



# Part C

STATE PERFORMANCE PLAN/ANNUAL PERFORMANCE REPORT  
2012 INDICATOR ANALYSES

FFY 2010-11

A national picture of the  
implementation of Part C of the  
Individuals with Disabilities  
Education Act (IDEA)



## **INDICATORS 10, 11, 12, AND 13: DISPUTE RESOLUTION UNDER PART C** **Prepared by Center for Appropriate Dispute Resolution in Special Education** **(CADRE)**

### **INTRODUCTION**

The IDEA requires states receiving grants under Part C to make available four dispute resolution (DR) processes, and to report annually to the U.S. Department of Education Office of Special Education Programs (OSEP) on their performance.<sup>1</sup> The processes, which include signed written complaints, mediation, due process complaints, and resolution sessions associated with due process (where Part B due process procedures are adopted), offer a formal means for resolving disagreements and issues arising under the IDEA.

The following summary and analysis of the FFY 2010 State Annual Performance Reports (APRs) for the DR indicators under Part C includes:

- **Indicator 10:** Percent of signed written complaints with reports issued that were resolved within the 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).
- **Indicator 13:** Percent of mediations held that resulted in mediation agreements.

Readers should note that while there are examples of lead agencies successfully improving their performance in each of the four dispute resolution areas, specific details on improvement strategies are beyond the scope of this document. Also, while there is a relationship between overall DR system functioning, leadership, and resources, including those directed toward specific improvement activities, past or current performance does not necessarily predict future performance.

### **DATA SOURCES/MEASUREMENT APPROACHES**

Sources for this report include FFY 2010 APRs, applicable APR clarifications, OSEP-verified APR data, and information on state DR activities drawn from CADRE's longitudinal DR database, which includes data from prior APRs and states' Section 618 reports.<sup>2</sup> Summaries of longitudinal data from FFY 2003 through FFY 2010 are included here to demonstrate change over time in state compliance and performance

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<sup>1</sup> For the purposes of this report, the terms "states" and "states/entities" are used interchangeably to refer to all 56 Part C grant recipients (i.e., the 50 United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands).

<sup>2</sup> CADRE maintains a national longitudinal DR database using the following reported data: 1) from FFY 2002 to the present, state DR activity reported to OSEP in the APRs, first as Attachment 1 and later as Table 7; 2) from FFY

related to these Indicators.<sup>3</sup> And unless otherwise specified, years stated in the text refer to federal fiscal years (FFY); for example, FFY 2010 may also be shown as 2010 or 2010-11.

