

SPP Summary – Indicator B-16  
***Timeliness in the Completion of Complaint Investigations***  
CADRE, Richard Zeller and Aimee Taylor

This document summarizes indicator B-16 for Part B SPPs. The indicator is one of four dispute resolution indicators for Part B. Indicator B-16 is:

“Percent of signed written complaints with reports issued that were resolved within 60-day timeline or a timeline extended for exceptional circumstances with respect to a particular complaint.”

Data necessary to calculate this indicator were included in Attachment 1 of the SPP for school year 2004-05 and have been included in the two previous Annual Performance Reports (2002-03 and 2003-04 school years). Measurement of this indicator is defined, with the label and cell designations from Attachment 1, as:

$$\text{Percent} = [(1.1(b) + 1.1(c)) \text{ divided by } (1.1)] \text{ times } 100$$

where,

$$\begin{aligned} (1.1)(b) &= \text{“Reports within timelines”} \\ (1.1)(c) &= \text{“Reports within extended timelines”} \\ (1.1) &= \text{“Complaints with reports issued”} \end{aligned}$$

## **METHODOLOGY:**

CADRE compiled and examined the Indicator 16 sections from the SPPs of all 50 states, DC, BIA, five outlying areas (AS, CNMI, GU, PR, VI), and the three Freely Associated States (FSM, ROP, RMI). For purposes of this report, these 60 entities are referred to in aggregate as “states.” Each state report was summarized to capture the following information:

- Baseline reported for Indicator B-16
- Number of years of data for Indicator B-16 reported in the SPP text
- Improvement/maintenance practices described (in many cases it is not possible to distinguish improvement from maintenance)
- Assertions states made about the effectiveness of their complaints system
- Description of the “measurable and rigorous target” for Indicator B-16

Two or more reviewers read and compiled data for each of the above elements for each state. Reviewers entered the resulting summaries into an Excel data base, with a focus on capturing in brief the language each state used. The authors of this document then

coded these summaries in order to categorize improvement or maintenance strategies, assertions of effectiveness, and measurable and rigorous target descriptions.

## **SUMMARY AND ANALYSIS:**

### **2004-05 School Year Baseline Reported for Indicator B-16**

Fifty-six (56) states reported having one or more complaints during 2004-05. The total number of complaints reported by these states was 8,337; of these, 7,478 were completed “on time” (within 60 days or with an extended timeline), for a national rate of 89.7%. However, ten states report 80% of all complaints nationally; one state accounted for 58% of the national total. More than half of the 56 states reporting baseline values on this indicator indicated that they completed all complaints within 60 days or within an appropriately extended timeline. The following table displays the range of state rates of completion:

<u>Indicator B-16 Value Reported</u>	<u>Number of States Reporting</u>
<50%	3
50% - 75%	6
75% - 90%	6
>90% - <100%	10
100%	31

Few states documented in the text of the SPP whether or not extensions were used to complete complaint investigations on time. Not all the data from Attachment 1 has not been completely verified as of the preparation of this summary. However, based on those states whose Attachment 1 data has been verified, it appears that nationally less than 15% of “on time” complaints involve the use of an extension. About one-third of states used extensions more than 20% of the time to achieve timely completion, but most states do not seem to make frequent use of extensions.

### **Number of Years of Data Reported in the SPP Text**

The data necessary to calculate this performance indicator have been a part of the Annual Performance Report and now the SPP for three years. Dispute resolution activity varies considerably among Part B programs. The vast majority of states, however, did not report baseline data beyond the single year covered by this SPP (2004-05).

Eleven (11) states reported two or more years of data for this indicator; seven of these states reported three or more years. The trend information provided by these states varied, with some states showing improved on-time performance and others showing slippage. It was not the case that states with multiple years of data only displayed positive improvements. Some states have clearly used the trend data to help focus their efforts to improve future timeliness.

