

GAO

Report to the Ranking Minority
Member, Committee on Health,
Education, Labor and Pensions,
U.S. Senate

September 2003

SPECIAL EDUCATION

Numbers of Formal
Disputes Are
Generally Low and
States Are Using
Mediation and Other
Strategies to Resolve
Conflicts





Highlights of [GAO-03-897](#), a report to the Ranking Minority Member, Committee on Health, Education, Labor and Pensions, U.S. Senate

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Numbers of Formal Disputes Are Generally Low and States Are Using Mediation and Other Strategies to Resolve Conflicts

Why GAO Did This Study

In the 2001-02 school year, about 6.5 million children aged 3 through 21 received special education services under the Individuals with Disabilities Education Act (IDEA). On occasion, parents and schools disagree about what kinds of special services, if any, are needed for children and how they should be provided. Conflicts between school officials and families sometimes become costly, both financially and in terms of the harm done to relationships.

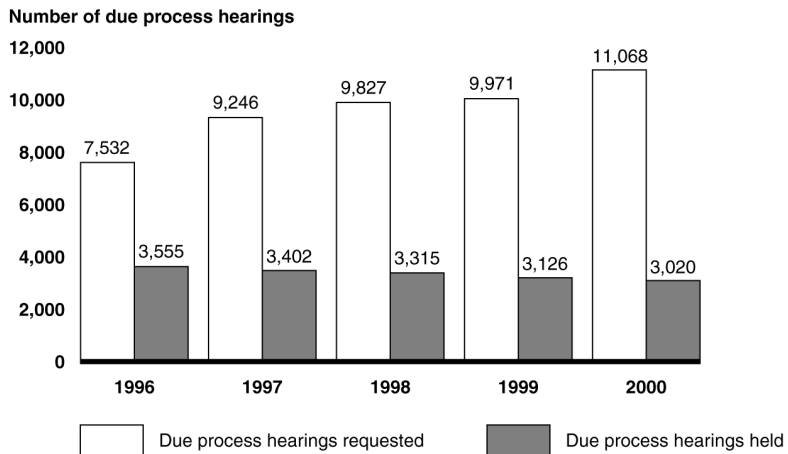
As requested, GAO determined the kinds of issues that result in formal disputes, the extent to which the three formal mechanisms (due process hearings, mediations, and state complaints) are employed for resolution, the role of mediation and other alternative dispute resolution strategies in selected locations, and whether local education agencies received adequate and timely complaint notifications from states. To address these objectives, GAO reviewed available national data and conducted site visits to state and local education agencies in four states—California, Massachusetts, Ohio, and Texas.

What GAO Found

Officials in four states told GAO that disagreements usually arose between parents and school districts over fundamental issues of identifying students' need for special education, developing and implementing their individualized education programs, and determining the appropriate education setting.

While national data on disputes are limited and inexact, the available information showed that formal dispute resolution activity, as measured by the number of due process hearings, state complaints, and mediations, was generally low. According to the National Association of State Directors of Special Education, while requests for hearings increased from 7,532 to 11,068 over a 5-year period, the number of due process hearings held decreased from 3,555 to 3,020; much of the 5-year decline occurred in New York. Additionally, most due process hearings were concentrated in five states—California, Maryland, New Jersey, New York, and Pennsylvania—and the District of Columbia.

Numbers of Due Process Hearings Requested and Held Nationwide from 1996 through 2000



Source: Eileen Ahearn, *Due Process Hearings: 2001 Update* (Project Forum, NASDSE), April 2002.

Overall, dispute resolution activity was generally low relative to the number of students with disabilities. About 5 due process hearings were held per 10,000 students with disabilities. National studies also reported no more than an estimated 7 mediations per 10,000 students and about 10 state complaints per 10,000 students.

States GAO visited emphasized mediation in resolving disputes and made it more available than federal law required. Some locations had developed additional strategies for early resolution of disagreements between parents and school districts. Finally, school district officials in the four states said they had few problems with state complaint notifications, and problems encountered had little impact on the timeliness of the complaint process: state and local education officials appeared to be working together to overcome them.

www.gao.gov/cgi-bin/getrpt?GAO-03-897.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Marnie Shaul at (202) 512-7215 or shaulm@gao.gov.

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Abbreviations

CADRE	Consortium for Appropriate Dispute Resolution in Special Education
IDEA	Individuals with Disabilities Education Act
IEP	individualized education program
LEA	local education agency
NASDSE	National Association of State Directors of Special Education
OSEP	Office of Special Education Programs
SEA	state education agency
SEEP	Special Education Expenditure Project
SLIIDEA	Study of State and Local Implementation and Impact of the Individuals with Disabilities Education Act

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United States General Accounting Office
Washington, DC 20548

September 9, 2003

The Honorable Edward M. Kennedy
Ranking Minority Member
Committee on Health, Education,
Labor and Pensions
United States Senate

Dear Senator Kennedy:

In the 2001-02 school year, about 6.5 million children aged 3 through 21 received special education services under the Individuals with Disabilities Education Act (IDEA) at a federal cost of approximately \$8 billion and more than \$48 billion in state costs.¹ On occasion, parents and schools disagree about what kinds of special services, if any, are needed for children and how they should be provided. Disagreements between school officials and families that cannot be resolved quickly sometimes become formal disputes that can be costly, both financially and in terms of the harm done to relationships. In May 2003, the Special Education Expenditure Project (SEEP) reported that school districts spent at least \$90 million on resolving such disputes in the 1999-2000 school year.

School districts and families have at least three formal mechanisms for resolving disputes: state complaint procedures, due process hearings, and mediation.² A state complaint procedure is a review by the state education agency (SEA) to determine whether a state or a local school district has violated IDEA. A due process hearing is an administrative agency process, in which an impartial hearing officer receives evidence, provides for the examination and cross-examination of witnesses by each party, and then issues a report of findings of fact and decisions. To provide an alternative mechanism for resolving conflicts in a way that may be less costly and less

¹Source of cost data: Congressional Research Service Report for Congress, *Individuals with Disabilities Education Act (IDEA): Current Funding Trends*, RS21447, updated March 3, 2003.

²Parties that are not satisfied with a due process hearing decision may bring a civil action in federal or state court but such actions are uncommon and were not included in our review. In the 1998-99 school year, an estimated 301 civil actions were initiated nationwide.

adversarial, the 1997 amendments to IDEA required that states offer voluntary mediation when a request for a due process hearing is filed. Mediation is a negotiating process that employs an impartial mediator to help the parties in conflict resolve their disputes with a mutually accepted written agreement. While school districts and families are not required to choose this option, the legislation strongly encouraged states to promote the use of mediation to resolve disagreements.

This report responds to your request that we determine (1) the kinds of issues that result in formal disputes, (2) the extent to which the three formal mechanisms are employed for resolution, (3) the role of mediation and other alternative dispute resolution strategies in selected locations, and (4) whether local education agencies received adequate and timely complaint notifications from states. To identify what kinds of issues result in formal disputes between parents and school districts, we made site visits to SEAs and local education agencies (LEA) in California, Massachusetts, Ohio, and Texas. We selected these states, in part, because they varied in their volume of formal dispute activity and were geographically diverse. To determine the extent to which various dispute resolution mechanisms were employed, we reviewed data from four nationwide studies.³ These studies employed somewhat different measures for due process and mediations, which contributed to the variation in the findings reported. We collected information from each of the four states we visited, and also interviewed state education officials, educators in local school districts, and parent resource and advocacy groups. We also met with SEA officials and other experts in Iowa to obtain information about their mediation system and other alternative dispute resolution strategies.⁴ To determine whether LEAs have received timely notifications from states that a complaint has been filed, we interviewed educators in one urban and one rural school district in each of the four states we visited. Appendix I contains a more detailed description of our methodology.

