



Annual Compliance Report 2018-2019

Division of Support & Accountability
Office of Federal Programs



**West Virginia Board of Education
2019-2020**

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Introduction

The West Virginia Department of Education (WVDE), Office of Federal Programs (OFP) and Office of Special Education & Student Support (OSESS), share the responsibility for ensuring that educational services are provided to all eligible students with exceptionalities. The *Individuals with Disabilities Education Improvement Act 2004 (IDEA)* and *Policy 2419: Regulations for the Education of Students with Exceptionalities* ensure that all students with exceptionalities have available a free appropriate public education (FAPE).

This annual compliance report includes data on monitoring activities, Facilitated Individualized Education Programs (FIEP), state complaints, due process hearings, including the resolution process and mediations that were requested during the 2018-2019 school year and documents the WVDE's efforts to meet the requirements under IDEA and Policy 2419 pertaining to:

- » administering the monitoring system, FIEP process, state complaints, due process hearings, including the resolution process and mediation, and;
- » identifying findings and making decisions based on the on-site monitoring, the annual desk audit (ADA), annual LEA determinations, written complaints and due process hearings, in addition to making data from these processes available to the public.

Monitoring System

The Office of Federal Programs (OFP) is responsible for ensuring West Virginia's compliance with the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) and its implementing regulations and West Virginia Code §18-20 (Education of Exceptional Children) that require the West Virginia Department of Education to adopt and use procedures to assure public agencies are providing a free appropriate public education to students with exceptionalities. Furthermore, IDEA guarantees the free appropriate public education (FAPE) of children with disabilities in the least restrictive environment (LRE).

To meet the needs of students with disabilities, the OFP has developed a continuous improvement monitoring process which places focus on both compliance requirements and the performance of students with exceptionalities. The Compliance Monitoring System includes various monitoring activities which occur on a four-year cycle, or more frequently if warranted. Acknowledging that the ultimate purpose of compliance monitoring is increased results for students with disabilities, the OFP requires each district to present its Results Driven Accountability Plan (RDP) at the opening of the onsite monitoring. In addition, all local education agencies (LEAs) are required to complete annually a District Self-Assessment for self-review and improvement planning which is overseen by the Office of Special Education & Student Support (OSESS). Four types of formal monitoring processes are conducted by the West Virginia Department of Education.

- » Compliance Desk Audit & On-Site Monitoring
- » Annual Desk Audit (ADA) and LEA Determinations
- » Focused Monitoring
- » Dispute Resolution Process

Compliance Monitoring

Compliance Monitoring is a comprehensive monitoring activity occurring on a four-year cycle. Each LEA receives on-site monitoring no less than every four years. This activity is conducted through visits in selected districts. The monitoring team during the 2018-19 school year consisted of Office of Federal Programs (OFP) staff and other educators as determined by the lead monitor. Districts selected for a Compliance On-Site Monitoring engaged in pre-monitoring activities, submission of data for a desk audit focusing on various compliance indicators, on-site monitoring activities and the corrective improvement process.

Fifty-seven (57) LEAs are monitored within the four year cycle as required by West Virginia Code §18-20-1 (Education of Exceptional Children). In addition, the state has the responsibility to have a system for enforcing the requirements of the Individuals with Disabilities Education Act (IDEA). The table that follows provides the four year cycle.

Compliance On-Site Monitoring 2018-2019	Compliance On-Site Monitoring 2019-2020	Compliance On-Site Monitoring 2020-2021	Compliance On-Site Monitoring 2017-2018/2021-2022
» Brooke	» Barbour	» Berkeley	» Boone
» Doddridge	» Braxton	» Cabell	» Hardy
» Grant	» Calhoun	» Fayette	» Harrison
» Hampshire	» Clay	» Gilmer	» Lincoln
» Jackson	» Lewis	» Greenbrier	» Logan
» Jefferson	» Marshall	» Hancock	» Marion
» Nicholas	» Mercer	» Kanawha	» Mason
» ODTF	» Mineral	» McDowell	» Monongalia
» Pleasants	» Mingo	» Morgan	» Putnam
» Pocahontas	» Monroe	» Ohio	» Raleigh
» Taylor	» Pendleton	» Preston	» Ritchie
» Wayne	» Roane	» Randolph	» Summers
» Webster	» Tucker	» Wirt	» Tyler
» Wetzel	» Wood	» Wyoming	» Upshur
» WVSD			

Annual Desk Audit (ADA)

The ADA is submitted electronically each year and is a review of both compliance and results State Performance Plan (SPP) Indicators. Districts that do not meet the targets on indicators will receive written notice of noncompliance from the Office of Special Education & Student Support (OSESS). Each ADA indicator determined “Not Met” requires completion of an improvement plan to be reviewed and accepted by the OSESS. The ADA must be completed and submitted annually to the OSESS to identify findings of noncompliance and areas requiring program improvement.

Focused Monitoring

Focused Monitoring is a monitoring process conducted by the OFP whereby an LEA may receive a visit based on an identified need. Focused Monitoring will drill down within the LEA’s data and/or practices to identify root causes and solutions to an on-going issue of compliance, performance or both. Each focused monitoring conducted is individualized to the district and the situation.

Dispute Resolution Process

Policy 2419: Education of Students with Exceptionalities and/or the IDEA require that all parents of or adult students with exceptionalities have available a process to file written state complaints, due process complaints, request mediation and request facilitated IEPs. This important procedural safeguard provides assurance that the rights of students with exceptionalities are being protected. Effective dispute resolution data can enable the State to track identified issues to determine whether a patterns or trends exist and the effectiveness of the resolution process.

Office of Special Education Programs

OSEP 09-02 Memorandum

The United States Department of Education, Office of Special Education Programs (OSEP) issued a memorandum (OSEP 09-02 Memorandum of Correction) to states on October 17, 2008 clarifying expectations for correction of noncompliance by the LEA and the verification of that correction by the state. The principles in this memorandum are the standards by which the WVDE reports noncompliance and correction for the State Performance Plan/Annual Performance Report (SPP/APR) and determines whether or not each LEA has made the appropriate corrections. The memorandum requires two levels, or prongs, of verification showing correction for all findings identified in writing to an LEA, excluding State Complaints and Due Process Hearing Decisions.

