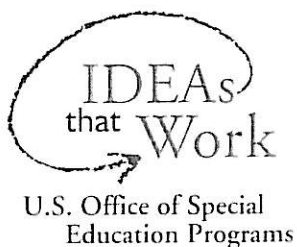




# Part C

STATE PERFORMANCE PLAN/ANNUAL PERFORMANCE REPORT  
2011 INDICATOR ANALYSES

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



## INDICATORS 10, 11, 12 AND 13: DISPUTE RESOLUTION UNDER PART C

Prepared by CADRE

### INTRODUCTION

The Individuals with Disabilities Education Improvement Act (IDEA 04) requires that states, in order to be eligible for a grant under Part C, must provide three dispute resolution options to assist parents and schools to resolve disputes: written state complaints; mediation; and due process complaints (hearings). IDEA 04 expanded the use of mediation to allow parties to resolve disputes involving any matter under IDEA. In addition, IDEA 04 added a new “resolution process” whenever a due process complaint is filed following Part B due process procedures, to provide parents and schools a more informal setting in which to reach a settlement and avoid the cost and stress of a fully adjudicated 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.”

States are also required to report annually to the Office of Special Education Programs (OSEP), US 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 for the dispute resolution indicators under Part C. These include:

- **Indicator 10:** 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.
- **Indicator 11:** Percent of fully adjudicated due process hearing requests that were fully adjudicated within the applicable timeline.
- **Indicator 12:** Percent of hearing requests that went to resolution sessions that were resolved through resolution session settlement agreements (applicable if Part B due process procedures are adopted).
- **Indicator 13:** Percent of mediations held that resulted in mediation agreements.

In addition to these required procedures, many states offer informal “early dispute resolution” processes intended to diffuse and resolve disagreements before they reach the level requiring a formal process. These alternative dispute resolution approaches are particularly important in Part C programs, because there is minimal formal activity under the required procedures. This summary addresses state performance on the required dispute resolution processes, as well as information provided by the states on early resolution options. CADRE’s approach to technical assistance and performance improvement is systemic – focusing on all dispute resolution areas and emphasizing early resolution and conflict management processes. That orientation is reflected in this combined report on the four indicators.

## **DATA SOURCES/MEASUREMENT APPROACHES**

The main document sources for this report are the FFY 2009 (2009-10) Part C Annual Performance Reports submitted to OSEP on February 1, 2011, and the “clarification reports” submitted by 55 states/entities as of April, 2011. One state had not submitted the required APR at the time this analysis was completed. For comparison purposes, this report also draws on past APRs, specifically on indicator performance and other state data from prior years.

Beginning with 2002-03, states reported dispute resolution activity to OSEP, first as “Attachment 1” to their Annual Performance Reports and later as “Table 4” in these reports. CADRE has maintained, since the beginning of this data collection, a National Longitudinal Dispute Resolution Database. IDEA 04 required, as of FFY 2006, that this data collection be managed under the “Section 618” data collection provisions of the statute. For the past four years, the required data have been reported to the Westat/Data Accountability Center (DAC). CADRE receives dispute resolution data from DAC after it has been verified for publication in OSEP’s Annual Report to Congress. States are no longer required to include a copy of Table 4 with their APRs. As a result, only the indicator values themselves can be analyzed for change through 2009-10. Some CADRE longitudinal data are referenced in portions of this report in order to demonstrate change over time in state compliance and performance on these indicators through 2008-09. Otherwise, all data reported in this summary are drawn from the current state APRs. Other CADRE records regarding state dispute resolution systems were drawn from for the final section on recommendations.

### **ACTUAL PERFORMANCE FOR FFY 2009**

State Part C programs have a very different history and experience with dispute resolution than Part B programs under IDEA. While the requirements for dispute resolution are largely the same, the rate of Part C formal dispute resolution activity is nonexistent or infrequent in most states.

