

# **Dispute Resolution (DR) Procedures, Data Collection, and Caseloads**

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**Study Supported by the Consortium for Appropriate Dispute Resolution in  
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## **Background**

The U.S. Department of Education, Office of Special Education Programs (OSEP), funded a 5-year Center on Dispute Resolution for the purpose of providing information and assistance regarding the planning and implementation of alternative dispute resolution procedures. The Consortium for Appropriate Dispute Resolution in Special Education (CADRE) is operated by Direction Service, Inc. (Eugene, Oregon) in coordination with its core partners including the National Association of State Directors of Special Education (NASDSE), the National Information Center for Children and Youth with Disabilities (NICHCY), the Mediation Information and Resource Center (MIRC), and the Technical Assistance Alliance for Parent Centers (The Alliance). This study was conducted by NASDSE through its partnership agreement with CADRE.

## **Earlier Study Findings**

A study of state dispute resolution procedures (i.e., complaint resolution, mediation, and due process hearings) was conducted between February and April of 1999 using email and fax. All 50 state education agencies (SEAs) responded by providing information regarding their DR systems. The findings included:

- Some SEAs had developed sophisticated software systems to track and manage their due process cases. Software for complaints and mediation was much more limited. None of the systems for complaints, mediation, and due process were linked by common fields to provide integrated case management information (i.e., a child's case cannot be followed across DR procedures to determine the number of attempts at dispute resolution or all outcomes). Further investigation, however, found that Maine and Iowa have fully integrated data systems with this capability.
- Database elements used by SEAs varied widely, with little consistency across states.

- There were no consistent, agreed-upon methods or procedures across states for reporting follow-up and impact DR data. A few good satisfaction instruments were available for modification and use.
- None of the SEAs interviewed were able to follow a case through the complaints, mediations, and due process hearings systems to determine the number of cases utilizing more than one DR procedure with the same issues involved.
- None of the SEAs could eliminate duplicate counts from their DR databases.

A more in-depth study of the SEAs that appeared to have the most advanced data systems was conducted between June and August of 1999. Findings included the following:

- Software used varied considerably including tables in word processing applications, spreadsheets, databases, and call center software.
- Some applications were developed by public and private vendors, while most SEAs developed their own tracking systems and used software available to them on their servers and personal computers.
- A review of the data elements placed in the database structure (tracking systems) found a wide variety of field names with many different allowable entries within the same field. Codes were rarely used.

The above findings stimulated the development of a National Design Team to formulate suggested data elements and codes for an integrated database across complaint resolution, mediation, and due process. The Design Team was composed of DR staff persons from Illinois, Texas, Indiana, Maine, Idaho, and Washington. The Design Team was convened via telephone and email and identified the data elements used by SEAs. A paper was prepared entitled “Dispute Resolution Database Structure and Elements” describing the suggested data elements and linked data tables needed to construct a comprehensive database including all dispute resolution systems (mediation, complaints resolution, and due process). The availability of such databases enables SEAs to determine the effectiveness of their systems and plan appropriate system enhancements. This activity was completed in 2000.

Because of the finding that no SEAs other than Maine and Iowa used an integrated DR database and that an integrated database is necessary to determine unduplicated counts and the history of cases, NASDSE and CADRE began promoting the use of integrated DR databases using the Design Team’s recommendations. During Years 2 and 3 (2000 and 2001), a mock database was developed using the Design Team’s input regarding recommended data elements. The mock database and description of the use of integrated databases were provided to SEAs interested in implementing an integrated DR database or modifying the mock database for their use.

## **Current Study**

### **Procedures:**

A review of state databases showed that the ratio of DR cases per 10,000 special education students varied greatly across states. As a consequence, the current effort was undertaken to obtain data from states that could be used to calculate this ratio and select states for the National Effectiveness Study to be carried out during 2002-03. During the summer and fall of 2002, data were collected from 49 states and the District of Columbia.

SEA respondents were asked to report the number of disputes requested or filed, the number held or conducted, and the number of cases of decisions or agreements reached. SEAs also reported information regarding their procedures for handling cases, the nature of their databases, and satisfaction information gathered.