2018-2019 Findings of Noncompliance

The data below provides the total number of findings of non-compliance for the 2018-2019 school year from the ADA and Compliance On-Site Monitoring activities. The findings of noncompliance are provided to each LEA for review and correction. If the state finds noncompliance in an LEA, the State must notify the LEA in writing of the noncompliance and the requirement that the noncompliance be corrected as soon as possible, but in no case more than one year from identification. The one year correction requirement begins the date the State provides written notification to the LEA. The written notification from the State will detail specific steps the LEA must take to correct the noncompliance. To assure the LEA is correctly implementing the specific regulatory requirement(s) that were found to be noncompliant (Prong 2) a random sample of current IEPs will be reviewed in approximately six months following the initial finding of noncompliance. Correction is completed on the date the State determines both prongs are in compliance.

2018-2019 Compliance Monitoring Findings

Fifteen (15) districts received an on-site compliance monitoring visit during the 2018-2019 school year and are as follows: Brooke, Doddridge, Grant, Hampshire, Jackson, Jefferson, Nicholas, ODTP, Pleasants, Pocahontas, Taylor, Wayne, Webster, Wetzel and WVSDB. The information provided below provides the number of districts monitored that were noncompliant for the specific area indicated.

Administrative Review

Administrative Findings	Noncompliant Districts
AF2: Finance: Time/Effort	1 district
AF4: Instructional Groupings	1 district
AF5: Certification/Caseloads	8 districts
AF6: Full Instructional Day	4 districts
AF 7: Classroom Location/Size	1 district
AF 8: Other/No PEP Plans	3 districts
AF8: Other/Not Providing a Continuum of Services	5 districts
AF8: Other/Speech Services not provided at beginning of school year	1 district
AF8: Other/MTSS not in place	1 district
AF8: Other/DRS not invited to IEP meetings	1 district
AF8: Other/Over the 50% for co-taught classes	1 district
AF8: Other/No Consultation Logs for Indirect Services	1 district
AF8: Other/No documentation for providing Part A services	1 district
AF8: Other/Discipline/Change of Placement	2 districts
AF8: Other/ Delivery of Services/ SEE Environment/Age Appropriate Peers	2 districts

Student File Review

File Review Summary of Percentage of Noncompliance	Districts Below 75%
General Supervision	
Amendments to the IEP	5 districts
Transition	10 districts
ESY Services	1 district
Service Verification	12 districts
Transfer of Rights	1 districts
Related Services	1 district
Discipline Procedures	3 districts
Eight Day notice of IEP meeting	1 district
Procedural Safeguards	1 district
IEP Team Members	1 district

The OSESS revised the data collection process for Indicator #13 (Secondary Transition) during the 2011-2012 school year in an attempt to affect continuous improvement in this area. The OFP offers technical assistance to districts prior to the collection and reporting of transition age IEPs reviewed during the on-site monitoring reviews. In addition, the OSESS continues to mandate the annual self-assessment process for Indicator 13 for those districts who are not receiving an on-site monitoring review. The table below provides the compliance data prior to the correction period for those districts who received an on-site monitoring review and does not include the self-reporting during the ADA. Technical assistance for Indicator 13 will continue until compliance targets are met by each district on a regular basis.

Secondary Transition On-Site Monitoring File Review

County School District	File Sample Size	Compliance Percentage
District 1	10	90%
District 2	10	40%
District 3	10	70%
District 4	10	70%
District 5	10	90%
District 6	10	80%
District 7	10	40%
District 8	10	70%
District 9	10	60%
District 10	10	40%
District 11	10	100%
District 12	10	40%
District 13	10	0%
District 14	10	60%
District 15	10	90%

Surveys

Surveys were disseminated to special education directors in all LEAs monitored during the 2018-19 school year to collect feedback on the monitoring process. Results of the eight surveys returned are reported in the matrix on the following pages:

**West Virginia Department of Education
Office of Federal Programs
On-site Monitoring Activities Evaluation**

Not at all satisfied	Somewhat satisfied	Satisfied	Very Satisfied	Extremely Satisfied
County: _____ Special Education Director: _____ Guest Monitor: _____ The Office of Federal Programs (OFP) Monitoring Team’s purpose it to provide guidance to the district staff regarding compliance issues related to the education of students with disabilities. So that we may continually work to improve our monitoring procedures, we would appreciate your input. Please rate your level of satisfaction with the on-site monitoring activities.				
			3	5
			1	7
				8
			1	7
				8
				8
			2	6
				8
9. What are some ways that we can improve the monitoring process? <ul style="list-style-type: none"> • Our team was very satisfied with the process. Prior to the monitoring, there was open dialogue with the monitors about to expect. The follow-through also has been excellent. • Very satisfied with the process • I did not like the collaborative monitoring with DHHR. While a great practice when visiting out of state facilities, WVDE/ODTP should be monitored with the same protocol as the other districts. • I was satisfied with the monitoring • I recommend completing a student file review with the directors being monitored during the opening conference. I know the state does it but doing one together would be helpful. This document and the hands-on application helps us understand the policy better. • Nothing at this time • Compliance standards/requirements clearly and objectively defined to reduce interpretation. • In bigger counties could you do more than one elementary and one middle. 				

10. Do you believe that you have the capacity to correct all findings?

- Yes
- I do believe that the corrections can be corrected in a timely manner.
- Yes
- Yes
- Yes
- Yes
- Yes
- Yes I think I can correct most. The job postings is a different department that I can't control.

11. What additional support would you like from the WVDE office of Federal Programs?

- I think we are missing the monthly updates that we had and interaction with the directors when RESA was providing information to us.
- I appreciate the open communication. I feel comfortable calling for assistance in matter that arise.
- I feel supported by the WVDE Office of Federal Programs.
- Nothing at this time.
- Support on helping us grow on various service delivery models to help us think individually within a system.
- None at this time.
- Webinars of the online IEP program, forms and processes.

12. Did the Compliance Coordinator clearly communicate information about scheduled monitoring activities prior to the monitoring visit? Was there any additional information that you would like to have?

