cases in which the school district has called the state's child protective services agency in what they believe was retaliation for parents bringing a dispute against the district, and that parents who are undocumented may fear that raising a dispute might result in unwanted attention from immigration officials. Further, according to stakeholders, some parents face other challenges, such as language barriers, difficulty obtaining time off from work, transportation, or internet access that could affect their use of IDEA dispute resolution and their ability to take advantage of resources, such as IDEA dispute resolution training, workshops, and online information.

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Education Funds  
Technical Assistance  
Providers That Explain  
Dispute Resolution  
Processes to Parents

Education and SEAs provide technical assistance to support parents' understanding of their rights under IDEA and to facilitate their use of dispute resolution options. According to stakeholders we interviewed, the area of special education in general and the federal law, IDEA, are complicated, and parents often do not understand the IDEA dispute resolution process.

Education supports several efforts to help parents understand and use dispute resolution options afforded to them under IDEA.

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<sup>40</sup>Staff from an association representing school superintendents provided an alternative explanation, noting that, in general, parents in smaller communities and rural areas tend to file fewer due process complaints because these communities are more tight-knit, so disputes can be resolved in less adversarial ways.

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- **Procedural safeguards notice.** To receive IDEA funds, states must ensure school districts notify parents of their rights under IDEA, including the right to initiate dispute resolution about the educational services provided to their child. School districts must provide a notice, referred to as a procedural safeguards notice, to parents that explains their rights under IDEA.<sup>41</sup> According to Education officials, to help states meet their IDEA requirements, the agency developed a model notice, which states can, but are not required to, have school districts use to notify parents of their rights under IDEA. States may also develop their own procedural safeguards notice as long as it includes all the information required under IDEA.<sup>42</sup>
  - **Technical assistance.** Education established and funds different types of technical assistance centers that provide information, training, workshops, and advocate services, and collect and disseminate data on dispute resolution, among other activities. Specifically, Education officials reported that Education provided about \$21 million to the network of Parent Training and Information Centers (PTI), about \$2.9 million to the network of Community Parent Resource Centers, and \$750,000 to CADRE in fiscal year 2019.<sup>43</sup> In addition, Education's technical assistance centers collaborate with P&As in some cases.<sup>44</sup> Further, P&A staff we interviewed in some of our selected states told us they conduct trainings for advocates to attend meetings with parents, other attorneys working on special education issues,

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<sup>41</sup>The procedural safeguards notice must be provided to parents only one time each school year, except that a copy also must be given to the parents upon initial referral or parental request for evaluation, upon receipt of the first state complaint and receipt of the first due process complaint in a school year, in accordance with the discipline procedures, and upon request by a parent. 20 U.S.C. § 1415(d)(1)(A), 34 C.F.R. § 300.504(a).

<sup>42</sup>Education officials told us that states are not required to submit their procedural safeguards notice to OSEP for review, and OSEP does not routinely review states' notices. However, OSEP will generally review a state's procedural safeguards notice or portions of the notice at the request of the state or when concerns are raised by stakeholders, including parents, school districts, or others.

<sup>43</sup>Each state has at least one PTI. Community Parent Resource Centers provide services similar to PTIs, but stakeholders told us the resource centers tend to focus on more targeted populations or specific geographic regions of a state. Unlike PTIs, not all states have a Community Parent Resource Center and these centers receive less funding from Education overall. Education funds additional technical assistance centers related to IDEA, such as the IDEA Data Center and the Parent Technical Assistance Center (PTAC).

<sup>44</sup>Protection and Advocacy agencies are funded by the HHS, and work at the state level to assist individuals with disabilities on a range of issues, including IDEA. P&As provide technical assistance, training, information, and referrals, in addition to legal support and other services to their clients.

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community organizations and agencies, and parents. Education officials told us that, in the past, the agency has facilitated meetings between PTIs and P&As, to improve collaboration between these organizations. According to Education officials, these meetings resulted in informal agreements between PTIs and P&As.

In addition, Education's Center for Parent Information and Resources, the national technical assistance center to the PTIs, provides resources on its website to help parents learn about their rights and the procedural safeguards notice they receive from schools. For example, the center's website contains an explanation of the procedural safeguards notice and online training on procedural safeguards, among other issues. The website also provides contact information for the PTI(s) in each state.<sup>45</sup> Further, CADRE, part of Education's technical assistance and dissemination network, has developed concise, easy-to-read materials that it distributes to parent centers and others to help them understand the procedural safeguards and how to resolve disputes with school districts.

Stakeholders we interviewed told us that parents often do not understand IDEA dispute resolution procedures, but that PTI staff are available to explain them, discuss the procedural safeguards notice, and offer other assistance at no cost to the parents. According to stakeholders, the IDEA procedural safeguards notice is usually a lengthy document that uses complex, legal language and that parents say the notice is hard to understand.<sup>46</sup> Education officials told us their model notice is complex in part because it must reflect all the applicable provisions of the IDEA statute and regulations. To help parents understand the notice and their dispute resolution options, the PTIs in our selected states offer a variety of assistance, such as staffing telephone helplines, meeting with parents in person, offering workshops and training for parents, and developing or making available easy-to-read documents and other resources. PTI staff can also attend mediation meetings with parents and help parents write

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<sup>45</sup>This website also provides contact information for the Community Parent Resource Centers.

<sup>46</sup>We previously reported on Education's efforts, required by IDEA (20 U.S.C. § 1417(e)), to publish model forms to help states streamline the process of preparing IEPs and comply with parent notice requirements. See GAO, *Special Education: State and Local-Imposed Requirements Complicate Federal Efforts to Reduce Administrative Burden*, [GAO-16-25](#) (Washington, D.C.: Jan. 8, 2016).

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state complaints, including parents for whom English is not their first language. In addition, PTI staff told us they try to help specific populations, including parents who are not native English speakers, understand and navigate the dispute process. In some cases, PTI staff will attend mediation meetings with or provide interpreters for non-English speaking parents.<sup>47</sup> PTI staff are also available to help parents who have lower levels of formal education or who have disabilities, which stakeholders identified as other factors that could affect parents' use of dispute resolution options.