### **Quality Issues and Analysis:**

As determined in an earlier study, the data elements in state database structures have a variety of field names with a number of different allowable entries within the same field. As a result, the data obtained for this study, coming from the same databases, lack consistency. For example, some SEAs record requests for due process hearings in their databases and only record mediations if both parties agree to mediate. Other SEAs record the mediations offered in the mediation database so that the offer is documented. Consequently, data are inconsistent because of different procedures and differing degrees of duplication. A similar situation exists when a simultaneous filing of a formal complaint and a request for mediation occurs. Some SEAs only record the procedure that is used to resolve the dispute. Others record both the filed complaint and mediation request. Another difference surrounds cases involving more than one student. Some SEAs record only the main case, while others record the names of the children involved as separate cases.

The following tables provide DR data across states. The data should be used cautiously since there is no quality control or quality assurance regarding its integrity. Many different procedures were used within the SEAs to gather and record the data. Table 1 provides an overview of the number of SEAs reporting per cell and the total counts reported. The first number in the cells in columns two, three, and four is the total number of DR cases reported, and the second is the number of SEAs reporting data.

**Table 1. The number of cases reaching different levels of the DR process and the number of SEAs providing data.**

<b>1999-2000 School Year or 2000 Calendar Year</b>	<b># Filed or Requested</b>		<b># Held or Conducted</b>		<b># Decisions or Agreements</b>	
Total Complaints	6,094	49	2,643	34	3,320	36
Mediations Independent of Due Process Requests	470	14	224	11	193	12
Mediations Paired with Due Process Requests	2,922	16	23	10	247	12
All Mediations (Undifferentiated)	7,346	46	3,144	40	2,060	41
Total Due Process Hearings	9,759	45	1,733	37	1,780	41
<b>2000-2001 School Year or 2001 Calendar Year</b>	<b># Filed or Requested</b>		<b># Held or Conducted</b>		<b># Decisions or Agreements</b>	
Total Complaints	6,766	49	2,761	35	3,480	38
Mediations Independent of Due Process Requests	648	16	225	11	174	12
Mediations Paired with Due Process Requests	3,198	15	259	11	206	12
All Mediations (Undifferentiated)	8,163	48	3,304	43	2,750	44
Total Due Process Hearings	11,779	47	3,698	40	2,587	45

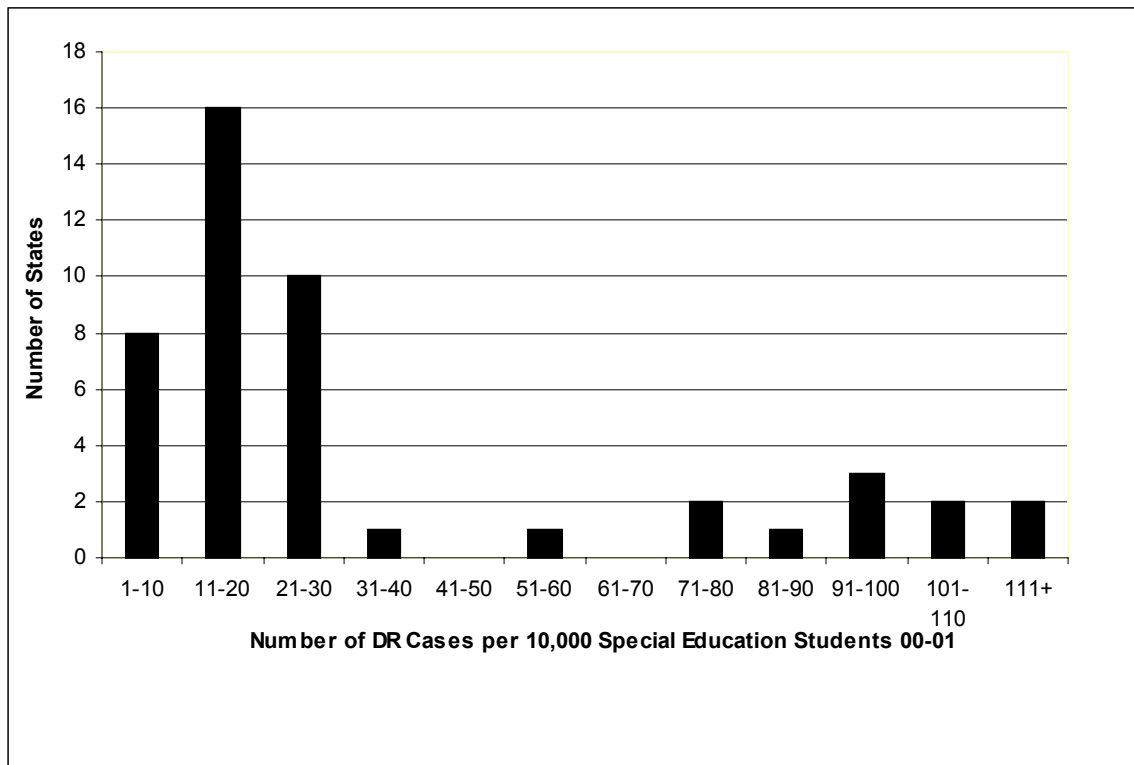
To make the above data more useful, missing data for 2000-2001 were replaced with 1999-2000 data when it were available and if not, data were replaced with calculations based upon percentages derived from the 30 SEAs that reported complete data sets. More SEAs were able to provide data for the 2000-2001 or 2001 calendar year, so calculations were made for that year (total complaints, total mediations, and total due process hearings). Table 2 provides national projections for the 50 states using calculations to replace missing data. The District of Columbia is not included in these calculations.