- Yes, I was contacted by Lesa Hines and was given a well-rounded overview of the process and what was expected.
- I am very pleased with information provided prior to monitoring.
- Communication was clear and I felt well informed throughout the process.
- Yes, no additional information needed at this time.
- Yes, and no if the monitoring is truly going to see us as we are on a daily basis. Maybe add another reminder about having related service schedules present to help us remember.
- Yes, no additional information needed.
- Communication was adequate for the process.
- Yes they did. I was approached the year prior and again months in advance. The process was explained.

13. What do you believe are the greatest obstacles for your district in regards to improving student achievement? What additional support could the WVDE provide to assist you in overcoming those barriers?

- The greatest obstacle for our district is to improve student achievement, parental involvement and address mental health issues.
- Attendance for our population, mental health concerns and continue to work with us to promote funding for mental health.
- Our district struggles to demonstrate student achievement through statewide assessment. Considering the needs and deficits of the students placed in our district, it is not surprising, but still a great obstacle. We are constantly working (and will continue) toward improvement and implementing research-based teaching strategies.
- Students that improve test scores with GSA are usually dismissed. This leaves us always with the lowest students.
- Belief systems of teachers and administrators. Continuing to honor requests for department staff to come to counties to help with trainings and exposing directors to supports on changing belief systems.
- I do not believe there are any obstacles we cannot overcome.
- Significant behavior/mental health issues. We utilized our RDP grant for the employment of a School Social Worker/ Licensed Therapist who is trained in play therapy. Please work to ensure continuation of the grant cycle.
- Staff to provide staff development regarding scheduling (elementary). Mentors for new teachers, training for long term subs.

14. Do you have any additional comments?

- The team here feels that the process was very open and the WVDE OFP monitoring staff is always available to assist with our questions.
- None at this time.
- None at this time.
- No
- Thank you for helping us grow and implement effective programs for compliance and student growth.
- No additional comments.
- Loss of state aid funds to support students who are placed in OOS facilities by DHHR creates a financial hardship in providing services that have been budgeted with those funds.

Annual Desk Audit

Each West Virginia school district submits the ADA electronically each year on April 30 to the OSESS. This assessment is a review of both compliance and results State Performance Plan (SPP) Indicators. Districts not meeting targets on indicators will receive written notice of noncompliance on or before May 31. Each ADA indicator determined Not Met requires completion of an improvement plan to be reviewed and accepted by the OSESS. Thirty-one (31) districts received written notification of non-compliances identified in the ADA Report for the compliance SPP indicators. The data is reported below:

- » A combined total of five (5) districts were identified as noncompliant for Indicator 4A and 4B: (4A – 2 districts) Rate of Suspension/Expulsions for all students with a disability and (4B – 4 districts) Rate of Suspension/Expulsion of students with a disability by Race/Ethnicity.
Rates of suspension and expulsion: Percent of districts that have: (a) a significant discrepancy, by race or ethnicity, in the rate of suspensions and expulsions of greater than 10 days in a school year for children with IEPs; and (b) policies, procedures or practices that contribute to the significant discrepancy and do not comply with requirements relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards.
- » Thirty-three (33) districts identified as noncompliant for Indicator 11: Child Find.
Percent of children who were evaluated within 80 days of receiving parental consent for initial evaluation.
- » Two (2) districts were identified as noncompliant for Indicator 13: Secondary Transition.
Percent of youth with IEPs age 16 and above with an IEP that includes appropriate measurable postsecondary goals that are annually updated and based upon an age appropriate transition assessment, transition services, including courses of study, that will reasonably enable the student to meet those postsecondary goals, and annual IEP goals related to the student's transition needs. There also must be evidence that the student was invited to the IEP Team meeting where transition services are to be discussed and evidence that, if appropriate, a representative of any participating agency was invited to the IEP Team meeting with the prior consent of the parent or student who has reached the age of majority.

Local Educational Agency Determinations

IDEA section 616(e) and Part B Regulations §300.600(a) and 300.604 require states to annually determine if the LEA:

- » Meets the requirements and purposes of IDEA, Part B;
- » Needs assistance in implementing the requirements of Part B;
- » Needs intervention in implementing the requirements of Part B; or
- » Needs substantial intervention in implementing the requirements of Part B.

In making each LEA's Annual Determination, the Office of Special Education & Student Support used a Results/Compliance matrix. The four (4) factors considered were:

- » District's performance on selected SPP results and compliance indicators;
 - » Valid and reliable data;
 - » Correction of identified noncompliance; and
 - » Other data available to the State about the LEA's compliance, including relevant audit findings.
- For the April, 2019 ADA submission, there were 33 possible points on both Results and Compliance indicators. The Results/Compliance matrix reflects a percentage score that was used to determine the LEA's 2019 Annual Determination as follows:
- Meets Requirements: A LEA's Annual Determination is Meets Requirements if the matrix percentage is at least 80%.
 - Needs Assistance: A LEA's Annual Determination is Needs Assistance if the matrix percentage is less than 80%.
 - Needs Intervention: A LEA's Annual Determination is Needs Intervention if the total matrix percentage is less than 80%, and the LEA was determined to be in Needs Assistance for more than three consecutive years.
 - Needs Substantial Intervention: The State did not make a determination of Needs Substantial Intervention for any LEA.

