



Report to the Chairman, Committee on  
Education and the Workforce, House of  
Representatives

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August 2014

# SPECIAL EDUCATION

Improved  
Performance  
Measures Could  
Enhance Oversight of  
Dispute Resolution

# GAO Highlights

Highlights of [GAO-14-390](#), a report to the Chairman, Committee on Education and the Workforce, House of Representatives

## Why GAO Did This Study

States receiving IDEA funds must ensure that a free appropriate public education is made available to all children with disabilities, and IDEA has long incorporated formal methods to resolve disputes between parents and school districts. The 2004 reauthorization of IDEA expanded the availability of alternative dispute resolution by broadening the use of voluntary mediation and requiring resolution meetings prior to due process hearings. GAO was asked to examine the use of dispute resolution methods since 2004. In this report GAO (1) examines recent trends in dispute resolution methods, (2) reports stakeholders' views on alternative methods, and (3) assesses Education's related performance measures for states. GAO analyzed federal dispute resolution data from 2004 to 2012, conducted a national survey, compared Education's performance measures to leading practices, and interviewed Education officials and stakeholders selected for their knowledge of dispute resolution.

## What GAO Recommends

GAO recommends that Education improve measures for overseeing states' dispute resolution performance, including more transparent data on due process hearing decisions and comparable parental involvement data. Education neither agreed nor disagreed with the recommendations and proposed alternative actions. GAO does not believe these proposals will address the weaknesses in Education's performance measures and continues to believe the recommendations remain valid.

View [GAO-14-390](#). For more information, contact Jacqueline M. Nowicki at (617) 788-0580 or [nowickij@gao.gov](mailto:nowickij@gao.gov).

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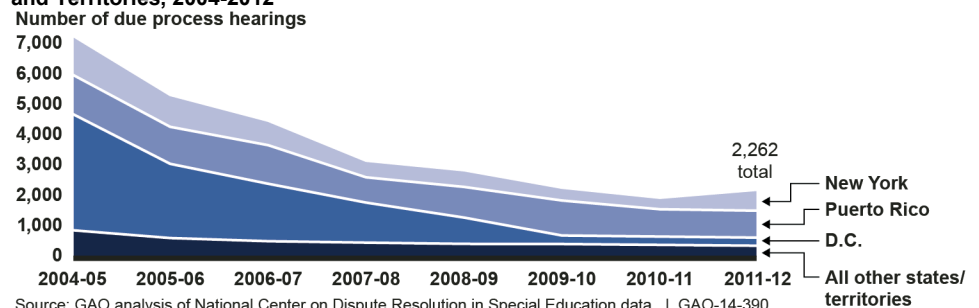
## SPECIAL EDUCATION

### Improved Performance Measures Could Enhance Oversight of Dispute Resolution

## What GAO Found

From 2004 through 2012, the number of due process hearings—a formal dispute resolution method and a key indicator of serious disputes between parents and school districts under the Individuals with Disabilities Education Act (IDEA)—substantially decreased nationwide as a result of steep declines in New York, Puerto Rico, and the District of Columbia. Officials in these locations largely attributed these declines to greater use of mediation and resolution meetings—methods that IDEA requires states to implement. Despite the declines, officials in these locations said that higher rates of hearings persisted because of disputes over private school placements or special education services. GAO did not find noteworthy trends in the use of other IDEA dispute resolution methods, including state complaints, mediation, and resolution meetings. States and territories reported on GAO's survey that they used mediation, resolution meetings, and other methods they voluntarily implemented to facilitate early resolution of disputes and to avoid potentially adversarial due process hearings.

**Due Process Hearings in New York, Puerto Rico, the District of Columbia, and Other States and Territories, 2004-2012**



States, territories, and other stakeholders generally reported on GAO's survey or in interviews that alternative methods are important to resolving disputes earlier. Some stakeholders cited the potential of these methods to improve communication and trust between parents and educators. Some state officials said that a lack of public awareness about the methods they have voluntarily implemented was a challenge to expanding their use, but they were addressing this with various kinds of outreach, such as disseminating information through parent organizations.

The Department of Education (Education) uses several measures to assess states' performance on dispute resolution but lacks complete information on timeliness and comparable data on parental involvement. Education requires all states to report the number of due process hearing decisions that were made within 45 days or were extended; however, it does not direct states to report the total amount of time that extensions add to due process hearing decisions. Similarly, Education collects data from states on parental involvement—a key to dispute prevention—but does not require consistent collection and reporting, so the data are not comparable nationwide. Leading performance measurement practices state that successful performance measures should be clearly stated and provide unambiguous information. Without more transparent timeliness data and comparable parental involvement data, Education cannot effectively target its oversight of states' dispute resolution activities.

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# Contents

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Letter		1
	Background	5
	Due Process Hearings Have Substantially Decreased, and States and Territories Use a Range of Other Methods to Resolve Disputes	12
	States, Territories, and Other Stakeholders Reported Alternative Dispute Resolution Methods Helped Resolve Disputes without Resorting to Due Process Hearings	19
	Education Lacks Key Information on the Timeliness of Due Process Hearing Decisions, and the Parental Involvement Data It Collects Are Not Used for Oversight	23
	Conclusions	31
	Recommendations for Executive Action	32
	Agency Comments and Our Evaluation	32
Appendix I	Comments from the U.S. Department of Education	35
Appendix II	GAO Contact and Staff Acknowledgments	38
Tables		
	Table 1: Established Timelines for Due Process Hearing and State Complaint Decisions	8
	Table 2: Dispute Resolution Performance Measures	10
	Table 3: Examples of State Comments on Most Common Voluntarily Offered Methods	22
Figures		
	Figure 1: Steps in Due Process and State Complaint Process under the Individuals with Disabilities Education Act	8
	Figure 2: Rate of Due Process Hearings, 2004-2012	13
	Figure 3: Number of Due Process Hearings, 2004-2012	14
	Figure 4: Rates of Mediations and Resolution Meetings	16
	Figure 5: Commonly Offered Alternative Dispute Resolution Methods Voluntarily Implemented by States and Territories	17

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Figure 6: Use of Extensions to Due Process Hearing Decision  
Timelines for School Year 2011-2012

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**Abbreviations**

CADRE	Consortium for Appropriate Dispute Resolution in Special Education
Education	Department of Education
IDEA	Individuals with Disabilities Education Act
IEP	Individualized education program
LEA	Local educational agency
NCSEAM	National Center for Special Education Accountability Monitoring
OSEP	Office of Special Education Programs
PACER	Parent Advocacy Coalition for Educational Rights
SEA	State educational agency

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August 25, 2014

The Honorable John Kline  
Chairman  
Committee on Education and the Workforce  
House of Representatives

Dear Mr. Chairman:

The Department of Education (Education) reported that in school year 2010-11, approximately 6.4 million children and youth aged 3 through 21 received special education and related services under the Individuals with Disabilities Education Act (IDEA), Part B. First enacted in 1975 as the Education for All Handicapped Children Act, IDEA was last reauthorized in 2004. Its purposes include ensuring that a free appropriate public education is available to children with disabilities, protecting their and their parents' rights under the Act, and assisting states and local educational agencies (LEA) in financing their education.<sup>1</sup> To accomplish these purposes, the Act requires that states accepting IDEA funds ensure that schools develop, with input from parents, an individualized education program (IEP) for each eligible child<sup>2</sup> and implement certain procedural safeguards, including the opportunity to present a complaint with respect to matters related to the identification, evaluation, or educational placement of children with disabilities or the provision of a free appropriate public education to the child.<sup>3</sup> IDEA and its implementing regulations provide formal methods—due process complaint and hearing procedures and state complaint procedures—for resolving disputes between parents and school districts, which represent important

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<sup>1</sup>20 U.S.C. § 1400(d)(1). Free appropriate public education means special education and related services that—(a) are provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the state educational agency; (c) include an appropriate preschool, elementary school, or secondary school education in the state involved; and (d) are provided in conformity with the individualized education program (IEP) requirements of IDEA. 20 U.S.C. § 1401(9). Moreover, IDEA requires that states have in effect policies and procedures to ensure that children with disabilities are identified, located and evaluated. 20 U.S.C. § 1412(a)(3)(A).

<sup>2</sup>20 U.S.C. § 1414(d).

<sup>3</sup>20 U.S.C. § 1415(b)(6)(A).

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protections for families under IDEA.<sup>4</sup> However, federal policymakers have recognized the often adversarial and costly nature of escalated disputes between parents and school districts—especially those that involve due process hearings. Similarly, Education has observed that due process hearings generally are expensive for all parties, time-consuming, and are universally understood to be a marker of serious unresolved differences about a student’s need for special education and related services or the nature or location of services.<sup>5</sup> Reauthorizations of IDEA have included provisions to promote early and less costly methods of dispute resolution. In 1997, IDEA was amended to require states to offer parties to a dispute the opportunity to voluntarily use mediation, whenever a due process complaint was filed.<sup>6</sup> The 2004 reauthorization of IDEA required states to expand the availability of mediation, allowing parents and districts to use it at any point; that is, before or after filing a due process or state complaint. It also required parties to attend a resolution meeting within 15 days of when a parent files a due process complaint to encourage them to resolve disputes prior to due process hearings, unless both parties agree to waive the meeting or use IDEA’s mediation process.<sup>7</sup> Resolution meetings and mediation are regarded by Education as alternative dispute resolution methods.<sup>8</sup>

In preparation for the next reauthorization of IDEA, you asked us to examine the use of dispute resolution methods, including mediation and resolution meetings, since the 2004 reauthorization. This report examines the following questions:

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<sup>4</sup>Due process hearings provide parents and school districts with an impartial opportunity to resolve complaints related to the identification, evaluation, or educational placement of a child, or the provision of a free appropriate public education to the child. In contrast, state complaints allow organizations or individuals, including those from another state, to file a complaint alleging that a public agency has violated a requirement of Part B of IDEA or its implementing regulations.

<sup>5</sup>GAO, *Special Education: Numbers of Formal Disputes Are Generally Low and States Are Using Mediation and Other Strategies to Resolve Conflicts*, [GAO-03-897](#) (Washington, D.C.: Sept. 9, 2003).

