



Annual Compliance Report 2017-2018

Division of Support & Accountability
Office of Federal Programs

December 2018



**West Virginia Board of Education
2018-2019**

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Introduction

The West Virginia Department of Education (WVDE), Office of Federal Programs (OFP) and Office of Special Education (OSE), 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 2017-2018 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. 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 (OSE). 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)
- Focused Monitoring
- Dispute Resolution Process

Compliance Monitoring

Compliance On-site Monitoring is a comprehensive monitoring activity occurring on a four-year cycle. Each LEA receives on-site monitoring no less than every four years and will participate in activities described in these procedures. This activity is conducted through an on-site visit in selected districts. The monitoring team during the 2017-18 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 the 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.

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 target on compliance indicators will receive written notice of noncompliance from the Office of Special Education (OSE). Each ADA indicator determined "Not Met" requires completion of an improvement plan to be reviewed and accepted by the OSE. The ADA must be completed and submitted annually to the OSE to identify findings of noncompliance and areas requiring program improvement.

Compliance On-Site Monitoring 2014-2015	Compliance On-Site Monitoring 2015-2016	Compliance On-Site Monitoring 2016-2017	Compliance On-Site Monitoring 2017-2018
<ul style="list-style-type: none"> • Brooke • Doddridge • Grant • Jackson • Jefferson • OIEP • Nicholas • Pleasants • Taylor • Wayne • Webster • Wetzel 	<ul style="list-style-type: none"> • Barbour • Braxton • Calhoun • Clay • Hampshire • Lewis • Marshall • Mercer • Mingo • Monroe • Pendleton • Pocahontas • Roane • Tucker 	<ul style="list-style-type: none"> • Cabell • Fayette • Gilmer • Greenbrier • Hancock • Kanawha • McDowell • Mineral • Morgan • Ohio • Preston • Randolph • Wirt • Wood • Wyoming 	<ul style="list-style-type: none"> • Berkeley • Boone • Hardy • Harrison • Lincoln • Logan • Marion • Mason • Monongalia • Putnam • Raleigh • Ritchie • Summers • Tyler • Upshur • WVSD

Focused Monitoring

Focused Monitoring is a monitoring process conducted by the OFP whereby an LEA may receive a visit based on an identified need or other data source (i.e., an LEA receiving a large number of complaints on a specific issue). Focused Monitoring will drill down within the LEA's data 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 federal law 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 for parents 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 OFP 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.

2017-2018 Findings of Noncompliance

The data below provides the total number of findings of non-compliance for the 2017-2018 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.

2017-2018 Compliance Monitoring Findings

Sixteen (16) districts received an on-site compliance monitoring visit during the 2017-2018 school year and are as follows: Berkley, Boone, Hardy, Harrison, Lincoln, Logan, Marion, Mason, Monongalia, Putnam, Raleigh, Ritchie, Summers, Tyler, Upshur and WV School for the Deaf and Blind. The information provided below provides the number of districts monitored that were noncompliant for the specific area indicated.

Administrative Review

Administrative Findings	Noncompliant Districts
AF3: Finance/Audit Findings	1 district
AF4: Instructional Groupings	2 districts
AF5: Certification/Caseloads	15 districts
AF6: Full Instructional Day	6 districts
AF7: Classroom Location/Size	3 districts
AF8: Other/IEP Implementation	2 districts
AF8: Other/Finalized IEPs	1 district
AF8: Other/Crisis Team	1 district
AF8: Other/ESY Clarification	1 district
AF8: Other/No Recess Provided	1 district

Student File Review

File Review Summary of Percentage of Noncompliance	Districts Below 75%
General Supervision	
Amendments to the IEP	6 districts
Procedural Safeguards	2 districts
Transition	7 districts
Eligibility/Procedures	1 district
ESY Services	2 districts
Service Verification	6 districts
Transfer of Rights	2 districts
Parent Invitation	1 district
Prior Written Notice	1 district
Reason for Meeting	1 district
IEP Reviewed Annually	1 district
Supplemental Services	1 district

The OSE 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 OSE 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 for those districts who received an on-site monitoring review and does not include the self-reporting during the ADA.

