Part B

State Performance Plan/Annual Performance Report
2011 Indicator Analyses

FFY 2009–10

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

IDEAs that Work
U.S. Office of Special Education Programs

TA&D NETWORK

INDICATORS 16, 17, 18 AND 19: DISPUTE RESOLUTION UNDER PART B
Prepared by the Center for Appropriate Dispute Resolution in Special Education (CADRE)

This summary addresses state performance on the dispute resolution (DR) processes required under the Individuals with Disabilities Education Improvement Act (IDEA), as well as information provided by the states on early resolution options. CADRE'S orientation to technical assistance and performance improvement is systemic and integrated – focusing on all DR options and emphasizing early dispute resolution and conflict management processes to alleviate the need for more formal and contentious processes. That orientation is reflected in this combined report on the four required DR indicators. While specific details on improvement strategies are beyond the scope of this document, readers should note that there are many examples of states successfully improving their performance in each of the four dispute resolution areas. Past or current problematic performance does not predict future performance, especially where state leadership and resources are directed toward specific improvements.

INTRODUCTION

IDEA requires that states, in order to be eligible for a grant under Part B, must provide four dispute resolution options to assist parents and schools to resolve disputes: written State complaints, mediation, and due process complaints (hearings). The 2004 reauthorization of IDEA expanded the use of mediation to allow parties to resolve disputes involving any matter under IDEA. IDEA also added a new fourth "resolution process" whenever a parent files a due process complaint, to allow parents and schools a more informal setting in which to reach a settlement and resolve the due process complaint without a hearing. These additions to the statute reflect the Congressional preference expressed at 20 U.S.C. 1401(c)(8) for the early identification and resolution of disputes: "Parents and schools should be given expanded opportunities to resolve their disagreements in positive and constructive approaches." In addition to these required procedures, many states offer informal "early dispute resolution" processes (e.g., IEP Facilitation, ombudsperson) intended to diffuse and resolve disagreements before they reach a level requiring a formal process.

States are also required to report annually to the Office of Special Education Programs (OSEP), U.S. Department of Education, on their compliance with and performance in key areas of the Law. This document is a summary and analysis of the FFY 2009 State Annual Performance Reports (APRs) for the dispute resolution indicators under Part B. These include:

- Indicator 16: Percent of signed written complaints with reports issued that were resolved within 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.

DATA SOURCES AND METHODOLOGY

Sources for this report include the FFY 2009 (2009-10) APRs submitted to OSEP on February 1, 2011, APR clarifications submitted by states as of April 2011, OSEP summaries of the indicators used for U. S. Department of Education Determination Letters on State Implementation of IDEA (June 2011), and other CADRE information on state DR activities. This report also draws on state DR data from prior years.

Beginning in 2002-03, states have reported DR activity to OSEP, first as "Attachment 1" and later as "Table 7" in their APRs. CADRE maintains a national longitudinal dispute resolution database using these reported data. IDEA required that, as of FFY 2006 (2006-07), these data be reported under Section 618 of the IDEA to the Westat/Data Accountability Center (DAC). CADRE receives DR data from the DAC after it has been verified for publication in OSEP's Annual Report to Congress. Since complete Table 7 data are no longer uniformly reported in the APRs, the current APR documents can be used only to generate summaries of changes in the indicator values but not summaries of broader dispute resolution activity. Summaries of longitudinal data from 2003-04 through 2008-09 are included here in order to demonstrate change over time in state compliance and performance related to these indicators. Otherwise, the data used in this report are drawn from state APRs. Note: "States" and "states/entities", unless otherwise clear from context, are used interchangeably to refer to all eligible recipients of Part B state grants, including the 50 United States, and the other "entities" (i.e., District of Columbia, Puerto Rico, Bureau of Indian Education, Virgin Islands, American Samoa, Guam, the Northern Mariana Islands, and the Freely Associated States (Republic of Palau, The Marshall Islands, Federated States of Micronesia).

Three CADRE analysts compiled performance data from the 60 APRs submitted by states. Performance data gathered by OSEP in its reviews was compared to that recorded by CADRE. In a few instances, CADRE elected to use corrected figures for an indicator where there were clear and confirmable mistakes made by the state in the report (for example, indicator values, in a few cases, did not match reported data used to make the calculation), or the calculation was simply in error. In those cases, OSEP may follow the state's submitted indicator or may register a concern about the reliability and validity of the state's data. Where possible, CADRE used corrected data, in some cases checking with the state to ensure that the correction was accurate. Each report was reviewed for information about improvement activities. Where relationships between state characteristics and performance could be identified, these are reported as well.

SUMMARY BY INDICATOR: PERFORMANCE AND IMPROVEMENT ACTIVITIES

This section is a summary by dispute resolution indicator of the states' actual (2009-10) performance, progress and slippage, trends, significant improvement activities, and any relationships identified among state characteristics and performance.

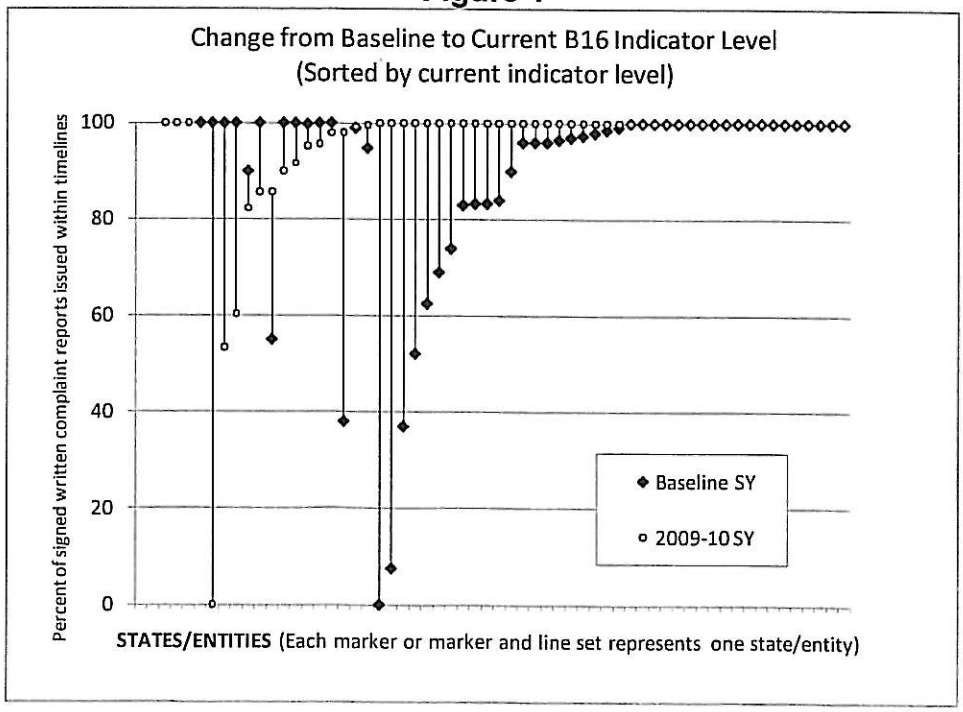
Indicator B16: Percent Signed Written Complaints Issued Within Timelines

The timeline requirements for completing investigations and reports of signed written complaints are statutory: "within 60-day timeline or a timeline extended for exceptional circumstances with respect to a particular complaint." B16 is a "compliance" indicator – states must meet this standard for all complaint reports issued. In 2009-10, 43 states met this 100% target; three states (outlying entities of the Pacific) reported no complaint activity, while 14 states did not meet this target. There is a slight negative relationship between performance on this indicator and the percent of students served in special education: the states serving the larger proportions of their school population in special education failed to achieve compliance slightly more often.

Indicator B16 Actual Performance

Figure 1 is a display of the range of current performance on Indicator B16 and change from the baseline year (2004-05) to the current year (2009-10). "Hi-lo lines" show the change; if the baseline marker (diamond) is below the 2009-10 marker (circle), that state showed positive change from baseline; if above, those states declined from baseline to the current year.

