

Special Education Due Process Complaints and Attorneys' Fees

Fiscal Years 2016-2021

Independent Analysis Unit
Los Angeles Unified School District

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The views expressed herein are those of the Independent Analysis Unit and do not necessarily reflect those of the District, the Board of Education, or any individual Board Member.

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INTRODUCTION

The Individuals with Disabilities Education Act (IDEA) requires schools to provide a free and fair and appropriate education (FAPE) tailored to the individual needs of all children with disabilities. IDEA also codifies extensive procedural safeguards to protect the rights of children with disabilities and their families. This report focuses on one of these safeguards: families' right to dispute components of their child's individualized education program (IEP).

The 1997 reauthorization of IDEA detailed two dispute resolution processes, which are formally called *Due Process* proceedings. They include requests for *Mediation Only* proceedings or *Due Process Hearings*. The latter is the subject of this report. IDEA entitles children with disabilities and their families to have attorneys' fees paid or reimbursed should they pursue a Due Process Hearing, utilize the services of attorneys, and prevail in the hearing. Because of this provision in the law, agreements reached prior to the Due Process Hearing often also include attorneys' fees paid or reimbursed.¹

This report describes the results of an **analysis of due process parents' attorneys' fees** that the District paid or reimbursed **from fiscal years (FY) 2016 to 2021. During this six-year period, L.A. Unified paid \$60 million in parents' attorneys' fees in 8,054 cases of special education Due Process Hearing requests. For these cases, the District paid an average of \$7,400 in attorneys' fees per case.**

In this report, we present the *number of cases*—formal special education Due Process Hearing requests for which the District paid or reimbursed parents' attorneys' fees—and their associated *fees* (expressed in 2021 real dollars) each year from FY 2016 to FY 2021.

Cases and fees are grouped by local district, *resolution period* (i.e., at what point in the proceedings the resolution was reached) and *disability category* (category of special education eligibility).

We found that overall attorneys' fees first rose over this period but then trended downward in the last few years, and the same pattern was observed for total cases. Average fees per case (adjusted for inflation) during this time remained relatively stable, which is notable since attorneys raise their

Key Findings

No alarming fiscal trend is clear in due process attorneys' fees expenditures in L.A. Unified. Overall due process plaintiff attorneys' fees were lower in FY 2021 than they were in FY 2016, though they spiked higher in two intervening years (FY 2018 and 2019).

The decrease in attorneys' fees followed a decrease in overall Due Process Hearing cases that resulted in attorneys' fees paid, as the District increased its efforts to resolve more cases using *alternate dispute resolution* processes. Average fees per case, adjusted for inflation, also decreased slightly over the six-year period, but remained relatively stable.

Attorneys' fees are not spread evenly across local Districts. Local districts Northeast, Northwest and West had more due process cases that resulted in attorneys' fees being paid than any of the other local districts.

The District and plaintiffs resolved most of these due process cases during the optional mediation period (in the mediation session or shortly thereafter)—after the resolution session but before pre-hearing statements.

Due Process Hearing cases with attorneys' fees decreased across almost all categories of disability. Only requests for hearings associated with speech and language impairment increased. But these cases remained few.

Complaints filed on behalf of students with autism made up the largest number of Due Process Hearing requests. These students comprise roughly a fifth of students with disabilities in L.A. Unified (19%), compared to nearly two fifths (39%) of due process hearing requests. This disproportionality, however, is not necessarily a cause for alarm.

rates each year. **But the drop in overall cost of fees to the District is mainly the result of fewer requests for Due Process Hearings.**

Cases in each local district followed this general pattern, first increasing but then trending down in recent years. However, local districts did not contribute equally to overall cases or fees. **Local Districts West, Northwest, and Northeast had almost twice as many cases with attorneys' fees as Local Districts East and South, on average.** And trends in fees closely followed trends in cases: Local Districts West, Northwest and Northeast represented larger shares of attorneys' fees than Local Districts Central, East, and South.

Consistently across the years, about eight in ten cases with attorneys' fees were resolved in the mediation period, which occurs after the early resolution session period and before the pre-hearing conference statements. Since it made up the bulk of the cases, the average cost of attorneys' fees associated with resolutions during the mediation period—about \$7,500—was close to the average cost per case overall—about \$7,300. Data show a recent growth in cases resolved late in Due Process Hearing proceedings, which generally entail higher attorneys' fees, and a decrease in cases resolved early (i.e., in the resolution session period), which generally entail lower attorneys' fees. This increase occurred during the year of school facilities closures and may be related to these closures. Though it has not affected overall costs, this rise could do so if it continues.

Cases and fees varied in terms of disability category, but **the categories with the most due process cases—autism, specific learning disability, and other health impairment—on average 39%, 18%, and 17% of all cases with attorneys' fees, respectively, also accounted for most of the fees—nearly three**

quarters of all fees each year, on average.

The overall average attorneys' fees per case (\$7,300), therefore, tracked closely with the average for cases involving students with autism (\$7,300), students with specific learning disabilities (\$7,100), and students with other health impairments (\$7,200).

Higher-than-average attorneys' fees per case were associated with a few disability categories—e.g., deafness, deaf-blindness, and multiple disabilities – hearing—though there were relatively few of these cases and they did not significantly influence the total expenditures on attorneys' fees, nor did their frequency increase over the period of this analysis. In fact, **cases associated with all disability categories decreased over the six years, except for cases associated with speech or language impairment**, which climbed from 2% ($n=27$) to 7% ($n=72$) of all requests for Due Process Hearings from 2016 to 2021.

ABOUT IEP DISAGREEMENTS

IDEA stipulates that parents, guardians, or the students themselves if they are age 18 or over (hereafter parents or families), must sign off on all sections of a student's individualized education program (IEP), which represents the school staff's proposal for how they plan to provide FAPE to the student. IEPs contain sections on assessment, eligibility, instructional setting, and services.

