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State Laws for Due Process Hearings Under the Individuals with Disabilities Education Act

By Perry A. Zirkel*

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I. INTRODUCTION

The Individuals with Disabilities Education Act (IDEA)¹ is the leading major growth sector within K–12 education litigation.² Among the IDEA’s “extensive procedural requirements,”³ the primary adjudicative step is the due process hearing (DPH).⁴ After the DPH, the subsequent steps of the adjudicative avenue under the IDEA are (1) if the state chooses to have a second administrative tier, a review officer stage,⁵ and (2) appeal to either a state or federal court.⁶

Under its model of “cooperative federalism,”⁷ the IDEA legislation⁸ and regulations⁹ provide states with the option of supplementing its detailed foundation, including additional specifications for DPHs. To fill a gap in the increasingly rich literature on various aspects of DPHs, the purpose of this article is to provide a systematic synthesis of these state law additions. Part I of the article provides a review of the relevant literature. Part II

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¹ 20 U.S.C. §§ 1400.1 *et seq.* (2016).

² *E.g.*, Perry A. Zirkel & Brent L. Johnson, *The "Explosion" in Education Litigation: An Updated Analysis*, 265 EDUC. L. REP. 1 (2011) (revealing the upward trajectory of IDEA litigation within the relatively level trend of K–12 litigation within the past three decades).

³ *E.g.*, Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 182 (1982); *see also* Endrew F. *ex rel.* Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 994 (2017) (referring to the IDEA’s “detailed set of procedures”); Schaffer *ex rel.* Schaffer v. Weast, 546 U.S. 49, 68 (2005) (Breyer, J., dissenting) (characterizing the Act as having a “detailed procedural scheme”).

⁴ 20 U.S.C. § 1415(f) (2016). The full designation is “impartial due process hearing,” although the Act alternatively refers to “due process hearing” as a shorter, more general designation. *E.g.*, *id.* §§ 1415(b)(7)(B), 1415(e)(2)(E)–(G), 1415(f)(1)(B)(ii), 1415(f)(3)(B).

⁵ *Id.* § 1415(g).

⁶ *Id.* § 1415(i)(2)(A).

⁷ *Schaffer v. Weast*, 546 U.S. at 52 (citing *Little Rock Sch. Dist. v. Mauney*, 183 F.3d 816, 830 (9th Cir. 1999)).

⁸ *See supra* note 1.

⁹ 34 C.F.R. §§ 300.1 *et seq.* (2018).

tabulates the DPH requirements in the IDEA legislation and regulations. Part III sets forth the method and results of the canvassing of state laws. Finally, Part IV provides a discussion of the results along with recommendations for further research.

II. LITERATURE OVERVIEW

The relevant secondary sources tend to fit in two not entirely separate groups, roughly designated as narrative rhetoric and empirical research. Much of the first group of courses has focused on problems with DPHs,¹⁰ including expense to the parties,¹¹ damage to their relationship,¹² and lengthy complexity of the process,¹³ and suggested solutions, such as individualized education program (IEP) facilitation¹⁴ and binding arbitration.¹⁵ The empirical research, as reviewed more extensively elsewhere, includes analyses of frequency

¹⁰ For the obverse side, see, e.g., Mark C. Weber, *In Defense of IDEA Due Process*, 29 OHIO ST. J. ON DISP. RESOL. 495 (2014) (concluding that the DPH mechanism should be subject to refinement, not removal).

¹¹ E.g., Elisa Hyman, Dean Hill Rivkin, & Stephen A. Rosenbaum, *How IDEA Fails Families without Means: Causes and Corrections from the Frontlines of Special Education Lawyering*, 10 J. GENDER, SOC. POL'Y & L. 107, 111–14 (2011) (identifying prevailing problems and possible solutions for parents in poverty).

¹² E.g., AM. ASS'N OF SCH. ADM'RS, RETHINKING SPECIAL EDUCATION DUE PROCESS 8–9 (2013), https://www.aasa.org/uploadedFiles/Policy_and_Advocacy/Public_Policy_Resources/Special_Education/AASARethinkingSpecialEdDueProcess.pdf (citing various sources that identify parties' perceived dissatisfaction).

¹³ E.g., Perry A. Zirkel, *Over-Due Process Revisions for the Individuals with Disabilities Education Act*, 55 MONT. L. REV. 403, 405 (1994) (identifying the cumbersome length of DPHs as one of the prevailing problems).

¹⁴ E.g., Tracy G. Muller, *IEP Facilitation: A Promising Approach for Resolving Conflicts Between Families and Schools*, 41 TEACHING EXCEPTIONAL CHILD. 60 (Jan. 2009) (describing a process that utilizes an outside facilitator for resolving disagreements at IEP meetings); Elizabeth A. Shaver, *Every Day Counts: Proposals to Reform IDEA's Due Process Structure*, 66 CASE W. RES. L. REV. 143 (2015) (recommending, *inter alia*, IEP facilitation in lieu of the current pre-DPH resolution session procedure).

¹⁵ E.g., S. James Rosenfeld, *It's Time for an Alternative Dispute Resolution Procedure*, 32 J. NAT'L ASS'N ADMIN. L. JUDICIARY 544 (2012) (providing for an additional dispute resolution option for binding arbitration by a panel consisting of an expert in the child's disability, a special education administrator with experience in the child's disability, and an attorney familiar with special education law).

and outcomes of DPHs decisions.¹⁶ In the overlapping margin, systematic syntheses examine specialized aspects of DPHs, including burden of proof,¹⁷ impartiality,¹⁸ and remedial authority.¹⁹

More proximate to the present focus, a few analyses have examined state law additions to the IDEA foundation for specific areas, such as and identification of students with specific learning disabilities,²⁰ behavior-related strategies in special education,²¹ and

¹⁶ E.g., Perry A. Zirkel & Cathy A. Skidmore, *National Trends in the Frequency and Outcomes of Hearing and Review Officers under the IDEA: An Empirical Analysis*, 29 OHIO ST. J. ON DISP. RESOL. 525 (2015) (providing comprehensive literature review and systematic findings specific to frequency and outcomes of DPH decisions). For more recent frequency or outcomes analyses for specific issues, see, e.g., Cathy A. Skidmore & Perry A. Zirkel, *Has the Supreme Court's Schaffer Decision Placed a Burden on Hearing Officer Decision-Making under the IDEA*, 35 J. NAT'L ASS'N ADMIN. L. JUDICIARY 304 (2015) (finding that *Schaffer v. Weast* has had a minor effect on DPH decisions); Perry A. Zirkel, *Manifestation Determinations under IDEA 2004: An Updated Legal Analysis*, 29 J. SPECIAL EDUC. LEADERSHIP 32 (2016) (finding similar frequency and outcome pattern after, as compared with before, 2004 IDEA amendments); Perry A. Zirkel, *Are the Outcomes of Hearing (and Review) Officer Decisions Different for Pro Se and Represented Parents?*, 34 J. NAT'L ASS'N ADMIN. L. JUDICIARY 263 (2015) (finding a significant difference but questioning causality); Perry A. Zirkel, *Adjudicative Remedies for Denials of FAPE under the IDEA*, 33 J. NAT'L ASS'N ADMIN. L. JUDICIARY 214 (2013) (determining frequency and outcomes of compensatory education and tuition reimbursement).

¹⁷ E.g., Perry A. Zirkel, *Who Has the Burden of Persuasion in Impartial Hearings under the Individuals with Disabilities Education Act?*, 13 CONN. PUB. INT. L.J. 1 (2013) (categorizing state laws into the three groupings after *Schaffer v. Weast* – silent, default, on-district).

¹⁸ E.g., Peter J. Maher & Perry A. Zirkel, *Impartiality of Hearing and Review Officers Under the Individuals with Disabilities Act*, 83 N. DAKOTA L. REV. 109 (2007) (providing a checklist of hearing officer characteristics and conduct that courts have determined to be either a clear, probably, unlikely, or not at all a violation of the IDEA impartiality requirement).

¹⁹ E.g., Perry A. Zirkel, *The Remedial Authority of Hearing and Review Officers under the Individuals with Disabilities Education Act: An Update*, 31 J. NAT'L ASS'N ADMIN. L. JUDICIARY 1 (2011) (canvassing the case law and related authority for the various remedies available to IDEA hearing and review officers).

²⁰ E.g., Laura Boynton Hauerwas, Rachel Brown & Amy N. Scott, *Specific Learning Disability and Response to Intervention: State-Level Guidance*, 80 EXCEPTIONAL CHILD. 101 (2013); Perry A. Zirkel & Lisa B. Thomas, *State Laws and Guidelines for Implementing RTI*, 43 TEACHING EXCEPTIONAL CHILD. 60 (Sept./Oct. 2010) (tracking states' official responses to the IDEA 2004 provision

the statute of limitations for DPHs.²² Most closely, a state-by-state canvassing of various features of DPH systems serves as the direct springboard for the present state law tabulation.²³ This springboard analysis, which was based on a survey of the responsible representatives of state education agencies (SEAs),²⁴ revealed an overall trend toward “judicialization” of DPHs, including the increasing use of full-time administrative law judges (ALJs) as hearing officers.²⁵ However, it did not extend to examining the applicable state laws for DPHs that added to the applicable IDEA requirements.

III. IDEA FOUNDATIONAL REQUIREMENTS

The IDEA contains specific provisions for the successive phases before, during, and after DPHs. The “before” and “after” phases serve only as the frames for the focus of the present analysis.²⁶ The

for changing the requirements for eligibility under the classification of specific learning disabilities).

²¹ E.g., Perry A. Zirkel, *State Special Education Laws for Functional Behavioral Assessments and Behavior Intervention Plans: An Update*, 45 COMMUNIQUE 4 (Nov. 2016) (finding continuing pattern of skeletal additions to IDEA for functional behavioral assessments and behavior intervention plans).

