



*in*Forum

In Depth Policy Analysis

Optional IDEA Alternative Dispute Resolution

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Optional IDEA Alternative Dispute Resolution

Though the vast majority of interactions between parents and school personnel about students with disabilities are positive and productive, disagreements can arise. Disputes may range in intensity from minor miscommunications to significant conflicts that trigger the use of procedural safeguards available under federal law. The Individuals with Disabilities Education Act (IDEA) provides for several distinct dispute resolution processes including mediation, filing of a due process complaint, which may lead to a resolution meeting and/or an impartial due process hearing, and civil action [P.L. 108-446 §615(e)(i)]. IDEA regulations also specify procedures for filing a state written complaint against an education agency by an individual or organization [34 CFR §§300.151 through 300.153]. In addition to these dispute resolution processes required under IDEA, some states and localities voluntarily choose to adopt alternative mechanisms for resolving disagreements over the provision of special education services.

This report summarizes results from a national survey of states' use of non-IDEA required alternative dispute resolution (ADR) processes and findings of an in-depth case review of those processes in eight states. This document, a joint effort of Project Forum and the Consortium for Appropriate Dispute Resolution in Special Education (CADRE), was produced as part of Project Forum's cooperative agreement with the U.S. Department of Education Office of Special Education Programs (OSEP).

METHODOLOGY

Surveys were sent to special education units of education agencies in all states and nonstate jurisdictions (hereafter referred to as SEAs or states). The survey was developed in collaboration with CADRE and included questions about the use of alternative dispute resolution processes not specifically required under IDEA, the extent of use of the processes (e.g., if the process is used statewide or regionally, if it is in a planning or development stage, if it is being piloted) and other specific information about the available data regarding each of 10 processes.¹ The 10 specific processes were defined as follows:

- Conflict resolution skills training for participants—Skills training that enhances the capacity to communicate, negotiate and prevent conflict from evolving and becoming problematic;
- Stakeholder management or oversight council—A representative body that advises administrators and ADR program managers on issues related to the state's dispute resolution system;
- Parent-to-parent assistance—Parents serve as a resource to other parents and school district personnel, especially for addressing emerging or active conflicts;

¹ More specific information on these and other dispute resolution options can be found at: www.directionservice.org/cadre/continuum

- Dispute resolution case managers—Case managers facilitate understanding of special education law, clarify issues and facilitate problem solving among teachers, service providers and family members;
- Telephone intermediary—Quick response service for parents and schools when help is requested - provides an opportunity to help clarify the problem and identify informal ways of addressing any issues;
- IEP facilitation—IEP facilitators who are not part of the team are used when an adversarial climate exists or when a meeting is expected to be particularly complex or controversial;
- Non-IDEA mediation—Innovative mediation processes, different than those prescribed by IDEA, such as co-mediation, solution panels or shuttle mediation;
- Third-party opinion or consultation processes—Participants in a dispute work with legal and/or special education experts (not hearing officer) to learn more about the merits of the family and school positions. The experts may propose solutions and assist the parties to negotiate;
- Early complaint resolution—A less formal opportunity to resolve a written state complaint, seeking local resolution in lieu of an investigation and occurring within legally required timelines; and
- Resolution meeting facilitation—Similar to IEP facilitation, but utilized in the context of the resolution meeting process.

Forty-three states completed surveys. Interviews were conducted with state staff responsible for dispute resolution in eight states: *Connecticut, Iowa, Minnesota, North Dakota, Oregon, Pennsylvania, Virginia* and *Wisconsin*. In seven states, interviewees were SEA staff; in Pennsylvania at the recommendation of SEA staff, the director of the Pennsylvania Office for Dispute Resolution was interviewed about that state's ADR processes. Also, in Wisconsin, one additional interview was conducted with the director of a state-supported special education mediation center. The states selected for interviews had reported in the survey that they used a range of non-IDEA required dispute resolution processes and could report some data on their use of the processes. CADRE staff were also consulted prior to confirming selection of the states to be interviewed. Interviewees were asked about each ADR process individually and then asked to share their perspectives on factors that facilitate the use of processes and those factors that challenge their implementation and use of the processes. Data from surveys, interviews and relevant other documents, such as websites and state forms were analyzed to develop the presentation of the findings that follow.