## Improvement/Maintenance Practices Described

States varied widely in the level of practice descriptions they provided in the SPP. What states reported in the SPP is summarized here, although CADRE is aware of innovative and effective state practices that were not included in the SPPs. This summary is also limited by:

- States differing in their willingness to report non-required activities in the SPP;
- Difficulty in distinguishing improvement from maintenance activities;
- Difficulty in finding the connection between apparent improved performance and what the states see as their effective practices;
- Differing terminology (e.g., states use “train, develop personnel, provide TA/ support, conduct annual conference” to describe similar activities);
- Sketchiness and variability of report detail (e.g., “annual training” v. “30 hours of mediation training & 24 hours IDEA update training”);
- States using a standard format for improvement activities; for 19 states, improvement activities were the same for all indicators and differed, if at all, only in terminology (e.g., “hearing officer training” v. “mediator training”).

Because Improvement strategies for many states followed a common format across dispute resolution indicators, the summary below lists types of improvement strategies and the number of states that included them in their SPPs under *All Indicators* and under *Indicator B16*:

Improvement “Strategies”	All Indicators	Indicator B-16
• Training and Technical Assistance	53	32
• Data collection and tracking systems	46	32
• Review data & plan system changes	29	20
• Guidance/public awareness materials	26	11
• Satisfaction surveys and user feedback systems	23	2
• PTI, stakeholders, and advisory Involvement	18	7
• Assign or adjust FTE of staff as needed	11	4
• Promote ADR options	26	13
• Forms and templates to expedite processes	21	10

Most of the above activities would seem to be basic components of a state system. The absence of reporting, however, does not necessarily indicate an absence of activity. For states with integrated dispute resolution systems, redundancy across indicator reports might be inevitable, because the state sees different dispute resolution processes as closely related.

States use the terms training, technical assistance, personnel development, annual conference, etc., to designate activities with the same function. Many states list “training” without any further specification. Some states emphasized training in rights and procedural safeguards, while others focused on specific communications skills and

dispute resolution approaches. Several states indicated they were exploring web-based skills training approaches.

Many states list data collection and tracking systems and periodic performance reviews. These clearly overlapping functions focused in different states on tracking complaints timelines (with tickler systems), monitoring complaint investigator performance, ensuring the implementation of corrective actions, or identifying issues for improvements in the operation of the complaints system. Few states, however, report using participant satisfaction or feedback as a check on the effectiveness of the corrections in addressing parent concerns.

Common early dispute resolution processes supported through complaints processes were “early complaints resolution” periods. These typically involve time at the early stages of the complaint filing (e.g., 10 days to 2 weeks) for the parties to consider a face-to-face conference or a mediation to address the concerns. If settlement is reached through this approach, the filing party typically withdraws the complaint and agreed to changes in program are then implemented.

### **Assertions of Effectiveness Regarding the State’s Complaints System**

Eight states asserted that their systems resulted in fewer complaints or that complaint investigations were completed on time because of particular improvement strategies. The connection between data on improved performance and these strategies was, at least, articulated. Common elements in these “effective strategies” include:

- Electronic data tracking systems, with “ticklers” for key points in the process
- Forms/templates/processes for complaint filing (e.g., guides to parents), and efficient communications with parties, documentation, etc.
- Prescreening processes to determine validity of complaint
- Additional and dedicated “expert” staffing (e.g., coordinator, attorney, paralegal)
- Training for investigators with an emphasis on timelines
- Strict/higher internal standards for investigation and reporting (e.g., 30 days)
- Standards for and documentation of any timeline extension
- Promotion and use of early resolution and alternative dispute resolution processes (e.g., IEP facilitation, resolution facilitator, parent “navigators”)

### **Description of the “Measurable and Rigorous Target” for Indicator B-16**

For almost all states, the target statement took this form: “100% resolved within 60-day timeline, or a timeline extended for exceptional circumstances.” A few states provided other targets. These included:

- Providing adequate staffing and work distribution so that no complaint investigator had more than three complaints at any one time
- Setting a higher standard for time to report completion (e.g., 30-35 days)
- Reduce complaint filings and investigations by 3% per year

- Increase use of early resolution and alternative dispute resolution approaches

While Indicator B-16 must have a 100% goal, the effective management of a complaints system, in the context of broader dispute resolution, should involve other goals and indicators (e.g., increased use of alternative dispute resolution approaches, durability of corrective actions required through complaints). Most states were not explicit about what these other indicators were.

