

# **DISPUTE RESOLUTION SYSTEM FUNCTIONS AND ACTIVITIES**

## **FROM AN ANALYSIS OF SELECTED FFY 2006 Part C Annual Performance Report Indicators 10, 11, 12 and 13**

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## **INTRODUCTION**

This document is based on a summary and analysis of selected FFY 2006 State Annual Performance Reports (APRs) for the dispute resolution indicators under Part C. These include:

- Indicator 10. Percent of signed written complaints with reports issued that were resolved within a 60-day timeline or a timeline extended for exceptional circumstances with respect to a particular complaint.
- Indicator 11. Percent of fully adjudicated due process hearing requests that were fully adjudicated within the applicable timeline.
- Indicator 12. Percent of hearing requests that went to resolution sessions that were resolved through resolution session settlement agreements (applicable if Part B due process procedures are adopted by the lead agency under 34 CFR §303.420(a)).
- Indicator 13. Percent of mediations held that resulted in mediation agreements.

An integrated perspective rather than a focus on these as separate indicators is more likely to produce lasting resolutions to disputes and the capacity of families and early intervention (EI) service providers to reach effective agreements and to deal with conflict when it arises. CADRE'S approach to technical assistance and to this analysis focuses on all dispute resolution areas and emphasizes early resolution and conflict management processes.

This chapter sampled selected Part C APRs for summary and analysis. We examined the APRs and web sites of 19 states. The states selected included every state that had at least one request for a due process hearing in FFY 2006, those states that had compliance issues for Indicator 10 (Complaints), about half of the states that reported some level of complaint activity, and four states that have not reported any formal dispute resolution activity. The last group was of particular interest and was selected based on their having reported alternative and early dispute resolution activities in earlier APRs.

We focused, then, on extracting from a sample of APRs and web sites, our best understanding of what Part C programs do, formally and informally, to manage and resolve conflicts and disputes. For purposes of this chapter, by "conflict" we mean "a normal expression of disagreement in human interactions that is most often resolved by the parties without outside intervention." By "disputes" we mean "a conflict that has risen

to the level that may lead to a request by either or both parties for a process for or assistance in its resolution.” The objective of this chapter, then, is a descriptive and prescriptive analysis:

To describe, as fully as possible, the kinds of activities Part C Lead Agencies undertake in order to effectively manage and resolve conflict and disputes in their states.

The intended audiences for this document are Lead Agency Part C system managers, coordinators of dispute resolution processes (hearing, complaint or mediation systems), dispute resolution practitioners, and providers, parents and other stakeholders who are involved in advising Part C Lead Agencies on the operation of dispute resolution systems.

In this chapter we address methodology and concepts underlying the selection of states for review and the approach to the analysis. We then present findings in a detailed description of the activities that states undertake in order to operate capable dispute resolution systems. A summary of a review of Lead Agency web sites is included in the Appendix A.

**Key Concept: Part C Dispute Resolution Activity is Relatively Infrequent**

Few states report formal dispute resolution activity (written complaint filing, due process [DP] hearing request, or mediation) in their Part C APRs. Only 15 states have reported one or more dispute resolution events every year for the past four years; 12 states have reported some activity in three of those years; four states have reported activity in two of those years; nine states reported activity in only one year; and 16 states have reported no activity at all in the past four years (two of these states have not submitted reliable reports).

There is simply not enough formal Part C dispute resolution activity nationally to draw dependable conclusions about compliance and performance differences. On the two compliance indicators (C10 and C11), Table 1 summarizes FFY 2006 activity and the lack of it across states:

Table 1: Dispute Resolution Activity in Part C (FFY 2006)

	Indicator C10, Complaints	Indicator C11, DP Hearings
# states that did not report data	2	2
# states reporting ≥ one filing/request	28	7
# states reporting no filings/requests	26	47
# states with no substantial compliance	3	0

Of the seven states reporting at least one hearing request, only four actually held a hearing and all were reported completed within timelines. While larger states account for most of the formal dispute activity, nine of the 13 largest states (accounting for two

thirds of the children served in Part C) reported no hearing requests. The seven states reporting hearing activity represent a decrease from the number of states reporting hearing activity in prior years.

Three of the 13 largest states reported no written complaint filings. Written complaints appear to be the most commonly used formal dispute resolution process. Based on three years of data (FFY 2003, FFY 2004, and FFY 2005), the total number of complaints nationally was remarkably stable, averaging about 176 per year. Each year about three fourths of complaint filings resulted in investigations with written reports issued and about 20% were withdrawn or dismissed. The percentage of reports with findings dropped from 57% in FFY 2003 to about 42% in FFY 2005.

Only 16 states have adopted Part B procedures for hearings. Virtually no activity was reported in these states related to resolution meetings or written settlement agreements.

Only three states reported more than ten mediations held (the cut-off for establishing targets and improvement activities).

