

Part B

STATE PERFORMANCE PLAN/ANNUAL PERFORMANCE REPORT
2012 INDICATOR ANALYSES

FFY 2010-11

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



INDICATORS 16, 17, 18, AND 19: DISPUTE RESOLUTION

Prepared by the Center for Appropriate Dispute Resolution in Special Education (CADRE)

INTRODUCTION

The Individuals with Disabilities Education Act (IDEA) requires states receiving grants under Part B to make available four dispute resolution (DR) processes, and to report annually to the U.S. Department of Education Office of Special Education Programs (OSEP) on their performance and improvement activities for each.⁸ The processes, which include signed written complaints, mediation, due process complaints, and resolution meetings associated with due process, offer a formal means for resolving disagreements and issues arising under the IDEA.

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

- Indicator 16: Percent of signed written complaints with reports issued that were resolved within the 60-day timeline or a timeline extended for exceptional circumstances with respect to a particular complaint, or because the parent (or individual or organization) and the public agency agree to extend the time to engage in mediation or other alternative means of dispute resolution, if available in the State.
- Indicator 17: Percent of adjudicated due process hearing requests that were adjudicated within the 45-day timeline or a timeline that is properly extended by the hearing officer at the request of either party or in the case of an expedited hearing, within the required timelines.
- Indicator 18: Percent of hearing requests that went to resolution sessions that were resolved through resolution session settlement agreements.
- Indicator 19: Percent of mediations held that resulted in mediation agreements.

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

⁸ For the purposes of this report, the terms “states” and “states/entities” are used interchangeably to refer to all 60 Part B grant recipients (i.e., the 50 United States, the District of Columbia, the Bureau of Indian Education, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau).

DATA SOURCES AND METHODOLOGY

Sources for this report include FFY 2010 (2010-11) APRs, applicable APR clarifications, OSEP-verified APR data, and information on state DR activities drawn from CADRE's longitudinal DR database, which includes data from prior APRs and states' Section 618 reports. Unless otherwise specified, years stated in the text refer to federal fiscal years (FFY); for example, FFY 2010 may also be shown as 2010 or 2010-11.

CADRE's national longitudinal DR database uses the following reported data: 1) from FFY 2002 to the present, state DR activity reported to OSEP in the APRs, first as Attachment 1 and later as Table 7; 2) from FFY 2006 to the present, Section 618 data reported by states to the Data Accountability Center (DAC); and 3) DAC state DR activity data, following publication in OSEP's Annual Report to Congress.

Summaries of longitudinal data from FFY 2003 through FFY 2010 are included here to demonstrate change over time in state compliance and performance related to each indicator. Since complete Table 7 data are not uniformly reported in the APRs, current APR data can be used to generate complete summaries of changes in the indicator values and in use trends for those data elements used in calculating the indicators. Summaries of other Table 7 DR activity may include under-estimates of FFY 2010 values.

SUMMARY BY INDICATOR: PERFORMANCE AND IMPROVEMENT ACTIVITIES

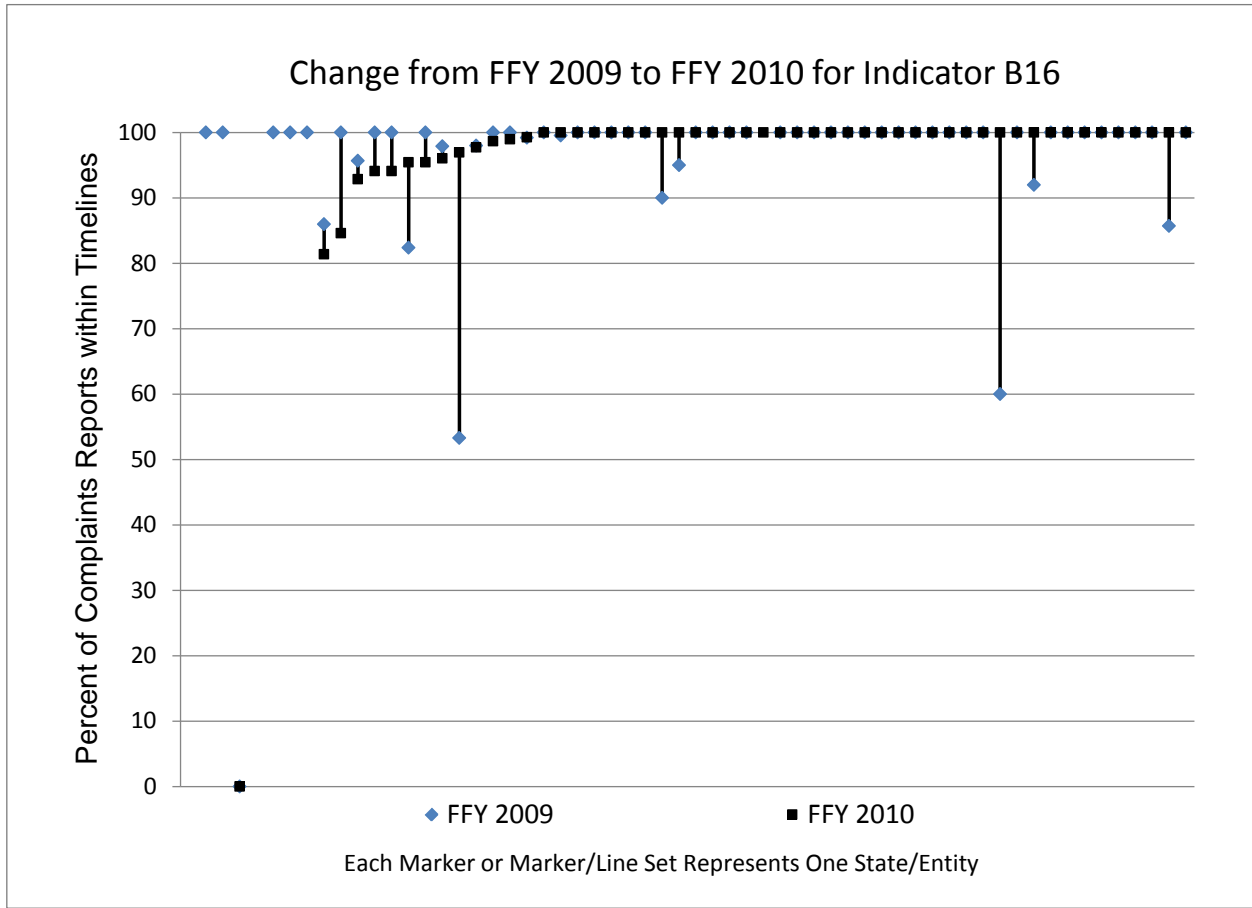
Indicator 16: Signed Written Complaint Reports Issued Within Timelines

Indicator 16 is a compliance indicator with a performance target of 100%. States must issue signed written complaint reports within the 60-day timeline, or a timeline appropriately extended.

In FFY 2010, 46 states performed at or above 95% ("substantial compliance" with the indicator), nine of which showed improvement over their FFY 2009 levels. Ten states performed below their FFY 2009 level; however, the drop was slight for five of those, as their overall performance met substantial compliance. Seven states reported no activity, one entity completed on-time reports in neither FFY 2010 nor FFY 2009, and one state lacked valid and reliable data.

Figure 1 is a display of the change in current performance on Indicator 16 from FFY 2009 to FFY 2010. Each marker and line set represents a state. If the FFY 2009 marker (diamond) is below the FFY 2010 marker (square), the state showed positive change. If the diamond is above the square, the state showed negative change.

Figure 1

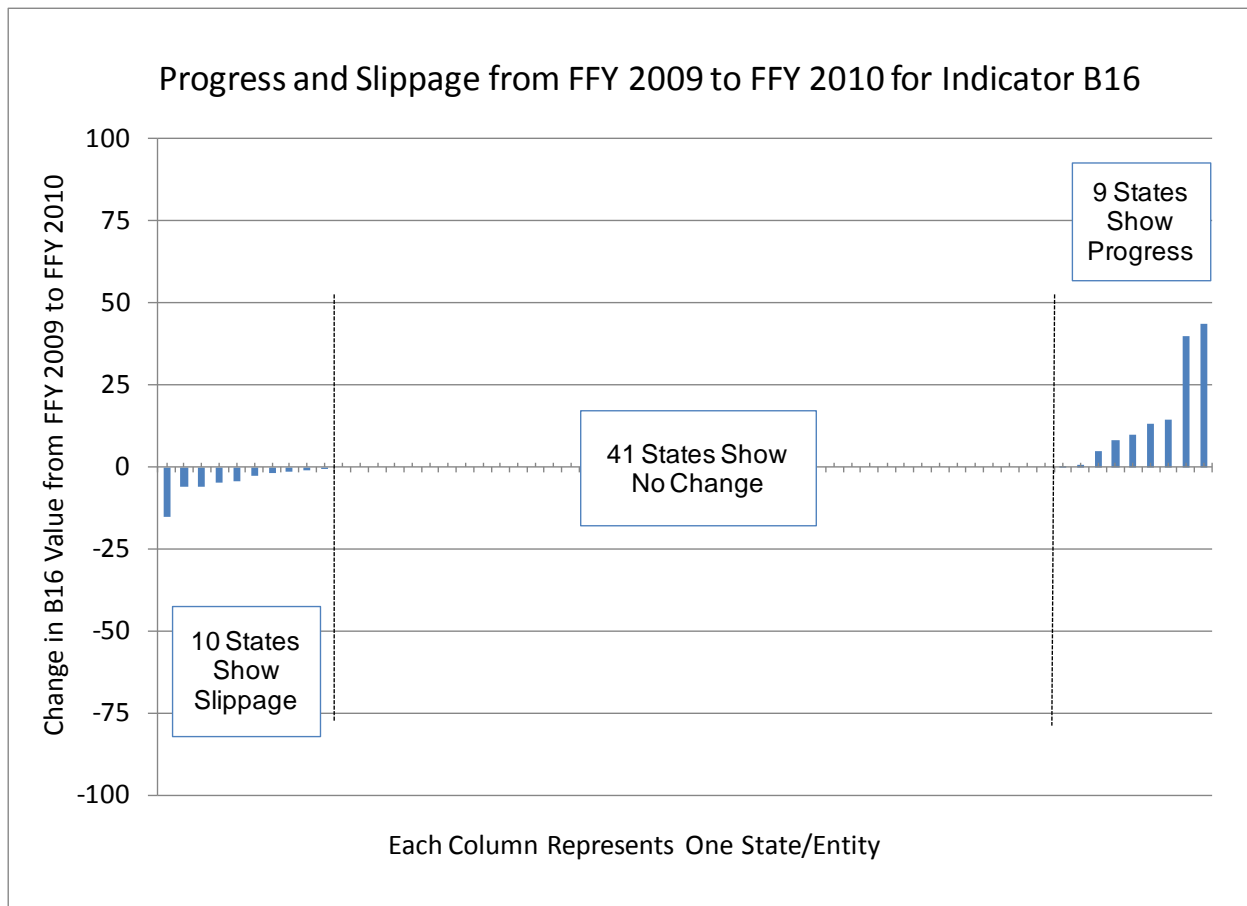


Though not shown above, a review of historical data shows that the vast majority of states have showed significant progress over the past six years. In FFY 2004, 39 states performed at or above 95%. Fifteen states did not meet substantial compliance that year, and only six performed above 80%. By comparison, in FFY 2010, two of the six states not meeting substantial compliance performed at 94%, three others were above 80%, and one entity was at 0%.

