**Annual Compliance Report 2020-2021**

# West Virginia Department of Education

**Office of Federal Programs & Support**

**Special Education**

# Introduction

During the 2020-2021 school year, the West Virginia Department of Education (WVDE), Office of Federal Programs & Support (OFPS) and Office of Special Education (OSE), shared the responsibility for ensuring that educational services were 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* mandate that all students with exceptionalities have available a free appropriate public education (FAPE).

This annual compliance report includes data on monitoring activities, dispute resolution, and other general supervision activities completed during the state fiscal year (FY21) and documents the WVDE’s efforts to meet the requirements under IDEA and Policy 2419pertaining to:

* administering the monitoring system and dispute resolution system, and;
* identifying findings and making decisions based on the on-site monitoring, the annual desk audit (ADA), annual Local Education Agency (LEA) determinations, written complaints, facilitated Individualized Educational Programs (IEPs), mediations, and due process hearings, in addition to making data from these processes available to the public.

# Monitoring System

The OFPS is responsible for ensuring West Virginia’s compliance with the 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 of children with disabilities in the least restrictive environment.

To meet the state’s responsibilities to students with disabilities through enforcement of the requirements of the IDEA, the OFPS has developed a continuous improvement monitoring process which focuses on both compliance requirements and the performance of students with exceptionalities. The Compliance Monitoring System includes various ongoing monitoring activities. Acknowledging that the ultimate purpose of compliance monitoring is increased results for students with disabilities, the OFPS requires each district to present its Results Driven Accountability Plan (RDP) at the opening of the onsite monitoring review. In addition, all LEAs are required to complete annually a District Self-Assessment for self-review and improvement planning. Four types of formal monitoring processes are conducted by the West Virginia Department of Education.

* Compliance Desk Audit & On-Site Monitoring
* Annual Desk Audit
* LEA Determinations
* Focused Monitoring
* Dispute Resolution Process

# Compliance Monitoring

Compliance Monitoring is a comprehensive monitoring activity occurring for each of West Virginia’s 57 school districts on a four-year cycle, as required by West Virginia Code §18-20-1 (Education of Exceptional Children). More frequent monitoring reviews may be scheduled as warranted. Each LEA receives on-site monitoring no less than every four years. This activity is done through a remote file review process focusing on various compliance indicators, followed by school visits and on-site document reviews in selected districts. A corrective improvement process, including additional onsite visits as necessary, follows the onsite reviews. The monitoring team during the 2020-2021 school year consisted of OFPS staff and other educators as determined by the lead monitor.

The following table provides the four-year onsite monitoring cycle:

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

## Annual Desk Audit

The ADA is submitted annually by each West Virginia school district and is a review of both compliance and results State Performance Plan (SPP) Indicators. The ADA is designed to identify strengths and weaknesses of the districts and address findings of noncompliance and areas requiring program improvement. Districts that do not meet the targets on indicators receive written notice of noncompliance. An improvement plan is required to identify steps that will be taken to improve results for students with disabilities. Once the improvement plan is found acceptable by the OFPS, the district receives ongoing support to meet its identified goals.

## Focused Monitoring

Focused Monitoring is a monitoring process conducted by the OFPS whereby an LEA may receive a visit based on an identified need. Focused Monitoring drills down within the LEA’s data and/or practices to identify root causes and solutions to an on-going compliance and/or performance concern. 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 students with exceptionalities or adult students with exceptionalities have available a process to file written state complaints, due process complaints, request mediation and request facilitated individualized education programs (FIEPs). 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 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, 2008clarifying 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 each LEA has made the appropriate corrections. The memorandum requires two levels, or prongs, of verification showing correction (individual student-level and systemic corrections) for all findings identified in writing to an LEA, excluding State Complaints and Due Process Hearing Decisions.

# 2020-2021 Findings of Noncompliance

The data below provides the total number of findings of non-compliance for the 2020-2021 school year. 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, a random sample of current IEPs will be reviewed in approximately six months following the initial finding of noncompliance. This practice is known as Prong 2. Correction is completed on the date the State determines both prongs comply.