Results in Brief

The four states we visited reported that disputes between school districts and families have often centered on fundamental issues of identifying

³These studies covered various periods of time from 1991 to 2000. See app. I for a listing and brief discussion of these studies.

⁴Iowa was recommended to us because it was viewed as using innovative dispute resolution practices.

students' need for special education, the development and implementation of their individualized education programs (IEP), and the educational setting in which they were placed. For example, school officials and parents sometimes disagreed about what setting would afford the appropriate educational placement for a student—a regular classroom, a special needs classroom, or a specialized school. Such conflicts can lead to formal disputes. Officials in six of the eight school districts we visited mentioned that disputes had resulted from decisions over students' educational placements.

While data are limited and inexact, four national studies indicate that the use of the three formal dispute resolution mechanisms has been generally low relative to the number of children with disabilities. Due process hearings, the most resource-intensive dispute mechanism, were the least used nationwide. Using data from the National Association of State Directors of Special Education, we calculated that nationwide, in 2000, about 5 due process hearings were held per 10,000 students with disabilities. According to these data, over three-quarters of the due process hearings had been held in five states— California, Maryland, New Jersey, New York, and Pennsylvania—and the District of Columbia. Mediation activity was also low. Another national study reported in 2003 that the median number of mediations for states was 4 for every 10,000 students with disabilities in school year 1999-2000. In May 2003, SEEP estimated that 4,266 mediation cases occurred during the 1998-99 school year, which we calculated as a rate of about 7 mediations per 10,000 students with disabilities. Also, using the latter study, we calculated that about 10 state complaints were filed for every 10,000 students with disabilities in the 1998-99 school year.

Officials in all four states we visited were emphasizing the use of mediation to resolve disputes between families and school districts, and some states had developed additional approaches for early resolution. State officials told us they found that mediation was successful in resolving disputes, strengthening relationships between families and educators, saving financial resources, and reaching resolution more quickly. The University of the Pacific reported that 93 percent of the mediation cases in California resulted in agreements between families and schools during the 2001-02 fiscal year; the cost of a mediator was about one-tenth that of a hearing officer. In addition, there were a variety of alternative strategies in place in several states and localities to resolve disputes earlier and with less acrimony. For example, Iowa exceeded IDEA requirements by allowing parties to request a pre-appeal conference to mediate disputes prior to filing for a due process hearing. This

conference was used five times more often by families and educators than mediation in conjunction with a filing for a due process hearing. Ohio, on the other hand, developed a parent mentor program in which parents of students with disabilities were hired to provide training and information about special education to educators and other parents of children with disabilities and to attend IEP meetings at parent or staff request. Data for measuring the cost-effectiveness of this and other such programs, however, were limited.

Officials in the eight local school districts we interviewed said they had few problems responding to state complaint notifications in a timely way; and those problems were generally minor, causing modest delays. For example, Los Angeles Unified School District officials said that complaint notifications sometimes lacked supporting information, such as copies of the specific IEP in question or relevant mediation agreements or evaluations. In some cases, the notifications did not identify a child's school or date of birth. These shortcomings, officials indicated, generally caused only a few days' delay in responding appropriately to the state.

Background

In 1975, a new federal law, now called IDEA, established a federal commitment to identify children with disabilities and provide special education and related services such as speech and language services, psychological services, physical and occupational therapy, and transportation.⁵ The cornerstone principle of IDEA is the right of children with disabilities to have a free appropriate public education. Under the law, school districts must provide special education and related services without charge to parents and the services must meet the standards of the SEA. The services for and placement of each child must be based on the child's unique needs, not on his/her disability. IDEA also stipulates that children with disabilities are to be educated in the "least restrictive environment," that is, the law requires that children with disabilities are educated with children who are nondisabled to the maximum extent appropriate.

⁵IDEA contains four parts (A through D) and this report primarily focuses on part B of the legislation. Part B contains provisions relating to the education of children ages 3 through 21 and includes the funding formula, use of funds, provisions relating to evaluations, eligibility determinations, individualized education programs, educational placements, and detailed requirements for procedural safeguards.

About 13 percent of students in federally supported programs, or about 6.5 million children, receive special education services under IDEA. These students have a wide variety of needs that range from mild to severe. Children with speech or language impairments, specific learning disabilities, emotional disturbance, hearing impairments (including deafness), visual impairments (including blindness), orthopedic impairments, autism, traumatic brain injury, other health impairments, or mental retardation, and who need special education and related services are eligible under IDEA.

School districts are responsible for identifying students who may have a disability and evaluating them in all areas related to the suspected disability.⁶ The evaluation process is intended to provide information needed to determine if the student is eligible as defined under IDEA. The IEP team decides on, among other things, special education and related services that will be provided for the child and on the frequency, location, and duration of the services to be provided.⁷

The law requires two steps for an IEP: (1) a meeting by the IEP team to agree about an educational program for a child with a disability and (2) preparing a written record of the decisions reached at the meeting. Development of the IEP is designed to facilitate communication between parents and school personnel and provide an opportunity for resolving any differences concerning the special education needs of a child. The IEP also documents a commitment of resources for providing special education and related services, and schools are responsible for ensuring that the child's IEP is carried out as it was written.

⁶Parents may also obtain an independent educational evaluation of their child at any time at their own expense. The results of this evaluation must be considered in any decision in providing a free appropriate public education for that child, and may also be presented, if needed, as evidence at a due process hearing.

⁷IDEA requires that an IEP team include (1) the child's parents; (2) at least one regular education teacher of the child, if the child is, or may be participating in the regular education environment; (3) at least one special education teacher, or if appropriate, at least one provider of the child's special education; (4) a representative of the public agency qualified to provide, or supervise, special education and who is knowledgeable about the general curriculum and the resources available from the public agency; (5) an individual who can interpret the instructional implications of educational results; (6) at the discretion of the parent or the agency, other individuals with knowledge or expertise about the child; and (7) the child, if appropriate. Public agencies include SEAs, LEAs, Departments of Mental Health and Welfare, state schools for children with deafness or children with blindness, and any other political subdivisions of the state that are responsible for providing education to children with disabilities.

Disagreements over eligibility determinations about a child and over an IEP can be contentious and occasionally result in disputes.⁸ Many disagreements between families and local schools are resolved informally, during initial or follow-up IEP meetings at the local schools, or in other venues such as conferences with principals or other administrators. On occasion, however, parties have been unable to resolve their differences. In these instances, under IDEA, procedural safeguards⁹ afford parents recourse when they disagree with school district decisions about their children.

Disagreements can be formally resolved through state complaint procedures, through a due process hearing, or through mediation. A state complaint is initiated through a signed written complaint that includes a statement that a public agency has violated a requirement of IDEA and the facts on which the statement is based. If the complaint is against a school district, the SEA typically informs the school district of the complaint by formal notification, requests documentation from the local education officials, and, when necessary, conducts an on-site investigation. The SEA must issue a written decision to the complainant that addresses each allegation in the complaint and contains findings of fact and conclusions, and the reason for the SEA's final decision. If violations are found, the decision specifies the corrective actions to achieve compliance. A due process hearing is an administrative agency process initiated by a written request by one of the aggrieved parties to either the SEA or the LEA, depending on the state's process. An impartial hearing officer listens to witnesses, examines evidence, and issues a written decision. In the decision, the hearing officer determines whether violations occurred and issues remedies. Mediation is a voluntary process whereby parents and

⁸In the states and localities we visited, some educators and advocates alike provided a variety of reasons that parents may not take formal actions to resolve issues with schools. These reasons included the lack of information about how to file formal complaints, a perception that the available remedies were ineffective, and a parent's reluctance to have conflict with school officials.