Indicator 16 Progress and Slippage

Nine states showed progress in Indicator 16 from FFY 2009 to FFY 2010, ten states exhibited slippage, and 41 states experienced no change. Of the 41 “no change” states, seven reported no activity in one or both years and one state lacked valid and reliable data for the current year.

Figure 2



Not all states/entities provided an explanation for their progress or slippage on Indicator 16. Some simply indicated that they either met or did not meet the target, without attributing their performance to any specific activities or issues, while others just stated “implementation of improvement activities” as their explanation for progress/slippage. Nineteen states/entities indicated that they had worked or were working with one or more technical assistance centers as part of their improvement activities.

States that attributed progress or improvement to particular strategies included the following in their explanations or activities charts:

- Improve systems administration and monitoring, including increased collaboration among complaint investigators, general supervision and monitoring (GSM) staff, and leadership (32 states).
- Provide technical assistance, training, or professional development to agency staff (at the state and/or local level), families, and other stakeholders (28 states).
- Improve data collection and reporting, timeline tracking, and intra-agency coordination (17 states).
- Stakeholder collaboration and engagement, often including a public process for publicizing DR options, clarifying processes, and reporting results (15 states).

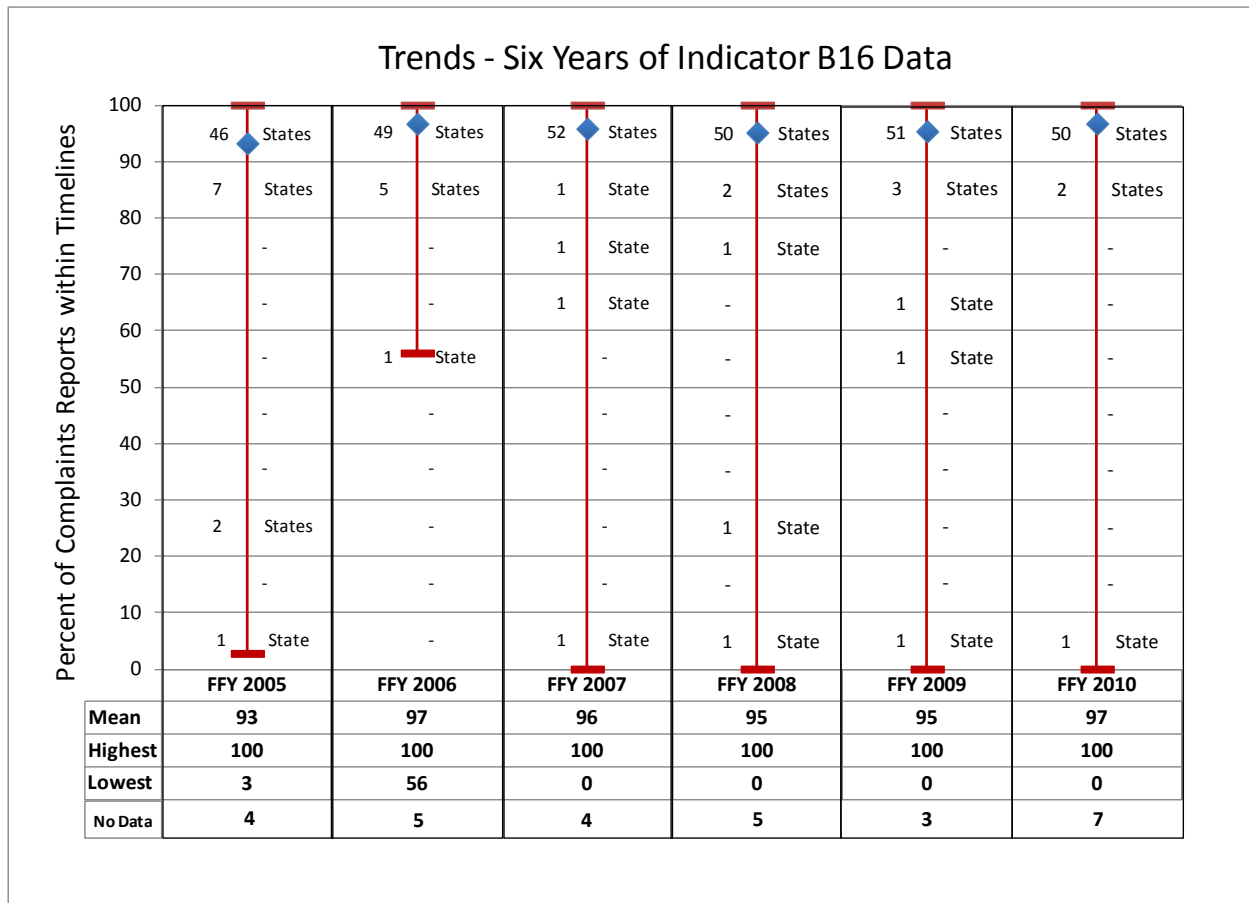
- Enhanced public awareness/outreach, including online access to complaint procedures, guidance documents, and model complaint forms (14 states).
- Support for upstream or early DR processes, such as facilitated IEP meetings (11 states).
- Clarify, examine, and/or develop policies and/or procedures related to this indicator (nine states).
- Adjust FTE to meet level of activity/need (eight states).

States that experienced slippage generally attributed underperformance to one or more of three main causes:

- Staffing and personnel difficulties, including vacancies, hiring freezes, contract issues, and personal leave/scheduling (six states).
- System restructuring and/or implementation of new complaints processes or procedures (six states).
- A significant increase in the number and/or complexity of complaints filed compared to prior years (three states).

Indicator 16 Trends

Figure 3



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

Each of the bands in Figure 3 reflects a 10% range of performance for Indicator 16, and the number of states falling within each range. The uppermost band shows the number of states that performed $\geq 90\%$ on this indicator; the next band down shows the number of states that performed in the 80% to $<90\%$ range, etc.

The trend toward substantial compliance ($\geq 95\%$) is positive. Of the 50 states/entities in the 90% to 100% band, 39 were at 100% and eight were greater than 95%. Three states were between 90% and 95%. The two states in the 80% to $<90\%$ range both struggled with staffing issues in FFY 2010. In past years, these two states have demonstrated compliance with Indicator B16.

Over the years, several non-state entities have struggled to reach compliance. The single state entries in the 0% to $<10\%$ range across years have consistently represented non-state entities; which entity varies year to year. Not achieving compliance appears to be an exception to the rule though, as the vast majority of states/entities have achieved compliance on Indicator B16 annually.

Table 1, drawn from APR data, illustrates that in FFY 2010, 39 states achieved full compliance, 47 reached substantial compliance, six performed below 95%, and seven had no activity or reported non-valid and reliable data.

Table 1

Number of States Achieving Substantial or Full Compliance on Indicator B16

	05-06	06-07	07-08	08-09	09-10	10-11
100%	36	36	42	42	43	39
$\geq 95\%$ to $<100\%$	46	42	47	47	49	46
$<95\%$	10	13	9	8	8	6
No Activity or NVR Data	4	5	4	5	3	7

Indicator 16 Improvement Activities

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

For Indicator 16, as was the case in prior years, a number of states report having implemented updated policies and procedures regarding the use of extensions in complaint investigations – granting extensions in compliance with regulatory standards (i.e., in exceptional circumstances or when the parties opt to try mediation). While applying rigorous standards had the initial effect of decreasing on time report

completion (in 05-06 and 06-07), growth in the number of states completing investigations and reporting within timelines is evident in these data. It should be noted that APR data do not provide a fully accurate picture of the use of extended timelines because states inconsistently report their Indicator 16 calculations.⁹ For this reason, the current year's data are estimated, and updated after Section 618 data are available.

Another improvement activity that may be credited for the upward trend in timely complaint reporting is increased collaboration amongst complaint investigators, GSM staff, and leadership. Thirty-two states identified this as a priority, as well as cross-training staff to job-share in times of high demand and ensuring that staff are provided with the training and professional development necessary to provide effective technical assistance and training to the field.

Some states have gone an extra step in their SPPs/APRs, including DR activities other than those required by the IDEA. For example, a few states that promote or encourage strategies aimed at prevention or early resolution of conflicts have included details about these optional processes in their improvement activities, as those activities are considered essential parts of their DR system. Anecdotal evidence suggests that use of upstream, preventive strategies is linked to a reduction in the number of signed written complaints filed. However, there is no nationwide data collected to support or refute this.

Featured Elements of State Processes and Improvement Activities

Here (and in later parts of this chapter) are observations on improvement activities and process elements considered to be parts of effective DR systems, emphasized by some states in their FFY 2010 APRs. It is important to note that these are not endorsements of any particular approach. Several of these processes and activities were featured in the FFY 2009 and prior years' B16 Indicator analyses, suggesting that states are learning from and following in others' footsteps.

System Administration and Monitoring. Many states credited improved communications, coordination, and collaboration between complaints investigation staff, GSM staff, and leadership with ensuring that corrective action plans required by complaint reports were completed and closed within one year. This activity emphasizes the benefits of teamwork and shared knowledge. It may also bring to light unidentified statewide or regional technical assistance and training needs, provide opportunities to address stakeholder concerns and issues of noncompliance, and possibly reduce the number of complaints filed annually.

Training/Professional Development. Providing technical assistance, training, or professional development to agency staff (at the state and/or local level), families, and other stakeholders is a key element of effective DR systems. States that provided detail on training activities in their APRs held sessions at regular intervals throughout the year

⁹ The formula used to report Indicator B16 data is drawn from the Section 618 Table 7: [(1.1b reports within timelines + 1.1c reports within extended timelines)/1.1 complaints with reports issued x 100]. When states report only the sum of the digits in the parentheses, without providing detail on how many reports were issued within extended timelines, it complicates analysis on the use of extensions.

