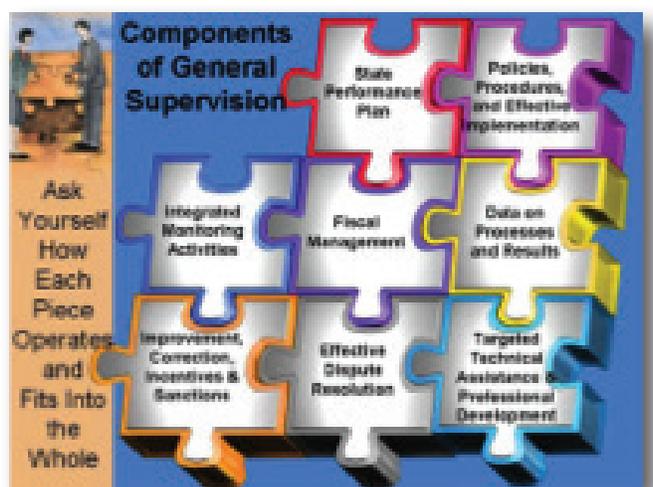


# Annual Report of Compliance Monitoring Activities

2013-2014



West Virginia Department of Education  
Division of Teaching and Learning  
Office of Special Programs



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# Introduction

The West Virginia Department of Education, Office of Special Programs (OSP), has the primary responsibility for ensuring that educational services are provided to all eligible students with exceptionalities. The *Individuals with Disabilities Education Improvement Act of 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, written complaints, due process hearings, including the resolution process and mediations, that were requested during FFY 14 which documents the Department's efforts to meet the requirements under IDEA and Policy 2419 pertaining to:

- administering the monitoring system, written complaints, due process hearings, including the resolution process and mediation, and
- making findings and decisions from compliance on-site monitoring, annual desk audit (ADA), written complaints and due process hearings available to the public.

# Monitoring System

The Office of Special Programs (OSP) is responsible for ensuring the state's compliance with the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) and its implementing regulations and the 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, OSP has developed a continuous improvement monitoring process which places an equal focus on compliance requirements and the performance of students with exceptionalities. The Compliance Monitoring System includes various monitoring activities which occur either annually or on a four-year cycle. In addition, all local educational agencies (LEAs) are required to complete annually a District Self-Assessment (DSA) for self-review and improvement planning. Four types of formal monitoring processes are conducted:

- Compliance Monitoring
- Annual Desk Audit (ADA)
- Focused Monitoring
- Dispute Resolution Process

## Compliance Monitoring

Compliance Monitoring is a comprehensive monitoring activity occurring on a four- year cycle. Each LEA will receive an on-site monitoring no less than every four years and will participate in activities described in these procedures. This activity is conducted through a desk review and on-site visit in selected districts. The monitoring team consists of OSP staff and other educators as determined by the Compliance Coordinator. Districts selected for a Compliance Monitoring will engage in pre-monitoring activities, on-site monitoring activities and the continuous improvement process. Although all State Performance Plan (SPP) and WV Indicators are important, the OSP has determined monitoring priority Indicators for mandatory review during the on-site visit.

Fifty-seven (57) LEAs will be monitored within a 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 of 2004 (IDEA). The following table provides the four year cycle.

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

### **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 with less than 100% on compliance indicators will receive written notice of noncompliance. Each ADA indicator determined Not Met requires completion of an improvement plan to be reviewed and accepted by the OSP. The ADA must be completed and submitted annually to the OSP, identifying findings of noncompliance and areas requiring program improvement.

### **Focused Monitoring**

Focused Monitoring is an on-site monitoring process during which 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) brought to the attention of the OSP. In addition, the OSP may resolve a complaint regarding alleged violations that occurred outside the one-year timeline through the Focused Monitoring process. This process may occur concurrently with a Compliance Monitoring or independently. A Focused Monitoring will drill down within the LEA's data to identify root causes and solutions to an on-going issue of non-compliance, performance or both. Each Focused Monitoring is individualized to the LEA and the situation.