#### **Part C Dispute Resolution Activity 2003-04 to the Present:**

Fifty-five (55) states and entities submitted Part C Annual Performance Reports and/or clarifications in 2011. Most Part C programs reported little or no dispute resolution activity. The number of states reporting some activity for 2009-10 was highest for Written State Complaints (22 states reported at least one complaint report completed). The number of states using Mediation tapered off in 2009-10 (11 states held at least one mediation in 2009-10). Fully adjudicated Due Process Hearings occurred in only a few states (four states in both 2008-09 and 2009-10). Table 1 displays the number of states reporting dispute resolution activity across five years.

**Table 1**

States Reporting Data by Indicator – Five Year  
(based on APR reports submitted)

	2005-06	2006-07	2007-08	2008-09	2009-10
Indicator 10	25	30	26	28	22
Indicator 11	6	5	6	4	4
Indicator 12*	0	0	0	2	0
Indicator 13	10	7	11	16	11

\* Indicator 12 applies only in states adopting Part B due process complaint procedures

In order to calculate an indicator value, a state must complete a complaint report, hold a fully adjudicated hearing, conduct a resolution meeting, or hold a mediation. Since state written complaint filings, due process complaints, and mediation requests do not necessarily result in a complaint report, hearing, or mediation held, the indicator activity reported above does not reflect the number of states with dispute resolution request activity reported in 618 data submitted. Table 2 below shows the number of states reporting any activity for this APR submission and for years prior to this submission.

**Table 2**

Number of States That Report At Least One Dispute Resolution Activity by Year

	Complaint Filed	Report Issued	Mediation Held	Mediation Agreement	Hearing Request	Hearing Held
2003-04	23	22	13	9	9	3
2004-05	33	22	12	12	13	5
2005-06	29	25	10	10	10	4
2006-07	29	25	10	10	12	5
2007-08	29	27	10	10	10	6
2008-09	31	26	18	14	13	4
2009-10*	≥25	22	11	8	≥8	4

\* Based on APR reporting for 2009-10; prior years of data are based on 618 data reported by states to the Data Accountability Center

Across these seven years, 44 states have reported at least one Part C complaint filing; for nine of these states it was a single event in one year. Over the same period, 40 states completed at least one written complaint report; again, for nine of these states it was a single report. Other types of dispute resolution activity have been present in far fewer states. While 15 states reported at least one fully adjudicated hearing between 2003-04 and 2009-10, ten of these states held only one or two hearings over this seven year period. Three large states account for 83% of all due process hearing activity, while one of these states accounts for two-thirds of all Part C hearings held in this seven

year period. In any given year, most states have no dispute resolution activity, with the exception of complaints filed. The number of states having Part C dispute resolution activities, however, remains relatively stable. For 2009-10, more complete dispute resolution data cannot be consistently determined (these data will not be published until Fall 2011). Table 3 (below) summarizes the numbers of reported dispute resolution events under Part C for the years 2003-04 through 2009-10. The increase in 2008-09 in complaints filed is largely attributable to substantial increases in three states. However, 14 states saw fewer complaints in 2008-09 than in 2007-08, while 19 states saw increases.

**Table 3**

Summary of Reported Part C Dispute Resolution Events Per Year

	Written State Complaints	Complaint Reports Issued	Mediations Held	Mediation Agreements	Due Process Complaints	DP Hearings Held
2003-04	180	138	51	32	186	13
2004-05	173	108	57	37	200	24
2005-06	176	123	70	69	135	17
2006-07	169	120	78	76	112	15
2007-08	195	151	83	77	111	18
2008-09	238	163	103	91	206	17
2009-10*	≥181	124	94	79	≥255	48
Total	≥1,312	927	536	461	≥1,205	152

\* Estimates based on data provided in 2009-10 APRs (written state complaints and due process complaints filed are not uniformly reported in the APR)

Part C due process requirements vary depending on whether the state has adopted Part C or Part B due process timeline requirements. While many states use the same agency to conduct due process hearings (e.g., a State Office of Administrative Hearings may operate both the Part B and Part C due process system), it is a state option to follow one of three due process timeline options.