(the content/focus was based on current issues and needs), in addition to providing at least one annual professional development event for staff. Six states reported collaborating with parent centers to develop and provide statewide stakeholder training events, while five states began developing online stakeholder resources.

Integrated Database and Timeline Tracking. States that implemented integrated data and tracking systems reported that monthly and/or frequent report review meetings were helpful to ensure that timelines were addressed and reports issued in a timely manner. Often, these same states reported aligning improvements to their data and tracking systems with updates to their administration and monitoring systems, to maximize improvement activity outcomes. States that have corrected repeated timeline problems have invested in staff training emphasizing tracking (including “tickler” notices) and data accountability, and provided relevant feedback to staff (e.g., report reviews, performance evaluations).

Stakeholder Engagement and Public Awareness/Outreach. All 15 states that reported incorporating stakeholder engagement and public awareness/outreach activities in their improvement activities achieved substantial compliance on Indicator 16. These states underscored the importance of stakeholder involvement in the development of policies, procedures, guidance documents, and model forms, as well as discussion/review of reports, results, and processes.

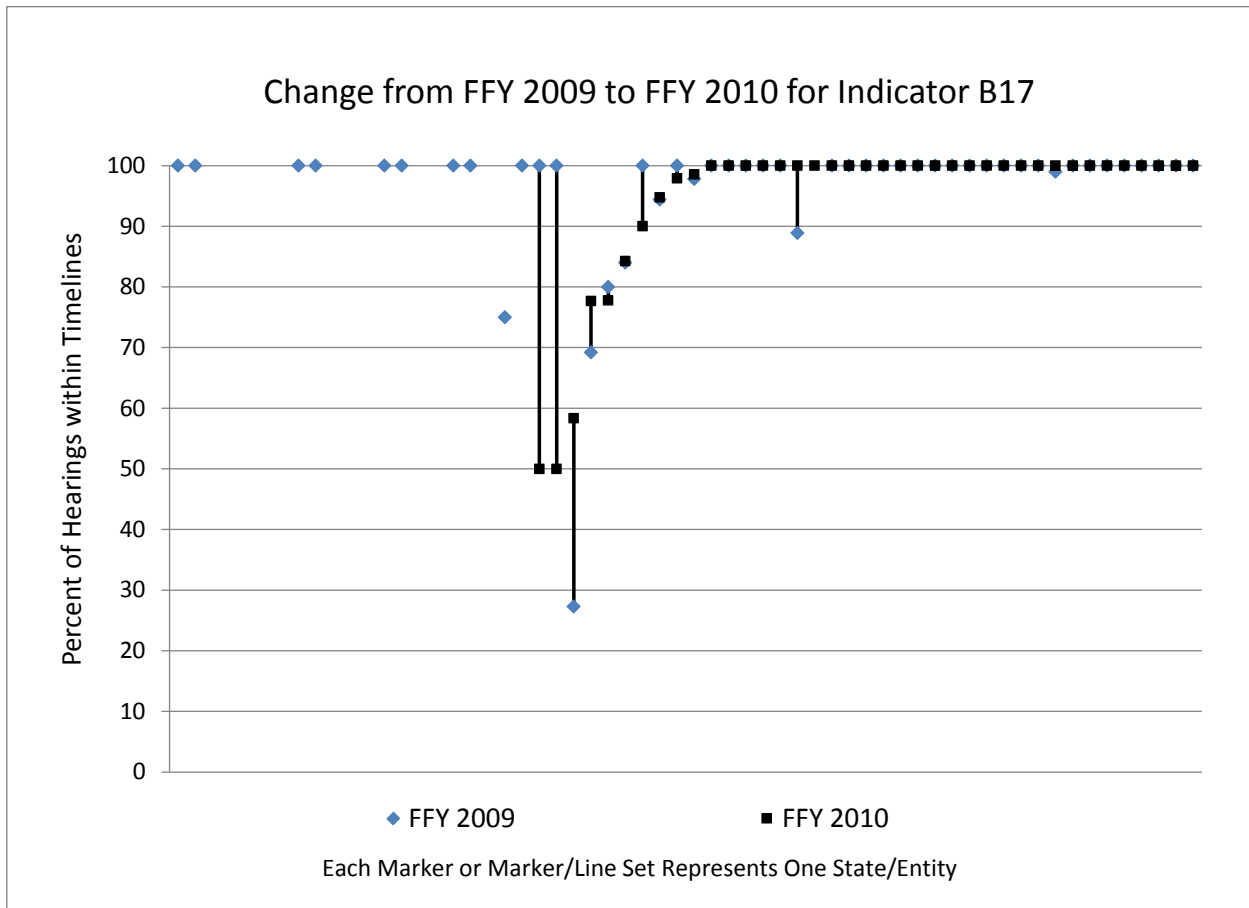
Indicator 17: Hearings Held and Decisions Issued Within Timelines

Indicator 17 is a compliance indicator with a performance target of 100%. This indicator measures whether due process hearing decisions were issued “within the 45 day timeline, or a timeline that is properly extended by the hearing officer at the request of either party or in the case of an expedited hearing, within the required timelines.” States must meet this standard for all due process hearings held and decisions issued.

Thirty-nine states held due process hearings in FFY 2010. Of those, 29 met the 100% target and two achieved substantial compliance ($\geq 95\%$); one state was at 90%, and seven states failed to meet the target. Twenty-one states reported no due process hearings held.

Figure 4 is a display of the change in current performance on Indicator 17 from FFY 2009 to FFY 2010.

Figure 4



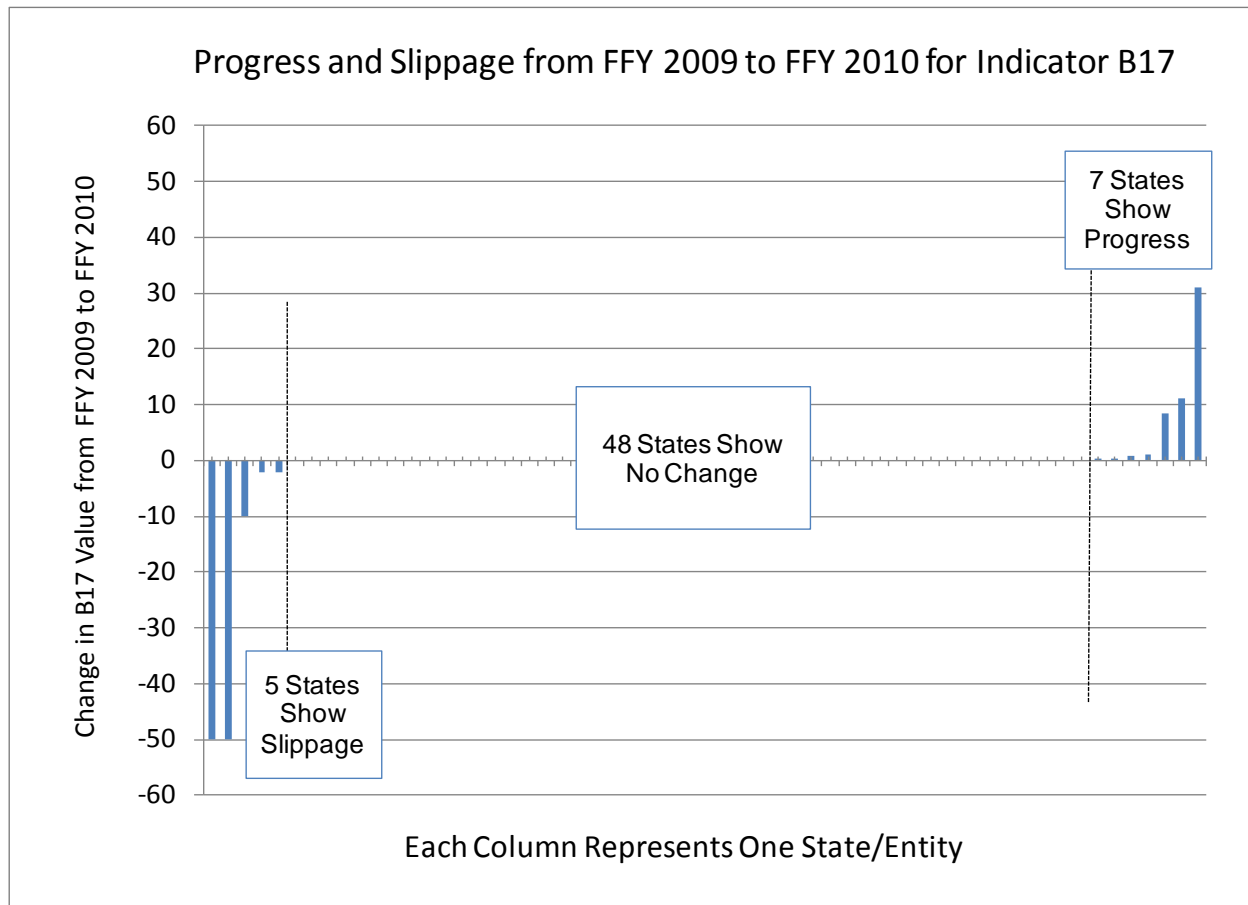
Overall, states/entities appear to be getting better at managing the complexities of tracking and managing due process hearing timelines. In FFY 2010, seven states made gains toward meeting the target, including two states that reached 100% and one that achieved substantial compliance.

Five states/entities lost ground in FFY 2010 compared to FFY 2009. Two of those had relatively low activity levels – half of the decisions issued were outside the required timeline (i.e., in State A, two of four hearings had timely decisions; in State B, one of two hearings had a timely decision). Despite losing ground, one state achieved substantial compliance (>95%), owing to a moderate activity level (18 of 19 decisions were issued on time).

Several states experienced issues with hearing officer performance, including not having decisions issued on time or provided to the parties in a timely manner, in accordance with the requirements of the IDEA. For one large state, a significant change in procedures first implemented in FFY 2009 carried over into FFY 2010, impacting two years of data. That state’s performance during the second half of FFY 2010 was markedly improved over the first half, yet not enough to achieve substantial compliance.

Indicator 17 Progress and Slippage

Figure 5



Between FFY 2009 and FFY 2010, seven states showed progress, five states showed slippage, and 48 showed no change. Of those states/entities showing no change, 26 reached the 100% target in both years, while the other 22 reported no due process complaint activity in one or both years.

States that attributed progress or improvement to particular strategies included the following in their explanations or activities charts:

- Provide technical assistance, training, and professional development opportunities to hearing officers, ALJs, and staff at the SEA and administrative hearing office, including focused training on hearing procedures, timelines, and legal issues (29 states).
- Improve systems administration and monitoring, including more frequent and/or effective communications between the SEA's due process coordinator and hearing officers or an administrative hearing office, which may be implemented through the use of agreements or memoranda of understanding (26 states).