## **CADRE RECOMMENDATIONS FOR COMPLAINTS SYSTEMS**

- Improve the documentation and quality of data to support assertions about effective practices;
- Establish and use performance indicators for all dispute resolution system management beyond the four required performance indicators;
- Establish integrated dispute resolution data systems for formal complaints, due process, resolution sessions, mediations, other dispute resolution approaches, and for tracking of expressed parent concerns;
- Support early and informal dispute resolution options (e.g., early complaint resolution, other early dispute resolution approaches prior to filing);
- Provide training for staff and parents focused on dispute resolution options and effective collaborative working relationships;
- Develop parent/provider surveys to measure awareness of DR options, understanding of rights, and satisfaction with special education services and dispute resolution processes.

### SPP Summary – Indicator B-17

#### ***Timeliness in the Adjudication of Due Process Hearings***

CADRE, Richard Zeller and Aimee Taylor

This document summarizes indicator B-17 for Part B SPPs. The indicator is one of four dispute resolution indicators for Part B. Indicator B-17 is:

“Percent of fully adjudicated due process hearing requests that were fully adjudicated within the 45-day timeline or a timeline that is properly extended by the hearing officer at the request of either party.”

Data necessary to calculate this indicator were included in Attachment 1 of the SPP for school year 2004-05 and have been included in the two previous Annual Performance Reports (2002-03 and 2003-04 school years). Measurement of this indicator is defined, with the label and cell designations from Attachment 1, as:

$$\text{Percent} = [(3.2(a) + 3.2(b)) \text{ divided by } (3.2)] \text{ times } 100$$

where,

- (3.2)(a) = “[Hearing] Decisions within timeline”
- (3.2)(b) = “[Hearing] Decisions within extended timeline”
- (3.2) = “Hearings (fully adjudicated)”

**METHODOLOGY:**

CADRE compiled the Indicator B-17 sections from the SPPs of all 50 states, DC, BIA, five outlying areas (AS, CNMI, GU, PR, VI), and the three Freely Associated States (FSM, ROP, RMI). For purposes of this report, these 60 entities are referred to in aggregate as “states.” Each state report was summarized to capture the following information:

- Baseline reported for Indicator B-17
- Number of years of data for Indicator B-17 reported in the SPP text
- Improvement/maintenance practices described (in many cases it is not possible to distinguish improvement from maintenance)
- Assertions of effectiveness regarding the state’s due process hearings system
- Description of the “measurable and rigorous target” for Indicator B-17

Two or more reviewers read and compiled data for each of the above elements for each state. Reviewers entered the resulting summaries into an Excel data base, with a focus on capturing in brief the language each state used. The authors of this document then coded these summaries in order to categorize improvement or maintenance strategies, assertions of effectiveness, and measurable and rigorous target descriptions.

**SUMMARY AND ANALYSIS:**

**2004-05 School Year Baseline Reported for Indicator B-17**

Fifty-two (52) states reported holding one or more “fully adjudicated” due process hearings in 2004-05 in the text of their SPP. Under this indicator, States reported 7,261 hearings held, with 6,783 of those being held with 45 days or an appropriately extended timeline, for an “on time” rate of 93%. The distribution of the values reported for this indicator for these 52 states are shown below:

<u>Indicator B-17 Value Reported</u>	<u>Number of States Reporting</u>
<50%	3
50% - >80%	8
80% - <100%	8
100%	33

Only about half a dozen states showed the full calculation for this indicator in the SPP text, but the breakdown of “on-time” performance is also reported in Attachment 1. While not all Attachment 1 data has been verified, CADRE has confirmed the accuracy of data from 44 of the 50 states (not including non-state entities). Most states appear to make extensive use of extensions in order to complete hearings on time; about three-

fourths of the states in this verified sample used extensions in more than half their “on-time” hearings. The distribution of states by the % of their on-time hearings that were under extended timelines is displayed below:

<u>% of On-Time Hearings that had Extended Timelines</u>	<u># States Reporting</u>
100%	9
80 - <100%	11
50 - <80%	13
<50%	3
0% (w/in >50%)	4
<u>No hearings held</u>	<u>4</u>
Total <i>n</i> =	44

### **Number of Years of Data Reported in the SPP Text**

The data necessary to calculate this performance indicator has been a part of the Annual Performance Report and now the SPP for three years. Dispute resolution activity varies considerably (from none to some) among Part C states, and across years. The vast majority of states, however, did not report baseline beyond the single year covered by this SPP (2004-05).