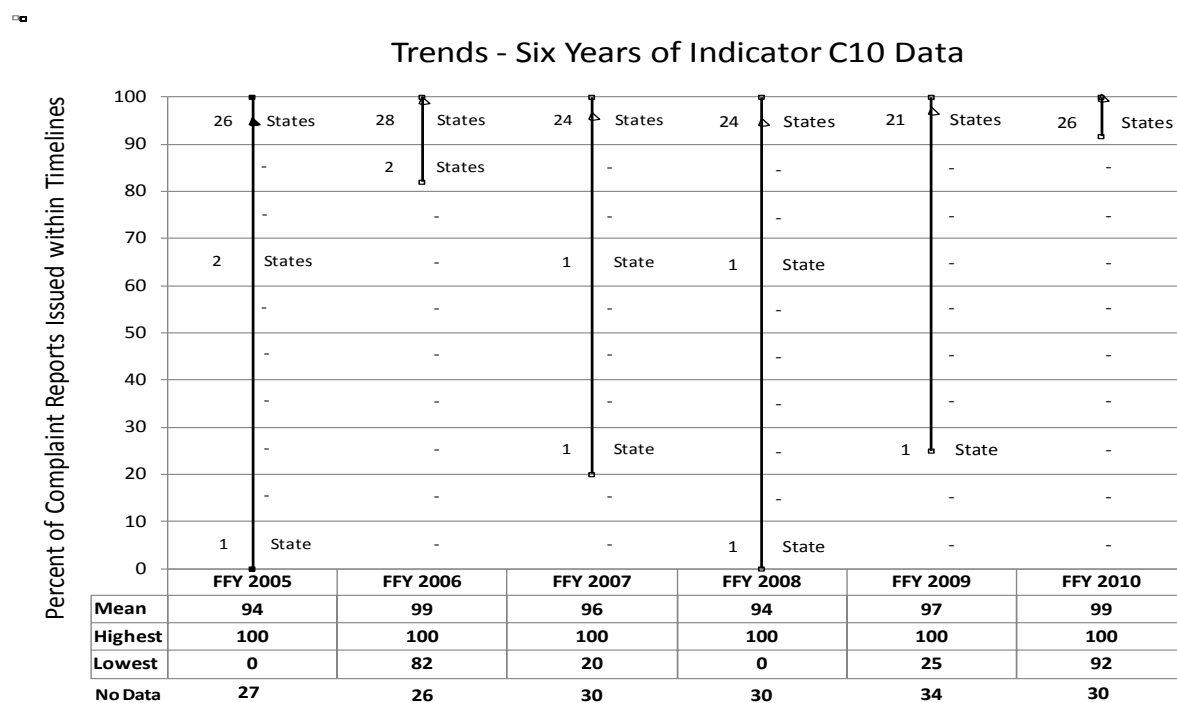
## SUMMARY BY INDICATOR: PERFORMANCE AND IMPROVEMENT ACTIVITIES

### Indicator 10: Signed Written Complaint Reports Issued Within Timelines

Indicator 10 is a compliance indicator with a target of 100%. States must issue signed written complaint reports within the 60-day timeline, or a timeline appropriately extended.

Each of the bands in Figure 1 reflects a 10% range of performance for Indicator 10, and the number of states falling within each range. The uppermost band shows the number states that performed  $\geq 90\%$  on this indicator; the next band down shows the number of states that performed in the 80% to  $<90\%$  range, etc.

Figure 1



Note: "No data" indicates the number of states/entities reporting no activity or lacking valid/reliable data.

In FFY 2010, 25 states produced signed written complaint reports, with the mean performance level for all states ranking at 99%. Twenty-three states reached the 100% target, while two states – those with the most complaint reports issued – performed at

2006 to the present, Section 618 data reported by states to the Data Accountability Center (DAC); and 3) DAC state DR activity data, following publication in OSEP's Annual Report to Congress.

