



Annual Compliance Report 2019-2020

Office of Federal Programs



**West Virginia Board of Education
2021-2022**

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Introduction

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

This annual compliance report includes data on monitoring activities, Facilitated Individualized Education Programs (FIEP), state complaints, due process hearings, including the resolution process and mediations that were requested during the 2019-2020 school year and documents the WVDE's efforts to meet the requirements under IDEA and Policy 2419 pertaining to:

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

Monitoring System

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

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

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

Compliance Monitoring

Compliance Monitoring is a comprehensive monitoring activity occurring on a four-year cycle. Each LEA receives on-site monitoring no less than every four years. This activity is conducted through visits in selected districts. The monitoring team during the 2019-20 school year consisted of Office of Federal Programs (OFP) staff and other educators as determined by the lead monitor. Districts selected for a Compliance On-Site Monitoring engaged in pre-monitoring activities, submission of data for a desk audit focusing on various compliance indicators, on-site monitoring activities and the corrective improvement process.

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

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

Annual Desk Audit (ADA)

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

Focused Monitoring

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

Dispute Resolution Process

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

Office of Special Education Programs

OSEP 09-02 Memorandum

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

2019-2020 Findings of Noncompliance

The data included in this document provides the total number of findings of non-compliance for the 2019-2020 school year from the ADA and On-Site Compliance 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 comply.

2019-2020 Compliance Monitoring Findings

Fourteen (14) districts received an on-site compliance monitoring visit during the 2019-2020 school year and are as follows: Barbour, Braxton, Calhoun, Clay, Lewis, Marshall, Mercer, Mineral, Mingo, Monroe, Pendleton, Roane, Tucker and Wood. 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	1 district
AF2: Finance: Time/Effort	4 districts
AF4: Instructional Groupings	1 district
AF5: Certification/Caseloads	12 districts
AF6: Full Instructional Day	3 districts
AF 7: Classroom Location/Size	1 district
AF 8: Other/No restraint form	2 districts
AF8: Other/Not Providing a Continuum of Services	7 districts
AF8: Other/Speech Services not provided at beginning	1 district
AF8: Other/DRS not invited to IEP meetings	1 district
AF8: Other/Special Education teachers being paid from federal funds but are teaching general education classes.	1 district
AF8: Other/No Consultation Logs for Indirect Services	2 districts
AF8: Other/General education students being sent to special education classes for in-school suspension (ISS)	2 districts
AF8: Other/Discipline/Change of Placement	2 districts
AF8: Other/Special Education teachers teaching multiple subjects at the same time	1 district
AF8: Other/Gifted services not provided at the beginning of school year	1 district
AF8: Other/Overserving special education minutes	1 district

Student File Review

File Review Summary of Percentage of Noncompliance	Districts Below 75%
General Supervision	
Amendments to the IEP	9 districts
Transition	7 districts
ESY Services	4 districts
Service Verification	12 districts
Transfer of Rights	4 districts
Related Services	3 districts
Discipline Procedures	2 districts
Eight Day notice of IEP meeting	1 district
Procedural Safeguards	2 districts
IEP Team Members	0 districts

The OSE revised the data collection process for Indicator #13 (Secondary Transition) during the 2011-2012 school year to affect continuous improvement in this area. The OFPS 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 not receiving an on-site monitoring review. The table below provides the compliance data prior to the correction period for those districts who received an on-site monitoring review and does not include the self-reporting during the ADA. Technical assistance for Indicator 13 will continue until compliance targets are met by each district on a regular basis.