²² Perry A. Zirkel & Peter J. Maher, *The Statute of Limitations under the Individuals with Disabilities Education Act*, 175 EDUC. L. REP. 1 (2003) (categorizing states into various identified groupings prior to the express filing limitation in the 2004 amendments of the IDEA).

²³ Perry A. Zirkel & Gina Scala, *Due Process Hearing Systems under the IDEA: A State-by-State Survey*, 21 J. DISABILITY POL’Y STUD. 3 (2010). An update of this survey analysis is in progress. Jennifer Collins, Thomas Mayes, & Perry A. Zirkel, *State Due Process Hearing Systems: An Update*, J. DISABILITY POL’Y STUD. (under review).

²⁴ The respondents were either the SEA special education directors or, via their delegation, their particular staff member who supervised the DPH system. *Id.* at 4.

²⁵ *Id.* at 7. For the use of this term to refer to the trend toward legal procedures rather than special education expertise, see Perry A. Zirkel, Zorka Karanxha, & Anastasia D’Angelo, *Creeping Judicialization in Special Education Hearings?: An Exploratory Study*, 27 J. NAT’L ASS’N ADMIN. L. JUDICIARY 27 (2007) (finding gradual increase in various indicators of this trend in DPHs in Iowa).

²⁶ Due to the marginal significance of the prehearing and posthearing phases here, their illustrative citations are limited to the IDEA legislation. For the corresponding regulations, see 34 C.F.R. §§ 300.506 – 300.510 (2018) (prehearing) and §§ 300.513 – 300.514, 300.516 (2018) (posthearing). The regulations largely

provisions for the prehearing phase address (1) the complaint,²⁷ (2) the response,²⁸ (3) the resolution session,²⁹ (4) prehearing disclosure,³⁰ and (5) the opportunity for mediation.³¹ Although the dividing line is not a bright one, the hearing officer (HO) is—with very limited exception³²—not directly involved in these enumerated prehearing steps. The provisions for the post-hearing phase address (1) the decision³³ and (2) any appeal.³⁴

Specifically, the focus here is the DPH rather than the prehearing and posthearing phases. Although not devoid of overlap with or extension into the pre- and post-hearing periods,³⁵ the following provisions of the IDEA legislation, with the limited supplementation of its regulations,³⁶ set forth the outer boundaries and four-category organization of the analysis³⁷:

repeat the statutory provisions, providing relatively limited added specifications. *E.g.*, *id.* § 300.512(a)(3) (2018) (five-day minimum for “any evidence,” not just evaluations and their recommendations).

²⁷ *E.g.*, 20 U.S.C. §§ 1415(b)(6) (2016) (subject matter and statute of limitations) and 1415(b)(7)(A) (2016) (contents). The related provisions also limit the amendment of the complaint. *Id.* § 1415(c)(2)(E)(i) (2016).

²⁸ *Id.* § 1415(c)(2)(B) (2016).

²⁹ *Id.* § 1415(f)(1)(B)(1) (2016).

³⁰ *Id.* § 1415(f)(1)(B)(2) (2016). For the notable extension of the scope of this five-day requirement in the regulations, *see supra* note 26.

³¹ *Id.* § 1415(e) (2016). However, extending beyond the immediate prehearing phase, this opportunity extends to the period before the complaint. *Id.* § 1415(e)(1) (2016).

³² This exception is for the possible resort to the hearing officer for a determination of the sufficiency of the complaint. *Id.* § 1415(c)(2)(D) (2016).

³³ *Id.* §§ 1415(f)(3)(E) (free appropriate public education boundaries for the decision) and 1415(i)(1)(A) (2016) (finality of the decision). The corollary regulations add only a requirement for “findings of fact” although oddly via “and” rather than “in” the decision. *E.g.*, 34 C.F.R. § 300.512(a)(5) (2018).

³⁴ 20 U.S.C. §§ 1415(g) (review officer) and 1415(i)(2)–(3) (2016) (court, including attorneys’ fees).

³⁵ A major example is the category of “HO features,” with the subcategories of qualifications and impartiality being initially and largely a prehearing matter but continuing in the implementation phase, including disqualifications during and after the DPH.

³⁶ The citations of the regulations are limited to those that provide specifications beyond those of the legislation.

³⁷ The bulleted items only exemplify rather than exhaust the subcategories. For example, the IDEA does not address training or assignment of HOs; yet these

1. HO Features
 - Impartiality: not an SEA or district employee³⁸ and without conflict of interest³⁹
 - Qualifications⁴⁰: applicable law,⁴¹ hearing management,⁴² and decision writing⁴³
2. Party rights
 - Representation⁴⁴
 - Witnesses⁴⁵
 - Hearing record⁴⁶

items emerge as additional subcategories under the broad HO Features category to the extent that state laws address them. Moreover, the four categories and their subcategories are neither mutually exclusive nor clearly settled. For example, the Evidence subcategory under HO Authority overlaps with the Witnesses subcategory of Party Rights. Similarly, the single IDEA items respectively used as placeholders for the HO Authority category (*infra* text accompanying note 48) and the Miscellaneous category (*infra* text accompanying note 51) are merely tentative interpretations in light of the lack of a pre-established taxonomy for this state law analysis.

³⁸ 20 U.S.C. § 1415(f)(3)(A)(i) (2016) (“an employee of the SEA or the LEA that is involved in the education or care of the child”). The regulations add the clarification that “[a] person who otherwise qualifies to conduct a hearing . . . is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.” 34 C.F.R. § 300.511(c)(2) (2018).

³⁹ 20 U.S.C. § 1415(f)(3)(A)(i) (2016) (“a personal or professional interest that conflicts with the person’s objectivity in the hearing”).

⁴⁰ The regulations add a requirement for the applicable education agency to maintain a list of the HOs that includes their qualifications. 34 C.F.R. § 300.511(c)(3) (2018).

⁴¹ 20 U.S.C. § 1415(f)(3)(A)(ii) (2016) (“knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts”).

⁴² *Id.* § 1415(f)(3)(A)(iii) (2016) (“knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice”).

⁴³ *Id.* § 1415(f)(3)(A)(iv) (2016) (“knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice”).

⁴⁴ *Id.* § 1415(h)(1) (2016) (“the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities”).

⁴⁵ *Id.* § 1415(h)(2) (2016) (“the right to present evidence and confront, cross-examine, and compel the attendance of witnesses”).

⁴⁶ *Id.* § 1415(h)(3) (2016) (“the right to written, or, at the option of the parents, electronic findings of fact and decisions”). The regulations add that this record must be “at no cost to parents.” 34 C.F.R. § 300.512(c) (2018).

- Parent options for open hearing and child’s attendance⁴⁷
- 3. HO Authority
 - Evidence, including limitation on added issues⁴⁸
- 4. Timelines
 - Statute of limitations (SOL), or filing deadline for DPH⁴⁹
 - Extensions⁵⁰
 - Miscellaneous⁵¹

IV. METHOD AND RESULTS

The search for relevant state law consisted of three successive sources. The primary source was the Westlaw database, using the separate compilations of statutes and regulations on a state-by-state basis to obtain pertinent provisions in the state law corollaries to the IDEA.⁵² For the relatively few states where the available entries mentioned or implied a relevant policy manual, the next source was

⁴⁷ 34 C.F.R. §300.512(c) (2018) (“Parents involved in hearings must be given the right to—(1) Have the child who is the subject of the hearing present; (2) Open the hearing to the public.”).

⁴⁸ 20 U.S.C. § 1415(f)(3)(B) (2016) (“The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the [complaint], unless the other party agrees otherwise.”). This provision, although a limitation on the overlapping category of Party Rights, serves as a placeholder here for HO Authority based on the HOs enforcement obligation and its similarly direct connection to the residual and central Evidence subcategory.

⁴⁹ *Id.* §§ 1415(b)(6)(b) and 1415(f)(3)(C)-(D) (2016) (filing within two years of the “knew or should have known” (KOSHK) date unless state law specifies otherwise, with two express exceptions).

⁵⁰ 34 C.F.R. § 300.515(c) (2018) (granting the HO authority to “grant specific extensions of time beyond the [applicable 45-day period for the decision] at the request of either party”).

⁵¹ Serving as the basis for this residual catchall category is the reference in the regulations to HO-initiated evaluations. 34 C.F.R. § 300.502(d) (2018).

⁵² The primary strategy was to search within “education,” but more extensive ad hoc efforts were warranted in several states due to not only varying terms for education but also reasonable indication of the additional applicability of more generic legislation or regulations for administrative hearings. *E.g.*, the Arizona and Colorado special education regulations: ARIZ. ADMIN. CODE § R7-2-405 (2015) (defining the HO as “an administrative law judge (‘ALJ’) of the Office of Administrative Hearings”); COLO. CODE REGS. § 301-8(7.5)(f) (2016) (referring to HOs as ALJs of the Office of Administrative Courts).

the website of the SEA for the cited document.⁵³ Finally, for the states with such policy manuals and for those in which either the legal status of the policy manual or the applicability of the state Administrative Procedures Act (APA) provisions for contested cases was unclear,⁵⁴ the final source was e-mail communications with the state representative responsible for IDEA DPHs.⁵⁵

In light of the partially blurry margins, the final scope of sources was limited to state special education laws, state APA provisions to the extent applicable, and legally binding state policy manuals as of December 2017,⁵⁶ thus excluding DPH-related manuals that provided

⁵³ IDAHO ADMIN. CODE r. 08.02.03.004 (2018) (incorporating by reference the *Idaho Special Education Manual*, which is available at <http://www.sde.idaho.gov/topics/admin-rules/files/sped-manual/documents/Special-Education-Manual-Approved-081017.pdf>); S.C. CODE ANN. REGS. 43-243(II) (2016) (referencing the SEA's policies, which are available at <https://ed.sc.gov/districts-schools/special-education-services/fiscal-and-grants-management-fgm/grants/sc-policies-and-procedures-for-special-education/>); W. VA. CODE R. § 126-16-3 (2017) (incorporating by reference the "West Virginia Procedures Manual for the Education of Students with Exceptionalities," which is available at http://wvde.state.wv.us/osp/Policy2419_2017.pdf); 7 WYO. CODE R. § 7 (2018) (requiring the SEA to adopt "dispute resolution policies and/or procedures," which is available at https://edu.wyoming.gov/downloads/special-ed/SpecEd_Policy_and_Procedure_Manual_v__1_1FINAL_8-20-2010.pdf).