FINDINGS

Conflict Resolution Skills Training

Nationwide, 19 SEAs responding to the survey indicated they use conflict resolution skills training, another five indicated that their state is in the planning or development stages of that process and another five reported that this process had been piloted or was used in some regions or localities. The nature of the trainings varied state to state. Some SEAs reported days-long,

extensive and in-depth training opportunities designed for state mediators and IEP facilitators, while in other states more broad information sharing sessions were provided by state ADR personnel at state and regional conferences for parents or administrators.

Intensive training for mediators and facilitators

Several states reported sending practitioners who conduct or oversee ADR processes to national or regional conferences and workshops designed to build specific skills. For example, mediators and IEP facilitators attended trainings conducted by regional resource centers (RRCs), the Learning Disabilities Association (LDA) and the U.S. Department of Education (ED) to learn about regulatory changes, as well as to build and refine specific dispute resolution communication skills. Some states reported bringing in nationally-recognized experts from CADRE to train practitioners. Expertise at regional or state dispute resolution centers not specific to special education was also tapped. An example is the University of North Dakota's Conflict Resolution Center in Grand Forks, which serves as a resource for the state special education ADR processes.

States often establish specific requirements for the professionals who serve as mediators and facilitators. The *Wisconsin* statute requires contracted mediators to attend a five-day training; in *Connecticut*, mediators meet with state ADR staff quarterly to receive updates on policies and procedures and to share and learn from each other's experiences. In most cases, these intensive trainings for practitioners who provide mediation and other ADR services are supported directly by state funds.

Broad conflict resolution training for local participants

Many survey respondents and all states interviewed reported supporting some basic training about conflict resolution. Most often, information sharing about the available ADR processes was provided by state staff through existing conferences and meetings, particularly state or regional conferences of special education administrators and other school personnel and by parents, usually coordinated by the state parent training and information centers (PTIs). State ADR personnel also often reported the use of one-time workshops or conference sessions on broader conflict resolution topics such as building trust and improving parent-educator communication skills. Using another approach, one state reported requiring all special education administrators to participate annually in training on dispute resolution techniques.

In addition, many states reported making available skill-specific trainings. In *Iowa*, as part of the state-supported area education agency (AEA) resolution facilitator initiative, agencies are informed about training opportunities and are responsible for making logistical arrangements for training workshops on specific dispute resolution topics of their choosing. Local education agency (LEA) representatives and parents are invited, as well as representatives from other youth-serving agencies such as juvenile justice. Started in 1995, the AEA trainings initially were attended exclusively by special education personnel and parents, but since 2000 there has been a noted increase in participation by personnel who work with non-special education populations. Another example is a state-developed training for IEP managers in *Minnesota*. State staff

developed a four-module training package that utilizes a training-of-trainers model to teach school district IEP manager trainees topics ranging from IEP meeting basics to due process requirements of IDEA and Section 504 of the Rehabilitation Act. Nearly 900 stakeholders have participated in one of the 25 sessions to become trainers; more than 2,500 IEP managers have been trained as a result.

Other states use more strategic, targeted approaches to training. For example, *Oregon* provides training to the 10 LEAs reporting the highest incidence of due process hearings or state complaints. LEAs help identify the topics of most need and select a trainer from a list of four state-approved trainers; training may be delivered to large groups or at a more individualized level. In the years following training, those 10 LEAs rarely reappear on the list of those with the highest incidence of hearings or complaints.

Stakeholder Management or Oversight Councils

Twelve states indicated they use a management or oversight council and another five states reported they were in planning or development stages of implementing this process. It appears that in many cases where there is not a separate group to advise on dispute resolution, the state advisory panel required by IDEA plays a role in providing guidance to state ADR staff. State respondents noted that the advisory panel, or a subgroup of it, regularly reviews dispute resolution data, and that state dispute resolution staff regularly attend panel meetings. An example is *North Dakota's* IDEA Advisory Committee, which meets quarterly. Once a year, ADR staff meets with the Committee for a productive discussion about the available dispute resolution data. The Committee advises staff on issues as specific as plans for resolution session procedures and review of data evaluating the state's use of IEP facilitation. Similarly, in *Oregon*, the Dispute Resolution Committee, a subcommittee of the State Advisory Council, provides helpful input. Data on requests and complaints are shared with the subcommittee, which is composed of parents, a mediator, attorneys that represent parents and LEAs, a representative of the protection and advocacy organization and the head administrative law judge for hearings. This group meets five times a year to provide feedback and guidance. Other states report that their state advisory panel members regularly receive updates and copies of due process hearing decisions.