In the three years prior to this APR cycle (FFY 2003 thru FFY 2005), 71% of all the dispute resolution activity (written complaints filed, mediations held and due process hearing requests) occurred in five states. In short, the formal dispute resolution processes required by IDEA are used infrequently and compliance, while it represents an issue for a few states, does not reflect much about how conflict might be resolved in Part C programs in general.

Various explanations have been offered for the relatively low level of dispute resolution activity in Part C (see Footnote 1):

- Parents of infants and toddlers may be overwhelmed.
- Parents don't know the EI system or their rights.
- Fear of reprisal or... "Don't dump your one best friend."
- Part C families have less time to work up to filing: average length of time served is 1.5 years – mean age at first IFSP = 17 months (NEILS, 2001).
- Part C child count (0-2 years) is about 4.5% of the Part B count (3-21 years).
- By law, early intervention participation is voluntary (some parents opt out).
- Parents are the primary decision-makers and are free to accept or reject any recommended EI service.
- The IFSP process tends to be family-friendly, intimate, and emphasizes services in the home or in natural environments.
- Parents know their rights but choose not to use formal dispute resolution approaches; prevention and informal complaint resolution mechanisms resolve concerns.

While each of these explanations may be a possible contributing factor, they do not likely all apply in all states. Lead Agencies with little or no dispute resolution activity may consider which of these (or other explanations) are relevant to their state.

Footnote 1: The first four bullets are from a summary of 18 interviews with Part C Coordinators from: Gittler & Hurth (1998) Conflict management in early intervention: Procedural safeguards and mediation. *Inf & Yg Children*.11(1); the last five bullets are from drawn from discussions and conversations among CADRE staff and Part C program participants attending CADRE presentations.

## **METHODOLOGY**

### **Sample Selection**

CADRE initially intended to select states based on the same logic we applied in our APR review and analysis for Part B. In that case, we selected states based on performance of three types: consistent demonstrated compliance over several years, improved to demonstrate compliance, or demonstrated “no substantial compliance.” For the FFY 2006 APRs, with the exception of the two entities that did not report, all states with hearings held achieved compliance on Indicator 11 (timely hearings) and only three states that received written complaints did not demonstrate “substantial compliance” on Indicator 10 ( timely complaints). With so few compliance issues in the Part C programs, a parallel selection approach could not be meaningfully applied.

Nineteen States were selected for the review to include:

- All states that had any hearing request activity (n = 7)
- All states that had compliance issues with Indicator 10 (n = 3)
- Other states that reported activity under Indicator 10 (n = 5)
- States that had no hearing, mediation or complaint activity (n = 4)

The last group was selected based in part on CADRE knowledge of past APRs and the active promotion in those states of alternative dispute resolution activity. The reviews involved reading and categorizing of all activity by two reviewers, followed by a third reviewer who combined and reconciled the two reviews, most often by another reading of the APR. The intent was to “go deep” in describing what Part C programs do to support and manage dispute resolution processes.

### **Identifying Part C Critical Functions and Activities v. Improvement Strategies**

States are asked to describe in their APRs the “improvement strategies” they undertake to maintain or improve their performance in the dispute resolution indicator areas. Most states do not fully describe the operations of their systems in their APRs, but instead address their efforts toward improvement. As a result, most APRs provide only a limited view of how dispute resolution systems function overall. “What’s working well” for many states may go unreported, or may be only alluded to in describing completed activities or in explanations of progress. As a secondary source, CADRE examined state Lead Agency web sites to identify the level of public information available on formal and informal dispute resolution options.

In both the Part B and Part C APR analyses, CADRE adapted the “improvement strategy taxonomy” and definitions provided by OSEP and added three functions: Public Awareness/Outreach, Upstream or Early Resolution Processes, and Stakeholder Involvement. Our premise in both analyses is that a state dispute resolution system will, at some level, have activities that address each of these basic “functions”:

- A. Data collection and reporting
- B. Systems administration and monitoring
- C. Systems and infrastructures for technical assistance and support
- D. Technical assistance/training/professional development
- E. Clarification/examination/development of policies and procedures
- F. Program development
- G. Collaboration/coordination
- H. Evaluation
- I. Increases or Adjustments to FTE
- J. Public Awareness/Outreach
- K. Upstream or Early Resolution Processes
- L. Stakeholder Involvement

The focus of this Part C summary is on activities described in the APRs we reviewed. We also examined state web sites from two perspectives: (1) to assess how accessible information on dispute resolution is to parents and other interested parties; and (2) to identify the kinds of related activities that may be the reason for some states having so little dispute resolution activity (e.g., ensuring parents understand and can apply their procedural safeguard rights, informal dispute resolution activities). CADRE is convinced that well-informed families and competently managed conflict, dealt with early, can help Part C programs resolve most potential disputes with families and contribute to the positive collaborative partnerships so crucial to successful early intervention.