The infographic on page 3 illustrates the various ways families and the District may resolve disputes over a child's IEP. Families or the District can request one of two IDEA formal dispute resolution processes, which are also referred to as formal special education due process proceedings: *A Mediation Only* process or a *Due Process Hearing*; these

How Students' IEP Disputes are Resolved in L.A. Unified

Dispute over aspect(s) of a child's individualized education program (IEP), the provision of FAPE

Assessment



Eligibility



Instructional Setting



Services



who is involved in resolving the dispute depends upon which path is taken



The District



parents, guardians, public agencies (sometimes) or the student (if 18/18+)



Office of Administrative Hearings (OAH)

Dispute Resolution Processes required by IDEA

Path 1: Due Process Proceedings



Parents or the District submit a request for one of two Due Process Proceedings with OAH, and OAH assigns a case number

Request for Mediation Only

A mediator assists both parties in a mediation session. After the session, OAH closes the case. If issues are resolved, the resolution is a **MEDIATION ONLY AGREEMENT**.
NO ATTORNEYS PARTICIPATE IN THESE CASES.

or

Request for Due Process Hearing

Mandatory resolution sessions only follow parents' requests for a Due Process Hearing. If issues in these requests are resolved in the session OR before the Hearing (or optional mediation), the agreement is a **RESOLUTION SESSION AGREEMENT**.

District-initiated requests, or parent-initiated requests not resolved in a resolution session, proceed to optional mediation sessions, Pre-hearing statements and Due Process Hearings.

Agreements reached during the voluntary mediation session (OR after the mediation session but before the hearing) are called **MEDIATION AGREEMENTS** (or mediated agreements).

When a case proceeds to the Hearing, both parties present their case, usually with attorneys before an Administrative Law Judge.

PRE-HEARING AGREEMENTS are agreements reached after the Pre-hearing statements but before the Hearing. Resolutions reached during/ after the hearing are called **HEARING/DECISION**.

As time spent in the process increases, so can attorneys' fees, generally

\$

\$ \$

\$ \$ \$

Path 2: District-provided processes



Parents and the District utilize options designed to be less adversarial and faster than due process proceedings

Informal Dispute Resolution

Parents identify their issues, and the District attempts to work with the parent to quickly resolve the issues identified. The District has offered IDR for years as a less formal option than Due Process Proceedings. If issues are resolved, the resolution is an **INFORMAL DISPUTE RESOLUTION (IDR)** agreement.

or

Alternate Dispute Resolution

ADR is a new process that is like IDR but required by the state; it also includes a school-site option (ADR-S). These issues are handled by the District's Due Process Department, and resolutions are called **ALTERNATE DISPUTE RESOLUTION (ADR or ADR-S)** agreements.

District-initiated cases can also be **DISMISSED** by OAH at the request of the District (parent-initiated requests are not dismissed).

The party that filed the complaint can also **WITHDRAW** the complaint at any time.

requests are submitted to the California State Office of Administrative hearings (OAH), which then assigns a case identification number. Alternatively, families or the District may utilize *informal* or *alternate dispute resolution* processes, which are District-provided dispute resolution processes that involve additional District personnel.

The infographic on page 3 further details the formal special education due process proceedings, which begin with parents requesting either a Mediation Only process or a Due Process Hearing. Cases that result from requests for Mediation Only proceed straight to a mediation conference with the purpose of reaching a resolution to the dispute. In these cases, participation by attorneys is barred. Alternatively, a request for a Due Process Hearing begins with a resolution period and a mandatory resolution session, proceeds to optional mediation, and then to a Due Process Hearing that begins with pre-hearing statements, after each period only proceeding to the next step if an agreement was not reached. Attorneys may be involved at any point after the request has been made for a Due Process Hearing. For cases that proceed to the Due Process Hearing, both parties present their cases, usually with attorneys, before an Administrative Law Judge who is knowledgeable about special education laws and mandates.

Resolutions of formal special education due process proceedings occur when all parties enter into a written and signed *settlement agreement*, either in a mediation-only conference (in the case of the Mediation Only option), or at some point in the proceedings prior to and including the hearing (in the case of the Due Process Hearing option). However, formal special education due process disputes do not necessarily end with an agreement or written decision from a hearing officer; the District can ask the OAH to

dismiss District-initiated complaints or filing parties can withdraw their own complaints at any time during the proceedings. **Informal special education dispute resolution processes are beyond the scope of this report.**

ABOUT THE ANALYSIS

This report provides information on complaints made on behalf of children with disabilities that resulted in formal special education due process proceedings and payment of parents' attorneys' fees. Students included in the analysis were enrolled in L.A. Unified traditional public schools, L.A. Unified non-school locations,² independent charter schools, private schools, and LAUSD contracted Non-Public Schools and Non-Public Schools/Residential Treatment Centers, all of which are served by the LAUSD Special Education Local Plan Area (SELPA).

About the data

To assemble data for this report, the IAU began with six years of due process hearing case data provided by the Division of Special Education that included Office of Administrative Hearings (OAH) case numbers, the dates requests were filed and resolved, and points in the proceedings when resolutions occurred. Case data were combined with student-level data from the District's student information system (accessed through FOCUS data queries³) and Welligent (the data system containing special education records) that included school enrollment data and students' disability categories (a.k.a., special education eligibility categories). We then added attorneys' fees associated with each OAH case number from L.A. Unified's Office of General Counsel (OGC). Finally, we simplified the data as follows.

Years and costs. In the combined dataset, the IAU grouped cases into fiscal years based on the date the District received the complaint. Fiscal years begin July 1 and end June 30. All attorneys' fees were adjusted for inflation and are expressed in 2021 dollars.⁴

Local district. Cases were also grouped geographically by local district, though school information was not identified for all students with OAH cases. Students in option schools were grouped into the physical local district in which the option school was located, and students in non-school locations (Special Education Support, Special Education Early Education Program, and Special Education Infant/Preschool Program) were grouped into the category "Non-school locations." All other cases were grouped into the "Other/Unknown" category. These cases averaged 13% and 15% of all cases and fees each year, respectively, and were not included in figures that show data disaggregated by local district. The "Other/Unknown" cases included those for which school enrollment information was not identified for the student (12% of cases each year, on average), those for which students' district identification numbers indicated they attended private school (1.6% of cases each year, on average), and those who attended independent charter schools (0.2% of cases each year, on average).

