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# IDEA Data Brief: Mediation

Center for Appropriate Dispute Resolution in Special Education | September 2017

## KEY FINDINGS

1. Requests for mediation have consistently increased over time.
2. The number of mediations held has increased over time.
3. Mediations not related to due process complaints were more likely to conclude in a written agreement than mediations that were related to due process complaints.
4. Among states with the most mediation activity, those with the highest agreement rates also reported fewer due process related mediations.
5. Approximately one out of every four requests for mediation was withdrawn.



The Individuals with Disabilities Education Act (IDEA)<sup>1</sup> requires states and entities<sup>2</sup> receiving funds under Part B to make available the following dispute resolution options: mediation, written state complaint, and due process complaint. These mandatory options offer mechanisms for resolving disputes that arise under IDEA.

Among these options, mediation is perceived to be the least adversarial because participants work together on solutions with the support of an impartial third party and are in control of the outcome. Mediation is also believed to be the least costly because it typically requires less time and may require less involvement from attorneys.

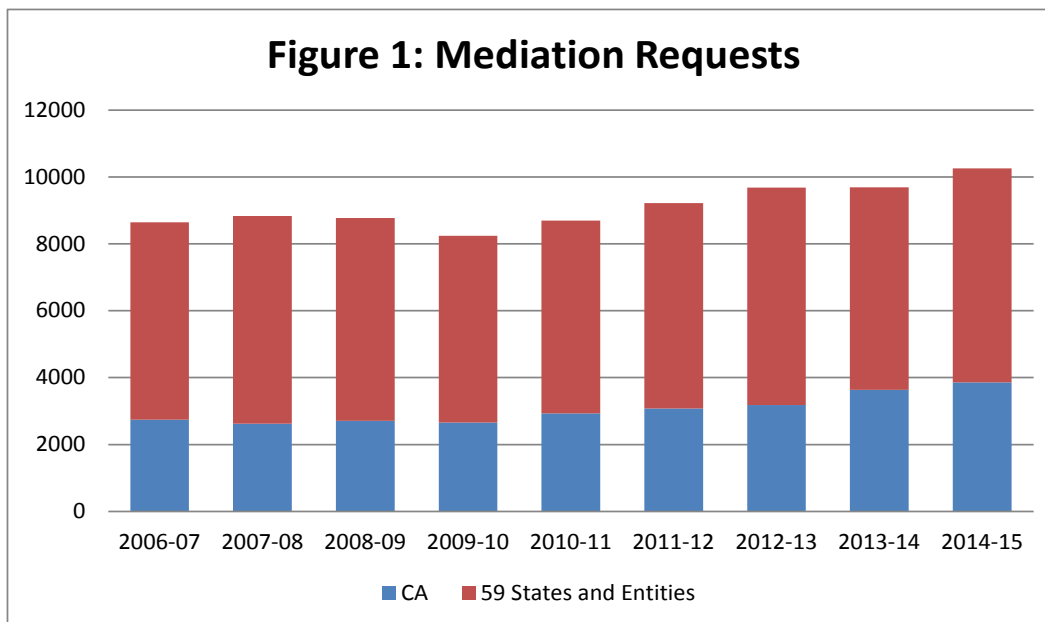
States are required to annually report activity and performance on dispute resolution activity to the U.S. Department of Education's Office of Special Education Programs (OSEP). This brief on mediation is one in a series that examines eleven years of IDEA dispute resolution activity based on data reported to OSEP by the states. Although data for this brief spans eleven years, date ranges selected for analysis may vary depending on factors such as reliability or changes in reporting requirements and will be noted accordingly.

<sup>1</sup> 20 USC 1400 et seq; 34 CFR part 300.

<sup>2</sup> The terms "states" and "states and entities" are used interchangeably to refer to all 60 Part B grant recipients. Grant recipients include the 50 states, the District of Columbia, the Bureau of Indian Education (BIE), Puerto Rico, the Virgin Islands, American Samoa, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

## Requests for mediation have consistently increased over time.

Requests for mediation have increased by 22% over the last eleven years, from a total of 8,387 in 2004-05 to 10,260 in 2014-15. As illustrated in Figure 1, this increase was largely due to an increase in mediations related to due process complaints in California, a state that consistently experiences the most mediation activity nationwide. Over the last eleven years, California alone has accounted for 33% of all mediation requests and 49% of all mediations related to due process. This level of mediation activity may be driven by a specific state policy and procedure by which the filing of a due process complaint operates as a combined request for mediation to be followed by a due process hearing if the dispute is not resolved.<sup>3</sup> If California's data are removed from the national data set, the increase in mediation requests falls from 22% to 7%.