The Part B summary provides additional detail on the kinds of activities performed by State educational agencies (SEAs) in carrying out these functions (see “Dispute Resolution System Functions and Activities: From an Analysis of Selected FFY 2006 Annual Performance Report Indicators 16, 17, 18 and 19”). Since the required dispute resolution functions are essentially the same for both programs, the Part B summary may be of value to Part C states with significant levels of activity that want to examine management functions used in Part B to address data gathering, monitoring process timelines, practitioner standards and training, etc.

## **FINDINGS:**

The amount of detail provided in Part C APRs varies and is, overall, generally less than that provided in Part B APRs. This is hardly surprising, given the relatively low levels of dispute resolution activity in Part C. In the states selected for this review, the APRs for the dispute resolution indicators ranged from 12 pages (with some detail about system organization and explanations of progress/slippage provided) to as few as three pages.

In some APRs, there was little or no explanatory text (that is, almost all the space was taken up by the elements of the APR template, with no significant state content included).

In order to offer useful guidance about what Part C programs can do to effectively manage conflict and disputes, CADRE extracted as much detail as we could about each activity type. Clearly, not every state does the same things, but there are activities common to each of the 12 functions that seem to be fairly standard. Some activity descriptions reflect an aggregate of what two or more states said about a particular kind of activity. In other cases, we include activities that some Lead Agencies pursue that others do not and would not find appropriate to undertake.

### **Activities Necessary to the Functions of a State Dispute Resolution (DR) System – Beginning Description**

Identifying the broad categories of activity (functions of a dispute resolution system) is a meaningful step in understanding how Part B and Part C dispute resolution systems function. The following description of activities within each function is a first attempt at specifying critical activities and processes for an effective Part C Lead Agency dispute resolution system. We hope this summary can serve to stimulate discussions among system managers, practitioners and stakeholders about how these systems can be made more effective in promoting better parent/provider decision-making and, when needed, effective and durable dispute resolution.

These activity descriptions, arranged by the 12 identified “functions” of a dispute resolution system, are based on CADRE’s review of APRs and examination of the Lead Agency web sites. Each function is listed below with a brief definition in parentheses following. For each function, detailed activities are described. For some functions, sub-functions are offered and then activities. The activities may include those that, at a minimum, are necessary for compliance and/or basic system operation, as well as activities that may enhance compliance and capable system performance.

#### Function A. Data Collection and Reporting

(Definition: Ensure accurate data collection in order to monitor, manage and report on dispute resolution activities.)

The degree to which a Lead Agency invests in data collection and process tracking should be related to the level of activity being managed. In Part C programs with few or no complaints and hearing requests, a paper checklist system or simple spreadsheet may suffice. In states with more activity, more complex systems are likely justified. In Part B programs, integrated data systems that allow tracking individuals or programs across dispute resolution options used are an increasingly common practice. Part C programs do not describe integrated data systems, even among those states with more DR activity. At a minimum, Part C DR data collection requires a method for compiling

data that satisfies the Section 618 and APR data reporting requirements (Table 4). These data alone, however, will not suffice to manage timeliness of complaints and hearings and some other issues related to dispute resolution.

Part C APR descriptions primarily address written complaint tracking. The activities described below are organized by the “sub-functions” that data systems support:

*Sub-Function A1: Collect Data to Support Timelines Management*

Management of timely and effective system performance can be enhanced when states track steps in a dispute resolution process. The appropriate *level of detail* to track is that which is sufficient to allow timelines monitoring, correction of timeline slippage in individual cases and the use of summary data in systems improvement efforts. Data systems can be designed to both generate expected dates for completion of various activities based on the date the DR process was initiated, as well as serve to document the actual dates of the activity for each case.

- **Data on the Timeliness of Complaints.** No APR included a description of tracking *process* by more than the date the complaint was filed and the date the complaint was closed. While not reported, tracking expected and actual intermediate process steps can assist in monitoring timelines, such as dates for: investigator appointed, end of an early resolution period, first contact with participants, additional information collected, first draft report, and final report.
- **Data on the Timeliness of Due Process (DP) Hearings** Again, no APR included a description of detailed *process* tracking. Hearing process tracking may involve dates for: HO appointment, first contact with parties, final date for submission of evidence, hearing date, draft decision, final decision.
- **Data on Resolution Meetings/Agreements.** Resolution meeting requirements apply only to states that have adopted Part B procedures for due process complaints. Only one resolution meeting occurred in these states from FFY 2004 through FFY 2005. Data on these activities (should they occur) is required under Section 618 data reporting requirements.
- **Track corrective action/decision implementation.** Several states mention monitoring and reporting on complaint corrective actions and implementation of hearing decisions, but no data specifications were offered.