Figure 1



Most states have shown progress and achieved compliance. In the baseline year, 28 states had B16 levels of 100%, while 39 states were above 95% ("substantial compliance"). For 2009-10, 43 states were at 100%, while 49 were above 95%. This indicates overall progress across states toward achieving compliance. However, some states continue to struggle: two states were below compliance levels for both years and six states that had reported compliant indicator levels in 2004-05 were unable to do so for 2009-10. Other comparisons reflected in Figure 1:

- Two states had no activity in either the baseline or current year
- One additional state had activity in the baseline year, but not in 2009-10
- Three states (all smaller entities) had activity only in 2009-10
- Ten states in 2009-10 were below baseline
- 25 states in 2009-10 were above baseline
- 19 states were compliant (100%) both years
- 32 states were above 95% (substantial compliance) for both years

States are doing substantially better in achieving compliance in 2009-10 than they did during their baseline year.

Indicator B16 Progress and Slippage

Seven states showed slippage in Indicator B16 from 2008-09 to 2009-10; 38 states experienced "no change" from 2008-09 and 2009-10; 15 states showed progress. Other slippage information:

- Two states had no activity in either 2008-09 or 2009-10
- Three states had no activity (shown in the figure below as "no data") in 2009-10
- Three states (all smaller entities) had activity only in 2009-10
- Four states evidenced 100% change (one showing slippage and three progress) – three of these states had only one or two complaints in 2009-10
- Five states had no activity in 2008-09
- 35 states achieved 100% compliance both years
- 41 states were above 95% (substantial compliance) for both years

One of the 100% progress states was a large state that overcame a lack of valid and reliable data (0% in 2008-09) to demonstrate 100% compliance in 2009-10. This state investigated and reported on almost 100 complaints in the current year (some problems may reflect more technical data quality and tracking issues than systemic complaint procedural performance).

States did not always provide "explanations" for progress or slippage. Many states simply restate that they met or did not meet the target in this section without attributing their performance to anything specific. Others simply indicate "implementation of improvement activities" as an explanation. Of those 29 states that attributed their progress or their meeting compliance to one or more particular strategies, the reasons in order of most frequent mention included:

- Data tracking and frequent monitoring of timelines by leadership or by a team
- Stakeholder collaboration and engagement, often including a public process for publicizing DR options, clarifying processes, and reporting results
- Team engagement through frequent meetings to review progress on complaints
- Other ADR - active promotion of alternative dispute resolution to reduce demand for more formal processes
- Leadership engaged through active priority setting and monitoring of timelines
- Training of and guidance to staff and other stakeholders on procedures
- Communication with and technical assistance (TA) to LEAs to provide guidance, encourage early resolution
- Increasing staff to address backlogs and adjust staff assignments to address demand

Ten states provided explanations for not achieving compliance. Six states indicated that the primary reason for failure to achieve compliance was the result of one or few reports slipping past the 60 day timeline by a few days, sometimes over a weekend. Loss of key staff was the next most common reason given for failure to meet timelines.

While the occasional process error and staff loss can be particularly difficult in any system, some states appear to aim their procedures too much at the end of the 60 day timeline or may require reviews that cannot be reliably provided by leadership in times of competing demands. Several states noted that they complete draft reports within 30 to 45 days, allowing time at the end of the process for review and refinement of the report before issuance. If the report is not drafted until near the end of the 60 days, failure to issue it on time will be more frequent.

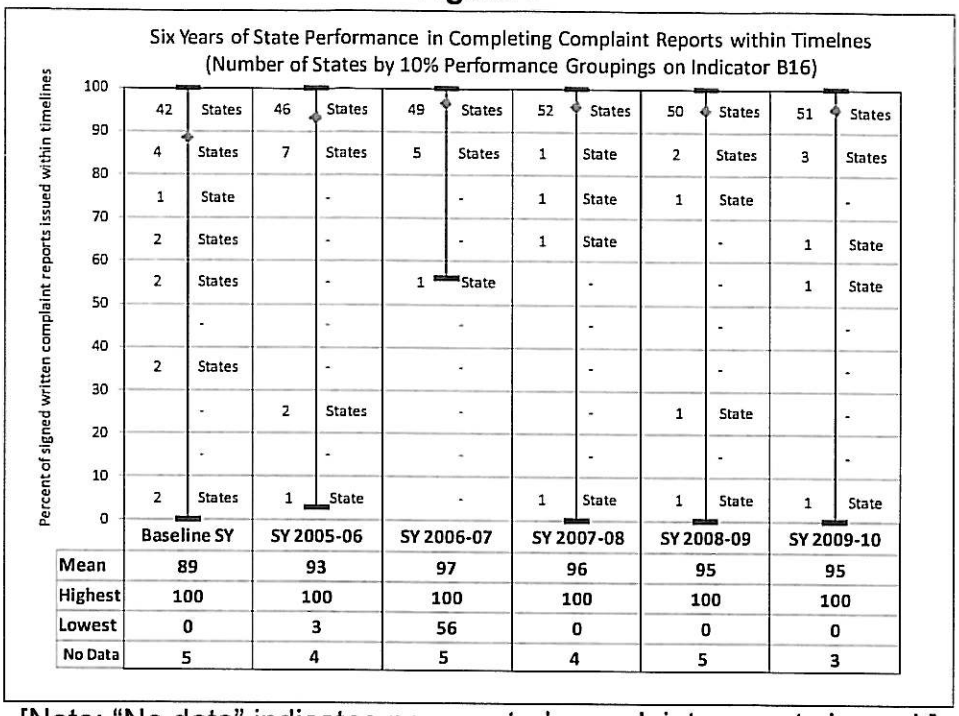
Indicator B16 Trends

The performance "bands" (rows) in Figure 2 reflect, in the uppermost band, the number of states with performance on this indicator ≥ 90%. The next band shows the number of states with performance in the range of 80% to <90%, while each remaining band covers a 10% range (e.g., 70% to <80%, 60% to <70%). Again, three states had no activity during the 2008-09 year and all states provided valid and reliable data.

Table 1 summarizes states demonstrating full compliance (100%) and substantial compliance (≥95%) for these six years.

Many states report that they now apply rigorous criteria for the use of extensions in complaint investigations, ensuring that extensions are granted strictly in compliance with regulatory standards in exceptional circumstances with respect to a particular complaint or when the parties involved agree to engage in mediation. It may be that individually applying these formal standards had the initial effect of decreasing on time report completion (in 05-06 and 06-07). However, growth in the number of states completing their complaint investigations and reporting within timelines is evident in these data.

Figure 2



[Note: "No data" indicates no reported complaints reports issued.]

Table 1

Number of States Achieving Substantial or Full Compliance on Indicator B16

	Baseline (04-05)	05-06	06-07	07-08	08-09	09-10
100%	28	36	36	42	42	43
≥95% to 100%	39	46	42	47	47	49

Indicator B16 Improvement Activities

APRs often lack detail on how a state approaches dispute resolution management. "Annual training", or "data tracking system" are general descriptions. In many states, the information on improvement strategies is "boilerplate" language, usually brief and sometimes the same wording for all four dispute resolution indicators. In a number of states, activities other than what is required by IDEA are not reported. For example, many states promote early resolution strategies aimed at preventing or resolving conflicts before the formal processes are fully invoked, but may not report on these optional processes even though the state may consider those activities essential parts of their dispute resolution system.

Featured Elements of State Processes and Improvement Activities

There are, without doubt, states with effective activities that are not described in their APRs or SPPs. Here (and in later parts of this chapter) observations are offered on improvement activities and processes emphasized by some states (AK, AR, AZ, DC, FL, GA, MA, MN, MS, MT, ND, NM, SD, TX, WI) and that stood out in the FFY 2009 reports. These mentions are not endorsements of a particular approach (states generally do not provide sufficient information for such a judgment). Nor does a state's mention suggest that their performance is compliant, or is compliant as a result of a particular activity. The activities described, however, are frequently mentioned in APRs as parts of effective systems.

Timelines Tracking. Integrated tracking system (used by investigators; tracked by supervisors or reviewed by "team" regularly; monthly or frequent review meetings to ensure timelines are addressed and common issues can be identified and focused on.)

Procedural Clarity. Procedures or guidance that lay out the steps on a timeline from complaint filing to report delivery help clarify the process to investigators, LEA staff and parents. Key elements mentioned by several states: first draft of complaint report submitted early (one to four weeks prior to the end of the 60 day timeline) to allow time for review, polishing, signing, and delivery on time, and follow-up procedures to ensure that corrective actions have been implemented. [A caution from one state about overcomplicating the review process: "In retrospect, new review procedures that relied on the availability of the division chief delayed six complaint reports."]