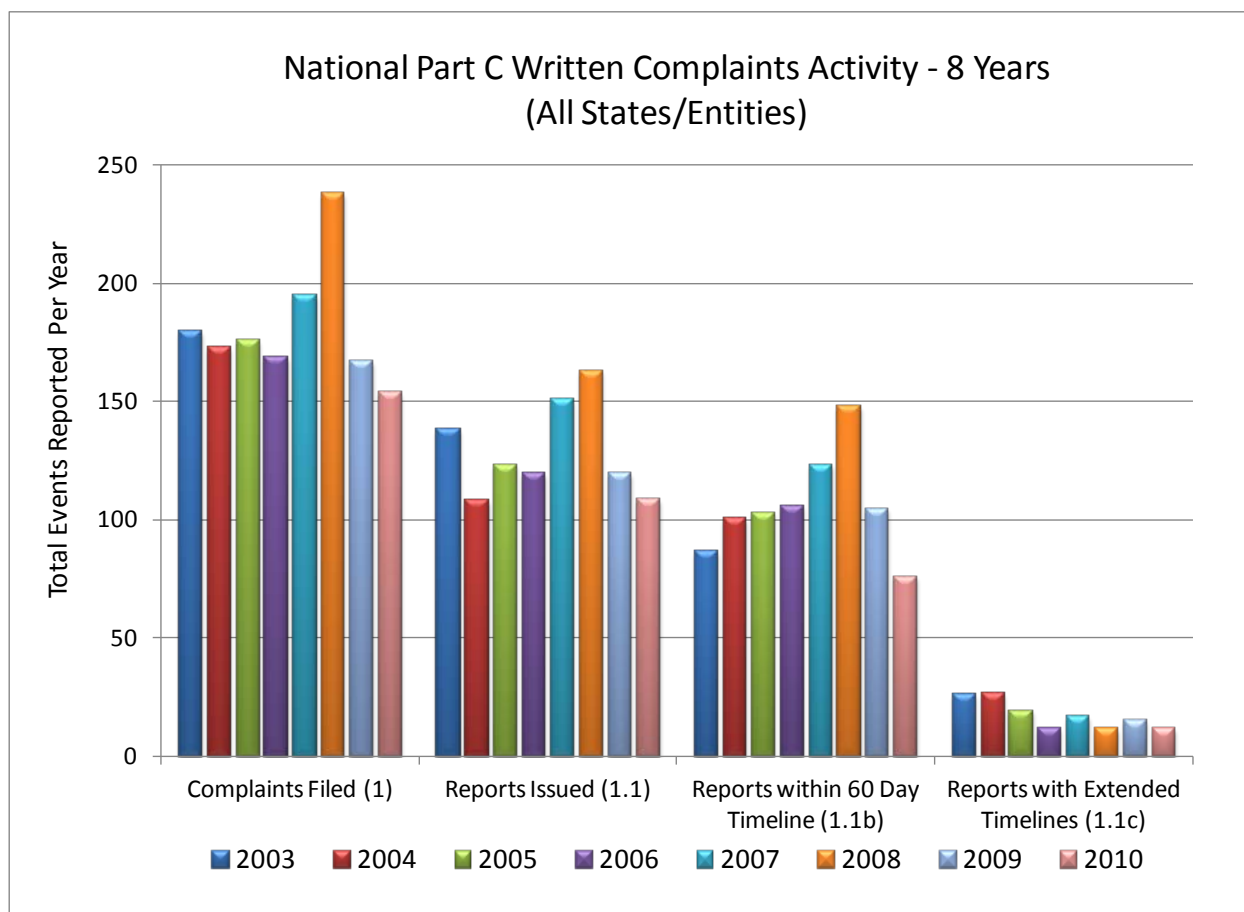
<sup>3</sup> Since complete Table 7 data are no longer uniformly reported in the APRs, current APR data can only be used to generate summaries of changes in the indicator values, not summaries of broader dispute resolution activity.

91%. These numbers suggest that the national trend toward substantial compliance ( $\geq 95\%$ ) is positive.

Very few states issue more than ten signed written complaints reports in any given year and 2010-11 was no exception, when only four states did so. The balance of states produced fewer than five reports, and all of those were reported as being on time.

The use of signed written complaints is the procedural safeguard most utilized under Part C of the IDEA, and Figure 2 offers a look back at the past eight years' data. Complaint activity has remained relatively stable over time, peaking in FFY 2008. That year, about half the growth was attributable to anomalous activity in a single state, which dropped back to more characteristic levels in FFY 2009.

**Figure 2**



It is important to note that the data showing whether reports were issued within the 60 day timeline, or within an extended timeline, does not provide a fully accurate picture of states' use of extended timelines. States inconsistently show their performance calculations for Indicator 10.<sup>4</sup> For this reason, each current year's data are estimated,

<sup>4</sup> The formula used to report Indicator C10 data is drawn from the Section 618 Table 4: [(1.1.b. reports within timelines + 1.1.c. reports within extended timelines)/1.1 complaints with reports issued x 100]. When states report only the sum of the digits in the parentheses, providing no detail on the number of reports issued within extended timelines, it complicates analysis on the use of extensions.

and updated after the Section 618 data becomes available. Overall though, it appears that states are using extended timelines for exceptional bases, in accordance with the IDEA and OSEP guidance.

### Indicator 10 Improvement Activities

State Performance Plans (SPP) and APRs often lack detail regarding how a state/entity approaches DR management; however, improvement activities associated with each indicator offer a glimpse into what each state has identified as its current priorities. Many states have adopted OSEP's "Featured Improvement Activities" taxonomy and incorporated this into indicator-specific activity charts that specify planned activities, associated resources, proposed timelines, and anticipated outcomes.