Secondary Transition On-Site Monitoring File Review

County School District	File Sample Size	Compliance Percentage
District 1	10	95%
District 2	10	89%
District 3	10	67%
District 4	10	95%
District 5	10	77%
District 6	10	93%
District 7	10	83%
District 8	10	90%
District 9	10	87%
District 10	10	82%
District 11	10	80%
District 12	10	83%
District 13	10	97%
District 14	10	73%

Surveys

Surveys were disseminated to special education directors in all LEAs monitored during the 2019-2020 school year to collect feedback on the monitoring process. Results of the ten surveys returned follow:

**West Virginia Department of Education
Office of Federal Programs
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	3	6
2. Did the Compliance Coordinator attempt to gain your trust and confidence prior to the visit?			1		9
3. At the entrance conference, did the Compliance Coordinator clearly outline the procedures and team activities for the visit?			1	1	8
4. Were staff interviews and focus group sessions conducted in a professional manner?		1			9
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?			1		9
6. Did district staff have ample time to ask questions?			1		9
7. Did the team clearly describe the follow up monitoring activities?			1	1	8
8. Do you feel comfortable contacting the Compliance Coordinator with any follow up questions?				1	9
9. What are some ways that we can improve the monitoring process? <ul style="list-style-type: none"> • Monitoring has improved greatly over the past several years. I appreciate the supportive nature of the monitors. Continue this support level. • I believe the process is very clear and easy to follow/understand. Please continue to provide professional development sessions to support monitoring processes, IEP writing, compliance/ quality IEP’s etc. These are valuable and amazing for staff and directors. • I think you currently have a good system for the monitoring process. • The opportunity to go on a monitoring prior to our monitoring date was very helpful. I think being able to continue this is very beneficial. I thought the process was great, it was non-threatening and put our minds at ease knowing it was not a gotcha, but rather a support. • Providing consistency - this has historically been a challenge. In addition, if IEPs need to be compliant regarding the PEP, please update the General File Review packet to reflect this. (Current form is from August 2014.) Moreover, the General File Review cannot be printed from the WVDE website. 					

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

- I did until this school closure. I'm concerned about my prong 2 review as we are doing the best we can at holding meetings and my teachers concerns right now really are on the well-being of their students, not a well written IEP.
- YES!! Lesa and Jeremy have been great with providing clear and understandable explanations of each finding, following up and offering support.
- Yes, due to the support of the WVDE.
- YES
- Yes. Furthermore, the General File Review could include more criteria for IEP5: Present Levels, Impact Statement. If specific examples cannot be provided, non-examples would greatly help when training teachers to be compliant for this item.

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

- Nothing from Federal Programs.
- Continued professional development opportunities. These opportunities/resources are very valuable to small/rural counties with limited staff and resources to meet one-on-one with state department.
- Continue to offer and provide trainings to counties.
- For newer directors, having a list of financial and other guidelines such as private schools and Time and Effort.
- Suspension data in real time by student. Currently, the current suspension report (WVS750I) reports students removed beyond 10 days and does not account for fractions of days suspended, i.e. 0.5 or .25 days.

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?

- Absolutely. I did not need anything further.
- YES!! Everything was very organized and communicated. The summer on-site and the session at CASE was very helpful and made everything come together smoothly.
- Yes, the most difficult part for us was having the monitoring early in the year but I thought it worked out well.
- Yes, everything was great.
- Having information about the PEP reflected in the IEP would be helpful when conducting an internal general file review twice a year.

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?

- There is a variety of obstacles here (lack of interest/motivation, lack of parenting, lack of strong school level leadership in some cases, poor home environment). I'm not sure what the WVDE could do. The level of support though is much less than it was years ago. I don't think it is intentional, I just think so many people have not have experience to understand what we do.
- Staffing and resources for behavioral/mental health needs to provide quality and appropriate services. Professional development opportunities in our area would be great!
- One of the biggest obstacles is gaining and retaining certified personnel.
- Staff buy-in; utilizing interventions successfully, maximizing instructional time.
- Our district has made great strides in improving student achievement for student with disabilities. Providing students with disabilities assessment accommodations does NOT result in comparable assessment data for students without disabilities

Annual Desk Audit

Each West Virginia school district submits the ADA electronically each year on or before April 30th to the OSESS. This assessment is a review of both compliance and results State Performance Plan (SPP) Indicators. Districts not meeting targets on indicators will receive written notice of noncompliance on or before May 31. Each ADA indicator determined Not Met requires completion of an improvement plan to be reviewed and accepted by the OSESS. Twenty-five (25) districts received written notification of non-compliances identified in the ADA Report for the compliance SPP indicators. The data is reported below:

- » Three (3) districts 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-four (24) 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.
- » One (1) district 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 Special Education & Student Support used a Results/Compliance matrix. The four (4) factors considered were:

- District's performance on selected SPP results and compliance indicators;
- Valid and reliable data;
- Dispute resolution; and
- Other data available to the State about the LEA's compliance, including relevant audit findings.