Only seven states reported two or more years of data for this indicator. These seven states account for only 40 hearings held in 2004-05 (out of 6,783 reported in the SPP texts). Of the 40, 24 were in one state. In other words, states with more active hearing systems tended to not report trend activity in their baseline on this indicator.

### **Improvement/Maintenance Practices Described**

States varied widely in the level of practice descriptions they provided in the SPP. What states reported in the SPP is summarized here, although CADRE is aware of innovative and effective state practices that were not included in the SPPs. This summary is also limited by:

- States differing in their willingness to report non-required activities in the SPP;
- Difficulty in distinguishing improvement from maintenance activities;
- Difficulty in finding the connection between apparent improved performance and what they states see as their effective practices;
- Differing terminology (e.g., states use “train, develop personnel, provide TA/ support, conduct annual conference” to describe similar activities);
- Sketchiness and variability of report detail (e.g., “annual training” v. “30 hours of mediation training & 24 hours IDEA update training”);
- States using a standard format for improvement activities; for 19 states, improvement activities were the same for all indicators and differed, if at all, only in terminology (e.g., “hearing officer training” v. “mediator training”).

Because Improvement strategies for many states followed a common format across dispute resolution indicators, the summary below lists types of improvement strategies and the number of states that included them in their SPPs under *All Indicators* and under *Indicator B16*:

<u>Improvement Strategies</u>	<u>All Indicators</u>	<u>Indicator B-17</u>
• Training and Technical Assistance	53	41
• Data collection and tracking systems	46	28
• Review data & plan system changes	29	15
• Guidance/public awareness materials	26	12
• Satisfaction surveys and user feedback systems	23	3
• PTI, stakeholders, and advisory Involvement	18	5
• Assign or adjust FTE of staff as needed	11	4
• Promote ADR options	26	6
• Forms and templates to expedite processes	21	8

Most of the above activities would seem to be basic components of a state system; the absence of reporting, then, does not necessarily indicate an absence of activity. Many states indicated “training” without further specification. The most frequently noted element of training for Hearing Officers was emphasis on timelines and proper use of extensions. In a number of states this was supported through ongoing review of timelines data, tickler systems, and sanctions for HOs who did failed to complete hearings in a timely fashion (e.g., non-renewal of contracts). Other notable strategies for some states were the use of guides (forms, templates) for filing hearings and promotion of ADR options (pre-hearing conferences, now to be called “resolution sessions”, or mediation) as an alternative to filing a hearing request.

### **Assertions of Effectiveness Regarding the State’s Due Process Hearings System**

CADRE identified assertions of effectiveness about the Due Process Hearings management systems in 10 states. In most cases, no specific data provided to support the assertion. In some states reporting trend data, change or improvement was attributed to the strategies previously adopted to address problems of timeliness. Among the approaches described as “effective” in helping to meet timelines were:

- Train hearing officers and enforce timeline requirements
- Structure process so that the HO is responsible for timelines (e.g., immediate HO assignment, with the HO contacting parties regarding calendar)
- Ensure adequate staffing, including coordination of the hearings system
- Tracking system for hearing process, with ticklers built into alert HOs
- Standards/guidance/model for use of extensions

While the connection between these strategies and data showing their effectiveness was sometimes scant, they do appear to be reasonable strategies to improve timely completion of the hearings process.



## **Description of the “Measurable and Rigorous Target” for Indicator B-17**

For most states, the target statement took this form: "100 percent of fully adjudicated due process hearing requests will be fully adjudicated within the applicable time frame." Only two states provided any other “targets” in this area beyond the required “100%” compliance with required timelines. In these two states, other indicators were noted, including decreasing the use of hearings and increasing alternate methods of dispute resolution, and collecting and using data on an ongoing basis to manage the hearings process. It seems likely that many states also share these goals, though few articulate them in the SPP.