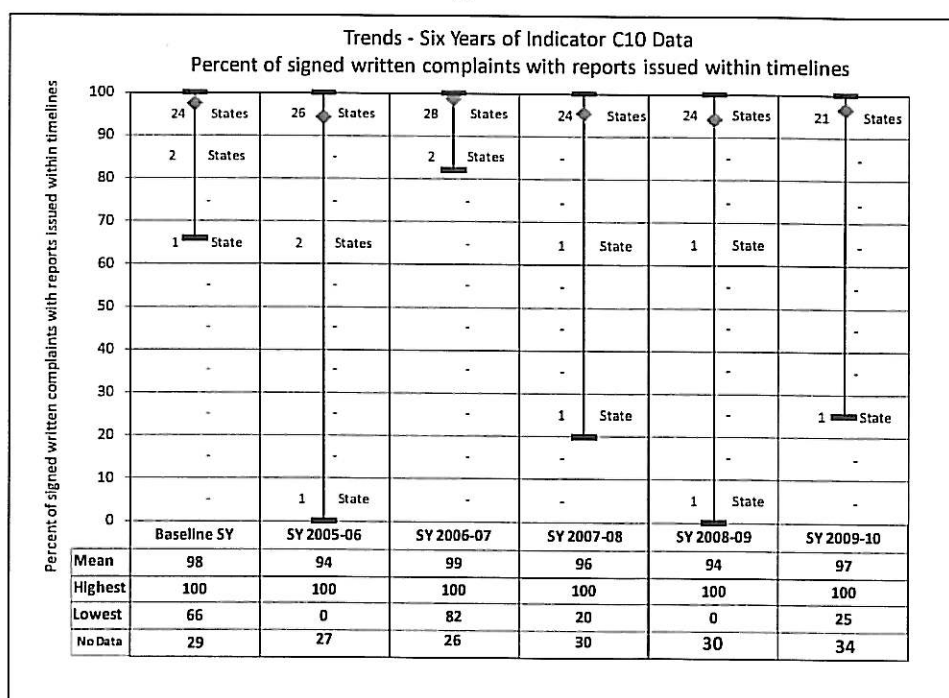
In the 2009-10 Indicator 12 reports, 36 states indicated that they adopted Part C 30 day procedures; 12 states reported that they operated under Part B 45 day procedures; two states adopted Part B 30 day procedures. The five remaining states' procedures were not clearly reported. State reporting on the election of timelines has been inconsistent in both APR reports and in Section 618 reporting. Over the course of the past four years a total of 22 different states have either directly noted that they use Part B procedures or implied it by reporting on resolution meeting activity in their Section 618 data. On the other hand, no resolution meetings were reported held in 2009-10 APRs. If this is accurate, resolution meetings continue to be from rare to non-existent in Part C programs.

## PROGRESS, SLIPPAGE AND SIX-YEAR TRENDS

### State Written Complaints

Few states have more than ten dispute resolution events of any type in any year. While OSEP summarizes *compliance data* for Indicators 10 and 11, they have not used dispute resolution indicators to make *compliance determinations* of “needs assistance” for Part C programs. Figure 1 is a display of the states that have had activity over the past six years (the “baseline year” was 2004-05). The top band on this display shows the number of states with Indicator 10 values between 90% and 100% for each year, with the number of states at other “10%” band ranges indicated. All of the states shown in the 90% to 100% band had Indicator 10 values of 100%.

**Figure 1**



Most states seem to have achieved compliance for written state complaints when they have activity. The number of states failing to achieve 100% for this indicator has varied from one to three over these six years. States not achieving compliance tend to be the larger states and among those with the most overall dispute resolution activity.

### Due Process Complaints (& Hearings)

Table 4 displays the number of states achieving or falling short of achieving compliance with hearings timelines based on APR data from 2005-06 through 2008-09. While most states with activity meet compliance standards for timely hearings, both larger, more active states and smaller states with rare activity are among those that have had difficulty achieving compliance. Many Part C programs operate their due process

systems through the same entity that manages their state's Part B due process activity. Problems endemic to those systems may be exacerbated by misunderstood differences in requirements for the Part C timelines.