For Indicator 10, a number of states reported improved system administration and monitoring, including holding regular meetings with EI providers and programs to review both formal and informal complaints. States use these opportunities to identify issues and/or needs that are ripe for technical assistance, training, and professional development activities, which are then made available to staff and stakeholders.

Other improvement activities mentioned in states' APRs are stakeholder engagement and public outreach, including an emphasis on developing social media and video resources. It was noted by several states that while traditional parental rights brochures and procedure booklets are provided to families, sharing these through social media (means that are familiar to today's parents) appears to be an especially effective means of communicating the information.

In addition to 12 states highlighting informal DR activities in their APRs, anecdotal information from Part C lead agencies suggests that disputes between families and providers are usually resolved informally, often with the assistance of another staff member.<sup>5</sup> Some states collect data on informal DR activity that reaches the lead agency, while others track data for those at the EI program-level.

The low number of signed written complaints under Part C seems predictable, given OSEP's guidance that IFSP services should be provided to children in their natural environment, the close relationship that may develop between families and providers, and the short period of time that a child may be eligible for services under Part C compared to Part B.

### **Indicator 11: Due Process Hearings Held and Decisions Issued Within Timelines**

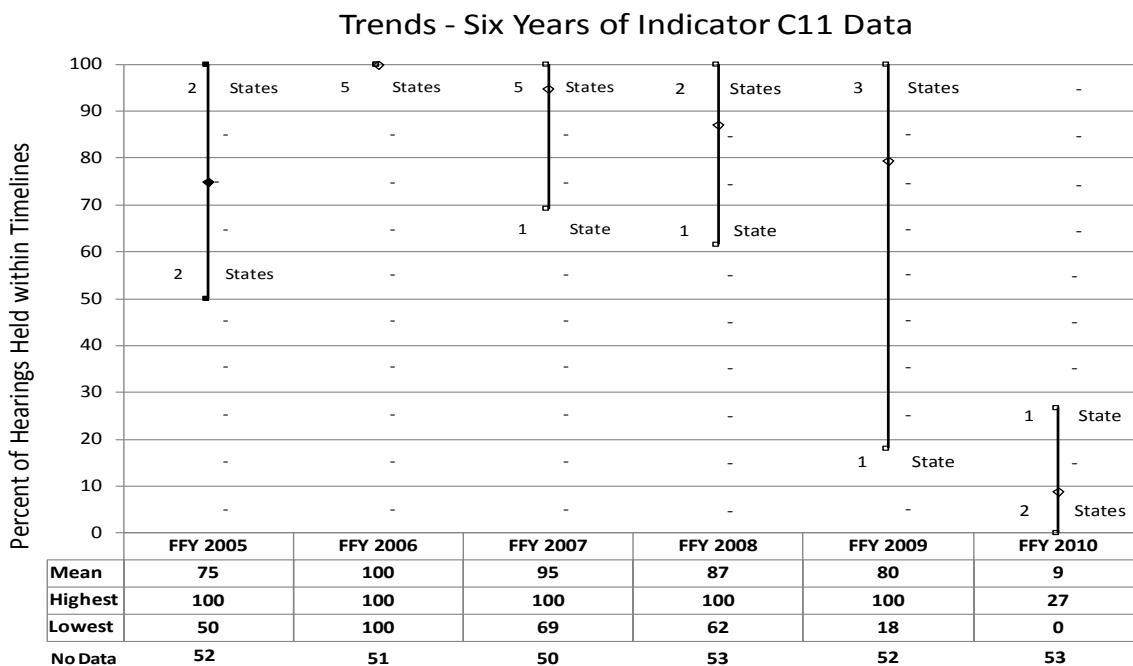
Indicator 11 is a compliance indicator with a target of 100%. This indicator measures whether due process hearing decisions were issued within the hearing timelines; all states must meet this standard.

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<sup>5</sup> States describe informal complaints as those where complainants do not submit signed written complaints but instead place phone calls or initiate conversations to discuss "frustrations" (versus "complaints").