**Table 2. The number of cases, including estimated missing data, reaching different levels of DR for the 50 states.**

<b>2000-2001 School Year or 2001 Calendar Year</b>	<b># Filed or Requested</b>	<b># Held or Conducted</b>	<b># Decisions or Agreements</b>
<b>Total Complaints</b>	7,874	5,758	5,126
<b>Total Mediations</b>	8,070	5,536	4,582
<b>Total Due Process Hearings</b>	12,914	3,659	3,593
<b>TOTAL DR Cases</b>	28,858	14,953	13,301

Table 3 and Figure 1 show a bi-modal distribution of the ratio of DR cases per 10,000 enrolled special education students. To make the ratio calculations, the following formula was used: Ratio = Total disputes (complaints filed + mediations requested + due process hearings requested)/Student Count)\*10,000. The student counts used were those reported by OSERS on its Website for 3 to 21-year-olds in the appropriate school years. States with the higher ratio are mostly in the Northeast, while the rest of the nation shows lower ratios.

**Figure 1. Distribution of States by their ratio of DR cases per 10,000 special education students in 2000-01.**



The following tables provide information by state code that may be helpful in assessing overall DR system performance. The use of NA in the tables refers to state data that were not available. Table 3 provides the ratios by state used to construct figure 1 above.

**Table 3. Ratio of DR cases per 10,000 special education students for two years, with data from the 00-01 year ordered from the highest to the lowest ratios.**

<b>State Code</b>	<b>Ratio of DR Cases per 10,000 Special Education Students 99-00</b>	<b>Ratio of DR Cases per 10,000 Special Education Students 00-01</b>
811	1777	2292
425	121	130
46	94	110
524	109	102
623	103	95
742	91	92
950	92	91
534	NA	85
29	76	77
515	92	72
644	96	53
317	35	33
753	33	30
64	20	28
227	32	27
920	37	26
732	27	25
851	20	25
654	18	24
81	23	24
347	17	23
326	24	22
248	23	20
939	19	20
218	16	20
555	19	19
138	18	17
55	14	17
416	20	17
435	16	17
929	18	17
841	19	16
128	9	14
831	11	14
910	17	13
722	13	12
38	16	12
712	12	11
613	NA	10
940	10	10
821	20	10
456	9	8
446	15	7
119	10	7
930	7	7
149	2	3

State Code	Ratio of DR Cases per 10,000 Special Education Students 99-00	Ratio of DR Cases per 10,000 Special Education Students 00-01
237	NA	NA
72	NA	NA
336	NA	NA
633	NA	NA
545	NA	NA

SEA respondents gave information on their efforts to provide early DR intervention that could resolve disputes before they get to the SEA. Sixty-nine percent of the states in the low ratio group had early resolution efforts, while 60 percent of the states in the high ratio group had early resolution efforts. The difference between the two groups is small and shows the trend one would expect. Perhaps early resolution may account for a small part of the reasons the two groups differ from one another.

States were also ranked by their median household incomes using the United States (U.S.) Census Bureau's 3-year median averages (1998-2000). The ranks of income were then compared to the ratio of cases per 10,000 students to determine if there was a significant relationship. Thus, testing if higher ratios correspond with higher income. The Spearman rank correlation coefficient was determined to be .39. A significant relationship ( $p < .01$ ) that accounts for a small amount of the factors causing the difference between the high and low ratio groups was found.