Using External Expertise. Many states contract for external expertise to bring in an independent perspective for system review, as well as for periodic training of staff.

Evaluation Monitoring. Using integrated data tracking systems, some states comment that they use issues identified through informal and formal dispute resolution to inform improvement activities and monitoring across special education, and to identify hot topics for staff training.

Staff/Stakeholder Training. States providing more detail on their training describe frequent events (as often as twice a month), based on needs and issues assessment. States that have corrected repeated timeline problems have invested in both extra staff training and in tracking (including "tickler" notices about timelines) and feedback to staff (e.g., report reviews, performance evaluation).

LEA Communications and TA. Training for SEA DR and LEA staff helps familiarize them with DR processes. Frequent communication (form letters, standard protocols) in the event of a complaint helps keep the process moving.

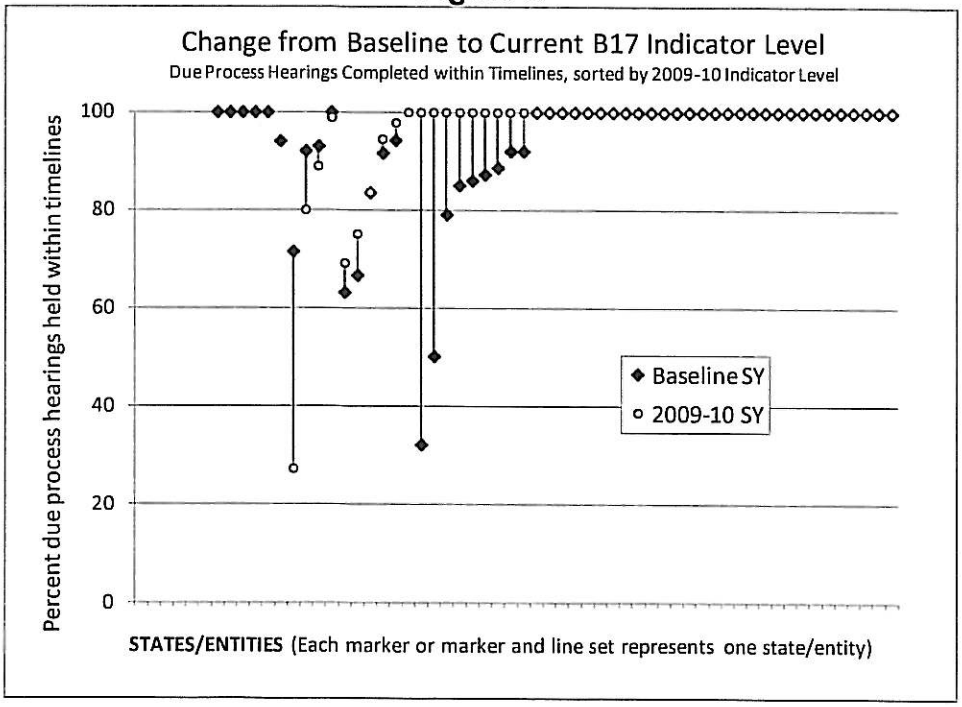
Indicator B17: Hearings Held and Decisions Issued Within Timelines

The timeline requirements for conducting hearings and issuing hearing officer decisions are statutory. Under B17, hearings decisions must be 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." This is another "compliance" indicator – states must meet this standard for all due process hearings held and decisions issued. In 2009-10, 39 states held hearings and met the 100% target; 12 states reported no due process hearings held; and nine states held hearings but failed to meet this target.

Indicator B17 Actual Performance

Figure 3 is a display of the change in state B17 performance from the baseline year (2004-05) to the current year (2009-10). The vertical lines show change; if the diamond marker (baseline) is below the circle marker (2009-10), that state showed positive change from baseline; if above, the state declined from baseline to the current year.

Figure 3



Change from baseline performance on indicator B17 is overwhelmingly positive:

- Four states had 2009-10 performance less than baseline
- One state showing no change reported 83.5% for both years
- 13 states showed improvement from baseline to 2009-10
- 12 states held no due process hearings in 2009-10
- Six states held no due process hearings in either year

- Seven states had no activity in the baseline year
- One state had activity only in 2009-10
- 39 states were compliant in 2009-10 compared to 29 states in the baseline year
- Two additional states were substantial compliance (Indicator values >95%)
- 28 achieved 100% compliance in both years

It is clear that state systems are getting better at managing the complexities of tracking and managing hearing timelines.

Indicator B17 Progress and Slippage

Four states showed slippage, 43 showed "no change" and 13 showed progress between 2008-09 and 2009-10. Of the 35 "no change" states/entities, only two reported no due process complaint activity for both 2008-09 and 2009-2010, six states held a hearing in only one of these years, while 35 states achieved 100% compliance both years.

Of the 43 "no change" states: 23 reported 100% on time for both 2008-09 and 2009-2010; 12 held no hearings in 2009-10; 17 held no hearings in 2008-09; and nine held no hearings in either year. As noted above, 39 states that held hearings reported achieving 100% compliance in contrast to only 29 states in 2008-09. Of the 13 states showing progress, eight achieved full compliance (100%), while two more states had indicator B17 levels between 95% and 100%.

Explanations for progress fell into predictable areas, largely focused on the timeline requirements:

- Tracking systems that provide information to the hearing system, to the parties in the complaint, to hearing officers (including "ticklers"), and to SEA dispute resolution managers about each due process complaint and where it is in the process.
- Agreements and joint tracking of timelines by the SEA and a state office of Administrative Hearings (when the SEA did not directly supervise a hearing panel).
- Focused training (in some states up to eight days a year) on hearing procedures, including timelines, legal issues, etc.
- Hearing officer evaluation systems that included feedback and guidance regarding timelines.
- Use of outside expertise (e.g., national experts as trainers).

Explanations for slippage (and for failure to reach compliance) were most often cited as failure to mail a decision before rather than after a weekend when the timeline ran out on a Saturday or Sunday and other relatively easy-to-fix clerical or technical issues. For some states, vacations and staffing issues may represent a larger systemic issue in meeting regulatory timelines. Of the four states that showed slippage, three were the result of a single hearing not being completed within timelines. Had those hearings

been completed, all three states would have achieved 100% compliance. The largest slippage (67%) was the result of a finding during an OSEP verification visit: the state had failed to include both the new date of the hearing and the date of the decision when communicating to the parties about extensions. The state reports that this noncompliance has been corrected by a change in a letter template.
As might be expected, states with more hearing activities are more likely to have problems reaching 100% compliance. Table 2 provides a quick view of "break points" for the number of hearings held and the number of states failing to meet compliance.

The more hearings that states hold, the more difficult it may become to complete them all within timelines; more active systems are less likely to achieve 100% compliance. However, two of the three states that held in excess of 100 hearings in 2009-10 achieved between 95% and <100% on this indicator, suggesting that even with high levels of activity these systems can achieve substantial compliance.