Resolution period. In addition to grouping cases by local district, we grouped cases by Due Process Hearing resolution period, which was the part of the proceedings when an agreement between both parties occurred. The resolution periods are *resolution session*, *mediation*, *pre-hearing*, and *hearing*, the last of which includes cases that ended with written decisions from the hearing officer and cases settled during the hearing. Less than 1% of the 8,054 cases analyzed in this report had an unknown resolution ($n=54$) at the time of

the report's publication. These cases were grouped in the "Unknown" resolution period.

Disability category. Finally, cases were grouped by the student's disability category. The District uses more than a dozen disability descriptions as categories in its administrative data systems (FOCUS and Welligent). For this report, figures and tables present data disaggregated for the following categories (ordered from most/highest to least/lowest cases and attorneys' fees): autism, specific learning disability, other health impairment, intellectual disability (we included students previously identified with the disability mental retardation in this category), emotional disturbance, speech or language impairment, and orthopedic impairment (we included students identified as "multiple disabilities – orthopedic" in this category).

In addition, disability categories that either averaged fewer than 50 cases with attorney fees or less than \$100,000 in attorneys' fees annually were grouped into "other disability types." This category includes deaf-blindness, deafness, developmentally delayed (age-specific disability), established medical disability (age-specific disability), hard of hearing, multiple disabilities – hearing and multiple disabilities – vision (grouped as multiple disabilities – hearing/vision), traumatic brain injury, and visual impairment. Of note, in some cases with attorneys' fees, the student is identified as never fully assessed or assessed and found ineligible, not eligible, or not a student with a disability, or in 2021 only, some preschool students were identified with deferred eligibility. These cases are included in the "other" category, though the attorneys' fees averaged over \$200,000 annually. Data for all cases disaggregated by all disability categories are provided in the appendix.

Limitations

Importantly, this list of cases represents only a partial accounting of disagreements over students' IEPs. Some disputes are withdrawn or resolved through informal or alternate resolution processes, which may or may not involve attorneys, but does not result in the District paying attorneys' fees. Other disputes are settled in mediation-only, an option available under IDEA that does not allow for attorneys or other independent contractors who provide legal advocacy to participate in the process on either the District or plaintiff side. Additionally, not all Due Process requests resulted in the District paying parents' attorneys' fees. Attorneys' fees are only paid when the plaintiff prevails or when the District agrees in the settlement to pay the fees.

FINDINGS

The following sections include information about the number of formal special education Due Process Hearing requests that included payment of parents' attorneys' fees over six years and their associated fees. Cases and fees are also disaggregated by local district, resolution period, and disability category.

Costs have decreased because cases have decreased

Over the six-year period between FY 2016 and FY 2021, the number of formal special education Due Process Hearing requests that resulted in payment of attorneys' fees each FY first increased but then trended down. In 2021, cases were down 300 from the peak in 2018 and down 150 from 2016 (Figure 1). Also over the six-year period, the District's total expenditures on attorneys' fees decreased by \$1.7 million (Figure 2). **The decline in cases explains the overall drop in expenditures** since the average attorneys' fees per case

remained relatively steady over six years, decreasing just \$400 from \$7,500 in 2016 to \$7,100 in 2021. This decrease is surprising since attorneys typically raise their hourly rates on an annual basis and the District must continue to negotiate reasonable rates and fees.⁵

Cases in each local district followed this general pattern, first increasing but then trending down after 2018 or 2019 (Figure 3). However, cases did not occur at equal rates across the District. While each local district is comprised of similar shares of students with disabilities, Local District West had twice as many cases with attorneys' fees as Local

Figure 1. Cases with Attorneys' Fees, FY 2016-2021

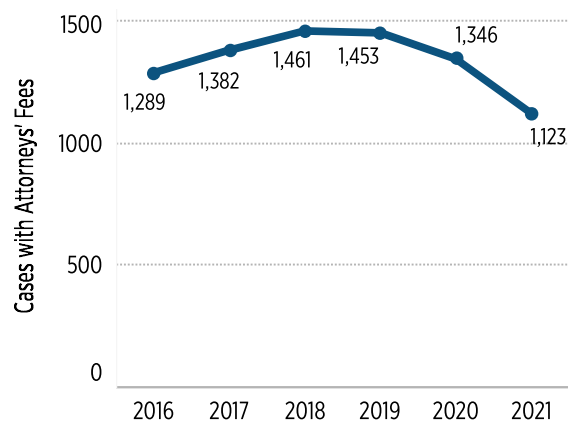
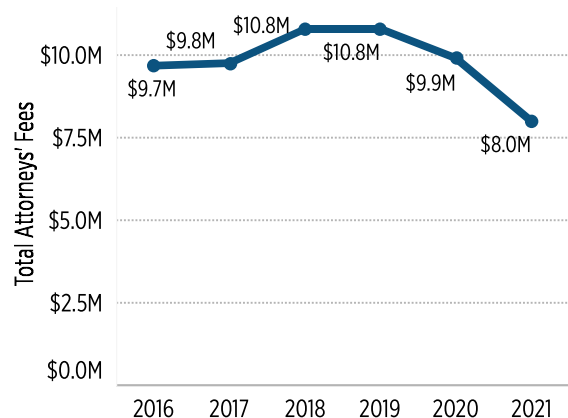
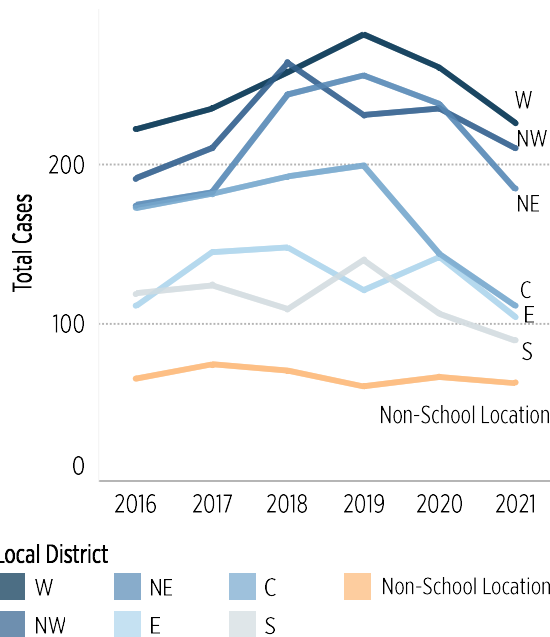


Figure 2. Total Attorneys' Fees, FY 2016-2021



Note: All dollars are 2021 real dollars.