For the April, 2020 ADA submission, there were 37 possible points on both Results and Compliance indicators. The Results/Compliance matrix reflects a percentage score that was used to determine the LEA's 2020 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: A 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 the districts Local Educational Agency Determinations status:

- Meets Requirements: 37 districts
- Needs Assistance – One Year: 8 districts
- Needs Assistance – Two Years: 6 districts
- Needs Assistance – Three Years: 1 district
- Needs Intervention – One year: 1 district
- Needs Intervention – Two Years: 2 districts
- Needs Substantial Intervention: 2 districts

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

Part B Results Indicators	State Performance Plan (SPP) Target	SWD State Average	LEA Percentage	Score
Indicator 1: Graduation (17-18)	80.80	78.78%		
Indicator 2: Drop Out (17-18)	1.75%	0.70%		
Indicator 3b: Participation Rate/Reading (17-18)	95.00%	98.18%		
Indicator 3b: Participation Rate/Math (17-18)	95.00%	97.91%		
Indicator 3b: Participation Rate/Alternate Assessment (17-18)	1.00%	1.22%		
Indicator 3c: Assessment Data/ELA Proficiency (17-18)	17.20%	12.42%		
Indicator 3c: Assessment Data/Math Proficiency (17-18)	14.30%	11.56%		
Indicator 4a: Suspension/Expulsion (more than 10 days) (17-18)	3.28%	3.28%		
Indicator 5a: Educational Environment General Education Full Time (6-21) (18-19)	63.80%	63.04%		
Indicator 5b: Educational Environment Separate Class (6-21) (18-19)	8.88%	7.41%		
Indicator 5c: Educational Environment (18-19)	1.30%	1.47%		
Indicator 6a: Preschool Environments (Regular Early Childhood Program) (18-19)	32.80%	39.60%		
Indicator 6b: Preschool Environments (Separate Special Education) (18-19)	10.20%	9.74%		
Indicator 7a: Preschool Outcomes (Social-Emotional Skills) (17-18)	A1.	79.00%	82.50%	
	A2.	68.00%	63.32%	
Indicator 7b: Preschool Outcomes (Knowledge & Skills) (17-18)	B1.	79.00%	82.98%	
	B2.	64.00%	61.51%	
Indicator 7c: Preschool Outcomes (Appropriate Behavior) (17-18)	C1.	80.00%	85.57%	
	C2.	79.00%	73.72%	

Local Educational Agency (LEA) Annual Determination Worksheet Part B Results Matrix						
Part B Results Indicators		State Performance Plan (SPP) Target	SWD State Average	LEA Percentage	Score	
Indicator 8: Parent Involvement	(17-18)	38.00%	37.60%			
Indicator 14c: Higher Education/Post-Secondary/Competitively Employed	(17-18)	69.00%	70.51%			
Indicator 14a1: Response Rate	(17-18)	60.00%	72.14%			
Results Points Available		Results Points Earned		Results Performance		
19		0		0%		
Part B Compliance Matrix						
Part B Compliance Indicators 0% or 100%		State Performance Plan (SPP) Target	SWD State Average	LEA Percentage	Correction of Findings	Score
Indicator 4b: Suspension by Race/Ethnicity	(18-19)	0.00%	3.51%			
Indicator 9: Disproportionality/All Disabilities	(18-19)	0.00%	0.00%			
Indicator 10: Disproportionality/Specific Disabilities	(18-19)	0.00%	0.00%			
Indicator 11: Initial Evaluation Times	(18-19)	100.00%	96.70%			
Indicator 12: Preschool Transition	(18-19)	100.00%	100.00%			
Indicator 13: Secondary Transition	(19-20)	100.00%	99.84%			
Dispute Resolution		100.00%				
Timely and Accurate Data		100.00%				
Cyclical Monitoring		100.00%				
Compliance Points Available		Compliance Points Earned		Compliance Performance		
18		0		0%		
Results Driven Accountability Percentage and Determination						
37		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 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 three (3) on-site reviews for the 2019-2020 school year. In previous years five (5) on-site reviews have been completed. However, due to Covid-19 the out of state monitoring cycle was interrupted. The facilities which received an on-site review were:

- Liberty Point Behavioral Healthcare – Staunton, VA
- Gulf Coast Treatment Center – Fort Walton Beach, FL
- Children's Center of Ohio – Patriot, OH

Two facilities reviewed had educational findings of noncompliance and corrective action plans were required. One of the out of state facilities reviewed were found to have violations warranting suspension of placements and/or removal of students. The suspension was due to findings under the WVDHHR umbrella rather than education and the team will reassess at the direction of WVDHHR if/when the facility requests consideration for new placements.

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.....	13
Total number of FIEPs completed.....	9
Total number of FIEP requests withdrawn.....	4
Total number of FIEP requests wherein parents refused to participate.....	0
Total number of FIEP requests not held due to resolution of issues.....	0
Total number of FIEP requests wherein district refused to participate.....	0

State Complaints:

Total number of state complaints requested.....	5
Total number of state complaints determined insufficient.....	1
Total number of state complaints where agreement was reached through early resolution.....	0
Total number of state complaints where agreement was reached through mediation.....	10
Total number of state complaints where issues were deferred pending due process.....	2
Total number of Letter of Findings issued.....	2

Mediations:

Total number of mediations requested.....	6
Total number of written agreements.....	2
Total number of mediations without agreements or withdrawn.....	4

Due Process Hearings:

Total number of due process hearings requested.....	15
Total number of cases dismissed (closed due to a resolution meeting, Mediation Agreement, withdrawal or other resolution without having a hearing).....	12
Total number of cases resulting in a decision by a hearing officer.....	3

Facilitated Individualized Education Program (FIEP)

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

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

The IEP Facilitator's role is to:

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

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

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

State Complaints

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

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

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

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

State Complaints and Due Process Complaints

If a written state complaint is received that is also the subject of a due process complaint or contains multiple issues of which one or more are part of the due process complaint, the WVDE shall set aside any part of the state complaint that is being addressed in the due process complaint until the conclusion of the hearing. Any issue that is not a part of the due process action will be resolved following the established state complaint procedures and timelines. For issues that are addressed in the due process hearing, the hearing officer's decision is binding 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 five (5) state complaints submitted during the 2020 school year, two (2) were fully investigated and resulted in the WVDE issuing a Letter of Findings (LOF). Two (2) state complaints were deferred when the parties filed due process complaints. Both due process complaints resulted in hearing officer decisions and all state complaint issues were addressed. One state complaint request was determined to be insufficient.

Most Prevalent Violations Identified in 2020 State Complaints

1. Prior Written Notice
2. Eligibility Determinations
3. Convening and Conducting IEP Meetings and Implementation of 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 2020

Number of Mediations Requested	Number of Mediations Requested in Lieu of Resolution Meetings	Mediations Withdrawn or Dismissed	Mediation Agreements	Mediations Held Without an Agreement
6	1	3	2	1