Separate, dedicated stakeholder groups or oversight councils operate in some states. When planning for initial implementation of IEP facilitation, *Wisconsin* convened a stakeholder group that advised on best practices. *Wisconsin* now utilizes a different stakeholder group that is responsible for establishing targets for the OSEP indicators² and receives state mediation data updates. Two of the three partners that comprise the *Wisconsin* Special Education Mediation System (WSEMS) serve on the stakeholder group and staff report this provides good representation of ADR issues in the group. In *Iowa*, every third year a group of diverse stakeholders holds a facilitated discussion and makes recommendations to the state. A similarly

² More information about the OSEP indicators can be found at www.rfcnetwork.org (navigate on right side to "SPP/APR Guidance Materials" and "SPP/APR Calendar"). More resources specific to the dispute resolution indicators can be found on the CADRE web site at: <http://www.directionservice.org/cadre/sppresources.cfm>.

diverse stakeholder group formed initially in 1999-2000 still advises the *Pennsylvania* Office for Dispute Resolution on timely issues. In all cases, interviewed state staff were very positive about the contributions of these groups and reported that they made meaningful recommendations that helped to guide positive change.

Parent-to-Parent Assistance

Parents serve as valued resources to other parents in many states. Twenty-six states indicated that parent-to-parent assistance is used. This may represent an undercount of the process, however, since narrative responses on the survey indicate that some states with active processes for PTIs to support parents did not consider it a parent-to-parent assistance process while others did. PTIs appear to be the primary source of parent-to-parent assistance in most states. State staff reported referring parents who contact them with basic questions and initial concerns to parent trainers and other representatives from PTIs. Some states directly employ a staff person at the SEA who is a parent of a child with a disability, and serves as an initial contact and “clearinghouse” of information to parents in need of assistance. Several states reported their efforts to support the local or regional hiring of parents as mentors, coordinators or contacts to directly assist parents in need.

In some states, specific efforts focus on the role parents can play in diffusing conflicts. The *Wisconsin* parent-run PTI (Wisconsin FACETS), a partner in the Wisconsin Special Education Mediation System (*WSEMS*), has provided information about available dispute resolution options to more than 3,000 parents and has helped support hundreds of facilitated IEPs and mediations. Much of *WSEMS*’s success is attributed to the three-way partnership between the regional special education administrators’ organization, FACETS and technical expertise provided by an independent dispute resolution consultant. Another example is *Virginia*, which supports a state-level parent coordinator responsible for providing technical assistance to localities to establish and maintain parent resource centers and a state ombudsman who acts as a source of information and referral, aids in answering individuals’ questions and assists in the resolution of concerns and issues. Some LEAs in *Virginia* also employ parent ombudsmen or coordinators, who are themselves parents of children with disabilities. In *Oregon*, the state supports a grant with the PTI to operate a Partners Project. Parents are trained to serve as partners to other parents during IEP, transition or mediation meetings and help prepare for the meeting, clarify roles, plan an agenda, and identify the issues. At the meetings, partners take notes and act as trained listeners who are familiar with special education rules and regulations. Partners model parent/professional partnerships and collaboration.

Dispute Resolution Case Managers

Dispute resolution case managers are used in 13 states that responded to the survey. Another two states indicated they are in the planning or development stages of establishing dispute resolution case managers. Narrative data indicate states define case management broadly. In some states, respondents reported staff managing formal and informal complaints, informing parents about how to use dispute resolution processes or otherwise explaining procedures and responding to

parent queries. Other states reported that case management is handled exclusively by local or regional agencies.

An example is *Iowa*, where each AEA employs at least one resolution facilitator coordinator who works with the parent and school personnel to define the issues of concern, resolve them informally or refer the parties to more formal resolution options as appropriate. The AEA resolution facilitators have the advantage of knowing the local systems and points of contact and can often help refocus and “calm” the situation. *Pennsylvania’s* Office for Dispute Resolution employs three case managers who serve as first line contacts when a due process hearing is requested. Case managers serve as the information and document follow-through between parties, attorneys and the hearing officer. The office also employs a mediation case manager through whom all mediation requests go.

Telephone Intermediary

A majority of states (33) reported offering telephone intermediary services and another state indicated it is in the planning or development stages of establishing such a system. Narrative information provided indicates that states use two main ways of providing intermediary services: SEA staff respond to referred inquiries and the use of toll-free telephone hotlines.