### **Dispute Resolution Process**

Special Education laws and regulations ensure that all students with exceptionalities have available a process to receive written complaints, mediation and due process complaints. This important procedural safeguard for parents is required by federal law. The timely resolution of complaints, mediations and due process actions is required for a complaint dispute process. Effective dispute resolution data enable the State to track identified issues to determine whether patterns or trends exist and the effectiveness of reaching resolutions.

## Office of Special Education Programs – OSEP 09-02

The OSEP issued a memorandum (OSEP 09-02 Memorandum of Correction) that 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 standard by which the OSP reports noncompliance and correction in the State Performance Plan (SPP)/ Annual Performance Report (APR) and determines whether or not each LEA made the appropriate corrections. The memorandum requires two levels, or prongs, of verification of correction for all findings identified in writing to an LEA, excluding State Complaints or Due Process Hearing Decisions.

### 2013-2014 Findings of Noncompliance

The data below provides the total number of findings of non-compliance for the 2013-2014 school year from the ADA and Compliance Monitoring activities. The findings of noncompliance are provided to each LEA for review and correction. If the state finds noncompliance in a 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. Correction is completed on the date OSP determines both prongs are in compliance.

### 2013-2014 Compliance Monitoring Findings

Compliance monitoring occurs on a four-year cycle. Sixteen (16) LEAs received a compliance monitoring visit during the 2013-2014 school year and are as follows: Berkeley, Boone, Hardy, Harrison, Lincoln, Logan, Marion, Mason, Monongalia, Putnam, Raleigh, Ritchie, Summers, Tyler, Upshur and West Virginia School for the Deaf and the Blind. The tables below provides the information on the 16 LEAs monitored that were noncompliant for the specific area indicated.

### Administrative Review

Administrative Findings	Number of Districts
AF1: Finance (Budget & Expenditures)	2 districts
AF3: Finance (Audit Findings)	1 districts
AF4: Instructional Groupings	3 districts
AF5: Certification/Caseloads	14 districts
AF6: Full Instructional Day	2 districts
AF7: Classroom Location & Size	1 districts
AF8: Other: <ul style="list-style-type: none"> <li>• Classroom – two (2) teachers per instructional setting.</li> <li>• Continuum of Services – 3</li> <li>• ESY – 1</li> <li>• Discipline &amp; Coding of Suspensions – 2</li> <li>• Maintenance of Effort – *1 (District was required to reimburse SEA)</li> </ul>	4 districts
<i>*The items indicate one of the 16 districts had 3 Administrative Findings listed as Other, therefore the district was counted only once in the percentage of Other.</i>	

## Student File Review

<b>File Review Summary of Percentage of Noncompliance</b>	<b>Districts Below 75%</b>
<b>General Supervision</b>	
Amendment	2 districts
Prior Written Notice (PWN)	3 districts
Progress Update	1 district
<b>Notice of Meeting</b>	
Notice completed incorrectly	2 districts
IEP Participation & Development	4 districts
Transfer of Rights	3 districts
Goal-Condition	1 district
Goal Procedures	1 district
ESY Services	3 districts
Discipline Procedures (Students over 10 days)	3 districts
Service Verification	6 districts

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

Once an on-site monitoring has concluded the district special education director and guest monitors are given an evaluation to complete, rating their level of satisfaction with on-site monitoring activities. These evaluations provide input to help improve the monitoring process and procedures.