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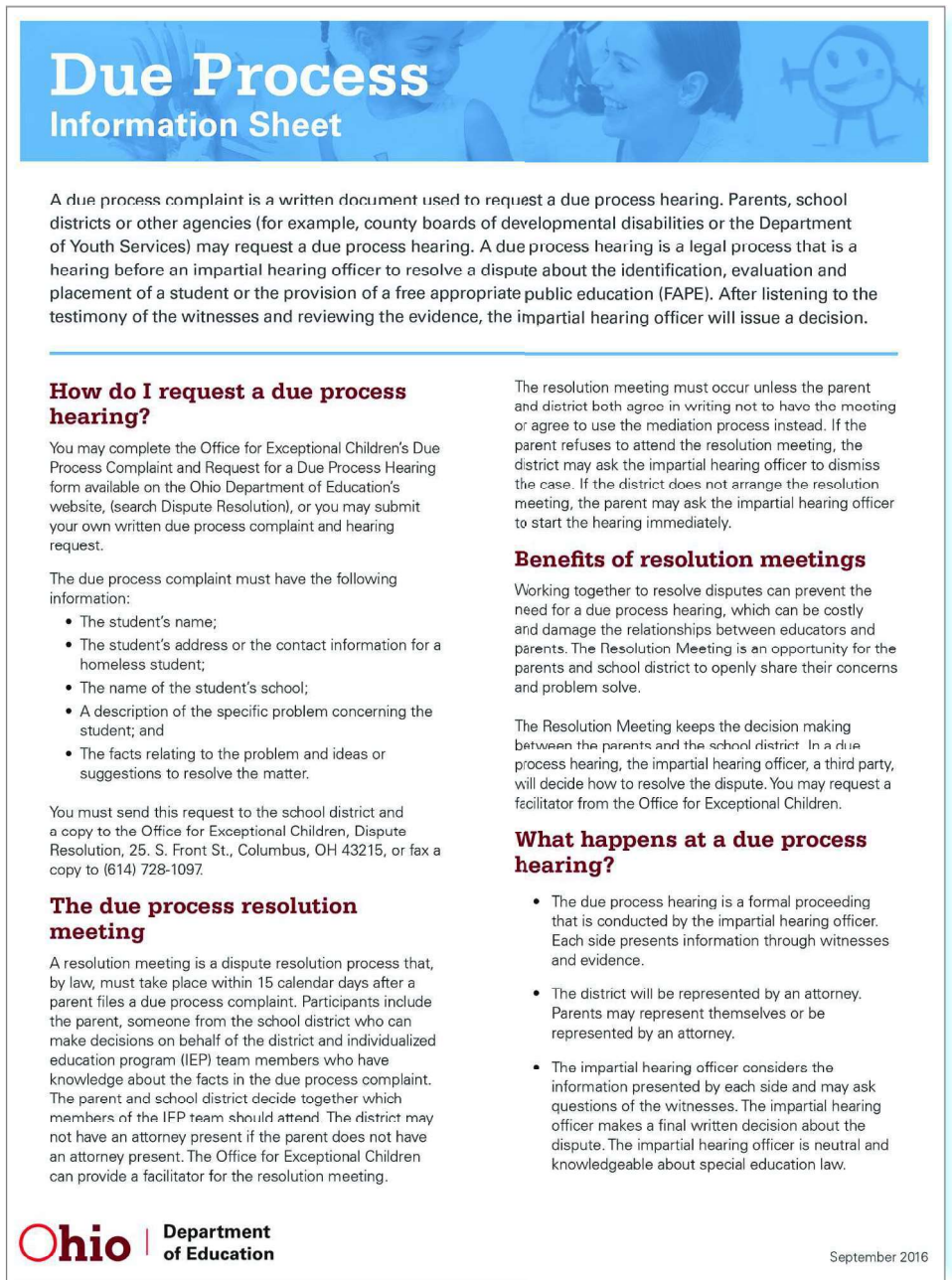
### States Also Provide Technical Assistance and Training to Help Parents Use Dispute Resolution Options

Our five selected states provide technical assistance and training to help parents understand and use dispute resolution options, including how to file a state complaint. State officials in some of our selected states said they make available plain language documents that can supplement the legally required procedural safeguards notice. For example, all of the states created a parents' rights handbook and several have one- or two-page documents describing the IDEA dispute resolution processes that they make available on the state's public website (see fig. 6 for an example of such a document). In addition, the states we contacted post information about IDEA on their websites in multiple languages. For example, one state's parents' rights handbook is available in English and 11 other languages. Regarding the cost of due process hearings discussed earlier, one state we contacted provides information about free and low-cost services along with the state's parents' rights booklet, and several states include contact information for the PTIs and sometimes P&As in their booklet.

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<sup>47</sup>While PTIs may at times provide interpreters, Education stated that doing so is the responsibility of the school district, not the PTI.

**Figure 6: Example of Information Document Related to Dispute Resolution Available on State Websites**



## Due Process Information Sheet

A due process complaint is a written document used to request a due process hearing. Parents, school districts or other agencies (for example, county boards of developmental disabilities or the Department of Youth Services) may request a due process hearing. A due process hearing is a legal process that is a hearing before an impartial hearing officer to resolve a dispute about the identification, evaluation and placement of a student or the provision of a free appropriate public education (FAPE). After listening to the testimony of the witnesses and reviewing the evidence, the impartial hearing officer will issue a decision.

### How do I request a due process hearing?

You may complete the Office for Exceptional Children's Due Process Complaint and Request for a Due Process Hearing form available on the Ohio Department of Education's website, (search Dispute Resolution), or you may submit your own written due process complaint and hearing request.

The due process complaint must have the following information:

- The student's name;
- The student's address or the contact information for a homeless student;
- The name of the student's school;
- A description of the specific problem concerning the student; and
- The facts relating to the problem and ideas or suggestions to resolve the matter.

You must send this request to the school district and a copy to the Office for Exceptional Children, Dispute Resolution, 25. S. Front St., Columbus, OH 43215, or fax a copy to (614) 728-1097.

### The due process resolution meeting

A resolution meeting is a dispute resolution process that, by law, must take place within 15 calendar days after a parent files a due process complaint. Participants include the parent, someone from the school district who can make decisions on behalf of the district and individualized education program (IEP) team members who have knowledge about the facts in the due process complaint. The parent and school district decide together which members of the IEP team should attend. The district may not have an attorney present if the parent does not have an attorney present. The Office for Exceptional Children can provide a facilitator for the resolution meeting.