## **CADRE RECOMMENDATIONS FOR DUE PROCESS HEARINGS SYSTEMS**

- Improve the documentation and quality of data to support assertions about effective practices;
- Provide guidance/standards/formats for documenting and justifying extensions of hearing timelines;
- Establish and use performance indicators for all dispute resolution system management beyond the four required performance indicators;
- Establish integrated dispute resolution data systems for formal complaints, due process, resolution sessions, mediations, other dispute resolution approaches, and for tracking of expressed parent concerns;
- Support early and informal dispute resolution options (e.g., guidance on how to facilitate an effective resolution session, other early resolution/pre-filing processes);
- Train hearing officers on effective hearings, timelines, IDEA legal updates;
- Develop parent/provider surveys to measure awareness of DR options, understanding of rights, and satisfaction with special education services and dispute resolution processes.

SPP Summary – Indicator B-18

### ***Effectiveness of Resolution Sessions in Reaching Settlement Agreements***

CADRE, Richard Zeller and Aimee Taylor

This document summarizes indicator B-18 for Part B SPPs. This indicator is one of four potential dispute resolution indicators for Part B. Indicator B-18 is:

“Percent of hearing requests that went to resolution sessions that were resolved through resolution session settlement agreements.”

This is a new requirement under IDEA 04, effective July 1, 2006. As a result, data necessary to calculate this indicator were not included in Attachment 1 of the SPP for school year 2004-05. The first year of data (2005-06 school year) and the establishment of baselines for this indicator will be reported in the Annual Performance Report due

February 1, 2007. Measurement of this indicator is defined, with the label and cell designations from Attachment 1, as:

$$\text{Percent} = [3.1(a) \text{ divided by } (3.1)] \text{ times } 100.$$

where,

$$\begin{aligned} (3.1)(a) &= [\text{resolution session}] \text{ "Settlement agreements"} \\ (3.1) &= \text{"Resolution sessions"} [\text{held}] \end{aligned}$$

## **METHODOLOGY:**

CADRE compiled the Indicator B-18 sections from the SPPs of all 50 states, DC, BIA, five outlying areas (AS, CNMI, GU, PR, VI), and the three Freely Associated States (FSM, ROP, RMI). For purposes of this report, these 60 entities are referred to in aggregate as "states." Each state report was summarized to capture the following information:

- Baseline reported for Indicator B-18
- Improvement/maintenance practices described (in many cases it is not possible to distinguish improvement from maintenance)
- Description of the "measurable and rigorous target" for Indicator B-18

Two or more reviewers read and compiled data for each of the above elements for each state. Reviewers entered the resulting summaries into an Excel data base, with a focus on capturing in brief the language each state used. The authors of this document then coded these summaries in order to categorize improvement or maintenance strategies, assertions of effectiveness, and measurable and rigorous target descriptions.

## **SUMMARY AND ANALYSIS:**

### **Baseline to be Reported for Indicator B-18**

No states reported baseline for this indicator, although a few states make reference to the successful use of "informal settlement conferences," or "reconciliation conferences" as processes that have been available in their states previously. In addition to creating several new data reporting elements, the formalization of the "resolution session" in IDEA 04 may add a new dimension in the options schools and parents have in dealing with conflict. In some states, it will name and formalize some existing practices. Except for a few states that did not include anything on this indicator, almost all states said that they would begin data collection as of July 1, 2005.

