

Procedures for State Complaint Investigations – 2021 Update



Erin Frazier, Director of Special Services B- 20
David Emberley, Due Process Consultant

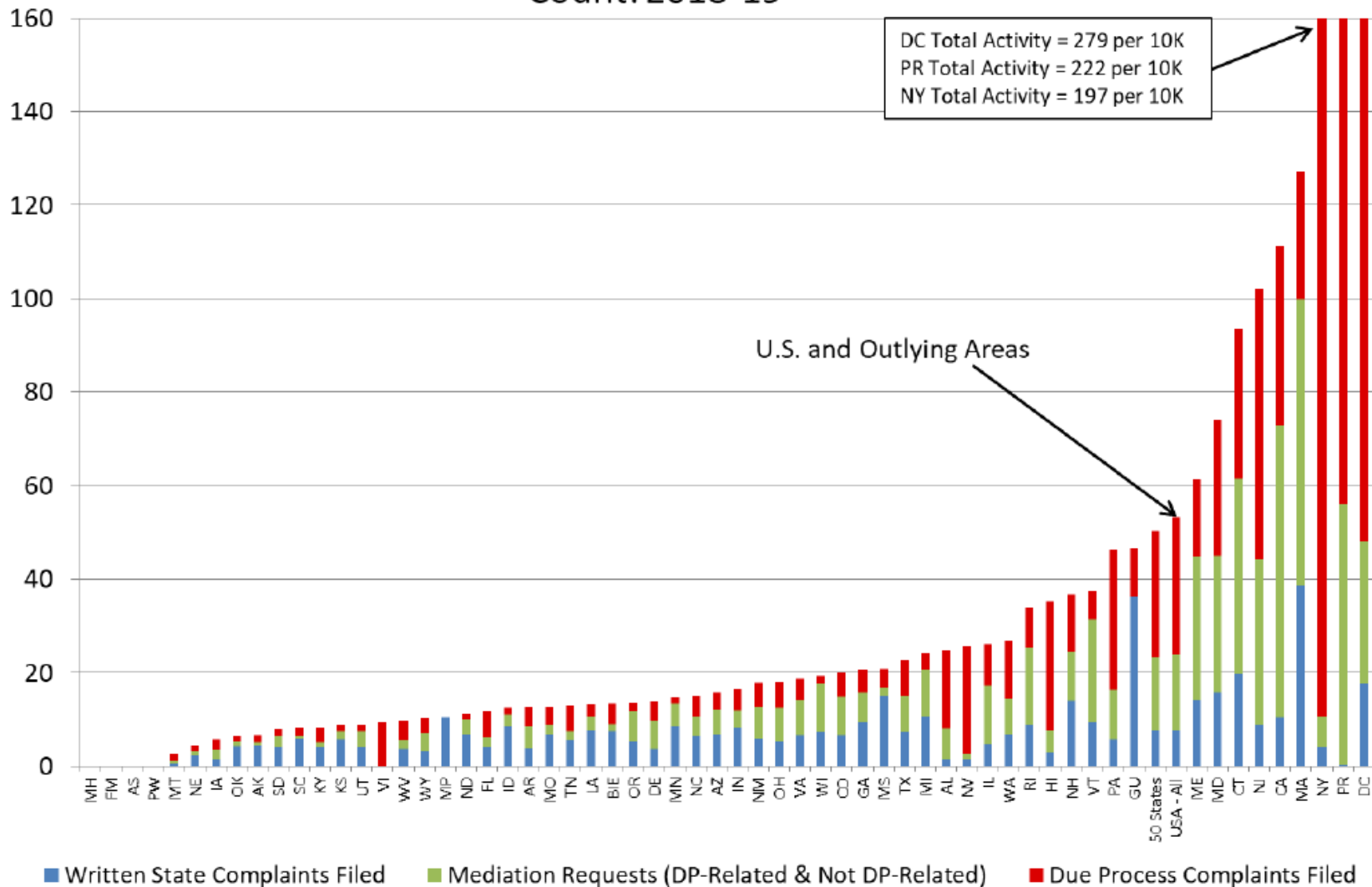


Agenda

- **Dispute Resolution/Complaint Data**
- **Updated CI Procedures (Handbook)**
 - Overview/Introduction (Investigative v Adjudicative)
 - Permissible subjects
 - Responses (not motions)
 - Ancillary allegations (response due date)
 - Interviews (attorney's presence)