⁵⁴ First, quere whether such policy manuals comply with the IDEA regulation requiring an APA-type process for policies and procedures that implement the IDEA. 34 C.F.R. § 300.165 (2018). Second, in addition to the states that use full-time governmental ALJs as IDEA HOs, some others (e.g., Indiana and Kentucky) apply their APA. Conversely and unusually, Wisconsin uses full-time ALJs but expressly excludes applicability of its APA. WIS. STAT. § 115.80(10) (2017).

⁵⁵ E.g., E-mail from Sheila Patsel, Assistant Director of Office of Federal Programs for W.V. Dep't of Educ., to Perry A. Zirkel (Feb. 26, 2018, 2:57 EST) (rules of procedure for state superintendent hearings and appeals do not apply to IDEA DPHs in W. Va.) (on file with author); E-mail from Carol Ann Hudgens, Section Chief for Policy for Exceptional Children Division of N.C. Dep't of Pub. Instruction, to Perry A. Zirkel (Nov. 30, 2017 11:08 EST) (clarifying that the state APA applies to IDEA DPHs in N.C.); E-mail from Tammy Pust, Chief Judge, Minn. Office of Admin. Hearings, to Perry A. Zirkel (Nov. 20, 2017, 17:06 CST) (same for Minn.) (on file with author); E-mail from Kerry V. Smith, Director of Pennsylvania's Office for Dispute Resolution, to Perry A. Zirkel (Nov. 28, 2017, 10:30 EST) (acknowledging that the issue is unsettled but opining that the state APA is probably not binding on DPHs in Pa.) (on file with author).

⁵⁶ See *supra* note 53. For a close call in favor of inclusion, see HEARING RULES FOR SPECIAL EDUCATION APPEALS (2008),

guidance for HOs and/or the public without the force of law.⁵⁷ The Appendix lists the citations of the state law, including the binding manuals, in two columns, differentiating those state law specific to special education from the generic APA provisions applicable to IDEA HOs.⁵⁸

Similarly, the subject matter scope extends to the aforementioned⁵⁹ four categories of the DPH process, with the understanding that the separation from the excluded prehearing and posthearing stages,⁶⁰ like those among these four categories,⁶¹ is not

www.mass.gov/anf/docs/dala/bsea/hearing-rules.doc; the basis for this determination is MASS. GEN. LAWS ch. 71B, § 2A(a) (2017) (authorizing the director of the HOs unit, with specified consultation, to issue necessary procedural rules consistent with applicable law).

⁵⁷ CAL. CODE REGS. tit. 5, § 3091 (2018) (providing for “guidance” manual for interested parties); PENNSYLVANIA SPECIAL EDUCATION DISPUTE RESOLUTION MANUAL 1 (2017), <http://odr-pa.org/wp-content/uploads/pdf/Dispute-Resolution-Manual.pdf> (specifying that the document lacks the force of law); HEARING OFFICER DESKBOOK: A REFERENCE FOR VIRGINIA HEARING OFFICERS 1 (2016) (“These guidelines create no legal mandates or requirements”). For a close call in favor of exclusion, see POLICIES GOVERNING SERVICES FOR STUDENTS WITH DISABILITIES (2014), <https://ec.ncpublicschools.gov/policies/nc-policies-governing-services-for-children-with-disabilities/policies-children-disabilities.pdf>. See *supra* note 55. However, this conclusion is only tentative in light of *North Carolina State Board of Education v. North Carolina Rules Review Commission*, 805 S.E.2d 518 (N.C. Ct. App. 2017) (holding that the state board of education policies are governed by the rulemaking requirement of the APA, including the Rules Review Commission’s approval). Similarly, the scope does not extend to attorney general opinions concerning DPHs. E.g., Cal. Attorney Gen. Opinion No. 14-1401 (Sept. 28, 2017) (opining that neither the IDEA and corollary California laws nor the California APA authorizes non-attorney representation at a DPH).

⁵⁸ For the states that apply APA laws, the citations are to the regulations rather than the legislation for the sake of specificity and brevity.

⁵⁹ See *supra* notes 38–51 and accompanying text.

⁶⁰ See *supra* note 35 and accompanying text.

⁶¹ The reasons for the incomplete clarity and consistency include (1) although the pertinent IDEA and state law provisions generally use some of these organizing categories, such as hearing rights, they are far from complete and symmetrical in the use of these headings; (2) some of the headings inevitably overlap, such as those attributed to the parties and those attributed to the HO; and (3) variance in the strength and detail of the entries would otherwise cause undue complications and questions, such as a mandatory provision for prehearing conferences or subpoenas otherwise shifted from HO Authority to Party Rights.

entirely clear and consistent.⁶² The reason for the extensions is that although the actual DPH is the focus of the analysis, the supplementary selection criterion was significance to DPH participants, including HOs, and policymakers.⁶³ Conversely, the contents do not extend to other, more clearly distinguishable related areas.⁶⁴

Based on an examination of the aforementioned⁶⁵ sources in light of the organizing focus and supplemental consideration, the author developed the subcategories and compiled the entries for the accompanying Table. In comparison to the foundational IDEA template, which fit on a tandem basis only to the extent of state law entries, the additional subcategories are as follows: (1) for HO Features – assignment and training; (2) for Party Rights⁶⁶ – strike

⁶² At the outer boundary, an example is the SOL for DPHs, which is at least partly a prehearing subject. See *supra* note 27. Yet, as reflected in its overlapping specification in the IDEA provisions for the DPH process (*supra* note 48), this SOL is also significant for the conduct of DPHs for at least two reasons. First, it requires difficult HO determinations, including but not at all limited to the KOSHK date, which is when the parent first knew or should have known of the alleged violative action. See, e.g., Perry A. Zirkel, *Of Mouseholes and Elephants: The Statute of Limitations for Impartial Hearings Under the Individuals with Disabilities Education Act*, 35 J. NAT'L ASS'N ADMIN. L. JUDICIARY 305 (2016). Second, the SOL for DPHs affects the scope of the evidence, at least in separating controlling from background information. See, e.g., *Pangerl v. Peoria Unified Sch. Dist.*, 67 IDELR ¶ 36 (D. Ariz. 2016); *Dep't of Educ., State of Haw. v. E.B.*, 45 IDELR ¶ 249 (D. Haw. 2006) (ruling that the amount of evidence beyond the applicable SOL is within the HO's discretion).

⁶³ Based on this supplementary criterion, the exceptions to the strict scope for the contents were largely extensions into the prehearing stage. See *supra* note 62 and *infra* text accompanying note 68.

⁶⁴ These specific exclusions are: (1) the subject matter jurisdictions for DPHs, 20 U.S.C. § 1415(b)(6)(A) (2016); (2) the “stay-put” provision, *id.* § 1415(j); 34 C.F.R. § 300.518 (2018); and (3) the special stay-put and HO provisions, including expedited hearings, for disciplinary changes in placement, 20 U.S.C. § 1415(k)(4); 34 C.F.R. § 300.532 (2018). The other provisions mentioning HOs are part of the aforementioned posthearing exclusion for decisions (*supra* note 33)—specifically for attorneys' fees, 20 U.S.C. § 1415(i)(3)(D)(iii), and tuition reimbursement decisions, 20 U.S.C. § 1412(a)(10)(C)(ii) (2016).

⁶⁵ See *supra* notes 56–58 and accompanying text.

⁶⁶ In partial contrast, the heading for lay representation is a specific application of the broader advisor regulation (*supra* note 44).

HO⁶⁷ and discovery; (3) HO authority – prehearing conference and subpoenas; and (4) for Timelines – none.⁶⁸ The entries represent four approximate, Likert-type levels: (x) = partial; x = w/o particular limitation or detail; X = relatively detailed or forceful; and **X** = unusual. The Comments column provides clarifying and supplementary information with cross-reference to the letter of the applicable subcategory. For the same of efficient use of space, the source citations appear in the Appendix.