The resolution meeting must occur unless the parent and district both agree in writing not to have the meeting or agree to use the mediation process instead. If the parent refuses to attend the resolution meeting, the district may ask the impartial hearing officer to dismiss the case. If the district does not arrange the resolution meeting, the parent may ask the impartial hearing officer to start the hearing immediately.

### Benefits of resolution meetings

Working together to resolve disputes can prevent the need for a due process hearing, which can be costly and damage the relationships between educators and parents. The Resolution Meeting is an opportunity for the parents and school district to openly share their concerns and problem solve.

The Resolution Meeting keeps the decision making between the parents and the school district. In a due process hearing, the impartial hearing officer, a third party, will decide how to resolve the dispute. You may request a facilitator from the Office for Exceptional Children.

### What happens at a due process hearing?

- The due process hearing is a formal proceeding that is conducted by the impartial hearing officer. Each side presents information through witnesses and evidence.
- The district will be represented by an attorney. Parents may represent themselves or be represented by an attorney.
- The impartial hearing officer considers the information presented by each side and may ask questions of the witnesses. The impartial hearing officer makes a final written decision about the dispute. The impartial hearing officer is neutral and knowledgeable about special education law.

**Ohio** | Department of Education

September 2016

Source: Ohio Department of Education. | GAO-20-22

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State officials we interviewed also said their states offer telephone helplines that parents can call with questions about their dispute resolution options and the processes involved. Some state officials told us they have staff available by phone to explain the dispute options to parents, including to parents who do not speak English or have lower levels of formal education. One state has a phone line that connects parents to an early resolution specialist who will try to help parents resolve the dispute before a formal complaint becomes necessary. Officials in one state told us that the state has installed voice interpretation technology for its helpline so that parents who need assistance with hearing or speaking can communicate with staff. Some states also employ staff who can serve as interpreters to better assist non-English speaking parents. Officials in some states told us that staff answering the helpline are available to answer questions about dispute resolution documents for parents who have difficulty reading. In addition, some of the states we contacted said they made requesting mediation and/or filing state complaints easier by posting the required initiation forms on their websites. According to staff from one state, after the state posted its state complaint form online, the number of complaints doubled in 5 years.

Further, some of our selected states provide training and technical assistance to school districts, parent advocate groups, and parents related to accessing IDEA dispute options. One of our selected states uses 16 regional support teams to provide training and technical assistance to school districts. Another state conducts parent training jointly with the Education-funded PTI in the state. We have previously reported on other efforts some states have taken to help parents understand their dispute rights and reduce the need for parents to initiate formal disputes. For example, some states have offered conflict resolution skills training to school district staff and parents, and support facilitated IEP meetings, among other initiatives.<sup>48</sup>

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## Agency Comments and Our Evaluation

We provided a draft of this product to the Department of Education for review and comment. We received written comments from Education, which are reproduced in appendix I. Education also provided technical comments that we have incorporated as appropriate.

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<sup>48</sup>GAO, *Special Education: Improved Performance Measures Could Enhance Oversight of Dispute Resolution*, [GAO-14-390](#) (Washington, D.C.: Aug. 25, 2014).

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As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the appropriate congressional committees, the Secretary of Education, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (617) 788-0580 or [nowickij@gao.gov](mailto:nowickij@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.



Jacqueline M. Nowicki, Director  
Education, Workforce, and Income Security Issues



# Appendix I: Comments from the Department of Education



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

OCT 15 2019

THE ASSISTANT SECRETARY

Ms. Jacqueline M. Nowicki, Director  
Education, Workforce, and Income Security Issues  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Ms. Nowicki:

The U.S. Department of Education's (Department's) Office of Special Education and Rehabilitative Services has reviewed the U.S. Government Accountability Office's (GAO's) draft report titled "*Special Education--IDEA Dispute Resolution Activity in Selected States Varied Based on School Districts' Characteristics*" (GAO-20-22). The draft GAO report contains no recommendations to the Department, but we would like to express our appreciation to GAO for a careful examination, in several States, of the important dispute resolution provisions of the Individuals with Disabilities Education Act (IDEA).

Special education due process has been a matter of continuing interest to Congress and GAO, as reflected in GAO's prior work in this area, e.g., GAO-03-897: "*SPECIAL EDUCATION--Numbers of Formal Disputes Are Generally Low and States Are Using Mediation and Other Strategies to Resolve Conflicts*" (September 9, 2003). In 2014, GAO reported that from 2004 through 2012, the number of due process hearings, a formal dispute resolution method and a key indicator of serious disputes between parents and school districts under IDEA, substantially decreased nationwide; please see GAO-14-390: "*SPECIAL EDUCATION--Improved Performance Measures Could Enhance Oversight of Dispute Resolution*". (Published August 25, 2014; publicly released September 24, 2014).

Notably, while IDEA dispute resolution activities, ranging from resolution meetings to litigation in State or Federal district courts are not under the control of the Department, we monitor States on their implementation of IDEA dispute resolution requirements. The Department's grantees under both Parts B and C of IDEA are the States, and we collect data from, and monitor the implementation by States regarding dispute resolution, as noted on page 6 of the draft GAO report.

The draft GAO report and the data, which have their basis in the IDEA Section 618 collections, indicate that the breadth of IDEA dispute resolution options work and are being implemented consistent with the statute. Resolution meetings can provide a timely, early avenue for ending disputes. Due process complaints are frequently resolved through mediation. Mediation has resulted in agreements in roughly two-thirds of disputes, and mediation, as GAO notes, is less time-consuming and less costly than more formal procedures. It is, however, vital that the full range of IDEA due process options for parents be maintained.

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We appreciate the opportunity to review the draft GAO report and have provided technical comments.

Sincerely,

A handwritten signature in blue ink that reads "Johnny W. Collett". The signature is written in a cursive style with a large initial "J".

Johnny W. Collett

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# Appendix II: Objectives, Scope, and Methodology

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This report examines the use of dispute resolution options available under the Individuals with Disabilities Education Act (IDEA). In particular, this report examines (1) how often IDEA dispute resolution options are used, and whether use in selected states varies across school district-level socioeconomic or demographic characteristics; and (2) what challenges parents face in using IDEA dispute resolution options and how Education and selected states help facilitate parents' use of these options.