⁹The procedural safeguards afforded parents include the right to written prior notice whenever the education agency proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child; the right to provide consent to an evaluation to determine whether the child has a disability as defined under the law before the evaluation is conducted; and the right to an impartial due process hearing when the parent has presented a complaint related to the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

school districts agree to meet with an impartial third party in an informal setting to reach a resolution that is mutually agreeable. Agreements are mutually designed, agreed to, and implemented by the parties. While the processes used for resolving disputes vary,¹⁰ other important key differences exist among these three mechanisms as well. Table 1 identifies some of the key differences in formal dispute resolution mechanisms offered by SEAs.

Table 1: Key Differences in Formal Dispute Resolution Mechanisms

	State complaint	Due process hearing	Mediation
Who can request	Any organization or individual	A parent, public agency, or the child (at age of majority)	A parent, public agency, or the child (at age of majority)
Who decides	State education agency officials	Impartial hearing officer	Mutually between the parties
Federally prescribed timeline	60 calendar days	45 calendar days	None prescribed but generally less than 30 days
Relative financial cost to LEAs and parents	No cost to parents or LEAs	Generally expensive for LEAs and for parents if they hire an attorney ^a	Generally much less expensive than due process hearings ^b
Relative financial cost to SEAs	Generally much less expensive than due process hearings, primarily consists of staff cost to resolve the complaint	Generally expensive for SEAs, primarily for the cost of a hearing officer	Generally much less expensive than due process hearings, primarily for the cost of a mediator

Source: Information on who can request the three mechanisms was obtained from 34 C.F.R., Ch. III, sections 300.662, 300.507, and 300.517; who decides the three mechanisms was obtained from 34 C.F.R., Ch. III, sections 300.661, 300.508, and 300.506; federally prescribed timelines for complaints and due process hearings were obtained from 34 C.F.R., Ch. III, sections 300.661 and 300.511, information about the timeline for mediation was obtained from state education officials in the states visited; and information about relative financial cost were obtained from state and local education officials in the states visited.

^aIf parents prevail, they may be awarded reasonable attorney's fees.

^bAttorneys are more often used during due process hearings, but, in most states, parties are allowed legal representation during mediation. However, the parents would typically be responsible for their attorney's fees during mediation.

¹⁰There are variations in how certain procedures may be carried out. For example, in some LEAs, parents may file complaints either to the school district or with the state. Also, SEAs varied in employing hearing officers and mediators; some SEAs contracted out for these positions and other states had a cadre of full-time employees in an administrative unit not involved in the education or care of the child.

Parents and other parties can generally choose which mechanism to use to resolve their dispute. Parents have the right to request a due process hearing at any time over any issue related to the identification, evaluation, or educational placement or the provision of a free appropriate public education to the student. They may also file both due process requests and written state complaints simultaneously, but the SEA must set aside any part of the state complaint that is addressed in the due process hearing until the conclusion of the hearing. Any issue in the complaint not addressed in the due process hearing must be resolved within the time frames and procedures consistent with the state complaint requirements. Finally, although either parents or school districts can file a request for a due process hearing, this mechanism is potentially very costly to both parties, in terms of financial expenses and relationships. While school districts and parents are responsible for their own attorney's fees and other associated expenses, the hearing officer is paid for by the state.¹¹

According to the National Association of State Directors of Special Education (NASDSE), due process systems are structured similarly across the states with one major distinction—about two-thirds of the states use a one-tier system in which the hearing is held only at the state level. About one-third of the states use a two-tier system in which a hearing occurs at a local level, usually the school or district with the right to appeal to a state-level hearing officer or panel.¹² Even though the 1997 amendments to IDEA required states to make mediation available as a voluntary alternative to parents or school districts when they request a due process hearing, most states had mediation systems in place much earlier. In September 1994, NASDSE reported that Connecticut and Massachusetts were the first states (in 1975) to implement formal mediation systems. By 1985, 15 more states had implemented mediation, and over the next decade 22 additional states had mediation systems.

Education's Office of Special Education Programs (OSEP) is responsible for overall administration and allocation of federal funds for states' implementation of IDEA programs. In addition, OSEP is charged with

¹¹In cases where families prevail in due process hearings, they may be entitled to attorney's fees. In some states, the hearing officer can make the determination of reasonable attorney's fees and order the school district to pay. In other states, parents must seek attorney's fees in a district court.

¹²Eileen Ahearn, *Due Process Hearings: 2001 Update* (Project Forum, NASDSE), April 2002.

assessing the impact and effectiveness of state and local efforts to provide a free appropriate public education to children and youth with disabilities. OSEP has contracted for two major research studies that focus, in part, on dispute resolution activities. One of these, conducted by Abt Associates, the Study of State and Local Implementation and Impact of the Individuals with Disabilities Education Act (SLIIDEA) will include nationwide data over a 5-year period (2000-04); a report on selected findings was published in January 2003. The second study, SEEP, is being conducted by the American Institutes for Research. In May 2003, this project reported on procedural safeguards and related expenditures for dispute resolution from survey data of a nationwide sample of LEAs. Since states are not required to collect or report data on dispute resolution activity, these studies, along with two studies by NASDSE, provide the most recently available information on the prevalence of formal dispute activity.¹³ However, each of these studies has limitations, which are discussed in appendix I.

Under IDEA, Education also provides funds to grantees for parent centers. The parent training and information centers and community parent resource centers provide a variety of services, including helping families obtain appropriate education and services for their children with disabilities, training and information for parents and professionals, connecting children with disabilities to community resources that can address their needs, and resolving problems between families and schools or other agencies. Each state has at least 1 parent center and, currently, there are 105 parent centers in the United States. According to the Technical Assistance Alliance for Parent Centers, the national

¹³OSEP plans to obtain consistent information, through performance reporting, from states. Part of this reporting system is expected to include data on numbers of complaints, due process hearings, and mediations. Initial state reports of this information are proposed to be due by March 31, 2004.

coordinating office, parent centers provided assistance to nearly 1 million parents and professionals during the 2001-02 school year.¹⁴

In Selected Locations, Disputes between Schools and Families Were Usually over Student Identifications, Education Programs, and Placements

Formal disputes between schools and families in the 4 states we visited ranged from identifying a student's disabilities to developing and implementing the IEP and the student's placement. Officials in these states told us that disputes frequently arose between families and school districts over (1) identifications, that is, whether children were eligible for IDEA services and how their eligibility determinations were made; (2) the types of special education and related services, if any, they needed; (3) whether schools carried out the education programs as written; and (4) whether schools could provide an appropriate educational environment for certain students.¹⁵

SEA and LEA officials told us that schools and parents occasionally disagreed about whether or not a child needed special education services. On the one hand, a school may want to evaluate a child because it believes he or she may have a disability and, in this case, the school must evaluate the child at no cost to the family. A parent may also ask for the child to be evaluated, but if the school does not think the child has a disability it may refuse to evaluate him or her. Parents who disagree must take appropriate steps to challenge the school's decision. Conversely, for a variety of reasons, parents may not want the child to receive special education services. For example, the family may disagree with the school's decision

¹⁴OSEP also funded a 5-year national center on dispute resolution, the Consortium for Appropriate Dispute Resolution in Special Education (CADRE), for the purpose of providing information and assistance to state agencies on implementation of the mediation requirements under the 1997 amendments to IDEA. In addition, CADRE supports parents, educators, and administrators to benefit from the full continuum of dispute resolution options that can prevent and resolve conflicts. The national center works with its core partners, including NASDSE; the Academy for Educational Development/National Information Center for Children and Youth with Disabilities, and the Technical Assistance Alliance for Parent Centers (The Alliance). CADRE is a project of Direction Service, Inc., located in Eugene, Oregon.