*Sub-Function A2: Collect Data to Support Management of Overall System Effectiveness*

- **Issues raised in complaints.** Some states refer to collecting and reporting summary data on issues presented in complaints. Common issue taxonomies can help align analyses with Indicator 9 activities (system of general supervision).
- **Other information.** The data may include results of complaint investigations, the provider the complaint was filed against, and satisfaction of participants. One state mentioned collecting satisfaction data after six months to assess the durability of mediation agreements. Assessment of the durability of corrections resulting from

investigations also might be accomplished through Indicator 9 (system of general supervision).

- **Informal dispute resolution.** Several states collect data and report on parental concerns and complaints that are resolved through informal means. Inasmuch as Part C programs may have greater capacities for informal resolutions of concerns, this kind of tracking seems critical to understanding issues/concerns that are not resolved through formal resolution processes.

## Function B. Systems Administration and Monitoring

(Definition: Administer and manage dispute resolution systems. Carry out dispute resolution process monitoring, including continuous improvement and focused monitoring.)

Administration involves standard setting for practice and performance (e.g., timelines, durability of resolutions), monitoring of actual practice and performance, and adjusting resources and activities to improve system performance with respect to standards (e.g., for individual cases and for longer term adjustments to improve effectiveness). Data collected on dispute resolution processes and outcomes are critical tools for managers. Administration activity in the Part C APRs reviewed range from relatively simple (smaller systems with a few staff) to more complex in states with larger programs. States with higher levels of dispute resolution activity and those that share dispute resolution systems with the state's Part B program should consider reading CADRE's Part B APR analysis.

Among the kinds of activities unique to Part C administration were:

- **Informal systems to address complaints or concerns.** Several states have established informal complaint systems that do not require a formal written complaint in order to receive systematic attention. These systems often operate at the local provider and regional level first, with unresolved issues at these levels being addressed by state staff. Fast turn-around is characteristic of these informal systems (e.g., a goal of resolution within one or two days).
- **Ensure that hearings are timely, extensions appropriate, and that decision formats and language reflect Part C requirements.** In many states, Part C hearings may be run through a State Office of Administrative Hearings or held using hearing officers shared with the Part B program. Because the timeline requirements under Part C often differ, attention to clarifying those standards with the hearing officers is critical. A Memorandum of Agreement is a typical strategy.
- **Support the conduct of hearings.** States note using shared data systems (e.g., the Lead Agency and Office of Administrative Hearings both have access to process tracking data); providing high quality equipment for recording hearing proceedings; and arranging locations for hearings that are more accessible to families/participants.
- **Monitor complaints and implementation of corrective actions.** Complaint timelines were most often tracked. Some states also track to ensure that required

corrections occur within a timely manner, and follow-up to ensure that system corrections were implemented.

- **Regular staff meetings on compliance issues and standards.** Some states share complaint or other DR results monthly with all staff to ensure that compliance issues are understood and addressed.

### Function C. Systems and Infrastructures for Technical Assistance and Support

(Definition: Develop and maintain Statewide or regional infrastructures to maximize resources.)

Part C programs appear to have a more regional structure than do Part B (education) systems. As a result, the infrastructure for training, technical assistance (TA) and support may be assumed in these regional offices. However, other than the mention of regions and some collaboration with Parent Training and Information Centers (PTI) to provide training and support to parents, little of what was reported fit readily into this function. At a minimum, TA infrastructures should ensure sufficient information and support to dispute resolution practitioners and participants so that effective dispute resolution can be realized.

Since the vast majority of conflict resolution effort seems to be “hidden” in informal dispute resolution activity, these infrastructures should support those informal processes. Part C programs could benefit from sharing with one another how they provide support these kinds of informal processes.

### Function D. Technical Assistance/Training/Professional Development

(Definition: Provide TA to State, regional and local service agencies, families and/or other stakeholders on effective practices and programs in dispute resolution.)

Training is a common activity in most of the Part C APRs we reviewed. States, however, tend to provide minimal detail about training content. Training for practitioners focuses on understanding the legal requirements of the dispute resolution (DR) process, IDEA regulations/precedents, and effective process management. Participant training often is about specific DR processes or may emphasize skill development (listening, negotiation, collaborative decision-making, IFSP development). This section addresses training/TA content, process of delivery and, where available, a sense of the length of typical training interventions. Examples of these activities include:

- **Train administrative law judges (ALJs).** Content may include: Part C timelines; procedural safeguard requirements; conduct of hearings; federal regulations; the hearing process; residential placement/tuition reimbursement cases. This applies in states with Office of Administrative Hearings (OAH) systems or where Part B and Part C share hearings officers. Typical trainings are one to two days per year.