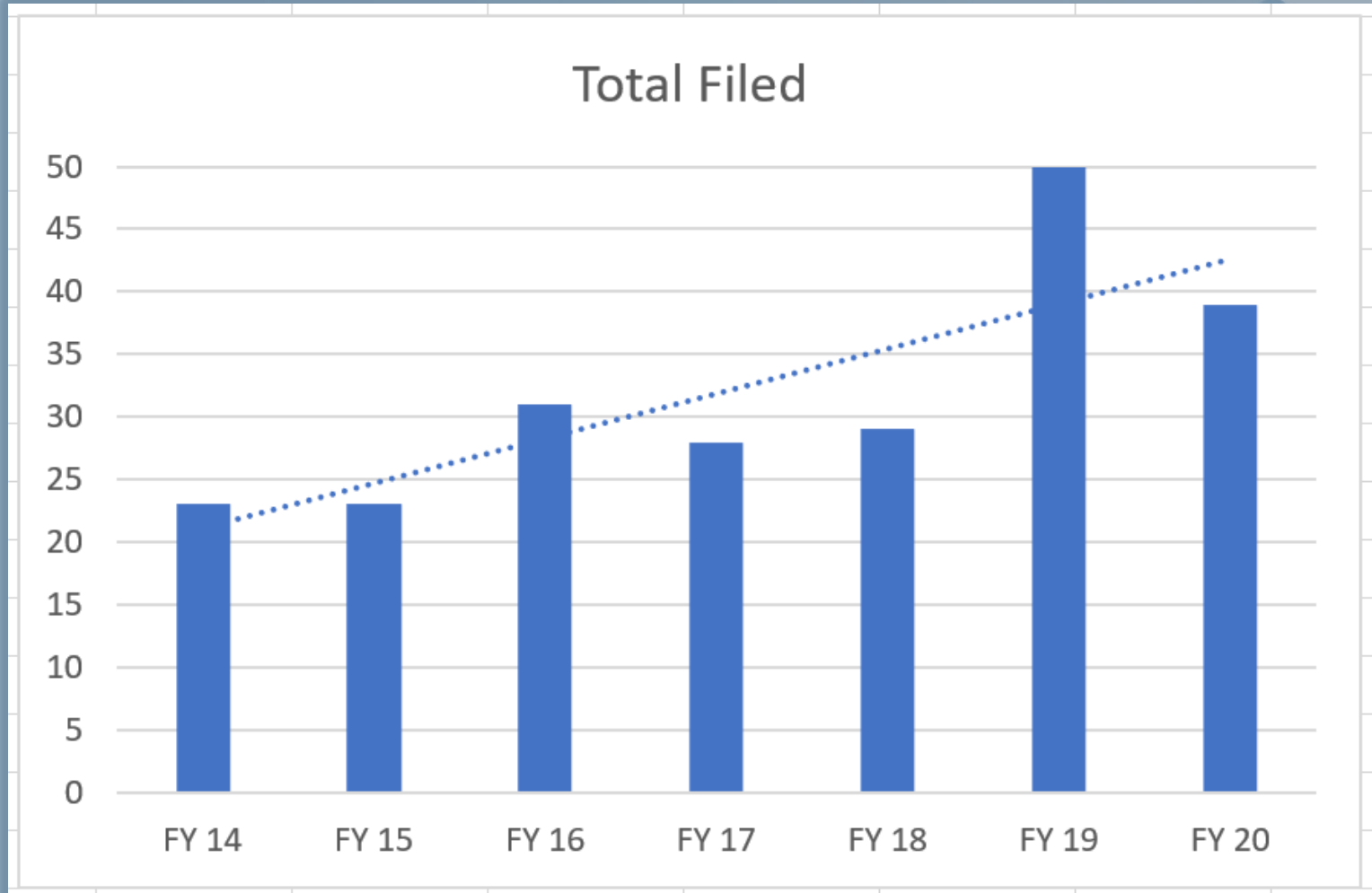


Total Dispute Resolution Activity by State/Entity per 10K Child Count: 2018-19



Prepared by CADRE - Contact: cadre@directionservice.org

Complaint Data (2014 – 2020)