To address our first objective, we obtained publicly available dispute resolution data at the national and state levels and collected and analyzed data on the number and types of dispute resolution options used from selected states at the school district level. To address how often dispute resolution options are used, we reviewed and analyzed publicly available data from the Center for Appropriate Dispute Resolution in Special Education (CADRE) from school years 2004-05 to 2016-17, the most recent data available when we conducted our analysis. We assessed the reliability of these data by interviewing knowledgeable CADRE staff and comparing CADRE data to other publicly available data. In addition, we interviewed staff at Parent Training and Information Centers (PTI) funded by the Department of Education (Education) and Protection and Advocacy (P&A) agencies funded by the Department of Health and Human Services, as well as state educational agency (SEA) officials in our five selected states to determine the reasons parents use dispute resolution. We also interviewed various national organizations that advocate for parents and local educational agencies (LEA) and SEAs.

To determine whether the use of dispute resolution options varied by socioeconomic or racial and/or ethnic characteristics, we analyzed dispute resolution data we collected at the LEA level from five states for school year 2017-18, the most recent data available at the time of our analysis. We selected these states—Massachusetts, Michigan, New Jersey, Ohio, and Pennsylvania—based on a combination of criteria including the amount of dispute activity within the state (that is, the number of mediations, due process complaints, and state complaints); the large number of LEAs in the state with highly homogenous student populations to allow us to compare across LEAs with different student populations; the large number of IDEA-eligible students in the state; and the states' ability to provide reliable LEA level data on disputes. We used Education's Common Core of Data (CCD) to categorize each LEA in our selected states based on (1) income level, as measured by the

percentage of students eligible for free or reduced-price school lunch;<sup>1</sup> (2) racial and/or ethnic makeup, as measured by the percentage of Black and/or Hispanic students; and (3) population density, as categorized by CCD. We used Education's school year 2016-17 CCD data, which was the most recent data available at the time of our analysis. In some cases, states had not reported 2016-17 free or reduced-price school lunch data to CCD so we used CCD data from a previous year. We assessed the reliability of the CCD data by (1) reviewing existing information about the data and the system that produced them and (2) reviewing data reliability assessments of the data from other recent GAO reports. We assessed the reliability of dispute resolution data provided by the states by (1) performing electronic testing of required data elements, (2) conducting interviews with knowledgeable agency officials and reviewing written responses to data reliability questions, and (3) reviewing existing information about the data and systems that produced them, where available. We determined that the CCD and data collected from the states were sufficiently reliable for the purposes of this report.

We matched the LEA-level dispute data provided by our states to the LEA-level socioeconomic, race/ethnicity, and population density data from CCD to determine whether the frequency of use of dispute resolution options or the types of options used varied across LEAs with different characteristics. Because our analyses are at the LEA level, and not the individual student or family level, it is impossible to know with certainty whether the families using the dispute resolution options in our school districts match the categorization of the districts themselves. To address this concern to the greatest extent possible, we report on LEAs that are highly homogenous. These districts are those in which:

- 90 percent or more of the students were eligible for free or reduced-price school lunch (very low-income districts) compared to districts in which 10 percent or fewer of the students were eligible (very high-income districts), and

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<sup>1</sup>The Department of Agriculture's National School Lunch Program provides low-cost or free lunches to children in schools. Children are eligible for free lunches if their household income is below 130 percent of federal poverty guidelines or if they meet certain automatic eligibility criteria, such as eligibility for the Supplemental Nutrition Assistance Program or Temporary Assistance for Needy Families. Students are eligible for reduced-price lunches if their household income is between 130 percent and 185 percent of federal poverty guidelines. For example, the maximum household income for a family of four to qualify for free lunch benefits was \$31,980 in school year 2017-18.

- 90 percent or more of the students were Black and/or Hispanic (very high-minority districts) compared to districts in which 10 percent or fewer of the students were Black and/or Hispanic (very low-minority districts).

We conducted two separate analyses on the combined data. We analyzed and compared:

1. the percentage of all the “very low” districts in our data that had dispute resolution activity to the percentage of all the “very high” districts in our data with dispute resolution activity, as measured by whether the district had one or more mediation requests, due process complaints, or state complaints. We also conducted this analysis to compare the percentages of urban, suburban, and rural districts with dispute resolution activity.
2. the rate of dispute resolution activity in our “very low” districts and our “very high” districts, as measured by the number of mediation requests, due process complaints, and state complaints per 10,000 students served under IDEA. We also conducted this analysis for urban, suburban, and rural districts.

This first analysis compared the percentages of school districts with different income and racial and/or ethnic characteristics that had at least one mediation request, due process complaint, or state complaint. In essence, it shows the differences in whether there is any dispute resolution activity in districts with different income and racial and/or ethnic characteristics, in our selected states. Because our analysis counts districts in which a single dispute resolution was initiated in the same manner as those with more activity, it is not potentially skewed by individual districts that may have unusually high or low levels of dispute resolution activity. To supplement this analysis, our second analysis compares the rate of dispute activity in these types of districts, which shows the magnitude of the various types of dispute resolution activity.

Although we use this 90-10 threshold in the body of the report, we also conducted these analyses for districts where 75 percent or more of students were eligible for free or reduced-price lunch and 25 percent or fewer were not eligible. Similarly, we conducted our race/ethnicity analyses at this same level as well. These additional analyses can be found in appendix III. The results from our five states are not generalizable to all states.

To address both research objectives, we reviewed relevant federal laws and regulations. We also reviewed Education documents, including its

model Notice of Procedural Safeguards, PTI and CADRE documents, and relevant literature related to challenges parents face using dispute resolution.

In addition, we interviewed Education officials about challenges families face in using dispute resolution options and Education's efforts to assist families. We also interviewed PTI, P&A, and advocacy organization staff, and SEA officials from the five states from which we collected data.

We conducted this performance audit from June 2018 to November 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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# Appendix III: Additional Data Tables

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This appendix contains tables that show data based on analyses we conducted using dispute resolution data collected from five states—Massachusetts, Michigan, New Jersey, Ohio, and Pennsylvania—for school year 2017-18, and the Department of Education’s Common Core of Data for school year 2016-17. In some cases, states did not report free or reduced-price school lunch data for school year 2016-17. In those cases, we used the most recent year for which the state reported those data. The total number of local educational agencies and the total number of students served in our income analysis and our race/ethnicity analysis are slightly different.