Table 2

Number and Percent of States Holding Hearings and Noncompliance Status

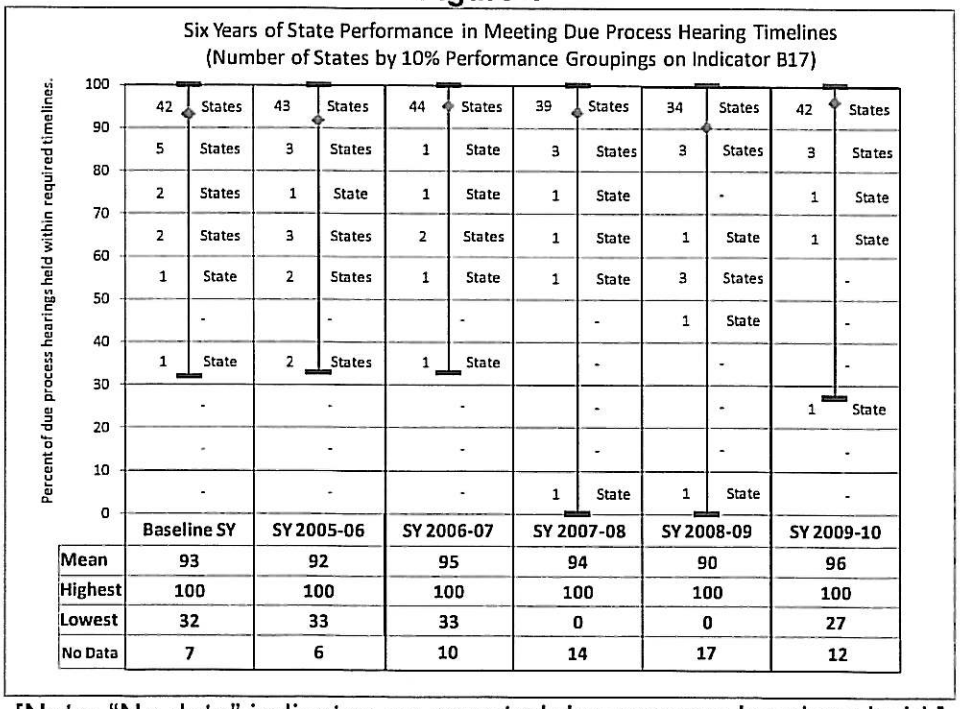
	Number of States		
# Hearings Held	Total	States with B17 <100%	% Noncompliant
None	12	NA	NA
1-3	22	0	0%
4-17	15	3	20%
18-99	8	4	50%
>100	3	3	100%

A significant unknown in the APR data reported is the number and proportion of hearings pending as of June 30 each year. For 2009-10, 12 states provided at least partial information about the number of due process complaints filed, hearings held and hearings pending. In six states that reported both complaints filed and pending, from 14% to 75% of due process requests were pending as of June 30 (the total number of complaints pending was almost 700 and the average was 33% pending). In eight states that reported both due process complaints and hearings held, the percentage of due process complaints resulting in a full hearing ranged from 0% (in the state with 75% pending) to 13% with an average reported rate of 5%. These states accounted for 161 hearings held. In 2008-09 (the year for which consistent Section 618 data are currently available), pending due process complaints (2,602) were 14.4% of all filed; by contrast, state written complaints pending (72) were 1.4% of all filed. The addition of the resolution meeting process has resulted in more of those due process complaints filed late in the year remaining pending as of the close of the reporting period. High levels of "pending due process complaints" in some states may distort summaries and comparisons with other states that have a relatively low proportion of pending.

Indicator B17 Trends

The performance "bands" (rows) in Figure 4 reflect, in the uppermost band, the number of states with performance on this indicator ≥ 90%. Again, 12 states held no due process hearings during the 2008-09 year and all states reported valid and reliable data. While the past two years saw some decrease in both the number of states with due process hearing activity and states reaching compliance, in 2009-10 fewer states with due process activity fell below 90% on Indicator B17 than in any past year.
The single state in the "20% to 30%" band was, again, the state with noncompliance regarding extensions. That issue may be present in other states as well and also may be as easily addressed by a change in the form letter used for communications regarding extensions. The overall trend toward compliance is further demonstrated in Table 3 which shows how many states achieved full compliance or that fell within the range of 95% to <100% ("substantial compliance").

Figure 4



[Note: "No data" indicates no reported due process hearings held.]

In contrast to Figure 4, the 35 states (Table 3) in the baseline year achieving 95% to 100% means that seven of the 42 states (in the top band of Figure 4) had Indicator values between 90% and 95%. It is not entirely clear why 2006-07 appeared to be a more successful compliance year, but full implementation of the resolution process and its implications for hearing timelines may not have been fully reflected in the data until 2007-08.

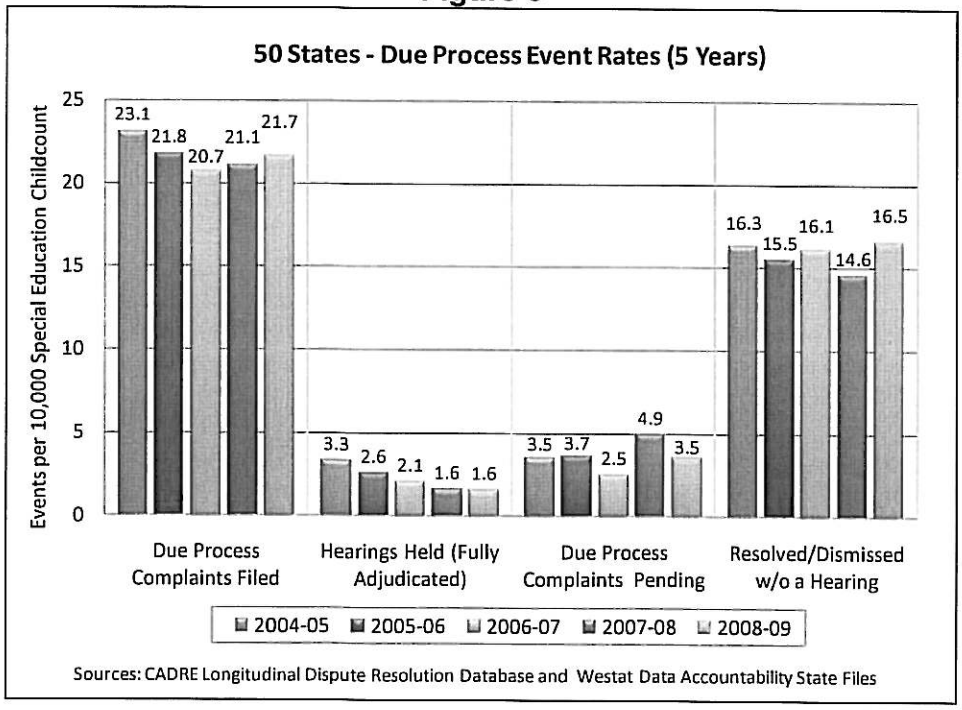
Table 3

Number & Percent of States Achieving Substantial or Full Compliance on Indicator B17

	Baseline (04-05)	05-06	06-07	07-08	08-09	09-10
100%	35	37	41	35	29	39
≥95% to <100%	-	4	2	-	2	2
Total (95% to 100%)	35	41	43	35	31	41
Percent of States that Held Hearings with Ind. B17 ≥95%	66%	76%	86%	76%	72%	85%

Figure 5 displays data not available through the APR – the average national rate of due process hearings per 10,000 special education child count. These data come from the Section 618 Table 7 reports (currently submitted to the DAC and no longer included in the APRs) and from earlier APRs (prior to 2006-07, APRs included Table 7).

Figure 5



While the rate of due process complaints filed over this five year period (2004-05 through 2008-09) decreased and then rose again somewhat, the rate of "hearings held" has decreased substantially. "Pending" due process complaints remain higher than hearings held but may have stabilized at pre-resolution meeting levels. "Resolved without a hearing" has been remarkably stable – the use of resolution meetings to resolve due process complaints may not have changed the rate of complaints resolved

with a hearing, but may have formalized some resolutions that were previously occurring but without any particular standards.

Indicator B17 Improvement Activities

The following description of the elements of what appear to be effective systems (either in achieving compliance, or representing active systems that have established practices that led to improved performance) is a compilation of APR entries by these states: AK, CA, CT, DC, FL, GA, IL, MN, MT, ND, NM, NV, PA, TX, UT, and WY.

Featured Elements of State Processes and Improvement Activities

Policy/Procedure/Guidance. Several states describe policy and guidance documents for participants, system managers, and hearing officers. The contents of guidance address, for example: timeline elements of the due process complaint system (notice, Hearing Officer [HO] assignment, resolution meeting process, hearing/decision timelines, and extensions), hearing procedures and conduct, appropriate HO behavior, report writing style and standards, HO evaluation, and the use of settlements when agreeable to the parties to avoid hearings.

Assignment of Hearing Officer (HO) Supervision and Evaluation. An increasing number of states report HO evaluation systems. Where the State Office of Administrative Hearings provides the HOs, the evaluation systems are based on collaborative agreements with the SEA. These evaluations address timelines, an essential area of HO performance, as well as feedback from participants and other areas described above under policy/procedure/guidance. Sanctions in many states involve required retraining and TA for HOs who fail to meet timeline or other standards; at least two states (NY and PA) report decertifying HOs for repeated failure to improve performance.