Each of the bands in Figure 3 reflects a 10% range of performance for Indicator 11, and the number of states falling within each range. The uppermost band shows the number states that performed  $\geq 90\%$  on this indicator; the next band down shows the number of states that performed in the 80% to  $<90\%$  range, etc.

**Figure 3**



Note: "No data" indicates the number of states/entities reporting no activity or lacking valid/reliable data.

As Figure 3 demonstrates, the timeliness with which hearing decisions were issued in FFY 2010 represents a significant departure from the performance levels of past years. In 2010, only three states held due process hearings and none of these achieved compliance for the 17 total hearings held. One large state reported 27% compliance (4 of 15 decisions were issued timely). In the other two states, each having held one hearing, both decisions were issued late. It is important to note that all three of these states reported following Part C due process procedures which, at the time, contained no provision in the Part C regulations to permit a hearing officer to extend hearing timelines.<sup>6</sup>

### Indicator 11 Improvement Activities

The one large state mentioned above reported seeking technical assistance to improve the performance of their DR system. In that particular state, due process hearings are managed by a state office of administrative hearings, so the lead agency has little to do with the day-to-day activities as a complaint proceeds to hearing. Working together, the

<sup>6</sup> The updated Part C regulations, issued in the September 28, 2011 Federal Register, include a provision allowing a hearing officer to grant an extension of the hearing timeline at the request of either party. See 34 C.F.R. § 303.437(c).

hearing office and lead agency performed a root-cause analysis on the 11 decisions issued beyond the 30-day due date. In ten cases, they found that the hearings were heard within 30 days but that the hearing officer did not sign the decision until later. The other case was heard on the 34th day, and signed on the 41st day.

Also of note, this same state received nearly twice as many complaints in FFY 2009 (245) as in FFY 2010 (125), with 44 of the 2009 cases going to hearing, compared to 15 in 2010. The state attributed the difference between the two years to several key activities, including providing technical assistance and training opportunities to staff and stakeholders, updated information publications, and changes to the state’s regulations.

Although only three states held due process hearings in FFY 2010, six other states reported a total of 60 additional due process complaints, all of which were withdrawn or dismissed. A large state accounted for 51 of those complaints. A few states attributed pre-hearing resolution to informal DR activities (as discussed under Indicator 10) and have begun tracking this informal activity in their DR data systems.

Many of the states that reported receiving no due process complaints attributed this to heightened outreach and public awareness activities relating to procedural safeguards, parental rights, and informal DR options. Quite a few of these states also reported collaborating with parent centers to encourage families and EI providers to work together to resolve disputes early, as they arise, for the benefit of the child.

**Indicator 12: Resolution Meetings Resulting in Written Settlement Agreements**

Indicator 12 is a performance indicator that documents the number of resolution meetings resulting in settlement agreements, and applies only to states that have adopted Part B due process complaint procedures. For performance indicators, states/entities set targets, or goals, in their SPPs. States are not required to set a target or report current performance if they hold fewer than ten resolution sessions in a single year.

In their FFY 2010 APRs, 14 states said that they had adopted Part B due process procedures; however, as shown in Table 1, no states reported holding resolution meetings during 2010.