County: _____ Special Education Director: _____ The Office of Special Programs (OSP) on-site visit is to review the district's implementation of IDEA, WV State Code and Policy 2419. The OSP would appreciate the district's input, so we may continually work to improve our monitoring process. Please rate your level of satisfaction with the on-site monitoring activities.	<b>Not at all satisfied</b>	<b>Somewhat satisfied</b>	<b>Satisfied</b>	<b>Very Satisfied</b>	<b>Extremely Satisfied</b>
1. In general, how satisfied were you with the monitoring visit?					
2. Did the Lead Monitor clearly communicate information about scheduled monitoring activities prior to the monitoring visit?					
3. Did the Lead Monitor provide detailed information to you about your role in the monitoring activities prior to the visit?					
4. Did the Lead Monitor attempt to gain your trust and confidence prior to the visit?					
5. At the entrance conference, did the Lead Monitor clearly outline the procedures and team activities for the visit?					
6. During the monitoring process, do you feel that central office and school staff monitoring participants were encouraged to express their point of view?					
7. During the monitoring process, do you feel that you were encouraged and given an opportunity to express your point of view?					
8. Were staff interviews and focus group sessions conducted in a professional manner?					
9. At the exit conference, did the Lead Monitor and other members of the monitoring team present themselves as fair and impartial?					
10. At the exit conference, did the Lead Monitor address preliminary compliance findings?					
11. Did district staff have ample time to ask questions?					
12. Did the team clearly describe the follow up monitoring activities?					
13. How satisfied are you with the preliminary results of the monitoring visit?					
14. Do you feel comfortable contacting the Lead Monitor with any follow up questions?					
15. What are some ways that we can improve the monitoring process?					
16. Do you believe that you have the capacity to correct all findings?					
17. What additional support would you like from the WVDE Office of Special Programs?					

**Question 15. *What are some ways we can improve the monitoring process?***

- Possibly have a mid week session with the director.
- The monitoring system has been very positive, it has not felt punitive in any way. The only thing that would have been more proactive would have been if we had had IEP training and (informal) monitoring last spring before formal monitoring.
- Greater emphasis on quality of programs and services and less on file review.
- The process is working very well.
- I am very pleased with the process. I feel like you do a wonderful job preparing districts. I can't think of any improvements.
- Everything went well, no suggestions at this time.
- N/A Process was made less stressful by the teams' attitude and administration of the monitoring.
- Expand the desk audit to include additional items.
- Honestly everything went great!
- They were a pleasure to have in the county. Additionally, I talked to all principals after the teams exited their buildings. All nine principals were most complimentary of their team members and their professional and caring attitudes.

**Question 16. *Do you believe you have the capacity to correct all findings?***

- Seven (7) directors answered "Yes"
- Yes, with professional development for teachers. We urgently (emergency status) need IEP training for all SE teachers, administrators and directors.
- Yes, I believe that through staff development and work with the personnel department all findings can be corrected.

**Question 17. *What additional support would you like from the WVDE Office of Special Programs?***

- Ideas for professional development for coteaching.
- IEP training for teachers, administrators and professionals.
- Additional SPL and PBS training.
- Transition training.
- Continue to be understanding and willing to help.
- Serving as a guest monitor was most helpful.
- I have questions about interpretations of specific items in 2419, but nothing related to this monitoring!
- Monitoring interview questions packet pages need numbered.
- None needed at this time.

# Annual Desk Audit (ADA)

The ADA is submitted electronically each year on April 30, and is a review of both compliance and results SPP Indicators. Districts with less than 100% 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 OSP. Thirty-four (34) LEAs received written notification of noncompliances identified in the ADA Report for the compliance SPP indicators. Overall, there was an improvement in the number of districts with noncompliance indicators. However, there was an increase in the number of LEAs as noncompliant for Indicator 11: Child Find. A reason for the slippage is attributed to the number of days districts were not in session due to severe weather. The noncompliance data (compliance indicators only) is reported below:

- Two (2) districts were identified as noncompliant for Indicator 4B: Suspension 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 ten (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.*
- Two (2) districts were identified as noncompliant for Indicator 10: Disproportionality Specific Disabilities. *Percent of districts with disproportionate representation of racial and ethnic groups in specific disability categories that is the result of inappropriate identification.*
- Thirty two (32) 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 identified as noncompliant for Indicator 12: Early Childhood Transition. *Percent of children referred by Part C prior to age three (3), who are found eligible for Part B, and who have an IEP developed and implemented by their third birthday.*
- One (1) district identified as noncompliant for Indicator 13: Secondary Transition. *Percent of youth with IEPs age 16 and above with an IEP that includes appropriate measureable 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 needed transition services. 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.*

# Dispute Resolution System

School districts and parents may have disagreements regarding students with exceptionalities and they need to make every effort to resolve their differences. For those cases when it is not possible to informally resolve a disagreement, the OSP is required to administer a system for written complaints, due process hearings and mediations regarding the identification, evaluation, placement and/or provision of FAPE for students with exceptionalities. A state complaint is a charge that special education laws or regulations are not being followed by a county school district or public agency. A complaint also may address a LEA's failure to implement a due process hearing decision. A due process hearing provides a forum to have an impartial hearing officer settle disagreements. Parents and school districts are encouraged to use mediation, which is less formal than a complaint or a due process hearing, to resolve a disagreement.