# 2020-2021 Compliance Monitoring Findings

Fourteen (14) districts received an on-site compliance monitoring visit during the 2020-2021 school year and follow: Berkeley, Cabell, Fayette, Gilmer, Greenbrier, Hancock, Kanawha, McDowell, Morgan, Ohio, Preston, Randolph, and Wyoming. The information provided below provides the number of districts monitored that were noncompliant for the specific area indicated.

**Administrative Review**

|  |  |
| --- | --- |
| **Administrative Findings** | **Noncompliant Districts** |
| AF1: Finance: Budget and Expenditures (Requisition, PO, Invoice, Check) | 2 districts |
| AF2: Finance: Time/Effort | 7 districts |
| AF4: Instructional Groupings | 1 district |
| AF5: Certification/Caseloads | 11 districts |
| AF6: Full Instructional Day | 10 districts |
| AF 8: Other/Private School Consultation Documentation | 2 districts |
| AF8: Other/Not Providing a Continuum of Services | 9 districts |
| AF8: Other/Speech Services not being provided | 1 district |
| AF8: Other/Special Education rooms identified | 2 districts |
| AF8: Other/Co-Teacher schedule assignment | 1 district |
| AF8: Other/No Consultation Logs for Indirect Services | 3 districts |
| AF8: Other/General education students being sent to special education classes for in-school  suspension (ISS) | 1 district |
| AF8: Other/Supplemental Aides and Services  documentation | 2 districts |
| AF8: Other/ Special Education teachers teaching  multiple subjects at the same time | 1 district |
| AF8: Other/ESY transportation | 1 district |
| AF8: Other/Co-Taught Classroom over 50% | 1 district |
| AF8: Other/Special Education services not current on the IEP | 1 district |
| AF8: Other/Sign Support Specialist PD plan | 1 district |

**Student File Review**

|  |  |
| --- | --- |
| **File Review Summary of Percentage of Noncompliance** | **Districts Below 75%** |
| **General Supervision** |  |
| **Amendments to the IEP** | 8 districts |
| **Transition** | 14 districts |
| **ESY Services** | 3 districts |
| **Service Verification** | 12 districts |
| **Transfer of Rights** | 2 districts |
| **Related Services** | 5 districts |
| **Supplemental Services** | 4 districts |
| **Special Education Services** | 4 districts |
| **Meeting Notice** | 2 districts |
| **Predetermining** | 10 districts |
| **LRE Statement** | 6 districts |
| **Performance Gap** | 3 districts |
| **Not Meeting Timelines** | 1 district |
| **Evaluations** | 1 district |

Efforts to affect continuous improvement for Indicator #13 (Secondary Transition) include technical assistance to districts delivered prior to the collection and reporting of transition age IEPs reviewed during the on-site monitoring process. In addition, the OFPS continues to mandate the annual self-assessment process for Indicator 13 for those districts 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 systemic basis.

**Secondary Transition On-Site Monitoring File Review**

|  |  |  |
| --- | --- | --- |
| **County School District** | **File Sample Size** | **Compliance Percentage** |
| District 1 | 10 | 63% |
| District 2 | 10 | 79% |
| District 3 | 10 | 76% |
| District 4 | 10 | 87% |
| District 5 | 10 | 68% |
| District 6 | 10 | 79% |
| District 7 | 10 | 88% |
| District 8 | 10 | 71% |
| District 9 | 10 | 61% |
| District 10 | 10 | 69% |
| District 11 | 10 | 65% |
| District 12 | 10 | 87% |
| District 13 | 10 | 70% |
| District 14 | 10 | 82% |