**Table 4**

Number of States Achieving and Not Achieving Indicator 11 Compliance

	2005-06	2006-07	2007-08	2008-09	2009-10
Indicator 11 = 100%	2	5	5	2	3
Indicator 11 < 100%	2	0	1	2	1
No Hearing Activity	52	51	50	52	52

Only four states held due process hearings during 2009-2010. All were states that have adopted 30 Day Part C due process procedures. All are relatively large states with Part C child counts of more than 10,000. A total of 48 hearings were held, with one state accounting for 44 of those hearings. Eight states reported receiving due process complaints, but four of these had settlements that resulted in the withdrawal of the requests. Eight states clearly reported on due process complaints filed. Together, they accounted for a total of 255 filings. Of these, 245 were from a single large state. Thus, due process complaints are not distributed across states in any predictable form except that larger states are more likely to receive them.

**Resolution Meeting Activity**

No Part C program held a resolution meeting in 2009-10. Indicator 12 applies only to those states that adopt Part B due process (DP) complaint timelines. Seventeen states either explicitly or implicitly suggested that they could hold resolution meetings if they had DP complaints filed (that is, they say they adopted Part B timelines, or they say they did not have resolution meetings because they didn't have DP requests). This exceeds the number of states that have indicated that they adopted Part B procedures in their Section 618 data reports. CADRE estimates only about a dozen states operate under Part B timelines. Again, CADRE believes that these reports are neither reliable nor consistently reported across years.

**Mediation**

Eleven states reported a total of 94 mediations held in 2009-10, yielding 79 mediation agreements. These 11 states include six of the seven largest states (by population) and are all among the largest 19 states nationally. Eight of these states reported holding only one mediation and one state held two, while two large states accounted for 89% of all Part C mediations held. The eight states with mediation activity represent just over 50% of the national Part C child count. Only a handful of states not holding mediations reported any mediation requests, although it is not possible (absent Table 4 data) to say whether other states had requests that were either not held or that were pending as of

June 30, 2010. Also, states do not consistently distinguish due process related mediations from those not related to due process, so the relative use of mediation in due process cannot be determined. Where states do distinguish due process related mediations from other mediations, almost all the Part C mediations they held were due process related.