Table 1: State Law Additions to IDEA Provisions for DPHs

State*	HO Features				Party Rights			HO Authority			Timelines		Misc.	Comments	
	A	B	C	D	E	F	G	H	I	J	K	L	M		
	Impartiality	Qualifications	Assignment	Training	Strike HO	Lay rep.	Discovery	Prehear. conf.	Subpoenas	Evidence	Filing deadline	Extensions	Other		
AL			X					X				X	X	C-rotational; H-mandatory; L-notice only (to SEA); M-detailed specs (e.g., ct. reporter, sequence)+party cooperation	
AK	X		X	X	X			(x)		x	X	X	X	A-no emp. within 12 mos.; C-random; D-incl. sp. ed. law; E-1 str.; H-HO "may"; J-broad; K-1 yr.; [M-may consolidate §504]	
AZ*	X			X				X	x			(x)	X	A-no rep. within 12 mos.; H-detailed; L-factors only; M-APA, incl. ex parte for parties	
AR	X							(x)	X	x			X	X	A-ex parte; H-party may request; I-detailed. HO determines B/P; J-restrict Ws; L-combo; M-mandatory dismissals, no depositions or interrogatories, time limits for arguments, 3-day general limit
CA*	X			X	X			(x)	x	x			X	X	A-ex parte; D-80 hrs./20 hrs.; E1 str.+disclosure-->recusal; H-party may request; J-broad+tech.+HO prior Qs & experts; M-adv. comm., HO auth. reasonable length [+ prevailing party by issue reg.-required handbook and ADR material] + APA, incl. sanctions [+ A.G. Opinion against lay representation]
CO*	X						x	x	x	X			X		A-jud. std., ex parte+; G thru J-RCP & R.Evid. "to the extent practicable"; L-combo=documented+ cause; M-APA, incl. default, ex parte-parties
CT				X				X		X			X	X	D-in procedures and sp ed; H-mandatory with specs.; J-exhibit numbering+B/Per for IEP on LEA+summon/question Ws; L-detailed+new date; M-HO auth. for expert IEP prescription, bifurcation for TR, and determining hearing length w. factors and briefs max., ADR (advisory opinion, visiting atty.)
DE	X		X	x					x	X					A-tripartite panel; C-rotation; J-B/P on LEA
FL*						(x)	x	x	x	x			X	X	F-formal HO determination; H-HO "may"; I-not documents alone?; L-and 5 days prior; M-APA, incl. stds. of conduct for party reps
GA*	X						(x)	(x)	X	X			X	x	A-not previously familiar+disclosure+ex parte; G,H-HO discretion; L-good cause+new date; J-shiftable B/P; M-APA, incl. dismissal to re-file

⁶⁷ This abbreviated designation represents the analog to peremptory challenges in jury selection. For states with an entry, the Comments column provides the specified number of strikes that the law permits.

⁶⁸ All of these additions were, at least partly, extensions into the prehearing stage.

HI*	X							X	X	X		X	X	A-ex parte+familial; H-mandatory; J-HO may restrict testimony; L-rigorous reasons exceeding APA; M-APA
ID*	X						(X)		X			X		A-ex parte; H-HO "may"; L-documented only; M-simplified state APA incl. respectful/no smoking
IL	X	X		X	X			X	X			X		A-incl. resident and post S; B-ed+exp+screen. comm.+eval. for annual reapp.+termination; D-detailed, contractor; E-1 str.; H-mandatory w. specs; L-if jt.; M-site, length (7-30 days), system eval.
IN*	X			(X)		X	X	X	X	X		X	X	A-ex parte=business dealings; D-state law procedures only; I-broad; L-document only; M-APA, incl. sanctions, no class actions (individuals only)
IA*	X					X	(X)	X	X			X	X	A-jud. std.+ex parte (w. sanctions)+spouse; H-may; I-by CSSO+by HO (detailed), R.Evid.; L-factors only; M-APA, incl. 3 rd party, rt. for written briefs
KS*		X		X	X		(X)		X					B-atty.+exam; E-parent unrestricted (triggering SBE appointment); H-HO auth. or party agreement
KY*	X			X			(X)	X	(X)	X			X	A-ex parte; D-max. hrs. (18/6); H-HO "may"; I-unclear B/P; K-3 yrs. w. revised exc.; M-biannual report, disqualif. by agency head, HO default auth.,
LA*	X	X		X			X	X			X	X		A-rep. within 3 yrs.; B-atty.; H-mandatory/detailed; K-1 yr.; M-party dress in "proper business attire," HO auth. for telephone hearings
ME								X	X				X	I-by CSSO w. HO modif. auth.; J-broad
MD*	X					(X)	(X)	X	X			X	X	A-jud. std.; G-documents/objects only; H-HO "may" but with specs; J-broad w. auth. to limit; M-HO-ordered expert W at SEA expense, technology + APA
MA*	X	X				X	X	(X)	X			X	X	A-ex parte; B-atty.; H-HO "may" but detailed; I-detailed; J-broad; M-special bureau-detailed rules (e.g., adv. comm., reg. reports, ADR-advisory opinions), [jurisd for 504 & parent rejections, enforcement, not eval. consent]
MI*	X			X			(X)	X	X			X	X	A-previous law associate; D-"as needed" in specified subjects; H-HO "may" but detailed; M-APA, incl. HO auth. for issue ID/simplification, technology, reasonable limits, and no discovery
MN*	X			X			X	X	X			X	X	A-various; H-mandatory/detailed; J-question Ws; L-good cause examples; M-ADR-FIEP, system data incl. participant eval.; mandatory for length; 5-day exc. for impeachment+APA
MS														(leg. and regs do not make notable additions)
MO	X			X										A-work or advocacy for 5 yrs.; D-10 hrs. initially and 5 hrs. annually for the at least 3 designated ALJs
MT	X			X				X	X	X			X	A-ex parte; C-ranking procedure; H-mandatory; J-R.Evid. w. ltd. exc.; M-"informal disposition," CSSO decision for disqualif.
NE							X	X	X	X		X	X	A-ex parte; G-HO auth.; H-hybrid, detailed; J-party option/expense of R.Evid.; L-good cause examples; M-technology, HO-initiated evid.
NV				X	X	X			(X)				X	C-random; D-40 hrs. yr. 1, annually thereafter; E-up to 2 strikes for complainant from panel of 3 (via preferential sequence); I-SEA sup't. auth. and specified ct. enforcement; J-B/P on LEA
NH									X		X			K-90 days for TR
NJ*	X					X	(X)	X	X	X			X	A-ex parte; G-depos only for good cause; H-mandatory w. specs; J-broad w. B/P on LEA; M-"emergent relief" (-TRO), sanctions+ APA
NM								X					X	H-mandatory w. specs; M-consideration of costs and burdens, sanctions, prohib. non-atty. rep., jt. ext. for ADR option, FIEP, untimely withdrawal
NY	X			X	X			(X)	X			X	X	A-not atty. within past 2 yrs.; C-rotation; H-HO "may" J- B/P on LEA; L-30-day max. each & factors & nonreasons; M-suspension/revocation, max. rates, limitation on assisting pro se P, various limits, incl. 1 day per party
NC*							X	(X)	X	X	X	X	X	K-1 yr.; H-discretionary but detailed; L-examples; M-APA, incl. sanctions, prohibits non-atty. rep.
ND*	X						X	(X)	X	X		X	X	A-ex parte; H-discretionary but detailed; M-FIEP, APA
OH		X		X					X					B-atty.
OK		(X)	X						X					B-atty. or master's degree; C-rotation

OR*	(X)						(X)	(X)	X	X					X	A-ex parte (from parties)-only rebuttal/record; G-HO auth.; H-discretionary but detailed; M-APA, incl. mandatory default for LEA
PA										X					X	J-incl. HO initiated; M-annual report to SBE. [internal manual w/o force of law]
RI																(state regs mirror the IDEA regs)
SC		(X)		(X)					X					X		B-h.s. grad; D-for selection; L-incl. new date
SD*	X						(X)		X	X					X	A-ex parte; G-HO auth.; J-judicial R.Evid.; M-APA (sp. ed. regs merely track IDEA)
TN*	X			X		(X)	(X)		X	X				X	X	A-ex parte; D-annual trg. (sp.ed.law); F-unless prohib. by law; G-ltd.; I-at party request; L-for mediation or HO extraord. circ.; M-[prevailing party by issue]+APA, incl. technology
TX			X			X	(X)		X	X	X	X	X	X	X	C-rotation; F-formal specs. & HO det.; G-HO auth.; J-R.Evid.; J-1 yr.; L-factors+new date; M-sanctions, rep. requirements if hearing at a school, party conduct, reasonable time limits
UT			X													C-rotation [otherwise, state rules mirror IDEA regs]
VT		X						X	X		X	X	X	X	X	B-atty; H-mandatory w. specs.; K-90 days for TR; L-specified reasons; M-withdrawal, 1-day each unless HO determines more
VA*	X	X	X	X		X		X	(X)					X	X	A-ex parte; B-atty. (5 yrs.), annual recertif.-eval. factors; C-reg'l rotation; H-hybrid, detailed; L-incl. HO-initiated if SEA approves; M-reissue corrected decisions (but not errors of law) [+deskbook]
WA*								(X)	X					X	X	H-HO "may" but detailed; I-detailed via cross ref.; L-incl. IHO-initiated; M-IHO auth. for s.j.+ other activism
WV	X	X	X	X		(X)			X						X	A-not LEA or parent atty. within 1 yr.; B-atty.; C-rotation; F-delegated to state law (guidance that silence suffices); M-FIEP, "efficient manner"
WI	X			X				(X)	X	X	X	X	X	X	X	A-atty.; K-1 yr.; H-discretionary; L-document reason; M-excludes APA
WY	X	X					(X)	X	X					X		A-ex parte; B-atty.; G-HO "may"; H-mandatory w. specs; L-document new date
	30	11	11	21	5	8	19	33	40	28	8	31	35			
	Impartiality	Qualifications	Assignment	Training	Strike HO	Lay rep.	Discovery	Prehear. conf.	Subpoenas	Evidence	Filing deadline	Extensions	Other			

*Designates states that have applicable state APA provisions, as cited in the Appendix.

A. *HO Features*

The most frequent state law additions to the foregoing IDEA provisions for this category,⁶⁹ without weighting for partial or elaborated entries, were for the impartiality (n=30) and training (n=21) subcategories. For impartiality, as the entries in the Comments column show, the prevalent addition was for *ex parte* communications, although some states variously extended the IDEA employment/interest prohibitions⁷⁰ to varying roles and relationships, typically for specified periods. The unusual impartiality provisions were the few state laws (Colorado, Iowa, and Maryland) that applied the judicial standard, which extends beyond actual to the appearance of bias; Illinois' recusal requirement based on not only residency but also if "he or she knows or should know that he or she may receive remuneration from a party to the hearing within 3 years following [its] conclusion"⁷¹; and Delaware's tripartite panel of a special educator, lay advocate, and private attorney.⁷²

The training requirements were mostly limited to mere mention without specified amounts, although California and Missouri were the leading examples of explicit minimum amounts for the preservice and in-service periods.⁷³ The other unusual provision was the elaborate initial and continuing training mechanism in Illinois, which not only provides rather detailed specification of the subject matter but also "unbiased . . . educational and legal experts" under contract with a training entity via "a competitive application process . . . at least once every 3 years."⁷⁴

⁶⁹ See *supra* notes 38–43 and accompanying text.