**Surveys**

Surveys were disseminated to special education directors in all LEAs monitored during the 2020-2021 school year to collect feedback on the on-site monitoring process. Results of the surveys returned are reported in the matrix on the following pages:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| West Virginia Department of Education  Office of Federal Programs & Support  On-site Monitoring Activities Evaluation  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. | Not at all satisfied | Somewhat satisfied | Satisfied | Very Satisfied | Extremely Satisfied |
| 1. In general, how satisfied were you with the monitoring visit? |  |  |  | 1 | 6 |
| 2. Did the Compliance Coordinator attempt to gain your trust and confidence prior to the visit? |  |  |  |  | 7 |
| 3. At the entrance conference, did the Compliance Coordinator clearly outline the procedures and team activities for the visit? |  |  |  |  | 7 |
| 4. Were staff interviews and focus group sessions conducted in a professional manner? |  |  |  |  | 7 |
| 5. At the exit conference, did the Compliance Coordinator and other members of the monitoring team present themselves as fair and impartial? At the exit conference, did the Compliance Coordinator address preliminary compliance findings? |  |  |  |  | 7 |
| 6. Did district staff have ample time to ask questions? |  |  |  |  | 7 |
| 7. Did the team clearly describe the follow up monitoring activities? |  |  |  |  | 7 |
| 8. Do you feel comfortable contacting the Compliance Coordinator with any follow up questions? |  |  | 1 |  | 6 |
| 9. What are some ways that we can improve the monitoring process?   * Monitoring is always a difficult process for all. I feel our team was professional and courteous. I feel our team wants us to be able to correct findings and succeed for students. * Jeremy and Lesa were wonderful! As a new special education director, they were helpful, encouraging and supportive. * If there is new that the monitoring team will be looking for, to ensure districts are aware. I was not really aware about the PEP plans, not sure how I missed it. * After the Pandemic it is recommended that monitoring return to majority onsite. * Written compliance report available closer/at time of exit for school staff to address the issues while they are fresh. * I appreciate what the team did to help work through the process. I did like the audit going in parts. This allowed me to work through portions before the next step began. * None at this time. | | | | | |
| 10. Do you believe that you have the capacity to correct all findings?   * While we may not be able to correct them for this year, we can correct them going forward. * I do * Yes, there are only two of us in my office. It may take time, but we are constantly working to improve. * Yes * Yes * I feel the department provided me with guidance to correct the findings. * With the help of our Special Education Specialists, we have the capacity to correct. | | | | | |

|  |
| --- |
| 11. What additional support would you like from the WVDE office of Federal Programs?   * I appreciate always being able to reach out for assistance. * IEP training delivered by WVDE Office of Federal Programs. I believe it will help streamline the process and build a good working relationship with the WVDE. I also feel the Office of Federal Programs would be the best to deliver this training and support. * Offer any support in finding certified teachers, help personnel directors in alternate certification paths. * I feel very supported from the office of federal programs. * Support in scheduling the recommended/required trainings. * The coordinator communicated the information to me clearly. * When we have phone calls, Jeremy is often our first phone call. He is always helpful. |
| 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. Administrators liked when they received questions ahead of time. * Yes – everything was clearly communicated * Yes, I was provided an email and a follow up phone call. Ms. Hines and Mr. Brunty have been very helpful during the entire process. * Yes, and I was encouraged to ask any follow up questions that I may have at a later time. * Yes – no issues or improvements at this time * The coordinator communicated the information to me clearly. * Communication was timely, clear and complete. |
| 13. What do you believe are the greatest obstacles for your district regarding improving student achievement? What additional support could the WVDE provide to assist you in overcoming those barriers?   * Students have deficits due to their specific learning disability. We strive to find the people (most important factor) and programs to help close those deficits. I am not sure what else WVDE could do here. * Lack of understanding of Policy 2419 and research-based practices for students with disabilities for our general education teachers, administrators and central office staff. Additional support would include WVDE Federal Programs presence at the Superintendents meetings and Instructional support meetings. (you all may already be present and represented at each meeting) * Living in a remote area, I think parents don’t get the full support needed. It’s not a poverty only concern, but just the access to broadband and cell service. All of these things not only hurt our student’s attendance, but it’s a barrier to keep certified teachers. * Special education teacher retention and the quality of new teacher hires. Majority of our teachers have only passed the praxis and have little to no formal training in special education. * Lots of compliance and responsibilities to attend to that take away from opportunity to work on quality indicators - small county, limited resources and hours in a week. * Cabell County’s greatest obstacle is reducing suspension and looking more at LRE. These have been a focus of our ADA. We are continuing to work to address these at a district and school level. * As long as we measure student achievement via proficiency we will continue to experience failure. Students can and do demonstrate growth. Is there a way that it can be included/recognized? |
| 14. Do you have any additional comments?   * Thank you for your assistance and support. * None. Thank you! * Thank you for all of your support and for your patience. * Thank you for your ongoing support of Hancock County Schools. * Well done monitoring visit and adjustment for COVID impact. Very communicative and supportive – always able to ask/answer questions. * Thank you for helping me as a new director. I appreciate what is being done to help make change and keep the focus on kids. * I appreciate their guidance and support that I receive from the monitors. When problems are identified, solutions are not far behind. |