Mediation activity varied significantly across states, with 17 states receiving few or no requests for mediation.<sup>4</sup> A “per capita” calculation (event rate per 10,000 special education childcount) allows comparisons of dispute resolution activity across years and across states with different childcounts.<sup>5</sup> The national mean rate for mediation requests increased from 12.7 per 10K in 2006-07 to 15.3 per 10K in 2014-15. By comparison, California, the state with the most mediation activity, saw mediation requests increase from 40.8 per 10K in 2006-07 to 54.3 per 10K in 2014-15.

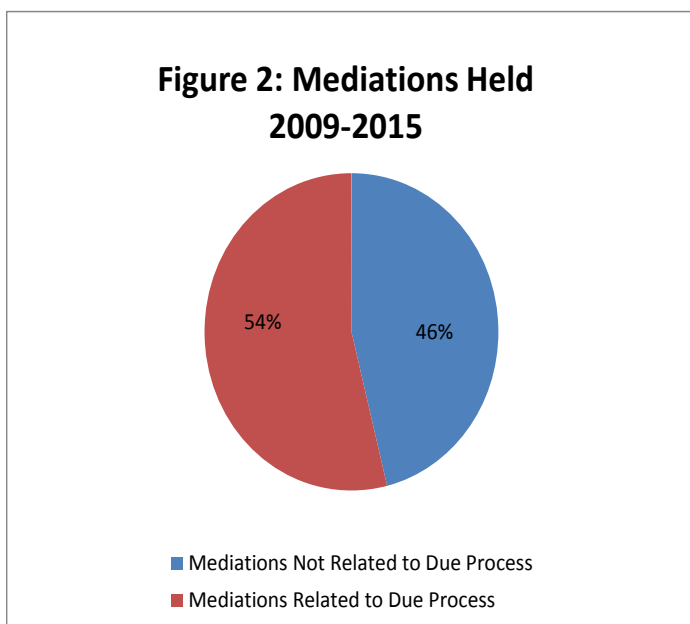
<sup>3</sup> Office of Administration Hearings User Guide: Understanding Special Education Due Process Hearings (CA 2009)(stating “[a] parent or legal guardian of a student who has a disability, or is suspected of having a disability, may file with OAH a request for mediation only (Form 1) or a request for mediation and due process hearing (Form 2).

<sup>4</sup> Six states and entities consistently receive no requests for mediation and eleven consistently receive ten or fewer requests per year.

<sup>5</sup> An “event rate per 10K” equals the number of events divided by childcount times 10,000. Childcount varies widely, from <1,500 in the Virgin Islands to >700,000 in California. While an event rate per 10K “equates” levels of activity across states, changes over time in low-childcount states and entities can be misleading. For example, a single added event in the Virgin Islands will increase the rate per 10K by 6.7, while a single added event in California would increase that state’s rate by only 0.014 per 10K.

**The number of mediations held has increased over time.**

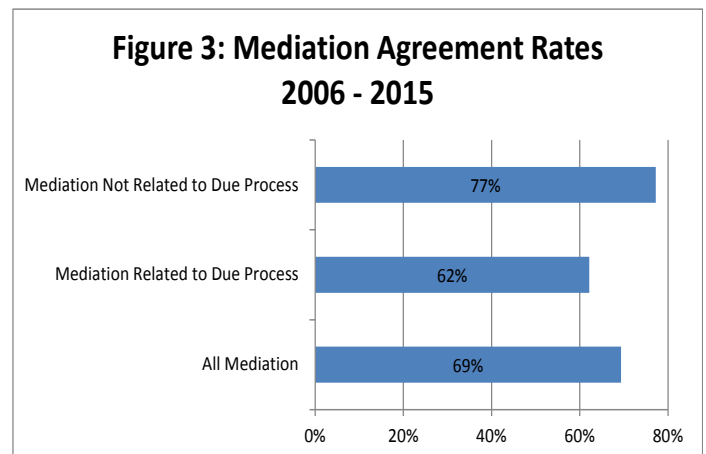
The number of mediations held increased 18% between 2009-10 and 2014-15. Data beginning with 2009-10 provides a more accurate representation of national activity on the number of mediation sessions due to the questionable reliability of this specific data element between 2006-07 and 2008-09.<sup>6</sup>



As illustrated in Figure 2, over half (54%) of all mediations held were related to a due process complaint. The percentage of due process related mediation sessions has increased over the last three years, ranging from 55% to 57%. Notably, California, the state with the most mediation activity, was responsible for 53% of all due process related mediation activity, while representing about 11% of total childcount.