<sup>6</sup>Pub. L. No. 105-17, § 101, sec. 615(e)(1), 111 Stat. 37, 90.

<sup>7</sup>Pub. L. No. 108-446, § 101, sec. 615(e)(1), 118 Stat. 2647, 2719.

<sup>8</sup>See U.S. Department of Education, OSEP MEMO 13-08: Dispute Resolution Procedures under Part B of the Individuals with Disabilities Education Act (Part B) (Washington, D.C.: July 23, 2013).

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1. What are the recent trends in methods used to resolve IDEA disputes between parents and school districts?
  2. What are the views of stakeholders regarding the value of alternative methods for resolving disputes?
  3. How do Education's performance measures related to dispute resolution compare to leading practices in performance measurement?

To describe the recent trends in methods used to resolve IDEA disputes, we analyzed data collected by Education and compiled by the National Center on Dispute Resolution in Special Education operated by the Consortium for Appropriate Dispute Resolution in Special Education (CADRE) for all states, the District of Columbia, and U.S. territories from school year 2004-05 through 2011-12—the most recent data available at the time we did our work.<sup>9</sup> We reviewed relevant federal laws and regulations, as well as Education's policies, procedures and guidance to gain an understanding of requirements related to dispute resolution. We assessed the reliability of dispute resolution data by (1) performing electronic testing of required data elements, (2) reviewing existing information about the data and the system that produced them, and (3) interviewing agency officials knowledgeable about the data. We determined that the data were sufficiently reliable for the purposes of this report. We supplemented trend data with information on dispute resolution that we collected in a web-based, self-administered survey of special education directors (or other officials performing that role) in all states and U.S. territories (60 entities in total).<sup>10</sup> We designed and tested the questionnaire in consultation with subject matter specialists, special education stakeholders, and state special education directors, which we selected for their knowledge of special education dispute resolution. For example, we consulted two organizations that collaborated on a prior survey of state directors of special education on dispute resolution. Survey data collection took place from late 2013 through January 2014 and we obtained a 100 percent response rate.

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<sup>9</sup>In this report, we define alternative dispute resolution methods as a range of strategies to resolve disputes between parents and school districts excluding due process hearings and state complaint resolutions.

<sup>10</sup>In addition to the 50 states and the District of Columbia, our survey included the Bureau of Indian Education, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, Palau, Puerto Rico, and the Virgin Islands. We did not survey Midway.

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To describe the views of stakeholders regarding the value of alternative methods for resolving disputes, we collected responses in a survey of state and territory special education directors and conducted other activities. We asked survey questions about the perceived importance of alternative methods for resolving disputes as well as challenges faced and assistance received in implementing these methods. In addition to states' views on alternative dispute resolution, we also collected information from national organizations and subject matter specialists in special education, including organizations representing states, school districts, parents, and students, which we selected based on their knowledge of special education dispute resolution. To obtain the perspective of parents of children with disabilities, we gathered the perspectives of organizations representing the views and rights of these parents. We also held discussion groups with 14 parents identified by the state educational agency (SEA) and Parent Information and Training Centers in one state regarding their recent experiences in using alternative methods for resolving disputes.<sup>11</sup> The views of these parents are not generalizable but still provide valuable information to illustrate the range of parent views on alternative methods to resolving disputes in special education. Additionally, we conducted a search of related literature and reviewed prior GAO work on this topic.<sup>12</sup>

To evaluate how Education assesses states' performance in IDEA dispute resolution, we reviewed Education's state performance measures related to dispute resolution and compared them to nine attributes of successful performance measures previously identified by GAO, such as whether performance measures are designed to be clear.<sup>13</sup> In assessing Education's measures against these attributes, we analyzed Education

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<sup>11</sup>A Parent Training and Information Center is an Education-funded resource for parents with children with disabilities, providing information and training on special education topics, the rights of families under IDEA, and options available to resolve disputes with school districts. Every state has at least one such center.

<sup>12</sup>[GAO-03-897](#).

<sup>13</sup>GAO, *Tax Administration: IRS Needs to Further Refine Its Tax Filing Season Performance Measures*, [GAO-03-143](#) (Washington, D.C.: Nov. 22, 2002). GAO identified nine attributes of performance goals and measures based on previously established GAO criteria. In addition, GAO considered other sources, including Office of Management and Budget Circular No. A-11,12, the Government Performance and Results Act of 1993, and IRS's handbook on Managing Statistics in a Balanced Measures System, and vetted them with agency officials.



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dispute resolution performance data and spoke with Education officials about performance measures and monitoring of dispute resolution. We reviewed methodological issues as necessary to assess whether a particular measure met the overall characteristics of a successful performance measure. To inform all of our objectives, we reviewed relevant federal laws, regulations, and guidance and interviewed officials with Education's Office of Special Education Programs (OSEP), CADRE, SEAs, and national stakeholders and subject matter specialists in special education and IDEA dispute resolution. We selected national stakeholders and subject matter specialists based on their knowledge of dispute resolution issues in special education.

We conducted this performance audit from April 2013 to August 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

A special education dispute may involve a variety of issues. According to an Education study published in 2011, the most common topics of disputes were (1) whether schools were providing an appropriate educational environment for certain students; (2) whether schools carried out the education programs as set forth in the IEP; (3) the types of special education and related services, if any, specific children needed; and (4) children's eligibility for IDEA services and whether eligibility determinations were properly made.<sup>14</sup>

A range of methods exists to resolve special education disputes, ranging from formal hearings and state complaint procedures to less formal, alternative methods.

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## Due Process Hearings and State Complaints

IDEA and its implementing regulations have long required states to provide two formal methods—due process hearings and state complaint

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<sup>14</sup>U.S. Department of Education, *IDEA National Assessment Implementation Study: Final Report* (Washington, D.C.: July 2011).

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resolutions—for resolving disputes between parents and school districts. Although both methods provide avenues for resolving such disputes, these processes differ with respect to who can file each type of complaint, subject matter, timing, procedures, and appeal processes.

## Due Process Hearings

IDEA provides that parents and school districts have the right to file a due process complaint notice to request a due process hearing on any matter relating to the identification, evaluation, or educational placement of a child, or the provision of a free appropriate public education to a child with a disability.<sup>15</sup> For example, a parent might file a due process complaint over whether a school district is using the appropriate instructional methods for a child. After filing a complaint but prior to holding a hearing, IDEA requires parties to a dispute to attend a resolution meeting where parents discuss their complaint and the facts that form the basis of the complaint and the LEA is given the opportunity to resolve the complaint, unless the parent and the LEA agree in writing to waive the meeting or use IDEA's mediation process.<sup>16</sup> The purpose of the resolution meeting is to achieve a prompt and early resolution of a parent's due process complaint to avoid a more costly and adversarial due process hearing and the potential for civil litigation.<sup>17</sup> If the parties reach an agreement at the resolution meeting, then a due process hearing is not necessary. If the parties do not reach an agreement or choose to waive this meeting, a due process hearing is held. A due process hearing is an administrative proceeding in which an impartial hearing officer receives evidence, provides for the examination and cross-examination of witnesses by each party, and then issues a report of findings of fact and a decision.<sup>18</sup> Either party can appeal a hearing officer's decision in any state court of competent jurisdiction or in federal court without regard to the amount in controversy.<sup>19</sup>

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<sup>15</sup>20 U.S.C. § 1415(b)(6)(A).

<sup>16</sup>20 U.S.C. § 1415(f)(1)(B)(i), 34 C.F.R. § 300.510(a)(3). Resolution meetings must be held within 15 days of a school district's receipt of the parents' due process complaint.

<sup>17</sup>U.S. Department of Education, *OSEP MEMO 13-08: Dispute Resolution Procedures under Part B of the Individuals with Disabilities Education Act (Part B)*.

<sup>18</sup>34 C.F.R. §§ 300.511-300.513.

<sup>19</sup>20 U.S.C. § 1415(i)(2)(A). If the school district is responsible for conducting due process hearings, an appeal from a due process hearing is to the state educational agency before appealing to court. 20 U.S.C. § 1415(g).

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## State Complaints

Education's regulations pertaining to state complaint procedures permit parents and organizations and individuals, including those from another state, to file a complaint with the SEA alleging that a public agency has violated a requirement of IDEA, Part B.<sup>20</sup> This differs from a due process complaint in part because, while only parents and public agencies can file due process complaints, any organization or individual, including one from another state, may file a written state complaint. Once the complaint has been filed, the SEA must carry out an independent on-site investigation if the SEA determines that an investigation is necessary.<sup>21</sup> It must then make a determination and issue a written decision that may include specific procedures for implementation of its decision. In contrast to due process procedures, parties cannot file an appeal in state or federal court.

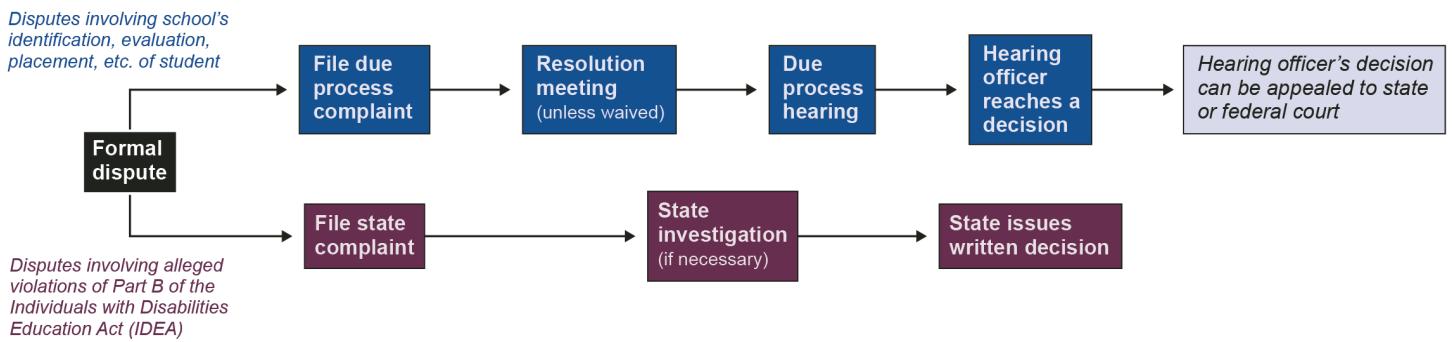
See figure 1 for a comparison of the steps involved in due process and state complaint process under IDEA.