**Annual Desk Audit**

Each West Virginia LEA submits the ADA electronically each year on or before April 30th to the Office of Federal Programs and Support, Special Education office. This assessment is a review of both compliance and results State Performance Plan (SPP) Indicators. LEAs not meeting targets on compliance indicators will receive written notice of noncompliance on or before May 31. Districts with indicators determined Not Met were required to complete an improvement plan to be reviewed and accepted by the OFPS, Special Education office. LEAs that did not meet at least one result indicator were required to develop a District Systemic Improvement Plan (DSIP) around one or more related indicators based on importance or need for a systemic change.

Twenty-three LEAs received written notification of non-compliances identified in the ADA Report for the compliance SPP indicators. The data is reported below:

* Three (3) LEAs were identified as noncompliant for Indicator 4B: 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.*

* Twenty (20) LEAs identified as noncompliant for Indicator 11: Child Find.

*The percentage of children who were evaluated within 80 days of receiving parental consent for initial evaluation.*

* Five (5) LEAs were identified as noncompliant for Indicator 12: Early Childhood Transition.

*Percent of children referred by West Virginia Birth to Three (IDEA Part C) prior to age three,*  *who are found eligible for pre-school services (Part B) and who have an IEP developed and*  *implemented by their third birthday.*

* One (1) LEA was identified as noncompliant for Indicator 13: Secondary Transition.

*Percent of youth with IEPs age 14 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 Federal Programs and Support, Special Education 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;
* Dispute resolution; and
* Other data available to the State about the LEA’s compliance, including relevant audit findings.

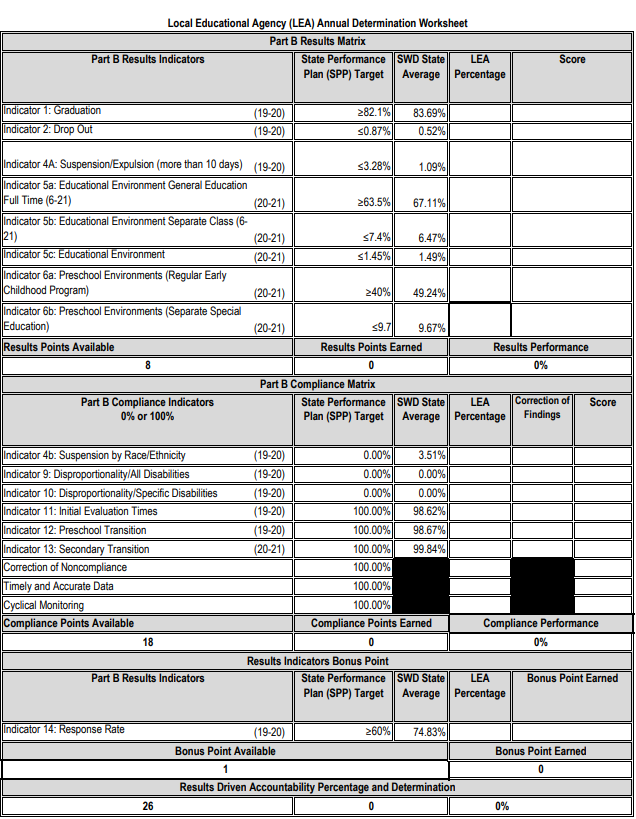
For the April 2021 ADA submission, there were 26 total points available on both Results and Compliance indicators. The number of total points was reduced resulting from lack of Indicator 3 assessment data caused by the emergency school closure based on the COVID-19 Pandemic. Additional adjustments were made including removing Indicator 7 Pre-K assessment, indicator 8 parent involvement and indicator 14c one year exit surveys, for consistency and equity. The Results/Compliance matrix reflects a percentage score that was used to determine the LEA’s 2021 Annual Determination as follows:

* Meets Requirements: The LEA’s Annual Determination is Meets Requirements if the matrix percentage is at least 80%.
* Needs Assistance: The LEA’s Annual Determination is Needs Assistance if the matrix percentage is less than 80%.
* Needs Intervention: The 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 LEA’s Annual Determination is Needs Substantial Intervention if the total matrix percentage is less than 80%, and the LEA was determined to be in Needs Intervention for more than three consecutive years.

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

* Meets Requirements: 53 districts
* Needs Assistance – One Year: 1 district
* Needs Intervention – One year: 1 district
* Needs Intervention – Two Years: 1 district
* Needs Substantial Intervention – Two Years: 1 district

**2021 Annual Determination Template Worksheet**



**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 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 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 monitor out-of-state facilities servicing West Virginia students. These procedures aim to ensure appropriate treatment and educational services are being provided in a safe environment. The team representing WVDE and WVDHHR conducts on-site reviews of out-of-state facilities that provide services to students in West Virginia. 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.

While the interagency team’s protocol is to conduct five (5) on-site reviews per year, no on-site reviews could be completed for the 2020-2021 school year due to the travel restrictions imposed during the Covid-19 pandemic. Despite travel restrictions, the OFPS continued to monitor all Individualized Education Programs (IEPs) developed for students with disabilities during court-ordered placements, provide oversight of WV LEA coordination with out of state facilities, and deliver necessary trainings and feedback electronically to share appropriate education recommendations and directives. Maintenance of compliance of special education policy and law remained a primary focus during the pandemic to ensure that WV students placed in out-of-state, non-educational placements continued to receive a free appropriate public education. The onsite review process resumed at the beginning of the 2021-2022 school year.

Common educational findings of noncompliance in out of state facilities include lack of appropriate certification for school faculty; IEP services minutes unable to be verified by the school schedule; applicable students not consistently participating in their IEP Team meetings when transition services are addressed; notification of parents for IEP meetings and restraints; other findings are unique to individual facilities.

**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. 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 OFPS 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 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 Individualized Education Program:**

Total number of FIEPs requested 10

Total number of FIEPs completed 8

Total number of FIEP requests withdrawn 0

Total number of FIEP requests wherein parents refused to participate 2

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 12

Total number of state complaints determined insufficient 2

Total number of state complaints where agreement was reached through early resolution 5

Total number of state complaints which were withdrawn …................................................ 1

Total number of state complaints where agreement was reached through mediation 0

Total number of state complaints where issues were deferred pending due process 1

Total number of Letter of Findings issued 3

**Mediations:**

Total number of mediations requested 1

Total number of written agreements 1

Total number of mediations without agreements or withdrawn 0

**Due Process Hearings:**

Total number of due process hearings requested...............................................................9

Total number of cases dismissed (resolution agreement, mediation agreement, withdrawal or other resolution without hearing) ........8

Total number of cases resulting in a decision by a hearing officer. ........1

**Facilitated Individualized Education Program**

An 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 many other states in making this option available. A Facilitated IEP Team meeting provides an opportunity for early conflict prevention and may be requested by school districts, parents of children with disabilities, and adult students (18 years and older) with disabilities.