⁷⁰ See *supra* notes 38–39.

⁷¹ 105 ILL. COMP. STAT. 5/14-8.02a(f-5) (2018).

⁷² 14 DEL. ADMIN. CODE §§ 926(11.2) (2017). Akin to the tripartite arrangement typical for labor arbitration the collective bargaining agreement impasses, the impartiality is inferably based on not only the balance between the two polar partisan members but also the neutral, who in this case is the private attorney (presumably not working on behalf of either school districts or parents of students with disabilities).

⁷³ Conversely, Kentucky law specifies a maximum of "eighteen (18) classroom hours of initial training and six (6) classroom hours per year of continuing training." KY. REV. STAT. ANN. § 13B.030(b)(4) (2017).

⁷⁴ 105 ILL. COMP. STAT. 5/14-8.02c(e)–(f) (2018). Moreover, the same legislation provides that a specified "7-member Screening Committee shall

Beyond the triad of ability and knowledge IDEA competencies,⁷⁵ the relatively infrequent state law additions to the Qualifications subcategory (n=11) were typically limited to requiring attorney status, although a couple of state laws specified a broader educational alternative.⁷⁶ Additionally, three state laws are relatively unusual in providing more rigorous requirements: (1) Kansas requires not only attorney status but also passing “a written examination prescribed by the state board [of education] concerning special education laws and regulations”⁷⁷; Illinois successively requires “a master’s or doctor’s degree in education or another field related to disability issues or a juris doctor degree”⁷⁸ and, much more significantly, the aforementioned⁷⁹ rather rigorous specified selection, training, evaluation, and reappointment process; and (3) Virginia specifies that the attorney must have practiced for five years, show “established prior experience with administrative hearings or knowledge of administrative law,”⁸⁰ and undergo a certification and annual recertification process that includes an evaluation based on specified factors, such as issuing decisions “within regulatory time frames.”⁸¹

Finally, for the additional subcategory of assignment, the similarly infrequent pertinent state law (n=11) provisions almost all

participate in the selection of the training entity” and in not only the initial selection but also the annual evaluation and reappointment of the HOs. *Id.* 5/14-8.02c(a), 5/14-8.02c(f), and 5/14-8.02c(g) (2015).

⁷⁵ See *supra* notes 41–43.

⁷⁶ Oklahoma provides the alternative of “a Master’s degree in education, special education, psychology, or any related field.” OKLA. ADMIN. CODE § 210:15-13-5(e) (2008). At the far end, South Carolina requires, as its express minimum, “a high school graduate (or ... an equivalent credential).” POLICIES AND PROCEDURES IN ACCORDANCE WITH THE [IDEA] 10 (2011), <https://ed.sc.gov/districts-schools/special-education-services/fiscal-and-grants-management-fgm/grants/sc-policies-and-procedures-for-special-education/>. Conversely, the many state laws that are silent for this item and for other subcategories provide flexibility for de facto requirements as a matter of prevailing practice.

⁷⁷ KAN. ADMIN. REGS. §§ 91-40-29(b)(1)(B) (2017).

⁷⁸ 105 ILL. COMP. STAT. 5/14-8.02c(b) (2018).

⁷⁹ See *supra* note 74.

⁸⁰ HEARING OFFICER SYSTEM OF RULES OF ADMINISTRATION 1 (2016), http://www.courts.state.va.us/programs/ho/rules_of_admin_1.pdf

⁸¹ 8 VA. CODE ADMIN. § 20-81-210(D) (2017).

specify a rotational process. However, at the unusual end, Montana's law provides for a ranking process, whereby the chief state school officer (CSSO) submits a list of three HOs to the parties and selects one based on their respective rankings.⁸² Reflecting the overlap with the assignment subcategory, the subsequent strike subcategory lists Kansas' variation because it seems, on balance, to be more a matter of a party right for peremptory disqualification.⁸³

B. Party Rights

The most frequent state law addition to the foregoing IDEA provisions for this category,⁸⁴ without weighting for partial or elaborate entries, was for discovery (n=19). However, reflecting the overlap between this category and the next one, in various of these state laws discovery was subject to the HO's discretionary authority rather than being an unqualified mandate.⁸⁵ In contrast, the state laws entitling parties to lay representation (n=8) and the right for peremptory strikes of the assigned HO (n=5) were relatively rare. Moreover, as clarified in the Comments column of the Table, the right to lay representation sometimes was qualified, such as the Florida and Texas provisions for HO determination.⁸⁶ Finally, the right to strike the HO in Kansas was unusual both in terms of breadth and ambiguity, giving the parents the right to "request

⁸² As the intermediate step, the parties have "three business days to rank the proposed [HOs] ... in order of preference." MONT. ADMIN. R. 10.16.3509(1)(b) (2015). The predecessor regulation provided for the CSSO's submission of five names for the parties to each eliminate two and rank the remaining three within five business days. E-mail from Mandi Gibbs, Early Assistance Program Director, Mont. Office of Pub. Instruction, to Perry A. Zirkel (July 9, 2018, 11:53 EST).

⁸³ See *infra* note 87 and accompanying text.

⁸⁴ See *supra* notes 44–47 and accompanying text.

⁸⁵ Additionally, the right to discovery had other limitations in some of the state laws, as the Comments column entries for Maryland, New Jersey, and Tennessee clarified.

⁸⁶ The Texas provision is unusual in its specification of a formal procedure, including detailed criteria for the HO's written authorization. 19 TEX. ADMIN. CODE § 89.1175 (2017).

disqualification of any or all of the [HOs] on the list and to request [a replacement appointment].”⁸⁷

C. HO Authority

For the succeeding and overlapping category of HO Authority, the state law additions to the rather minimal pertinent provision in the IDEA⁸⁸ were more frequent—specifically, without weighting as to strength or detail, n=40 for subpoenas, n=33 for prehearing conferences, and n=28 for various other evidentiary issues. As for variation, the majority of the state law provisions for subpoenas and prehearing conferences were discretionary rather than mandatory, and an overlapping minority, especially those under APA laws, were more detailed. At the unusual end of the variation range, Iowa’s special education law and applicable APA provision differentially allocate subpoena authority.⁸⁹ For evidence, the differences were more varied, including provisions for the HO initiating⁹⁰ or limiting,⁹¹ testimony. The relatively unusual provisions include requiring (1) formal rules of evidence,⁹² (2) burden of persuasion on

⁸⁷ KAN. STAT. ANN. § 72-973a (2017). For the specific procedure, including timeline, see KAN. ADMIN. REGS. §§ 91-40-28(d)(2)–(4) (2017). To maintain prompt progress in implementing this provision in light of the limited number of HOs, the Kansas SEA requests school districts to limit the list for parents to two or three hearing officers. E-mail from Mark Ward, Special Education Attorney, Kan. State Dep’t of Educ., to Perry A. Zirkel (Dec. 21, 2017 11:20 EST).

⁸⁸ See *supra* note 48 and accompanying text.

⁸⁹ Compare IOWA ADMIN. CODE r. 281-41.1009(1) (2018) (authorizing chief state school officer), with IOWA ADMIN. CODE r. 481-10.14 (2018) (authorizing the state office of administrative hearings).

⁹⁰ Here are examples listed in the Comments column of the table: California (asking questions of witnesses before the parties do so and arranging for medical experts); Connecticut (summoning and questioning witnesses); Iowa (asking clarifying-only questions at the conclusion of the parties questioning of the witnesses); Maryland (calling an impartial witness at expense of SEA); and Pennsylvania (ordering additional evidence).

⁹¹ *E.g.*, Arkansas (restricting witnesses) and Hawaii (restricting testimony). This feature overlaps with the Miscellaneous category item for limiting the DPH more generally. See *infra* notes 107–109 and accompanying text.

⁹² Iowa; South Dakota; and Texas; *cf.* Colorado (“to the extent practicable”); Montana (with limited exceptions); Nebraska (at party option and expense).

the school district,⁹³ and, at the extreme end, (3) detailed specification for the party exhibits.⁹⁴

D. Timelines

The provisions specific to initiating the hearing and extending its length are of particular significance to the exercise of HO authority in light of the relatively tight and specific timeline for completion of the DPH as marked by issuance of the decision.⁹⁵ For the filing deadline (also referred to herein as “SOL”), per the express allowance for state exceptions, a few states have shorter period⁹⁶ and one state has a longer period⁹⁷ than the IDEA two-year, KOSHK-based approach.⁹⁸ Beyond this relatively limited group (n=7) of states, the pertinent IDEA provisions remain without further specifications.

For the IDEA provision for HO extensions,⁹⁹ the state law additions were much more frequent (n=31), ranging from limited requirements for notice¹⁰⁰ to detailed limitations for various combinations of reasons, length, and notice.¹⁰¹ At the elaborate end,

⁹³ Delaware, Nevada, New Jersey, and New York; *cf.* Connecticut (for the IEP); Georgia (subject to HO discretion in unusual circumstances). This evidentiary feature fits more closely in the excluded but partially overlapping category of HO decisions (*supra* note 33) but is included here based on its special significance.

⁹⁴ CONN. AGENCIES REGS. § 10-76h-12(d) (2018) (including numbered index, specified prefix, chronological sequence, and waiver for good cause).

⁹⁵ The IDEA regulations require issuance of the HO’s final decision within 45 days of completion of the resolution-session phase (*supra* note 29), except for specific extensions that the HO grants at the request of either party (*supra* note 50).