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<sup>20</sup>34 C.F.R. § 300.153.

<sup>21</sup>Education's regulations, 34 C.F.R. § 300.515(a), provide that not later than 45 days after the expiration of the 30-day resolution period or the adjusted resolution periods, a final decision is reached in the hearing and a copy of that decision is mailed to the parties. Education's regulations, 34 C.F.R. § 300.515(c), also provide that a hearing officer may grant specific extensions of time beyond the 45-day period at the request of either party to the hearing. The IDEA regulations do not give a hearing officer the authority to grant an extension unilaterally or an extension for an unspecified period of time. Education's regulations and guidance do not limit the length of an extension or how many times a party to a dispute can request one. There is no requirement that the other party consent or agree to the extension. When a state reports that a due process hearing decision was issued within an extended timeline, OSEP requires the state to report whether the decision has been issued within the specific time extension granted by the hearing officer.

**Figure 1: Steps in Due Process and State Complaint Process under the Individuals with Disabilities Education Act**



Source: GAO analysis of IDEA regulations. | GAO-14-390

Note: IDEA allows parties to a dispute to use mediation at any time during the due process and state complaint processes, as well as prior to the filing of a due process or state complaint.

Education established specific timelines for issuing decisions resulting from due process hearings and state complaint resolutions and set terms by which these timelines can be extended (see table 1).

**Table 1: Established Timelines for Due Process Hearing and State Complaint Decisions**

	Timeline	Extension
Due process hearing decision	Must be reached within 45 days after the conclusion of the resolution period. <sup>a</sup> The resolution period is 30 days and starts with the filing of a due process complaint. <sup>b</sup>	A hearing officer may grant an extension to the due process hearing time periods at the request of the parent or school district. <sup>c</sup>
State complaint decision	Must be issued within 60 days after a complaint is filed with the state educational agency (SEA). <sup>d</sup>	An SEA may grant an extension to the time limit for a state complaint investigation but generally only in exceptional circumstances or where the parent and school district agree to extend the timeline to engage in mediation or another alternative method of dispute resolution. <sup>e</sup>

Source: GAO analysis of IDEA regulations. | GAO-14-390

Notes: An SEA's procedures for granting extensions of the timeline for resolving state complaints must also include procedures for effective implementation of the SEA's final decision, if needed. <sup>34</sup> C.F.R. § 300.152(b)(2). Education guidance states that exceptional circumstances do not include state staff shortages or heavy caseloads; school vacations and breaks; or the use of mediation or alternative dispute resolution without agreement by both parties to extend the 60-day time limit.

<sup>a</sup>34 C.F.R. § 300.515(a).

<sup>b</sup>34 C.F.R. § 300.510(a), (b).

<sup>c</sup>34 C.F.R. § 300.515(c).

<sup>d</sup>34 C.F.R. § 300.152(a).

<sup>e</sup>34 C.F.R. § 300.152(b).

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## Alternative Dispute Resolution Methods

A variety of alternative dispute resolution methods exist that provide opportunities for parties to resolve disputes prior to due process hearings or state complaint resolutions. These include two methods states are required to provide under IDEA—mediation and resolution meetings—as well as others that states have voluntarily implemented.

### Mediation and Resolution Meetings

Either a parent or a school district can initiate the mediation process, which must be voluntary for each party. Mediations are conducted by a qualified and impartial individual who is trained in effective mediation techniques and knowledgeable in laws and regulations about special education and related services. If the parties reach an agreement through the mediation process, they must execute a signed, written agreement. According to Education the agreement is enforceable in any state or federal district court or by the SEA if the state has other procedures that permit parties to seek enforcement of mediation or resolution agreements.

Resolution meetings allow parents and districts an opportunity to resolve a dispute without due process hearings by providing an opportunity for them to discuss the due process complaint and the facts that form the basis of that complaint without necessarily having attorneys present.<sup>22</sup> Similar to mediation, if the parties reach agreement in a resolution meeting, they must execute a signed written agreement that is enforceable in state or federal court.

### Other Alternative Methods

Alternative methods that states have voluntarily developed and implemented are generally meant to help to facilitate early resolution of disputes before they proceed to a due process hearing and to preserve relationships between families and educators. Examples of early resolution practices include educator training in conflict resolution, which is designed to equip individuals with skills to better communicate and negotiate their positions and interests, and facilitated IEP meetings in which a facilitator helps keep members of the IEP team focused on the development of the IEP while addressing conflicts and disagreements that may arise during the meeting.

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<sup>22</sup>20 U.S.C. § 1415(f)(1)(B), 34 C.F.R. § 300.510(a)(2).

## Education’s Oversight and Technical Assistance

To ensure states comply with the requirements of their IDEA grants, Education’s Office of Special Education Programs (OSEP) conducts a variety of activities to oversee and assist them, including monitoring states’ performance on a variety of indicators. We have previously reported that agencies need to have performance measures that demonstrate results, are limited to a vital few, cover multiple priorities, and provide useful information for decision making in order to track how their programs and activities can contribute to attaining the agency’s goals and mission.<sup>23</sup> Further, past GAO work has shown that agencies successful in measuring performance had performance measures reflecting a range of attributes, such as clarity in how measures are stated and defined.<sup>24</sup> Education uses four performance measures for dispute resolution as part of a system of performance measures to guide SEAs in their implementation of IDEA and in how they report their progress and performance to the department (see table 2).<sup>25</sup>

**Table 2: Dispute Resolution Performance Measures**

Measure	Description
Timely State Complaint Reports	Percent of state complaint reports issued within the 60-day timeline or a timeline extended for exceptional circumstances.
Timely Due Process Hearing Decisions	Percent of due process hearing decisions made within the 45-day timeline or a timeline that is properly extended by the hearing officer.
Hearing Requests Resolved by Resolution Meetings	Percent of hearing requests that went to resolution sessions that were resolved through resolution session settlement agreements.
Mediations Resulting in Agreements	Percent of mediations held that resulted in mediation agreements.

Source: GAO analysis of Education documentation. | GAO-14-390

<sup>23</sup>For more information, see [GAO-03-143](#).

<sup>24</sup>[GAO-03-143](#).

<sup>25</sup>With the reauthorization of IDEA in 2004, Education revised its performance measures and reporting requirements for SEAs to align its accountability system for IDEA with the requirements of the Government Performance and Results Act of 1993 (GPRA). GPRA, as subsequently modified by the GPRA Modernization Act of 2010, provides for the establishment of strategic planning and performance measurement in the federal government and requires that federal agencies develop annual performance plans and program performance reports to provide information that can be used by federal managers to improve results. For more information, see GAO, *Managing For Results: Executive Branch Should More Fully Implement the GPRA Modernization Act to Address Pressing Governance Challenges*, [GAO-13-518](#) (Washington, D.C.: June 2013).

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Education established a new IDEA data center to help states, school districts, and other entities build capacity for collecting high quality IDEA performance data, including dispute resolution data, and makes these data available to the public on the center's website.<sup>26</sup> Education uses a variety of tools, including analyzing states' performance data and conducting desk audits and on-site visits to monitor states' compliance with IDEA's dispute resolution requirements and target technical assistance.

Education has also recognized that involving parents in the education of their children with disabilities is important to preventing or mitigating disputes with school districts. In addition to data on dispute resolution, Education also requires states to provide data on the extent to which parents report that schools facilitated parent involvement to improve services and results for children with disabilities.

Education provides several forms of technical assistance to help states implement informal early resolution methods to facilitate the timely resolution of disputes. For example, Education funds the National Center on Dispute Resolution in Special Education to provide states with assistance in implementing a range of dispute resolution options, including those that provide opportunities for early, less costly, and less adversarial dispute resolution. Education also funds a national network of Parent Training and Information Centers that provide parents in each state with information about their rights under IDEA and the options available to them for resolving special education disputes. Lastly, Education provides written guidance on dispute resolution procedures under IDEA.

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<sup>26</sup>U.S. Department of Education, IDEA data center, [www.ideadata.org](http://www.ideadata.org).

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## Due Process Hearings Have Substantially Decreased, and States and Territories Use a Range of Other Methods to Resolve Disputes

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### The National Decline in Rates and Numbers of Due Process Hearings Has Been Driven by Steep Rate Declines in New York, District of Columbia, and Puerto Rico

Since 2004, the nationwide rates of due process hearings<sup>27</sup>—a key indicator of serious disputes between parents and school districts and a formal method for resolving disputes—have decreased substantially (see fig. 2).<sup>28</sup> As shown in figure 2, this trend was largely driven by steep rate declines in New York, District of Columbia, and Puerto Rico—three locations that have relatively high rates of due process hearings.<sup>29</sup> SEA representatives in these locations cited the use of mediation or resolution meetings as key among the reasons for the declines. Additionally, a New York official told us that the use of settlement agreements prior to due process hearing decisions may have also contributed to declines in hearings, while a District of Columbia official pointed to improvements in identifying students with special education needs earlier and delivering services more efficiently. Lastly, a representative for Puerto Rico told us that improvements in how the SEA handles due process complaints and the use of technology have resulted in a decline in hearings.

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<sup>27</sup>The data indicate the number of due process hearings that were fully adjudicated.