Mediation Issues Chart

Case	Issues	Outcome
M20-001	The district did not agree to mediate. The parties were able to reach a settlement through the resolution process in Due Process. The parent withdrew the mediation and the hearing request.	Withdrawn
M20-002	The parent alleges in a due process hearing that the district denied the student a FAPE, specifically, by failing to provide modifications, assistance, homework packets, services in the least restrictive environment, evaluate the student appropriately, including the requested reading program, and Extended School Year (ESY) services. Partial Agreement on 9/16/2019; Issues not mediated will go to Due Process Hearing.	No Agreement
M20-003	The parent alleges the district is refusing a support person/Autism Mentor/Paraprofessional to assist the student.	Agreement
M20-004	The district requested mediation to resolve an issue with the student’s parents to deactivate the listen in feature and provided to the parents a “Listen-In Deactivation Commitment” which would deactivate the listen in feature while the student is at school. After leaving numerous messages with the parents, the OFP never received a return call. The mediation was not assigned and therefore, dismissed.	Withdrawn

Case	Issues	Outcome
M20-005	The parent withdrew the request for mediation due to the student not having an IEP initially. Later the student became eligible for special education.	No Agreement
M20-006	The parents withdrew their request for a due process hearing. The parties agree the school will send monthly reports to parents, the school will begin multi-disciplinary testing, and the school will have a certified Orton-Gillingham professional consult with teacher.	Agreement

Mediation Costs

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

Case Number	Cost
M20-001	\$0
M20-002	\$2,400.00
M20-003	\$1,200.00
M20-004	\$0
M20-005	\$0
M20-006	\$2,600.00
Total Costs - \$6,200.00	

Mediation Survey Responses

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

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

Mediation Survey Summary

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

Parent Comment

- » “Our mediation was awhile back. Overall, satisfied with results, however, the meeting was held at County Board Offices, not at a neutral site. Unacceptable.”

District Comments

- » “Everyone was professional, helpful, and worked to develop a solution. Although we still went to Due Process, the staff worked to bring both sides to an agreement. I appreciate everyone’s work.”

Due Process Hearing

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

Due Process Complaint Resolution Meeting

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

Due Process Complaints & Hearing Requests

A total of fifteen due process complaints were filed with the WVDE during the FY 2020 school year. All 15 were filed by parents or attorneys representing parents. A total of 12 due process complaints were resolved through the resolution session process. Three mediation sessions were requested to resolve due process complaints and 2 of the 3 resulted in mediation agreements. One was withdrawn by the Hearing Officer. A total of three complaints resulted in fully adjudicated hearings with decisions issued.

IDEA Due Process Hearing Complaint Issues

Case Number	Alleged Violation	Action
D20-001	The parent alleges the district has failed to develop an appropriate IEP and failure to provide FAPE in the Least Restrictive Environment (LRE). The parties were able to reach a settlement through the resolution process in Due Process. The parent withdrew the Due Process Complaint.	Resolution Agreement
D20-002	The parent alleges the district violated IDEA and/or WV Policy 2419 by failing to appropriately evaluate Student before ending the provision of a one-to-one aide; the district violated IDEA and/or WV Policy 2419 by failing to determine Student's need for extended school year services (ESY); and the district violated IDEA and/or WV Policy 2419 by failing to provide Student appropriate modifications, assistance, homework packets, and services all in the least restrictive environment (LRE). (Attorneys)	Due process Hearing Decision
D20-003	The parents allege the educational placement of the student; and/or, evaluation, and the provision of a free appropriate public education to such student. (Attorneys)	Resolution Agreement
D20-004	The parents allege that the district failed to provide the student with needed special education and related aids and services; and denied the student the opportunity to participate and benefit from public services and programs that are as effective and meaningful as those delivered by the LEA to other students. (Attorneys)	Resolution Agreement
D20-005	The parent alleges that the student has been denied Reading Instruction which is appropriate for their specific disability and without interventions, the student will graduate from high school as an illiterate.	Resolution Agreement
D20-006 Expedited	The parent alleges that the student's incidents of misconduct are largely attributable to a failure of the LEA's teachers and staff to properly implement the student's IEP. (Attorneys)	Due process Hearing Decision
D20-007	The parent alleges that the student was physically abused by a teacher, we then transferred school. Another student took a picture of the student's private area and nothing has been done to either party.	The Hearing Officer Dismissed