## State Complaints:

Total number of state complaints requested .....	37
Total number of state complaints determined insufficient.....	3
Total number of state complaints where agreement was reached through early resolution ....	12
Total number of state complaints where agreement was reached through mediation .....	1
Total number of Letters of Findings issued .....	14
Total number of complaints pending .....	2

## Mediations:

Total number of mediations requested .....	17
Total number of written agreements .....	11
Total number of mediations without agreements, withdrawn or pending .....	6

## Due Process Hearings:

Total number of due process hearings requested.....	22
Total number of cases dismissed (closed due to a resolution meeting, mediation agreement, withdrawal or other resolution without having a hearing).....	19
Total number of cases resulting in a decision by a hearing officer.....	2
Total number of cases pending .....	1

# State Complaints

The federal regulations for implementing Part B of IDEA 2004 require each state to administer a complaint 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 at the Department's homepage. Although the use of this form is not required, the complaint must be in writing, contain the complainant's original signature and meet the criteria specified in Chapter 11, Section 1A.

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 the 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.

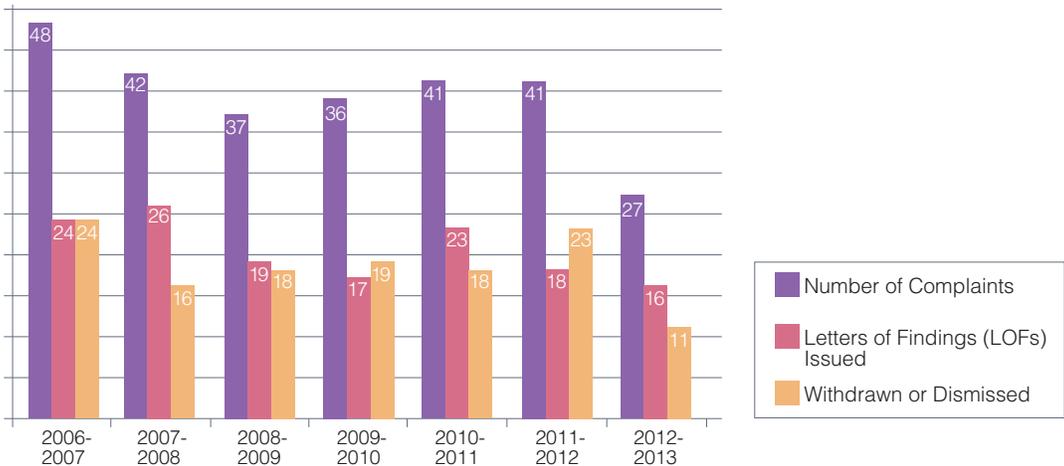
# Early Resolution of State Complaints

Either the special education director or the parent/adult student may request 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 these procedures and timelines.