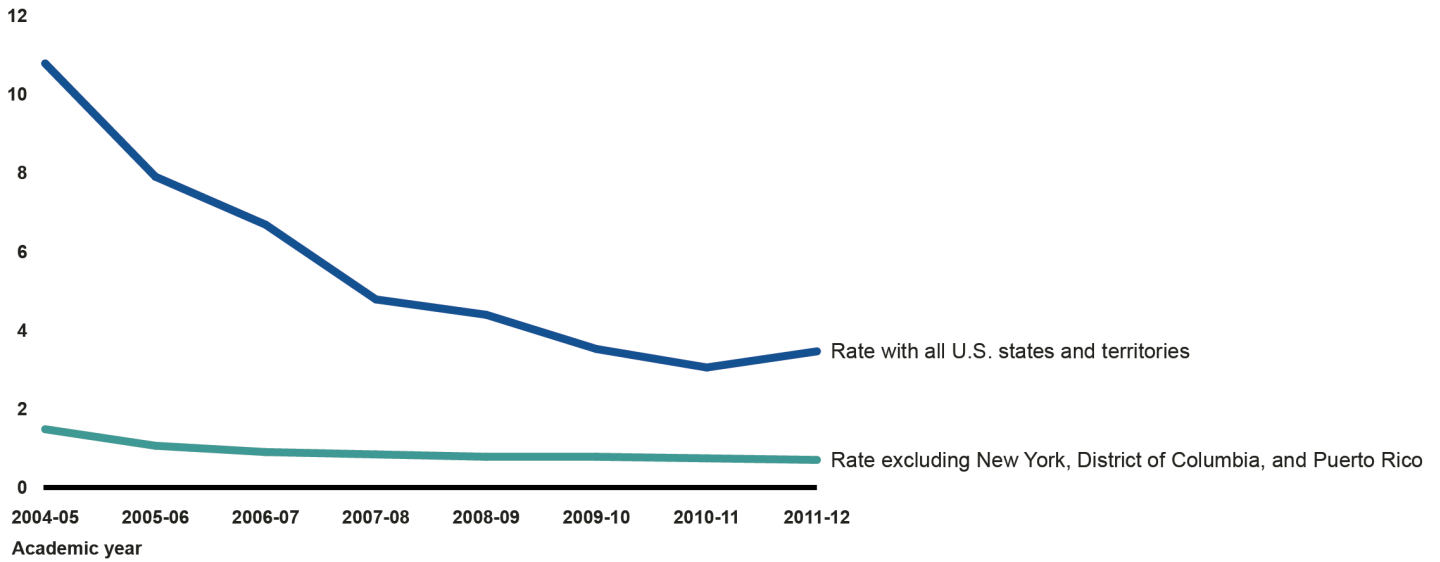
<sup>28</sup>In this section, we focus on rates, rather than the number of due process hearings held, to allow for greater comparability among states and entities. The number of hearings held nationally has also trended downward over this period.

<sup>29</sup>We did not find a noteworthy national trend with the rates of state complaint reports—another formal IDEA method for resolving disputes—from 2004 to 2012.



**Figure 2: Rate of Due Process Hearings, 2004-2012**

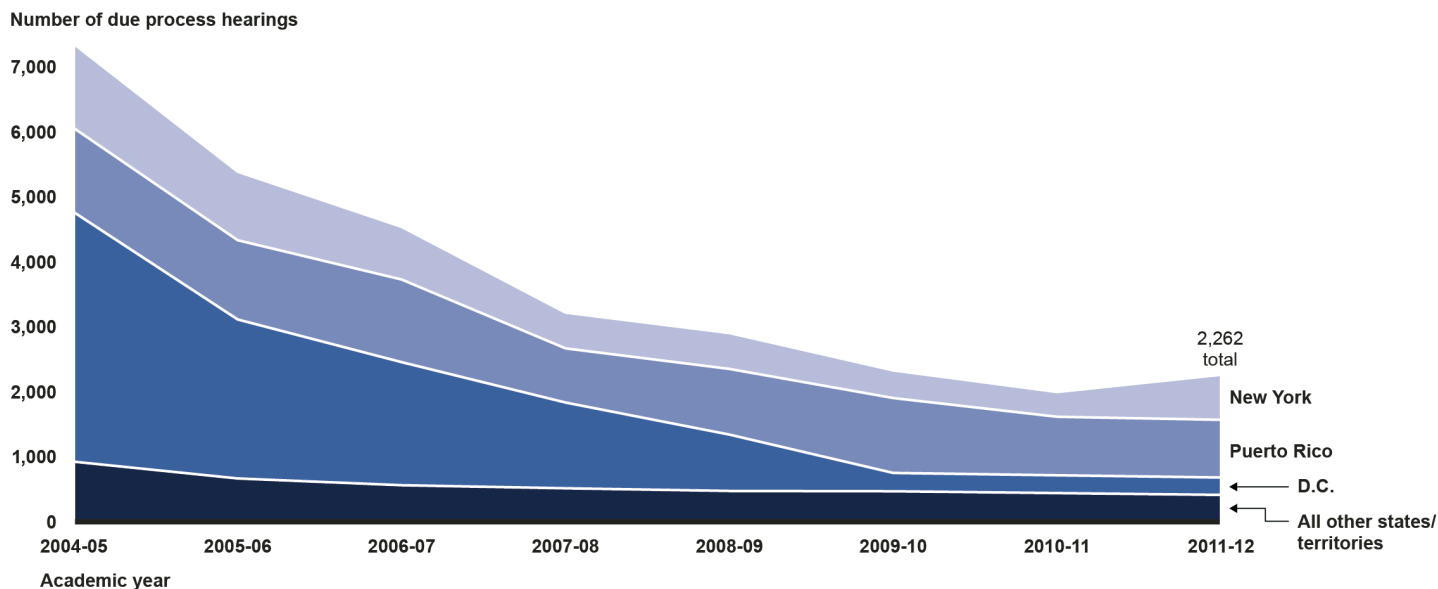
Number of due process hearings per 10,000 special education students



Source: GAO analysis of National Center on Dispute Resolution in Special Education data. | GAO-14-390

Despite such substantial declines, due process hearings in these locations still comprised over 80 percent of due process hearings nationally in 2011-2012. For trends in the numbers of due process hearings in these locations and all other states, see figure 3.

**Figure 3: Number of Due Process Hearings, 2004-2012**



Source: GAO analysis of National Center on Dispute Resolution in Special Education data. | GAO-14-390

Outside of these three locations, the rate of due process hearings has remained consistently low, ranging from 1.5 hearings per 10,000 special education students in 2004-2005 to 0.7 hearings in 2011-2012. These overall low rates of due process hearings are slightly lower than observations we made over a decade ago, when we found that due process hearings occurred at a low rate of about 5 per 10,000 special education students in 2000.<sup>30</sup> Education officials told us that reducing the occurrence of due process hearings was generally positive—considering that hearings can be protracted, adversarial and costly. However, they suggested that a low number of due process hearings may not necessarily indicate a lack of problems associated with delivering special education services. They suggested that dispute resolution trends should be understood in combination with other information on individual states, such as parents’ awareness of the procedural safeguards under IDEA.

According to state education officials, certain types of complaints have been associated with the substantially higher rates of due process

<sup>30</sup>GAO-03-897.

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hearings in New York, District of Columbia, and Puerto Rico. For example, state education officials in these locations told us that many due process hearings were held because parents and officials from their children's school districts disagreed on whether to place the students in private schools. In addition, a state education official in Puerto Rico told us many due process hearings were held because parents and officials disagreed about the need to provide services related to special education, such as physical therapy or special classroom accommodation. Further, Education officials told us that higher rates of due process hearings in District of Columbia and Puerto Rico have been driven, in part, by consent decrees, which are agreements entered into by parties to a lawsuit under the supervision of a court. For example, lawsuits were initiated against District of Columbia public schools in 1997, alleging that District of Columbia failed to provide timely due process hearings and implementation of hearing officer determinations and settlement agreements. The latest consent decree was approved under this litigation in 2006 by the U.S. District Court for the District of Columbia, with one of its goals being for District of Columbia to achieve and maintain timely due process hearings.<sup>31</sup>

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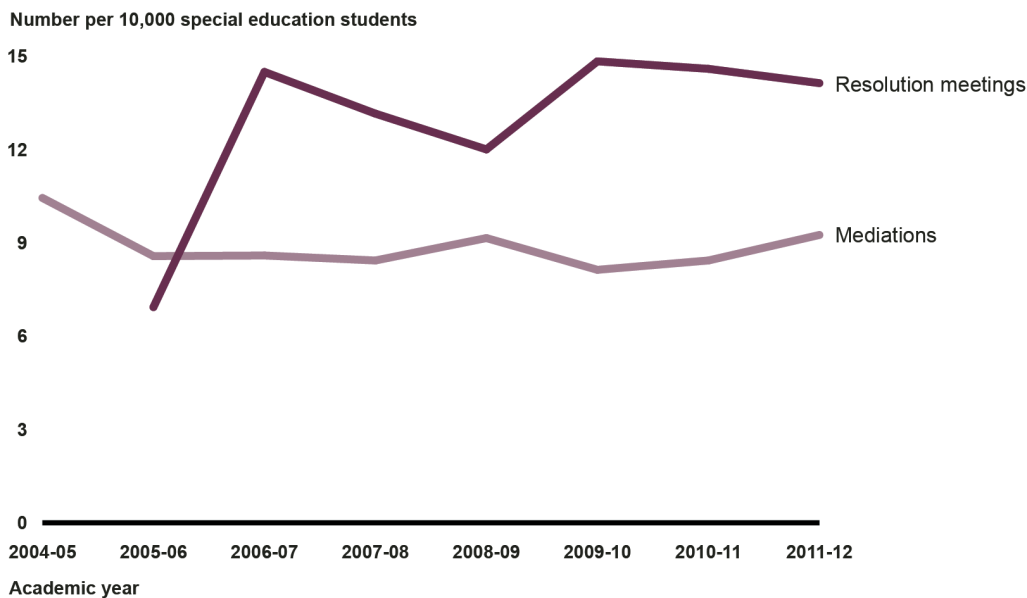
### States and Territories Use a Range of Alternative Methods for Early Dispute Resolution

Regarding the two alternative methods states are required by IDEA to make available, the rate of mediations held decreased slightly from 2004 to 2012, and the rate of resolution meetings held more than doubled from 2005-06—when states were first required to implement them—to 2006-07 and declined slightly from 2006-07 to 2011-12 (see fig. 4). The slight overall decline in mediations may have resulted, in part, from the decrease in due process complaints filed. According to Education officials, the low rate of resolution meetings in 2005-2006 (6.9 per 10,000 students) can be explained primarily by the lack of awareness about this new requirement among school districts at that time.