Figure 3. Cases with Attorneys' Fees by Local District, FY 2016-2021

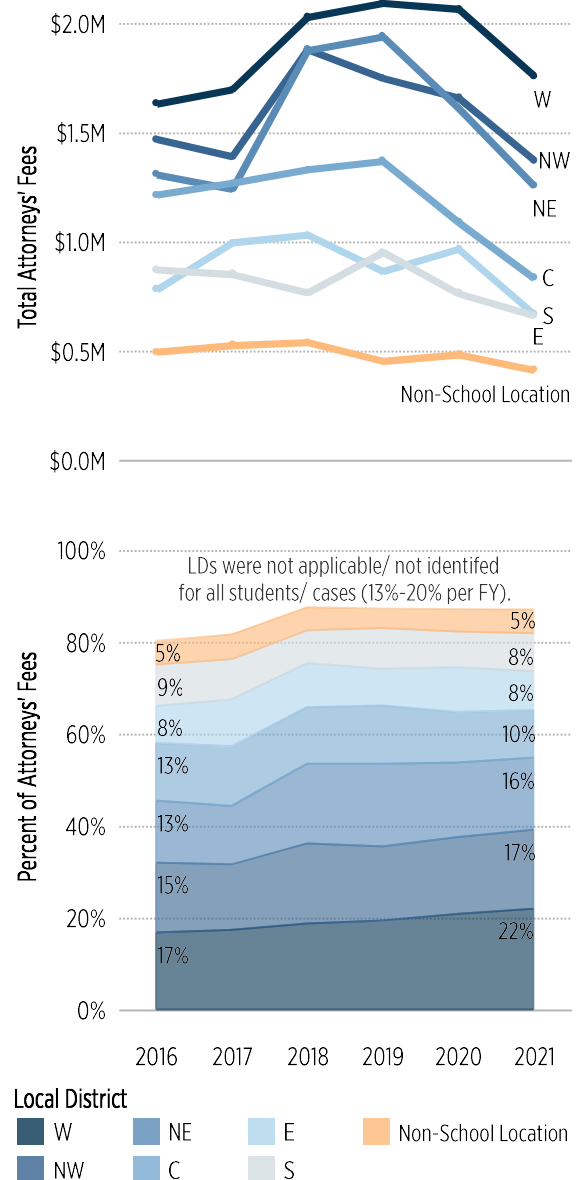


Note: Total cases for the other/ unknown local districts (not shown) were: 231, 227, 172, 160, 151, and 134. For nearly all these cases, the school information was not identified at the time of this report. Non-school locations include: Special Education Support, Special Education Early Ed Program, and Special Education Infant/ Pre-school Program.

Districts East and South, on average, with the number of cases in Local Districts Northwest and Northeast closely behind Local District West.

Because costs closely follow trends in cases, **local districts did not contribute equally to overall costs.** Cases and attorneys' fees from Local Districts East and South—and in recent years, Local District Central—were lower than other local districts. For example, in FY 2021, total attorneys' fees in Local Districts East, South and Central represented 8%, 8% and 10% of all attorneys' fees that year, compared to Local District West, which represented 22% of all attorneys' fees, and Local Districts Northwest and Northeast, which represented 17% and 16% of all fees, respectively (Figure 4).

Figure 4. Total and Percent of Total Attorneys' Fees by Local District, FY 2016-2021

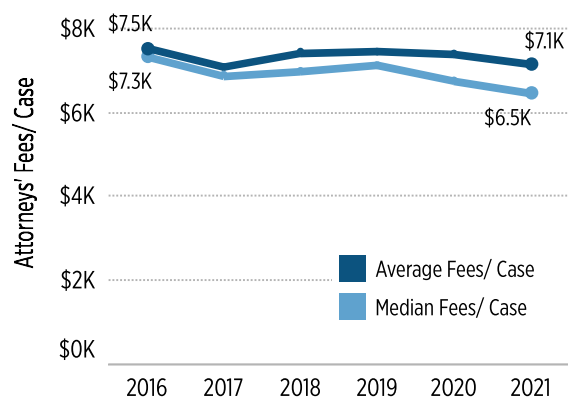


Note: All dollars are 2021 real dollars. In sequential order, total and percent of total attorneys' fees for cases in other/ unknown local districts (not shown) were: \$1.9M (20%), \$1.8M (18%), \$1.4M (13%), \$1.4M (13%), \$1.3M (13%), \$1.0M (13%). Students identified as attending independent charter schools (<0.5% of cases/year) and students identified as attending private schools (1-3% of cases/year) were included in the other/ unknown group. Non-school locations include: Special Education Support, Special Education Early Ed Program, and Special Education Infant/ Preschool Program.

Most cases are resolved during the mediation period, but cases resolved late in the proceedings can drive average costs up

While overall costs are down, **inflation-adjusted average attorneys' fees per case remained relatively steady over six years, decreasing just \$400 from \$7,500 in 2016 to \$7,100 in 2021** (Figure 5). This finding is positive, given that attorneys typically raised their rates each year. However, given the complexity of formal special education due process cases and the scale of the District, the average attorneys' fees per case can mask variability that may suggest concerning trends. As shown in Figure 5, the median cost per case fell more than the average—from \$7,300 to about \$6,500—a drop of \$800 over six years. That the median was lower than the average means that **relatively few outlier cases entailed substantially higher-than-average attorneys' fees**. Some of those outliers were cases resolved late in the proceedings.⁶