- **TA/Support to administrative law judges.** ALJs are provided access to an online special education case law and legal database.
- **Train state and regional staff.** Provided annually on complaint resolution processes to staff responsible for informal and formal written complaint resolution.
- **Train service coordinators.** Training on both formal and informal options for dispute resolution to staff who are working directly with families.
- **Individualized training for mediators and hearing officers.** Mediators and hearing officers receive individual training prior to mediation or a due process hearing assignment (this seems particularly appropriate in states where these events are rare – one or a few per year).
- **Train and provide TA for parents.** Training on family rights, procedural safeguards, how to file/request formal and informal dispute resolution. Provided by state staff or PTIs (sometimes jointly) in a variety of ways: face to face training, conference calls, webinars, flash videos, peer-to-peer model, PTI mentors, articles published in parent newsletters. Translation during trainings is critical for non-English speakers. In some cases, trainings for Spanish-speaking families were conducted entirely in Spanish.
- **Cross-train Part C Lead Agency and office staff:** One small state reported cross-training to ensure that timely dispute resolution management is not dependent on just one assigned staff.

#### Function E. Clarification/Examination/Development of Policies and Procedures

(Definition: Clarify, examine and/or develop policies or procedures related to dispute resolution.)

Resolution meeting requirements represent the biggest change in dispute resolution processes, but they apply only in states adopting Part B due process procedures. Only one resolution meeting has been held since FFY 2004 in the 16 Part C states that use Part B procedures. Thus, policy revision related to resolution meetings, an active issue in Part B, is largely irrelevant in Part C. A few states focused effort on making alternative dispute resolution options more clearly available to staff and families. To the extent that states reference policy and guidance to parents, local providers, and service coordinators, they tend to focus on procedural safeguards and making parents more aware of dispute resolution options.

- **Develop a written complaint form.** Several states revised or created new complaint filing forms and streamlined processes (e.g., who receives, how complaints are assigned, etc.). [Model complaint forms are readily accessible on about a third of the web sites reviewed.]
- **Provide model language.** Guidance and examples for written notices, prior consent, and descriptions of family rights as a means of ensuring that consistent and accurate information related to procedural safeguards is available. [We were unable to readily locate a copy of procedural safeguards on about a third of web sites reviewed.]

- **Guidelines and documentation of extensions:** Some states developed a formal process for extending the timeline for completing the complaint investigations based on documented exceptional circumstances.
- **Parent/family handbook:** Many states report revising/updating parent handbooks, including updated procedural safeguards.
- **Dispute resolution handbook:** Several states mention developing documents about the formal and informal ways of resolving disputes for use by service providers and families.
- **Family orientation and support on a DVD:** One state is developing a DVD to provide to every parent at the initial IFSP meeting. Content would include child development activities, resources of the Part C program, parent and child rights, dispute resolution options, etc. Alternate means of providing the information would be available for families who could not access the DVD.

## F. Program Development

(Definition: Develop/fund new regional/statewide processes or initiatives.)

Some of the Part C APRs we reviewed are from states where CADRE is aware that active early resolution activities are promoted and used successfully, yet the APRs do not reflect that activity. We did not identify, in the APRs we reviewed, “program development” activities. Since dispute prevention and early resolution seem to be the arenas within which most conflict is managed, program development in these areas would seem natural where they do not already exist. For activities that could become program development efforts in states without an early resolution focus, we draw the reader’s attention to activities described under functions D (Training/TA), J (Public Awareness/Outreach), K (Upstream or Early Resolution Processes), and L (Stakeholder Involvement).

## Function G. Collaboration/Coordination

(Definition: Collaborate/coordinate with families and agencies.)

- **Interagency Coordinating Council (ICC) leverages collaboration.** ICCs and Part C Lead Agencies meet with other parents (organizations, PTIs, individuals) to discuss issues, including parent rights, and recommend actions to the Lead Agency; ICC leadership projects (including periodic parent newsletter) may be used to promote involvement in Part C, encourage early resolution of issues.
- **Collaborate with PTIs.** Provide information on dispute resolution options (multiple languages, and in alternate formats upon request); provide mentors/guides to parents new to Part C programs; conduct joint training.
- **Collaborate with the protection and advocacy agency (P&A).** Work with the P&A to provide information about mediation to parents; conduct training on advocacy topics including child/parent rights and alternative dispute resolution.

- **Collaborate with other family organizations.** Develop a handbook with information about formal and informal ways of resolving disputes, for use by service providers and targeted toward specific groups of families.
- **Collaborate/negotiate with the state Office of Administrative Hearings (OAH).** Areas of collaboration address various procedures (streamlining process, data collection, language used in settlements and decisions, legal implications of policy changes); a memorandum of agreement spelling out such details is critical where an OAH system controls hearing and/or mediation processes.

### Function H. Evaluation

(Definition: Conduct internal/external evaluation of informal and formal dispute resolution processes and outcomes.)

The APR descriptions of evaluation of dispute resolution processes, where they exist, tend to focus more on these critical questions:

- Are parents reliably provided copies of procedural safeguards?
- Do EI staff members or others (e.g., PTI staff) explain those rights to parents?
- Do parents understand how to exercise their rights and seek dispute resolution where appropriate?
- Are parent concerns or disputes effectively addressed through formal and informal dispute resolution processes?