Secondary Transition On-Site Monitoring File Review

County School District	File Sample Size	Compliance Percentage
District 1	10	60%
District 2	10	90%
District 3	10	20%
District 4	10	80%
District 5	10	70%
District 6	10	100%
District 7	10	90%
District 8	10	40%
District 9	10	100%
District 10	10	80%
District 11	10	70%
District 12	10	90%
District 13	10	100%
District 14	10	70%
District 15	10	90%
District 16	10	40%

Surveys

Surveys were disseminated to special education directors in all LEAs monitored during the 2017-18 school year to collect feedback on the monitoring process. Seven surveys were returned. Results are reported in the matrix on the following pages:

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

County: _____ Special Education Director: _____ Guest Monitor: _____ <i>The Office of Federal Programs (OFP) Monitoring Team's purpose is 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.</i>	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?				1	6
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?					7
9. What are some ways that we can improve the monitoring process? <ul style="list-style-type: none"> • It would be helpful if the district was aware if any other compliance pieces would be reviewed by the monitoring team after the monitoring visit. • None at this time. • It is always a challenge to balance compliance indicators with a more qualitative approach to program review for academic instructional practices, but I do hope that more emphasis can be placed on teacher and program instructional and curricular practices. • I can't think of any improvements. • The monitoring process was well done, informative and helpful to us. The process of getting all the documents to the WVDE ahead of the monitoring was not difficult but for a large county they could not all be uploaded. Jeremy and Matt were very accommodating and allowed us to hand deliver the documents. • I would like your staff to be able to spend more time in the county observing our programs. • While it was easy enough for a small system like ours to complete, I did hear from other counties that the certifications upload was difficult and they thought there should be a way for you to get that from the state department instead. • The monitoring process went very well. 					

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

- Yes
- We have the capacity to correct the findings.
- Yes
- Yes
- Yes
- Yes
- Absolutely, the findings were easily corrected and will be incorporated into fall training for teachers to avoid future findings of the same manner.

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

- None at this time, they are always very willing to answer any questions that I have.
- We are very satisfied with the support we receive from the WVDE Federal programs.
- The support for the monitoring was immediate, accurate and appreciated. I believe at this point we receive all the assistance we requested.
- In future, they may need to help with staff development for identified issues since our RESA will not be around to provide such in the future.
- Would like to be informed of specific places where data is pulled from.
- None needed at this time.
- I often feel I am out there on my own so to speak, in terms with know what is going on at the state and national level. It feels like things are requested of districts with little to no explanation or training. I fear that with the elimination of RESAs, this will worsen. I would like to see more communications from the Office of Federal Program. We receive several emails, however email is not always the best way to communicate information.
- Technical assistance with corrections, as necessary.

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, had the information.
- I felt completely prepared for the monitoring visit.
- The compliance coordinator did an excellent job explaining the process and what would occur.
- Yes; the maximum allowable size for files/documents that are to be uploaded.
- Yes, everything was communicated effectively.
- The schedule was well communicated, organized and easy to follow.
- The compliance coordinator clearly communicated and I did not require any additional information.

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?

- Lack of certified teachers, too many substitutes, loss of pay due to county financial crisis.
- The mindset that many regular education teachers have when a student has an IEP, a lot of time they feel like the student is not their student to teach but need provided services by special education teachers.
- Fidelity to the curriculum and overcoming student's particular needs, especially if born into drug addicted families.
- The need for certified special education teachers especially in the areas of autism and emotional behavior disorders.
- Teacher retention is a problem. We have a special education teacher and provide staff development and then the teacher leaves the next year and we have to start all over again, if we can find a certified teacher in the first place. The WVDE could do something to help with teacher retention and finding certified special education teachers.
- Obtaining qualified staff and providing sufficient professional development. Collaboration with higher ed programs that produce special educators may be helpful. I believe the school calendar/employment calendar needs to be greater than 200 days to allow for more professional development time.
- There are several obstacles to improving student achievement in my county. One obstacle is to change the culture. There are still individuals of the mindset that SWD do not have the ability to achieve at the same level as their peers. Another obstacle related to culture is the belief over the past several years. In fact, I have John L O'Connor (author of CASE book – Great Instruction Great Achievement, A Road Map for Special Education Administrators) scheduled to work with principals in an effort to change culture. Another obstacle is the training/ expertise of our special educators. Special educators take coursework that teaches them about strategies or how to create strategies. They are not content experts, yet in many cases they are the sole educator teaching a student with dyslexia, dyscalculia, behavior, etc. The higher ed. programs simply do not equip the teachers with the skills they need to address the severe needs of some of our students.