### **Improvement/Maintenance Practices Described**

This indicator is new and the requirement to collect data on resolution sessions did not take effect until July 1, 2005. As a result, "improvement strategies" listed by 26 states

that included them were really “implementation strategies” for the new requirement. Below are the types of improvement strategies and the number of states that included them in their SPPs under *All Indicators* and under *Indicator B18*:

Improvement “Strategies”	All Indicators	Indicator B-18
• Training and Technical Assistance	53	11
• Data collection and tracking systems	46	22
• Review data & plan system changes	29	7
• Guidance/public awareness materials	26	4
• Satisfaction surveys and user feedback systems	23	3
• PTI, stakeholders, and advisory Involvement	18	4
• Assign or adjust FTE of staff as needed	11	0
• Promote ADR options	26	1
• Forms and templates to expedite processes	21	9

Because the resolution session must be convened by the local district, many states do not see a staffing responsibility in this area. In some cases, states noted under indicator 17 (hearing timeliness) that they were assigning responsibility for tracking and reporting on resolution sessions to the hearing officer. Clearly, most states are awaiting clarification in the final regulations, but some are proceeding to provide guidance to LEAs in how to conduct an effective resolution session. Many states indicated that they will add resolution session data to their tracking system, but only a handful specified the data to be collected and who would actually collect it. Several states indicated they will provide training to local staff in how to conduct an effective resolution session, and a handful of states indicated they will train “facilitators” to assist in conducting effective resolution sessions. The coming year will hold opportunities to make the resolution session an effective element of a states dispute resolution system.

### **Description of the “Measurable and Rigorous Target” for Indicator B-18**

Almost all states indicated that a target was not yet applicable, because they have not collected any baseline data yet. States will report baseline data in and set targets for this indicator in their first APR due February 1, 2007.

Two states reported from past experience that “conciliation conferences” or “informal settlement” conferences had been effective in resolving disputes prior to hearings. Other states might consider any informal data they have on due process requests resolved without hearing as an indicator of past experience as they set targets in the 2005-06 APR.

### **CADRE RECOMMENDATIONS FOR INDICATOR B-18**

- Improve the documentation and quality of data to support assertions about effective practices;
- Establish and use performance indicators for all dispute resolution system management beyond the four required performance indicators;

- Establish integrated dispute resolution data systems for formal complaints, due process, resolution sessions, mediations, other dispute resolution approaches, and for tracking of expressed parent concerns;
- Establish procedures to ensure that LEAs meet timelines for “convening” resolution sessions and that data on the sessions and any resulting settlement agreements are provided by the SEA;
- Support other early and informal dispute resolution options (e.g., 48 hour response to expressed parent concerns, facilitated IEPs for complex issues);
- Train staff and parents with a focus on dispute resolution options and effective collaborative working relationships, whether in resolution sessions or in other venues;
- Develop parent/provider surveys to measure awareness of DR options, understanding of rights, and satisfaction with special education services and dispute resolution processes.
- Consider establishing data collection systems that will support good management of resolution sessions systems, including:
  - Resolution session held
  - # days from filing that the session was held
  - Resolution settlement agreement finalized and issues addressed
  - # days from filing that the agreement was reached
  - Use of 3 day period to rescind agreement and by which party
  - Issues agreed to in settlement agreement
  - Whether any issues in the original due process filing proceed to hearing or are otherwise unresolved
  - Resolution process elements (use of facilitator, participants)

SPP Summary – Indicator B-19  
***Effectiveness of Mediation in Reaching Mediation Agreements***  
 CADRE, Richard Zeller and Aimee Taylor

This document summarizes indicator B-19 for Part B SPPs. The indicator is one of four dispute resolution indicators for Part B. Indicator B-19 is:

“Percent of mediations held that resulted in mediation agreements.”

Data necessary to calculate this indicator were included in Attachment 1 of the SPP for school year 2004-05 and have been included in the two previous Annual Performance Reports (2002-03 and 2003-04 school years). Measurement of this indicator is defined, with the label and cell designations from Attachment 1, as:

$$[(2.1(a)(i) + 2.1(b)(i)) \text{ divided by } (2.1)] \text{ times } 100.$$

where,

(2.1(a)(i) = “Mediations *[held]* related to due process”

(2.1(b)(i)) = "Mediations *[held]* not related to due process"  
(2.1) = "Mediations *[held]*"

## METHODOLOGY:

CADRE compiled the Indicator B-19 sections from the SPPs of all 50 states, DC, BIA, five outlying areas (AS, CNMI, GU, PR, VI), and the three Freely Associated States (FSM, ROP, RMI). For purposes of this report, these 60 entities are referred to in aggregate as "states." Each state report was summarized to capture the following information:

- Baseline reported for Indicator B-19
- Number of years of data reported in the SPP text
- Improvement/maintenance practices described (in many cases it is not possible to distinguish improvement from maintenance)
- Assertions of effectiveness regarding the state's mediation system
- Description of the "measurable and rigorous target" for Indicator B-19

Two or more reviewers read and compiled data for each of the above elements for each state. Reviewers entered the resulting summaries into an Excel data base, with a focus on capturing in brief the language each state used. The authors of this document then coded these summaries in order to categorize improvement or maintenance strategies, assertions of effectiveness, and measurable and rigorous target descriptions.

## SUMMARY AND ANALYSIS:

### 2004-05 School Year Baseline reported for Indicator B-19

Seven states report having no mediations or agreements. Of the 53 states reporting mediation agreement rates, 7 states report 100% agreement rates, but in only two of these states were there ten or more mediations. The range of mediation rates for all 60 states is shown below.

<u>Mediation Rate Reported</u>	<u>Number of States Reporting</u>
(No mediations or agreements)	7
100%	7
85% - <100%	9
75% - <85%	14
60% - <75%	16
<50%	7

In the text of the SPPs, the 53 states report a total of 7,295 mediations, resulting in 5,382 agreements (for a 74% national rate of agreement). The 12 most active states also have an average 74% agreement rate together, with a total of 82% of all the

mediation activity nationally. The distinction between mediations related to due process and those not so related will await a complete analysis of the Attachment 1 data. Most states did not comment on these two measures in the text portion of the SPP.

### **Number of Years of Data Reported in the SPP Text**

The data necessary to calculate this performance indicator has been a part of the Annual Performance Report and now the SPP for three years. Most states did not report baseline beyond the single year covered by this SPP (2004-05). It is hard to determine, from the SPPs alone, whether mediation activity has increased or decreased over time.

Fifteen (15) states reported two or more years of data for this indicator, with 14 of them reporting three or more years. Many of these states used the mutli-year data to highlight trends in mediation use and agreement rate over time. States reported multiple years of data on this indicator more often than on any of the other SPP dispute resolution indicators.

### **Improvement/Maintenance Practices Described**

States varied widely in the level of practice descriptions they provided in the SPP. What states reported in the SPP is summarized here, although CADRE is aware of innovative and effective state practices that were not included in the SPPs. This summary is also limited by:

- States differing in their willingness to report non-required activities in the SPP;
- Difficulty in distinguishing improvement from maintenance activities;
- Difficulty in finding the connection between apparent improved performance and what the states see as their effective practices;
- Differing terminology (e.g., states use “train, develop personnel, provide TA/ support, conduct annual conference” to describe similar activities);
- Sketchiness and variability of report detail (e.g., “annual training” v. “30 hours of mediation training & 24 hours IDEA update training”);
- States using a standard format for improvement activities; for 19 states, improvement activities were the same for all indicators and differed, if at all, only in terminology (e.g., “hearing officer training” v. “mediator training”).

Because Improvement strategies for many states followed a common format across dispute resolution indicators, the summary below lists types of improvement strategies and the number of states that included them in their SPPs under *All Indicators* and under *Indicator B19*:

Improvement “Strategies”	All Indicators	Indicator B-19
• Training and Technical Assistance	53	39
• Data collection and tracking systems	46	21
• Review data & plan system changes	29	6
• Guidance/public awareness materials	26	12

• Satisfaction surveys and user feedback systems	23	18
• PTI, stakeholders, and advisory Involvement	18	7
• Assign or adjust FTE of staff as needed	11	5
• Promote ADR options	26	14
• Forms and templates to expedite processes	21	2

Most of the above activities would seem to be basic components of a state system. The absence of reporting, however, does not necessarily indicate an absence of activity. For states with integrated dispute resolution systems, redundancy across indicator reports might be inevitable, because the state sees different dispute resolution processes as closely related.

States use the terms training, technical assistance, personnel development, annual conference, etc., to designate activities with the same function. Many states list “training” without any further specification. Some states emphasized training in rights and procedural safeguards, while others focused on specific communications skills and dispute resolution approaches. Several states indicated they were exploring web-based skills training approaches.