¹⁵In the states we visited, SEA officials told us disagreements that involved potential technical violations of federal or state law or regulations were generally pursued through the state complaint procedures, while disagreements involving judgment such as student identification and educational placements were generally resolved through due process hearings or mediations. An OSEP memorandum, dated July 17, 2000, Subject: Complaint Resolution Procedures under Part B of the Individuals with Disabilities Education Act (Part B), directs states to make their complaint procedures available for resolving any complaint, including (1) those that raise systemic issues and (2) individual child complaints.

about whether or not the child has a disability, or the parent may be concerned about the possibility of negative perceptions about special education identification. Officials in five of the eight school districts we visited mentioned that disputes occurred because parents wanted or did not want their children identified for special education.

Another issue that existed in some school districts was over the availability of related services, such as speech and language services and occupational therapy. Disputes sometimes occurred as a result of problems in providing related services, including the types, amounts, methods, or the failure to provide services. Speech and language services, for example, were mentioned as a recurring problem in some areas because of the shortage of specialists available to provide these services. Officials in six of the eight school districts we visited identified having disagreements with parents regarding the provision of speech and language services.

SEA and LEA officials also identified a number of issues related to the IEP that caused disagreements between parents and school districts. For example, we were told that disagreements had occurred because parents believed the school had not implemented the IEP as agreed upon. Moreover, parents and schools also disagreed about whether the school had chosen the appropriate instructional methods for a child. For example, parents may want a child with autism to receive an intensive behavioral interventions program that consists of one-on-one instruction with a trained therapist. Because this type of instruction could be very costly to the LEA, school officials told us they would like the flexibility to consider a less expensive but suitable alternative approach as part of the student's IEP. Officials in five of the eight school districts we visited mentioned that disputes with parents resulted from the instructional methods chosen or preferred by the school, particularly for students with autism.

We also found that school officials and parents sometimes disagreed about whether a placement was the appropriate and least restrictive environment for a child. For instance, some educators have contended that a child should attend classes primarily for students with disabilities, while parents believed their children would perform better in a regular classroom. Some disputes about placement also resulted from the parents' desire to have their children taught outside the public school system. Because serving a child outside the school district can be very expensive, school districts preferred, whenever feasible, to keep a child within the

district. Officials in six local school districts we visited mentioned that disputes had occurred over decisions about a child's educational setting.

Available Data Indicate That Dispute Resolution Activity Was Generally Low; Due Process Hearings Were Concentrated in a Few Locations

While national data on disputes are limited and inexact, the reported available information indicates that formal dispute resolution activity, as measured by the number of due process hearings, state complaints, and mediations, was generally low. According to a 2002 NASDSE report, the nationwide number of due process hearings held—the most expensive form of the three dispute resolution mechanisms—was generally low for a 5-year period that ended in 2000, with most hearings occurring in a few locations.¹⁶ Finally, based on national data from three studies, the rates of mediations and state complaints were also low, but somewhat higher than due process hearings.

The Number of Due Process Hearings Held Nationwide Was Low and Most Occurred in a Few States and the District of Columbia

While the total number of due process hearings held nationally was low over a 5-year period from 1996-2000, most hearings were concentrated in a few locations. In April 2002, NASDSE reported that, over the 5-year period, requests for hearings steadily increased from 7,532 to 11,068.¹⁷ Because requests for due process hearings are frequently withdrawn or the parties resolve their issues through other means, most requests do not lead to formal hearings. NASDSE reported that the number of due process hearings held was low and had decreased from 3,555 to 3,020.^{18,19} We calculated that due process hearings occurred at a low rate of about

¹⁶Similar state level data on mediations and complaints were unavailable.

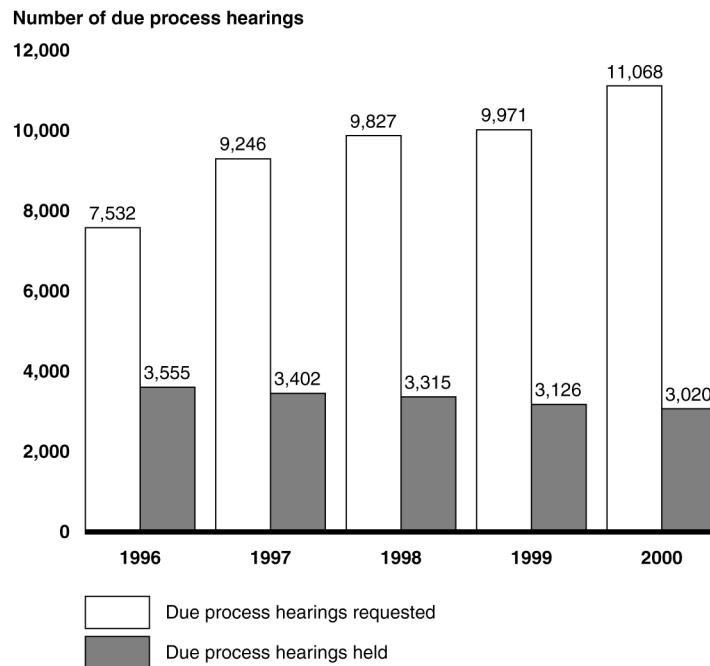
¹⁷These totals do not include data from New York state, which were not reported to NASDSE.

¹⁸These totals do not include state level appeals in two-tier states. Over the same 5-year period (1996 through 2000), 1,355 hearings were held in states that offered this review process. The number of hearings declined from 288 to 254 (12 percent) over the last 3 years.

¹⁹In May 2003, SEEP reported that an estimated 6,763 due process cases were initiated during the 1998-99 school year. The number of due process hearings reported in this study was greater than that in NASDSE's report because the SEEP survey did not distinguish between due process hearings requested and due process hearings held but included both in their count of due process cases. Moreover, the data in SEEP may include dispute resolution activity in addition to the procedural safeguards under IDEA, such as those provided for by Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination based on disability, as well as other activities made available by states. Consequently, the number of due process hearings in the SEEP report would be expected to be higher than in NASDSE's.

5 per 10,000 students with disabilities in 2000. (See fig. 1 for the number of hearings requested and held nationwide from 1996 through 2000.)²⁰

Figure 1: Numbers of Due Process Hearings Requested and Held Nationwide from 1996 through 2000



Source: Eileen Ahearn, *Due Process Hearings: 2001 Update* (Project Forum, NASDSE), April 2002.

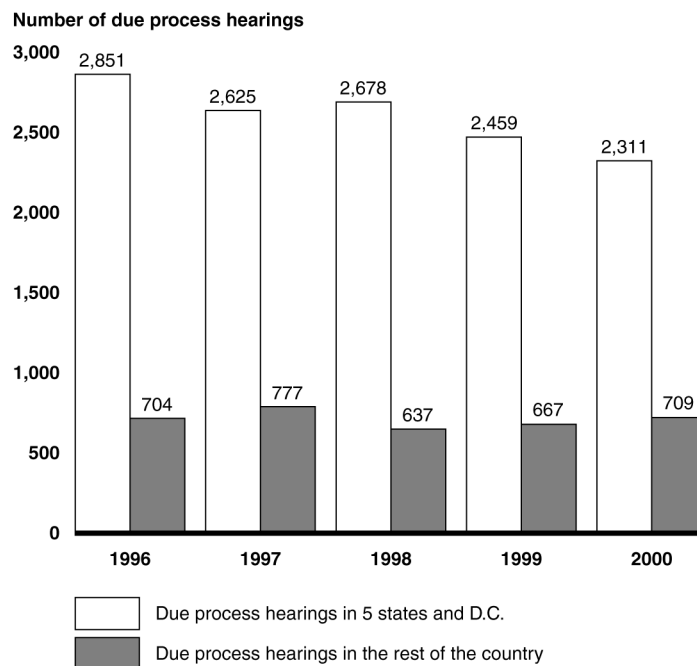
Note: This figure does not include data on hearings held at tier 2.