14. Do you have any additional comments?

- Thank you!
- The monitoring process from the initial contact to the monitoring report were done very professionally. We are using the monitoring as a tool to improve our services and our compliance.
- We appreciate the input and are always looking to improve our programs.
- The overall tone of the monitoring process is positive and supportive and that is appreciated.

Annual Desk Audit

Each West Virginia school district submits the ADA electronically each year on April 30 to the OSE. This assessment is a review of both compliance and results State Performance Plan (SPP) Indicators. Districts not meeting targets on compliance 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 OSE. 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 six (6) 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.

- Twenty-seven (27) 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 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 2018 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 2018 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: 40 districts
- Needs Assistance – One Year: 7 districts
- Needs Assistance – Two Years: 8 districts
- Needs Assistance – Three Years: 2 district
- Needs Intervention: 0 districts
- Needs Intervention – Two Years: 0 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 (16-17)	78.20%	75.68%		
Indicator 2: Drop Out (16-17)	2.25%	0.99%		
Indicator 3b: Participation Rate/Reading (16-17)	95.00%	97.98%		
Indicator 3b: Participation Rate/Math (16-17)	95.00%	97.93%		
Indicator 3b: Participation Rate/Alternate Assessment (16-17)	1.00%	1.36%		
Indicator 3c: Assessment Data/ELA Proficiency (16-17)	53.90%	13.62%		
Indicator 3c: Assessment Data/Math Proficiency (16-17)	55.50%	10.64%		
Indicator 4a: Suspension/Expulsion (more than 10 days) (16-17)	3.28%	3.51%		
Indicator 5a: Educational Environment General Education Full Time (6-21) (17-18)	62.80%	64.64%		
Indicator 5b: Educational Environment Separate Class (6-21) (17-18)	8.90%	7.47%		
Indicator 5c: Educational Environment (17-18)	1.40%	1.61%		
Indicator 6a: Preschool Environments (Regular Early Childhood Program) (17-18)	32.30%	32.55%		
Indicator 6b: Preschool Environments (Separate Special Education) (17-18)	10.30%	8.53%		
Indicator 7a: Preschool Outcomes (Social-Emotional Skills) (16-17)	A1: 78.50%	81.40%		0
	A2: 62.00%	64.30%		
Indicator 7b: Preschool Outcomes (Knowledge & Skills) (16-17)	B1: 78.50%	82.10%		0
	B2: 59.00%	62.80%		
Indicator 7c: Preschool Outcomes (Appropriate Behavior) (16-17)	C1: 79.50%	84.50%		0
	C2: 73.00%	74.40%		
Indicator 8: Parent Involvement (16-17)	36.00%	36.70%		
Indicator 14c: Higher Education/Post-Secondary/Competitively Employed (16-17)	67.00%	69.05%		
Indicator 14c: Response Rate (16-17)	60.00%	66.26%		
Results Points Available	Results Points Earned		Results Performance	
17	10		0%	

Part B Compliance Matrix

Part B Compliance Indicators 0% or 100%	State Performance Plan (SPP) Target	SWD State Average	LEA Percent- age	Correction of Findings	Score
Indicator 4b: Suspension by Race/Ethnicity (16-17)	0.00%	3.28%			
Indicator 9: Disproportionality/All Disabilities (16-17)	0.00%	0.00%			
Indicator 10: Disproportionality/Specific Disabilities (16-17)	0.00%	0.00%			
Indicator 11: Initial Evaluation Times (16-17)	100.00%	98.60%			
Indicator 12: Preschool Transition (16-17)	100.00%	100.00%			
Indicator 13: Secondary Transition (17-18)	100.00%	99.67%			
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 2017-2018 school year. The facilities which received an on-site review were:

- The Bradley Center – Pittsburgh, PA
- Alabama Clinical Schools – Birmingham, AL
- Hermitage Hall- Nashville, TN
- Devereux School – Viera, FL
- Timber Ridge School – Cross Junction, 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.....	16
Total number of FIEPs completed.....	13
Total number of FIEP requests withdrawn.....	0
Total number of FIEP requests wherein parents refused to participate.....	1
Total number of FIEP requests not held due to resolution of issues.....	1
Total number of FIEP requests wherein district refused to participate.....	1

State Complaints:

Total number of state complaints requested.....	13
Total number of state complaints determined insufficient.....	2
Total number of state complaints where agreement was reached through early resolution.....	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.....	0
Total number of Letter of Findings issued.....	11

Mediations:

Total number of mediations requested.....	7
Total number of written agreements.....	3
Total number of mediations without agreements or withdrawn.....	4

Due Process Hearings:

Total number of due process hearings requested.....	18
Total number of cases dismissed (closed due to a resolution meeting, Mediation Agreement, withdrawal or other resolution without having a hearing).....	15
Total number of cases resulting in a decision by a hearing officer.....	3

Facilitated Individual 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.