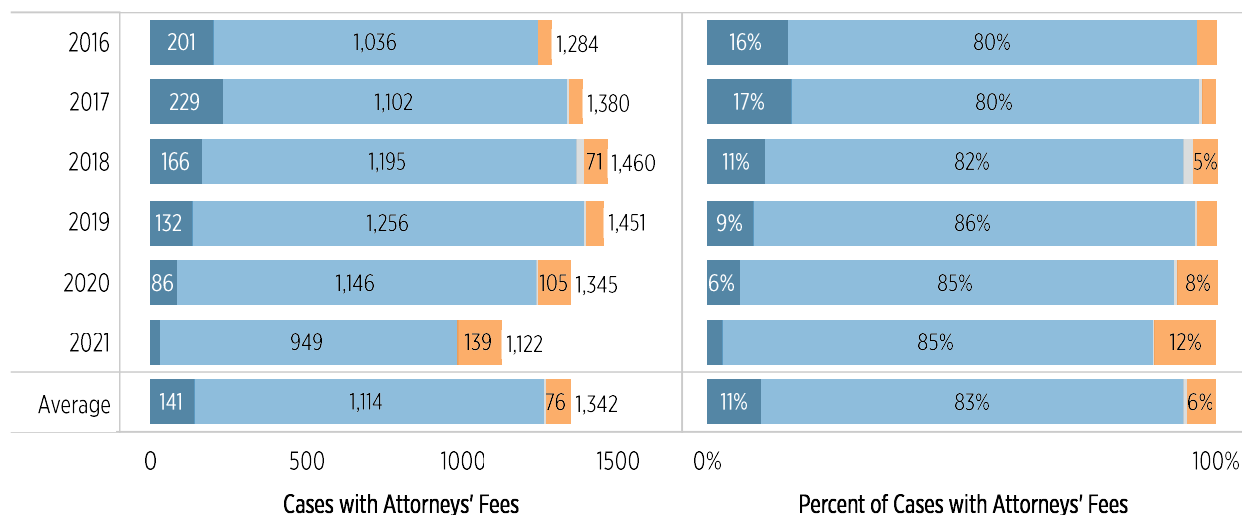
Figure 5. Average and Median Attorneys' Fees/ Case, FY 2016-2021



Note: All dollars are 2021 real dollars.

Once requests for hearings are filed with the Office of Administrative Hearings (OAH), they can be resolved at one of several points in the proceedings (see infographic, page 3). In general, the longer it takes to resolve a Due Process Hearing request, the higher the attorneys' fees.

Figure 6. Total and Percent of Cases with Attorneys' Fees by Resolution Period, FY 2016-2021

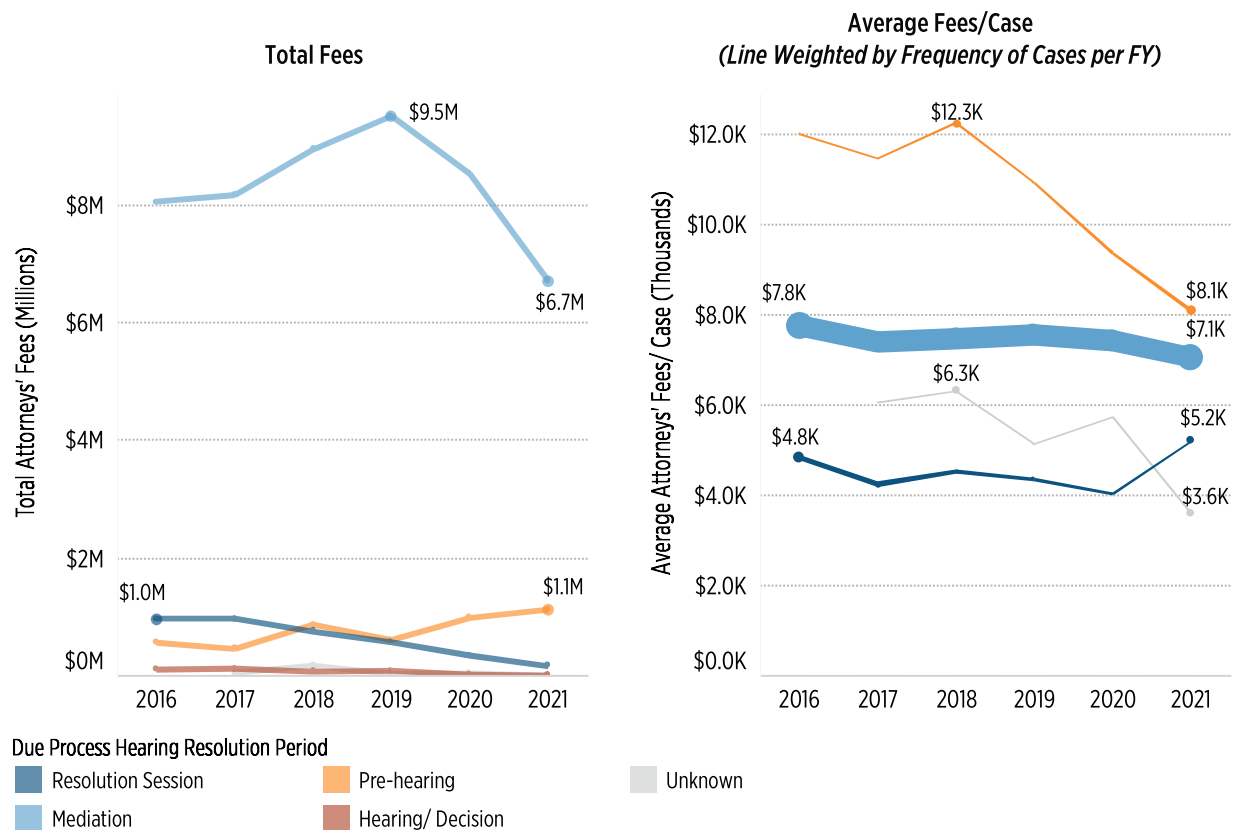


Due Process Hearing Resolution Period

Resolution Session Mediation Unknown Pre-hearing

Note: Cases that end in the "Hearing/Decision" are not shown due to their low annual frequency—in sequential order: 5, 2, 1, 3, 1, 1 (average = 2). In the right panel, unlabeled portions of bars represent cases that comprise ≤5%.