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<sup>31</sup>In July 2011, the District of Columbia was released from the part of the consent decree that involved timely adjudication of due process complaints.

**Figure 4: Rates of Mediations and Resolution Meetings**

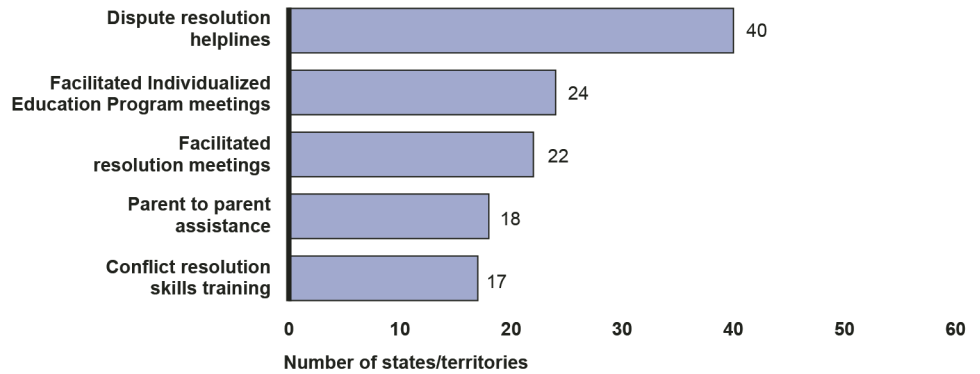


Source: GAO analysis of National Center on Dispute Resolution in Special Education data. | GAO-14-390

We found that while mediations occurred less frequently than resolution meetings in 2011-2012, mediations were more likely than resolution meetings to result in agreements. That is, over two-thirds (69 percent) of mediations resulted in agreements while less than a quarter (22 percent) of all resolution meetings resulted in agreements. These differences may be due to the fact that resolution meetings are required prior to a due process hearing, unless waived by both parties, while mediations are voluntary for the parties, and the parties may therefore be more open to agreement.

In addition to mediation and resolution meetings, states and territories we surveyed reported voluntarily offering a variety of other alternative dispute resolution methods, with two-thirds (33 out of 51) of them reporting offering three or more such methods. Among the most common of these were (1) dispute resolution helplines, (2) facilitated IEP meetings, (3) facilitated resolution meetings, (4) parent-to-parent assistance, and (5) conflict resolution skills training (see fig. 5). These methods are briefly described as follows:

**Figure 5: Commonly Offered Alternative Dispute Resolution Methods Voluntarily Implemented by States and Territories**



Source: GAO analysis of survey of states on alternative dispute resolution in special education. | GAO-14-390

Notes: Counts of states/territories are based on methods offered state- or territory-wide.

We surveyed a total of 60 states and territories and received a 100 percent overall response rate. However, not all 60 states and territories answered every question. The total number of responses to questions related to the individual dispute resolution methods above was 59 of 60 states/territories completing the survey.

- Dispute resolution helplines.** Dedicated staff in the SEA or through an SEA-contracted service provider available to respond to calls or e-mails from the public about dispute resolution options and procedures. For example, California reported maintaining a toll free number to allow both parents and school staff to contact them for advice. The service is provided in English and Spanish and helpline personnel may refer parents to support services such as parent centers, family empowerment centers, or technical assistance units. New York reported operating six regional offices staffed by state education personnel who provide parents and other parties with information regarding dispute resolution options and technical assistance.
- Facilitated IEP meetings.** Facilitators who are not part of the IEP team are used when an adversarial climate exists or when an IEP meeting is expected to be particularly complex or controversial. Texas reported it promotes facilitated IEP team meetings by developing a statewide facilitated IEP meetings project to be implemented in the 2014-15 school year.
- Facilitated resolution meetings.** Facilitators are used to help parties resolve a dispute during a resolution meeting. Michigan reported that resolution meetings are facilitated by special education attorneys and

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help encourage parties to resolve a dispute before it goes to a due process hearing.

- **Parent-to-parent assistance.** An SEA-supported service in which parents assist other parents and school district personnel, especially in addressing emerging or active complaints. Maryland reported it maintains family support specialists who work informally with families and school systems to resolve special education disputes.
- **Conflict Resolution Skills Training.** Training to enhance the capacity of parents and school, district, and state personnel to communicate, negotiate, and prevent conflict from evolving and becoming problematic. For example, in Iowa, the SEA conflict resolution skills training for state administrators, LEA representatives, and parents.

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## States, Territories, and Other Stakeholders Reported Alternative Dispute Resolution Methods Helped Resolve Disputes without Resorting to Due Process Hearings

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### States, Territories, and Other Stakeholders Considered Alternative Methods Important for Resolving Disputes without Resorting to Due Process Hearings

#### Mediation

On our survey, a large majority of state officials reported mediation and resolution meetings—methods that IDEA requires states make available—as extremely, very or moderately important to resolving disputes early.<sup>32</sup> Many states also reported methods they have voluntarily implemented as extremely, very or moderately important. Some stakeholders cited the potential of these methods to improve communication and trust between parents and schools.

55 states and territories reported that mediation was extremely, very or moderately important to resolving disputes,<sup>33</sup> and some officials commented on our survey or in follow up discussions that it provides parties with an opportunity to reduce tension, preserve or enhance relationships, and having a third party facilitate the discussion is beneficial. For example, an Iowa official explained that mediation can allow for more expedient dispute resolution and help to preserve or enhance relationships between parents and schools. Several officials

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<sup>32</sup>In addition to administering a survey, we conducted follow up interviews with survey respondents, as appropriate, to clarify or obtain additional detail on survey responses. Unless otherwise noted, in this section we are referring to information and responses obtained on the survey itself.

<sup>33</sup>The total number of responses to questions related to the individual dispute resolution methods described in this section ranged from 57 to 59 of the 60 states/territories completing the survey.

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expressed positive views about mediation and noted that there was a high likelihood that mediation resulted in agreements between parents and schools in their states. For example, officials from Rhode Island and Connecticut commented that a majority of mediations resulted in agreements in 2012-13 in their states, and one noted that most of them were reached on the day of the mediation between parents and school districts. Some state officials described on our survey and in follow up discussions difficulties they encountered in expanding the use of mediation in their state. An Oklahoma official commented that many schools are resistant to the idea of mediation before the filing of a due process complaint because of legal concerns about mediation agreements.<sup>34</sup> New York and D.C. officials told us in follow up discussions that mediation is underutilized despite its availability, in part because not all parents know that mediation is available for dispute resolution but also because parents may question the independence of mediators in their state. Some parents in one state told us they were not satisfied with the competency or independence of mediators. A national advocacy organization for people with disabilities, told us its organization recommends families to pursue mediation rather than filing a due process complaint because a trained mediator can have a positive impact of bringing parents and schools together. Education's guidance on dispute resolution similarly recognizes that the success of mediation is closely related to the mediator's ability to obtain the trust of both parties and commitment to the process.<sup>35</sup>

## Resolution Meetings

Forty-five states and territories reported that resolution meetings are an extremely, very, or moderately important method to resolve disputes. Some officials also commented that meetings such as these give parents and the school district a chance to discuss the basis of the dispute and work together to avoid a potentially adversarial due process hearing, which can also lead to improved relationships between parents and their school districts. A few state officials cited a high number of agreements as the result of resolution meetings. For example, a West Virginia official noted that during 2012, all of their requests for due process hearings

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<sup>34</sup>Under IDEA, if a resolution is reached through mediation, the parties must execute a legally binding agreement that is enforceable in state and federal courts. 20 U.S.C. § 1415(e)(2)(F).

<sup>35</sup>U.S. Department of Education, *OSEP MEMO 13-08: Dispute Resolution Procedures under Part B of the Individuals with Disabilities Education Act (Part B)*.



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were resolved at resolution meetings, and a Rhode Island official wrote that over half of its resolution meetings resulted in written agreements in the same year. However, several state officials commented on our survey or in follow up discussions that some parties prefer to waive the resolution meeting or that by the time the resolution meeting occurs parties are already entrenched which limits the ability of parties to reach an agreement before a due process hearing. For example, a Pennsylvania official told us that often parents who file due process complaints have legal representation and generally attorneys in her state have little incentive to resolve a dispute prior to a due process hearing. Similarly, attorney members of a national organization representing school boards told us in an interview that, when parents are not represented by an attorney, most disputes are resolved before they proceed to due process; however if parents are represented by attorneys, disputes are rarely are disputes resolved before a due process hearing.

Officials from an organization representing children with disabilities commented that resolution meetings are not as effective as facilitated methods where an independent third party assists parents and schools in finding a solution. IDEA does not require that resolution meetings be facilitated; however, several state officials commented on our survey and in follow up discussions that third party facilitation for resolution meetings is helpful in bringing about a resolution without resorting to a hearing. For example, an Oklahoma official commented that state officials had found facilitated resolution meetings useful to resolve disputes earlier and noted that without facilitation, parties often found it difficult to reach an agreement.

#### Other Alternative Dispute Resolution Methods

When we asked survey respondents to comment on the alternative dispute resolutions they voluntarily implemented—that is, those not required by IDEA—more than half of state officials reported that their states offer dispute resolution helplines while about half offer Facilitated IEP meetings, Conflict resolution skills training, and parent-to-parent assistance (see table 3).

**Table 3: Examples of State Comments on Most Common Voluntarily Offered Methods**

Method	Examples of why states/territories found method important
Dispute resolution helpline	California’s dispute resolution helpline is critical to informing parents about dispute resolution options.
Facilitated Individualized Education Program (IEP) meetings	As of September 1, 2014, Texas will provide a state facilitator at no cost to parents or school district for an IEP team in dispute.
Conflict resolution skills training	Virginia is developing additional tools to expand its conflict resolution training.
Parent-to-parent Assistance	Wyoming connects parents by connecting them to their state’s parent centers.

