

SPP Summary – Indicator B-17
Timeliness in the Adjudication of Due Process Hearings
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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,

$$\begin{aligned} (3.2)(a) &= \text{“[Hearing] Decisions within timeline”} \\ (3.2)(b) &= \text{“[Hearing] Decisions within extended timeline”} \\ (3.2) &= \text{“Hearings (fully adjudicated)”} \end{aligned}$$

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
No hearings held	4
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.