

*From Regulation to Resolution:
Emerging Practices In Special
Education Dispute Resolution*

OSEP Regional Implementation Meetings

Washington, D.C.

Los Angeles

Kansas City

Presented by

CADRE

Marshall Peter

Dick Zeller

Philip Moses

Quick Agenda Review

- Snapshot of national hearing and mediation data
- Rough sample of data available on resolution meetings
- Resolution Process:
 - The use of facilitators in resolution meetings
 - Hot topics
 - Recipes for successful resolution meetings
 - Building durable mediation and settlement agreements
 - Options for resolution ~ “resolved without a hearing”
- The CADRE continuum
- Systems of dispute resolution: state examples
- Dispute resolution improvement strategies
- Discussion, Q & A

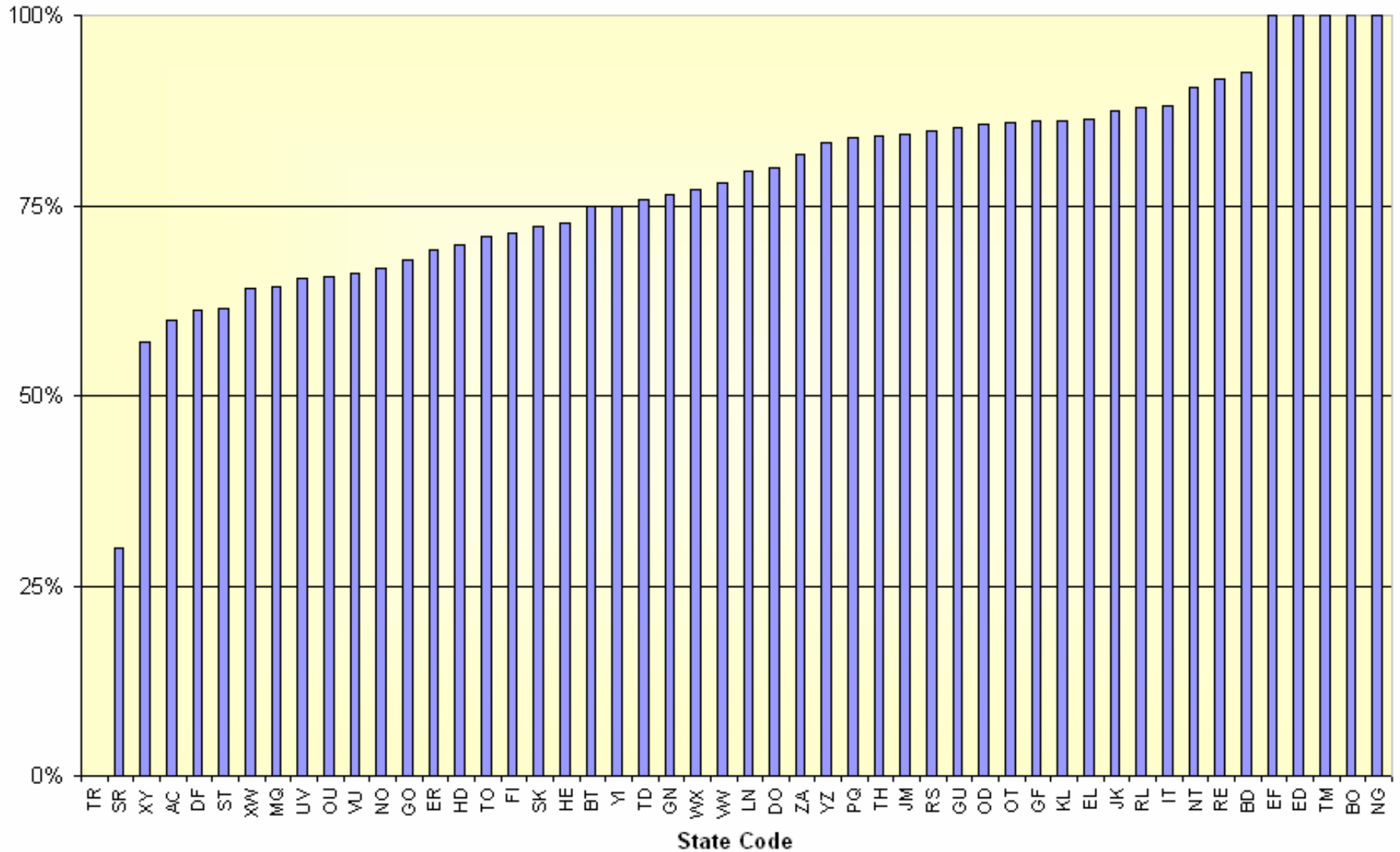
Data: A National Snapshot

(50 states, SPP attachment 1, 2004-05)

	# Reported	Percent
DP Hearing Requests	15,463	
Hearings Held	2,201	14%
Hearing Requests Pending	2,356	15%
Resolved without a Hearing	10,906	71%
<hr/>		
All Mediations Held	6,577	
All Mediation Agreements	4,997	76%

50 state summary does not include the outlying areas or DCPS.

Indicator 19 - Percent of Mediations Resulting in Agreement (50 States, SPP 04-05)
 [Sorted lowest to highest "mediation agreement" percentage.]