Mediation is thought to be a more effective DR procedure for resolving disputes and less disruptive to human relationships than other more formal DR procedures. Table 4 shows the percent of all DR filings/requests that were mediation cases. A high percentage may be desirable. The formula used to calculate the percentages is: Percent = mediations requested/total disputes (complaints filed + mediations requested + due process hearings requested). The reader will note from the formula that the percentage can change from year to year due to fluctuation in any of the variables in the denominator. For example, if due process hearing requests rose substantially and complaints and mediations remained constant, there would be a decline in the percent of mediation requests even though there was no substantial change in the number of mediation requests from the previous year. This phenomenon can impact several of the calculations that follow.

**Table 4. Mediation requests as a percent of all DR requests for the 00-01 year ordered from highest to lowest percent.**

State Code	Mediation Requests as a Percent of all DR Requests 00-01
119	67
623	57
248	53

<b>State Code</b>	<b>Mediation Requests as a Percent of all DR Requests 00-01</b>
149	50
524	43
46	43
753	42
613	37
456	36
555	35
831	35
712	34
128	33
38	33
81	33
416	32
950	32
29	31
317	29
644	28
425	27
940	27
435	26
939	23
851	23
732	23
347	22
64	22
227	20
920	19
821	19
534	19
218	19
138	17
742	17
515	17
841	16
910	14
326	11
722	10
446	9
930	8
654	7
929	6
811	6
55	4
545	NA
633	NA
336	NA
72	NA
237	NA



With mediation being an effective procedure for resolving disputes, it would be desirable that most mediation cases end in agreements. Table 5 shows the percent of all mediation cases ending in agreement. The formula for the calculations is: Percent = mediation agreements/mediation requests.

**Table 5. Percent of mediation requests that reach agreement for the 2000-2001 year, ordered from the highest to lowest percent.**

<b>State Code</b>	<b>Percent of Mediation Requests that Reach Agreement – 00-01</b>
446	100
326	100
910	100
930	100
939	96
821	94
722	91
644	89
425	89
929	86
811	82
72	81
841	80
55	75
920	71
851	71
416	69
149	67
218	65
119	62
38	61
435	61
317	61
336	60
712	59
534	55
81	54
227	53
950	51
29	51
555	51
456	50
138	50
654	50
524	50
64	47
613	47
753	41
831	36
623	34

State Code	Percent of Mediation Requests that Reach Agreement – 00-01
515	33
742	29
248	17
545	NA
940	NA
347	NA
633	NA
128	NA
237	NA
732	NA
46	NA

Due process hearings are formal procedures and often perceived as disruptive to future positive human relationships. Table 6 shows the percent of all DR filings/requests that were due process hearing requests. A high percentage may be undesirable. The formula used to calculate the percentages is:  $\text{Percent} = \frac{\text{Due process hearing requests}}{\text{complaints filed} + \text{mediations requested} + \text{due process hearings requested}}$ .

**Table 6. Due process hearing requests as a percentage of all DR requests in the 2000-2001 year, ordered from highest to lowest percent.**

State Code	DPH Requests as a Percent of all DR Requests – 00-01
811	94
515	76
910	73
534	67
55	64
732	57
81	52
613	52
29	52
939	49
317	49
712	45
456	45
149	44
524	44
742	44
929	42
128	41
46	40
753	39
920	38
446	36
38	34
644	33

State Code	DPH Requests as a Percent of all DR Requests – 00-01
851	31
248	31
930	31
326	31
722	31
950	29
821	28
425	28
940	27
347	26
841	25
555	24
416	22
218	22
138	22
435	22
623	22
119	20
654	19
227	18
64	16
831	3
237	NA
72	NA
336	NA
633	NA
545	NA

Table 7 provides a comparison of case resolutions to total DR requests/filings. Calculations divide the complaint decisions, mediation agreements, or due process hearing decisions by the total number of DR filings/requests. High mediation agreement percentages and low due process hearing decisions are desirable. This Table enables the reader to compare the outcomes of all DR cases against one another within the context of the total number of DR cases requested/filed.