- Improve data collection and reporting, timeline tracking, and interagency coordination between the SEA's due process complaint coordinator and the hearing officer or administrative hearing office (15 states).
- Clarify, examine, and/or develop policies and/or procedures related to internal and external due process complaint processes and requirements (10 states)
- Implement or improve evaluations/evaluation processes for the complaint filing and hearing process, hearing officer performance, and outcomes, including asking for feedback and guidance on timelines (10 states).

Very few states offered explanations for slippage (or failure to reach compliance); the most common reason was hearing officer/ALJ performance, followed by clerical errors related to procedural changes. Several states commented that they were in the process of implementing changes to their hearing officer/ALJ evaluation systems. A moderate activity state that experienced significant slippage in FFY 2009 made progress in FFY 2010 albeit without achieving substantial compliance; the state moved from a performance rate of 27% last year to 58% this year.

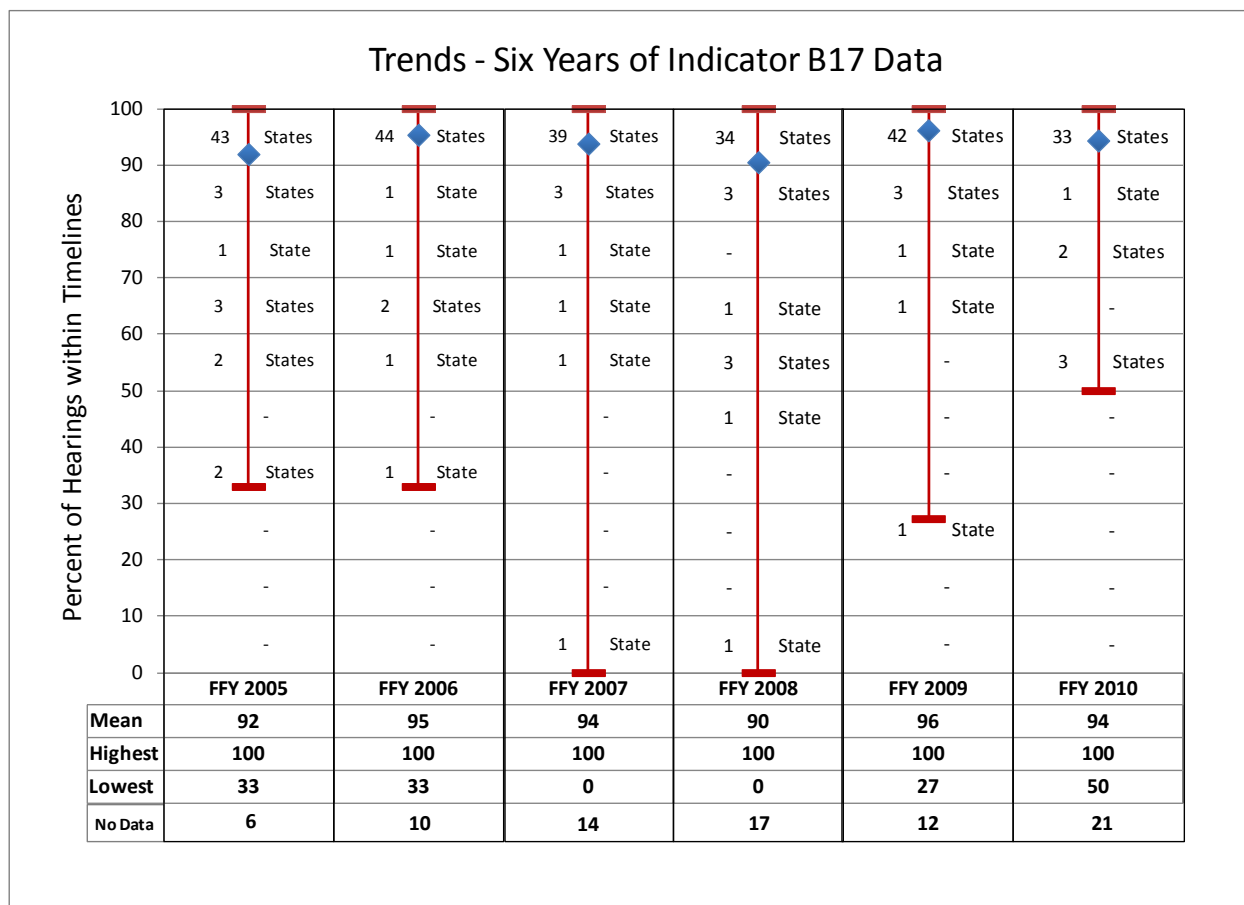
Of the five states that showed slippage in FFY 2010, only two showed significant drops in performance compared to FFY 2009. Those two states, mentioned earlier, had low levels of activity, and in each, half of the decisions (three of six) were issued late. Had those decisions been issued on time, both states would have achieved 100% compliance. Another relatively low-activity state that experienced slippage (from 100% in FFY 2008 to 80% in 2009 and 78% in 2010) linked the issue to a “problem hearing officer” who was removed from service after issuing two late decisions. There is no question that for states with relatively low activity levels, the timeliness of every decision affects their performance rate.

There also appears to be a relationship between the number of hearings that a state holds and the percentage of decisions issued on time. A comparison of performance rates and state activity levels suggests that it is more difficult for higher activity states/entities to ensure that all decisions are issued within the timelines. So, systems with moderate to high levels of due process activity are less likely to achieve 100% compliance. While this is an evidence-based observation (see Table 2), it is by no means a rule. Two of the states that held 100 or more hearings in FFY 2010 achieved between 95% and 100% on Indicator 17, suggesting that even systems with high levels of activity can achieve substantial compliance.

Table 2

Hearings Held	FFY 2009		FFY 2010	
	# of States	% Not Compliant	# States	% Not Compliant
None	12	N/A	10	N/A
1-3	22	5%	19	5%
4-19	16	25%	23	22%
20-99	7	29%	4	25%
>100	3	100%	4	75%

Figure 6

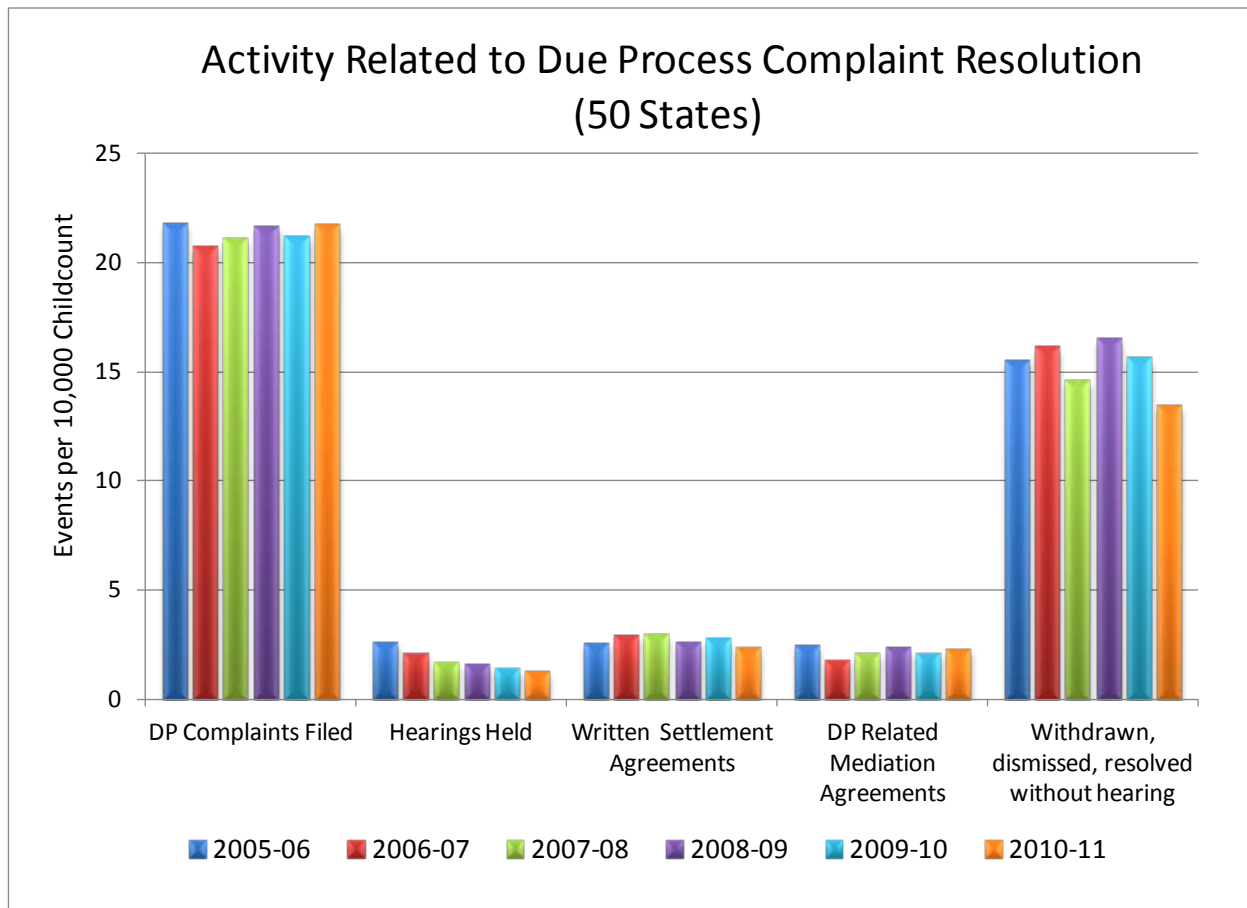


Note: "No data" indicates the number of states/entities reporting no activity or lacking valid/reliable data.

The bands in Figure 6 reflect state performance on Indicator B17 over a six year period. In FFY 2010, of the 39 states that reported due process hearing activity, 33 states were in the 90% to 100% range. Thirty-two of those states were at or above 95%, with 31 achieving the 100% target. Only six states fell below 90%, supporting the overall trend toward compliance.

Figure 7 displays data that is not available through the APR – the average national rate of due process hearings per 10,000 special education childcount. These data are drawn from the Section 618 Table 7 reports and from earlier APRs.

Figure 7



The rate of due process complaints filed over the six year period from FFY 2005 to FFY 2010 has remained relatively constant, while the number of hearings held has decreased. In light of the low number of hearings, it is of interest what became of the balance of the due process complaints filed. About one-fifth of complaints filed are reported as pending at the end of the fiscal year; more than half are reported as resolved without a hearing, dismissed, or withdrawn. For these no-hearing-held cases, there is limited data to determine final outcomes, such as whether a case was settled by the parties outside the resolution meeting or a mediation session.