State staff responses

State staff members are tasked to provide dispute resolution information to parents who contact them directly or through a PTI referral. Several states noted that specific staff are available daily to address calls or emails and provide responses ranging from basic procedural information to on-the-spot information about conflict resolution options. One state reported that three full-time staff in the special education office were used to provide technical assistance to parents and LEA personnel for the informal resolution of conflict regarding IDEA and 504 issues. Where data is kept, states estimated daily contacts ranging in numbers from 2 to 10, with annual contacts ranging from 50 to more than 1,350. In *North Dakota*, an estimated 80% of contacts were from parents or Protection and Advocacy agencies and 20% from schools.

Telephone hotlines

Four states provide a toll-free hotline for parents and school personnel seeking immediate clarification on issues of concern. *Pennsylvania* operates a program called “ConsultLine,” designed as a parent and advocate helpline and staffed by four personnel who provide regulatory information and options available to the parent to address their concerns. Copies of regulations and other documents discussed during a call are made available via the mail or Internet. In some cases, staff assist the parents by initiating a complaint resolution process. ConsultLine staff work with parents to draft initial email communication to the local special education director and state compliance advisor to help clarify issues. The role of ConsultLine ends there, but other dispute resolution options are available if the issue is not resolved with that initial contact.

IEP Facilitation

IEP facilitation appears to be a growing practice. Twenty-four states reported using it, and another eight states were in the planning or development stages of offering this practice. Six states reported the SEA has piloted the process or supports it in some regions or localities.

State level coordination

While many unique arrangements exist across states, in the majority of states where IEP facilitation is used, the process is coordinated or managed at the state level. In some cases, states with mature mediation systems use mediators to facilitate IEP meetings. An example is the WSEMS in *Wisconsin*, which initiated a pilot IEP facilitation program in 2004 using active mediators. The SEA now supports IEP facilitation as one of its successful dispute resolution options. In its first two years, WSEMS received 123 requests, 75 of which resulted in IEPs being developed. The most recent year of data reveals a drop in mediations requested and held, which respondents attributed in part to the use of IEP facilitation and a general reorienting of the system towards collaborative efforts to build trust and strengthen communication through involvement of a neutral third party. Another example is *Minnesota* where 42 requests for IEP facilitation were received last year. Mediators trained in IEP facilitation held 34 IEP meetings with a reported 94% agreement rate. Though IEP facilitation is used less frequently than mediation in their states, *Iowa* and *Pennsylvania* reported their AEA resolution facilitators and mediators, respectively, can and do facilitate IEP meetings, usually with satisfactory results.

The SEA in *North Dakota* contracts directly with special education experts from higher education institutions to provide IEP facilitation to LEAs. To maintain an adequate supply of facilitators, *North Dakota* anticipates it will begin to use retired agency personnel. Some states reported contracting with organizations to deliver IEP facilitation services. In one state, the PTI serves this function; in others, another independent contractor performs this role.

Local-level IEP facilitation

A second approach is locally administered IEP facilitation training and services. Narrative responses to this survey question indicate that LEAs in at least seven states provide some kind of IEP facilitation. Even in states in which IEP facilitation is managed at the state level, some LEAs operate their own IEP facilitation processes. LEAs may contract with individuals or organizations to deliver training to staff who then serve as facilitators or they may use external professional consultants to provide direct IEP facilitation services on a contractual basis.

States may provide indirect supports to local-level IEP facilitation. Upon request, *Oregon* provides LEAs a resource list of professionals who may be available for IEP facilitations, some of whom are mediators. Another example is *Maryland* where a state grant to Community Mediation Maryland, an independent training and technical assistance center, indirectly supports IEP facilitation. Facilitation is delivered via trained community conflict resolution center volunteers and is currently available in 10% of the state's LEAs.

Availability of IEP facilitation

States vary in terms of timeframes for making IEP facilitation available. Most states in which IEP facilitation is used make the process available upon request, at any stage of the dispute resolution process. Like some other states, *North Dakota* encourages use of IEP facilitation and has clarified in writing that IEP facilitation, like mediation, can be used prior to, in conjunction with, or following the filing of a due process hearing request. In survey responses, three states indicated that a formal, IDEA-required dispute resolution process, such as filing of a hearing request must precede the use of the IEP facilitation. An example is *Oregon*, which provides state supported IEP facilitation as a follow-up to final orders resulting from a state complaint when a district is ordered to meet again on issues related to an IEP or to work out some other issues. The state supported approximately 20 IEP facilitations last year.