⁹⁶ As indicated in the Comments column of the table, these states fit into two subgroups: (1) Alaska, Louisiana, North Carolina, Texas, and Wisconsin (one year); and (2) New Hampshire and Vermont (90 days for tuition reimbursement cases). The triggering dates in Alaska and Wisconsin vary from the IDEA “KOSHK” formulation (*supra* note 49), and in both New Hampshire and Vermont the triggering date is the time of the unilateral placement.

⁹⁷ KY. REV. STAT. ANN. § 157.224(6) (2017) (three years with revised exceptions and without limiting the introduction of evidence).

⁹⁸ *See supra* note 49 and accompanying text.

⁹⁹ *See supra* note 50.

¹⁰⁰ *E.g.*, Alabama (notice to SEA); Idaho (written decision)

¹⁰¹ *E.g.*, Alaska (cause and period); Arkansas (all three); Louisiana (cause and record); Minnesota (cause, with examples pro and con); and New York (all three).

Connecticut has particularly detailed procedures, with factors for and exclusions of reasons.¹⁰² Other unusual extension provisions include Illinois' preemption of the HO's discretion "if the parties jointly propose a delay in convening the hearing or prehearing conference,"¹⁰³ Virginia's good cause standard of "the best interest of the child,"¹⁰⁴ and Washington's authorization for extensions "by the HO upon his or her own motion."¹⁰⁵

E. Miscellaneous Other

The other state law additions consist of two categories pertinent to DPHs—general items that extend across the column headings of the Table and specific items that were not in themselves column headings. This catchall status for both general and specific other additions is, at least in part, attributable to the table's rather ad hoc formulation at the outset of the data collection.¹⁰⁶

At the general level, on the one extreme that is notable via the absence of any column entries, are the two states with laws that do not add pertinent provisions to the IDEA requirements: Mississippi and Rhode Island. Conversely, one of the relatively frequent and particularly HO-significant general features in several state laws is an express authorization for the HO to limit the length of the hearing, albeit typically with the counterbalancing qualifier of "reasonable."¹⁰⁷ Connecticut's law goes a step further by specifying

¹⁰² *E.g.*, CONN. AGENCIES REGS. § 10-76h-9 (2018).

¹⁰³ ILL. ADMIN. CODE tit. 23, § 226.640(b)(1) (2015).

¹⁰⁴ 8 VA. CODE ADMIN. § 20-81-210(P)(9) (2017).

¹⁰⁵ WASH. ADMIN. CODE § 10-08-090(1) (2017); *cf.* 8 VA. CODE ADMIN. § 20-81-210(P)(9)(b) (2017) (upon SEA approval in special circumstances).

¹⁰⁶ The formulation, in turn, was an artifact or consequence of the exploratory nature of this tabulation, in light of the absence of a precedent template in the literature.

¹⁰⁷ *E.g.*, California, Maryland, Michigan; and Texas; *cf.* Arkansas (authorizing the HO to set limits for the opening and closing arguments); Iowa (requiring the HO to set the time limit for argument); Minnesota (requiring the HO to limit the length of the DPH to the necessary time for each party's case). Minnesota's special education regulations further address this matter by delegating the HO with the duty at the prehearing conference to determine the amount of time for the hearing based on "balancing the due process rights of the parties with the needs for

as examples of this limitation authority the number of witnesses and the length of testimony and by specifying the applicable factors as “the issues presented and the need to complete the hearing in a timely fashion.”¹⁰⁸ Representing even more emphasis on timeliness, New York and Vermont authorize the HO to limit the DPH to one day for each party with largely parallel discretionary exceptions.¹⁰⁹ Similarly, Arkansas adds to the HO’s express authority to limit the presentations for expeditiousness the following guidance: “In general, a hearing should last no longer than three (3) days.”¹¹⁰ The other general feature that appeared to be particularly of interest was the relatively frequent provision for alternative dispute resolution procedures beyond the IDEA provision for mediation, such as the aforementioned¹¹¹ facilitated IEP process.¹¹²

Miscellaneous other features were at a more specific level, amounting to potential additional column headings. A frequent one that the tabulation missed altogether concerned the disqualification of HOs.¹¹³ Other specific features that, instead, were relatively infrequent but noted in the Comments column, included (1) DPH system accountability mechanisms, such as advisory committees,

administrative efficiency and limited public resources.” MINN. R. 3525.4110(2)(A)(4) (2015).

¹⁰⁸ CONN. AGENCIES REGS. § 10-76h-7(c) (2018).

¹⁰⁹ 8 N.Y. COMP. CODES R. & REGS. tit. 8, § 200.5(j)(3)(xiii) (2018) (where the HO “determines that additional time is necessary for a full, fair disclosure of the facts required to arrive at a decision”); 7-1 VT. CODE R. § 5:2365.1.6.15(e) (2017) (where the HO “determines that additional time is necessary for a full, fair disclosure of the facts necessary to arrive at a conclusion”). For another approach to a specified limit, see 105 ILL. COMP. STAT. 5/14-8.02a(g-55) (2018) (requiring “reasonable efforts” for the parties to present their respective cases within seven cumulative days and requiring the HO to schedule the final session within thirty days for the first session except for “good cause”).

¹¹⁰ ARK. ADMIN CODE R. § 10.01.32 (2015).

¹¹¹ See *supra* note 14 and accompanying text.

¹¹² *E.g.*, Minnesota, North Dakota, and West Virginia. Connecticut and Massachusetts provided for another such alternative—advisory opinions.

¹¹³ Although related to impartiality and the interrelated provisions for disclosure, disqualification was unexpected in terms of its significant treatment in the relevant state laws. Another relatively frequent but missed subcategory was the HO’s record-keeping responsibility.

periodic reports, or evaluation procedures¹¹⁴; (2) occasional applicable APA provisions that are not carefully consistent with the corresponding provisions in special education laws¹¹⁵ or that warrant customization with IDEA DPHs¹¹⁶; (3) the use of technology for DPHs¹¹⁷; and (4) the HO authorization for sanctions.¹¹⁸ At the unusual end, typically specific to a single state, were Connecticut's provision for bifurcated tuition reimbursement hearings¹¹⁹ and New Jersey's provision for "emergent relief."¹²⁰

¹¹⁴ *E.g.*, California (advisory committee), Massachusetts (advisory committee and regular reports), and Minnesota (system data and participant evaluation). At the extreme, Illinois' legislation provides an unduly elaborate system, especially for a state with a relatively limited number of DPHs, that includes an advisory council, a screening committee, a contractual training entity, annual HO evaluations for reappointment, and annual system reporting and review. 105 ILL. COMP. STAT. 5/14-8.02c – 5/14-8.02d (2018).

¹¹⁵ *See supra* note 89 and accompanying text.

¹¹⁶ *E.g.*, KY. REV. STAT. ANN. § 13B.090(7) (2017):

In all administrative hearings, unless otherwise provided by statute or federal law, the party proposing that the agency take action or grant a benefit has the burden to show the propriety of the agency action or entitlement to the benefit sought. The agency has the burden to show the propriety of . . . the removal of a benefit previously granted.

Id. It is not at all clear how this provision squares with (1) the Supreme Court's ruling in *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49 (2005), in which the Supreme Court not only ruled that the burden of persuasion was on the filing party in an IDEA DPH but also declined to address the relationship of state laws that provided otherwise, and (2) varying IDEA issues, such as a parental challenge to a district's determination that a child is no longer eligible for an IEP or a district filing to obtain consent for evaluating a child for eligibility.

¹¹⁷ *E.g.*, Maryland, Nebraska, and Tennessee.

¹¹⁸ *E.g.*, California, New Jersey, and Texas.

¹¹⁹ CONN. AGENCIES REGS. § 10-76h-14(b) (2018); *cf.* N.J. ADMIN. CODE § 1:1-14.6(e) (2018) (providing more general and qualified authority for HO bifurcation of the hearing).

¹²⁰ N.J. ADMIN. CODE §§ 6A:14-2.7(s) and 1.6A-12.1 (2018).

V. DISCUSSION AND RECOMMENDATIONS

The primary conclusion from these findings is that state law additions to the IDEA's foundational requirements for DPHs form a pattern characterized by variety and complexity. The variety fits with the value of experimentation among the states as one of the potential benefits of federalism.¹²¹

However, the complexity of the present pattern leaves in question whether states have realized this benefit. First, the overlay of the more generic provisions of state APAs,¹²² which in themselves vary widely, has in some cases wrought confusion and in others lack of customization.¹²³ Second and more significantly, both in the states with and in those without applicable APA provisions, the marked procedural formalism of peremptory strikes, discovery, and, more generally, motion practice signal a possible tipping point in the "judicialization" of DPHs.¹²⁴ The overall trend for special education hearings evokes the early warning about the Janus-like tradeoff between the benefits of "legalization" and the costs of "the arid formality of legalism."¹²⁵ This tendency is at marked variance with "[t]he legislative history, statutory terms, and regulatory framework of the IDEA [that] all emphasize promptness as an indispensable

¹²¹ See, e.g., *McDonald v. City of Chi.*, 561 U.S. 742, 783 (2010) ("the values of federalism and state experimentation"); *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 418 (1999) ("experimentation' long thought a strength of our federal system"); *EEOC v. Wyo.*, 460 U.S. 226, 264–65 (1983) ("Flexibility for experimentation not only permits each state to find the best solutions to its own problems, it is the means by which each state may profit from the experiences and activities of all the rest.") (Burger, dissenting). Justice Brandeis' dissenting opinion in *New State Ice Co. v. Liebmann*, 285 U.S. 262, 310–11 (1932) is usually credited with the conception of states as laboratories.

¹²² An overlapping contributing factor is the gradually but significantly increased utilization of full-time ALJs. In 2010, Zirkel & Scala, *supra* note 23, at 5, reported that 18 states used full-time ALJs as IDEA HOs, which represented a major increase since 1999. More recently, Colorado, Iowa, and Louisiana have joined this group.