Indicator 17 Improvement Activities

As earlier discussed, SPPs and APRs often lack detail on state approaches to DR management, so improvement activities associated with each indicator can be helpful to identify state/entity priorities. For Indicator 17, as was the case with Indicator 16, a number of states reported implementing new policies and procedures for due process complaints. Fourteen states/entities reported working with technical assistance centers on their improvement activities.

Featured Elements of State Processes and Improvement Activities

Technical Assistance, Training, and Professional Development. The most common improvement activities reported in FFY 2010 related to technical assistance, training, and professional development activities for hearing officers/ALJs and agency staff. States highlighted annual trainings that focused on hearing procedures, timeline management, appropriate extensions, and legal updates covering national, regional, and state-specific content, in addition to technical assistance sessions/meetings that occurred more frequently (i.e., quarterly, or in response to performance issues).

Of note is the spectrum of professional development and training opportunities that different states provide, and the amount of continuing education required for hearing officers/ALJs. Several states reported that hearing officers/ALJs must participate in a minimum of 24 hours of real-time training annually, while other states provide practitioners with subscription-based services that are available anytime but do not feature an in-person instruction component. Although not specifically expressed in their APRs, it appears that at least a few states experienced a budget adjustment in the amount of funds available for professional development and training. One state in particular stated in FFY 2009 that hearing officers were provided with eight days of training; yet in FFY 2010 that same state reported a \$400 training allowance per hearing officer.

Timeline Tracking and Case Docketing Database. Many states have implemented or updated due process complaint data systems similar to (or the same as) those used to track and monitor Indicator 16 data. For due process complaints, some states reported that their systems have a docketing function, which may be helpful in ensuring that timelines are met.¹⁰ Disaggregation of data from these systems is crucial to monitoring, evaluation, training, and technical assistance.

System Administration and Monitoring (and Evaluation). While ten states reported using hearing officer evaluation systems to track timeline compliance and overall performance, these systems are especially common in higher activity states/entities where due process complaints are managed by an office of administrative hearings. In such states, the supervision and evaluation systems are often based on collaborative agreements between the SEA and the hearing office. One state that did not achieve substantial compliance in FFY 2009 but did meet the target in FFY 2010 attributed their progress to both the use of new due process database tracking reports and an increase in hearing officer monitoring by the consultant that oversees the hearing and mediation system. Several states reported removing from service or initiating misconduct proceedings against hearing officers/ALJs that failed to improve or demonstrated incompetence.

Early DR Options and Conflict Management. Eleven states attributed the reduction of due process complaints filed and the increase in complaints resolved without a hearing to the implementation of early DR options and conflict management processes. Some examples of these include facilitated IEP meetings, parent hotlines (SEA or

¹⁰ Docketing involves scheduling and tracking the various elements of a due process complaint, from the resolution process through issuance of the decision, and may include “ticklers” that advise the hearing officer/ALJ and the parties of critical points in the process.

parent center operated), parent-educator training on working together collaboratively, and the use of an ombudsperson office.

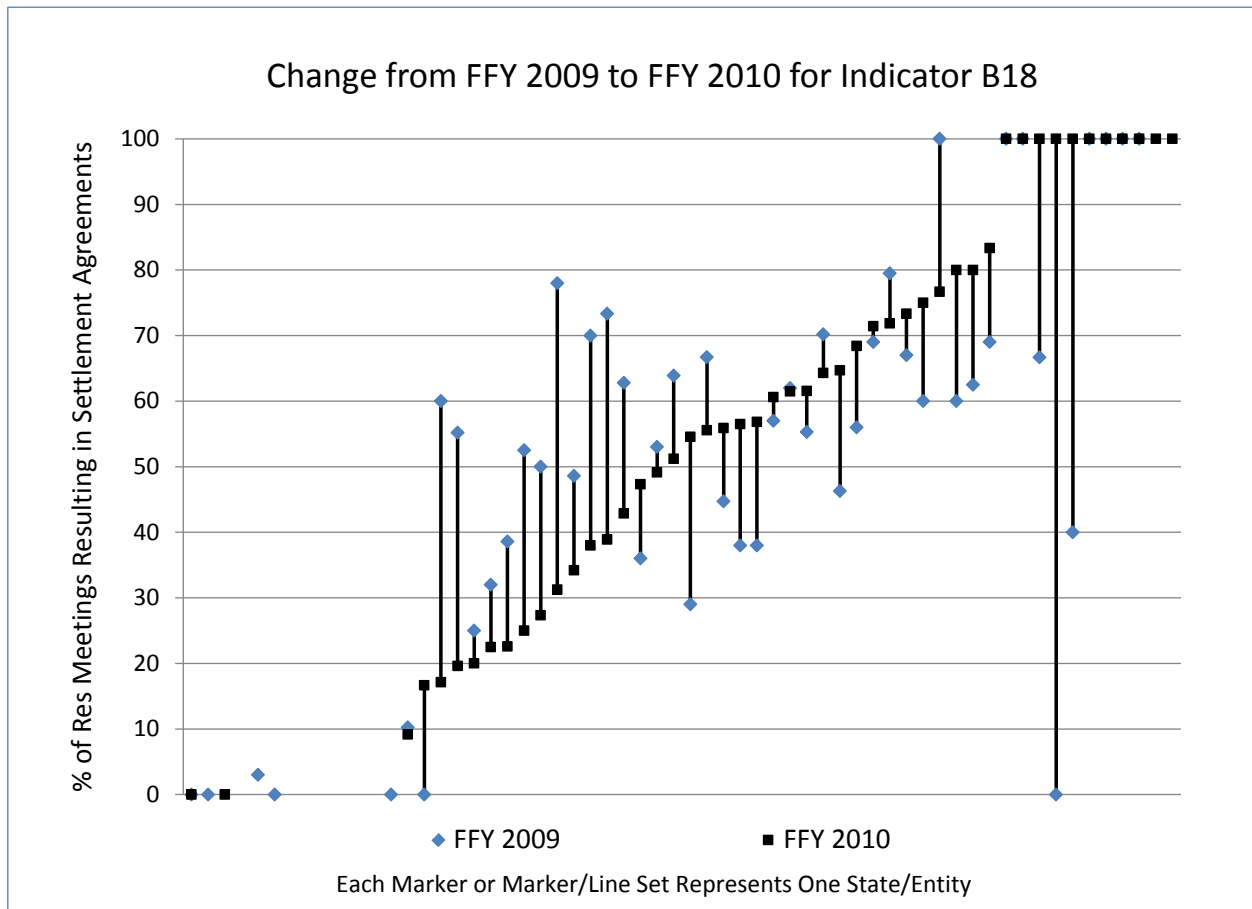
Indicator 18: Resolution Meetings Resulting in Written Settlement Agreements

Indicator 18 is considered a performance indicator that documents the number of resolution meetings resulting in written settlement agreements. For performance indicators, states/entities set targets, or goals, in their SPPs. States are not required to set a target or report current performance if they hold fewer than ten resolution meetings in a single year; although, some states/entities with low activity levels choose to report data on this indicator.

For the second year in a row, 49 states/entities reported Indicator 18 data in their APRs. In FFY 2010, 9,577 resolution meetings were held, resulting in 2,254 written settlement agreements, for a national agreement rate of 23.5%. In FFY 2009, 9,805 meetings were held and 2,975 agreements written, for a national agreement rate of 30.3%. Between the two years, the national performance rate for written settlement agreements declined by nearly 7%.

Figure 8 shows the change in state performance on Indicator B18 from FFY 2009 to FFY 2010, and reflects a key difference in activity between the two years.

Figure 8



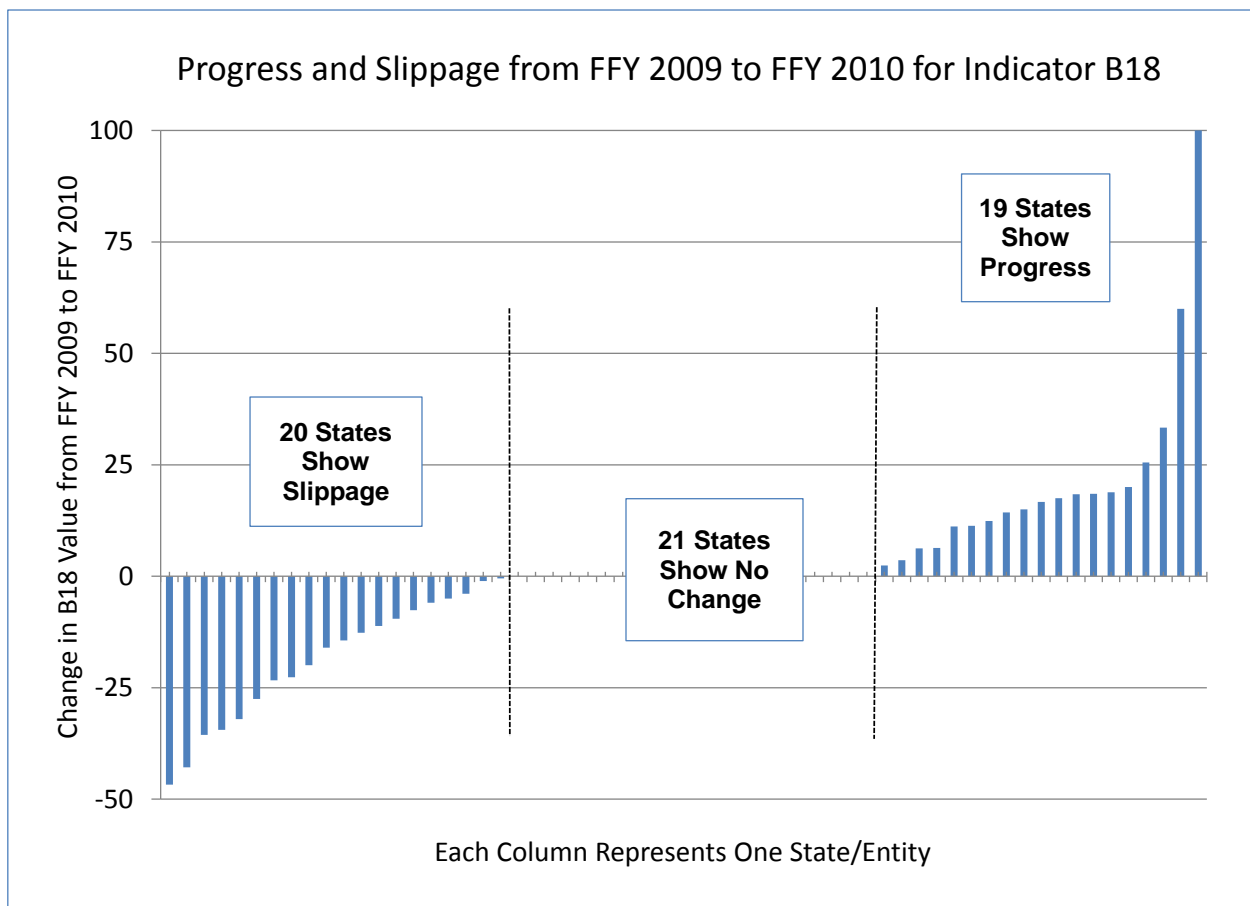
The drop in state performance was not due to the disproportionate impact of a very active state with low agreement rates (as was the case in FFY 2009); rather, a greater number of states experienced lower rates of agreement during FFY 2010.