**Table 7. Decisions and agreements as a percent of total DR requests or filings in the 2000-2001 year.**

State Code	Percent Complaint Decisions per DR Cases 00-01	Percent Mediation Agreements per DR Cases 00-01	Percent DPH Decisions per DR Cases 00-01
29	14	16	4
38	16	20	5
46	NA	NA	NA
55	19	3	9
64	56	10	2
72	NA	NA	NA
81	NA	18	6

<b>State Code</b>	<b>Percent Complaint Decisions per DR Cases 00-01</b>	<b>Percent Mediation Agreements per DR Cases 00-01</b>	<b>Percent DPH Decisions per DR Cases 00-01</b>
119	6	41	8
128	NA	NA	3
138	22	9	0
149	6	33	6
218	55	13	8
227	38	10	5
237	NA	NA	NA
248	16	9	7
317	22	17	6
326	58	11	5
336	NA	NA	NA
347	NA	NA	NA
416	38	22	6
425	17	24	1
435	NA	16	7
446	45	9	18
456	9	18	18
515	NA	6	20
524	13	21	9
534	NA	10	6
545	NA	NA	NA
555	36	18	7
613	11	17	5
623	10	19	5
633	NA	NA	NA
644	39	25	20
654	62	3	5
712	15	20	6
722	NA	9	9
732	NA	NA	5
742	29	5	5
753	16	17	9
811	0	5	37
821	51	18	18
831	61	13	2
841	38	13	5
851	26	16	5
910	14	14	73
920	34	13	4
929	50	5	10
930	15	8	8
939	NA	22	6
940	NA	NA	NA
950	35	16	1

SEA respondents provided several other types of information. To determine how many SEAs could link their databases into an integrated database, respondents were asked if their DR databases had student cases identified by a number unique to the

student such as a social security number (SSN), or if the databases had a name and date of birth (DOB) in them for each case. Half of the responding SEAs indicated that their databases contained fields that would enable them to link the information into an integrated database. The remaining half of the SEAs cannot easily link their DR databases into an integrated database across formal complaints, mediations, and due process hearings.

When asked if formal requests for complaint resolution and/or mediation received by the SEA are sent to the school district or intermediate unit for resolution or action prior to investigation or action by the SEA or its contracted entity, 13 SEAs indicated that they do involve the district or intermediate unit prior to launching a formal investigation. Some think that this type of early local resolution will reduce formal due process hearing caseloads. Using the information in Table 6, it was determined that 32.5 percent of the cases were due process hearings in states sending the filings/request to the school district or intermediate unit for possible early resolution. For states not sending the cases to school districts or intermediate units, the due process hearing cases were 38.4 percent of the caseload. While not a large difference, there appears to be some advantage to using this early resolution procedure.

Several less formal conflict resolution procedures are being used by SEAs in the local or intermediate school districts. Eighteen respondents reported using conflict resolution training of parents and/or school personnel; 12 states use IEP facilitators or coaches; 10 states use resource parents or a similar person; seven states reported using early case reviews, solution panels, or a similar process; and 26 states reported using other methods of less formal conflict resolution. Twenty-nine SEA respondents reported that they did not have any particular early resolution process or procedures available at the local level. Early resolution impacts due process hearing caseload. The comparison between states using early resolution and those not using it, found a difference of 9 percent. The due process hearing caseload for those with early resolution, such as those described above, was 31.4 percent, while it was 40.3 percent for those without early resolution strategies. Using the Mann-Whitney U test, a significant difference was found between the two groups ( $p < .05$ ).

When asked if the SEA used consumer satisfaction instruments to gather feedback from parents and/or school personnel about DR procedures, the following results were obtained: 2 SEAs responded yes for complaints; 22 for mediations; and 8 for due process hearings.

## **Summary**

As measured by this study, a relationship exists between a higher income level and a higher ratio of disputes per 10,000 students. This relationship accounts for a small amount of the observed difference between the two groups. The presence of local resolution efforts may also have a small impact upon the total number of DR cases seen by a state. Early resolution, however, does clearly reduce the proportion of due process hearing cases – the most costly of dispute resolute procedure.

The above tables provide some information that can be used to assess overall DR system performance. The DR ratio per 10,000 special education students is reflective of existing differences between groups of states (i.e., a high group and a low group). The national estimates must be used with caution because of duplicate counts, differences in how the DR databases are structured and maintained, and quality control/assurance issues. Measurements provided in Tables 4 through 7 suggest factors that may be used by states for monitoring and continuous improvement.