**Table 4: Number of Local Educational Agencies (LEA), Very High-Income LEAs, and Dispute Resolution Options Used in Selected States, School Year (SY) 2017-18**

**Table 5: Number of Local Educational Agencies (LEA), Very Low-Income LEAs, and Dispute Resolution Options Used in Selected States, School Year (SY) 2017-18**

**Table 6: Students Receiving Special Education Services, Students Served in Very High-Income Local Educational Agencies (LEA), and Dispute Resolution Options Used in Selected States, School Year (SY) 2017-18**

**Table 7: Students Receiving Special Education Services, Students Served in Very Low-Income Local Educational Agencies (LEA) and Dispute Resolution Options Used in Selected States, School Year (SY) 2017-18**

**Table 8: Number of Local Educational Agencies (LEA), Very Low-Minority LEAs, and Dispute Resolution Options Used in Selected States, School Year (SY) 2017-18**

**Table 9: Number of Local Educational Agencies (LEA), Very High-Minority LEAs, and Dispute Resolution Options Used in Selected States, School Year (SY) 2017-18**

**Table 10: Students Receiving Special Education Services, Students Served in Very Low-Minority Local Educational Agencies (LEA) and Dispute Resolution Options Used in Selected States, School Year (SY) 2017-18**

Table 11: Students Receiving Special Education Services, Students Served in Very High-Minority Local Educational Agencies (LEA), and Dispute Resolution Options Used in Selected States, School Year (SY) 2017-18

Table 12: Percentage of Local Educational Agencies (LEA) with at least One Mediation Request, Due Process Complaint, and State Complaint initiated in Selected States, at the 90 percent – 10 Percent Income and Minority Levels, School Year (SY) 2017-18

Table 13: Rate of Mediation Requests, Due Process Complaints, and State Complaints initiated in Selected States at the 90 percent – 10 Percent Income and Minority Levels, School Year (SY) 2017-18

Table 14: Percentage of Local Educational Agencies (LEA) with at least One Mediation Request, Due Process Complaint, and State Complaint initiated in Selected States, at the 75 percent – 25 Percent Income and Minority Levels, School Year (SY) 2017-18

Table 15: Rate of Mediation Requests, Due Process Complaints, and State Complaints initiated in Selected States at the 75 percent – 25 Percent Income and Minority Levels, School Year (SY) 2017-18

Table 16: Percentage of Local Educational Agencies (LEA) with Mediation Requests, Due Process Complaints, and State Complaints by Population Density in Selected States, School Year (SY) 2017-18

Table 17: Rate of Mediation Requests, Due Process Complaints, and State Complaints by Population Density in Selected States, School Year (SY) 2017-18

**Table 4: Number of Local Educational Agencies (LEA), Very High-Income LEAs, and Dispute Resolution Options Used in Selected States, School Year (SY) 2017-18**

		Total number of LEAs	Number of LEAs <=10 percent FRPL	Percentage of total LEAs in each state <=10 percent FRPL	Number of LEAs <=10 percent FRPL with at least one dispute resolution option used
Mediations requested	Total	3,452	275	8	129
	MA	397	56	14	40
	MI	873	18	2	3
	NJ	618	145	24	60
	OH	896	34	4	15
	PA	668	22	3	11
Due process complaints filed	Total	3,452	275	8	156
	MA	397	56	14	36
	MI	873	18	2	3
	NJ	618	145	24	93
	OH	896	34	4	13
	PA	668	22	3	11
State complaints filed	Total	3,452	275	8	75
	MA	397	56	14	24
	MI	873	18	2	9
	NJ	618	145	24	28
	OH	896	34	4	7
	PA	668	22	3	7

Source: GAO analysis of data from five states and the Department of Education's Common Core of Data (CCD). | GAO-20-22

Notes: Number and percentages of LEAs by income level, as measured by percentage of students eligible for free or reduced-price school lunch (FRPL), rely on CCD data from SY 2016-17, and in some cases prior years.



**Table 5: Number of Local Educational Agencies (LEA), Very Low-Income LEAs, and Dispute Resolution Options Used in Selected States, School Year (SY) 2017-18**

		Total number of LEAs	Number of LEAs >=90 percent FRPL	Percentage of total LEAs in each state >=90 percent FRPL	Number of LEAs >=90 percent FRPL with at least one dispute resolution option used
Mediations requested	Total	3,452	368	11	39
	MA	397	10	3	4
	MI	873	90	10	14
	NJ	618	22	4	3
	OH	896	135	15	8
	PA	668	111	17	10
Due process complaints filed	Total	3,452	368	11	46
	MA	397	10	3	2
	MI	873	90	10	0
	NJ	618	22	4	3
	OH	896	135	15	6
	PA	668	111	17	35
State complaints filed	Total	3,452	368	11	31
	MA	397	10	3	6
	MI	873	90	10	6
	NJ	618	22	4	1
	OH	896	135	15	7
	PA	668	111	17	11

Source: GAO analysis of data from five states and the Department of Education's Common Core of Data (CCD). | GAO-20-22

Notes: Number and percentages of LEAs by income level, as measured by percentage of students eligible for free or reduced-price school lunch (FRPL), rely on CCD data from SY 2016-17, and in some cases prior years.

**Table 6: Students Receiving Special Education Services, Students Served in Very High-Income Local Educational Agencies (LEA), and Dispute Resolution Options Used in Selected States, School Year (SY) 2017-18**

		Total number of students receiving special education services	Number of students receiving special education services in LEAs <=10 percent FRPL	Percentage of total students in each state that are in LEAs <=10 percent FRPL	Number of dispute resolutions initiated in LEAs<=10 percent FRPL, by state
Mediations requested	Total	1,156,264	111,313	10	392
	MA	170,044	20,065	12	199
	MI	197,538	6,623	3	4
	NJ	230,977	44,004	19	120
	OH	252,966	24,054	10	35
	PA	304,739	16,567	5	34
Due process complaints filed	Total	1,156,264	111,313	10	495
	MA	170,044	20,065	12	117
	MI	197,538	6,623	3	4
	NJ	230,977	44,004	19	309
	OH	252,966	24,054	10	21
	PA	304,739	16,567	5	44
State complaints filed	Total	1,156,264	111,313	10	130
	MA	170,044	20,065	12	39
	MI	197,538	6,623	3	16
	NJ	230,977	44,004	19	47
	OH	252,966	24,054	10	17
	PA	304,739	16,567	5	11

Source: GAO analysis of data from five states and the Department of Education's Common Core of Data (CCD). | GAO-20-22

Notes: Number and percentages of LEAs by income level, as measured by percentage of students eligible for free or reduced-price school lunch (FRPL), rely on CCD data from SY 2016-17, and in some cases prior years.