¹²³ See *supra* notes 115–116 and accompanying text.

¹²⁴ See *supra* note 25 and accompanying text.

¹²⁵ David Neal & David L. Kirp, *The Allure of Legalization: The Case of Special Education Reconsidered*, 48 L. & CONTEMP. PROBS. 63, 82 (1985).

element of the statutory scheme.”¹²⁶ For example, the Act’s principal sponsor of the IDEA emphasized the importance of providing prompt DPHs.¹²⁷ The then simultaneous scholarly cautions about excessive formalism¹²⁸ ring loudly, almost alarmingly, now.¹²⁹ In the absence of federal structural reform,¹³⁰ the time is ripe for state policymakers

¹²⁶ *E.g.*, Amann v. Stow, 991 F.2d 929, 932 (1st Cir. 1993) (citing Spiegler v. District of Columbia, 866 F.2d 461 (D.C. Cir. 1986); Adler v. Educ. Dep’t of State of N.Y., 760 F.2d 454 (2d Cir. 1985); Bow Sch. Dist. v. Quentin W., 750 F. Supp. 546 (D.N.H. 1990)).

¹²⁷ *E.g.*, Blackman v. District of Columbia, 277 F. Supp. 71, 80 n.8 (D.D.C. 2003) (citing Senator Williams’ statement in the final Senate debate ay 121 CONG. REC. 37,416 (1975)).

¹²⁸ *E.g.*, David Kirp, William Buss, & Peter Kuriloff, *Legal Reform of Special Education: Empirical Studies and Procedural Proposals*, 62 CAL. L. REV. 40, 154 (1974) (providing a qualifying caution about “proceduralization”); Maynard C. Reynolds, *More Process Than Is Due*, 14 THEORY INTO PRAC. 61 (1975) (warning that “the very procedures may become so burdensome that they will dull the edge and slow the thrust of [effective] implementation”).

¹²⁹ For an intervening judicial observation, see *Lillbask v. Sergi*, 117 F. Supp. 2d 182, 192 (D. Conn. 2000):

Detailed rules of procedure are no panacea against lengthy, contentious, wasteful, divisive, or delay-causing arguments. Indeed, highly formalized systems of legal procedure can be fodder for delay. Due process is not always served by bringing every dispute into a mini-courtroom where only lawyers can navigate the myriad rules. A formalized system could serve to disenfranchise and exclude the very people meant to be served, namely the parents and the educators.

Id.

¹³⁰ See, e.g., Perry A. Zirkel, *Over-Due Process Revisions for the Individuals with Disabilities Education Act*, 55 MONT. L. REV. 403 (1994) (recommending a five-part dramatic structural reform in the IDEA for DPHs). Congress is not likely to revise the IDEA in the foreseeable future, and the 2004 amendments were different in direction and extent from this proposal. See Zirkel et al., *supra* note 25, at 48 (“[T]he Congressional prescription in the latest amendments to the IDEA, particularly the strengthened notice-pleading feature and extended timeline for the hearing decision, clearly borrow from, and potentially add to, the judicialization trend. Time will tell whether the new pre-hearing procedures reduce the frequency and complexity of cases that go to hearing, but the likely trade-off will be not only more technical threshold issues, such as whether the complaint was sufficiently specific, but also closer and more complex cases, thus meaning longer duration to decision.”). Indeed, the U.S. Department of Education has failed to reform even the underlying information base about the efficacy of the DPH system. *E.g.*, U.S.

as well as IDEA HOs to exert more concerted and customized efforts at making DPHs more efficient both for the sake not only of the immediate and changing needs of the individual child at issue but also the allocation and utilization of school system's limited resources for education. The requisite efficiency does not mean the elimination of these state law additions but rather more careful selection and customization.¹³¹

For state policymakers, one of the factors that merit more careful consideration for the requisite customization is the state's level of DPH adjudications. The row-by-row entries in the Table do not closely correspond to either the absolute or per-capita calculation of the number of such adjudications. On an absolute basis, for example, the relatively small top group, which accounts for most of the adjudications, includes New York, California, Pennsylvania, and New Jersey; yet, the entries for these states in the Table reveal a wide variety in the nature and number of entries. Similarly, for adjudications on a per capita basis, Rhode Island ranked tenth and has no entries in the Table, whereas states with a much lower ranking (e.g., Iowa - #44, Florida - #38, and Colorado - #29, and Louisiana - #26) have rather extensive entries.¹³²

For HOs, the recommendations are to (1) compare the provisions in other state laws to lobby from the ground up for worthwhile improvements in the provisions in your state; and (2) within and beyond the states that make this authority explicit,¹³³ effectuate uniform movement for more expeditious completion of IDEA DPHs.¹³⁴

GOVERNMENT ACCOUNTABILITY OFFICE, SPECIAL EDUCATION: IMPROVED PERFORMANCE MEASURES COULD ENHANCE OVERSIGHT OF DISPUTE RESOLUTION 26 (Aug. 2014), <https://www.gao.gov/assets/670/665434.pdf> (recommending more clear and complete monitoring data concerning the timeliness of DPHs).

¹³¹ See, e.g., Weber, *supra* note 10, at 522: This reform could be achieved by discouraging elaborate motion practice, holding prehearing conferences to clarify the dispute, and seizing every opportunity to minimize procedure while still affording ample opportunity to be heard.

¹³² E.g., Perry A. Zirkel, *Trends in Impartial Hearings under the IDEA: A Follow-Up Analysis*, 303 EDUC. L. REP. 1 (2014) (focusing on the most recent available period, 2006–2011).

¹³³ See *supra* notes 107–109 and accompanying text.

¹³⁴ Judicial and agency authority generally is supportive of HO actions for more efficient DPHs. E.g., *Paris Sch. Dist. v. Harter*, 894 F.3d 885 (8th Cir. 2018)

For researchers, areas that merit follow-up systematic study include (1) more in-depth coverage within the scope of this analysis to address the designated exclusions¹³⁵ and the only incidentally identified subcategories¹³⁶ and (2) extending the analysis to the state law provisions the HO's decisional stage.¹³⁷ Moreover, the related non-binding documents, such as internal manuals,¹³⁸ and the prevailing practices and perceptions of IDEA HOs¹³⁹ also represent gaps in the available empirical research.

In conclusion, returning full circle to the IDEA's model of cooperative federalism,¹⁴⁰ both the legislation¹⁴¹ and other applicable

(upholding substantial reduction in parents' attorney fees' award based on part on taking 7 days for the hearing while the state law provided a general cap of 3 days); *B.S. v. Anoka Hennepin Pub. Sch.*, 799 F.3d 1217 (8th Cir. 2015) (upholding prehearing order of nine hours per party based on circumstances of the case, including state law and best-practices manual); *T.M. v. District of Columbia*, 75 F. Supp. 3d 233 (D.D.C. 2014) (viewing limitation on cross-examination as reasonable in the context of hearing specified in prehearing order as maximum of four days); *see also* Letter to Kane, 65 IDELR ¶ 20 (OSEP 2015) (concluding that a state best-practice guideline limiting a hearing to three sessions of six hours per session does not violate the IDEA just as long as it allows the HO to make an exception). Yet, although the average length of DPHs from filing to decision is not nationally available, the data that the U.S. Department of Education collects annually shows that the vast majority of HO decisions were not within the 45-day timeline. E-mail from Diana Cruz, Data Analyst, National Center for Appropriate Dispute Resolution in Special Education, to Perry A. Zirkel (Dec. 21, 2017 9:40 EST) (67% in 2004-05, 78% in 2005-06, 76% in 2006-07, 73% in 2007-08, 76% in 2008-09, 71% in 2009-10, 76% in 2010-11, 79% in 2011-12, 80% in 2012-13, 82% in 2013-14, 74% in 2014-15, 74% in 2015-16).

¹³⁵ *See supra* note 64.

¹³⁶ *See supra* note 113.

¹³⁷ *See supra* note 33.

¹³⁸ *See supra* note 57.

¹³⁹ The right to lay representation at an IDEA DPH serves as a partial example of the difference between law and practice, with the broad notion of policy as an intermediate category. Specifically, in contrast with the finding that seven state laws provide the right to lay representation (*supra* text accompanying note 86), a survey of SEA representatives approximately a decade ago found that twenty states either permitted (n=12) or left to the HO's discretion (n=8) lay representation as a matter of policy and another twenty-one states had no official or unofficial policy in this matter. Perry A. Zirkel, *Lay Advocates and Parent Experts under the IDEA*, 217 EDUC. L. REP. 19, 21 (2007).

¹⁴⁰ *See supra* note 7 and accompanying text.

¹⁴¹ *E.g., see supra* note 49.

authority¹⁴² reserve various HO issues to state law. This systematic synthesis provides for HOs and other interested individuals gap-filling information for the purpose of improving the effectiveness of this key dispute resolution process within and across the fifty states.