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, including an initial eligibility meeting, the annual review, a reevaluation review and other IEP Team meetings. 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 13 state complaints submitted during the 2018 school year, 11 were fully investigated and resulted in the issuance of letters of findings (LOFs). A total of two (2) complaints were withdrawn; 1 of those was withdrawn by the parent and one was withdrawn as a result of an early resolution agreement between the district and the parent. This year, there were no state complaints resolved through mediation.

Most Prevalent Violations Identified in 2018 State Complaints

- Providing a Copy of the IEP Following the Meeting
- Completing Additional Evaluations Requested by the IEP Team
- 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 2018

Number of Mediations Requested	Number of Mediations Requested in Lieu of Resolution Meetings	Mediations Withdrawn or Dismissed	Mediation Agreements	Mediations Held Without an Agreement
7	5	2	3	1

Mediation Issues Chart

Case	Issues	Outcome
M18-001	The parties agreed to mediate in lieu of a due process resolution meeting. The issues are that the district denied FAPE by refusing to allow parents meaningful participation in the development of an appropriate IEP, failing to craft an IEP containing individualized instruction and curriculum appropriate to the student’s cognitive abilities, failing to write IEP goals that are reasonably calculated to enable the student to make progress, failing to fulfill a prior mediation agreement, and discriminating against the student by disciplining him for conduct arising out of his diagnosed disabilities.	No agreement

Case	Issues	Outcome
M18-002	Parent alleges the district is refusing to allow the student a 1:1 aide at all times, based on notes submitted by the student's doctor and case worker	Parent Withdrew
M18-003	Parent requested mediation to resolve issues alleged in a due process hearing request, i.e., the district denied the student a FAPE by failing to write and implement an adequate behavior intervention plan (BIP) and goals calculated to enable the student to make progress, taking weeks to provide any curriculum and denying individualized instruction.	Parent withdrew (Resolved in Resolution Session)
M18-004	Parent requested mediation to resolve the issues in a due process hearing request, i.e., district failed to determine eligibility for special education and develop an appropriate IEP for the student.	Parent withdrew (Resolved in Resolution Session)
M18-005	Filed by an attorney on behalf of the parent and alleges the district failed to develop or implement an appropriate IEP, caused educational harm based on procedural violations and a denied a FAPE through improper disciplinary action.	Agreement
M18-006	Requested by the district; however, parents did not agree to mediation.	Withdrawn
M18-007	Requested to resolve issues in D18-012; specifically, the district's failure to implement an adequate BIP or conduct a FBA despite increasing behavioral concerns, failure to write IEP goals to enable the student to make academic progress, failure to design & implement appropriate transition goals, failure to address bullying and sexual assault allegations.	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 17 were \$24,231.29. The chart below provides a breakdown of mediation costs by case.

Case Number	Cost
M18001	\$2,618.00
M18002	\$1,700.00
M18003	\$0.00
M18004	\$2,200.00
M18004	\$2,674.00
M18004	\$0.00
M18004	\$1,500.00
Total Costs – \$10,692	

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, 2017, through June 30, 2018. Of the seven mediations requested, 4 mediation sessions were held, resulting in 3 mediation agreements. A total of 12 surveys were returned to the OFP; four 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.	3 yes; 1 no	8 yes
2. My rights in the mediation process were explained prior to entering into mediation	4 yes	8 yes
3. The mediator was knowledgeable about the mediation process.	4 yes	8 yes
4. I felt comfortable discussing my concerns in the mediation session.	3 yes	8 yes
5. I believe the mediator was fair to both sides.	4 yes	8 yes
6. I had an opportunity to fully express my concerns in the mediation.	4 yes	8 yes
7. Mediation helped me understand the concerns of the parent/district.	2 yes; 4 no	7 yes; 1 no
8. Mediation helped resolve issues that most likely would not have been resolved without mediation.	3 yes; 1 no	7 yes; 1 no
9. I was satisfied with the mediation process.	4 yes	7 yes; 1 no
10. I would recommend mediation to others.	4 yes	8 yes
11. The mediation resulted in a written agreement.	3 yes; 1 no	8 yes