These questions are closely related to APR Indicator 4 (from the OSEP Measurement Table):

“Percent of families participating in Part C who report that early intervention services have helped the family:

- A. Know their rights;
- B. Effectively communicate their children's needs; and
- C. Help their children develop and learn.”

Some APRs allude to but do not make specific reference to the Indicator 4 surveys, but this seems like an opportunity to think across indicators in assessing parental awareness of rights and dispute resolution options. A commonly used survey item to assess parent awareness of rights is: “My family was given information about the rights of parents regarding Early Intervention services.” The NCSEAM Parent Survey Item Bank includes items that address other dispute resolution issues, however, including: how to advocate for my child and family; who to call if not satisfied with EI services; what options I have if I disagree with a decision about my child’s services; etc. (see [http://www.monitoringcenter.lsuhs.edu/parent\\_Family\\_Involvement.htm](http://www.monitoringcenter.lsuhs.edu/parent_Family_Involvement.htm)). Some of these items would be helpful to states in evaluating their dispute resolution systems.

Almost without exception, Part C evaluation is directed toward system or process performance; almost nothing is directed toward evaluation of dispute resolution

practitioner performance. In states that share DR practitioners with Part B, their evaluation may be satisfied by Part B performance reviews. Practitioner evaluation may be of little interest, because so few Part C programs actually have any significant formal activity. In contrast, evaluation of those who conduct hearings, investigate complaints, and who mediate is a fairly active topic in Part B programs. In Part C states where more activity is present, Lead Agencies may benefit from examining some of the activities suggested in the Part B analysis. Examples of Part C program and practitioner evaluation activities reported include:

#### *Sub-Function H1. State Program Evaluation*

- **Evaluate formal dispute resolution process and outcomes.** An ICC subcommittee reviews final hearing orders and dispute resolution data, including results of dispute participant surveys; a “procedural safeguards officer” analyzes hearing decisions, complaint investigations, and mediation procedures and conducts a formal evaluation of consumers’ experience and satisfaction with dispute resolution procedures and reports annually to the ICC.
- **Evaluate informal dispute resolution effectiveness in resolving “parent concerns.”** Some states examine the resolution of parent concerns at local levels through: monitoring activities (e.g., a parent survey); review of reports and discussions with Area Agency staff about issues raised by families and their resolution.
- **Evaluate parent notification and understanding of procedural safeguards.** States report using various means to ensure that parents receive and understand procedural safeguards information and their dispute resolution options. Approaches reported include: client record reviews for documentation; parent survey responses; parent interviews; assessments of whether EI personnel have the materials and training needed to discuss dispute resolution with families.
- **Use evaluation results to plan state training and technical assistance.** Trend data from monitoring visits, complaints, and due process are considered when developing the contents of the state’s training Institutes and technical assistance efforts.
- **Publish the results of dispute resolution activity and evaluations.** One lead agency reports posting program profiles on its web site; dispute resolution activity and summaries of outcomes may be reported regionally or statewide to ensure confidentiality.
- **Use public forums to present APR and dispute resolution information.** Lead Agency engages parents in providing input regarding services, activities, timelines and resources.

#### *Sub-Function H2. Practitioner and Individual Participant Evaluation*

- **Participant satisfaction surveys.** Participants are surveyed immediately following mediation and six months later about the satisfaction with mediation; results are reviewed by a stakeholder group that advises the Lead Agency on improvements

to the dispute resolution system, including mediation. [This is as close to practitioner evaluation as we found in the states reviewed.]

#### Function I. Increases or Adjustments to FTE

(Definition: Add or reassign FTE at the State level. Assist with the recruitment and retention of local provider or regional staff members who focus on dispute resolution.)

Some states reported insufficient staffing as a reason for not completing complaint investigations on time. Approaches to adjusting/expanding FTE include:

- **Fund hearing officers in the State Office of Administrative Hearings.** In several states where hearings are managed in an office of administrative hearings, Lead Agencies may directly fund “dedicated” hearing officers.
- **Assign/contract with specialists to conduct complaint investigations.** Lead Agencies: dedicate a portion of one staff specialist FTE to ensure timely completion of complaint final orders; contract with external experts to conduct complaint investigations on demand.
- **Part B and Part C share dispute resolution resources.** Especially for conduct of hearings and mediation, some Lead Agencies contract the same personnel as Part B for formal dispute resolution. This can ensure more experienced mediators for both Part B and Part C.

#### Function J. Public Awareness/Outreach

(Definition: Specialized materials, targeted groups and methods of disseminating information on dispute resolution options.)

Public awareness activities on dispute resolution are often imbedded in other Part C outreach activities. Procedural safeguards outreach (providing notice, parent/family handbooks, training, etc.) is the primary initial way in which states try to make parents aware of their dispute resolution options. In a few cases, states emphasize “just in time” assistance in understanding these options, as when mentors or staff may be available to explain those options when a parent expresses a serious concern.