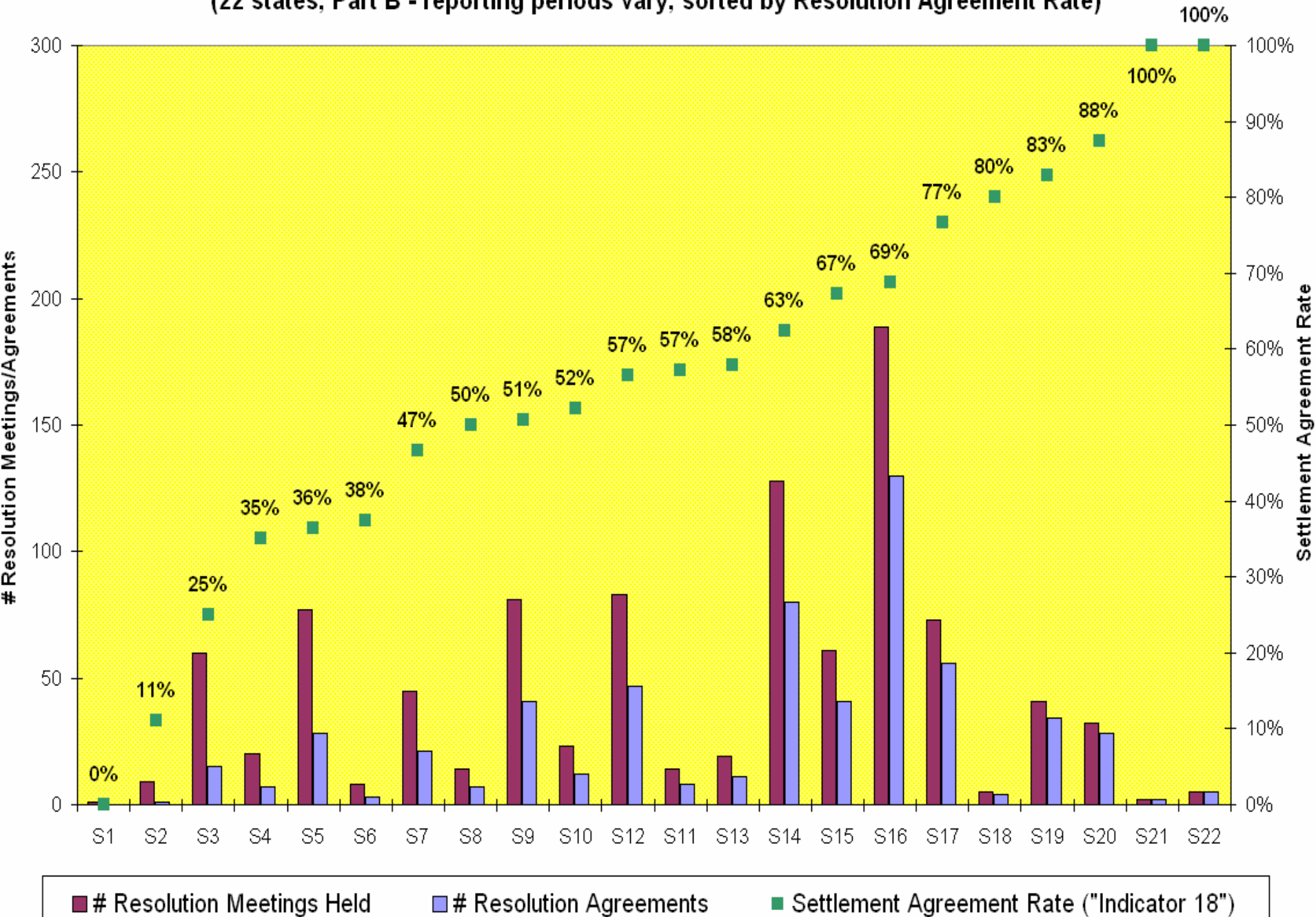


Resolution Meetings & Settlements

(“Rough Sample” of states, part B)

# States Reporting	22
Resolution Meetings Held	990
Resolution Settlement Agreements	581
Resolution Settlement Agreement Rate (Indicator 18)	59%

**"Rough Sample" of Resolution Meetings Held, Agreements Reached, and Agreement Rate
(22 states, Part B - reporting periods vary, sorted by Resolution Agreement Rate)**



Resolution Process Using External Facilitators in Resolution Meetings

Potential functions and benefits

- Improves relationships
- Supports participation & balances power
- Models effective, respectful communication
- Keeps the discussion student-focused
- Clarifies points of agreement & disagreement
- Encourages new options/solutions
- Costs less than more formal procedures
- Reduces stress on participants
- Effectively addresses implementation issues
- Helps normalize and depersonalize conflict

Resolution Process Using External Facilitators in Resolution Meetings

Potential Limitations and Concerns

- System and practitioner costs
- Organization and management
- Scheduling complexity
- Agreement to engage in facilitated process
- Facilitator selection
- Variability in facilitator skills and results
- Confidentiality protection for facilitator
- Blurring of the line between resolution meetings and mediations
- Facilitator liability insurance issues

Resolution Process: Hot Topics

- Who can participate? Who decides?
- Role of advocates/advisors (non-attorneys) in resolution meetings?
- Confidentiality agreement?
- When might a family and a school waive a resolution meeting?
- When might a family or school void an agreement?
- How might culture impact the nature of the dispute?
- How can the relationship between an LEA's settlement offer and attorney's fees be made clear?
- What are standards for "legally enforceable" mediation and resolution agreements in the state?

Resolution Process: Hot Topics (continued)

- What are the features of durable agreements?
- What roles might students play?
- What ethical issues might arise in resolution processes?
- What are appropriate “agreement rates” (indicators 18 and 19)?
- How can processes be evaluated and improved (e.g., data collection, summary and analysis)?
- What is the state’s general supervision responsibility for the resolution process?
- How might SEAs be involved in agreement implementation?