Non-IDEA Mediation

This process was defined as innovative mediation processes that are different from those prescribed by IDEA, such as co-mediation (i.e., use of two mediators rather than one), solution panels (i.e., a team with differing perspectives and expertise who assist parties to reach agreement) or shuttle mediation (i.e., when a mediator, outside a typical mediation meeting, goes back and forth between the parties to work out the details of agreements). Eleven states indicated using such processes; however, the narrative responses indicate wide variation in what respondents considered to fit this category. A couple of states reported that mediation was available for issues raised under other statutes or program areas, such as gifted education or Section 504. *Virginia*, for example, indicated that mediation is used to resolve 504 issues, interagency issues where the SEA is a party and some “school/parent issues where relationships have been frayed extensively.” Combined, these applications do not exceed 8 to 10 cases per year.

Several states noted that other non-IDEA mediation options are used at the local level, but state respondents were generally unaware of their specifics. Another state responded to the question in broad terms, indicating that all school personnel are encouraged to exercise good ADR skills when working with other school personnel and parents. Such a school-level focus was helpful in reducing the state’s incidence of due process hearing requests by half over the past three years.

Several other states reported use of co-mediation and shuttle mediation models. Though not designed as such, mediations in *Oregon* sometimes become shuttle mediations, when a third-party acts as a go-between over some time period. In both *Maine* and *Washington*, shuttle mediation is possible under current SEA-prescribed mediation processes. A few states reported co-mediation is used, though one state uses the term “mentor” in place of “co-mediator.”

Pennsylvania offers an informal Solutions Panel process for settling disagreements. Solutions Panel parties are encouraged to “engage in thoughtful problem solving in order to reach a mutually beneficial agreement.” A panel consists of two trained individuals, a parent and an educator, who help the participants reach agreement. Two intermediate units in the state have

been trained in use of Solutions Panels, but the buy-in from LEAs already strapped for time and resources has been poor.

Third-Party Opinion or Consultation Processes

Five states reported that third-party opinion or consultation processes are in use. One additional state indicated it has piloted or supports the process in some regions or localities. Narrative responses from a couple of states indicated that such processes were considered and rejected or that after using them the processes were discontinued.

Where they are available, use of the third-party processes is infrequent. *Oregon's* Office of Administrative Hearings provides an advisory opinion option for parties to a due process hearing in which each side presents for 45 minutes to a judge who then issues a nonbinding option. The option has been used twice in the past four years and was not utilized this past year. *Connecticut* utilizes an advisory opinion process with more frequency. Both parties must agree to the process, and the meeting must be held within 30 days of the filing of a due process hearing request. A hearing officer different from the one who would be assigned if the case went to a hearing presides over the two hours of testimony and cross examination and then verbally renders a nonbinding opinion. Advisory opinions are used in a small percentage of *Connecticut* cases in which hearings are requested, but when used, have a high rate of resolution between parties. Since July 2000, 73 advisory opinions have been convened; 67 did not go forward to a fully adjudicated decision. The advisory opinion option is particularly attractive to parents who may not be able to afford attorney fees but seek a more formal resolution option. It also provides the moving party the opportunity to be "heard" by an impartial hearing officer. The resulting opinion can provide a foundation upon which a settlement can be built. The advisory opinion process is similar to the *Washington* option of settlement conferences following a due process hearing request in which an administrative law judge trained in mediation hears from both parties and works towards settlement.

Early Complaint Resolution

A majority of respondents (25) reported use of early complaint resolution processes and another three states reported they are in the planning or development stage of their use. These processes designed to informally resolve a written state complaint vary considerably across states, both in terms of the party responsible and frequency of use.