While web sites are a significant information dissemination strategy in many areas, only a few of the Part C APRs we reviewed mention using the web as a major dissemination method. A CADRE review of the web sites for the states included in our APR sample regarding dispute resolution information and its accessibility to parents was revealing. We concluded that work on web resources could make them a valuable tool in helping parents understand and act on dispute resolution options. This review is summarized in the Appendix. Reported outreach strategies include:

- **Welcome packets.** Information is made available in English, Spanish, and other languages; in alternate formats (including web and DVD); rights brochures and information on formal processes and alternative dispute resolution options.

- **Mentors provide individual family contact around specific concerns.** Parent Training and Information Center mentors assist individual parents, helping them to understand their rights and pursue effective resolution of their concerns.
- **Technical assistance teams and “point of entry” staff counsel families.** Staff have been trained on the importance of fully explaining procedural safeguards and parental rights; with families more aware of their rights, they are more vested in ensuring quality services to their child [an explanation offered for the increase in complaints].
- **Publishing information on dispute resolution results on the web.** Lead Agency provides regular reports of performance data to key stakeholders and to the general public.
- **Target information on changes in the administrative code to providers.** Information has been provided through annual regional workshops, meetings of an intermediate units “collaborative project,” and in statewide and regional meetings of the association of local provider system managers.
- **Conduct training and conference presentations.** At regional trainings, PTI events; collaborate with other organizations (e.g., P&A) to promote mediation and alternative dispute resolution options.

#### Function K. Upstream or Early Resolution Processes

(Definition: Support activities designed to reduce the frequency of disputes and to resolve conflict earlier and through less adversarial means than the formally required options.)

While conflict and disagreement are natural parts of human interaction, it may be that disputes with service providers in early development years are less likely. Parents are still adjusting to having a child with a disability, learning to stretch expectations for the future, etc. There is indication in Part C APRs suggesting that systematic, fast and informal responses to parent concerns often result in those concerns being addressed, obviating the need for more formal dispute resolution options. CADRE is aware (from work with states and from past APRs) of more of these “early and upstream” processes being used than were reported in these APRs. Examples of support for upstream dispute resolution processes noted by these states:

- **Informal complaint resolution processes.** Letters and other information to families outlining how and to whom to express issues and concerns; linkage on the web site for registering concerns or formal complaints; access to state EI specialists through a toll free number; parents are offered ways to resolve concerns more quickly, while strengthening the working relationship between the family and the provider system.
- **Incorporate a mediation process for written complaints.** One state is planning on incorporating a mediation option for written complaints as soon as the Part C regulations are finalized.
- **Systematic fast and early attention to parental concerns.** Family concerns are generally heard first by the service coordinator. Responses may involve the service

coordinator or other “provider family relations staff” and include: home visits to discuss concerns and how they have been addressed (the family-centered IFSP process is often used to address concerns). Some states ensure response to a family-expressed concern in 48 hours or less.

- **Provide levels of attention to expressed concerns and their resolution.** Several states report “levels” of response beyond the immediate Part C staff including: referrals to the provider/supervisor in the service coordinating agency; system manager; regional consultant; state EI specialists; and a state complaints officer. Any written complaint or due process request received at any level is directly forwarded to the complaints officer; every effort is made to resolve issues without a formal hearing or investigation.
- **Require EI programs to have a local dispute resolution process.** Actual processes may vary (e.g., offer a meeting with the county administrator to resolve issues first at a local level, offer mediation or other facilitated resolution assistance). Some states encourage local resolution processes within the first 10 days after receipt of a complaint, with Lead Agency staff actively involved.

#### Function L. Stakeholder Involvement

(Definition: Engage stakeholders in the review, evaluation, and implementation of dispute resolution practices; stakeholders recommend improvements to the Lead Agency, ICC or other advisory body.)

References to “stakeholders” or “advisory groups” were less frequent in Part C APRs for these indicators than in Part B APRs. This could be a consequence of less activity. However, it seems logical to engage stakeholders in exploring and testing the effectiveness of dispute resolution options, especially dispute prevention and early resolution activities.

States described several ways they engaged or planned to engage stakeholders:

- **Explore the basis for low levels of activity.** One state will seek input from stakeholders, including families, in order to better understand the reasons for the lack of formal written complaints, mediations and due process hearing requests.
- **Use public forums to present APR and dispute resolution information.** Lead Agency engages parents in providing input regarding services, activities, timelines and resources.
- **Solicit stakeholder input on proposed systemic change.** After release of final Part C regulations, one state is planning to collect stakeholder input on the development of a policy for an early resolution mediation process for written complaints.
- **Use State Advisory Council Subcommittee to review DR performance data.** The Dispute Resolution Committee (a subcommittee of the State Advisory Council for Special Education) reviewed all final orders issued and all dispute data, including the results of complaint participant surveys. Such a committee could have a broader charge (e.g., all DR options, including ADR).