**Table 7: Students Receiving Special Education Services, Students Served in Very Low-Income Local Educational Agencies (LEA) and Dispute Resolution Options Used in Selected States, School Year (SY) 2017-18**

		Total number of students receiving special education services	Number of students receiving special education services in LEAs >=90 percent FRPL	Percentage of total students in each state that are in LEAs >=90 percent FRPL	Number of dispute resolutions initiated in LEAs >=90 percent FRPL, by state
Mediations requested	Total	1,156,264	92,770	8	121
	MA	170,044	7,625	4	18
	MI	197,538	5,727	3	19
	NJ	230,977	4,576	2	10
	OH	252,966	15,833	6	10
	PA	304,739	59,009	19	64
Due process complaints filed	Total	1,156,264	92,770	8	320
	MA	170,044	7,625	4	8
	MI	197,538	5,727	3	0
	NJ	230,977	4,576	2	14
	OH	252,966	15,833	6	8
	PA	304,739	59,009	19	290
State complaints filed	Total	1,156,264	92,770	8	115
	MA	170,044	7,625	4	35
	MI	197,538	5,727	3	13
	NJ	230,977	4,576	2	3
	OH	252,966	15,833	6	7
	PA	304,739	59,009	19	57

Source: GAO analysis of data from five states and the Department of Education’s Common Core of Data (CCD). | GAO-20-22

Notes: Number and percentages of LEAs by income level, as measured by percentage of students eligible for free or reduced-price school lunch (FRPL), rely on CCD data from SY 2016-17, and in some cases prior years.

**Table 8: Number of Local Educational Agencies (LEA), Very Low-Minority LEAs, and Dispute Resolution Options Used in Selected States, School Year (SY) 2017-18**

		Total number of LEAs	Number of LEAs <=10 percent B/H	Percentage of total LEAs in each state <=10 percent B/H	Number of LEAs <=10 percent B/H with at least one dispute resolution option used
Mediations requested	Total	3,592	1,695	47	367
	MA	404	227	56	128
	MI	872	438	50	49
	NJ	631	162	26	50
	OH	968	498	51	67
	PA	717	370	52	73
Due process complaints filed	Total	3,592	1,695	47	351
	MA	404	227	56	99
	MI	872	438	50	17
	NJ	631	162	26	76
	OH	968	498	51	49
	PA	717	370	52	110
State complaints filed	Total	3,592	1,695	47	234
	MA	404	227	56	95
	MI	872	438	50	37
	NJ	631	162	26	24
	OH	968	498	51	35
	PA	717	370	52	43

Source: GAO analysis of data from five states and the Department of Education's Common Core of Data (CCD). | GAO-20-22

Notes: Number and percentages of LEAs by race and ethnicity, as measured by percentage of Black and/or Hispanic (B/H) students, rely on CCD data from SY 2016-17.

**Table 9: Number of Local Educational Agencies (LEA), Very High-Minority LEAs, and Dispute Resolution Options Used in Selected States, School Year (SY) 2017-18**

		Total number of LEAs	Number LEAs >=90 percent B/H	Percentage of total LEAs in each state >=90 percent B/H	Number of LEAs >=90 percent B/H with at least one dispute resolution option used
Mediations requested	Total	3,592	385	11	51
	MA	404	29	7	3
	MI	872	94	11	14
	NJ	631	80	13	19
	OH	968	101	10	4
	PA	717	81	11	11
Due process Complaints filed	Total	3,592	385	11	70
	MA	404	29	7	5
	MI	872	94	11	2
	NJ	631	80	13	27
	OH	968	101	10	4
	PA	717	81	11	32
State complaints filed	Total	3,592	385	11	45
	MA	404	29	7	8
	MI	872	94	11	13
	NJ	631	80	13	13
	OH	968	101	10	5
	PA	717	81	11	6

Source: GAO analysis of data from five states and the Department of Education's Common Core of Data (CCD). | GAO-20-22

Notes: Number and percentages of LEAs by race and ethnicity, as measured by percentage of Black and/or Hispanic (B/H) students, rely on CCD data from SY 2016-17.

**Table 10: Students Receiving Special Education Services, Students Served in Very Low-Minority Local Educational Agencies (LEA) and Dispute Resolution Options Used in Selected States, School Year (SY) 2017-18**

		Total number of students receiving special education services	Number of students receiving special education services in LEAs <=10 percent B/H	Percentage of total students in each state that are in LEAs <=10 percent B/H	Number of dispute resolutions initiated in LEAs <=10 percent B/H, by state
Mediations requested	Total	1,165,401	445,208	38	898
	MA	170,132	68,593	40	486
	MI	197,522	80,421	41	69
	NJ	231,740	38,036	16	110
	OH	258,823	122,963	48	107
	PA	307,184	135,195	44	126
Due process complaints filed	Total	1,165,401	445,208	38	835
	MA	170,132	68,593	40	247
	MI	197,522	80,421	41	19
	NJ	231,740	38,036	16	272
	OH	258,823	122,963	48	74
	PA	307,184	135,195	44	223
State complaints filed	Total	1,165,401	445,208	38	390
	MA	170,132	68,593	40	194
	MI	197,522	80,421	41	51
	NJ	231,740	38,036	16	43
	OH	258,823	122,963	48	50
	PA	307,184	135,195	44	52

Source: GAO analysis of data from five states and the Department of Education's Common Core of Data (CCD). | GAO-20-22

Notes: Number and percentages of LEAs by race and ethnicity, as measured by percentage of Black and/or Hispanic (B/H) students, rely on CCD data from SY 2016-17.