Hearing Officer Training and Technical Assistance. The scope of training can mirror the policy/procedure/guidance described above, plus IDEA regulations and issues specific to special education programming (e.g., research-based Interventions, Learning Disabilities, Autism). In many states, the amount of training is substantial – several days a year – and in one state (CT), eight days a year for Hearing Officers.

Timeline Tracking and Docketing Database. Many states refer to data systems that support docketing (the scheduling of various elements of each due process complaint from resolution process through decision, including "ticklers" to the HO and the parties regarding critical points in the process). The more sophisticated of these systems also support organization of documents resulting from the process (e.g., forms for tracking resolution meeting planning and conduct, notices to participants, documentation of extensions, HO orders and final decisions). Disaggregation of data from these systems by HO is crucial to monitoring, evaluation, training, and TA.

Monitoring Due Process Complaints and Timelines. While a tracking system can provide the essential information for monitoring, the *work* of monitoring (that is, acting on the information) must still be done. States report specific monitoring strategies, including: a hearings system coordinator (full or part-time) or a contracted external agent (in smaller systems) responsible for tracking all cases; collaborative agreements with the State Office of Administrative Hearings for joint access to the database and joint tracking of cases; team approaches involving regular meetings (e.g., every other week) to review the status of individual cases and ensure timely progress.

Early Resolution. At least six states credit alternate dispute resolution with reducing due process complaints and/or increasing due process complaints that were resolved without a hearing. States mention these "early resolution" processes: parent hotline (SEA or PTI operated); school-parent training on working collaboratively; IEP facilitation; encouragement by HOs to use the resolution meeting process, mediation, or to reach other settlement agreements. A few states suggest that involving HOs in activities other than the direct preparation and conduct of a hearing, risks role confusion and conflict of interest. Different states report that such involvement may range from advocating that parties explore these options to actively facilitating resolution negotiations. Generally, hearing officers to do not serve directly as mediators.

Indicator B18: Percent Resolution Meetings Resulting in Written Settlement Agreements

Indicator B18 Actual Performance

Forty-nine (49) states held resolution meetings in 2009-10. Based on the numbers that these states reported in their calculations for Indicator B18, a total of at least 9,803 resolution meetings were held nationally and 2,975 written settlement agreements were reached in 2009-10 – a "national" agreement rate of 30.3%. The average state reported rate was 53.7%. The difference between these values reflects the disproportionate impact of one very active state with very low agreement rates.

Figure 6

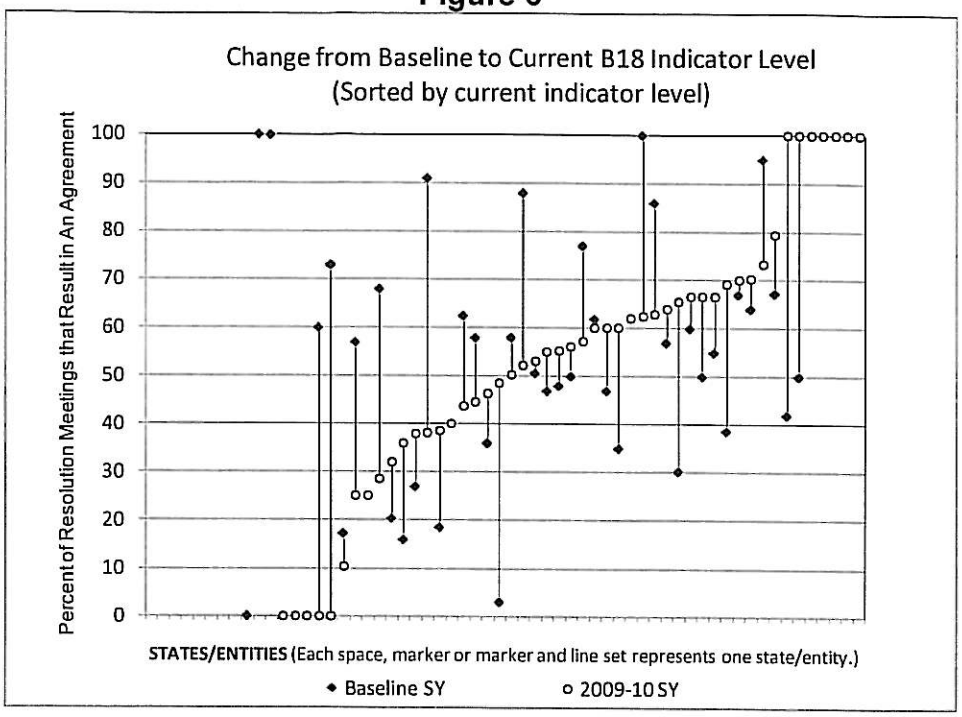


Figure 6 is a display of state performance on Indicator B18, "written resolution agreement rate." The distribution of these state reported rates is almost a straight line between 25% and 75%, with five or more states at each extreme (0% and 100%). Thirty-three (33) states held ten or more resolution meetings; 29 of them had agreement rates of more than 35%. The distribution of indicator performance for these more active states is also a remarkably straight line between 30% and 75%. While two of the seven states that reported 100% on this indicator held only one resolution meeting, the other five held between seven and ten resolution meetings each. For some of these states, this may reflect a problem in capturing information on resolution meetings held where parties did not reach agreement. At least two of the 100% states actively promote resolution meetings for every due process complaint and report that parents and schools are willing to reach agreements.

There is a modest relationship (r = .38) between the 2009-10 targets that states set for Indicator B18 and their performance. This may reflect as much the practice of adjusting targets to performance as the other way around. The average performance on B18 for states with resolution meeting activity in 2009-10 and the established targets (42 states) average about 50% (see Table 4). States with fewer than ten resolution meetings must still report their B18 performance but are not *required* to set a target, although many did.

Table 4

Written Settlement Agreement Targets

B18 Target	# States
<30%	6
30% to <50%	10
50% to <60%	10
60% to <70%	7
70% to <80%	4
>80%	5

Indicator B18 Progress and Slippage

Twenty-two (22) states showed slippage, 22 showed no change, and 16 showed progress. All 22 states that showed "slippage" (< - 1%) held at least two resolution meetings in 2009-10. The 16 states showing progress (>1%) held at least one resolution meeting in both years. Forty-seven (47) states held resolution meetings in both 2008-09 and 2009-10.

The "national" agreement rate in 2009-10 of 30.3% (see above) contrasts favorably with 2008-09, when states held 7,938 resolution meetings and reached agreement 2,090 times (26.3%). Overall, resolution meeting activity increased by 23% between these two years, while agreements increased by 42%.

These summary numbers, however, hide the wide variability in resolution meeting activity among states: one very active state accounts for almost 54% of all resolution meetings held, but only 18.2% of all written resolution agreements. Leaving out this state, the other 20 "slippage states" held 722 resolution meetings and reached 397 agreements (the aggregate B18 level = 55.0%), while the 17 "progress states" held 3,487 resolution meetings and reached 1,898 agreements (B18 = 54.4%).

Other observations about B18 progress and slippage:

- Eight states did not hold any resolution meetings in either year
- Five states held resolution meetings in one year but not the other
- Of the 22 states with "no significant change," 11 held no resolution meetings in 2009-10 and three more held none in 2008-09 (these states are included with the "no change" states since their "progress" or "slippage" against no activity would be misleading)

Explanations for Progress and Slippage

As with other indicators, about half the states offer no "explanation" for their performance, whether stable or changing. That is, they do not attribute their performance to anything they do, but simply describe how their performance changed. For those states where reasons are offered, explanations for progress (or for good

performance) or slippage (or for poorer performance) on Indicator B18 follow a clear pattern. Most often noted as the reasons for lower rates are:

- B18 indicator doesn't capture other resolutions; a low rate on B18 may mean that parties are finding other ways to resolve issues.
- The outcome depends on the parties (this is used as a reason by different states both for higher and for lower resolution agreement rates).
- Resolution meetings are a local responsibility the SEA cannot impact.
- Some attorneys resist participation.
- Fewer due process complaints and a higher percentage of those going to hearing mean that the issues are harder, therefore less subject to resolution outside a hearing.