Figure 7. Total Attorneys' Fees and Average Attorneys' Fees/ Case by Resolution Period, FY 2016-2021



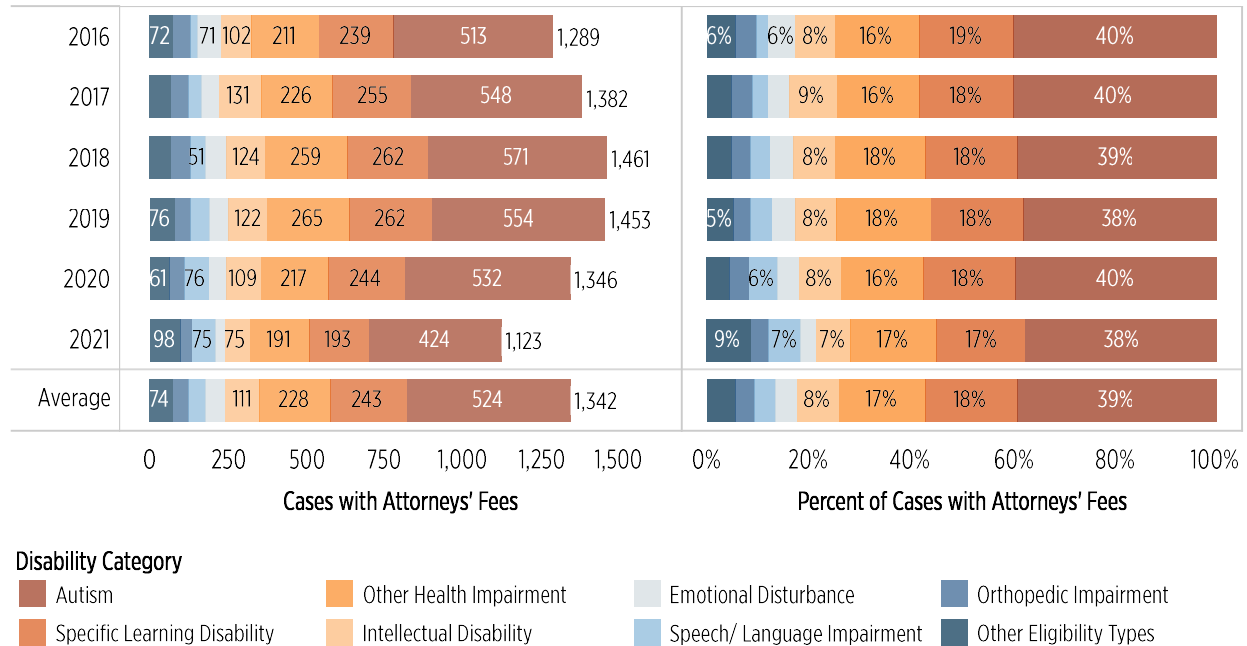
Note: All dollars are 2021 real dollars. The average fees per case for cases that end in “Hearing/Decision” are not shown due to low annual frequencies (<5) and high fees per case: 5 cases with average fees of \$21.7K/case in 2016; 2 cases with average fees of \$62.1K in 2017; 1 case with fees of \$73.9K in 2018; 3 cases with average fees of \$29.8K in 2019; 1 case with fees of \$25.1K in 2020; and 1 case with fees of \$8.6K in 2021.

Though it is possible to resolve a Due Process Hearing case during the resolution session period (the first 30 days a case is open), over the six years of this analysis, **the District and plaintiffs resolved most cases during the mediation period**, which occurs when both parties failed to reach an agreement during the resolution session period, but before the pre-hearing statements were due. About eight of every ten cases each of the six years were resolved in mediation (Figure 6). Accordingly, average attorneys’ fees per case closely mirrored the average attorneys’ fees for cases that were resolved with mediation agreements (Figure 7, right panel). During the period studied, the overall average attorneys’ fees per case were \$7,300, compared to

\$7,500 for cases that were resolved in the mediation period. Moreover, cases resolved in the mediation period represented six to nine times more total attorneys’ fees than the next most common resolution type (Figure 7, left panel).

However, resolutions achieved later in Due Process Hearing proceedings, i.e., pre-hearing agreements, trended up during this period. Though still a small share of cases, pre-hearing settlements tripled from 4% in 2016 to 12% in 2021 (Figure 6). **It may be that the increase in cases resolved with pre-hearing agreements is related to demand for in-person services and assessments during COVID-19 school facilities closures and the difficulties presented in resolving these**

Figure 8. Total and Percent of Cases with Attorneys' Fees by Disability Category, FY 2016-2021



cases under the then current circumstances. the average fees paid in cases resolved in the pre-hearing period, even after it declined starting in 2019, were substantially higher than the average fees for cases resolved earlier in Due Process Hearing proceedings (Figure 7, right panel).

At the same time, resolutions earlier in the proceedings—during resolution period—trended down, falling to only 3% of cases in 2021 from 16% of cases in 2016 (Figure 6). Cases resolved during the resolution period have the lowest average attorneys' fees per case, averaging \$4,500 over the six-year period (although these fees spiked in 2021).⁷

The greatest number of Due Process cases with attorneys' fees paid out involved students with autism

As overall cases with attorneys' fees decreased, the **relative share of cases associated with each of the disability categories**

analyzed remained stable over the six years of this analysis. Cases on behalf of students with autism made up about 40% of all complaints in any year from 2016 to 2021. The next two most common disability categories were specific learning disability and other health impairment. Together, these three categories comprised on average three-quarters of all cases each year (Figure 8).

Since the numbers of cases in the largest categories—autism, specific learning disability, and other health impairment—decreased over the period, total attorneys' fees involving students with these disabilities have come down, as shown in Figure 9 (left panel). Attorneys' fees involving students in several disability categories decreased notably since 2019, with fees associated with autism falling dramatically in 2021.

Cases related to students with disabilities grouped in the "other" category climbed in the most recent year, but the overall fees for these relatively few cases were small

compared to other categories of eligibility (Figure 9, left panel).