**Mediations not related to due process complaints were more likely to conclude in a written agreement than mediations that were related to due process complaints.**

Based on data from 2006-07 to 2014-15,<sup>7</sup> mediations that were not related to due process complaints have agreement rates that were 15 percentage points higher than those for mediations that were related to due process complaints. The national agreement rate for all mediations was 69%, as averaged over the last nine years. The agreement rate for mediations not related to due process complaints was 77%. The agreement rate for mediations related to due process was 62%. Figure 3 illustrates these agreement rates.



Although the national agreement rate has fluctuated from a low of 63% to a high of 72% over the last nine years, it has remained relatively stable, especially during the last seven years where it has fluctuated only 3%, ranging from 68% to 71%. The agreement rate for due process related mediations has been less stable over that time. For example, the agreement rate for mediations related to due process has ranged

<sup>6</sup> Between 2006-07 and 2008-09, six states with 25 or more mediation requests reported the exact same number for mediation requests as sessions held, with one state reporting 800 requests/sessions for each of the three years. Although it is possible that every request resulted in a mediation session, it grows much less probable as the number of requests increases.

<sup>7</sup> Because data reported in 2004-05 and 2005-06 for sessions held may not be reliable and would impact the agreement rate, the agreement rate was calculated based on data reported from 2006-07 through 2014-15.

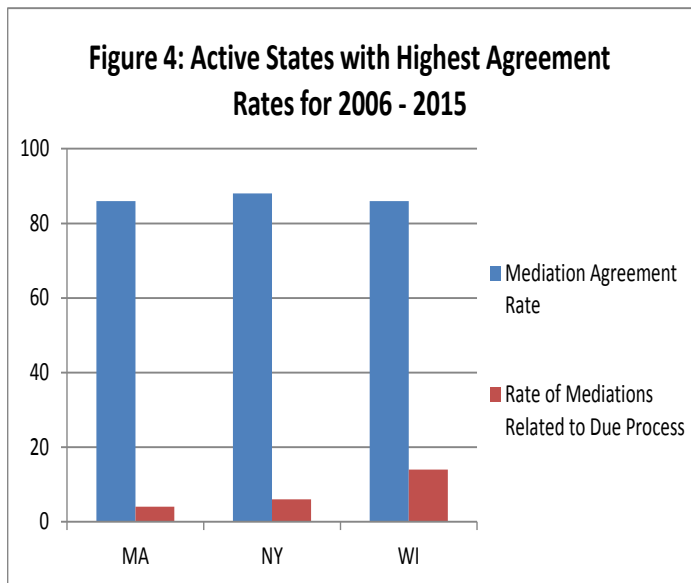
from 61% to 67% over the last five years. By contrast, the agreement rate for mediations that are not related to due process complaints has ranged from 75% to 77%, during the same period.

**Among states with the most mediation activity, those with the highest agreement rates also reported fewer due process related mediations.**

Based on data from 2006-07 to 2014-15, three mediation-active<sup>8</sup> states with the highest reported agreement rates also reported the lowest rate of due process related mediations. Mediation agreement rates for these three states ranged from 86% to 89%, representing rates that were 17 to 20 percentage points higher than the national average of 69%. As illustrated in Figure 4, these same three states also reported that 15% or fewer of the mediations held were related to a due process complaint. Consistent with national data, each of these states reported lower agreement rates for mediations related to due process.

**Approximately one out of every four requests for mediation was withdrawn.**

Between 2009-10 and 2014-15, 27% of all requests for mediation were reported as “withdrawn or not held,” meaning that the request did not result in mediation.<sup>9</sup> Over the last two years, the number of mediation sessions not held has increased to 29%.



**DATA SOURCES**

Data for this brief is drawn from CADRE’s National Longitudinal Database which is comprised of data from the following sources: dispute resolution activity reported in states’ Annual Performance Reports (APR), first as attachment 1 and later as Table 7; Section 618 data; data published in OSEP’s Annual Report to Congress; and data adjustments collected from states by CADRE after OSEP data were locked.

<sup>8</sup> Mediation-active states are defined here as averaging 50 or more mediations per year. Sixteen states fit this definition. MA, NY, and WI were selected based on having the highest agreement rates for all mediations within this category between 2009-10 and 2014-15.

<sup>9</sup> Prior to 2009-10, states reported mediations that were withdrawn and pending as one combined figure. Beginning in 2009-10, states were required to separately report the number of mediations that were withdrawn or not held and those that were pending.