The following is a summary of the districts Local Educational Agency Determinations status:

- » Meets Requirements: 36 districts
- » Needs Assistance – One Year: 13 districts
- » Needs Assistance – Two Years: 2 districts
- » Needs Assistance – Three Years: 2 districts
- » Needs Intervention- One year: 2 districts
- » Needs Intervention – Three Years: 2 districts

**Local Educational Agency (LEA) Annual Determination Worksheet
Part B Results Matrix**

Part B Results Indicators		State Performance Plan (SPP) Target	SWD State Average	LEA Percentage	Score
Indicator 1: Graduation	(17-18)	79.50%	76.86%		
Indicator 2: Drop Out	(17-18)	2.00%	0.87%		
Indicator 3b: Participation Rate/Reading	(17-18)	95.00%	98.18%		
Indicator 3b: Participation Rate/Math	(17-18)	95.00%	98.17%		
Indicator 3b: Participation Rate/ Alternate Assessment	(17-18)	1.00%	1.26%		
Indicator 3c: Assessment Data/ELA Proficiency	(17-18)	13.90%	12.79%		
Indicator 3c: Assessment Data/Math Proficiency	(17-18)	10.90%	11.31%		
Indicator 4a: Suspension/Expulsion (more than 10 days)	(17-18)	3.28%	3.51%		
Indicator 5a: Educational Environment General Education Full Time (6-21)	(18-19)	63.00%	63.56%		
Indicator 5b: Educational Environment Separate Class (6-21)	(18-19)	8.89%	7.57%		
Indicator 5c: Educational Environment	(18-19)	1.30%	1.60%		
Indicator 6a: Preschool Environments (Regular Early Childhood Program)	(18-19)	32.30%	34.18%		
Indicator 6b: Preschool Environments (Separate Special Education)	(18-19)	10.30%	8.39%		
Indicator 7a: Preschool Outcomes (Social-Emotional Skills)	(17-18)	A1.	79.00%	82.50%	
		A2.	68.00%	63.32%	
Indicator 7b: Preschool Outcomes (Knowledge & Skills)	(17-18)	B1.	79.00%	82.98%	
		B2.	64.00%	61.51%	
Indicator 7c: Preschool Outcomes (Appropriate Behavior)	(17-18)	C1.	80.00%	85.57%	
		C2.	79.00%	73.72%	

**Local Educational Agency (LEA) Annual Determination Worksheet
Part B Results Matrix**

Part B Results Indicators	State Performance Plan (SPP) Target	SWD State Average	LEA Percentage	Score
Indicator 8: Parent Involvement (17-18)	38.00%	38.00%		
Indicator 14c: Higher Education/Post-Secondary/Competitively Employed (17-18)	68.00%	69.31%		
Indicator 14a1: Response Rate (17-18)	60.00%	67.72%		
Results Points Available	Results Points Earned		Results Performance	
17	0		0%	

Part B Compliance Matrix

Part B Compliance Indicators 0% or 100%	State Performance Plan (SPP) Target	SWD State Average	LEA Percentage	Correction of Findings	Score
Indicator 4b: Suspension by Race/Ethnicity (17-18)	0.00%	3.28%			
Indicator 9: Disproportionality/All Disabilities (17-18)	0.00%	0.00%			
Indicator 10: Disproportionality/Specific Disabilities (17-18)	0.00%	0.00%			
Indicator 11: Initial Evaluation Times (17-18)	100.00%	97.46%			
Indicator 12: Preschool Transition (17-18)	100.00%	100.00%			
Indicator 13: Secondary Transition (18-19)	100.00%	99.15%			
Correction of Noncompliance	100.00%				
Timely and Accurate Data	100.00%				
Compliance Points Available	Compliance Points Earned		Compliance Performance		
16	0		0%		
Results Driven Accountability Percentage and Determination					
33	0		0%		

West Virginia Interagency Consolidated Monitoring of Out-of-State Residential Facilities

The West Virginia Legislature created The Commission to Study Residential Placement of Children to establish a mechanism to achieve systemic reform by which all of the state's child-serving agencies involved in the residential placement of at-risk youth jointly and continually study and improve upon this system. One of the topics of study outlined by the legislation when it formed the Commission was to develop ways to certify out-of-state providers to ensure that children who must be placed out-of-state receive high quality services consistent with West Virginia's standards. As part of this charge, the West Virginia Department of Health and Human Resources (WVDHHR) and the West Virginia Department of Education (WVDE) joined efforts to develop and implement a collaborative monitoring system to review out-of-state facilities providing treatment and educational services to West Virginia youth.

For students with disabilities, each state has a responsibility, under federal statute and regulation, to have a system of general supervision that monitors the implementation of IDEA. The WVDE implemented the educational monitoring of out-of-state facilities in April 2002. In 2012 an interagency team comprised of WVDE and WVDHHR, developed the interagency consolidated monitoring process and a manual which describes the procedures to thoroughly and consistently monitor out-of-state facilities servicing WV students. These procedures aim to ensure appropriate treatment and educational services are being provided in a safe environment. The team representing the WVDE and WVDHHR conducts on-site reviews of facilities out-of-state that are providing services for West Virginia students. A consolidated written report is issued to the facility administrator following the exit conference. Each report consists of recommendations for educational improvement, any child-specific and/or systemic findings of noncompliance under IDEA, WV state educational policies, WV state and federal codes, or WVDHHR rules, policies and procedures. Corrective action plans are imposed when appropriate. In addition, at the conclusion of the on-site monitoring and in the event suspension of placements or removal of members/students is ordered, the entire review team must return for a second on-site monitoring visit to determine the facility's correction of the deficiencies prior to a suspension being lifted.

The interagency team completed five (5) on-site reviews for the 2018-2019 school year. The facilities which received an on-site review were:

- » Natchez Trace – Waverly, TN
- » Foundations for Living – Mansfield, OH
- » New Hope Treatment Center – Rock Hill, SC
- » The Hughes Center – Danville, VA
- » Harbor Point Behavioral Health – Portsmouth, VA

All five facilities reviewed had educational findings of noncompliance and corrective action plans were required. None of the out of state facilities reviewed were found to have violations warranting suspension of placements and/or removal of students.

Dispute Prevention and Resolution System

When school districts and parents have disagreements regarding students with exceptionalities, the WVDE encourages the parties to make every effort to resolve their differences informally through conferences and/or IEP Team meetings. For those cases when it is not possible to informally resolve a disagreement, the WVDE administers a system for dispute resolution, which includes options for written state complaints, mediations and due process complaints regarding the identification, evaluation, placement and/or provision of a free appropriate public education (FAPE). A state complaint is a charge that a special education law or regulation is not being followed by a county school district or public agency and is investigated at the WVDE by OFP staff. A complaint may also address a district’s failure to implement a due process hearing decision. A due process hearing provides a forum in which an impartial hearing officer resolves the dispute between the parents and the county school district, unless it is settled by an agreement of both parties through a resolution session. Parents and school districts are encouraged to use mediation, which is less formal than a complaint or a due process hearing, to resolve disagreements. In addition, as a preventative measure, the WVDE has added the Facilitated Individualized Education Program (FIEP) process whereby trained, impartial facilitators assist the parties to resolve the issues by collaboratively developing an IEP to meet the student’s needs.