# Mediation and State Complaints

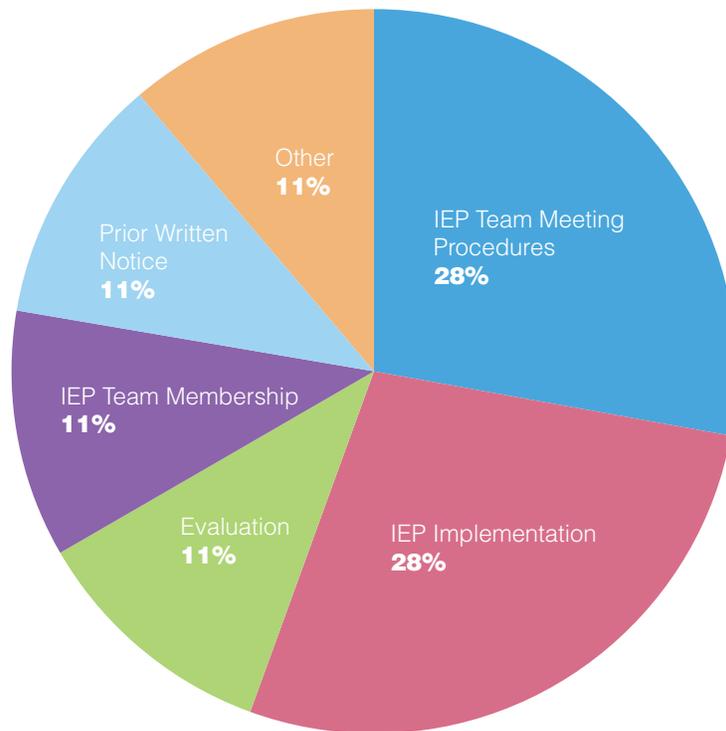
Another option for resolving the issues in the complaint is mediation. The parent and the district may agree to voluntarily engage in mediation consistent with the Department’s procedures as a means to resolve the issues in the complaint. If both parties agree to mediate, the timeline may be extended if agreed upon by the parent and the district. 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.

# State Complaint Trend Data



An analysis of data over a seven year period reveals a consistent number of formal state complaints submitted to the WVDE by parents and other non-parent complainants, with a significant decrease between the 2012 and 2013 school years. Additionally, the data indicate parents and districts are utilizing the early resolution process and mediation more often than due process hearings to resolve the issues alleged in the letters of complaint.

## Prevalence of Violations in State Complaint Investigations 2013-2014



An analysis of data over an eight year period reveals a consistent number of formal state complaints submitted to the WVDE by parents and other non-parent complainants, with a significant increase between the 2012-2013 and 2013-2014 school years. Of the 20 complaints withdrawn or dismissed, three were dismissed due to insufficient content. Fourteen of the complaints were resolved through the early resolution process and resulted in resolution agreements between the districts and parents. Two complaints were settled through mediation and one through a resolution session.

# 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 lines of communication which will benefit the student, parents and school personnel throughout the student's school life. Hopefully, when mediation is used, parents and schools may have the opportunity to resolve their differences amicably, make decisions with the student's best interest in mind and, therefore, reduce the need for litigation. Parents and LEAs are encouraged to use mediation, which is less formal than a due process hearing, to resolve a disagreement. Mediation can be a winning situation for all involved.

## Mediations Requested

Local Educational Agency	Number of Mediations Requested	Number of Mediations Requested in Lieu of Resolution Meetings	Mediation Withdrawn	Mediation Agreement	Mediation Without Agreement	Mediation Pending
Barbour	1			1		
Berkeley	1					
Brooke	1					
Cabell	1					
Greenbrier	3		1	2		
Harrison	1				1	
Kanawha	1	1			1	
Mason	1			1		
Marshall	1			1		
Mercer	1					1
Mingo	1			1		
Monroe	1	1		1		
Monongalia	1		1			
Nicholas	1			1		
Tyler	1			1		
<b>Totals</b>	<b>17</b>	<b>2</b>	<b>2</b>	<b>9</b>	<b>2</b>	<b>1</b>

## Mediations Requested by Month

Month	Mediations Requested
July	1
August	1
September	1
October	3
November	1
December	1
January	1
February	1
March	0
April	3
May	1
June	3
<b>Total</b>	<b>17</b>