**1. How could data beyond what is required for federal reporting help states better understand and improve their dispute resolution systems?** Although the dispute resolution data analyzed in this brief is limited to what states are required to report annually to OSEP, most states have access to additional dispute resolution data that may be of significant value. For example, available data indicates that approximately one out of four requests for mediation is “withdrawn or not held.” By definition, this data element would include mediation requests that were withdrawn, requests that were dismissed, requests where one party refused to mediate, and requests that were settled by some agreement other than a mediation agreement between the parties. Yet, the data reported to OSEP does not reveal why a request did not result in mediation.

Most states have a system for tracking dispute resolution activity that is more detailed than the federal reporting requirements and could more thoroughly describe why a request for mediation did not result in a session held. Finer and more specific data may help a state better understand what is working, as well as identify systemic features that may be contributing to the relative use of dispute resolution options. For example, a state may discover that the majority of requests for mediation are refused either by parents or by educators, indicating a potential need for further public awareness and outreach activities to address questions or concerns about the process. In addition, data related to the evaluation of individual mediations and systemic performance may be fruitful. More specific data may also help identify sources and themes of family-educator conflict that could be used to further inform conflict prevention activities.

CADRE has developed a Data Tool that states can use to take a closer look at important information underlying their dispute resolution data.

**2. Considering the higher agreement rate for mediation unrelated to due process, could states improve performance on Indicator 16, the written agreement rate, by encouraging the early use of mediation?** As illustrated on CADRE’s [Continuum of Dispute Resolution Processes and Practices](#), mediation may be informal (local mediation through the LEA) or formal (mediation under IDEA) and offered at various stages of conflict. National data on formal mediation under IDEA indicates that when mediation occurs without a due process complaint having also been filed, it is more likely to result in a written agreement, suggesting the potential benefit of mediation in the early stages of a dispute. One possible explanation is that by the time a due process complaint is filed, parents and educators have often been engaged in conflict for months and sometimes years. Because prolonged conflict may seriously impair communication and collaborative problem solving, mediation that occurs earlier in a dispute, and before a due process complaint is filed, may be more likely to result in a mutually agreeable resolution.

As discussed in Finding 1, state policy and procedure may have a significant impact on mediation activity. Consequently, states may want to consider evaluating who is accessing mediation, and when, to encourage the use of mediation prior to filing a due process complaint without impeding access to IDEA’s dispute resolution options. Additional data may help inform continuous improvement activities, program access and delivery, and public awareness and outreach activities for mediation.

## QUESTIONS FOR CONSIDERATION CONTINUED

CADRE has identified key function areas (systemwide oversight, program access, practitioner standards, public awareness, and evaluation) to explore when working to improve an individual process, such as mediation, or an entire dispute resolution system. In addition, CADRE's National and State dispute resolution data summaries include per capita descriptions of mediation activity that can be used for comparative analysis.

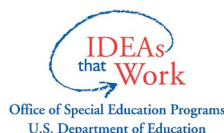
**3. How is the dispute resolution landscape evolving to offer a continuum of options beyond those required by IDEA?** Today, most states are making investments in early dispute resolution options, such as stakeholder communication skill-building workshops, parent liaisons, ombuds programs, and facilitation of Individualized Education Program (IEP) meetings. Examples of early dispute resolution options are available on CADRE's [Continuum](#). Currently, there are 44 states that offer at least one early dispute resolution option in addition to the federal requirements. Approaches that emphasize collaborative problem-solving, such as mediation and IEP facilitation, keep educational decision making in the hands of those who know the student best. Collaborative approaches are also more likely to build and strengthen the relationship between families and educators. Consistent awareness and availability of more collaborative approaches may provide an opportunity to resolve disputes before they become intractable, reducing stress on individuals and systems and leading to improved outcomes for children with disabilities.

## SUMMARY

Mediation is a valuable process for supporting collaborative decision making and resolving disagreements. In general, the number of mediation requests and sessions held has increased over the last eleven years. Although the agreement rate for mediation has been relatively stable at 69%, agreement rates for mediation unrelated to a due process complaint were 15 percentage points higher than agreement rates for mediation related to a due process complaint.

Additional [National](#) and [State](#) dispute resolution data summaries, including the most recent [SPP/](#)

[APR Indicator Summaries](#), are available on CADRE's website, [cadreworks.org](http://cadreworks.org). Although this data brief on mediation highlights key findings based on data reported to OSEP, states have access to additional dispute resolution data that may be useful for understanding and improving a dispute resolution system. CADRE can assist states in examining their existing dispute resolution system, as well as offer technical assistance to states interested in building a broader [continuum](#) of dispute resolution options beyond IDEA requirements.



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