Party responsible for early complaint resolution

Written complaints are received by the SEA; however, early complaint resolution processes operate at both the local and state levels. Some states report they facilitate communications between parents and school district personnel as early as possible following the receipt of the complaint or even following initial contact by a parent that is projected to lead to the filing of a state complaint. Narrative responses to the survey indicate that LEAs attempt to resolve issues once made aware of parents' concerns. States often encourage use of dispute resolution processes such as mediation or IEP facilitation for anticipated or filed state

complaints. Often these options are laid out in writing in correspondence from the state to the complainant. State staff may be designated to conduct formal or informal follow-up communications with the complainant following receipt to clarify roles and dispute resolution options and encourage constructive communications between the complainant and school where appropriate. An example is *Oregon*, which implements a 10-day window from receipt of the complaint to initiating the complaint investigation. A state staff member contacts both parties, identifies and clarifies issues and encourages the LEA to address the issues. In some cases, LEA personnel were not aware of the concern prior to contact from the state and work successfully to resolve the issue without state intervention. Similarly, when *Wisconsin* acknowledges a complaint it receives, it requires the LEA to review the complaint prior to investigation.

Frequency of use

Some states were able to report the number of cases in which early complaint resolution processes were used, ranging from three to approximately 80 cases. Where reported as a portion of complaints filed, early complaint resolution accounted for 13 of 115 cases in one state and three of 97 in another.

Resolution Meeting Facilitation

The regulations implementing IDEA 2004 specify that:

[W]ithin 15 days of receiving notice of parent's due process complaint and prior to a due process hearing, the local education agency must convene a meeting with the parent and other relevant members of the IEP team to discuss the complaint, so that the agency has the opportunity to resolve the issue. Both parties may agree to waive this meeting or may agree to mediation [34 CFR 300.510(a)].

Formal facilitation of resolution meetings is an option pursued by some states and localities.

About a third of states (14) reported resolution meeting facilitation is used, another three were in a planning or development stage, and another two had piloted or supported the process in some regions or localities. Responsibility for administration of these meetings varies. Four states reported that LEAs would be responsible for establishing resolution meeting facilitation, if they choose to establish such a system. Other states consider it an SEA responsibility, but the approaches vary. Four states reported that IEP facilitators or other established resolution facilitators can serve as resolution meeting facilitators. Though the *Iowa* SEA will provide a mediator to facilitate if requested, it encourages use of AEA Resolution Facilitators, or alternatively, other trained facilitators provided by the LEA or AEA. *North Dakota* uses IEP facilitators to conduct resolution meeting facilitation. Requirements for resolution meetings differ from IEP meetings, so *North Dakota's* resolution meeting facilitators use somewhat different processes and are trained in skills such as writing a legally binding contract. *Pennsylvania* is in the early phases of a pilot of resolution meeting facilitation in 10 intermediate units. Data will be collected to determine if the facilitation results in improved outcomes for both parties.

FACTORS THAT IMPACT USE OF ADR PROCESSES

Interviewees were asked about factors that both facilitate adoption and effective use of ADR processes and those that challenge their implementation.

Factors that Support ADR

Perception of neutrality

Many state respondents emphasized the importance of the perception of neutrality in ADR processes. Parties are more willing to communicate and negotiate in good faith when the process is perceived to be conducted and managed by neutral third parties. In states where a non-state entity manages the mediation and other ADR processes, parents and LEAs are reportedly more likely to invest in the opportunity to resolve disputes and delay filing of due process complaints or state complaints.

Use of advisory groups

Related to this, the importance of advisory bodies was underscored. The use of the advisory panels, whether general in scope or dedicated to dispute resolution issues, was considered to be extremely helpful in shaping implementation of the ADR processes. The diverse membership and leadership roles represented on the advisory groups contributed to not only to the substance of the feedback, but also to the credibility of the ADR efforts themselves. Group members often help build support for the state procedures within the constituent groups they represent. State personnel also feel the advice received by the group members reflects the diversity of stakeholders' perspectives.

Use of evaluation data

Data from users of the ADR processes were particularly useful to state staff in program improvement efforts. Almost all states reported procedures for gathering evaluation data from parties following use of ADR processes, most often on outcomes and satisfaction. These data were actively pursued and carefully examined for trends. Often evaluation and other outcome data were shared with state advisory groups and were critical to the recommendations the groups made to the state agency.

Factors that both Facilitate and Challenge the Implementation of ADR

Outreach and Public Awareness

Outreach and public awareness were noted as both facilitating and challenging implementation of ADR processes. Many state respondents spoke about the importance of information sharing about ADR processes and options through conferences and state and regional organizations. Word of mouth recommendations often facilitated the willingness of parties to try a new ADR process. Wide dissemination of accurate information about the range of benefits of ADR options, however, remains a challenge in many states.