**Table 11: Students Receiving Special Education Services, Students Served in Very High-Minority Local Educational Agencies (LEA), and Dispute Resolution Options Used in Selected States, School Year (SY) 2017-18**

		Total number of students receiving special education services	Number of students receiving special education services in LEAs >=90 percent B/H	Percentage of total students in each state that are in LEAs >=90 percent B/H	Number of dispute resolutions initiated in LEAs >=90 percent B/H, by state
Mediations requested	Total	1,165,401	81,275	7	161
	MA	170,132	5,667	3	17
	MI	197,522	15,786	8	35
	NJ	231,740	40,060	17	88
	OH	258,823	4,122	2	5
	PA	307,184	15,640	5	16
Due process complaints filed	Total	1,165,401	81,275	7	267
	MA	170,132	5,667	3	8
	MI	197,522	15,786	8	9
	NJ	231,740	40,060	17	174
	OH	258,823	4,122	2	5
	PA	307,184	15,640	5	71
State complaints filed	Total	1,165,401	81,275	7	145
	MA	170,132	5,667	3	23
	MI	197,522	15,786	8	49
	NJ	231,740	40,060	17	54
	OH	258,823	4,122	2	6
	PA	307,184	15,640	5	13

Source: GAO analysis of data from five states and the Department of Education's Common Core of Data (CCD). | GAO-20-22

Notes: Number and percentages of LEAs by race and ethnicity, as measured by percentage of Black and/or Hispanic (B/H) students, rely on CCD data from SY 2016-17.

**Table 12: Percentage of Local Educational Agencies (LEA) with at least One Mediation Request, Due Process Complaint, and State Complaint initiated in Selected States, at the 90 percent – 10 Percent Income and Minority Levels, School Year (SY) 2017-18**

		Percentage of LEAs with at least one dispute resolution initiated		Percentage of LEAs with at least one dispute resolution initiated	
		<=10 percent FRPL	>=90 percent FRPL	<=10 percent B/H	>=90 percent B/H
Mediations requested	Total	46.9	10.6	21.7	13.2
	MA	71.4	40.0	56.4	10.3
	MI	16.7	15.6	11.2	14.9
	NJ	41.4	13.6	30.9	23.8
	OH	44.1	5.9	13.5	4.0
	PA	50.0	9.0	19.7	13.6
Due process complaints filed	Total	56.7	12.5	20.7	18.2
	MA	64.3	20.0	43.6	17.2
	MI	16.7	0.0	3.9	2.1
	NJ	64.1	13.6	46.9	33.8
	OH	38.2	4.4	9.8	4.0
	PA	50.0	31.5	29.7	39.5
State complaints filed	Total	27.3	8.4	13.8	11.7
	MA	42.9	60.0	41.9	27.6
	MI	50.0	6.7	8.4	13.8
	NJ	19.3	4.5	14.8	16.3
	OH	20.6	5.2	7.0	5.0
	PA	31.8	9.9	11.6	7.4

Source: GAO analysis of dispute data provided by five states and the Department of Education's Common Core of Data | GAO-20-22.

Notes: Number and percentages of LEAs by income level, as measured by percentage of students eligible for free or reduced-price school lunch (FRPL), rely on CCD data from SY 2016-17, and in some cases prior years. Number and percentages of LEAs by minority level, as measured by percentage of Black and/or Hispanic (B/H) students, rely on CCD data from SY 2016-17.



**Table 13: Rate of Mediation Requests, Due Process Complaints, and State Complaints Initiated in Selected States at the 90 percent – 10 Percent Income and Minority Levels, School Year (SY) 2017-18**

		Number per 10,000 students, initiated in SY 2017-2018		Number per 10,000 students, initiated in SY 2017-2018	
		<=10 percent FRPL	>=90 percent FRPL	<=10 percent B/H	>=90 percent B/H
Mediations requested	Total	35.2	13.0	20.2	19.8
	MA	99.2	23.6	70.9	30.0
	MI	6.0	33.2	8.6	22.2
	NJ	27.3	21.9	28.9	22.0
	OH	14.6	6.3	8.7	12.1
	PA	20.5	10.8	9.3	10.2
Due process complaints filed	Total	44.5	34.5	18.8	32.9
	MA	58.3	10.5	36.0	14.1
	MI	6.0	0.0	2.4	5.7
	NJ	70.2	30.6	71.5	43.4
	OH	8.7	5.1	6.0	12.1
	PA	26.6	49.1	16.5	45.4
State complaints filed	Total	11.7	12.4	8.8	17.8
	MA	19.4	45.9	28.3	40.6
	MI	24.2	22.7	6.3	31.0
	NJ	10.7	6.6	11.3	13.5
	OH	7.1	4.4	4.1	14.6
	PA	6.6	9.7	3.8	8.3

Source: GAO analysis of dispute data provided by five states and the Department of Education's Common Core of Data. | GAO-20-22

Notes: Number and percentages of LEAs by income level, as measured by percent of students eligible for free or reduced-price school lunch (FRPL), rely on CCD data from SY 2016-17, and in some cases prior years. Number and percentages of LEAs by minority level, as measured by percent of Black and/or Hispanic students (B/H), rely on CCD data from SY 2016-17.

**Table 14: Percentage of Local Educational Agencies (LEA) with at Least One Mediation Request, Due Process Complaint, and State Complaint Initiated in Selected States, at the 75 percent – 25 Percent Income and Minority Levels, School Year (SY) 2017-18**

		Percentage of LEAs with at least one dispute resolution initiated		Percentage of LEAs with at least one dispute resolution initiated	
		<=25 percent FRPL	>=75 percent FRPL	<=25 percent B/H	>=75 percent B/H
Mediations requested	Total	38.7	12.1	24.1	12.7
	MA	60.9	30.8	58.5	11.6
	MI	9.8	13.3	11.0	13.5
	NJ	39.0	19.2	34.8	26.4
	OH	31.3	6.3	14.4	4.3
	PA	41.6	11.2	23.9	11.2
Due process complaints filed	Total	43.3	15.4	24.6	17.4
	MA	51.7	33.3	45.8	18.6
	MI	8.9	1.6	5.7	1.6
	NJ	56.0	34.2	49.9	33.0
	OH	27.2	4.9	11.5	6.2
	PA	51.3	35.7	33.4	35.3
State complaints filed	Total	24.1	11.5	16.6	12.1
	MA	48.3	46.2	48.2	39.5
	MI	21.4	10.1	12.8	12.7
	NJ	17.3	15.1	15.7	15.1
	OH	15.0	7.1	8.3	5.0
	PA	19.5	9.1	13.1	8.6

Source: GAO analysis of data from five states and the Department of Education's Common Core of Data (CCD). | GAO-20-22

Notes: Number and percentages of LEAs by income level, as measured by percentage of students eligible for free or reduced-price school lunch (FRPL), rely on CCD data from SY 2016-17, and in some cases prior years. Number and percentages of LEAs by minority level, as measured by percentage of Black and/or Hispanic (B/H) students, rely on CCD data from SY 2016-17.