While there may be some validity to each of these explanations, a consistent message from those states explaining their progress or satisfactory performance suggests that SEAs do have the capacity to impact this largely LEA-driven resolution opportunity. Most frequent explanations for improved or good performance on this indicator were:

- Improved data collection directly from LEAs on their responsibility for the process and timelines
- More guidance, training, web resources, consumer brochure, etc., about resolution meetings
- Continuous positive message about the potential of resolution meetings
- Monitored more actively, especially the 15 day timeline
- More upstream resolution options, including facilitation
- Some attorneys are very receptive and use the resolution meeting to reach agreements rather than proceed to a hearing

States with the highest resolution agreement rates present a common picture. Table 5 displays the number of resolution meetings held and results for the five states with significant activity that had the highest written settlement agreement rates.

Table 5

States with High Written Resolution Agreement Rates (B18)

State	Res Meetings Held	Written Settlement Agreements	Indicator B 18 (2009-10)
CT	78	62	79.5
OK	30	22	73.3
MD	111	78	70.3
PA	335	235	70.1
NH	13	9	69.2

These five "high performing states" states have actively focused on making resolution meetings work. They report common strategies that appear to contribute significantly to their success in using resolution meetings to resolve due process complaints:

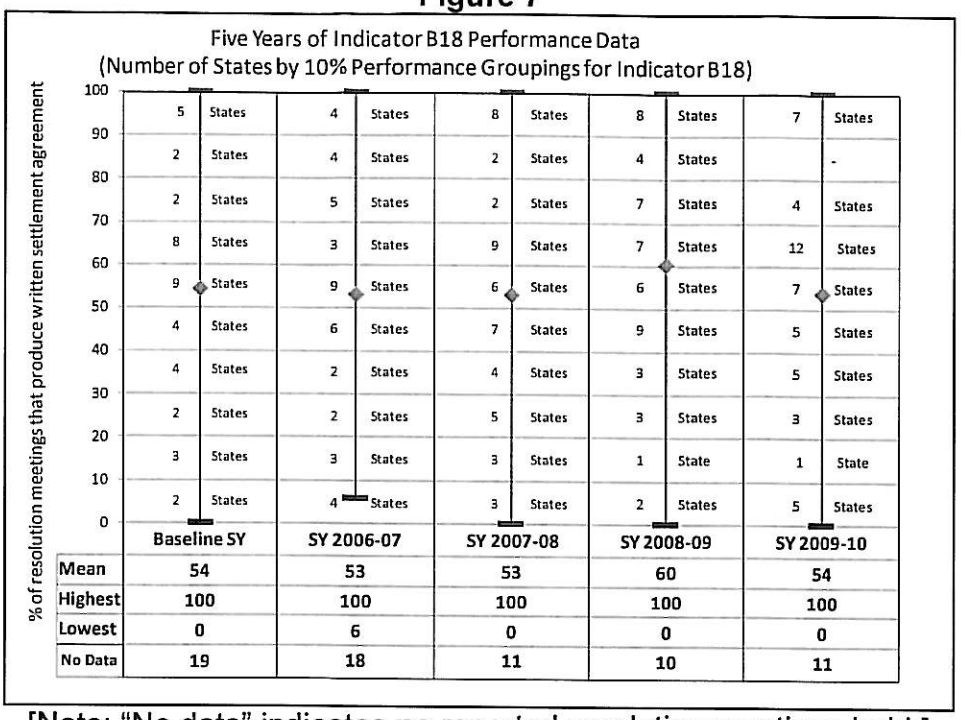
- All collect data on the resolution meeting process, timelines and outcomes from LEAs (or through Hearing Officers).
- All report that they promote resolution meetings to LEAs and parents (positive messaging).
- All provide active guidance and training to LEAs on their effective use.
- Four of these states offer or universally provide resolution meeting facilitation and/or other alternate and early dispute resolution options.

Indicator B18 Trends

There is much more variability in the success states had in resolving issues through the resolution meeting process. Figure 7 is a display of the number of states in each of ten performance bands on this indicator for five years. In 2009-10, 49 states held at least one resolution meeting. The apparent lack of much change since this requirement was first tracked (2005-06) may be deceptive. The first two years of data collection for this indicator may be suspect – many states may have had difficulty collecting data on resolution meeting activity so that the only instances of activity they could report were when an agreement was reached (inflating the agreement rates).

In 2009-10, the differences between states with higher B18 performance appear to be related to state orientation/culture and to the aggressiveness of the state in trying to make resolution meetings work. The nine states with the lowest B18 rates more often describe the resolution meeting process as a local responsibility for which they have minimal responsibility and they cite "resolved without a hearing" as a better measure of LEA-parent resolutions. Some states note that they collect more detailed information on resolutions reached outside the formal processes. Where that is not the case, however, "resolved without a hearing" may cover a wide range of undocumented outcomes, making helpful analysis of this indicator more difficult.

Figure 7



	Baseline SY	SY 2006-07	SY 2007-08	SY 2008-09	SY 2009-10
	5 States	4 States	8 States	8 States	7 States
	2 States	4 States	2 States	4 States	-
	2 States	5 States	2 States	7 States	4 States
	8 States	3 States	9 States	7 States	12 States
	9 States	9 States	6 States	6 States	7 States
	4 States	6 States	7 States	9 States	5 States
	4 States	2 States	4 States	3 States	5 States
	2 States	2 States	5 States	3 States	3 States
	3 States	3 States	3 States	1 State	1 State
	2 States	4 States	3 States	2 States	5 States
Mean	54	53	53	60	54
Highest	100	100	100	100	100
Lowest	0	6	0	0	0
No Data	19	18	11	10	11

[Note: "No data" indicates no reported resolution meetings held.]

Indicator B18 Improvement Activities

The variable performance on this indicator makes it difficult to identify which activities appear to contribute to higher performance on Indicator B18. The "improvement activities" of few high performing states suggest what matters (previewed above in the "progress/slippage" section). In this section are listed improvement activities to which states positively attributed performance.

Featured Elements of State Processes and Improvement Activities

Data Collection & Monitoring. Many states (AL, AZ, CA, IL, TX) report having improved their data systems in the past several years and now collect more detailed data on the resolution meeting process, satisfaction of parties with the process, and outcomes. Some states (e.g., AL, DC, ME, SC) have assigned the Hearing Officer to track and report on the resolution process; other states have placed responsibility for the process and for reporting on it with the LEA. SEAs, the PTI or another contracted organization, or the Hearing Officer may carry the responsibility for encouraging the parents and LEA to pursue the resolution process. As a part of reaching a written settlement agreement, some states collect a form, signed by both parties, confirming whether or not an agreement was reached that addresses the basis of the complaint. Aspects of SEA monitoring for many states now include:

- Immediate reminders of the resolution meeting process to the LEA when a complaint is filed

- Check points with the LEA to ensure that they are pursuing the resolution process (e.g., a reminder on day ten that the meeting must occur by day 15; contact on day 16 to assess whether the meeting occurred, etc.)
- Documentation of the resolution process outcomes (whether an agreement was reached)
- If an agreement has not been reached by day 15, follow-up to encourage resolution throughout the 30 day resolution period

Policy Guidance. Several states (CA, DT, IN, ME) reported that they made significant efforts to improve guidance on the resolution meeting process. They focus on, for example, revisions to laws and rules, web resources, outreach to families and students, consumer brochures, parent procedure manuals, improved handbooks to guide the process (forms, documents, scheduling procedures), and staff/LEA/parent training about the opportunity to resolve conflicts through resolution meetings.

Outreach and Communication. Several states (CT, FL, IN) report that consistent messaging about the value of the resolution process and ongoing communication with LEAs about the importance of doing resolution meetings has contributed to positive results in this area.

Support of a Range of Upstream DR Options. Upstream options are inconsistently reported, but include parent hotlines which are staffed either through another organization (IN) or by directing calls to SEA staff (FL). Wisconsin reports that facilitation training can help both with difficult IEPs and with resolution meetings. Three states provide early resolution options that help create a climate of cooperation and resolve problems early or before a more formal process is invoked.