Resolution Meeting Process Considerations

Preparation

- Flexible scheduling, location, seating, refreshments
- Clarifying participation, purpose, setting a collaborative tone
- Reviewing student records

Convening

- Agree on agenda, clarity in purpose, confidentiality, ground rules, breaks
- Remove distractions, communicate effectively, manage time
- Fully examine issues, ensuring equity in participation
- If dynamics are at issue do something different (e.g. change representation, rethink offer/demand, etc.)
- Clarify the LEA's offer to resolve (in writing)

Implementation

- Clear agreement components (e.g., SMART – specific, measurable, attainable, realistic, time-accountable; and legally enforceable in court)
- Legal review, withdrawal of DP complaint, follow-up

Resolution Meeting & Mediation: Components of Durable Agreements

- Clarify the issues and available options to resolve them
- Identify what participants will do and when, not what they won't do .
- Be specific: names, places, dates, times, amounts, actions.
- Use impartial, non-judgmental language that is future oriented. Avoid reference to past problems or blame.
- Avoid contingencies (e.g., "The school will do *xyz* if the parents do *abc*"). Each discrete activity should stand on its own.
- Create conditions to monitor implementation of the agreement and modify together if needed.
- Review for legal enforceability in the state.

“Resolved without a Hearing”

Other Resolution Options

- Reconvened/facilitated IEP meeting
- Attorney negotiations & settlement
- Mediation agreement
- Parent/family withdrawal of complaint
- Written agreement after the 30 day resolution period
- Others?

CADRE Continuum of Special Education Conflict Resolution Options

Stages of Conflict	Stage I			Stage II			Stage III			Stage IV				Stage V				
Levels of Intervention	Prevention			Disagreement			Conflict			Procedural Safeguards				Legal Review				
Assistance/ Intervention Options	Participant & Stakeholder Training	Stakeholder Council	Collaborative Rule Making	Parent-to-Parent Assistance	Case Manager	Telephone Intermediary	Facilitation	Mediation Hybrid Models	Ombudsperson	Third-Party Opinion/Consultation	Resolution Meeting	Mediation Under IDEA	Complaints	Due Process Hearing	Hearing Review (Tier II)	Litigation	Legislation	
Dimensions that help clarify placement of the options along the Continuum	Third-Party Assistance									Third-Party Intervention								
	Decision Making by Parties									Decision Making by Third Party								
	Interest-Based									Rights-Based								
	Informal & Flexible									Formal & Fixed								



Developed by CADRE
www.directionservice.org/cadre/continuum



Support of Local Capacity: State A

ADR mini grants to intermediate units to support:

- Solutions Panels
- Resource Parents
- IEP Coach
- Expert Team
- Local Mediation
- Facilitated IEPs
- First Aid/Early Case Review
- Independent Child Advocate
- Placement Specialist

Intermediate units with mini grants have lower rates of SEA level formal procedures

Support of Local Capacity: State B

State support of DR practitioners/neutrals in all intermediate units;

- Educators, parent coordinators, and others trained to resolve conflicts
- Initial 4 day training; 2 day advanced training
- Intermediate unit exchange program addresses impartiality concerns
- Agreements not legally binding

State DR project provides training

- For all stakeholders
- Focus on strengths, communication, trust-building, etc.
- 4 day training interspersed with practice
- Trainees think/act like facilitators/coaches although not formal role

State C Continuum:

Stage I			Stage II			Stage III				Stage IV				Stage V			Stages of conflict
<i>Prevention</i>			<i>Disagreement</i>			<i>Conflict</i>				<i>Procedural Safeguards</i>				<i>Legal Review</i>			Levels of Intervention
Participant & Stakeholder Training	Stakeholder Council	Collaborative Rule Making	Parent-to-Parent Assistance	Case Manager	Telephone Intermediary	Facilitation	Mediation Models	Ombudsperson	Third-Party Opinion/Consultation	Resolution Meeting	Mediation Under IDEA	Complaints	Due Process Hearing	Hearing Process (Tier II)	Litigation	Legislation	Assistance/ Intervention Options

Consensus-Building
Group of the
Continuous
Improvement
Focused Monitoring
Committee