**Table 1**

Number of States Reporting Data by Indicator in APR Clarifications

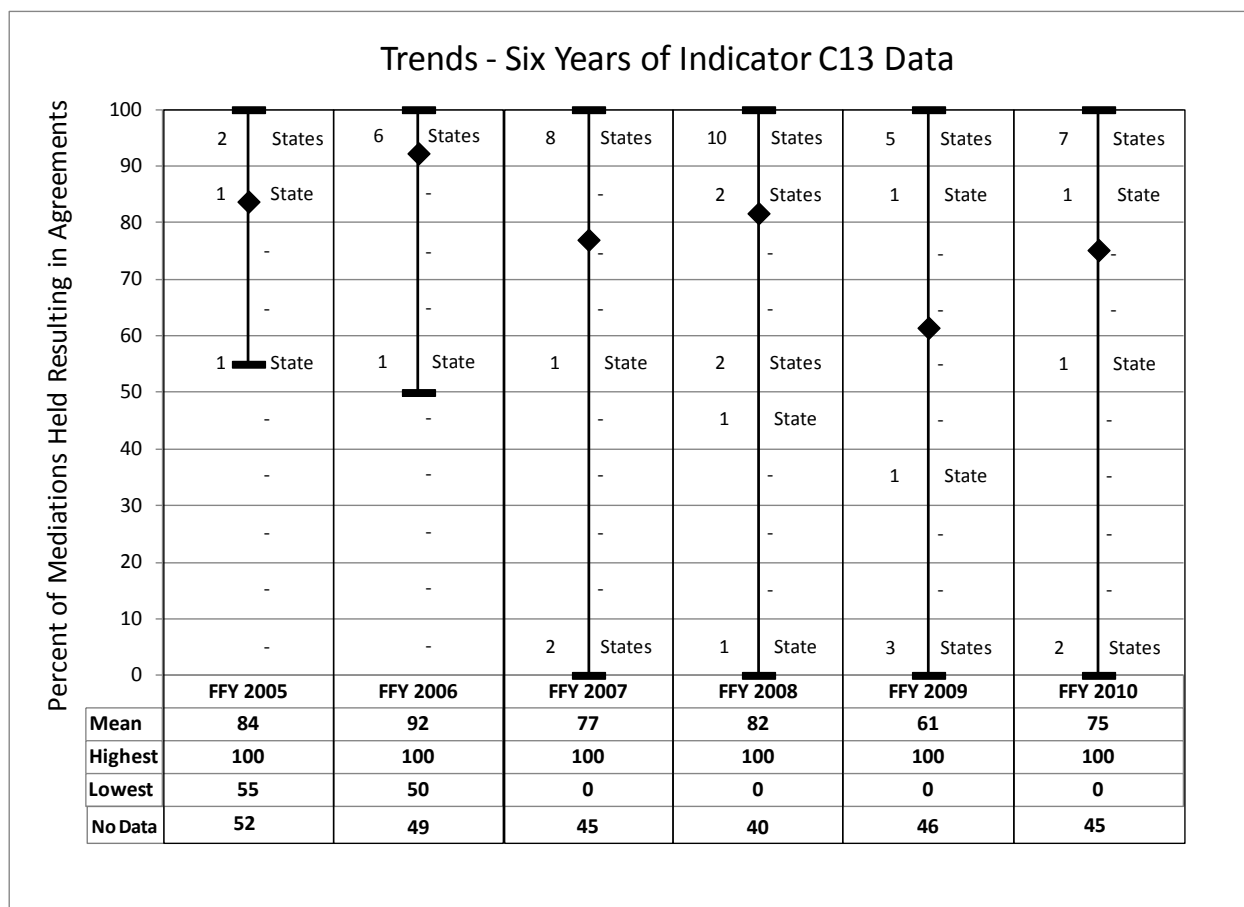
	2005	2006	2007	2008	2009	2010
Indicator C10 – Complaint Reports	29	30	26	26	22	26
Indicator C11 – Due Process Hearings	4	5	6	3	4	3
Indicator C12 – Resolution Meetings/ Written Settlement Agreements	-	1	1	3	-	-
Indicator C13 – Mediation Agreements	4	7	11	16	10	11

### Indicator 13: Mediations Resulting in Written Agreements

Indicator 13 is considered a performance indicator that documents the percentage of mediation sessions resulting in written agreements. Like Indicator 12, states are not required to set a target in their APR or report current performance if there are fewer than ten events to report in a single year. Some states/entities choose, however, to set targets and report data on this indicator even though their total number of mediations is less than ten annually.

The bands in Figure 4 reflect state performance on Indicator 13 over a six year period. In FFY 2010, 11 states reported holding mediations. Seven of those states had agreement rates of  $\geq 90\%$ , including two large states that accounted for 165 (94%) of the 175 mediations held nationally. Eight of the other nine states each held one or two mediations.