Indicator B19: Percent Mediations that Resulted in a Mediation Agreement

Indicator B19 Actual Performance

Figure 8 displays change from baseline year (2004-05) to the current year (2009-10) on Indicator B19, mediation agreement rate. Most state performance clustered between 60% and about 90%. Most states (31) maintained or improved mediation agreement rates from baseline to 2009-10. Half as many states (16) had lower mediation agreement rates in 2009-10 than during baseline. Eight states had mediation activity only in 2009-10, while one state had mediation activity only in the baseline year (for most states, the baseline year was 2004-05). Six states had no mediation activity in either year.

Figure 8

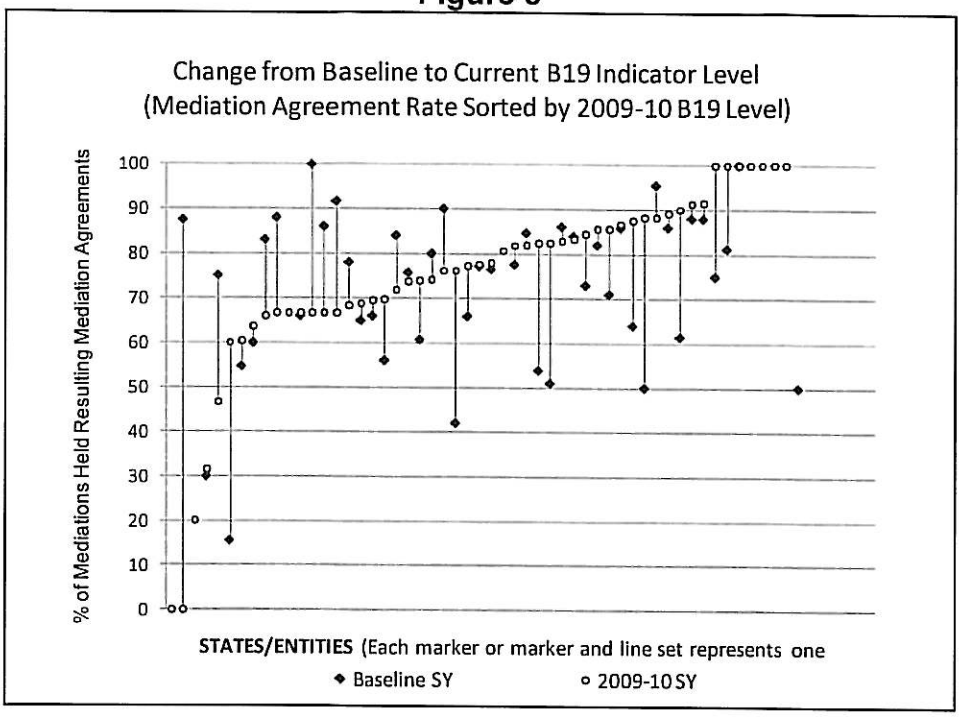


Table 6 displays the distribution of B19 targets set by states. When states set a range (e.g., 75% to 85%), the lower value was used. The majority of states (27) had targets between 75% to 85%, the recommended range for this indicator.

Table 6

The Range of Mediation Agreement (B19) Targets

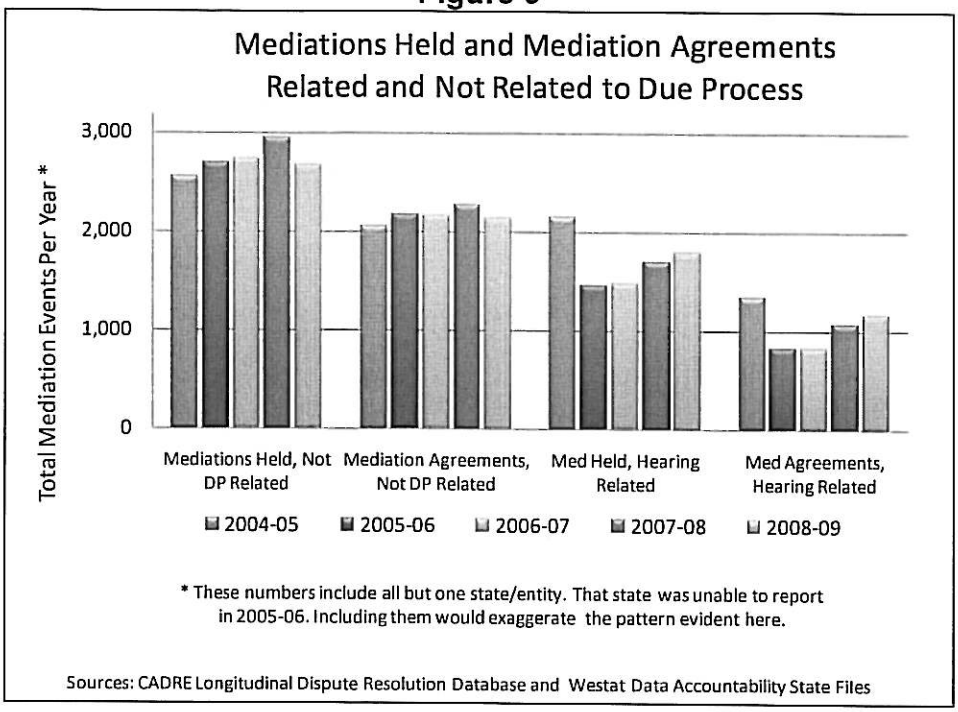
Mediation Target	# states
<50%	3
50% - <75%	10
75%	12
>75% - 85%	15
>85%	7

Figure 9 is a display of mediation activity for 49 states (not including DC or any outlying areas, and one state with inconsistent mediation data). Mediation and mediation agreements not related to due process grew until 2008-09. The dip in due process related mediation and mediation agreements may reflect a substitution in 2005-06 of resolution meetings for due process related mediation.

As was noted under the summary for B18, resolution meeting activity and agreements increased between 2008-09 and 2009-10, as did due process related mediations. This suggests that more due process complaints are being resolved through formal

agreements and that both mediation and resolution meetings are accounting for a larger percentage (albeit not most) "resolved without a hearing" outcomes.

Figure 9



Indicator B19 Progress and Slippage

Seventeen (17) states showed slippage from 2008-09 to 2009-10. The largest examples of slippage (30% and 33%) were in states that each conducted only 15 mediations. For these states, there are differences from year to year, but they are relatively small. In many instances this indicator can be influenced by an increase or decrease of a few cases in either the numerator (mediation agreements) or the denominator (mediations held). Since this is not a compliance indicator, states may be more interested in longer trends in mediation than in one year of mediation activity.

The reasons for progress and slippage in mediation rates are similar to those for resolution meeting agreements (B18). The increased use of alternate dispute resolution is offered as an explanation for both progress (creates a culture of agreement) and slippage (hard cases are now going to mediation after early resolution efforts solve the easy ones). Both may be valid explanations. The increased availability of some "upstream" conflict resolution options (e.g., IEP facilitation) has decreased demand in some states for mediation while other states suggest that training in parent/school collaboration (e.g., "Creating Agreement") has helped create the culture of collaboration that makes participants more willing to use mediation to reach agreement.