Source: GAO analysis of survey of states on alternative dispute resolution in special education. | GAO-14-390

Notes: Our survey asked states and territories to rate the importance of alternative dispute resolution methods offered statewide or in some regions or Local Education Agencies.

The total number of responses to questions related to the individual dispute resolution methods described in this table ranged from 57 to 59 of the 60 states/territories completing the survey.

A majority of states and territories reported that the guidance and assistance provided by CADRE—which serves as Education’s technical advisor and resource on special education dispute resolution—was extremely, very or moderately useful to their efforts to successfully implement and expand their early dispute resolution methods. For example, a Pennsylvania official told us in a follow up discussion that CADRE is the first resource they turn to for information and to obtain a national perspective on alternative dispute resolution issues, and an official from Florida commented that the technical assistance they received from CADRE was excellent. An Illinois official also reported their state frequently uses CADRE’s services, which were instrumental to the development and implementation of facilitated IEP meetings in their state.

Over half of the states surveyed reported no challenge or only a slight challenge in implementing or expanding dispute resolution methods due to, for example, lack of expertise or parent or school district resistance to using such methods. In follow up discussions, some state officials said the lack of public awareness as a challenge to implementing or expanding the use of alternative dispute resolution methods they have voluntarily implemented, and that they are addressing this challenge with various strategies.<sup>36</sup> For example, a Pennsylvania state official told us about the

<sup>36</sup>While IDEA requires school districts to annually notify parents in writing of the procedural safeguards available to them, including the dispute resolution methods specified by IDEA, it does not require districts to notify parents about other dispute resolution methods not specified by IDEA. Therefore states are responsible for developing strategies for notifying the public about other methods that may be available to them.

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difficulty of reaching out to and educating parents in rural and highly urban areas about alternative dispute resolution methods they have voluntarily implemented because they have less access to online information, and said the state partners with parent education networks and a statewide stakeholder council of parent advocates to raise awareness. Connecticut officials added that the state communicates with various parent groups throughout the year, publicizes alternate dispute resolution methods in its special education bulletins, and disseminates informational materials among parent groups and other state agencies. A Texas official said the state offers workshops at conferences and parent meetings to raise awareness of the states' methods for resolving disputes.

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## Education Lacks Key Information on the Timeliness of Due Process Hearing Decisions, and the Parental Involvement Data It Collects Are Not Used for Oversight

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### Education's Method for Measuring the Timeliness of Due Process Hearing Decisions Does Not Reflect Time Added by Extensions

Education assesses states' performance on dispute resolution using several different measures (see table 2) but lacks key information about the timeliness of due process hearing decisions, which reduces its ability to monitor dispute resolution effectively. Under its regulations, Education requires states and school districts, where applicable, to ensure that decisions are reached in due process hearings within 45 days after the expiration of the 30-day resolution period or adjusted resolution periods.<sup>37</sup> These regulations also permit a hearing officer to grant specific extensions of this 45-day timeline, at the request of either party to the

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<sup>37</sup>34 C.F.R. § 300.515(a).

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hearing.<sup>38</sup> According to Education's guidance on performance measures, all states are required to report the number of due process hearing requests that were adjudicated within 45 days, or a timeline that includes any approved extensions. However, this guidance does not direct states to report the amount of time that extensions add to due process hearing decisions. Leading performance measurement practices identified in our past work state that successful performance measures should, among other things, be clearly stated and provide unambiguous information.<sup>39</sup>

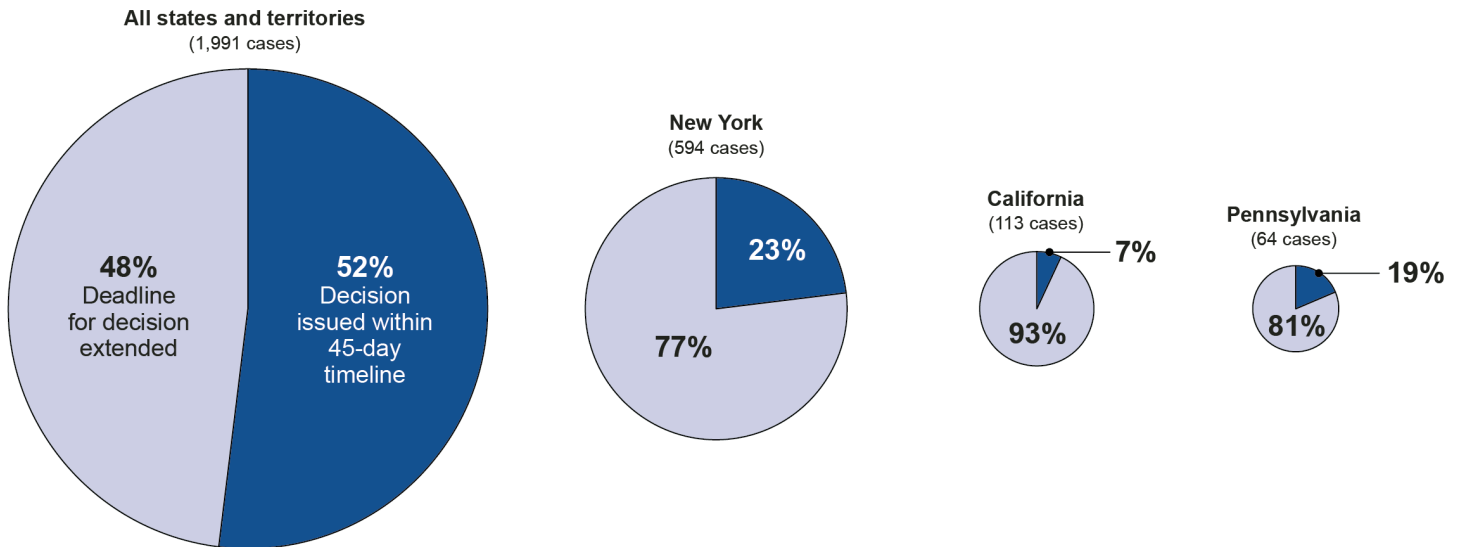
As shown in figure 6, nearly half of all due process hearing decision timelines were extended in school year 2011-12; in California, New York, and Pennsylvania, the large majority of hearing decisions were made under extended timelines. The decisions in these three states accounted for more than 65 percent of all hearing decisions nationally. Despite the more frequent use of extensions in California and New York, in 2011 they achieved about 99 percent and 86 percent, respectively, of the 100 percent performance target that Education established for hearing decision timeliness. Education's current performance measure creates the appearance that most hearing decisions in California and New York were timely even though extended hearings took an unknown amount of time, and no information is available about whether these extended timeframes affected the provision of services to children with disabilities.

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<sup>38</sup>34 C.F.R. § 300.515(c).

<sup>39</sup>[GAO-03-143](#).

**Figure 6: Use of Extensions to Due Process Hearing Decision Timelines for School Year 2011-2012**



Source: GAO analysis of National Center on Dispute Resolution in Special Education data. | GAO-14-390

Education officials told us that, while they were aware of the use of extensions in states, they did not know how much time extensions add to hearing decisions because they do not collect this information. They stated they were not concerned specifically about the effect of extensions on the timeliness of dispute resolution because they believe extensions are generally used for appropriate reasons, such as providing additional opportunities for resolving disputes prior to a hearing, accommodating parties' schedules, and affording parents sufficient time to resolve disputes.

A range of special education stakeholders, including state education officials and officials from national organizations that represent parents, students, and school systems, agreed that extensions to hearing decisions are requested by parties for a variety of reasons, including when (1) weather and school vacations result in school closures; (2) some or all parties (parents, district personnel, attorneys, and expert witnesses) are not available; (3) attorneys or parents require additional time to prepare cases; and (4) the parties involved want to allow additional time to schedule a mediation.

Though Education does not gather data on how much time extensions add on average to the dispute resolution process, some stakeholders we spoke with provided examples of extensions that typically ranged from a

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few weeks to several months. Several, including disability advocates and a state education official, stated that some decisions are extended by up to a year or more. Another noted that timelines for hearing decisions in one state typically get extended four or five times.

Stakeholders differed in their views on the extent to which the time added to due process decision timelines by extensions affected the education of children with disabilities. Some stakeholders stated there is likely to be little or no negative effect on children's education because of IDEA's "stay put" provision, which generally ensures that children will stay in their current educational placement until a dispute resolution proceeding is completed.<sup>40</sup> However, other stakeholders pointed out that extensions could cause some children not to receive appropriate educational services in a timely manner. For example, one stakeholder commented that for children currently placed in a program under the "stay put" provision, an extended hearing decision could mean the child would continue to receive educational services that may be inappropriate. Another stakeholder commented that extended decisions could also adversely affect children for whom "stay put" does not apply, such as those waiting to be identified for educational services.

Because Education's current measures do not provide clear and complete information on the total amount of time that due process hearing decisions take or the reasons for any time extensions, Education and other stakeholders, such as Congress, lack information about when and whether extended decisions could adversely affect the education of children with disabilities. Further, Education lacks information that could be used to identify trends and patterns within a state or across states that could help Education better target its oversight or monitoring. Lastly, as currently reported, states' results on this measure may provide Congress with a misleading picture of the amount of time that hearing decisions take, particularly in states with high rates of extensions.

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<sup>40</sup>Generally, under 20 U.S.C. § 1415(j), and 34 C.F.R. § 300.518(a)-(b), during the pendency of any administrative or judicial proceeding regarding a due process complaint, unless the parties (state or local agency and parents of the child) agree otherwise, the child involved in the complaint must remain in his or her current educational placement until the completion of all proceedings. This provision is commonly referred to as "pendency" or "stay-put." If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all proceedings.