Updated Handbook: Introduction



The state complaint investigation process is an important part of the Maine Department of Education's general supervisory responsibility pursuant to the Individuals with Disabilities Education Act (IDEA). Unlike a due process hearing, which provides a forum for resolving disputes between parents and school administrative units (SAUs) over the identification, evaluation, placement or provision of FAPE to a child with a disability, a state complaint investigation is a means of determining whether a public agency is in compliance with the governing law and regulations. If the investigation reveals noncompliance, a corrective action plan will be developed and monitored in order to both address the noncompliance and ensure that it is unlikely to occur in the future.



Updated Handbook: Introduction

The Department seeks to make the complaint investigation process easily accessible to individuals and public agencies. While the Department’s process must be fair to all parties, the Department discourages treating the complaint investigation process as a “due process hearing lite” – motions, objections and legal practices are discouraged and will not distract the assigned investigator or the Department from conducting an independent investigation and determining whether a public agency has complied with federal or state law.



Updated Handbook: Permissible Subjects

As noted above, a Complainant may allege *any* violation of the IDEA or MUSER, including the identification, evaluation, placement, or provision of early intervention services or a free appropriate public education to an infant, toddler or child with a disability. In addition, a state complaint may contain allegations of other matters under special education law, including the following:

- Failure of a public agency to implement a decision after a due process hearing, a resolution meeting agreement, or a mediation agreement.



Updated Handbook: Permissible Subjects

Note: The Department will investigate allegations of violation of other law (e.g., bullying/harassment or seclusion and restraint regulations) in an IDEA state complaint only to the extent that the violation of the other law or regulation resulted in a violation of state or federal special education statutes or rules.



Updated Handbook: Responses (not motions)

- The responding agency may propose a resolution to address the allegations in the complaint anytime during the investigation before the Complaint Investigation Report (CIR) is issued.
- After the CIR is issued, the responding agency may propose alternatives that address the corrective action identified in the report.

If a responding agency believes that it is not an appropriate party, or that the complaint is deficient for any other reason, those points should be raised in their response, not in a separate “motion to dismiss” or similar document. The CI may elect not to resolve any jurisdictional or other issues prior to the conclusion of their investigation.



Updated Handbook: Ancillary Allegations (response due date)

In all cases, the CI will notify the parties and the DPO of the ancillary allegation(s) and give both parties the opportunity to respond and provide documentation about the allegation(s) to the investigator, the other party and their representatives or advocates, if applicable, and a deadline by which to do so.

- Current handbook provides 3 days for response. CI can consider a longer period of time for response while keeping the 60 day timeline in mind.



Updated Handbook: Interviews (attorney presence)

The Department expects that public agencies will make staff available to be interviewed by the CI. The Department discourages public agencies from having counsel present for staff interviews. If the CI believes that the presence of counsel is interfering with the interviewee's ability to respond fully and truthfully to the CI's questions, the CI may ask the attorney to leave the interview. If the attorney declines, the CI may terminate the interview. The CI may consider the impact of the attorney's presence on the quality of the information provided by the interviewee.



Stakeholder Input

- You will receive a copy of the updated **Procedures for State Complaint Investigations** via email.
- Please provide feedback about the updates to:
David Emberley, Due Process Consultant
david.c.emberley@maine.gov
Maine Department of Education
23 Statehouse Station
Augusta, ME 04330-0023
- The deadline for feedback is January 22, 2021.