In FFY 2010, seventeen states saw an increase in the percentage of resolution meetings resulting in written settlement agreements, while the same number of states/entities saw a decrease of more than a few percentage points. Of the 11 states that reported 100% performance during FFY 2010, only one held more than ten resolution meetings (which also happened to be a first for the state). That state reported 17 resolution meetings and agreements. The rest of the states at 100% were all low activity states that reported six or fewer resolution meetings with agreements.

Indicator 18 Progress and Slippage

As demonstrated in Figure 9, 20 states showed slippage during FFY 2010, 21 showed no change, and 19 showed progress.

Figure 9



Fewer than half of states provided an explanation for their progress/slippage on Indicator 18. Most do not attribute their performance to any particular improvement activities but just state that the rate of performance went up or down.

Regardless of whether a state offered explanations for progress or slippage, the most common remark was that Indicator 18 does not account for all of the written settlement agreements that parties to due process complaints may create, particularly those occurring outside the due process resolution meeting. Several states reported that data collected for state use shows most parties settling prior to hearing, even though current performance on Indicator 18 may not reflect this. One state gave the example of parties crafting a settlement agreement after the resolution meeting but prior to the end of the resolution period – the resolution meeting would be reported as having occurred but their agreement is not, since it was finalized outside the resolution meeting. The number of due process complaints resolved this way seems significant, given the number of complaints reported as withdrawn or dismissed (including resolved without a hearing). For example, in FFY 2009, 70.5% of requests were reported as resolved without a hearing. The ultimate outcome of such cases (the reason for withdrawal) cannot be determined from APR or Section 618 data.

States with higher performance rates also noted:

- A facilitator was available to assist with communications during the resolution meeting, at no charge to the parties.
- Mediation was offered at the time a due process complaint was received.
- Training on resolution meetings and the resolution process was provided to educators and parents/families, including the benefits of collaboration and resolution of issues by the parties, as opposed to a decision issued by a hearing officer.
- Resolution periods, meetings, and settlement agreements were actively tracked, monitored, and reviewed by the SEA to ensure that LEAs were implementing the resolution process; corrective action plans were ordered for LEAs that were not meeting the requirements.
- Resolution meeting and agreement data were reviewed, and system improvements were implemented accordingly.

Some states with lower performance rates noted the following:

- Resolution meeting outcomes depend upon the parties involved and the level of complexities at issue (Note: This reason was also cited by states with higher performance).
- Although fewer due process complaints are being filed, a higher percentage of those are going to hearing, suggesting that the issues in dispute are more complex, and it is more difficult for parties to resolve disputes on their own.
- Financial constraints/budget issues – districts' hesitation to agree to settlements that would result in additional costs.

Indicator 18 Trends

The national agreement rate discussed earlier (23.5% in FFY 2010) represents a sharp decline from last year (30.3% in FFY 2009), and that difference becomes more

significant when activity levels are also taken into account. As Table 3 shows, states holding more resolution meetings generally report lower rates of agreement.

Table 3

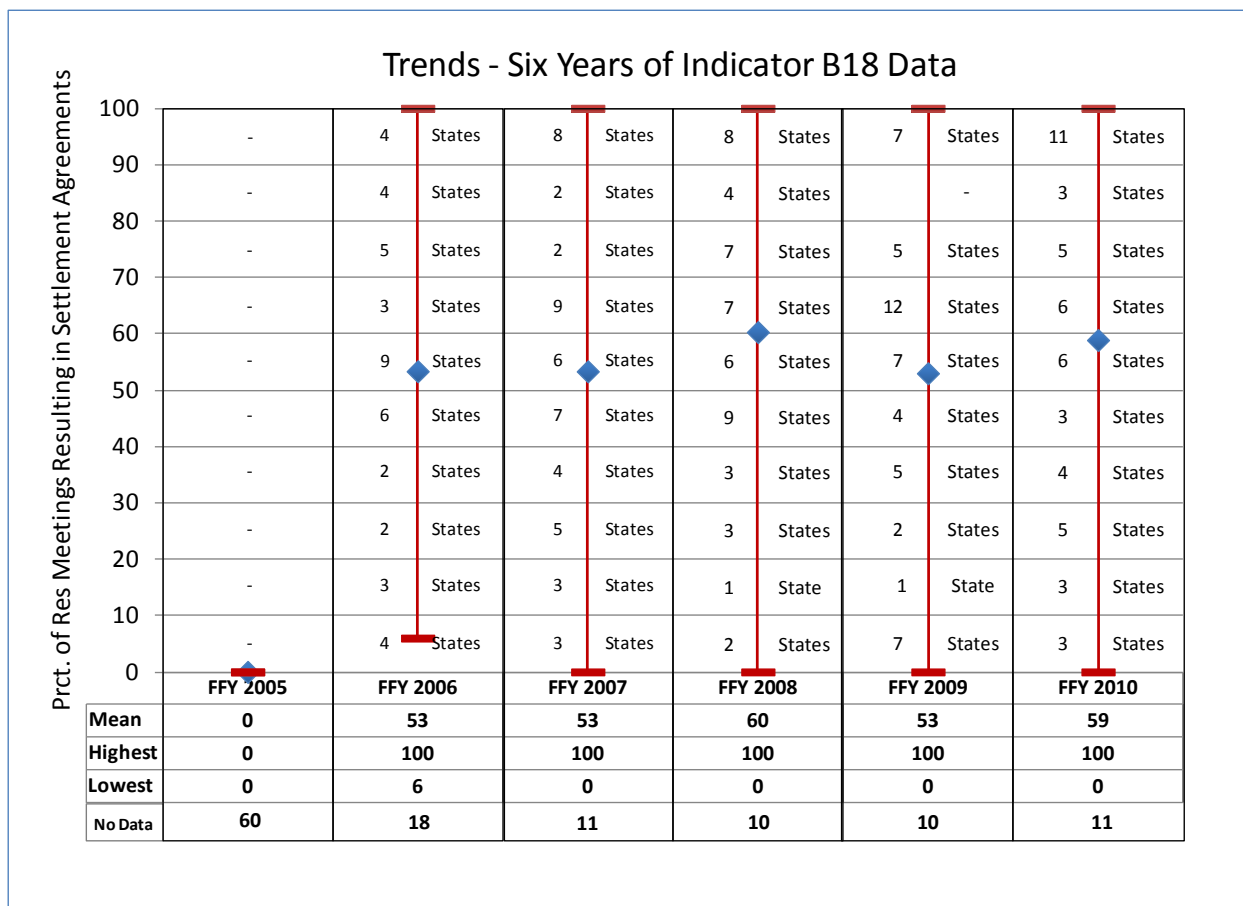
Indicator B18 Activity and Performance Rate in FFY 2010

# of Resolution Meetings Reported	<10	10-29	30-49	50-100	100-1000	>1000
# States Reporting	18	13	8	10	5	2
Performance Rate >50%	15	5	6	4	2	0

For example, only six of the 17 states (less than one-third) that held 50 or more resolution meetings reported a performance rate above 50%, while 26 of the 39 states (two-thirds) holding less than 50 resolution meetings reported rates above 50%. This also relates to the earlier discussion of written settlement agreements and due process complaints reported as withdrawn or dismissed (including resolved without a hearing). A resolution meeting that took place would likely be counted; however, an agreement begun at a meeting and completed at a later time would not necessarily be counted as an Indicator 18 written settlement agreement.

Figure 10 reflects state performance on Indicator 18 over a six year period. Of note is that over the years, the percentage of resolution meetings resulting in settlement agreements has been relatively flat, never rising above a mean of 60% (FFY 2008), despite states' reporting various improvement activities. In FFY 2010, the mean was 59%.

Figure 10



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

Indicator 18 Improvement Activities

It is difficult to determine which activities contribute significantly to improved performance on Indicator 18, as those listed by higher performing states are representative of a relatively small number of the total resolution meetings held in FFY 2010. The 11 states performing at 100% account for only 46 of the 9,577 meetings and 2,254 agreements, while only 15 of the 25 states/entities performing above the mean referenced improvement activities in their APRs. Some of those improvement activities were mentioned above, in the explanations for progress; following is a list of activities featured by states/entities in past years, and again this year.

Featured Elements of State Processes and Improvement Activities

Improved Data Collection & Monitoring. Over the years, a number of states have reported updates and improvements to their data systems, allowing them to collect and report more detailed data on due process resolution meetings, monitor LEA compliance, and track outcomes, including incorporating participants' evaluations of the process. Some aspects of monitoring that states now include:

- Providing immediate notification of the resolution process requirements to both parties at the time a due process complaint is received/filed.
- Checking with the LEA to ensure that the resolution process is implemented.
- Documentation of whether a written settlement agreement was reached, and at what point in the process.

Resolution Meeting Facilitation (Early DR and Conflict Management). A few states reported that they offer parties a facilitator to assist with communications during the resolution meeting, or period, at no charge to either party. While having the assistance of an impartial third-party does not guarantee that parties will create a settlement agreement, the use of a facilitator may improve the flow of communications between parties and their ability to work together.

Technical Assistance, Training, and Professional Development. As with Indicator 17, states reported providing technical assistance on the resolution process requirements to a broad range of stakeholders in FFY 2010. In addition to training and professional development activities for LEA staff and hearing officers/ALJs, states highlighted annual trainings offered to parent and advocacy groups that emphasized ways in which parties to a due process could use the resolution period to work together on creating agreement, and to avoid the irreparable relationship damage that often results from going through a hearing. States also reported making available updated public awareness and outreach materials to encourage schools and families to work together on resolving disagreements as early as possible, less adversarially and more cooperatively, to build strong relationships that lead to better outcomes for students.