However, while the number of due process hearings held nationwide decreased over the 5-year period, much of the decline occurred in New York, which experienced a substantial reduction in due process hearings held. Over the 5-year period, the number of due process hearings held in New York declined from 1,600 to 1,052. In addition, according to the NASDSE study, most due process hearings were held in a few locations. Nearly 80 percent of all hearings were held in 5 states—California, Maryland, New Jersey, New York, and Pennsylvania—and the District of

²⁰SLIDEA reported that the median number of due process hearings for states was 2.3 per 10,000 students with disabilities in the 1999-2000 school year.

Columbia.²¹ The rates of due process hearings per 10,000 students in these states ranged from 3 in California to 24 in New York; in the District of Columbia the rate was 336 due process hearings per 10,000. See figure 2 for the total numbers of due process hearings held in the 5 states and the District of Columbia compared with the rest of the nation over a 5-year period.

Figure 2: Numbers of Due Process Hearings Held in 5 States and the District of Columbia Compared to the Rest of the United States, 1996-2000



Source: Eileen Ahearn, *Due Process Hearings: 2001 Update* (Project Forum, NASDSE), April 2002.

²¹Two states received grants from Education that were used for programs related to dispute resolution, one of which focused on building dispute resolution skills in parents, educators, and other child-serving providers. In 2001, Pennsylvania received about \$558,000 to expand a pilot training program to provide stakeholders with the tools to resolve their disputes in a more timely and effective manner, thereby obviating the need for more formal means of dispute resolution. According to a state education official, as of May 2003, approximately 150 people have received the 1-day training program. In 2002, New York state received \$604,000 to use for the development and implementation of a Web based system that will allow educators and families access to information about dispute resolution activity. The state plans to have the information system operational by June 2004.

Using data from its nationwide sample survey of the 1998-99 school year, SEEP reported that the prevalence of dispute activity among school districts varied by certain demographic characteristics. For example, the percentage of urban school districts that reported having at least 1 due process case—request or hearing—for the year was significantly higher than either suburban or rural districts (an estimated 50 percent, 20 percent, and 9 percent, respectively). Similarly, large school districts reported significantly more due process cases, compared with smaller districts. However, when the study made adjustments for the number of students served by examining the rate of due process cases per 10,000 special education students, no statistically significant differences were found in rates for either urbanicity or size. SEEP also analyzed due process data by district income levels and found a significant difference—an estimated 52 percent of the highest income school districts reported at least 1 due process case, 13 times the percentage of lowest income districts (4 percent).²²

Rates of Mediations and State Complaints Were Also Low

According to limited national data available from three studies, the rates of mediations and complaints per 10,000 students with disabilities were generally low, but somewhat higher than the rates of due process hearings. SLIIDEA reported that in the 1999-2000 school year more formal disputes between parents and schools were resolved through mediation than due process hearings.²³ Based on survey results from all 50 states and the District of Columbia, this study reported that the median number of mediations for states was 4 for every 10,000 students with disabilities. The study also reported that 87 percent of the school districts surveyed said they did not have any mediation cases in the 1999-2000 school year.

Two other studies also reported low numbers nationally of mediation cases and complaints. In May 2003, the SEEP study reported that 4,266 mediation cases were held during the 1998-99 school year, from which we calculated a rate of about 7 per 10,000 students. In February 2003, a NASDSE study reported that 6,094 complaints were filed

²²NASDSE's study, Dispute Resolution Procedures, Data Collection, and Caseloads, also reported that a significant relationship existed between median household incomes and the number of disputes. Households with higher median incomes were more likely than households with lower median incomes to have filed a state complaint or requested mediation or a due process hearing.

²³In the SLIIDEA report, the term parent refers to parent or guardian.

nationwide during the 2000 school year or 2000 calendar year.²⁴ Similar results were found in the SEEP study, which reported that 6,360 state complaints were filed during the 1998-99 school year. Given that roughly 6 million students with disabilities were served in these school years, we calculated that about 10 complaints were filed for every 10,000 students with disabilities.²⁵ SEEP's survey also revealed that an estimated 62 percent of districts reported having no cases involving complaints, due process hearings requested or held, or mediations during the school year. (See app. II for information on the levels of formal dispute resolution activity in the urban and rural school districts we visited.)

States We Visited Were Emphasizing Mediation, and Some Locations Used Additional Strategies

In the 4 states in our review, and in Iowa, where we examined alternative dispute resolution strategies, officials told us they emphasized mediation in resolving disputes, and some locations had developed additional strategies for early resolution of disagreements between families and school districts. Officials saw mediation as a major resource for achieving agreements, strengthening relationships, resolving disputes more quickly, and reducing cost. The states we visited had implemented formal mediation by 1990 and, in varying degrees, exceeded minimum federal requirements by not tying it to a request for a due process hearing. In addition, 3 states we visited had established additional early dispute resolution strategies that were less formal and less adversarial.

States Encouraged the Use of Mediation to Resolve Disagreements

All 4 of the states we visited encouraged mediation as the mechanism for resolving disputes between schools and parents. All 4 states reported that parents and school districts could request mediation at anytime for any issue related to the identification, IEP development and implementation, placement, or the free appropriate public education of a student; but the

²⁴Forty-nine states provided data on the number of complaints. In this study, it was reported that state agencies used different procedures for gathering and recording information on dispute resolution activity, consequently, there was a lack of consistency in the data provided by states. Also, two SEAs—Iowa and Maine—were able to track disputes across the complaint, mediation, and due process hearing systems to determine the number of families using more than one mechanism for the same issue. The lack of integrated database systems results in an unknown number of disputes being counted more than once.

²⁵The margin of error for the calculated rate of 7 mediations per 10,000 students is (+/- 5 mediations per 10,000) at the 95 percent confidence level. The margin of error for the calculated rate of 10 complaints per 10,000 students is (+/- 4 complaints per 10,000) at the 95 percent confidence level.

degree to which it was specifically offered and used varied. In 2 of the states we visited, California and Massachusetts, mediation was used more frequently in dispute resolution in fiscal year 2002 than complaints and due process hearings combined. Mediation was used less often than state complaint procedures in Ohio and Texas, but both states had taken steps to expand their mediation programs. Table 2 provides the numbers of mediation cases over a 3-year period compared with complaints and due process hearings in the 4 states we visited.

Table 2: Dispute Resolution Activity in California, Massachusetts, Ohio, and Texas, Fiscal Years 2000-02

Type of dispute resolution activity	Fiscal Year		
	2000	2001	2002
California			
Complaints	897	1,191	989
Due process hearings	180	242	316
Mediations	1,357	1,511	1,774
Massachusetts			
Complaints	300	367	524
Due process hearings	39	35	33
Mediations	636	570	565
Ohio			
Complaints	113	137	162
Due process hearings	48	29	50
Mediations	92	125	91
Texas			
Complaints	158	158	152
Due process hearings	71	72	97
Mediations	147	142	139

Source: State education agencies in Massachusetts, Ohio, and Texas; and, for California, we obtained complaint data from the SEA and due process hearing and mediation data from the Special Education Hearing Office, University of the Pacific.