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Parental Involvement  
Performance Data Do Not  
Support Dispute  
Resolution Oversight

Education collects data from states on parental involvement in the education of children with disabilities, but these data are not comparable across states, and as a result Education cannot use these data to target its oversight of states' dispute resolution activities. One of Congress' findings in passing IDEA was that decades of research had demonstrated that the education of children with disabilities can be made more effective by strengthening the role and responsibility of parents,<sup>41</sup> and Education has recognized the importance of parental involvement in fostering relationships between parents and educators and preventing special education disputes. Accordingly, Education developed a performance measure for parental involvement and requires states to collect and report the results of this measure annually. Its measure is defined as the percentage of parents with a child receiving special education services who report that schools facilitated parental involvement as a means of improving services and results for children with disabilities, but states collect and analyze this information in different ways. According to Education officials, although IDEA does not specifically require Education to collect parental involvement data, parental involvement is such a critical factor in ensuring children needing special education services are provided such services that they believe it is important for states to collect and report such data. In 2002, the National Center for Special Education Accountability Monitoring (NCSEAM)—a national technical assistance center funded by Education—developed and validated a scale for states to use to measure parental involvement because of the lack of survey instruments designed to obtain parents' perceptions of schools' facilitation of their involvement.<sup>42</sup> To date, over half of states and territories use the NCSEAM scale to collect and report data for this measure.<sup>43</sup> Education officials told us they believed states gather data that is meaningful and useful for their own efforts. However, these officials said that Education cannot determine which states provide high quality parental involvement data, nor does Education use these data to monitor and oversee states' performance in this area and is unable to compare state performance because states have considerable latitude to determine the methodologies they use to collect the data and these methodologies

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<sup>41</sup>20 U.S.C. § 1400(c)(5)(B).

<sup>42</sup>A validation study was conducted in 2004 and included a pilot survey of a nationally representative sample of students with disabilities in eight states.

<sup>43</sup>The National and Regional Parent Technical Assistance Centers, *Indicator 8 (Parent Involvement) Summary Analysis* (Washington D.C.: 2013).

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consequently vary across states. As a result, Education is unable to assess the performance of individual states or compare states' performance on this measure.

The lack of comparable parental involvement data from states can be attributed to a variety of factors, according to PACER Center (Parent Advocacy Coalition for Educational Rights), which recently operated the National Parent Technical Assistance Center and conducted annual analyses of states' parent involvement data for Education.<sup>44</sup> PACER officials stated they found significant variability among states in their survey instruments, sampling and analysis methods, and the performance targets states set for parental involvement.<sup>45</sup> In previous analysis, PACER reported that in 2011, 34 states used a version of the parental involvement surveys developed by NCSEAM, 10 states used their own state-developed instrument, 10 states adapted questions from the NCSEAM or other parent surveys to develop their own surveys, and 3 states used a combination of surveys.<sup>46</sup> According to PACER officials, states' use of different survey instruments results in parents responding to questions that may represent varying types of parental involvement. They also noted that states varied in how they analyze survey results for the purposes of reporting on Education's measure. For example, in some states only half of the questions require positive responses for the survey to be scored positive overall for parental involvement on Education's measure; in others, a much higher percentage of questions require positive responses to be scored positive overall for parental involvement. Ultimately, PACER officials suggested that the meaningfulness of parent involvement data depends on the ability to use it to make valid

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<sup>44</sup>Founded in 1977, PACER Center was created by parents of children and youth with disabilities to help other parents and families in Minnesota and across the nation. PACER is staffed primarily by parents of children with disabilities and provides publications, workshops, and other resources to help make parents make decisions about education and other services for their children with disabilities.

<sup>45</sup>PACER officials did not indicate that states' response rates were a key challenge to obtaining comparability data on Education's measure. A recent PACER report indicated that states' response rates on surveys they conduct to report on Education's measure average 24.8 percent in 2011. This report also noted that there is no expectation that states to have a particular response rate and that, as long as the survey sample is representative of the population, a low response rate can still yield statistically valid results.

<sup>46</sup>PACER's summary reports use the term "states" refers to the 50 states, nine territories, and the District of Columbia (a total of 60 entities).



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comparisons across states and this requires that Education establish and require states to adopt consistent data collection and analysis methods. Others have also noted that the lack of consistency in data collection compromises the meaningfulness of the data. For example, a subject matter specialist noted that recent parental involvement data show a wide range of state performance on this measure—from below 20 percent to above 90 percent—raising important questions about validity that may undermine the public’s confidence in the data. The specialist noted the lack of comparability in state data and the recognition among states that Education does not use the data for oversight may discourage states from improving their parental involvement measures and practices.

Education officials said they explored the option of revising its parental involvement measure when some states raised issues about the burden of collecting the data but ultimately decided not to change it after encountering significant resistance from parent and advocate groups. Specifically, officials said they informally proposed that states report information about how they address and measure parental involvement in their state without requiring states to use a quantitative measure or targets. Education presented this proposal to a range of stakeholder groups, including state officials, Parent Training and Information Centers, advocates, and parents, among others. Education officials said parents and advocates were strongly opposed to the proposal to eliminate the current measure, suggesting instead that the department require that all states take a standard approach to collecting parent involvement data. For example, one parent advocacy organization stated that comparability of parental involvement data across states is critical and that Education should require a consistent approach to data collection for all states to ensure that the status of parental involvement for all families of children receiving special education services is reflected in their results. However, one organization representing states commented on the burdens of collecting data for the measure, pointing to the costs to states of mailing out parent surveys and noting that most surveys are not returned. On the other hand, conducting parent surveys does not necessarily entail high costs, according to one subject matter specialist who provided comments to Education. She noted that Florida took a number of steps to lower survey costs without compromising data quality, including moving to a web-based survey, with printed survey forms available to parents on request, and suggested that alternatives to costly survey mailings exist and should be considered. Also, PACER officials have stated that requiring a consistent approach to collecting parental involvement data may decrease some of the data collection burden associated with

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Education's measure because states would not need to develop their own approaches.

Education officials told us they question the usefulness of comparable parental involvement data across states for oversight and pointed to data on the overrepresentation of racial and ethnic groups in special education, among other IDEA measures, that are also not comparable across states. However, in 2013 GAO found these data do not provide a consistent picture on overrepresentation.<sup>47</sup> Specifically, we found that the flexibility to define how states measure overrepresentation resulted in inconsistent definitions and data collection methods across states and recommended that Education adopt a standard approach to measurement for all states. In responding to this recommendation, Education said that it did not have all the information necessary to determine whether it is appropriate to develop a single standard for overrepresentation. Education began soliciting public comments from stakeholders beginning in June 2014 to assist the department in considering the development of such a standard.

Leading performance measurement practices state that organizations that have progressed toward results-oriented management use performance information as a basis for decision making and that full benefit of collecting such information is realized only when managers actually use it to manage.<sup>48</sup> Uses of performance information to improve results include monitoring, resource allocation, and identifying and sharing effective practices, among others. The usefulness of performance information also depends, in part, on the extent to which the data are collected using consistent procedures and definitions.<sup>49</sup>

Without comparable parental involvement data across states, Education lacks important performance information which limits its ability to oversee states' dispute resolution activities, including monitoring and identifying

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<sup>47</sup>See GAO, *Individuals With Disabilities Education Act: Standards Needed to Improve Identification of Racial and Ethnic Overrepresentation in Special Education*, [GAO-13-137](#) (Washington, D.C.: Feb. 27, 2013).

<sup>48</sup>See GAO, *Managing For Results: Enhancing Agency Use of Performance Information for Management Decision Making*, [GAO-05-927](#) (Washington, D.C.: Sept. 9, 2005).

<sup>49</sup>See GAO, *Performance Plans: Selected Approaches for Verification of Agency Performance Information*, [GAO/GGD-99-139](#) (Washington, D.C.: July 30, 1999).

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problems with parental involvement in states and recommending improvement activities for states to take; recognizing and incentivizing high performance; assessing states' needs for technical assistance on parental involvement and making appropriate resource decisions; and identifying and helping to share promising parental involvement practices among states.

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## Conclusions

Both IDEA and Education recognize the importance of parental involvement in the education of children with disabilities. Having parents who are appropriately informed and involved in decision-making regarding the education of students with disabilities can lead to the resolution of disputes in a more collaborative manner without the use of formal dispute resolution methods and may result in greater trust between parents and school districts, and earlier, less adversarial dispute resolution. In addition, resolving disagreements before they escalate and become adversarial is in the collective best interest of parents, students, and districts.

It is also important for Education to hold states accountable for timely dispute resolution to protect the educational interests of children with disabilities. In particular, it is important that Education have an effective measure of hearing decision timeliness for monitoring states' dispute resolution performance. However, Education's measure does not provide clear, complete information about the duration of this process, information which is useful for ensuring effective program monitoring and targeted technical assistance. While Education tracks the number of hearing decisions made within 45 days, without information on the amount of time added to decisions timelines by extensions, Education is limited in its ability to monitor in this area, which could negatively affect children and their families by, for example, delaying the provision of appropriate special education services.

Additionally, Education views parental involvement as a critical factor in ensuring children needing special education services are provided such services and for this reason collects parental involvement data from states. However, without making the data more comparable across states, Education may be prevented from rigorously evaluating states' performance in this area and may be limited in its ability to identify promising practices and effectively target assistance to states in their efforts to resolve disputes at an early state. Additionally, unless Education uses the data it collects, it will not reap their potential benefits in improving performance for the benefit of students and parents.

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## Recommendations for Executive Action

Based on our review, we recommend the Secretary of Education direct the Office of Special Education Programs take the following two actions:

1. To increase transparency regarding the timeliness of due process hearing decisions for Congress and better target its monitoring and technical assistance to states, revise its performance measure to collect information from states on the amount of time that extensions add to due process hearing decisions.
2. To assist its oversight of dispute resolution, take steps to improve the comparability of parental involvement data while minimizing the burden to states, and use the data for better management decision making. Steps to consider could include establishing and requiring that states follow standard data collection and analysis procedures.

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## Agency Comments and Our Evaluation

We provided a draft of this report to Education for review and comment. Education's comments are produced in appendix I. Education also provided technical comments, which we incorporated into our report where appropriate. Education neither agreed nor disagreed with our recommendations but proposed alternative actions. However, Education's proposed actions will not effectively address the weaknesses we identified in Education's performance measures and we continue to believe our recommendations are valid.