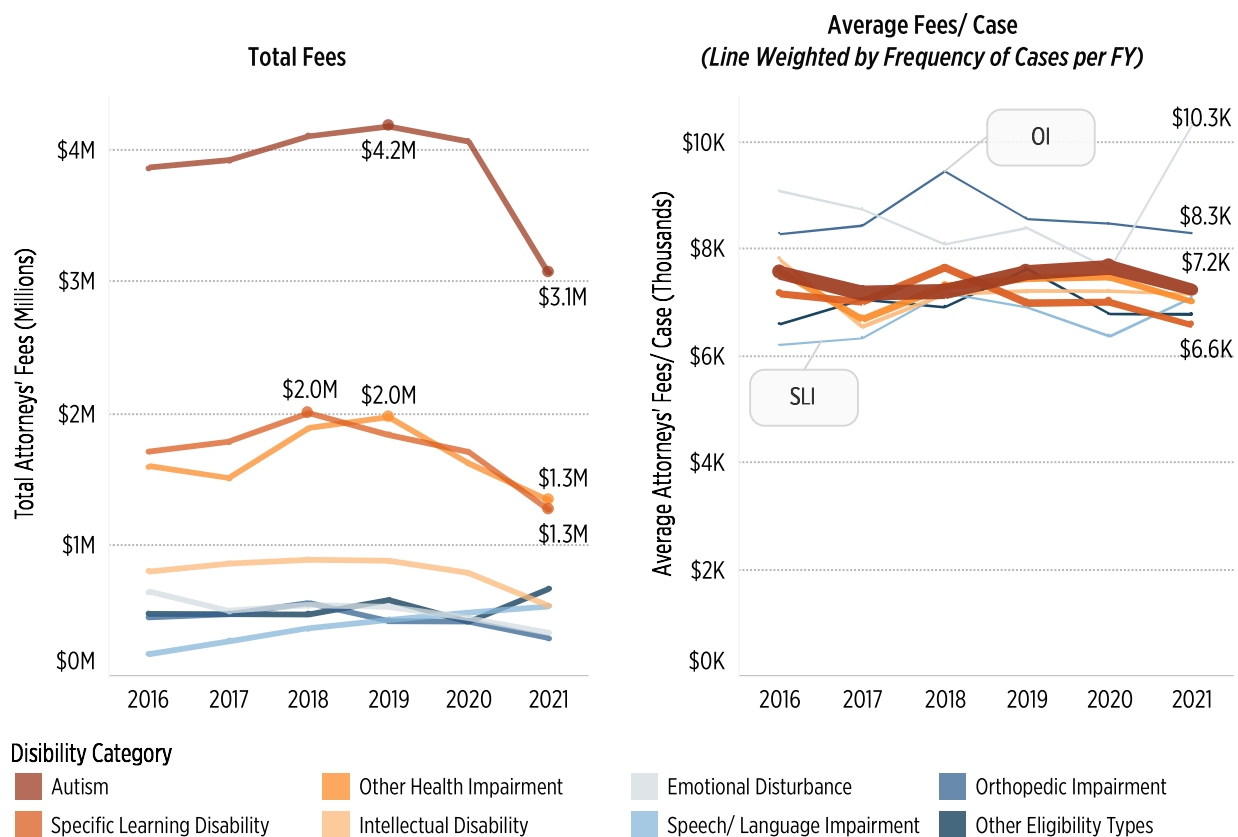
Because **cases on behalf of students with autism, specific learning disabilities, and other health impairments represented three-quarters of all cases, over time, the average cost for all cases reflected the average cost per case for these categories.** Over the six-year period, the District paid an average of \$7,400 in fees per case, compared to \$7,400 in fees for students with autism, \$7,100 for students with specific learning disabilities, and \$7,200 for students with other health impairments.

The average attorneys' fees in cases involving students with autism shrunk slightly but remained relatively stable over the six years

(Figure 9, right panel). The same is true of the average fees associated with the other disability categories except speech and language impairment. The average and total attorneys' fees for cases related to the speech and language impairment disability category spiked in 2021, with total fees increasing from \$0.2 million in 2016 to \$0.5 million in 2021—still only a small share of overall expenditures.⁸

The average attorneys' fees associated with one category of disability—emotional disturbance—climbed dramatically in 2021; however, there were fewer cases associated with this disability category in 2021 and overall fees associated with this category were lower in 2021 than in 2016.⁹ Despite some increases in cases associated with a few categories of

Figure 9. Total Fees and Average Fees/Case by Disability Eligibility Category, FY 2016-2021



Note: All dollars are 2021 real dollars.

disability, **this analysis shows that no eligibility category was associated with outlier cases that drove up the overall average cost of due process attorneys' fees.**

We also found that **students on whose behalf due process complaints were made were not representative of all students with disabilities enrolled in the district, but this disparity is not necessarily a matter of concern.**

For reference, Table 1 shows the shares of students with different categories of disabilities enrolled in the district compared to the shares of due process cases associated with those categories. Notably, complaints on behalf of students with autism were filed at a

higher rate than those filed on behalf of students in any other disability category and at a higher rate than might be expected given the number of students with an eligibility of autism in the District.

Complaints in two other categories of eligibility—other health impairment and emotional disturbance—were also notably high compared to students identified as eligible in these categories, though the numbers of students and complaints in these categories were relatively small. Conversely, complaints on behalf of students with specific learning disabilities or speech or language impairments were disproportionately lower than would be expected if they mirrored the distribution of those disabilities among students in the District.

Table 1. Average Percent of Cases and Special Education Enrollment by Disability Category, FY 2016-2021

Disability Category	Avg % of Cases	Avg % of Total District Sp. Ed. Enrollment
Autism	39%	19%
Specific Learning Disability	18%	40%
Other Health Impairment	17%	12%
Intellectual Disability ¹	8%	5%
Emotional Disturbance	4%	1%
Speech or Language Impairment	4%	15%
Orthopedic Impairment ²	4%	3%
Other Disability Types ³	7%	5%
Not eligible/unknown ⁴	3%	--
Multiple Disabilities – Vision/Hearing	1%	<1%
Hard of Hearing	<1%	1%
Deafness	<1%	<1%
Age-Specific ⁵	<1%	2%
Visual Impairment	<1%	<1%
Traumatic Brain Injury	<1%	<1%
Deaf-Blindness	<1%	<1%
Total	100%	100%

Source: Case percentages from Division of Special Education and Office of General Counsel; Districtwide percentages from LAUSD administrative student data/FOCUS.