**Figure 2**

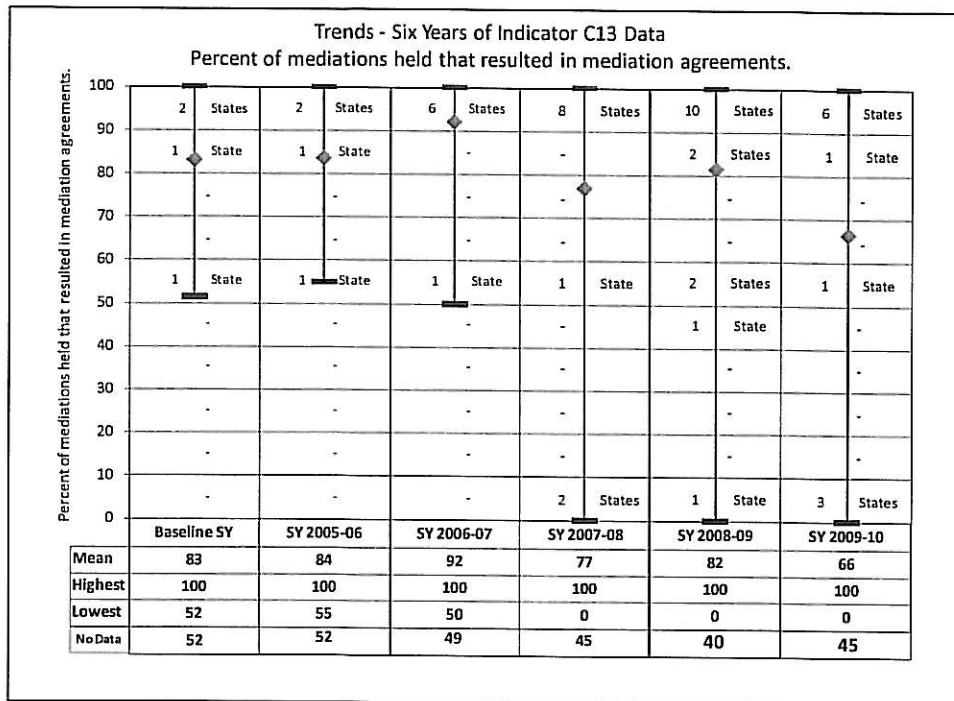


Figure 2 displays the range of mediation agreement rates present in states holding mediations during the past six years (again, baseline was 2004-05). The “Mean” indicator value is the mean of states reported values, not a mean of all mediations held. As a result, the three states who had no agreements (each with only one mediation) draw down the average. The total number of mediations reported across states (94) and the total number of agreements (79) yield a mean national mediation agreement rate of 84% (a “total activity Indicator 13”). For the prior five years, the national mediation agreement rates averaged over 90%. As indicated above, most mediations under Part C are due process related, unlike in the Part B program where due process mediations are the smaller proportion of mediations held. Part B due process related mediation agreement rates are also much lower.

Mediation may be a more natural formal process for dispute resolution in Part C programs. While a few states have seen some due process hearing activity, differences in the Part C and Part B programs may encourage more collaborative conflict resolution approaches in Part C. This seems to be reflected in the results achieved by states where mediation has been used.



## IMPROVEMENT ACTIVITIES

### Overview of trends in 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. The 12 improvement activity areas are outlined below as they apply to 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 providers, practitioners, and partners)
- Policies and procedures (process guidance for practitioners, providers, and participants in dispute resolution options)
- Program development (state initiatives, implementation of new processes)
- Collaboration/coordination with other organizations (Parent Training and Information Center (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, providers)
- Support of upstream or early resolution processes (prevention, early resolution processes)
- Stakeholder engagement (in design, implementation, and evaluation of dispute resolution)

To some extent, all these areas evidence some reporting by states in their APRs and SPPs. Most often the APRs lack sufficient detail to understand how a state approaches these areas. “Annual training”, or “data tracking system” lack specificity to inform readers or this summary of much that would be useful to others. In many states, the information on improvement strategies is “boilerplate” language, usually brief and often the same wording for all four dispute resolution indicators. In addition, because so many states have little or no activity in Part C dispute resolution, some APRs and SPPs contain no information on improvement activities (e.g., one state noted directly, if not quite accurately, “The state is not required to provide targets or improvement activities except in any fiscal year in which ten or more mediations were held.”). Whether or not

states report on any of these “improvement strategies,” if they have a “system of dispute resolution,” they must have activities in each of these 12 areas.

### **Highlights of promising or successful strategies**

Accepting that the information provided in many reports is limited, below we have highlighted five areas where a number of states have provided more specific information on what appear to be successful improvement activities. Most of the states referenced have some level of formal dispute resolution activity, although states with no activity who maintain a strong focus on prevention are also included.

#### “Concern Systems”

At least seven states (AL, KS, MT, NJ, PA, SC, and UT) report having systems that respond quickly to “concerns” or “issues” raised by families, often obviating the need for a more formal dispute resolution process. In the absence of a common descriptor for these processes, we have labeled these “Concern Systems.” These systems are characterized by their proactive attention to parent concerns, usually with multiple avenues for expressing concerns (web forms, hotlines), systematic tracking of the concerns (both at local/regional and state levels), and a timely response when a concern is expressed. Some states indicate a turn-around time of 48 hours or less, often with emphasis on easily reconvening an IFSP meeting (or facilitated IFSP) as a first step. Other local responses to expressed concerns in these systems include conferences with supervisors and state staff serving as intermediaries (either on site or by phone) to work with the family and provider to resolve the concern.

#### Data Systems and Review

Many states mention data collection as a part of their systems. In some cases these appear to focus primarily on the required processes and on timelines management. While process/timeline management is clearly essential, at least four states (AL, KS, MT, PA) describe going beyond that, gathering information on issues (or “concerns”) raised at any level of the DR system, and reviewing and using this information periodically. Such reviews can support planning targeted technical assistance to providers, training and information to parents, monitoring efforts, and other forms of assistance to local providers and families.