Other reasons offered for progress include:

- Highly qualified and capable mediators (in states with significant training to qualify and regular update and advanced skill training)
- Monthly contact (conference calls) with mediators to problem solve, provide on line training, and offer on-line tutorials
- Case preparation – some states invest heavily in preparing participants for participation in mediation
- Parent/SEA collaboration and stakeholder involvement can model good parent-professional relationships

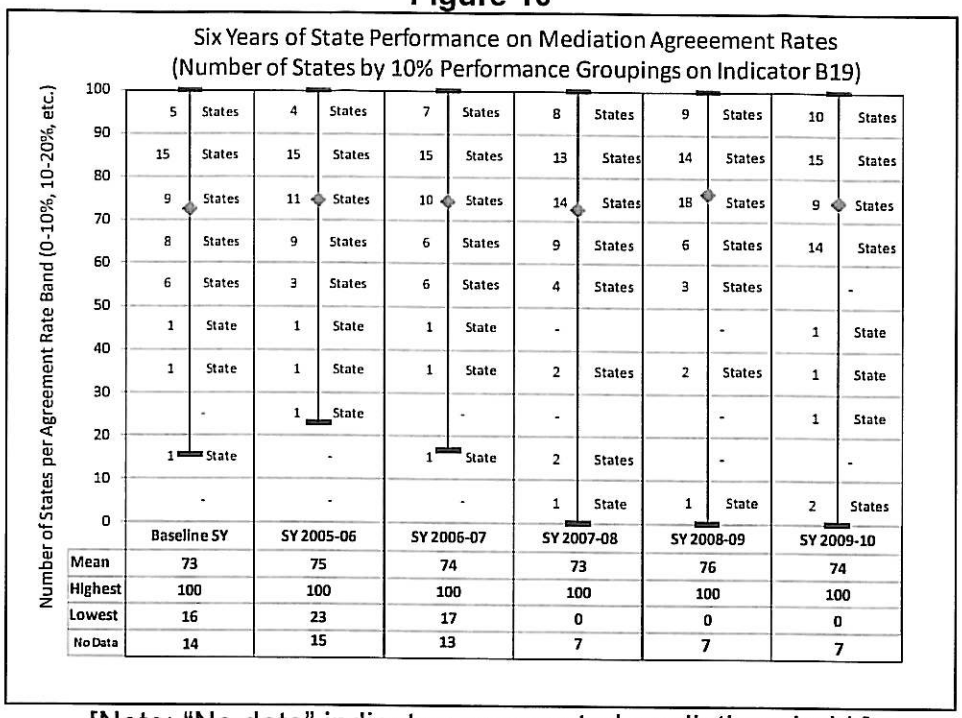
Explanations that states offer for slippage are similar to those for B18:

- More use of mediation for complaints ("harder issues")
- Can't control participants in mediation – they control the outcome
- Too few cases to judge progress or slippage
- Increasing use of due process related mediations drive down the agreement rates (generally lower for due process related mediation)
- Pending mediations are not reflected – if they were, rates could be higher

Indicator B19 Trends

Figure 10 displays the number of states at 10% bands for mediation rates across six years. The most striking thing about this figure may be the stability of the average reported mediation agreement rate. There is also an evident shift in the number of states using mediation (only seven states/entities in the past three years have had no mediations) and the increase in the number of states in the higher mediation agreement levels (only five states fall below 60% in 2009-10).

Figure 10



[Note: "No data" indicates no reported mediations held.]

Indicator B19 Improvement Activities

The most frequently mentioned improvement activity for mediation continues to be training. Other features of states with well-performing mediation systems worth noting include contracting out the mediation system, stakeholder participation/collaboration, and evaluation.

Highly qualified and trained mediators. Many states (e.g., AZ, AL, IL, MI, MN, WI) emphasize initial training and preparation of mediators (a minimum of 40 hours of basic training, often following by a period of mentoring with an established mediator). Regular communications (e.g., monthly conference calls for shared problem solving among mediators) and mandatory annual or more frequent training (e.g., in advanced mediation skills) can help mediators maintain and sharpen skills. States are increasingly using on-line resources and tutorials to extend training.

Contracting out the mediation system. At least 16 states contract with an outside expert entity (e.g., community mediation center, university mediation program, State Office of Administrative Hearings). Contracting with an outside agency may provide access to expertise and may be perceived as a more "neutral" than a state operated system.

Stakeholder participation/collaboration. Many mediation systems reflect stakeholder involvement and parent-professional participation in their design and operation (PA, WI) and through joint parent, mediator, and school personnel training (AR, ID, NY, PA, WI).

Evaluation. States find valuable information in assessing participant satisfaction, conducting internal evaluations (AR), evaluation of unsettled cases (PA), and participating in external evaluation efforts (ND and other states are part of a pilot evaluation by the University of Northern Colorado).

CONCLUSIONS

Dispute resolution systems are working, especially in states where they have the leadership and capacity to support investment in: effective state administration and monitoring of dispute resolution options, upstream (preventative) dispute resolution options, substantial and effective training, stakeholder collaboration, and systematic evaluation and improvement. Larger systems face challenges in managing large volume (e.g., more than 100 events per year), but even in many of the most active systems, the level of "substantial compliance" is impressive. The vast bulk of states are in compliance with Indicators B16 and B17, while most states have acceptable to excellent performance on Indicators B18 and B19.

On the whole, the picture of change in dispute resolution systems over time is positive. Most states have improved their performance (or maintained high performance) across all indicators since the baseline year (for most indicators and states, 2004-05). Policy, procedure and practice have tightened to address regulatory requirements in many states leading to more professionalized operations that produce more consistent compliance and performance.

Cultural conditions impact dispute resolution. In many smaller, tight-knit communities the idea of bringing conflict to the table is just not accepted. Several states noted this in their reports. Whatever the predisposition of potential participants toward formal processes, SEAs can be sensitive to and collect information as systematically as possible on the issues that arise in their systems, how they are dealt with and whether the resolutions are effective and durable.

RECOMMENDATIONS

An Organizing Taxonomy for Improvement Activities

OSEP has created a taxonomy of improvement activities that serve to describe what any system would have in place in order to administer and manage the work necessary to any indicator area. These improvement activity areas are outlined below as they apply to capable dispute resolution system management (the final three have been added by CADRE):

- Data collection and reporting (issues, process and outcome tracking)
- Systems administration and monitoring (tracking timelines, ensuring timeliness)
- Systems and infrastructures of technical assistance and support (assignment or contracting of personnel and resources to deliver training, TA and support)

- Provision of technical assistance/training/professional development (to state staff, local education agencies, practitioners, partners)
- Policies and procedures (process guidance for practitioners, local education agencies, participants in dispute resolution options)
- Program development (state initiatives, implementation of new processes)
- Collaboration/coordination with other organizations (PTI and other organization collaboration, joint training)
- Evaluation of improvement processes and outcomes (participant satisfaction with process/outcomes, durability of agreements)
- Staffing/resource allocation/recruitment and retention (capacity to adjust assignments based on demand)
- Public Awareness/Outreach (print materials, web support; to parents/families, local education agencies, practitioners)
- Support of "upstream" DR options (e.g., prevention, early resolution processes)
- Stakeholder engagement (in design, implementation, evaluation of DR systems)

States as a group report more or less on all these areas in their APRs and SPPs. Whether or not an individual state reports on any of these "improvement strategies," in order to have a capable "system of dispute resolution," they *should* have some kind of activity relating to each of the management functions represented in the above areas.

A CADRE DR System Perspective

Based on reviewing APRs and on working with states, CADRE recommends that states adopt an orientation to their dispute resolution systems that includes:

- Integration across processes, whether by internal design of the SEA, or through collaborative agreements and engagement with the other agencies that operate portions of the state's dispute resolution system. The dispute resolution processes are used by the same population as different avenues to resolving conflict and much can be learned by viewing them as complementary aspects of a single system.
- Organizational resources and support for upstream, early resolution options for dispute resolution. Ideally, this should include alternate dispute resolution processes that obviate the need for a formal filing of any kind (e.g., parent hotlines, "Creating Agreement" training, IEP facilitation). Emphasis on and support of early resolution options once a formal process has been invoked can also divert conflict into more collaborative arenas and help protect and heal relationships (e.g., early written complaints resolution through a telephone intermediary or an ombudsperson, resolution meeting facilitation, promotion of settlement agreements at any point in the due process timeline).
- Data collection, timeline, process, and outcome tracking for all dispute resolution options. The collection, frequent review (monthly or more often) and use of data to improve system performance is crucial.
- Inclusion of stakeholders in the design, planning, implementation and evaluation of dispute resolution options. Effective dispute resolution benefits from the

expertise and respect of the groups who participate in the system. Transparency and genuine opportunities for diversity of input, while at times challenging, can meaningfully improve the quality and performance of special education dispute resolution systems.

- Engagement with external resources to help improvement efforts. States that have effective systems use external resources to help them. This can include using national experts for training their hearing officers, contracting with mediation expertise, etc. It also means joining in a working community with colleagues from other states to learn from one another. CADRE's charge is to compile and make available resources on state dispute resolution systems. Many states use those resources in their planning and improvement efforts. CADRE also supports three highly active ListServs for dispute resolution coordinators/mediation managers, written complaints system managers and hearing system managers.

CADRE welcomes inquiries for information, training or technical assistance that could help improve state Part B dispute resolution system performance. Access us through:

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