While mediation was used less often in Ohio and Texas, SEA officials in both states expected the numbers of mediations to increase with recent changes in their mediation systems. In Ohio, a state education official told us and advocates confirmed that concerns about the objectivity of the mediation process in that state had made parents reluctant to use the state mediation system. As of June 2003, the Ohio SEA had contracted with four mediators and was in the process of adding four more across the state, and

the state also expected to provide on-going evaluation of the mediation process. In Texas, state officials told us they expected an increased reliance on mediation because the SEA had expanded the use of voluntary mediation as a means to resolve disputes quickly by offering it to parties involved in state complaints, although states are not required to offer mediation in conjunction with state complaints.

Officials in all 4 states we visited said mediation offered benefits to all parties. Three of the 4 states reported that a high percentage of mediations resulted in agreements. The University of the Pacific reported that 93 percent of mediations in California resulted in agreements between families and schools during the 2001-02 fiscal year. Similarly, Massachusetts and Ohio reported success rates of 85 percent and 89 percent, respectively, for the same time period.²⁶ Further, state education officials told us that mediation helped to foster communications between schools and parents and strengthen relationships. They also told us that mediations generally resolved disputes more quickly than state complaints or due process hearings. According to SEA officials in Ohio, for example, most mediations occurred within 2 weeks of the request. Texas state education officials also reported that mediations typically took place within 30 days upon receipt of the complaint. On the other hand, an administrator and some advocates told us that mediation agreements were not always implemented or enforced. However, no data were available on the extent to which this occurred.

Additionally, 3 of the states reported that mediations were less costly than due process hearings.²⁷ The Texas SEA estimated that over the past decade it had saved about \$50 million in attorney fees and related due process hearing expenses by using mediation rather than due process hearings. The state also reported that it spent an average of \$1,000 for a mediator's services compared to \$9,000 for a hearing officer's services.²⁸ Similarly, the University of the Pacific reported in January 2003 that in California, the average cost to the state for mediation was \$1,800, while the average cost of a due process hearing was \$18,600. These data are consistent with SEEP's recent nationwide findings that of 4,312 districts reporting on cost-

²⁶Texas SEA officials reported that mediations resulted in an agreement in 65 percent of the cases in 2002.

²⁷SEA officials in Massachusetts were unable to provide cost data for hearing officers and mediators.

²⁸These estimates do not include costs, such as attorney fees, paid by the LEA.

effectiveness, 96.3 percent of the respondents perceived mediation to be more cost-effective than due process hearings.

All 4 of the states we visited had created additional opportunities for offering mediation as a means to resolve disputes.²⁹ In Texas and Ohio, affected parties in a state complaint were immediately offered mediation to resolve their dispute.³⁰ In Massachusetts, it was offered when parents and educators disagreed over a student's proposed IEP and failed to reach consensus. These cases were automatically referred to the Bureau of Special Education Appeals for resolution, where mediation and due process hearings were offered. In fiscal year 2002, Massachusetts state officials estimated that approximately 10 percent of these IEP-related disputes resulted in mediation; most of the remaining cases were resolved less formally. In California, parties can request "mediation only" without filing a request for due process hearings. In this option, California state law specifically excludes attorneys—for parents or school districts—from participating. Although state and local education officials and advocates viewed the option as a viable and less adversarial alternative for dispute resolution, it was used in California 208 times, compared with 1,774 mediations tied to due process hearings in fiscal year 2002.

Some States and Localities Had Developed Additional Strategies for Early Dispute Resolution

States and localities we visited also used a variety of additional dispute resolution strategies that showed potential to help resolve disputes early, but limited data were available to assess their effectiveness. Iowa developed and promoted several strategies as part of a continuum of options for resolving disputes between parents and schools. One of these options, the Parent-Educator Connection, was created to resolve differences between parents and schools at the earliest point. This effort was designed to provide each of the 15 area education agencies with staff who were trained in conflict resolution. These parent-educator coordinators attended meetings, including IEP meetings at either parent or educator request. According to an SEA official, parent-educator

²⁹In addition to providing mediation when a request for a due process hearing has been made, many states offer mediation on other occasions. In May 2003, NASDSE reported that based on a survey of all state special education directors, mediation was offered (1) anytime parents or school districts requested it in 43 states, (2) when the SEA learned of a problem even before a formal complaint had been filed in 25 states, and (3) in connection with the filing of a state complaint in 20 states.

³⁰In California, parties can also obtain mediation by filing a state complaint, but a state education official told us that this option was rarely used.

coordinators attended 896 meetings during the 2001-02 fiscal year. Another option focused on increasing the availability of individuals with mediation skills to resolve more serious conflicts between parents and schools. These individuals, called resolution facilitators, were often regional education staff who were trained to assist families and schools in resolving their differences by discussing the problems and helping the parties work toward an acceptable agreement before it resulted in a more formalized dispute that involved the SEA. According to these state officials, another goal of the program is to teach others, including administrators, educators, and parents, about mediation, negotiation, and conflict resolution. In 2001, 238 participants, including 65 parents, received training, but no data had been collected by the SEA about how often resolution facilitators were used or about the results of informal mediation processes that had occurred.

Iowa also promoted the availability of a somewhat more formal mediation called a pre-appeal conference that was not tied to a request for a due process hearing. According to state officials, the rationale for establishing the pre-appeal conference was to allow the parties another opportunity to resolve their dispute early before it became acrimonious and a formal request for a due process hearing was filed. Officials told us that the pre-appeal conference was conducted in a similar manner to mediation, that is, in connection with a due process hearing. In 2002, the pre-appeal conference was used five times more often by families and educators than mediation and usually resulted in an agreement. Iowa advocated and actively promoted the availability of the pre-appeal conference and resolution facilitators to educators and parents.

In Ohio, the state funded a pilot parent mentor program whereby parents of students with disabilities were hired to help school districts and other families by providing training, support, and information services. One of their most important duties was to attend IEP meetings and other meetings at parent or school staff request. While no data were available on the cost-effectiveness of this program in resolving disputes at the local level, the state increased funding for the program and expanded the number of parent mentors from 10 pilot sites in 1990 to 70 project sites that afford 96 parent mentors for approximately one-third of Ohio's school districts.³¹ During the 2001-02 school year, parent mentors attended

³¹According to an Ohio parent center official, 10 of these projects are funded by federal funds through IDEA.

2,685 IEP meetings and had contact with 12,538 families of the 239,000 students with disabilities in Ohio.

California has an alternative dispute resolution grant program that provided limited funding in 2001 to 18 of the 119 regional education agencies within the state to establish strategies to prevent or address disagreements. Each region, typically consisting of more than one school district, selected several strategies and developed its own program for dispute resolution. One of these strategies, called facilitated IEPs, was used by 12 regions and involved one school district borrowing an expert trained in mediation from another school district to facilitate the IEP meeting. To become facilitators, staff participated in 4-day training programs that emphasized facilitation skills within an IEP process. The training was intended to provide facilitators with the tools to conduct IEP meetings in a way that enabled the team to (1) focus the IEP content and process on students' needs, (2) use a collaborative process, (3) build and improve relationships, and (4) reach consensus. An overall goal of this alternative grant program was to reduce the numbers of due process hearings requested in certain areas of the state. While there were no impact data for this program or any of the other strategies, 12 of the regions that participated showed an overall decrease of 42 percent in requests for due process hearings from 2001 to 2002.

State Notification Problems Were Generally Minor and Had Little Effect on Timeliness

In general, officials in the school districts we visited told us they had few problems with responding to state complaint notifications. The problems they encountered had little impact on the timeliness of the complaint process; state and local education officials appeared to be working together to overcome them.