Indicator 19: Mediations Resulting in Written Agreements

Indicator 19 documents the percentage of mediation sessions resulting in written agreements, and is considered a performance indicator. Like Indicator 18, states are not required to set a target in their APR or report current performance if there are fewer than ten events to report in a single year. Some states/entities choose to set targets and report data on this indicator even though their total number of mediations is less than ten annually.

Figure 11 shows that from FFY 2009 to FFY 2010, the total number of mediations held and agreements reached increased. Although a few states/entities improved slightly or lost some ground with regard to their performance, 34 states met their performance targets in FFY 2010. Most states are clustered in the 60% to 90% range of mediations resulting in settlement agreements.

Figure 11

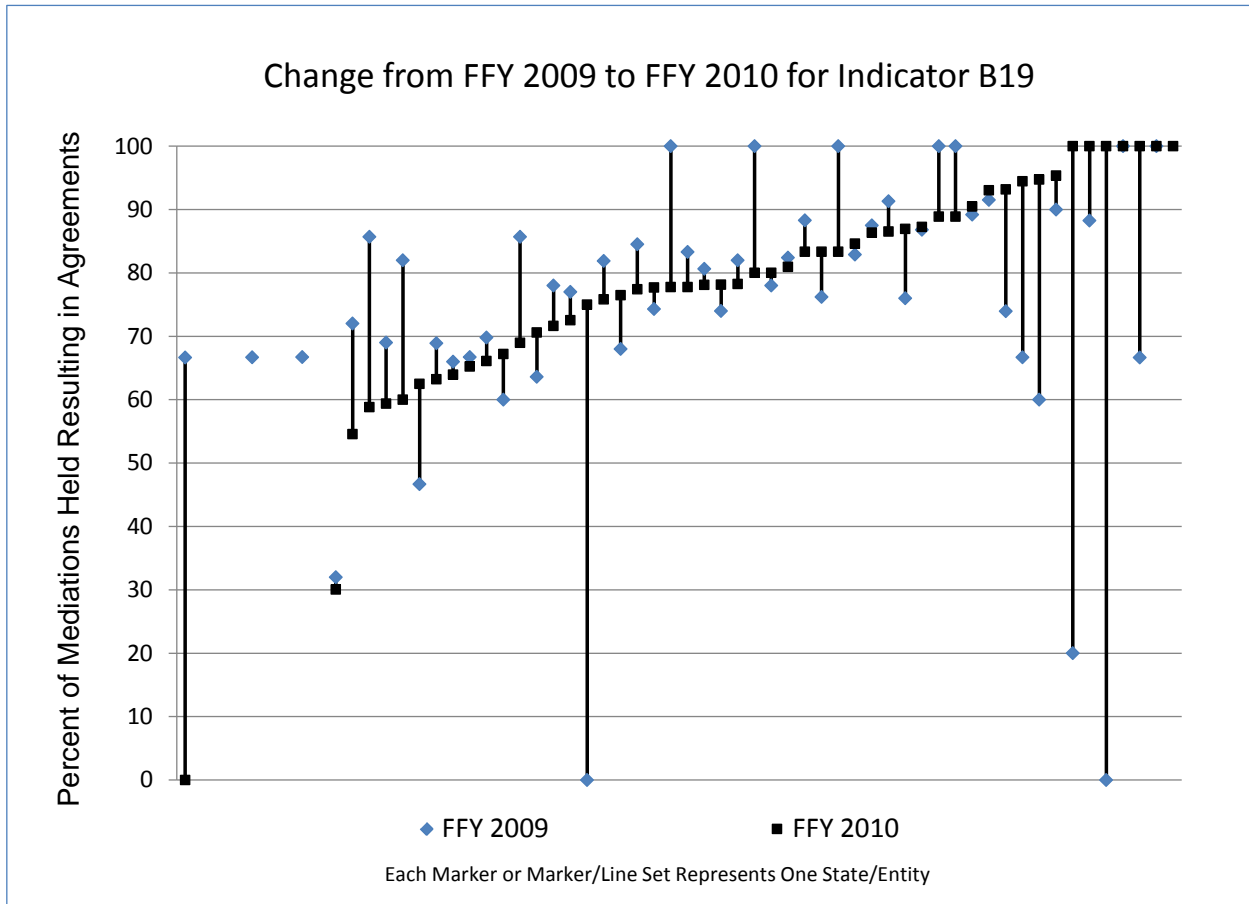
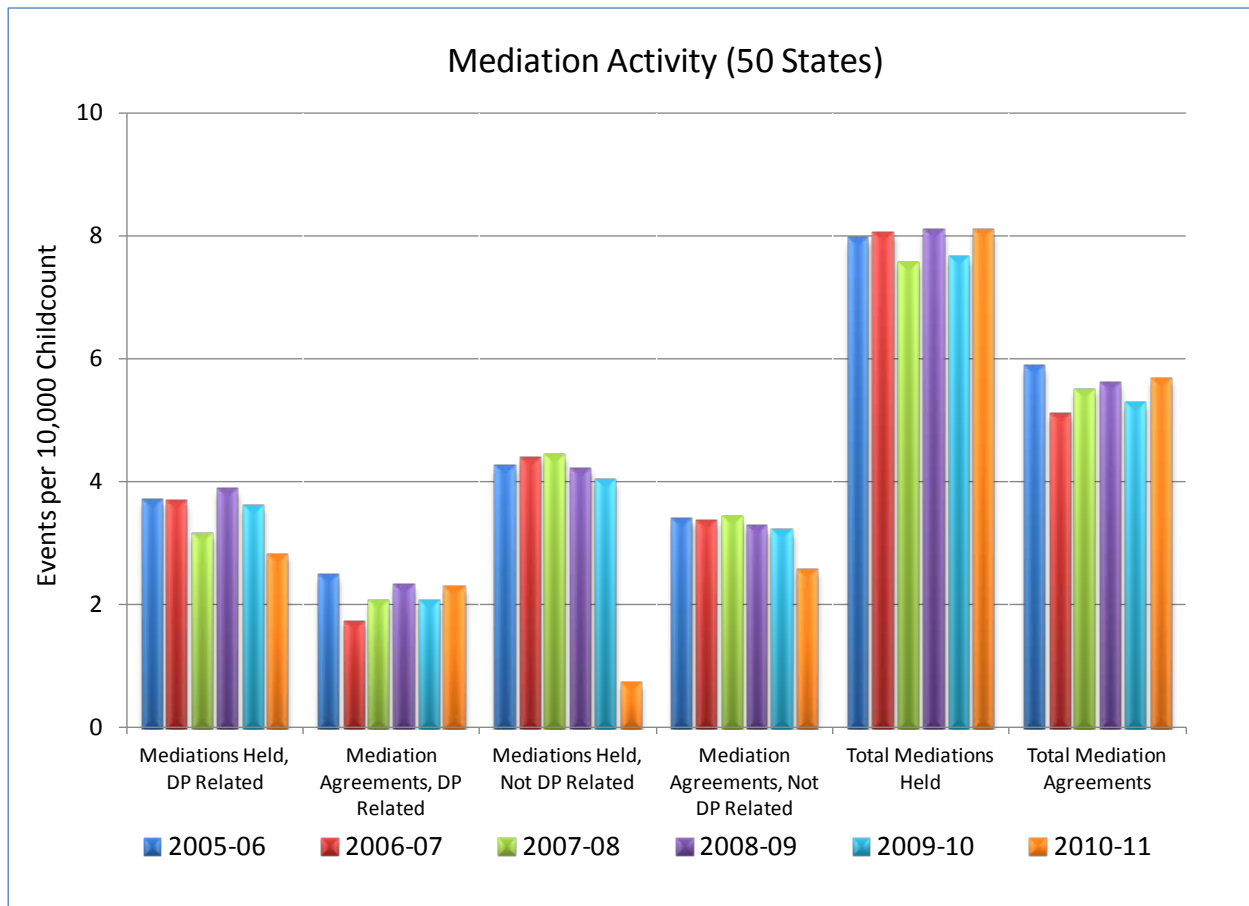


Figure 12 displays the rate of mediation activity for the 50 States, based on special education childcount.¹¹ Overall, the rate of performance on Indicator 19 during the past six years has been remarkably stable, with the exception of a dip in FFY 2010 in the rate of mediations held and agreements not related to due process. This may be attributable to a discrepancy between the data on the number of mediations and mediation agreements reported in the APRs and states' Section 618 Table 7 reports. Because states do not consistently follow OSEP guidance regarding the formula for calculating mediation agreement rate, the data for the number of mediations that either were or were not related to due process is incomplete for FFY 2010.¹²

¹¹ Not including the District of Columbia and other Part B grant recipients.

¹² The formula used to report Indicator C19 data is drawn from the Section 618 Table 7: $[(2.1.a.i \text{ mediation agreements related to due process complaints} + 2.1.b.i \text{ mediation agreements not related to due process complaints}) / 2.1 \text{ mediations held} \times 100]$. When states report only the sum of the digits in the parentheses, providing no detail on the number of agreements related to due process (or not), it complicates the analysis of mediation settlement rates.