Upon receipt of a request for a FIEP meeting, the OFPS 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. A trained, impartial professional facilitator or pair of facilitators will attend the IEP Team meeting to assist the members of the IEP Team in remaining 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 IEP team members have an opportunity to participate.

3. Encourage active listening by all participants.

4. Keep the group moving toward consensus without getting stalled on one part 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 OFPS on a rotational basis. The entire IEP Team will participate in the Facilitated IEP Team meeting.

Both parties must agree to participate in the facilitated IEP process to schedule the meeting and subsequently, a mutually agreed upon date and time for the meeting shall be established. 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 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 a state complaint is mediation. The parent and the district may agree to voluntarily engage in mediation consistent with the WVDE’s procedures 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 twelve (12) state complaints submitted during the 2021 school year, three (3) were fully investigated and resulted in the WVDE issuing a Letter of Findings (LOF). One (1) state complaint was deferred when the party filed a due process complaint. The due process complaint resulted in a hearing officer decision and all state complaint issues were addressed. Two (2) state complaint requests were determined to be insufficient. The remaining 6 complaints were resolved and/or withdrawn.

**Most Prevalent Violations Identified in 2021 State Complaints**

1. Failure to implement preventive discipline program

2. Failure to document behavior incidents in West Virginia Education Information System (WVEIS)

3. Failure to notify the parent of use of restraint

4. Failure to respond to request for IEP meeting in appropriate/timely manner

**Mediation**

Mediation is an informal process for assisting parents and LEAs to resolve disputes and reach agreements. Mediation is voluntary on the part of both parties and opens the lines of communication which should 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 2021**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Number of Mediations Requested** | **Number of Mediations Requested in Lieu of Resolution Meetings** | **Mediations Withdrawn or Dismissed** | **Mediation Agreements** | **Mediations Held Without an Agreement** |
| 1 | 1 | 0 | 1 | 0 |

**Mediation Issues Chart**

|  |  |  |
| --- | --- | --- |
| **Case** | **Issues** | **Outcome** |
| **M21-001** | Mediation was requested in conjunction with the filing of a due process complaint. | 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 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 FY21 were $2,460.00. The chart below provides a breakdown of mediation costs by case.

|  |  |
| --- | --- |
| **Case Number** | **Cost** |
| **M21-001** | $2,460.000 |
| **Total Costs - $ 2,460.00** | |

Due Process Hearing

Special education laws and regulations ensure that all students with exceptionalities have available a free appropriate public education. The WVDE, OFPS, 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 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 the applicable timelines begin.

Due Process Complaints and Hearing Requests

A total of nine (9) due process complaints were filed with the WVDE during the FY 2021 school year. All 9 were filed by parents or attorneys representing parents. A total of three (3) due process complaints were resolved through the resolution session process. One (1) complaint was resolved by a settlement agreement being reached beyond the 30-day resolution period. One (1) mediation was requested to resolve a due process complaint and resulted in a mediation agreement. One (1) complaint was resolved through private mediation. One (1) complaint was withdrawn by a parent and one (1) was dismissed by a hearing officer. One (1) complaint resulted in a fully adjudicated hearing with a decision issued by a hearing officer.