Case Number	Alleged Violation	Action
D20-008 Expedited	The parents allege whether the manifestation determination review was accurate in its findings that the conduct was not a manifestation of the student's disability; whether the student should be returned to school; and whether the student is entitled to a new Functional Behavior Assessment. (Attorneys)	Due process Hearing Decision
D20-009	The parent alleges that for the last several years, the LEA has placed the student on homebound and the district failed to provide a free appropriate education (FAPE) in the least restrictive environment (LEA) for the student. (Attorneys)	Resolution Agreement
D20-010	The parents allege the district failed to provide a free and appropriate education (FAPE) in the least restrictive environment, in part by failing to conduct a meaningful Functional Behavior Assessment (FBA) and an effective Behavior Intervention Plan (BIP) may be contributing to the student's behavior. (Attorneys)	Resolution Agreement
D20-011	The parent alleges that the district failed to develop and appropriate IEP; failed to implement an appropriate IEP/ appropriate instruction by qualified personnel; and education harm under the IDEA. (Attorneys)	Mediation Agreement
D20-012	The parent alleges that the district never implemented planning or a placement Team to address the student's learning disability nor actions to deal with the student's behaviors. The parent disagrees with the district's decision on the manifestation decision that the child's behavior was a manifestation of the student's disability.	Resolution Agreement
D20-013	The parent alleges that the district failed to identify the student in need of an Individualized Education Plan.	Resolution Agreement
D20-014	The parents allege that the district failed to conduct a multidisciplinary evaluation for the student despite receiving a written request. The LEA's failure to identify the student for special education services under the Individuals with Disabilities in Education Act (IDEA) has resulted in denial of FAPE under IDEA and West Virginia Policy 2419. (Attorneys)	Resolution Agreement
D20-015	The parent alleges that the manifestation meeting by the district was not done correctly or accurately and that they did not follow her IEP to the best of their abilities.	Resolution Agreement

*Two hearings were expedited and each resulted in a hearing officer decision.

IDEA Due Process Hearing Results by District

Local Educational Agency	Number of Hearings Requested	Results - Withdrawn/Resolution or Mediation Agreement/Due Process Hearing Decision
Logan	1	Resolution Agreement
Cabell	1	Due Process Hearing Decision
Hampshire	1	Resolution Agreement
Kanawha	2	Resolution Agreement; Resolution Agreement
Upshur	1	Resolution Agreement
Harrison	2	Due Process Hearing Decision; Resolution Agreement
Wayne	1	Resolution Agreement
Monroe	2	Due Process Hearing Decision; Resolution Agreement
Clay	1	Resolution Agreement
Mercer	1	Resolution Agreement
Mineral	1	Resolution Agreement
Putnam	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 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 2020 was \$62,678.55. 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		
D20-001	\$548.33	274.17	0	\$822.50
D20-002*	933.33	466.67	0	\$1,400.00
D20-003	\$116.67	\$58.33	0	\$175.00
D20-004	\$800.00	\$400.00	0	\$1200.00
D20-005	\$169.17	\$84.58	0	\$253.75
D20-006*	\$800.00	\$400.00	0	\$1200.00
D20-007	\$14,256.67	\$7,128.33	\$3,240.50	\$24,625.50
D20-008*	\$2,440.00	\$1220.00	0	\$3,660.00
D20-009	\$449.17	\$224.58	0	\$673.75
D20-010	\$13,466.67	\$6,733.33	\$2,774.30	\$22,974.30
D20-011	\$519.17	\$259.58	0	\$778.75
D20-012	\$1,133.33	\$566.67	0	\$1,700.00
D20-013	\$1,038.33	519.17	0	\$1,557.50
D20-014	\$1,000.00	\$500.00	0	\$1,500.00
D20-015	\$105.00	\$52.50	0	\$157.50
Total Costs	\$37,775.84	\$18,887.91	\$17,445.41	\$62,678.55

**Resulted in a due process hearing decision*

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



W. Clayton Burch
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