Facilitated Individual Education Program (FIEP):

Total number of FIEPs requested.....	15
Total number of FIEPs completed.....	13
Total number of FIEP requests withdrawn.....	2
Total number of FIEP requests wherein parents refused to participate.....	0
Total number of FIEP requests not held due to resolution of issues.....	0
Total number of FIEP requests wherein district refused to participate.....	0

State Complaints:

Total number of state complaints requested.....	17
Total number of state complaints determined insufficient.....	3
Total number of state complaints where agreement was reached through early resolution.....	3
Total number of state complaints where agreement was reached through mediation.....	1
Total number of state complaints where issues were deferred pending due process.....	1
Total number of Letter of Findings issued.....	10

Mediations:

Total number of mediations requested.....	9
Total number of written agreements.....	4
Total number of mediations without agreements or withdrawn.....	5

Due Process Hearings:

Total number of due process hearings requested.....	20
Total number of cases dismissed (closed due to a resolution meeting, Mediation Agreement, withdrawal or other resolution without having a hearing).....	17
Total number of cases resulting in a decision by a hearing officer.....	3

Facilitated Individualized Education Program (FIEP)

A Facilitated Individualized Education Program (FIEP) is a student focused IEP process designed to help the IEP Team overcome the pressures and challenges of a potentially contentious meeting. While the FIEP is not a required dispute resolution option under IDEA, West Virginia has joined a number of other states in making this option available to its districts. A Facilitated IEP Team meeting provides an opportunity for early conflict prevention and is available to school districts, parents of children with disabilities and adult students (18 years and older) with disabilities to resolve disagreements.

Upon receipt of a request for a FIEP meeting, the OFP assigns a facilitator whose primary responsibility is to assist IEP Team members in the thoughtful and productive development of a quality IEP focused on the student's specific needs. The district, the parent or an adult student may request a trained, impartial professional facilitator to attend the IEP Team meeting to assist the members of the IEP Team to remain focused on student issues and goals while addressing conflicts and disagreements that may arise during the meeting. The process may be used for any IEP Team meeting or eligibility meeting. IEP facilitation is free to all participants.

The IEP Facilitator's role is to:

1. Keep the meeting focused on the student.
2. Ensure that all members at the table have an opportunity to participate.
3. Encourage active listening by all participants.
4. Keep the group moving toward consensus without getting stuck on just one aspect of the IEP.

To formally request a Facilitated IEP Team meeting, parents or school staff may contact their district's special education director or complete a Request for a Facilitated IEP Team meeting form on the WVDE website at <https://wvde.us/special-education/policies-and-compliance/monitoring-and-compliance/>. Impartial facilitators will be selected by the OFP on a rotational basis. The entire IEP Team will participate in the Facilitated IEP Team meeting.

When the OFP receives a request for a Facilitated IEP Team meeting, a representative of the OFP will contact the school district or the parent to confirm the agreement of both parties. The IEP Facilitator, the district special education director, the student's case manager and the parents will arrange a mutually agreed upon date and time for the meeting. A request for a Facilitated IEP cannot delay the timeline for completion of the student's annual IEP Team meeting.

State Complaints

The federal regulations for implementing Part B of the IDEA require each state to administer a system for investigating and resolving state complaints. A formal state complaint is a charge that special education laws or regulations are not being followed by a district or public agency.

An individual or organization may file a state complaint under the procedures described in Policy 2419, Chapter 11. The WVDE has made available a form for filing a state complaint which can be accessed on the Department's website. Although the use of this form is not required, the complaint must be in writing, contain the complainant's signature and meet the criteria specified in Chapter 11, Section 2.A.

The WVDE has adopted written procedures for responding to and investigating state complaints and widely disseminates these procedures to parents and other interested individuals including parent training and information centers, protection and advocacy agencies, independent living centers and other appropriate entities in the state.

Within sixty days of receipt of a state complaint, the WVDE must carry out an independent investigation if the WVDE determines the state complaint is sufficient. Upon review of all relevant information, the WVDE must make an independent determination as to whether the public agency is violating state or federal special education laws or regulations. The WVDE issues a written decision to the district and the parent that addresses each allegation in the complaint and contains findings of facts and conclusions, the reasons for the WVDE's final decision, and procedures for effective implementation of the WVDE's final decisions, if needed, including corrective actions to achieve compliance.

State Complaints and Due Process Complaints

If a written state complaint is received that is also the subject of a due process complaint, or contains multiple issues of which one or more are part of the due process complaint, the WVDE shall set aside any part of the state complaint that is being addressed in the due process complaint until the conclusion of the hearing. Any issue that is not a part of the due process action will be resolved following the established state complaint procedures and timelines. For issues that are addressed in the due process hearing, the hearing officer's decision is binding on those issues and the WVDE must inform the complainant to that effect. Any remaining issues not addressed in the due process hearing decision will be investigated upon receipt of the hearing decision by the WVDE in accordance with the established state complaint procedures and timelines.

A state complaint alleging a district's failure to implement a due process hearing decision must be investigated and resolved by the WVDE utilizing the state complaint procedures.

Early Resolution of State Complaints

Either the special education director or the parent/adult student may initiate an early resolution to a state complaint investigation by contacting the other party and participating in a local conference if both the district and parent voluntarily agree to utilize the early resolution option. If early resolution is reached on any or all allegations within fifteen days of being notified of the receipt of the state complaint, the school district need not submit its written response to the allegations to the WVDE, and the state complaint will be considered resolved. Allegations not resolved will be investigated using established procedures and timelines.

Mediation and State Complaints

Another option for resolving the issues in the complaint is mediation. The parent and the district may agree to voluntarily engage in mediation consistent with the Department's procedures as a means to resolve the issues in the complaint. If both parties agree, the timeline for the investigation may be extended to accommodate the mediation session. If a mediation agreement is reached, the decisions are documented in a settlement agreement and the complaint is considered resolved. A settlement agreement is binding in any court of competent jurisdiction.