**IDEA Due Process Hearing Complaint Issues**

|  |  |  |
| --- | --- | --- |
| **Case Number** | **Alleged Violation** | **Action** |
| D21-001 | The parent alleges the district failed to provide the student a FAPE through an appropriately developed IEP; discrimination based on the nature and severity of the student’s disabilities; failure to educate the student in the student’s LRE, and failure to provide the student with appropriate aids and services. | Complaint withdrawn after agreement reached in private mediation. |
| D21-002 | The party alleges the district failed to provide the student with a FAPE because the student’s IEP was not implemented and the location of where the student was to receive services was materially altered from the school to the most restrictive setting, which was in the student’s home (due to COVID). | Complaint withdrawn after parties enter a resolution agreement. |
| D21-003 | The parent alleges the district failed to provide appropriate special education services to the student, failed to provide and test necessary auditory equipment, failed to design and implement an appropriate IEP, failed to provide a substitute interpreter and failed to provide necessary behavioral supports. | Complaint withdrawn after parties enter a resolution agreement. |
| D21-004 | The parent alleges the district failed to develop an appropriate IEP designed to address all the student’s needs and failed to conduct a compliant annual review of the student’s IEP. | Parent withdrew complaint. |
| D21-005 | The parent alleges the district failed to provide the student with a FAPE in the student’s LRE and failed to conduct necessary evaluations. | Complaint withdrawn after parties enter a resolution agreement. |
| D21-006 | The parent alleges the district failed to provide the student with a FAPE when it did not implement the IEP and/or prepare an adequate IEP, failed to properly train teachers on IEP requirements and discriminated against the student. | The hearing officer concluded the parent failed to prove the allegations. The district was directed to offer the student an IEE contingent on the parent signing a release to allow the district to review the IEE. |
| D21-007 | The parent alleges violations against the WVDE which were dismissed by the hearing officer. The hearing officer gave the parent the opportunity to amend other aspects of the complaint but the parent did not respond. | The hearing officer dismissed the complaint for insufficiency. |
| D21-008 | The parent alleges the student’s IEP was changed from a 1:1 aide trained in autism and safety care to direct adult supervision by a staff member. | The hearing officer dismissed the complaint after the parties reached a settlement agreement. |
| D21-009 | The parent alleges the district failed to provide appropriate special education and related services and accommodations to the student and failed to provide a FAPE in the student’s LRE. | Complaint withdrawn after parties resolve this matter through mediation. |

## IDEA Due Process Hearing Results by District

|  |  |  |
| --- | --- | --- |
| Local Educational Agency | Number of Hearings Requested | Results - Withdrawn/Resolution or Mediation Agreement/Due Process Hearing Decision |
| Berkeley | 1 | Mediation Agreement\* |
| Cabell | 1 | Resolution Agreement |
| Upshur | 1 | Resolution Agreement |
| Raleigh | 3 | Withdrawn, dismissed for insufficiency and due process hearing decision |
| Kanawha | 1 | Resolution Agreement |
| Hampshire | 1 | Settlement Agreement |
| Putnam | 1 | Mediation Agreement |

\*This matter was resolved by a private mediator. Because this mediation was not funded by the WVDE, it is not included in the mediation numbers.

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 2021 was **$29,248.10.** 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** |
| D21-001 | $1417.50 | $708.75 | $0.00 | $2126.25 |
| D21-002 | $990.00 | $495.00 | $0.00 | $1485.00 |
| D21-003 | $1938.00 | $969.00 | $0.00 | $2907.00 |
| D21-004 | $1742.00 | $871.00 | $0.00 | $2613.00 |
| D21-005 | $320.00 | $160.00 | $0.00 | $480.00 |
| D21-006\* | $9382.50 | $4691.25 | $2419.10 | $16492.85 |
| D21-007 | $800.00 | $400.00 | $0.00 | $1200.00 |
| D21-008 | $936.00 | $468.00 | $0.00 | $1404.00 |
| D21-009 | $360.00 | $180.00 | $0.00 | $540.00 |
| **Total Costs** | **$17,886** | **$8,943** | **$2,419.10** | **$29,248.10** |

\*- Resulted in a due process hearing decision

The West Virginia Department of Education, OFPS, Special Education, continually strives to support West Virginia’s LEAs in meeting the requirements of the *Individuals with Disabilities Education Improvement Act* and Policy 2419: *Regulations for the Education of Students with Exceptionalities* through the processes discussed in this report. Additionally, the OFPS provides 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, OFPS, at 833-627-2833.