# Mediation Issues Chart

Case Number	Mediation Issues	Mediation Agreement
M14-001 Parent Request	The parent stated the IEP was not implemented and did not address the student's disability and behavior.	Agreement
M14-002 District Request	The parent stated concerns regarding the student's educational performance during the Out-of-School Environment (OSE) placement.	No Agreement
M14-003 District Request	The student has not been in attendance of school.	No Agreement
M14-004 Number Error		
M14-005 District Request	The parent requested a one-on-one aide.	Agreement
M14-006 District Request Parent Request	The parent stated that she was not an equal participant in the IEP process; IEP goals were not calculated to provided benefit; denial of assistive technology evaluation; and request for a one-on-one aide.	Agreement
M14-007 Parent Request	The parent requested the student be reassigned schools, reimbursed travel expenses for parental transportation and provide annual training for district staff.	Agreement
M14-008 Parent Request	The parent requested the student be reassigned schools where the parent is currently employed.	No Agreement
M14-009 Parent Request	The parent was in disagreement with the IEP developed and stated it was a denial of services.	Agreement
M14-010 Parent Request	The parent was in disagreement with the student's placement.	Agreement
M14-011 Parent Request	The parent was in disagreement with the student's change of placement, behavioral issues and not provided FAPE.	Agreement
M14-012 Parent Request	The parent stated the IEP has not been implemented.	Withdrew mediation request
M14-013 Parent Request Due Process Complaint Filed	The parent stated the student was not provided FAPE and the student was placed in a private out-of-state facility.	No Agreement
M14-014 Parent Request	The parent requested a one-on-one aide and is in disagreement with the IEP goals.	Agreement
M14-015 Parent Request	The parent is in disagreement with the student's placement.	Agreement
M14-016 Parent Request	The parent is requesting compensatory education; an autism mentor, weekly reports; and complete data collection.	Agreement
M14-017 Parent Request	The parent stated the school is unable to develop an IEP to meet needs of the student.	Pending
M14-018 Parent Request	The parent stated the district denied the parents meaningful participation in the IEP process, the IEP Team did not have the required members, and was not provided prior written notice.	Dismissal of Mediation issues, Resolved without mediation.

# Mediation Costs

The West Virginia Department of Education, Office of Special Programs (OSP) assumes the total cost of the mediator assigned to the requested mediation. Mediators enter into an annual Service Agreement to conduct the mediation pursuant to the procedures specified in the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) and Policy 2419: *Regulations for the Education of Students with Exceptionalities*. The mediators are compensated at the rate of \$75.00 per hour for preparation and conducting the mediation and half-rate for travel time. Total mediation costs for FFY 14 were \$15,629.87. The chart below is a breakdown of mediation costs by case.

Case Number	Cost
M14001	\$1,511.74
M14002	\$900.00
M14003	\$2,079.09
M14005	\$1,093.49
M14006	\$2,050.92
M14007	\$1,645.39
M14008	\$678.96
M14009	\$1,086.23
M14010	\$3,620.24
M14011	\$1,872.17
M14012	\$125.00
M14013	\$923.79
M14014	\$1,571.18
M14015	\$2,296.62
M14016	\$1,922.36
M14017	Pending
M14018	\$600.00
<b>Total Costs</b>	<b>\$23,976.98</b>

# 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 works 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 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 districts from July 1, 2013, through June 30, 2014. Sixteen (16) mediations were conducted during FFY 14. A total of fourteen (14) surveys were returned to the OSP; eleven (11) districts and three (3) parent surveys were returned.