Of the 17 state complaints submitted during the 2019 school year, 10 were fully investigated and resulted in the issuance of letters of findings (LOFs). A total of four (4) complaints were withdrawn; 3 of those were withdrawn as a result of an early resolution agreement between the district and the parent and 1 was withdrawn as the result of a mediation agreement. Three (3) state complaint requests were determined to be insufficient.

Most Prevalent Violations Identified in 2019 State Complaints

1. Provision of Qualified Staff
2. Consideration of Factors for IEP Development
 - a. Student's Behavior, and
 - b. Medical Information Provided by the Parent
3. Implementing the IEP

Mediation

Mediation is an informal process for assisting parents and local educational agencies (LEAs) to resolve disputes and reach agreements. Mediation is voluntary on the part of both parties and opens the lines of communication which will benefit the student, parents and school personnel throughout the student’s school career. Hopefully, when mediation is requested, parents and school personnel will have the opportunity to resolve their differences amicably, make decisions with the student’s best interest in mind; and therefore, reduce the need for further dispute resolution options. Parents and LEAs are encouraged to use mediation, which is a less formal process than a due process hearing, to resolve disagreements.

Mediation Requests 2019

Number of Mediations Requested	Number of Mediations Requested in Lieu of Resolution Meetings	Mediations Withdrawn or Dismissed	Mediation Agreements	Mediations Held Without an Agreement
9	6	2	4	3

Mediation Issues Chart

Case	Issues	Outcome
M19-001	The parent alleges in a due process hearing that the district has failed to implement the student’s IEP; specifically, the provision of a graduation coach and modifications/accommodations set forth in the IEP. Parent also alleges the district is not following child find laws, as well as, the student’s 504 plan.	Agreement
M19-002	The parent alleges in a due process hearing that the district has denied FAPE to the student during the 6th and 7th grades.	Agreement
M19-003	The district requested mediation to resolve an issue with the student’s placement for her IEP services not being in her home school.	Dismissed/Parent did not agree to mediate.
M19-004	Parent alleges the district is denying the student FAPE; specifically, by failing to develop an IEP that meets the student’s needs, including reading instruction.	No Agreement
M19-005	The parent alleges the district denied the student a FAPE, failed to implement the IEP, failed to provide transportation, and other procedural violations.	No Agreement

Case	Issues	Outcome
M19-006	District requested mediation to resolve issues in a due process hearing filed by the parent. The parent, however, withdrew the mediation and the hearing request.	Withdrawn
M19-007	Parent requested mediation to resolve the issues in their due process complaint.	No Agreement
M19-008	Parent alleges in a due process hearing that the district failed to provide the student a FAPE.	Agreement
M19-009	Parent alleges in a due process hearing that the district failed to provide FAPE; specifically, by not following the discipline procedures.	Agreement

Mediation Costs

The West Virginia Department of Education assumes the total cost of the mediator assigned to the requested mediation. Mediators are selected by a solicitation process mandated by the State of West Virginia through the West Virginia Purchasing Division to conduct the mediation pursuant to the procedures specified in the Individuals with Disabilities Education Improvement Act (IDEA) and Policy 2419: Regulations for the Education of Students with Exceptionalities. Mediators are compensated at the rate per hour specified on their individual contract for preparation, conducting the mediation and travel time. Total mediation costs for FY 19 were \$24,000.00. The chart below provides a breakdown of mediation costs by case.

Case Number	Cost
M19-001	\$2,100.00
M19-002	\$3,800.00
M19-003	Not assigned
M19-004	\$2,200.00
M19-005	\$3,000.00
M19-006	\$1,300.00
M19-007	\$4,800.00
M19-008	\$3,500.00
M19-009	\$3,300.00
Total Costs - \$ 24,000.00	

Mediation Survey Responses

Mediation holds great promise for assisting parents, students, school districts and others in developing solutions to resolve disputes. Parents and school personnel have different perspectives on how well the mediation worked and its outcomes. The intent of this section is to capture the perspectives of those individuals participating in the mediation process and provide valuable data on how to increase the access, use and success of the mediation process. The evaluation of the mediation system helps ensure the services are continually being improved and refined; thereby, enhancing the likelihood that mediation will be effective and utilized to the greatest degree possible.

The chart below provides a summary of the survey responses received from parents and school district personnel from July 1, 2018 through June 30, 2019. Of the nine mediations requested, 7 mediation sessions were held, resulting in 4 mediation agreements. A total of 12 surveys were returned to the OFP; two surveys from parents and eight surveys from district personnel.

Mediation Survey Summary

Statements	Responses			
	Parent		LEA	
1. The mediation was attempted before a due process hearing was requested.	Y 2	N 0	Y 10	N 0
2. My rights in the mediation process were explained prior to entering into mediation	1		10	
3. The mediator was knowledgeable about the mediation process.	1		10	
4. I felt comfortable discussing my concerns in the mediation session.	1		10	
5. I believe the mediator was fair to both sides.		1	11	
6. I had an opportunity to fully express my concerns in the mediation.	1		10	
7. Mediation helped me understand the concerns of the parent/district.		1	10	
8. Mediation helped resolve issues that most likely would not have been resolved without mediation.	1		6	4
9. I was satisfied with the mediation process.		1	8	2
10. I would recommend mediation to others.	Not sure		9	1
11. The mediation resulted in a written agreement.	1		7	3

Parent Comment

- » “Although an agreement was reached, the mediation went on for 11 hours. The mediator should have called for or at least inquired about a continuance after most of the parties involved were complaining about being tired. She wanted to rush us along to finish up so a staff member of the LEA could attend to her pet. I was discouraged that the pet was more important than my child. I felt rushed at the end and would have felt more comfortable with the decisions if I wasn’t tired and rushed. I have also found out after the agreement was signed that the LEA is unable to comply with some aspects of the signed agreement, which has led me to have to involve my attorney in figuring out other approaches. I also found the LEA lacking in sharing or enforcing multiple points in the agreement with involved staff. Either myself or my attorney had to push for action to be taken and/or notified the appropriate staff/contractor(s) of their responsibilities. This is not the fault of the mediator; however, it does leave me dissatisfied with the process as a whole. I went to the mediation with the understanding that the agreement would address and resolves the issues. It was a waste of time if the agreement is not being fulfilled and furthers my lack of trust with the LEA.