## CONCLUSION

CADRE believes that the summary of activities provided in this chapter could be a first step in describing the full range of activities that Part C systems might undertake in order to implement capable dispute resolution systems. Our observations are limited by the lack of detail and the infrequent formal dispute resolution activity reported in Part C APRs. These formal requirements are complex, involving at least three required dispute resolution processes, but most states rarely have occasion to apply them. Some states also actively support but do not report on early, alternative dispute resolution (ADR) options.

As a result of this review, four areas stand out as particularly deserving of attention by Part C Lead Agencies:

- **Ensure that parents understand and can use procedural safeguards and dispute resolution options.** Lack of reported formal activity suggests the continuing value of efforts focused on informing parents and service providers about procedural safeguards, dispute resolution options, and providing support for their appropriate utilization.
- **Increase sharing about and investment in emerging alternative dispute resolution (ADR) practices.** Most Part C conflict is presently being resolved through early and informal processes at the provider level. Increased sharing of more explicit information on these ADR approaches and how they work will help states make better decisions about strategic investments in these practices.
- **Learn from Part B.** Part B systems typically have more activity and have evolved and grown to address IDEA dispute resolution management requirements. Part C systems can learn from the experiences of Part B.
- **Engage stakeholders in the design, implementation and evaluation of dispute resolution processes.** Stakeholder involvement (e.g., through a subcommittee of the ICC or other group) can help Lead Agencies design and operate their programs so that parents and providers understand and can effectively access conflict management and dispute resolution options.

## APPENDIX

### Part C Web Site Reviews

CADRE conducted a review of the web sites from each of the APR states we included in our analysis. Web sites are frequently used for public awareness and should contain information on formal and alternative dispute resolution practices in each state. Beginning from the Early Intervention home page for each state, we asked these questions [and noted these results]:

- Is there an obvious link to dispute resolution information from EI program home page? [No state had an obvious link to dispute resolution; only two states had a direct link to “procedural safeguards” or “parent rights.”]
- Is there a “parent overview” of DR options? [11 states had a procedural safeguards notice available in some form; six of these had some description of dispute resolution options – in two cases, only mediation was mentioned.]
- Is there a form (online or downloadable) for filing written complaint? [A form was available on two states; two states offered example complaint letters.]
- Is there a form (online or downloadable) for filing a hearing request? [A form was available in three states; again, two states offered examples of letters requesting due process hearings.]
- Is there any parent oriented resolution process/meeting/agreement guidance (applies to states that have adopted Part B hearing procedures)? [Three states offer information about resolution sessions, two of them were Education Lead Agency states.]
- Is there a form (online or downloadable) for requesting mediation? [Four states offered a form; two had information on how to request mediation.]
- Are other upstream activities suggested or resources offered? [Although several states mention informal processes in their APRs, none have obvious information on such options available on their web sites.]
- What do searches of the web site return for due process hearings, complaints, mediation? [For some states, searches were the only way to find information on dispute resolution; for eight states there was nothing found by searching.]
- Using the web site, could a parent ask for mediation, request a DP hearing, or file a state written complaint without much assistance? [Web sites divided evenly here, with about a third of the states each with sufficient information, or maybe sufficient information, or lacking sufficient information for a parent to act.]

We suspect that, like many state agencies, Part C Lead Agencies often do not have much control over the form or content of their web pages because of larger state policy issues. Of the 19 web sites reviewed for this analysis, however, few could be said to offer dispute resolution related information in a parent-friendly form. In almost all states, a parent who did not already know about dispute resolution would likely be unable to locate information about available options.

CADRE suggests that a web site should have these characteristics with respect to dispute resolution:

- Dispute resolution information readily available for parents/stakeholders:
  - An obvious link to dispute resolution information from the Early Intervention program home page
  - “Parent-friendly overview” of DR options, including explanation of processes and timelines, near the top of a dispute resolution page
  - Online or downloadable forms for filing a written complaint, a due process hearing request, or for requesting mediation
  - Upstream/ADR processes and resources clearly described and their use encouraged
  - Support contacts (PTI, Lead Agency procedural safeguards/dispute resolution consultant, other) clearly listed
- Results of hearing decisions redacted, summarized, and published on the web. Public availability of this information is a requirement under IDEA, although inclusion of summaries and analyses across cases is not required.
- Results of complaints redacted, summarized, and published on the web. There is no requirement to publish complaint summaries, although at least one Part C state compiled information on complaints and parent concerns, shared it with their ICC and published these results.
- Information on mediation and ADR strategies. Collaborative attention to parent concerns and problem solving are a natural fit with the character of Part C programs. Creating and supporting mediation and other informal processes for expressing concerns, (e.g., informal complaints) are present in some states, although not reflected on Part C web sites.