

SPP Summary – Indicator B-19
Effectiveness of Mediation in Reaching Mediation Agreements
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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,

$$\begin{aligned} (2.1(a)(i)) &= \text{“Mediations [held] related to due process”} \\ (2.1(b)(i)) &= \text{“Mediations [held] not related to due process”} \\ (2.1) &= \text{“Mediations [held]”} \end{aligned}$$

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 multi-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.