According to the local school district officials we interviewed, complaint notifications generally provided sufficient information to allow them to respond within the states' required time frames. Both the state and local officials told us the amount of time local school districts were given to respond to the notification letter ranged from 3 to 10 days. To allow them to respond to complaints, the notification letter typically (1) identifies the student, (2) identifies the student's school, (3) describes the nature of the complaint, and (4) specifies the relevant documents needed for the state to resolve a complaint and conduct an independent on-site investigation, if determined necessary.

Los Angeles Unified School District officials said they experienced a few problems with notifications because on occasion, the state did not include

the supporting documentation for the complaint, such as a copy of the relevant IEP or evaluation along with the notification letter. Also, these school district officials told us that the notification sometimes did not include the name of the school or the child's date of birth, which initially made it difficult to identify the student. While these problems may have resulted in several days' delay, Los Angeles Unified School District officials said that some of these administrative issues will be resolved once the district has implemented its Web based IEP system, which it expects to complete in January 2004. According to an SEA official, the state was generally flexible and allowed the school district additional time to provide the requested documents.

In addition, officials of the Austin (Texas) Independent School District and Hamilton (Ohio) Local School District told us the state notification included a summary of the parents' allegations. However, they were sometimes unable to discern the nature of the parents' complaint from this account. To better understand the nature of the parents' complaint, Austin school district officials formally requested a copy of the parent's signed letter from the SEA. According to SEA officials, Texas had recently begun to include a copy of the parents' letter as part of the notification.

Concluding Observations

Overall, the numbers of formal disputes between parents and school districts were generally low compared to the 6.5 million students between 3 and 21 years old served during the 2001-02 school year, but the thousands of disputes that occur threaten relationships and can result in great expense. The concentration of due process hearings in a few localities suggests that many factors may well be at play, including local attitudes about conflict, when parents or others dispute a school district's decisions. The states we visited viewed mediation as a valuable tool for parents and schools to resolve many disputes before they become acrimonious. The fact that the states we visited were emphasizing mediation and made it more widely available than IDEA requires—along with other options for early dispute resolution—may hold promise for reducing contentious and expensive forms of dispute resolution, such as due process hearings.

Agency Comments

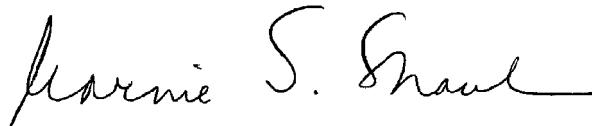
We provided a copy of this report to Education for its review and comment. Agency comments are reprinted in appendix III. Education agreed with our findings and stated that the report would be of great interest and highly relevant to the present congressional consideration of IDEA. Education said that it will assess the administration of dispute

resolution procedures in the six high incidence jurisdictions identified in our report through a combination of monitoring and technical assistance. Education also provided technical comments, which we incorporated as appropriate.

Copies of this report are being sent to the Secretary of Education, appropriate congressional committees, and interested parties. Copies will be made available to others upon request. The report is also available on GAO's Web site at <http://www.gao.gov>.

Please contact me on (202) 512-7215 if you have any questions about this report. Other GAO contacts and staff acknowledgments are listed in appendix IV.

Sincerely yours,

A handwritten signature in black ink that reads "Marnie S. Shaul". The signature is written in a cursive style with a long horizontal flourish at the end.

Marnie S. Shaul
Director, Education, Workforce,
and Income Security Issues

Appendix I: Scope and Methodology

In conducting our review, we obtained and analyzed information from the Department of Education, state education agencies (SEA), local school districts, and the McGeorge School of Law at the University of the Pacific. We visited 5 states, and in 4 of these states we interviewed staff from SEAs and local education agencies (LEA), including one urban and one rural school district in each state—for a total of eight school districts. At the district level, we performed our fieldwork at the Los Angeles Unified and Salinas Union High School Districts in California, Boston Public and Southbridge School Districts in Massachusetts, Cleveland Municipal and Hamilton Local School Districts in Ohio, and Austin Independent and Goliad Independent School Districts in Texas.

In selecting the states for our fieldwork, we considered states that (1) varied in volume of formal dispute resolution activity, (2) used one- or two-tier due process hearing systems, (3) had developed alternative dispute resolution strategies, (4) were visited by the Department of Education's Office of Special Education Programs over the past few years, (5) included large urban school districts, and (6) were geographically diverse. We met with SEA officials in Iowa because the state was identified by experts in the area for having innovative strategies in alternative dispute resolution. In addition, we met with representatives of other professional organizations, including the National Association of State Directors of Special Education and the Consortium for Appropriate Dispute Resolution in Special Education. We also interviewed members of parent resource and advocacy groups (federally funded and other nonprofits) in each of the states visited; these organizations employed parents of children with disabilities and we obtained their views.

To identify what kinds of issues resulted in formal disputes between parents and school districts, we interviewed state and local education officials, parent resource and advocacy groups, and obtained data during our site visits to California, Massachusetts, Ohio, and Texas. To determine how much formal dispute resolution activity occurred, we collected and reported data from each of the 4 states and reviewed and reported the results of four nationwide surveys, each affected by different data and research limitations:

- **Dispute Resolution Procedures, Data Collection, and Caseloads Study.** This study was conducted by the National Association of State Directors of Special Education (NASDSE) of state dispute resolution activities between February and April 1999. All 50 SEAs responded and provided some information on their state dispute resolution systems, including data on complaints, mediations, and due process hearings for

the 1999-2000 school year or 2000 calendar year. The study authors cautioned that the state data are variable and are gathered and recorded using different approaches. Also, to make the data more usable, when data were unavailable, the missing data were replaced by data from the previous year's experience or data were calculated and derived from the 30 states with complete information.

- **Due Process Hearings: 2001 Update.** Annually, Project FORUM at NASDSE surveyed special education directors to obtain nationwide data on the numbers of due process hearings requested and held over a 10-year period (1991 through 2000). The most recent survey also obtained information on the due process hearing systems used in all states and the District of Columbia to determine whether they were one- or two-tier hearing systems. The study authors noted that because state data vary in the way data are collected and maintained, the data were reported as a comparison of annual incidence even though the specific year of collection does not cover the same months. Further, short-term changes in the reporting of these data might be due to factors other than a change in a state's policy. But, multiyear changes in national totals could indicate trends in the due process system.
- **Study of State and Local Implementation and Impact of the Individuals with Disabilities Education Act (SLIDEA).** This study, funded by the Office of Special Education Programs (OSEP), is collecting data over a 5-year period by means of mailed surveys at the state, district, and school levels, and through case studies of the implementation of the Individuals with Disabilities Education Act (IDEA) in selected school districts on selected topics. In January 2003, one report was issued from this study, *Final Report on Selected Findings*, and included data on due process hearings and mediations. This report provides data on dispute resolution activity obtained from state and district surveys that were administered during the 1999-2000 school year. The estimates of dispute activity in this study were based on a survey of school districts with a response rate of 31 percent. Abt Associates conducted a nonresponse survey with eight of the original survey items primarily by telephone to determine potential bias between survey respondents and nonrespondents. Because some differences were found, data from the nonresponse survey were used to adjust the estimates based on the originally interviewed districts. An assumption was made in this analysis that nonresponding districts are similar to responding districts in the way they would answer the survey items.