General Comments

Parent Comment

- *[Mediator] was very professional and effective. [The mediator] helped each side understand the other's position.*

District Comments

- *Mediation session went very smoothly. The mediator did an excellent job.*
- *The mediator was needed to resolve issues that the school that the school could not resolve with the parents. Also, the mediation did shed more light on what the parents were dealing with. I just wish the parents would have allowed the county office to intervene before filing a due process complaint.*
- *I like to resolve cases through mediation. It is very easy to work with [Mediator].*
- *In this case, the attorneys had already established an agreement prior to the mediation meeting. The agreement that was finalized at the meeting was not much different than the current services the student is receiving. The attorneys, the mediator and the due process hearing officer all received some type of payment as a result of this due process from [County Schools]. The student is receiving very close to the same services. The parent did not want the services her attorney was asking for the student.*

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.

Mediation Survey Responses

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 eighteen due process complaints were filed with the WVDE during the FY 2018 school year. All 18 were filed by parents or attorneys representing parents. The WVDE had 3 requests for expedited hearings based on disciplinary issues. A total of 9 due process complaints were resolved through the resolution session process. Three mediation sessions were used to resolve the issues in the complaints and three others were withdrawn by the initiators or dismissed by the due process hearing officer. Three complaints resulted in fully adjudicated hearings.

IDEA Due Process Hearing Complaint Issues

Case Number	Alleged Violation	Action
D18-001	The parent alleges the district denied the parents meaningful participation in the IEP Team meeting; failed to develop/implement an IEP appropriate to meet the student's cognitive abilities and craft appropriate goals in math and reading; failed to fulfill a mediation agreement; failed to provide speech therapy; and failed to follow the discipline procedures. (Pro Se)	Withdrawn, after a mediation session, to resolve through an IEP Meeting
D18-002	The parent alleges the district denied the student a FAPE by failing to properly identify, evaluate and develop an IEP, including a proper BIP. In addition, the district imposed discipline against the student and failed to conduct a manifestation determination review. (Patrick Lane)	Resolution Agreement
D18-003	Parent alleges the district failed to implement the student's IEP and failed to provide/request accommodations for the ACT and an extracurricular activity. (Nancy Dalby)	Due Process Hearing Decision
D18-004-E	The parent alleges the district failed to identify the student under the Child Find duty, denied the student a FAPE by not providing proper accommodations and supports to remain in the LRE; improperly changed the student's placement as a result of a disciplinary incident; denied the student's placement in an alternative school; and failed to provide FAPE for 3 months of school. (Legal Aid of WV)	Resolution Agreement
D18-005	The parent alleges the district failed to follow the proper discipline procedures for the student. (Patrick Lane)	Resolution Agreement
D18-006	The parent alleges the district failed to: provide the parents meaningful participation in the IEP Team meeting; convene an IEP Team meeting with the proper membership; provide the parents with sufficient information to evaluate the proposed new placement for the student; consider the student's unique needs and the impact of the placement on the student's health; provide a proper 2017 IEP; and include vision therapy in the student's IEP. (Kay Casto & Chaney, PLLC)	Resolution Agreement