Figure 4



Note: "No data" indicates the number of states/entities reporting no activity or lacking valid/reliable data.

Because states do not consistently distinguish due process-related mediations from those not related to due process, the use of mediation relative to due process cannot be determined. However, in states that distinguish due process-related mediations from other mediations, almost all of the Part C mediations they held were due process-related. This is a pattern that has been apparent throughout the past six years.



A look at the past six years' APR data shows that the number of states reporting mediation activity peaked in FFY 2008. With the exception of that year, mediation appears to have been utilized by fewer than 20% of states in any given year. Also of note is that the two most active states, mentioned earlier, have consistently reported mediation agreement rates >80%, suggesting that they are using mediation successfully to address disputes.

## **CONCLUSIONS**

Despite significantly lower levels of activity than their Part B counterparts, Part C state DR systems appear to be working overall. They face very different challenges due to the infrequent use of the formal DR procedures states must make available. These include having staff members, EI providers, and practitioners prepared to ensure timelines are met and procedures are implemented.

An additional distinction is the role that informal dispute resolution plays in day-to-day EI interactions. Because families and providers work so closely, the idea of filing a formal complaint may not be considered necessary or appropriate. States must still ensure that the required DR processes (i.e., signed written complaints, mediation, due process complaints, and resolution sessions – if applicable) are available, and that they are ready to respond when an option is requested.

## **RECOMMENDATIONS**

CADRE prepared this summary and analysis. CADRE provides lead agencies technical assistance using an integrated and systemic approach, assisting with the development and maintenance of their required DR systems. System preparedness, in particular, poses potential challenges for lead agencies since the level of formal DR activity is substantially less under Part C than Part B. To assist states in building and maintaining their DR systems, CADRE has identified some key attributes of effective DR systems. While several have been featured in this chapter, a more complete list is provided here:

### **Oversight Guided by a Clear and Integrated Vision of the DR System**

- Management structure that includes a specific individual or group having responsibility and authority for coordination and performance of the system.
- Reliable financial and personnel resources adequate to support all system components.
- Transparency in the design, implementation, performance and evaluation of the system.
- Use of evaluation data to guide continuing system improvement efforts.
- Active and meaningful engagement of a broadly representative group of system stakeholders in planning, promotion, evaluation and improvement activities.

### **A Continuum of DR Options and Practices**

- Preventative or upstream DR approaches that offer alternatives to due process and formal complaint procedures.

- A single point of entry for families, including personal assistance to provide information, help identify and resolve issues, or suggest an appropriate DR option.
- Educational materials comparing DR procedures and describing how to prepare for and use them effectively.
- Information and training in collaborative strategies available to educators and parents include dispute prevention and conflict management skills.

### **Standards, Training, and Technical Assistance**

- Relevant experience, education, and training requirements for personnel in the DR system.
- Clearly articulated standards and guidance for performance, practice, and expected results for all personnel.
- Continuing education and professional development opportunities that respond to identified DR training needs.
- Technical assistance at the state and local level that leads to improved performance in specific activities and in overall system functioning.

### **Public Awareness, Outreach, and Stakeholder Involvement**

- Collaboration between lead agency and stakeholder organizations (i.e., PTIs and CPRCs) to develop resources and ensure availability and distribution to the widest audience possible.
- Publicly available, accessible resources and materials outlining DR system options and processes.
- A wide range of outreach activities and methods of information dissemination including web, print, television/radio, and in-person presentations in multiple languages.
- Continual recruitment of new stakeholders.
- Activities to keep experienced participants engaged and appeal to individuals who are new to special education.

### **Collection, Analysis, and Reporting of Evaluation Data for Continuous Quality Improvement**

- Standards that incorporate benchmarks and assess against best practices.
- Mechanisms for data collection and tracking that provide systematic information about individual DR practices and practitioners, as well as the performance of the system as a whole.
- Procedures for assessing how well the standards, personnel guidance, training and technical assistance are achieving the organizational mission.