In its comments, Education recognized the importance of promptly and fairly resolving special education disputes between parents and school districts and agreed that additional information on extensions could be useful in targeting its monitoring and technical assistance activities in states with large numbers of hearings issued within extended timelines. However, Education stated that collecting data from all states and territories on the amount of time that extensions add to hearing timelines would not necessarily improve its capacity to ensure that states and territories are properly implementing IDEA's dispute resolution procedures. Instead, Education proposed that it conduct follow up monitoring with any state that reports 10 or more fully adjudicated hearings in a given year where at least 75 percent of the decisions are issued with extended timelines. While this approach might be useful for Education's targeting of monitoring and assistance to states—particularly if monitoring includes collecting information about the duration of extensions, why parties request extensions and the effects of extended timelines on children's education—we believe Education's proposal alone will not correct the potentially misleading picture its timeliness measure creates regarding of the amount of time that hearing decisions actually

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take. As noted in the report, some stakeholders pointed out that extensions could cause some children not to receive appropriate educational services in a timely manner. Thus, we continue to see advantages in addressing the core weakness of its measure by collecting information from all states on the amount of time that extensions add to hearing decision timelines. Further, Education noted that only 12 states and territories had 10 or more fully adjudicated hearings in 2011-12 and stated that it is not appropriate or efficient to burden all states in collecting these data. However, requiring states with fewer hearings to report this information is unlikely to create significant administrative burden for them, as they would be providing information on a small number of decisions. Without reliable performance information, the public lacks a clear picture of the time required to reach due process hearing decisions and the potential impact on affected children.

Regarding our recommendation that it improve the comparability of parental involvement data it collects and use the data for better management decision making, Education stated it does not believe there is a need to improve the comparability of states' parental involvement data. More specifically, Education said that these data are designed to measure state performance against targets that each state sets, based on state-specific needs and circumstances. To improve the quality of parental involvement data, Education said it will work with states through its technical assistance centers to help build their capacity to collect high quality data. We commend Education's proposal to assist states in this way; however, its approach will continue to require states to report parental involvement data that Education cannot use to assist with oversight and manage for results related to dispute resolution. For example, absent comparable performance information across states, Education could not monitor states with weak performance on parental involvement or identify and assist states in sharing promising parental involvement practices that may help prevent disputes from developing. One approach Education could consider to improve the comparability of parental involvement data would be to establish and require that states follow standard data collection and analysis procedures in reporting the existing measure. Education stated that standardizing the collection of parental involvement data among states would result in increased administrative burden on some states. However, in our report we note that Education's former national technical assistance center on parental involvement suggested that consistent data collection may, in fact, decrease administrative burden because states would not need to develop their own approaches. Until Education collects data that it can use to effectively manage this effort, it will likely be limited in its ability to

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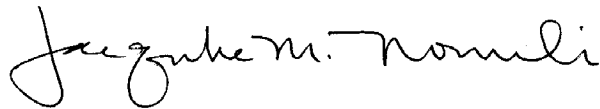
enhance collaboration between parents and educators, which facilitates resolving disputes earlier through less formal and costly means.

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As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the appropriate congressional committees, the Secretary of Education, and other interested parties. In addition, this report will be available at no charge on GAO's website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (617) 788-0580 or [nowickij@gao.gov](mailto:nowickij@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs can be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix II.

Sincerely yours,

A handwritten signature in black ink that reads "Jacqueline M. Nowicki". The signature is written in a cursive style with a large initial 'J' and 'N'.

Jacqueline M. Nowicki, Acting Director  
Education, Workforce, and Income Security

# Appendix I: Comments from the U.S. Department of Education



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

AUG 04 2014

Ms. Jacqueline Nowicki  
Acting Director  
Education, Workforce, and Income Security Issues  
U.S. Government Accountability Office  
441 G St., NW  
Washington, DC 20548

Re: SPECIAL EDUCATION: Improved Performance Measures Could Enhance Oversight of  
Dispute Resolution (GAO-14-390)

Dear Ms. Nowicki:

The Department appreciates the work you and your colleagues have done on this study and the opportunity to review and provide comments on the draft report. We note that the number of special education due process hearings has decreased substantially since the Government Accountability Office last studied special education dispute resolution in 2003 (GAO-03-897) and agree that the additional requirements in the 2004 reauthorization of the Individuals with Disabilities Education Act (IDEA) to offer mediation and the opportunity for a resolution meeting prior to conducting a due process hearing have contributed to the decrease. I write to provide the Department's responses to the draft report's recommendations that the Secretary of Education direct the Office of Special Education Programs (OSEP) to take the following two actions:

**Recommendation 1:** To increase transparency regarding the timeliness of due process hearing decisions for Congress and better target its monitoring and technical assistance to states, revise its performance measure to collect information from states on the amount of time that extensions add to due process hearing decisions.

**Response:** The IDEA regulations at 34 C.F.R. §300.515(c), provide that a hearing officer may grant specific extensions of the 45-day time period for reaching a final decision in a due process hearing at the request of either party to the hearing. The regulations do not address the reasons why extensions can be requested, or otherwise restrict the number of extensions that a hearing officer may grant at a party's request. Extensions in due process proceedings are requested for a variety of reasons, which include scheduling conflicts involving key staff, the need for time to prepare for the hearing, the availability of experts or attorneys knowledgeable about special education law and regulations in a geographic area, and the workplace and child care obligations of parents. There are circumstances in which a party's need for an extension is unavoidable, and without the additional time, a party may not have an opportunity to obtain a full and fair hearing.

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The Department agrees that having some additional information on the total amount of time required to resolve a due process complaint resulting in a due process hearing could be useful in targeting our monitoring and technical assistance activities in States with large numbers of hearing decisions issued within extended timelines. However, any additional changes to IDEA data collections must be balanced against the burden required of States to report the data. We agree that children's interests are served through prompt and fair resolution of disputes, but OSEP believes that collecting data from all States and territories on the amount of time that extensions add to hearing timelines would not necessarily improve OSEP's capacity to ensure that States are properly implementing IDEA's dispute resolution procedures. As GAO acknowledges on page 21 of the draft report, there are relatively few States with significant numbers of due process hearings. In 2011-2012, only 12 of 60 States and entities had 10 or more fully adjudicated hearings. We, therefore, do not believe it is appropriate or that it would be efficient to place this data burden on all States.

To address GAO's concerns, we propose that OSEP conduct follow-up monitoring with any State that reports 10 or more fully adjudicated hearings in a given year, where 75 percent or more of the decisions in those hearings were issued within an extended timeline. As part of that follow-up, OSEP will conduct interviews with State educational agency (SEA) staff to confirm that the SEA is appropriately administering and monitoring its due process system and ensures that extensions to the 45-day timeline are being granted only in the manner permitted by the IDEA regulations (i.e., at the request of either party and for a specified period of time). We will also provide technical assistance and guidance to those States to support their efforts in properly implementing the requirements in 34 C.F.R. §300.515(c). If OSEP identifies noncompliance, we will require the State to take appropriate action to correct the noncompliance in a timely manner.

Recommendation 2: To assist its oversight of dispute resolution, take steps to improve the comparability of parental involvement data while minimizing the burden to states, and use the data for better management decision making. Steps to consider could include establishing and requiring that states follow standard data collection and analysis procedures.

Response: OSEP's IDEA Part B State Performance Plan and Annual Performance Report (SPP/APR) indicators include: "Percent of parents with a child receiving special education services who report that schools facilitated parent involvement as a means of improving services and results for children with disabilities." In responding, a State must include a description of how the State has ensured that the response data are valid and reliable, including how the data represent the demographics of the State. The actual numbers used in the calculation must be provided to OSEP.

OSEP does not believe there is a need to improve the comparability of parental involvement data across States to assist in its oversight of dispute resolution because comparing State performance data in this area will not assist in OSEP's oversight of dispute resolution. The SPP/APR is designed to measure a State's performance against targets that the State sets, with input from stakeholders, based on State-specific needs and circumstances. In addition, if States do not meet their established targets, States must identify specific steps to improve performance in the relevant area. Also, once again, we must consider data burden when determining whether to revise or add to a data collection. Some States have reported they include the collection of



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**Appendix I: Comments from the U.S.  
Department of Education**

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SPP/APR parent involvement data in the collection of parent involvement data not specific to IDEA (e.g., in surveys of parents of all children) or in obtaining other types of information from parents. Standardizing the collection of IDEA parent involvement data would result in increased burden on these States and would require a separate data collection to satisfy the SPP/APR indicator requirement.

The SPP/APR information collection was recently revised, with public input, and was approved by the Office of Management and Budget on May 12, 2014. The current indicator in the SPP/APR is designed to collect appropriate data from each State (based on State-specific needs and circumstances) for the State to use in evaluating its level of parent involvement. Therefore, we are reluctant at this time, to impose an additional data burden that we believe to be of limited value and benefit.

To address GAO's concerns and to further support the collection of valid and reliable data on parent involvement, OSEP will direct the OSEP-funded Parent Centers, the IDEA Data Center and the Center for IDEA Early Childhood Data, to work with States to build capacity to collect high quality data that are representative and meaningful and that can be used to improve outcomes for children with disabilities. In addition, OSEP will continue to provide technical assistance to States through webinars and written guidance to ensure States have up-to-date information on sound methods for collecting, analyzing, and reporting data on parent involvement.

Thank you for the opportunity to comment on this draft report. We also include technical comments with this response.

Sincerely,



Michael K. Yudin  
Acting Assistant Secretary  
for Special Education and Rehabilitative Services

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# Appendix II: GAO Contact and Staff Acknowledgments

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## GAO Contact

Jacqueline M. Nowicki, (617) 788-0580 or [nowickij@gao.gov](mailto:nowickij@gao.gov).

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## Staff Acknowledgments

In addition to the contact named above, Betty Ward-Zukerman, Assistant Director; Edward F. Bodine, Analyst-in-Charge; Grace E. Cho, and John S. Townes made significant contributions to this report. Also contributing to this report were James E. Bennett, Deborah K. Bland, David M. Chrisinger, Lara L. Laufer, Benjamin T. Licht, Ying Long, Cady S. Panetta, James M. Rebbe, Carl M. Ramirez and Walter K. Vance.

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