District Comments

- » “It was a 504 issue so not the proper venue. I found this process to be a poor use of resources – time & money, all on the taxpayers’ dime. We gathered and met, but this was a 504 case, so the parents had to start over if they wanted to go through with mediation.”
- » “Excellent job by [Hearing Officer].
- » “I believe the mediator created an environment of trust and understanding that encourages both parties to work to resolve the matter in the best interest of the student but fair to both parties.”
- » “I found the process very useful. Both parties were able to express concerns. Both parties left the table with a feeling of satisfaction being able to move to the next step in regards to what was best for the student.”
- » “I am not clear on if mediation request was before a due process or if it was to resolve pending due process. That information was not shared by my supervisor. The mediator did ask if we had read and understood the complaint. I was fully aware of parent concerns prior to the meeting.”
- » “The parent wanted a specific reading program, delivered by a specific company. The district trained county hired personnel and brought materials to deliver instruction.
- » “The parent wanted a specific reading program delivered by a specific company. The county delivered the requested program and trained the county employees at the school via Skype.”
- » “[Mediator] did an excellent job with the mediation.”
- » *One survey from a parent advocate was returned as undeliverable (moved – left no forwarding address).

Due Process Hearing

Special education laws and regulations ensure that all students with exceptionalities have available a free appropriate public education (FAPE). The West Virginia Department of Education (WVDE), Office of Federal Programs (OFP), is required to accept due process complaints regarding the identification, evaluation, educational placement and/or provision of FAPE for exceptional students. Due process complaints and hearings are important procedural safeguards for parents and are required by federal law. A parent, an adult student with an exceptionality, a school district or an attorney representing either party may request a hearing by filing a due process complaint with the district's superintendent or the WVDE.

Due Process Complaint Resolution Meeting

In the Individuals with Disabilities Education Improvement Act (IDEA), Congress recognized the need to provide additional opportunities for early dispute resolution. A 30-day resolution period was added when a parent files a due process complaint. The LEA is required to hold a resolution meeting within 15 days of receiving notice of the parents' due process complaint to discuss the issues leading to their due process hearing request. This provides the LEA an opportunity to attempt to resolve the issues. The parents and LEA decide which IEP Team members will attend the resolution meeting; however, a LEA representative who has decision-making authority must participate in the resolution meeting. The resolution meeting must be held unless the parents and LEA agree in writing to waive the resolution meeting or agree to use mediation. If the LEA and parents resolve the issues relating to the due process hearing request during a resolution meeting, they must execute a legally binding agreement. If the LEA has not resolved the request for the due process hearing to the satisfaction of the parents within 30 days of the receipt of the parents' hearing request, the due process hearing may proceed and all of the applicable timelines begin.

Due Process Complaints & Hearing Requests

A total of twenty due process complaints were filed with the WVDE during the FY 2019 school year. All 20 were filed by parents or attorneys representing parents. The WVDE had 1 request for an expedited hearing based on disciplinary issues. A total of 10 due process complaints were resolved through the resolution session process. Six mediation sessions were requested to resolve due process complaints and 4 of the 6 resulted in mediation agreements. Three others were withdrawn by the initiators (parents). A total of three complaints resulted in fully adjudicated hearings with decisions issued.

IDEA Due Process Hearing Complaint Issues

Case Number	Alleged Violation	Action
D19-001	The parent alleges the district failed to follow the student's IEP/504 plan; delayed the provision of the student's services; and revised the IEP without parent participation. (Pro Se)	Mediation Agreement
D19-002	The parent alleges the district denied the student a FAPE by failing to offer an IEP to enable her to make progress; failing to follow the IEP; and failing to provide an appropriate placement in a setting reasonably calculated to enable her to make progress. (Attorney)	Mediation Agreement
D19-003	Parent alleges the district failed to provide the student special education and related services to receive a free appropriate public education (FAPE). (Attorney)	Resolution Agreement
D19-004	Parent alleges the district failed to provide the student special education and related services to receive a FAPE. (Attorney)	Resolution Agreement
D19-005	The parent alleges the district failed to properly evaluate the student; and therefore, failed to draft a properly developed IEP. (Attorney)	Resolution Agreement
D19-006	The parent alleges the district failed to provide the student a safe environment for the student to receive FAPE. (Attorney)	Resolution Agreement
D19-007	The parent alleges the district failed to develop an appropriate IEP, failed to implement the IEP; failed to provide transportation; and failed to provide a FAPE in the least restrictive environment (LRE).	Due Process Hearing Decision
D19-008	The parent alleges the district failed to provide the student's 1:1 support aide at recess; failed to provide occupational therapy (OT), physical therapy (PT) and speech services; failed to provide math and reading instruction; and failed to provide parent participation in decision-making. (Attorneys)	Parent Withdrew Complaint
D19-009	The parent alleges the district is not providing the student the services of an LPN; is not meeting is dietary needs; and is not providing reports of progress. (Attorney)	Resolution Agreement

Case Number	Alleged Violation	Action
D19-010	The parents allege the district failed to timely identify, locate and evaluate the student for a disability; failed to implement the student's IEP; failed to provide the parents a copy of the IEP or prior written notice (PWN); failed to provide scientifically based instruction and extended School year (ESY) services; and failed to consider compensatory education services. (Attorneys)	Resolution Agreement
D19-011E	The parents allege the district failed to make a proper determination in a manifestation determination meeting and improperly changed the student's placement to an interim alternative educational setting (IAES). (Attorneys)	Resolution Agreement
D19-012	The parent alleges the district failed to provide a method by which to communicate; failed to provide a functional behavioral assessment (FBA) and a positive behavior support plan; failed to provide a trained autism mentor; failed to ensure safety at school; and failed to provide FAPE in the LRE. (Attorneys)	Mediation Agreement
D19-013	The parent alleges the district failed to provide the student an IEP reasonably calculated to provide him a FAPE, and failed to provide, follow and implement the student's IEP. (Attorneys)	Parent/Attorney Withdrew Complaint
D19-014	The parents allege the district failed to conduct a manifestation determination; failed to implement the student's IEPs; failed to provide services to enable the student to access FAPE; and failed to educate the student in the LRE. (Attorneys)	Mediation Agreement
D19-015	The parent alleges the district is unilaterally changing the student's placement. (Attorney)	Resolution Agreement
D19-016	The parent alleges the district is changing the student's placement without considering all necessary information. (Attorney)	Resolution Agreement