#### Parent Organization Collaboration

At least seven states (AK, AL, IA, MS, NE, WI, WY) noted collaborations with their PTI or other parent organizations. These collaborations provide training or support to parents in the resolution of disputes and in the use of available dispute resolution options, including early resolution options. The use of parents as co-trainers in parent and provider training was described by several states as helpful in encouraging appropriate use of dispute resolution options and a preference for local resolution of issues.

### Focusing on Parent Rights

At least six states report that they focus specific efforts on ensuring that parents know their rights. Strategies include new Parent Rights Brochures (AK, CA), funding a parent support center (IN, WI), or providing new online resources (MA, MO). Several states reported using their Indicator 4A survey, which assesses how familiar parents are with their rights, to guide their outreach efforts to parents. (While it is tempting to use parent awareness as an explanation for the presence, absence, increase, or decrease in the use of formal dispute resolution options, we can find no relationship.)

### Stakeholder Engagement

At least four states (AK, AZ, ME, OR) actively involve stakeholders in their dispute resolution system oversight. Types of engagement included holding monthly or quarterly reviews of formal dispute resolution activity, reviewing concerns and issues raised by parents, and recommending actions.

### Assigning Staff Based on Workload

Several larger states (AZ, IL, MN, NY) reported that they adjusted staff assignments in order to accommodate changes in demand and meet timeline requirements, particularly in the area of Written State Complaints. Other states noted that their inability to meet timelines was the result of demand swings and the inability to staff to meet them.

## **CONCLUSION AND RECOMMENDATIONS**

Part C programs, as a whole, experience relatively little formal dispute resolution activity. Many states – most in some years – have no formal activity at all. Larger states, understandably, are more likely to have formal requests for dispute resolution. A few states have had problems during one of the last several years with meeting timelines for written complaints and the conduct of due process hearings. By and large compliance with timelines is not an issue in Part C. In 2009-10, for example, 21 states completed all their complaint reports on time and only one state failed to do so.

Most of the real “dispute resolution” activity in Part C occurs outside the required formal processes and is accommodated through the IFSP process, “concern systems” or other preventative processes for resolving disputes. The reporting on these non-required, preventative processes is inconsistent at best and generally lacks specific detail.

After review, CADRE recommends that states focus improvement in these areas:

- **A structured “concern system”** – parents should be able to raise concerns they have about their child’s program easily, through multiple channels (local and state); response to parent concerns should be timely (a day or two for initial response; less than a week or two for most resolutions); a reporting system for tracking concerns raised and how they were resolved should provide the state office with information they can use for improvement efforts.

- **A range of “alternative dispute resolution” (ADR) forums**, starting with easy-to-reconvene IFSPs. Additional ADR approaches can include facilitated IFSPs (where an outside neutral can assist the parties to work effectively where relationships may be frayed), telephone intermediary/ombuds role using trained staff who can quickly get both parties on the phone early in a possible conflict to work through to a resolution. Levels of appeal (e.g., through IFSP Coordinators, to local program supervisors, to regional supervisors, to the state office) are almost a given, but states should recognize that such “chains” of appeal can feel like “passing the buck” to the user. Ways to go straight to the Lead Agency with a concern can help prevent frustrations that may lead to more formal, contentious disputes.
- **A data system** that tracks both processes/timelines for the required dispute resolution options and that keeps track of issues/concerns raised in both required and non-required processes. Information from such a system should be reviewed and used for improvement planning by state staff and stakeholders at least quarterly.
- **Collaborative relationships and flexibility for accommodating infrequent dispute resolution activity.** Planning and maintaining a formal dispute resolution system for events that may happen less than once a year is a challenge for many, perhaps for most states. For state written complaints, it is almost assured that some state staff will be involved in any investigation and report, necessitating some flexibility in staff assignment. Where the SEA is the lead agency, this may be less a problem. Where the lead agency is not education, some states contract with the same organization that manages Part B activity. Some states (both within the Part B and Part C programs) contract with centers that specialize in dispute resolution (mediation, hearing systems).

CADRE welcomes any inquiry for information or assistance that could help improve state Part C dispute resolution system performance. Access us through:

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