While training, technical assistance and data collection feature prominently among mediation related Improvement strategies, in this arena states are more likely than in other dispute resolution areas to stress guidance/public awareness, satisfaction surveys, stakeholder involvement, and promotion of alternate dispute resolution. In some cases, these strategies appear across dispute resolution functions perhaps because states see the dispute resolution system as a whole and want to promote more collaborative dispute resolution in general. In other states, however, there is a tendency to limit these more cooperative orientations to the “mediation system.” It is difficult to tell whether this reflects differences in state practice and management, or reflects something else (e.g., that the SPPs were written by different staff).

Common early dispute resolution processes supported include training in communications and negotiation skills, a focus on conflict prevention, informal systems for the expression and attention to parent concerns, active PTI support for training on and promotion of ADR and mediation approaches.

**Assertions of Effectiveness Regarding the State’s Mediation system**

CADRE identified assertions of effectiveness about the mediation and other dispute resolution systems in 12 states. Specific data supporting the assertion were rarely provided, but more often in this area states say that parent and district satisfaction data support the effectiveness of their efforts. Among the effective practices states identified were the following:

- Increase fast resolution of conflict: several states arrange mediation sessions or IEP facilitation on an accelerated timeline (e.g., a mediation session within 5 days of request and agreement within two weeks);
- Increase mediation use through training, promotion of the positive results of mediation to parents and districts, in some cases with PTI collaboration;
- Increase the rate of mediation agreements through specific skills training for mediators, training for parents and districts, careful tracking of agreement rates, and use of satisfaction surveys and monitoring data to inform mediation.

### **Description of the “Measurable and Rigorous Target” for Indicator B-19**

Forty-seven (47) Part B states indicated a target(s) for mediation agreement rates. In most cases, these targets represent a starting rate (frequently the same as the current year’s agreement rate) and the highest (usually final) agreement rate for 2010-2011 school year. The lowest starting rate among the states was 15% (the current agreement rate for that state) and the highest starting rate was 100% (in six states this was the target for all six years). Only two other states set the same agreement rate across years (less than 100%), although several states set slightly increasing rates (by as little as a fraction of 1% increase per year).

- 7 states set no target, indicating that no target is required for <10 mediations
- 4 states set targets as percentage increases per year
- 2 states set same ranges across the six years
- 6 states set target at 100%
- 42 states set target ranges, generally in the range from 70% to 90% agreement

The rates that seem most common (about two thirds of the states) vary from about 70% to 90%. For many states this will represent modest increases compared to current agreement rates. This range is comparable to what CADRE has found to be the normal rates of agreement in other areas of mediation. There is a concern that setting a very high rate for agreements (e.g., 100%) could introduce coercion into the process by the mediator, especially if the mediator’s job performance is judged on the basis of agreement rate achieved. This will remain an active topic of discussion among the states.

### **CADRE RECOMMENDATIONS FOR INDICATOR B-19**

- Improve the documentation and quality of data to support assertions about effective practices;
- Establish and use performance indicators for all dispute resolution system management beyond the four required performance indicators;
- Establish integrated dispute resolution data systems for formal complaints, due process, resolution sessions, mediations, other dispute resolution approaches, and for tracking of expressed parent concerns;



- Support early and informal dispute resolution options (e.g., accelerated access to mediation, response to informally expressed parent concerns, facilitated IEPs for complex issues);
- Provide training for staff and parents focused on dispute resolution options and effective collaborative working relationships;
- Provide guidance to mediators, local providers and families on how to improve the quality and durability of mediation agreements;
- Provide focused skills training for mediators: addressing the dynamics of mediation, listening and communication skills, interest-based mediation, techniques to avoid impasse, and writing clear and complete mediation agreements;
- Develop parent/provider surveys to measure awareness of DR options, understanding of rights, and satisfaction with special education services and dispute resolution processes;
- Specific training on procedural safeguards, mediation skills, dispute resolution options, and collaborative decision making seem critical if are to avoid more contentious and formal dispute resolution options.