Case Number	Alleged Violation	Action
D19-017	The parents allege the district has failed to provide the student ESY and speech therapy services; failed to provide the parents copies of the data/assessments supporting the changes to the student's ELA and math services; failed to revise the student's IEP to include/reinstate several accommodations previously included in his IEP; failed to provide the students special education services with the assistance from an outside provider two days per week; failed to provide the two hours/week of psychological services by an outside psychologist; failed to provide the requested 160 minutes of OT/month and 120 minutes/month of PT and failed to provide speech-to-text, separate location, extra time and making accommodations for any statewide testing. (Attorney)	Parent/Attorney Withdrew Complaint
D19-018	The parents allege the district has failed to provide a FAPE to this student and other students who need behavioral supports and who are not performing at grade level, are not progressing at school and are not being educated with their nondisabled peers to the maximum extent appropriate or in the east restrictive environment. (Attorneys)	Due Process Hearing Decision - (Appealed to Federal Court)
D19-019	The parents allege the district has failed to provide a FAPE to this student and other students who need behavioral supports and who are not performing at grade level, are not progressing at school and are not being educated with their nondisabled peers to the maximum extent appropriate or in the east restrictive environment. (Attorneys)	Resolution Agreement
D19-020	The parents allege the district has failed to provide a FAPE to this student and other students who need behavioral supports and who are not performing at grade level, are not progressing at school and are not being educated with their nondisabled peers to the maximum extent appropriate or in the east restrictive environment. (Attorneys)	Due Process Hearing Decision

E – Expedited

IDEA Due Process Hearing Results by District

Local Educational Agency	Number of Hearings Requested	Results - Withdrawn/Resolution or Mediation Agreement/Due Process Hearing Decision
Cabell	2	Mediation Agreements
Hampshire	1	Resolution Agreement
Hancock	1	Resolution Agreement
Jefferson	1	Resolution Agreement
Kanawha	9	7 Resolution Agreements; 2 Hearing Decisions
Mineral	1	Mediation Agreement
Preston	1	Mediation Agreement
Putnam	2	Resolution Agreement; Mediation Agreement
Wood	1	Due Process Hearing Decision

IDEA Due Process Hearing Costs

The WVDE has entered into a contractual agreement for due process hearing officer services following a solicitation process mandated by the State of West Virginia through the West Virginia Purchasing Division. Hearing officers are compensated at the rate specified in each individual contract for preparation, travel, conducting the hearing and preparing and submitting the written decision. The WVDE remits payment to the hearing officer for 2/3 of the approved cost of the hearing officer's fee. The district remits payment to the hearing officer for 1/3 of the approved cost of the hearing officer's fee based on a memorandum of understanding between WVDE and the local education agencies. When a case is settled or dismissed prior to a hearing, the hearing officer is only paid for time accrued, which is considerably less than when a hearing occurs. The WVDE is responsible for 100% of the cost of a court reporter for the due process hearing. The district is responsible for the cost of the district's attorney.

The total cost of due process complaints for FY 2019 was \$140,234.36. The chart below breaks down the specific costs paid separately by the WVDE and the LEA, as well as the total cost for each due process complaint filed.

IDEA Due Process Hearing Costs

Case Number	Hearing Costs		Court Reporter Cost	Total Hearing Cost
	WVDE Cost	LEA Cost		
D19-001	\$548.33	274.17	0	\$822.50
D19-002	933.33	466.67	0	\$1,400.00
D19-003	\$116.67	\$58.33	0	\$175.00
D19-004	\$800.00	\$400.00	0	\$1200.00
D19-005	\$169.17	\$84.58	0	\$253.75
D19-006	\$800.00	\$400.00	0	\$1200.00
D19-007*	14,256.67	7,128.33	3,240.50	24,625.50
D19-008	\$2,440.00	\$1220.00		\$3,660.00
D19-009	\$449.17	\$224.58	0	\$673.75
D19-010*	\$13,466.67	\$6,733.33	\$2,774.30	\$22,974.30
D19-011	\$519.17	\$259.58	0	\$778.75
D19-012	\$1,133.33	\$566.67	0	\$1,700.00
D19-013	\$1,038.33	519.17	0	\$1,557.50
D19-014	\$1,000.00	\$500.00	0	\$1,500.00
D19-015	\$105.00	\$52.50	0	\$157.50
D19-016	\$105.00	\$52.50	0	\$157.50
D19-017	\$892.50	\$446.25	0	\$1,338.75
D19-018*	\$22,000.00	\$11,000.00	\$2,864.51	\$35,864.51
D19-019	\$1,895.83	\$947.92	0	\$2,843.75
D19-020*	\$23,200	\$11,600	\$2551.30	\$37,351.30
Total Costs	\$85,869.17	\$42,934.58	\$11,430.61	\$140,234.36

** Resulted in a due process hearing decision*

The West Virginia Department of Education, Office of Federal Programs (OFP) and Office of Special Education & Student Support (OSESS), continually strive to support West Virginia's LEAs in meeting the requirements of the Individuals with Disabilities Education Improvement Act (IDEA) and Policy 2419: Regulations for the Education of Students with Exceptionalities through the processes discussed in this report. Additionally, the OFP and OSESS provide resources and information on all dispute prevention and resolution processes to parents of children with disabilities, adult students with disabilities, and other interested parties. Questions regarding the information provided in this report should be directed to the West Virginia Department of Education, OFP, at 304-558-7805.



W. Clayton Burch
West Virginia Superintendent of Schools