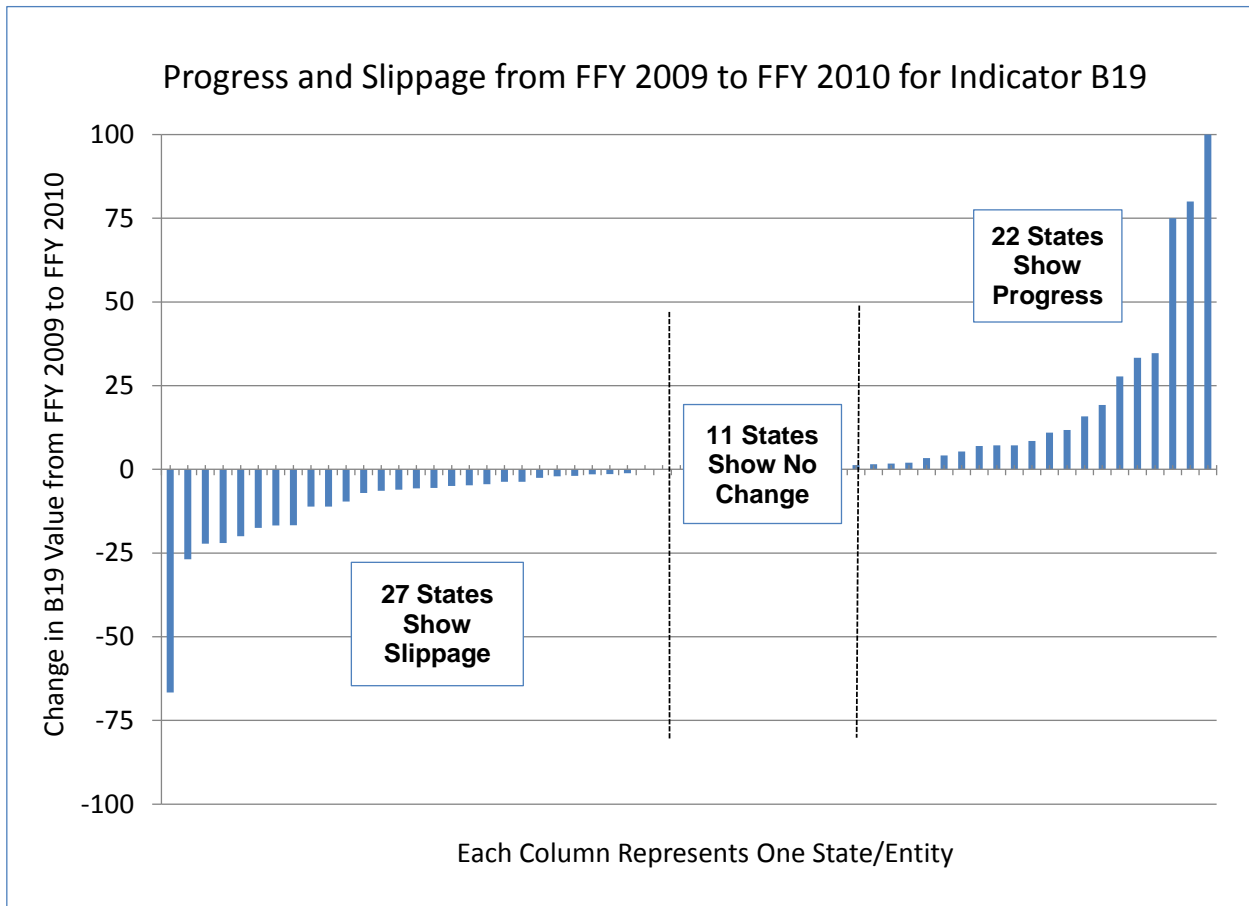
Figure 12



Indicator 19 Progress and Slippage

As demonstrated in Figure 13, 22 states reported progress on Indicator B19 from FFY 2009 to FFY 2010, 27 states experienced slippage, and 11 states showed no change.

Figure 13

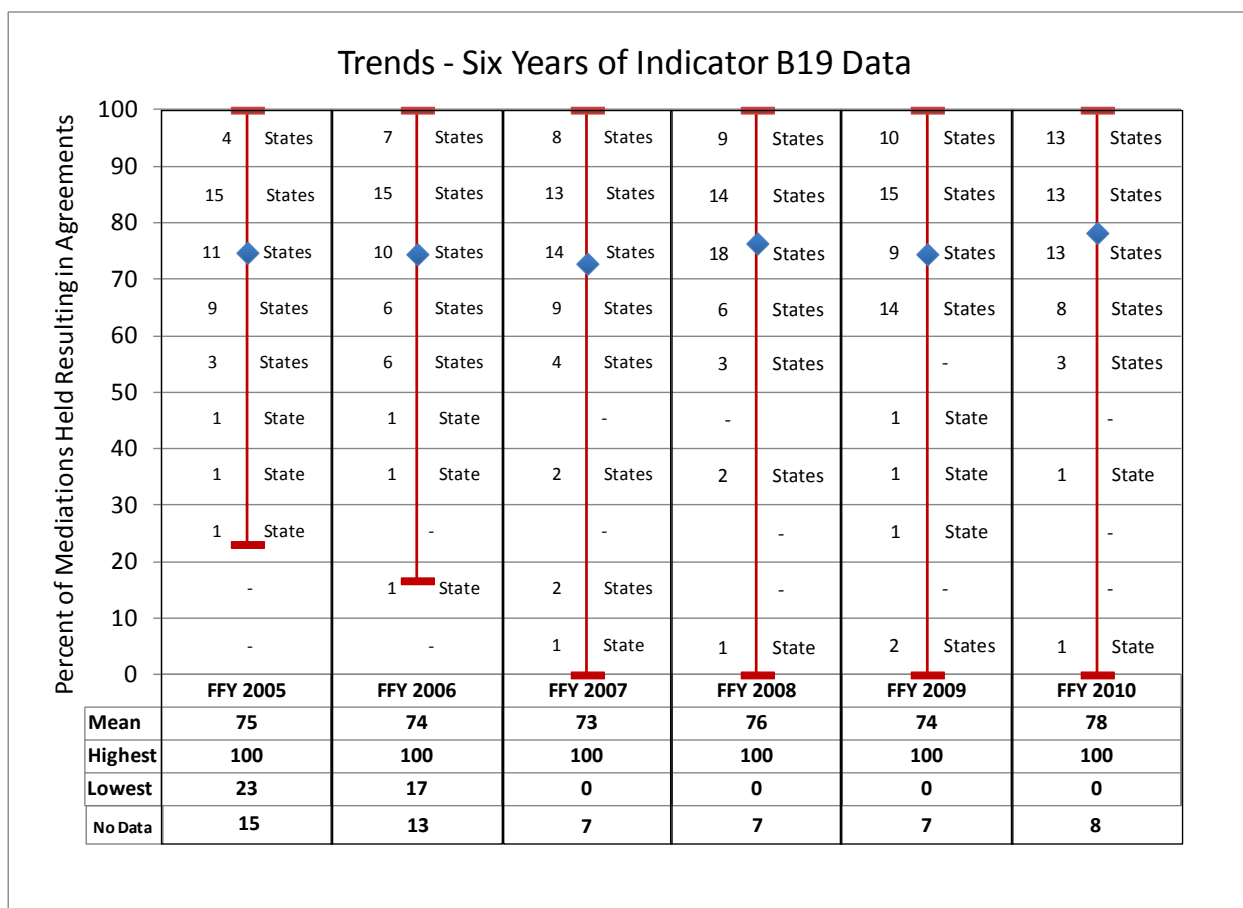


The reasons for progress and slippage in mediation rates are similar to those for resolution meeting agreements (Indicator 18). Increased use of early DR options was offered by states as both an explanation for progress (creates a culture of agreement) and slippage (hard cases are now going to mediation after early resolution efforts solve the easy ones). States continue to report that providing technical assistance and training opportunities for parent-school collaboration has encouraged participants to use mediation to reach agreement, while the increased availability of collaborative processes, such as IEP facilitation, has decreased demand for mediation in some places.

Indicator 19 Trends

The performance bands in Figure 14 display states' performance on the percentage of mediations resulting in agreements across the last six years. In FY 2010, 26 states performed between 80% and 100%, including 13 that performed at or above 90% – the highest number of states ever to perform in that range. Also worth noting is the mediation agreement rate – it remains steady, averaging 75% across the six years. Only seven or eight states/entities report having held no mediations in the past four years.

Figure 14



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

Indicator 19 Improvement Activities

The most frequently identified basis for achieving high mediation agreement rates was the presence of highly trained and experienced mediators. Additionally, states with high-performing mediation systems credit their performance to stakeholder collaboration and training, public awareness and outreach on the availability of early DR options, and implementation or improvement of data collection/reporting and evaluation systems.

Featured Elements of State Processes and Improvement Activities

Technical Assistance, Training, and Professional Development. Many states emphasized their requirements for mediator experience, training, and preparation of mediators (several require 20 or more hours of annual training and professional development). A few states reported increased frequency of communications with their mediators on hot topics and provision of technical assistance on complex issues, helping practitioners meet parties' needs. States also are increasingly using online resources and tutorials to provide practitioners with training opportunities.

Stakeholder Engagement. Many mediation systems include stakeholder involvement and parent-professional participation in their design and operation, and emphasized the development of ongoing joint training efforts with parent centers and other stakeholder groups in their APRs. Some states reported working with stakeholders on multi-year action plans relating to early DR options, like IEP facilitation and online resources for approaches to conflict management.

Internal and External Evaluation of Processes and Outcomes. States reported using information drawn from participant satisfaction surveys, process evaluations, and practitioner feedback to determine overall efficacy of their mediation systems and which areas needed adjustment. Several states noted that the return rate for mediation evaluations increased with the use of online surveys. Another state referenced sending parties an additional survey 60 days following their mediation, to determine the degree to which any agreement(s) crafted during mediation sessions were implemented.

CONCLUSIONS

State DR systems appear to be working well, especially in states with the leadership and capacity to support effective state administration and monitoring of dispute resolution options, implement early DR options and conflict management approaches, offer substantial and effective training, engage and involve stakeholders, and perform ongoing systematic evaluation and improvement. Policies, procedures, and practices across the country and among grant recipients have been updated, and systems are generally performing more consistently and successfully.

Active systems may face challenges in managing the high volume of requests and complaints they receive annually but many of these states/entities are reaching their targets and goals. Meanwhile, systems with lower levels of activity face very different challenges, such as being prepared when several due process or signed written complaints arrive at once, or a key staff person goes on leave. Additionally, in states with smaller populations and tight-knit communities, the idea of filing a formal complaint is not considered an option, so the need for more informal ways of managing conflict and less adversarial DR options are high priority.

RECOMMENDATIONS

CADRE has identified the following attributes commonly found in effective DR systems. While some of these have been featured in this chapter in relation to specific improvement activities, a more complete list is provided here:

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

- Management structure that includes a specific individual or group having responsibility and authority for coordination and performance of the system.
- Reliable financial and personnel resources adequate to support all system components.
- Transparency in the design, implementation, performance and evaluation of the system.

- Use of evaluation data to guide continuing system improvement efforts.
- Active and meaningful engagement of a broadly representative group of system stakeholders in planning, promotion, evaluation and improvement activities.

A Continuum of DR Options and Practices

- Preventative or upstream DR approaches that offer alternatives to due process and formal complaint procedures.
- A single point of entry for families, including personal assistance to provide information, help identify and resolve issues, or suggest an appropriate DR option.
- Educational materials comparing DR procedures and describing how to prepare for and use them effectively.
- Information and training in collaborative strategies, including dispute prevention skills, available to educators and parents.

Standards, Training, and Technical Assistance

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

Public Awareness, Outreach, and Stakeholder Involvement

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

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

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

CADRE prepared this summary and analysis. CADRE provides state education agencies (SEAs) technical assistance by means of an integrated and systemic approach, assisting states to develop, maintain, and increase performance of their required DR systems, as well as early dispute resolution options and conflict management approaches. When families, students, and schools resolve disagreements through less adversarial, more cooperative means, stronger relationships and better student outcomes generally result.