CONCLUSION

In sum, this analysis of formal special education Due Process Hearing requests that resulted in District-paid parents' attorneys' fees from 2016 to 2021 shows that **the overall number of cases for which attorneys' fees were paid has declined from 1,289 in FY 2016 to 1,123 in FY 2021** and, accordingly, since the average inflation-adjusted attorneys' fees per case remained stable, **the total expenditures on attorney's fees related to these cases declined from \$9.7 million to \$8 million.**

This trend of decreasing expenditures is good news for the District, but more progress may be possible. **The findings in this report point to several areas for strategic focus.**

- Complaints and fees were not spread evenly across local districts. **Cases and attorneys' fees from Local Districts East and South were lower than other local districts.** The local district with the most

cases and greatest attorneys' fees was West, closely followed by Northwest and Northeast (Cases and fees in Central were lower than Northeast, but higher than South and East).

- **Though the total number of cases decreased, the number of cases that were resolved at pre-hearing increased in recent years.** Though the average attorneys' fees for these cases fell in 2021, they still cost more than cases resolved earlier in the process. **This increase may have been related to special circumstances surrounding school facilities closures due to COVID-19, but a continuation of this pattern would be of concern.**

To continue to promote a decline in the number of requests for due process hearings, and consequent payment of attorneys' fees, it would be advisable for the District to:

- Explore why due process complaints are much more frequent in some local districts than in others, and
- Continue to encourage all informal dispute resolution processes and, in general, to resolve complaints as early as possible.

This report provides information to the Board on disagreements about the provision of FAPE that are resolved with the involvement of attorneys after one of the parties requests a Due Process Hearing. However, many disagreements are settled through other means. To understand the breadth of parents' complaints about the District's provision of FAPE, a study of all complaints and how they are settled is warranted.

In addition, parents' attorneys' fees represent only one cost related to IEP dispute resolution. The District incurs administrative costs as well in each of these disputes, whether attorneys' services are required. Finally, of real interest to the Board is whether special education services could be added or improved such that more parents would be satisfied with the Districts' provision of FAPE and IEP disputes would decrease. This question would require additional research.

NOTES

¹ When a case is resolved prior to hearing, there is language included in the Agreement of no admission as to who is the “prevailing party.”

² Non-school locations include: Special Education Support, Special Education Early Ed Program, and Special Education Infant/ Preschool Program.

³ <https://achieve.lausd.net/focus>

⁴ Inflation factors used were from <https://www.in2013dollars.com/Legal-services/price-inflation>

⁵ Personal correspondence, Division of Special Education.

⁶ Few cases proceed beyond the mediation period. If a case does proceed to the next stage, there are a multitude of reasons, usually involving the complexities of the remedies sought considering the District's position or a high demand for attorney's fees.

⁷ Cases that are resolved in resolution session historically have entailed low fees. Resolution session remains the resolution period with the lowest average attorneys' fees. The recent increase may be attributable to something related to the COVID-19 pandemic and should be the subject of further inquiry.

⁸ One plausible explanation for the spike in SLI complaints is that the difficulty of conducting assessment for students eligible as SLI who were also suspected of having other disabilities during the COVID-19 school facilities closures.

⁹ One plausible explanation for the rise in cases that involved emotional disturbance is that social emotional issues arose for students during COVID-19 school facilities closures.

APPENDIX

Table A1. Average Percent of Cases and Special Education Enrollment by Disability Category, FY 2016-2021

Disability Category	Overall (FY 2016-2021)		Annual (FY 2016-2021)				
	Cases	Attorneys' Fees	Cases	Attorneys' Fees/ Case			Total Attorneys' Fees
				Average	Min.	Max.	
Autism	3,142	\$22,762,854	511	\$7,348	\$264	\$74,227	\$3,754,756
Specific Learning Disability	1,455	\$10,037,339	236	\$7,051	\$321	\$73,921	\$1,668,298
Other Health Impairment	1,369	\$9,780,069	222	\$7,230	\$254	\$28,000	\$1,603,682
Intellectual Disability ¹	663	\$4,662,793	108	\$7,153	\$910	\$34,500	\$772,269
Emotional Disturbance	348	\$2,797,086	57	\$8,460	\$503	\$37,475	\$470,083
Speech or Language Impairment	333	\$2,180,609	53	\$6,651	\$513	\$32,341	\$357,611
Orthopedic Impairment ²	302	\$2,516,675	49	\$8,481	\$990	\$46,201	\$416,800
Other Eligibility Types ³	438	\$3,032,449	72	\$6,936	\$430	\$38,545	\$497,394
Not eligible/unknown ⁴	235	\$1,382,002	43	\$5,704	\$1,031	\$32,000	\$249,692
Multiple Disabilities – Vision/Hearing	56	\$568,722	9	\$10,445	\$4,870	\$38,545	\$92,610
Age-Specific ⁵	50	\$284,950	4	\$6,269	\$4,499	\$9,240	\$22,491
Hard of Hearing	37	\$290,382	6	\$7,999	\$5,412	\$13,347	\$48,008
Deafness	29	\$232,832	5	\$8,357	\$4,484	\$30,504	\$47,230
Visual Impairment	20	\$155,788	3	\$7,678	\$5,968	\$11,185	\$25,737
Traumatic Brain Injury	11	\$100,508	2	\$9,467	\$8,095	\$13,727	\$20,006
Deaf-Blindness	2	\$17,265	1	\$8,474	\$8,474	\$9,556	\$8,474
Grant Total	8,054	\$57,769,874	1,342	\$7,414	\$254	\$74,227	\$9,843,512

¹Includes Mental Retardation

²Includes Multiple Disabilities – Orthopedic

³Eligibility categories were grouped into “other” if total annual fees per category were less than \$100K (in 2021 real dollars) or if they were ineligible for special education services or never fully assessed

⁴Includes disability category N/A and not eligible, i.e., never fully assessed or was assessed and found ineligible. In FY 2016-2020, these students totaled <3% of all cases, on average. In FY 2021, ineligible students totaled 5% of all cases.

⁵Includes Developmental Delay (now Developmentally Delayed (ages 3-5 only), Established Medical Disability (ages 4-5), and in 2021, Deferred Eligibility (preschool only)

Source: Case percentages from Division of Special Education and Office of General Counsel; Districtwide percentages from LAUSD administrative student data/FOCUS.