**Table 15: Rate of Mediation Requests, Due Process Complaints, and State Complaints Initiated in Selected States at the 75 percent – 25 Percent Income and Minority Levels, School Year (SY) 2017-18**

		Number per 10,000 students, initiated in SY 2017-2018		Number per 10,000 students, initiated in SY 2017-2018	
		<=25 percent FRPL	>=75 percent FRPL	<=25 percent B/H	>=75 percent B/H
Mediations requested	Total	27.9	16.4	19.6	21.6
	MA	78.4	47.8	67.5	76.1
	MI	4.5	16.0	6.9	19.7
	NJ	24.7	21.4	23.5	21.3
	OH	12.3	4.8	8.4	4.3
	PA	16.7	10.4	11.3	7.0
Due process complaints filed	Total	34.6	25.7	21.6	27.3
	MA	43.6	13.1	34.4	12.3
	MI	4.7	1.7	3.3	4.6
	NJ	65.7	29.8	61.0	39.4
	OH	9.0	7.9	6.2	17.7
	PA	24.5	52.1	19.0	36.9
State complaints filed	Total	11.7	14.0	9.4	16.4
	MA	29.2	33.6	30.1	42.8
	MI	13.2	19.8	9.0	28.8
	NJ	8.7	13.9	8.7	11.6
	OH	6.7	6.1	4.3	8.0
	PA	4.6	9.7	3.9	8.2

Source: GAO analysis of data from five states and the Department of Education's Common Core of Data (CCD). | GAO-20-22

Notes: Number and percentages of LEAs by income level, as measured by percent of students eligible for free or reduced-price school lunch (FRPL), rely on CCD data from SY 2016-17, and in some cases prior years. Number and percentages of LEAs by minority level, as measured by percent of Black and/or Hispanic students (B/H), rely on CCD data from SY 2016-17.

**Table 16: Percentage of Local Educational Agencies (LEA) with Mediation Requests, Due Process Complaints, and State Complaints by Population Density in Selected States, School Year (SY) 2017-18**

		Total districts	Percentage of districts with at least one mediation request initiated SY 2017-2018	Percentage of districts with at least one due process complaint initiated SY 2017-2018	Percentage of districts with at least one state complaint, initiated SY 2017-2018
All	Total	3,694	22.3	23.7	16.4
	Urban	711	12.2	14.8	12.9
	Suburban	1,572	34.8	38.5	24.9
	Rural	1,411	13.5	11.7	8.6
MA	Total	404	52.5	42.3	48.8
	Urban	47	23.4	23.4	51.1
	Suburban	256	62.5	53.1	55.1
	Rural	101	40.6	23.8	31.7
MI	Total	883	12.1	5.8	13.6
	Urban	169	18.3	6.5	16.6
	Suburban	252	10.7	8.3	24.2
	Rural	462	10.6	4.1	6.7
NJ	Total	648	34.0	45.7	17.1
	Urban	59	18.6	28.8	11.9
	Suburban	469	38.2	51.4	19.0
	Rural	120	25.0	31.7	12.5
OH	Total	972	12.2	10.3	8.4
	Urban	283	4.6	4.2	7.1
	Suburban	267	27.7	23.6	14.6
	Rural	422	7.6	5.9	5.5
PA	Total	787	21.2	32.7	12.1
	Urban	153	13.7	35.3	8.5
	Suburban	328	32.6	43.9	18.9
	Rural	306	12.7	19.3	6.5

Source: GAO analysis of data from five states and the Department of Education's Common Core of Data. | GAO-20-22

**Table 17: Rate of Mediation Requests, Due Process Complaints, and State Complaints by Population Density in Selected States, School Year (SY) 2017-18**

		Total students	Number of mediation requests per 10,000 students initiated SY 2017-2018	Number of due process complaints per 10,000 Students initiated SY 2017-2018	Number of state complaints per 10,000 students initiated SY 2017-2018
All	Total	1,165,742	19.9	24.2	11.1
	Urban	234,495	20.7	25.2	15.3
	Suburban	661,144	23.0	29.5	11.7
	Rural	270,103	11.7	10.5	6.0
MA	Total	170,132	62.8	28.3	32.5
	Urban	34,045	77.0	22.0	37.6
	Suburban	120,215	57.7	30.2	30.9
	Rural	15,872	70.6	27.1	33.4
MI	Total	197,782	8.2	4.1	11.2
	Urban	47,702	12.4	5.7	17.4
	Suburban	85,913	4.3	4.1	12.1
	Rural	64,167	10.4	3.1	5.5
NJ	Total	231,743	21.8	51.8	9.0
	Urban	25,968	18.1	38.1	14.2
	Suburban	185,607	22.3	55.1	8.1
	Rural	20,168	21.8	38.7	10.9
OH	Total	258,823	7.8	7.0	5.2
	Urban	57,564	4.5	7.1	7.8
	Suburban	111,192	12.2	9.4	5.4
	Rural	90,067	4.6	3.9	3.3
PA	Total	307,262	12.5	28.6	5.7
	Urban	69,216	13.1	50.3	9.4
	Suburban	158,217	15.3	26.7	5.5
	Rural	79,829	6.4	13.4	2.8

Source: GAO analysis of data from five states and the Department of Education's Common Core of Data. | GAO-20-22

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# Appendix IV: GAO Contact and Staff Acknowledgments

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## Contact

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## Staff Acknowledgements

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