- **What Are We Spending on Procedural Safeguards in Special Education, 1999-2000?** This series of reports is based on descriptive information derived from the Special Education Expenditure Project (SEEP), a national study funded by OSEP and conducted by the American Institutes for Research. This report provides estimates of school district expenditures on special education mediation, due process, and litigation activities for the 1999-2000 school year; the prevalence of dispute activity (state complaints, mediations, due process hearings, and litigations) for the 1998-99 school year; demographic characteristics of school districts with and without dispute activity; and other related information. Data were collected from a sample of school districts to generalize to all districts in the 50 states and the District of Columbia. However, no overall response rate was cited in this study. Therefore, the level of nonresponse and its effect on data quality are unknown from this survey. Because of the survey design, the SEEP data on due process hearings did not distinguish between due process hearings requested and due process hearings held. Also, the SEEP data may include dispute resolution activity in addition to the procedural safeguards under IDEA, such as those provided for by Section 504 of the Rehabilitation Act of 1973, as well as other activities made available by states.

Inconsistencies in the way states define and collect data on dispute resolution activities could affect the validity of the estimates, as well as make between-state comparisons difficult. No national reporting system exists to identify and quantify the various causes of special education disputes or the prevalence of dispute resolution activity among the states. States have developed their own database systems that have a wide variety of categories and definitions of disputes with many different allowable entries. For example, in cases that involved the simultaneous filing of a state complaint and a request for mediation, some SEAs only record the procedure that was used to resolve the dispute while other states record both the filed complaint and request for mediation. As a result, the data reported in national studies as well as that reported from our site visits are of varying quality, resulting in inexact numbers of dispute resolution activity.

To determine what mechanisms (formal and informal) were used to resolve disagreements, we interviewed state education officials and local school district administrators and obtained and reviewed documents that described these mechanisms.

To determine whether LEAs had problems responding to dispute notifications from states, we interviewed special education administrators in each of the eight school districts we visited and reviewed SEA procedures and related documents.

We conducted our work between November 2002 and September 2003 in accordance with generally accepted government auditing standards.

Appendix II: Levels of Dispute Resolution Activity in the Four Urban and Four Rural School Districts Visited

The school districts we visited varied in their use of the dispute resolution mechanisms, and generally reflected the national trends in that complaints and mediation were used more often than due process hearings to resolve disputes between families and schools. Table 3 summarizes the levels of formal dispute resolution activity over a 3-year period in the eight school districts we visited in California, Massachusetts, Ohio, and Texas.

Table 3: Dispute Resolution Activity in Urban and Rural School Districts over a 3-Year Period, Fiscal Years 2000-02

School district	Geographic area	Number of students with disabilities ^a (2000-01)	Number of state complaints	Number of due process hearings	Number of mediations	Total number of formal disputes
Los Angeles Unified, Calif.	Urban	73,936	466	57	1,687	2,210
Salinas Union High, Calif.	Rural	1,052	3	1	9	13
Boston Public, Mass.	Urban	12,290 ^b	62	25	62 ^c	149
Southbridge, Mass.	Rural	522 ^b	2	0	9	11
Cleveland Municipal, Ohio	Urban	12,727	24	1	7	32
Hamilton Local, Ohio	Rural	345	2	0	1	3
Austin Independent, Tex.	Urban	9,509	8	3	13	24
Goliad Independent, Tex.	Rural	208	0	3	0	3

Source: SEAs in Massachusetts, Ohio, and Texas; and for California, we obtained complaint data from the SEA, and due process hearing and mediation data from the Special Education Hearing Office, University of the Pacific.

^aBased on kindergarten through grade 12 enrollment figures except for Salinas Union High (grades 7 through 12) and Boston Public (includes pre-kindergarten students).

^bEstimates based on total enrollment and percentage of students in special education.

^cThe number of mediations for Boston Public Schools is incomplete. The state changed its data system during the 2000 fiscal year and could provide data for only part of the year.

Appendix III: Comments from the Department of Education



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

THE ASSISTANT SECRETARY

August 13, 2003

Ms. Marnie S. Shaul
Director, Education, Workforce, and Income Security Issues
General Accounting Office
441 G Street, NW
Washington, D.C. 20548

Dear Ms. Shaul,

Thank you for the opportunity to review the draft report entitled, "SPECIAL EDUCATION: Numbers of Formal Disputes Are Generally Low and States Are Using Mediation and Other Strategies to Resolve Conflicts." I am pleased to respond on behalf of the Department of Education. The subject of this study is an important one and highly relevant to the present Congressional consideration of the Individuals with Disabilities Education Act (IDEA). We believe the final report will be of great interest when it is issued.

The findings of the draft report are notable in several respects. Most importantly, your data document the remarkably low overall incidence of serious disputes over special education programming. Due process hearings are expensive for all parties, time-consuming, and are not undertaken lightly, so due process hearings are universally understood to be a marker of serious unresolved differences about a student's need for special education and related services or the nature or location of services. One study considered in your analysis indicates that, nationwide, over half of school districts reported that no due process hearings were either requested or held. Your draft report indicates that, nationwide, the number of due process hearings held each year declined from 3,555 in 1996 to 3,020 in 2000. The number of hearings held declined every year throughout this period. There has been within that period a marked year-by-year decrease in the percentage of due process hearings actually held compared to hearings initially requested. More hearings are initially requested than are held.

We agree that there are State-specific differences in the collection of data on dispute resolution. However, reporting on the number of due process hearings held is straightforward and uncomplicated and we believe your draft report gives an accurate overall impression of the relatively low incidence of serious problems. During the 2001-2002 school year, approximately 6.5 million students received services under IDEA (Part B), so these data appear to provide little support for anecdotal contentions

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of widespread and systemic problems. However, as mentioned below, your draft report identified problems concentrated in a few jurisdictions.

The decreases over time in the number of due process hearings held and the percentages of due process hearings requested and held are, in our opinion, in large part attributable to the increased availability and effectiveness of alternative dispute resolution strategies, especially mediation. As your analysis recognizes, the 1997 IDEA reauthorization encouraged the use of alternative approaches to dispute resolution and such approaches appear to be effective and increasingly accepted. We believe that if alternative dispute resolution strategies are perceived and demonstrated to be fast, fair and effective in obtaining agreed-upon changes in a student's educational services or setting, students, parents, and school administrators will all benefit. As you have noted, the potential cost savings are substantial. The rapid resolution of disputes allows educational services to be provided with less uncertainty and disruption and this is desirable.

We are concerned about the remarkable jurisdictional differences you have identified in dispute rates among States and in particular the extraordinarily high rate of disputes in the District of Columbia. Your draft report identified California, New York and the District of Columbia as being among six jurisdictions having high rates of due process hearings. The rate of due process hearings per 10,000 students was 3 hearings per 10,000 students in California compared to an extremely high rate of 336 hearings per 10,000 students in the District of Columbia. That rate was over ten times the rate in New York. In addition, Maryland was identified as having a high rate of due process hearings. We intend to assess the administration of dispute resolution procedures in the six high incidence jurisdictions identified in the draft report through a combination of monitoring and technical assistance.

As is customary, we are providing suggested technical and production edits separately. We believe it is important to describe the due process provisions of IDEA and methods of administration of the Federal requirements as clearly and accurately as possible. You intend to release the final report at an important stage of legislative deliberations on IDEA and it would be helpful to all parties involved in this process for the final report to provide precise and factual characterizations rather than summaries or paraphrases. We are available to discuss any of our suggested changes with your staff if this would be helpful to you.

Sincerely,


FOI Robert H. Pasternack, Ph.D.

Enclosure

Appendix IV: GAO Contacts and Staff Acknowledgments

GAO Contacts

Deborah L. Edwards (202) 512-5416
Tim Hall (202) 512-7192

Staff Acknowledgments

The following people also made important contributions to this report: Ellen Soltow, Susan Bernstein, Luann Moy, Kris Braaten, Roger Thomas, and Richard Burkard.

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