Case Number	Alleged Violation	Action
D18-007	The parent alleges the district denied the student an evaluation and eligibility for special education, as well as transportation services. (Nancy Dalby)	Due Process Hearing Decision
D18-008	The parent alleges the district failed to implement an adequate BIP; failed to conduct a manifestation determination review of the student's discipline; failed to create goals and provide services, aids and modifications for the student to make progress; and failed to provide handicapped parking access. (Mountain State Justice, Inc.)	Resolution Agreement
D18-009	The parent alleges the high school administrators were neglectful and discriminatory by delaying the student's eligibility for special education. (Pro Se)	Mediation Agreement
D18-010	The parent alleges the district failed to develop & implement an appropriate IEP for the student; caused educational harm to the student due to procedural violations; and denied FAPE through improper disciplinary action. (Disability Rights of WV)	Resolution Agreement
D18-011	The parent alleges the district failed to implement the student's IEP; specifically, the accommodations for Spanish class. (Pro Se)	Case Dismissed by DPHO
D18-012	The parent alleges the district failed to implement an adequate BIP or conduct an FBA for the student; failed to develop goals designed to enable the student to make academic progress; failed to design and implement transition goals; and failed to properly address bullying and assault of the student. (Mountain State Justice, Inc.)	Mediation Agreement
D18-013	The parent alleges the district is excluding the student from an extracurricular field trip based on the student's behavior, which violates the BIP. (Patrick Lane)	Due Process Hearing Decision
D18-014	The parents allege the district is not providing services to the extent necessary for the student to receive meaningful educational benefit. (Patrick Lane)	Resolution Agreement
D18-015-E	The parent alleges the district failed to conduct a manifestation determination review when considering a disciplinary change of placement and failed to provide the parents their procedural safeguards. (Mountain State Justice, Inc.)	Parent Withdrew the Complaint

Case Number	Alleged Violation	Action
D18-016	The parent alleges the district failed to draft an IEP for the student that would provide the student a FAPE in consideration of a medical diagnosis; failed to implement the supplementary aids, services & program modifications specified in the IEP; and failed to allow the parent an opportunity to examine the student's educational record. (Patrick Lane)	Resolution Agreement
D18-017-E	The parent alleges the district failed to place the student back in the previous placement based on the results of the manifestation determination review, and failed to conduct a FBA and modify the student's BIP. (Patrick Lane)(Mountain State Justice, Inc.)	Resolution Agreement
D18-018	The parents allege the district has failed to meet the student's educational needs in the current educational placement and are requesting placement in a private placement. (David Mascio)	Resolution Session <i>Settlement Agreement</i>

IDEA Due Process Hearing Results by District

Local Educational Agency	Number of Hearings Requested	Results - Withdrawn/Resolution or Mediation Agreement/Due Process Hearing Decision
Barbour	1	Resolution Agreement
Brooke	1	Resolution Agreement
Cabell	1	Mediation Agreement
Jefferson	2	1 Hearing Decision; 1 Dismissed
Kanawha	7	5 Resolution Agreements; 1 Hearing Decision; 1 Withdrawal
Mason	1	Withdrawn
Morgan	1	Hearing Decision
Preston	1	Mediation Agreement
Putnam	1	Withdrawn
Randolph	1	Resolution Agreement

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 hearing is not held, settled or dismissed, the hearing officer is only paid for time accrued, which is considerably less than when a hearing occurs. In addition, 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 2018 was **\$99,474.57**. 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		WVDE Court Report Cost	Total Hearing Cost
	WVDE Cost	LEA Cost		
D18001	\$402.50	\$201.25	\$0.00	\$603.75
D18002	\$694.17	\$1,388.33	\$0.00	\$2,082.50
D18003*	\$17,288.53	\$6,233.33	\$4,821.86	\$28,343.72
D18004	\$1,983.33	\$991.67	\$0.00	\$2,975.00
D18005	\$221.67	\$110.83	\$0.00	\$332.50
D18006	\$6,486.67	\$3,243.33	\$0.00	\$9,730.00
D18007*	\$14,345.80	\$6,700.00	\$945.80	\$21,991.60
D18008	\$455.00	\$227.50	\$0.00	\$682.50
D18009	\$2,123.33	\$1,061.67	\$0.00	\$3185.00
D18010	\$396.67	\$198.33	\$0.00	\$595.00
D18011	\$2,345.00	\$1,172.50	\$0.00	\$3,517.50
D18012	\$1,746.67	\$873.33	\$0.00	\$2,620.00
D18013*	\$8,983.17	\$3908.33	\$1,166.50	\$14,058.00
D18014	\$338.33	\$169.17	\$0.00	\$507.50
D18015	\$1,936.67	\$968.33	\$0.00	\$2,905.00
D18016	\$198.33	\$99.17	\$0.00	\$297.50
D18017	\$2,298.33	\$1,149.17	\$0.00	\$34,457.50
D18018	\$1,066.67	\$533.33	\$0.00	\$1,600.00
Total Costs	\$63,310.84	\$29,229.57	\$6,934.16	\$99,474.57

*Resulted in a due process hearing decision

The West Virginia Department of Education, Office of Federal Programs (OFP) and Office of Special Education (OSE), 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 OSE 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.



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