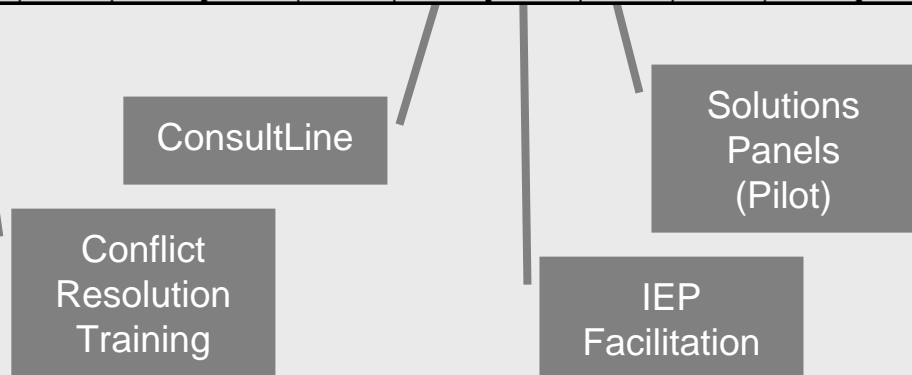
Parent
Liaison
Services

IEP
Facilitation

Resolution
Facilitation

State D Continuum:

Stage I			Stage II		Stage III			Stage IV			Stage V		Stages of conflict				
<i>Prevention</i>			<i>Disagreement</i>		<i>Conflict</i>			<i>Procedural Safeguards</i>			<i>Legal Review</i>		Levels of Intervention				
Participant & Stakeholder Training	Stakeholder Council	Collaborative Rule Making	Parent-to-Parent Assistance	Case Manager	Telephone Intermediary	Facilitation	Mediation Models	Ombudsperson	Third-Party Opinion/Consultation	Resolution Meeting	Mediation Under IDEA	Complaints	Due Process Hearing	Hearing Process (Tier II)	Litigation	Legislation	Assistance/ Intervention Options



State E Continuum:

Stage I			Stage II			Stage III			Stage IV			Stage V			Stages of conflict							
<i>Prevention</i>			<i>Disagreement</i>			<i>Conflict</i>			<i>Procedural Safeguards</i>			<i>Legal Review</i>			Levels of Intervention							
Participant & Stakeholder Training	Stakeholder Council	Collaborative Rule Making	Parent-to-Parent Assistance	Case Manager	Telephone Intermediary	Facilitation	Mediation Models	Ombudsperson	Third-Party Opinion/Consultation	Resolution Meeting	Mediation Under IDEA	Complaints	Due Process Hearing	Hearing Process (Tier II)	Litigation	Legislation	Assistance/ Intervention Options					

Skill Building Training

Parent-to-Parent Support Programs

IEP Facilitation

Special Education Ombudsman

Dispute Resolution Improvement Strategies from SPP Analysis

- Integrate system management for all dispute resolution options
- Support early and informal options (e.g., rapid access to mediation, response to informally expressed parent concerns, facilitated IEPs)
- Advanced skills training for mediators and facilitators (e.g., culturally relevant practices, impasse management, writing durable agreements)
- Train staff and parents on DR options and effective collaboration
- Measure parent/school awareness of options, understanding of rights, and satisfaction with and effectiveness of processes
- Pre-service curriculum emphasizing collaborative problem solving

Dispute Resolution Improvement Strategies from SPP Analysis

- Design and implement general supervision processes for LEA involvement in all DR, including resolution meetings
- Establish performance indicators beyond the four required SPP/APR indicators (e.g., cost, durability, satisfaction)
- Establish data collection and evaluation processes to help guide resolution or mediation process improvements:
 - Resolution meeting held, waived, opted for mediation
 - # days from filing that the resolution meeting was held
 - # days from filing that the agreement was reached
 - Use of 3 day period to rescind agreement and by which party
 - Issues addressed in agreements
 - Issues that remain unresolved or may proceed to hearing
 - Resolution process elements (use of facilitator, participants)

Discussion, Questions and Maybe Some Answers

For more information

www.directionservice.org/cadre