VI. APPENDIX CITATIONS FOR THE STATE LAWS SPECIFIC TO DPHS

	Special Education Laws	General Administrative Hearing Laws
AL	ALA. ADMIN. CODE r. 290-8-9-.08(9)(c) (2013)	
AK	ALASKA STAT. § 14.30.193 (2017); ALASKA ADMIN. CODE tit. 4, §§ 52.550, 52.560 (2018)	
AZ*	ARIZ. REV. STAT. § 15-766(F) (2017); ARIZ. ADMIN. CODE § R7-2-401 (2018)	ARIZ. ADMIN. CODE §§ R2-19-101 <i>et seq.</i> (2017)
AR	ARK. CODE ANN. § 6-41-216 (2017); ARK. ADMIN CODE R. § 005.18.10-10.01 (2010)	
CA*	CAL. EDUC. CODE §§ 56505-56509 (West 2017); CAL. CODE REGS. tit. 5, §§ 3080-3099 (2018)	CAL. CODE REGS. tit. 1, §§ 1000 <i>et seq.</i> (2018)
CO*	COLO. CODE REGS. § 301-8(7.5)(f) (2016)	COLO. CODE REGS. §§ 104-1, 104-2 (2014)
CT	CONN. GEN. STAT. § 10-76h(c) (2017); CONN. AGENCIES REGS. §§ 10-76h-7 to 10-76h-18 (2018)	
DE	DEL. CODE ANN. tit. 14, § 3130 (2017); 14 DEL. ADMIN. CODE §§ 926(11) (2017) – 926(12) (2011)	
FL*	FLA. STAT. § 1003.57(1)(c) (2017); FLA. ADMIN. CODE r. 6A-6.03311(9)(v) (2018)	FLA. ADMIN. CODE rr. 28-106.106 to 28-106.217 (2018)
GA*	GA. COMP. R. & REGS. 160-4-	GA. COMP. R. & REGS. 616-1-

¹⁴² *E.g.*, 71 Fed. Reg. 46,705 (Aug. 14, 2006) (agency commentary clarifying that the general supervisory responsibility of each SEA includes ensuring that its HOs are sufficiently trained to meet these newly specified qualifications); Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities, 61 IDELR ¶ 232, at item C-7 (OSEP 2013) (permitting state laws for electronic filing of DPH complaints).

	7.12(3)(i) to 160-4-7.12(3)(t) (2018)	2.01 <i>et seq.</i> (2018)
HI*	HAW. CODE R. §§ 80-60-65 to 80-60-69 (2017)	HAW. CODE R. §§ 16-201-15 to 16-201-25 (2018)
ID*	IDAHO ADMIN. CODE r. 08.02.03.004, ch. 13, §§ 5(D) – 5(F) (2018); <i>Special Education Manual</i> , IDAHO STATE DEPARTMENT OF EDUCATION (Aug. 10, 2017), http://www.sde.idaho.gov/topics/admin-rules/files/sped-manual/documents/Special-Education-Manual-Approved-081017.pdf .	IDAHO ADMIN. CODE rr. 04.11.01.417 – 04.11.01.600 (2018)
IL	105 ILL. COMP. STAT. 5 / 14-8.02a to d (2018); ILL. ADMIN. CODE tit. 23, §§ 226.630 – 226.640 (2018)	
IN	511 IND. ADMIN. CODE 7-45-7, 7-45-8 (2018)	4 IND. ADMIN. CODE rr. 21.5-3-1 to 21.5-3-37 (2011)
IA*	IOWA ADMIN. CODE rr. 281-41.511 to 281-41.512, 281-41.1003 to 281.41.1013 (2018)	IOWA ADMIN. CODE rr. 481-10.13 – 481-10.23 (2018)
KS*	KAN. ADMIN. REGS. §§ 91-40-28 to 91-40-29 (2017)	KAN. STAT. ANN. §§ 77-522 and 72-972a – 72-975 (2017)
KY*	KY. REV. STAT. ANN. § 157.224 (2017); 707 KY. ADMIN. REGS. 1:340 (2018)	KY. REV. STAT. ANN. §§ 13B.030-130, 15.111 (2017)
LA*	LA. ADMIN. CODE tit. 28, Pt. XLIII, §§ 511 – 512 (2017)	LA. ADMIN. CODE tit. 1, Pt. III, §§ 501 – 521 (2012)
ME	ME. STAT. tit. 20-A, § 7207-B (2017); 05-71-101 ME. CODE R. §§ XVI(7) to (14) (2017)	
MD*	MD. CODE ANN., EDUC. § 8-413 (West 2018); MD. CODE REGS. 13A.05.02.06C and 13A.05.02.15C (2018)	MD. CODE REGS. 28.02.01.05 – 28.02.01.22 (2018)
MA*	MASS. GEN. LAWS ch. 71B, § 2A (2017); 603 MASS. CODE REGS. 28.08(5); <i>Hearing Rules for Special Education Appeals</i> , MASSACHUSETTS DEPARTMENT OF ELEMENTARY & SECONDARY EDUCATION (Feb. 2008), www.mass.gov/anf/docs/dala/bsea/hearing-rules.doc .	MASS. GEN. LAWS ch. 30A, §§ 10 – 12 (2017); 801 MASS. CODE REGS. 1.01 <i>et seq.</i> (2018)
MI*	MICH. ADMIN. CODE rr. 340.1725e – 300.1724h (2018)	MICH. ADMIN. CODE rr. 792.10105 – 792.10121 (2015)

MN*	MINN. STAT. § 125A.091 (2017); MINN. R. 3525.4010 to 4350 (2018)	MINN. R. 1400.6500 to 7700 (2018)
MS	MISS. CODE ANN. § 37-23-143 (2017); 7-4 MISS. CODE R. §§ 1.300.511 – 1.300.513 (2017)	
MO	MO. REV. STAT. §§ 162.961 and 621.253 (2018)	
MT	MONT. ADMIN. R. 10.16.3509-23 (2015)	
NE	NEB. REV. STAT. §§ 79-1164 – 79- 1167 (2017); 92 NEB. ADMIN. CODE §§ 55-002 – 55-007 (2017)	
NV	NEV. REV. STAT. §§ 388.463 – 388.469 (2017); NEV. ADMIN. CODE § 388.310 (2017)	
NH	N.H. REV. STAT. ANN. §§ 186- C:16-a,16-b (2016); N.H. CODE R. EDUC. 1123.01(LexisNexis 2017)	
NJ*	N.J. ADMIN. CODE § 6A:14-2.7 (2018)	N.J. ADMIN. CODE §§ 1:6A-1.1 <i>et seq.</i> , 1:1-5.4 <i>et. seq.</i> (2018)
NM	N.M. CODE R. §§ 6.31.2.12(I)(12)- (18) (LexisNexis 2017)	
NY	N.Y. EDUC. LAW § 4404 (LexisNexis 2018); N.Y. COMP. CODES R. & REGS. tit. 8, § 200.5(j) (2018)	
NC*	N.C. GEN. STAT. §115C-109.6 (2017)	26 N.C. ADMIN. CODE 3.0105- 0122 (2017)
ND*	N.D. ADMIN. CODE 67-23-05-01 – 67-23-05-03 (2018)	N.D. ADMIN. CODE 98-02-02, 98-02-03 (2012)
OH	OHIO ADMIN. CODE 3301-51- 05(K)(8)-(K)(12) (2014)	
OK	OKLA. ADMIN. CODE § 210:15-13-5 – 210:15-13-6 (2008)	
OR*	OR. REV. STAT. § 343.165 (2017); OR. ADMIN. R. 581-015-2340 – 581-015-2383 (2017)	OR. ADMIN. R. 137-003-0501 <i>et</i> <i>seq.</i> (2017)
PA	4 PA. CODE § 14.162 (2017)	
RI	R.I. CODE R. § 21-2-54:E (2017)	
SC	S.C. CODE ANN. REGS. 43-243 (2016); <i>Policies and Procedures in</i> <i>accordance with the Individuals</i> <i>with Disabilities Education</i> <i>Improvement Act, 2004</i> , SOUTH CAROLINA STATE DEPARTMENT OF EDUCATION (Mar. 2011), https://ed.sc.gov/districts-	

	schools/special-education-services/fiscal-and-grants-management-fgm/grants/sc-policies-and-procedures-for-special-education/.	
SD*	S.D. ADMIN. R. 24:05:30:09.04 – 24:05:30:13 (2017)	S.D. CODIFIED LAWS §§ 1-26-18 – 1-26-26 (2017)
TN*	TENN. CODE ANN. § 49-10-606 (2017); TENN. COMP. R. & REGS. 0520-01-09-.18 (2017)	TENN. CODE ANN. § 4-5-301 (2017); TENN. COMP. R. & REGS. 1360-04-01-.01 <i>et seq.</i> (2017)
TX	19 TEX. ADMIN. CODE § 89.1151 – 89.1186 (2017)	
UT	<i>Special Education Rules</i> , UTAH STATE BOARD OF EDUCATION, (Oct. 2016) https://www.schools.utah.gov/file/bff61848-ae42-4265-a654-6dae5f398507 .	
VT	Vt. STAT. ANN. tit. 16, § 2957 (2017); 7-1 Vt. CODE R. § 5:2365 (2017)	
VA*	VA. CODE ANN. § 22.1-214 – 22.1-214.1 (2017); 8 VA. ADMIN. CODE § 20-81-210 (2017)	VA. CODE ANN. §§ 2.2-4024 – 2.2-4024.2 (2017); <i>Hearing Officer System Rules of Administration</i> , SUPREME COURT OF VIRGINIA (Jan. 1, 2017), http://www.courts.state.va.us/programs/ho/rules_of_admin_1.pdf .
WA*	WASH. ADMIN. CODE §§ 392-172A-05095 – 392-172A-05110 (2017)	WASH. ADMIN. CODE §§ 10-08-090 – 10-08-200 (2017)
WV	W. VA. CODE R. § 126-16-3 (2017); <i>Regulations for the Education of Students with Exceptionalities</i> , WEST VIRGINIA DEPARTMENT OF EDUCATION (Aug. 14, 2017), http://wvde.state.wv.us/osp/Policy2419_2017.pdf .	
WI*	Wis. STAT. § 115.80 (2017); Wis. ADMIN. CODE PI § 11.12 (2017)	
WY	7 WYO. CODE R. § 7 (2018); <i>Special Education Policy and Procedure Manual</i> , WYOMING DEPARTMENT OF EDUCATION (Aug. 20, 2010), https://edu.wyoming.gov/download	

	s/special-ed/SpecEd_Policy_and_Procedure_Manual_v__1_1FINAL_8-20-2010.pdf.	
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*Designates states that have pertinent, more general laws (typically APA legislation and/or regulations) in addition to special education-specific laws