OSEP performance reporting

Another factor that was both facilitating and challenging to respondents is the OSEP requirement to report on progress or slippage on the targets set for the dispute resolution indicators in the states' Annual Performance Reports (APRs) relative to their State Performance Plans (SPPs). Briefly, APR/SPP indicators require states to report such indicators as the percent of signed written complaints that were resolved within 60 days, the percent of due process hearing requests that were fully adjudicated within 45 days, the percent of hearing requests that went to resolution sessions and were resolved through resolution session agreements and the percent of mediations held that resulted in mediation agreements.

Many states reported that data on some ADR processes were available because of the OSEP APR/SPP reporting requirements. These reporting requirements also helped validate the work of many state dispute resolution staff. Attention and resources were directed to the areas targeted in the APR/SPPs. Some interviewees, however, expressed concerns about the unintended effects of the indicators in discouraging expansion or meaningful use of ADR processes. One respondent noted that use of the mediation agreements as an indicator was counter to the ultimate purpose of resolving conflicts through one or more processes. Mediation may be one stage in a series of processes used to resolve a specific conflict and judging its success solely on the basis of whether a mediation agreement was immediately reached could under represent the value of the mediation process. Instead, the respondent advocated using other metrics as a means of more completely measuring the contribution of mediation to the resolution of disagreements. Another respondent noted that LEAs were leery about using ADR processes like mediation because of fear that data about the incidence of using the processes would reflect poorly on the LEA. Respondents also indicated that the APR focus on mediation agreements, resolution session agreements, and the timeliness of resolved state complaints and hearing requests may discourage or delay the implementation of other non-IDEA required dispute resolution processes.

Factors that Challenge ADR

Timing

Several respondents noted that issues of timing could impact the use of some ADR processes. This was particularly true for IEP facilitation. Often parties may not realize conflicts

will arise until they are in an IEP meeting without a facilitator. One respondent attributed underutilization of IEP facilitation to the fact that “the school usually does not know the meeting will be contentious until the meeting has begun. Then, it's too late to call the mediation center, that holds the contract to provide mediation, facilitation and conciliation to any school or parent related to a student with a disability.” Timing also appears to impact the decision of parties to agree to participate in a resolution meeting. In some cases, the resolution meeting is seen as an extra step that provides fewer protections and more “outs” than mediation. Parties who are seeking a more speedy resolution are likely to waive the resolution meeting in favor of moving to mediation or a due process hearing immediately.

Ownership of IEP processes

IEP facilitation raises some unique challenges. Respondents noted that LEAs may feel a sense of ownership over the IEP process. That is, school personnel often have significant experience in administering and participating in IEP meetings and can be critical of external IEP facilitators who are less familiar with procedures. SEA respondents reported that parents often felt more comfortable with IEP facilitation because they perceived the facilitator to be neutral or more supportive of parents’ needs. Some school personnel have had difficulty adjusting to these new dynamics.

Communication and trust

Probably the greatest challenge noted by respondents was the need to strengthen communication and build trust between parties in conflict. Regardless of the ADR process used, ineffective communication skills can deepen conflict and make the likelihood of resolution even more remote. Several respondents noted that identification of the core issues of conflict can be extremely difficult to discern when parties lack the ability or will to communicate respectfully. Fear of potential retaliation remains a concern of many parents and contributes to an atmosphere of distrust.

CONCLUSIONS

States appear to be using ADR with promising results. Where used widely, the perception of neutrality in the administration of the processes is a facilitating factor that encourages parties to actively seek resolution. State agencies also rely on the guidance of advisory bodies and make effective use of evaluation data to improve their implementation of the various ADR processes.

Challenges to the use of ADR processes can hinder expansion. Wider dissemination about the availability and relative success of available ADR processes may lead to a greater willingness of parties to try less procedural and adversarial options for resolution of conflicts. More open communication between parents and school and LEA personnel concerning educational issues could also build a foundation for avoiding conflict and would allow ownership of the IEP and other processes to belong equally to all team members.

Related to this, communication among LEAs, SEAs and OSEP regarding reporting requirements could help clarify expectations regarding other non-IDEA required dispute resolution options. Similarly, clarification regarding the timing and use of various alternative dispute resolution processes in relation to required procedures in IDEA could extend the positive outcomes of ADR already seen. States appear to be more likely to develop and expand ADR processes when they can assure that the ADR processes represent effective options within the framework of collaborative decision making and effective conflict resolution specified by IDEA.

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