Questions	Parent Response	District Response
In general, how did you feel about the Mediation/Due Process Hearing Programs?	<ul style="list-style-type: none"> <li>• 2 Very Satisfied</li> <li>• 1 Satisfied</li> </ul>	<ul style="list-style-type: none"> <li>• 7 Very Satisfied</li> <li>• 4 Satisfied</li> </ul>
Was there any kind of help you expected or needed from the WVDE that you did not receive?	<ul style="list-style-type: none"> <li>• 3 No</li> </ul>	<ul style="list-style-type: none"> <li>• 11 No</li> </ul>
How clear was the Mediator/Hearing Officer in explaining the process to you?	<ul style="list-style-type: none"> <li>• 3 Completely clear</li> </ul>	<ul style="list-style-type: none"> <li>• 11 Completely clear</li> </ul>
Did the Mediator/Hearing Officer obtain your trust and confidence?	<ul style="list-style-type: none"> <li>• 3 Completely</li> </ul>	<ul style="list-style-type: none"> <li>• 10 Completely</li> <li>• 1 Partially</li> </ul>
Did the Mediator/Hearing Officer understand the issues and the conflict?	<ul style="list-style-type: none"> <li>• 1 Completely understood</li> <li>• 2 Partially understood</li> </ul>	<ul style="list-style-type: none"> <li>• 11 Completely understood</li> </ul>
Was the Mediator/Hearing Officer impartial?	<ul style="list-style-type: none"> <li>• 3 Yes</li> </ul>	<ul style="list-style-type: none"> <li>• 11 Yes</li> </ul>
Do you feel you were encouraged and given an opportunity to express your point of view?	<ul style="list-style-type: none"> <li>• 3 Yes</li> </ul>	<ul style="list-style-type: none"> <li>• 11 Yes</li> </ul>
Do you feel that the other participants were encouraged and given an opportunity to express their point of view?	<ul style="list-style-type: none"> <li>• 3 Yes</li> </ul>	<ul style="list-style-type: none"> <li>• 11 Yes</li> </ul>
Did the Mediator/Hearing Officer control the parties' conduct so that everyone was given ample time to appropriately express himself/herself?	<ul style="list-style-type: none"> <li>• 3 Yes</li> </ul>	<ul style="list-style-type: none"> <li>• 11 Yes</li> </ul>

Did the Mediator/Hearing Officer make him/herself available to hear emergency matters?	<ul style="list-style-type: none"> <li>• 3 Yes</li> </ul>	<ul style="list-style-type: none"> <li>• 6 Yes</li> <li>• 1 No</li> <li>• 3 NA</li> <li>• Don't understand question</li> </ul>
Did the Mediator make it clear that any decision or decisions were up to the parties involved?	<ul style="list-style-type: none"> <li>• 3 Completely clear</li> </ul>	<ul style="list-style-type: none"> <li>• 11 Completely clear</li> </ul>
How satisfied were you with the particular results of your mediation agreement?	<ul style="list-style-type: none"> <li>• 2 Very Satisfied with the items written in the IEP, waiting to see how well the IEP will be followed and how my son is treated.</li> <li>• 1 Satisfied</li> </ul>	<ul style="list-style-type: none"> <li>• 5 Very satisfied</li> <li>• 4 satisfied</li> <li>• No particular feeling one way or another</li> <li>• 1 NA</li> </ul>
Do you feel communication between the parties has improved after the mediation process was completed?	<ul style="list-style-type: none"> <li>• 2 Not sure</li> <li>• Had to hire a different outside OT for my son because [Mr.] could not be reached after several attempts by myself and the original OT of my choice.</li> </ul>	<ul style="list-style-type: none"> <li>• 2 Somewhat improved</li> <li>• 2 Much improved</li> <li>• 2 Improved</li> <li>• 3 Not sure</li> <li>• No, but they were not good before.</li> </ul>
Would you recommend mediation as a dispute resolution process for special education issues?	<ul style="list-style-type: none"> <li>• 3 Yes</li> </ul>	<ul style="list-style-type: none"> <li>• 4 Wholeheartedly</li> <li>• 1 With Resolution</li> </ul>
Were other issues resolved between the parties that were not originally identified? If so what were the issues?	<ul style="list-style-type: none"> <li>• 1 No</li> <li>• Somewhat</li> </ul>	<ul style="list-style-type: none"> <li>• Yes almost all issues were not the original issue.</li> <li>• 1 No</li> </ul>
Generally speaking what issue originally caused you to request mediation? Was this issue resolved?	<ul style="list-style-type: none"> <li>• Bad IEP, teachers not following IEP on paper they are resolved, let's see how it goes.</li> <li>• Problems in classroom yes it was resolved.</li> <li>• Failure to provide services as provided in IEP and placement of student.</li> </ul>	<ul style="list-style-type: none"> <li>• Unreasonable demands parents requested.</li> <li>• Standard modified diploma programs.</li> <li>• Parent requesting an aide for one-on-one.</li> <li>• Parents attorney suggested the mediation to me so I requested it take place.</li> <li>• Mediation request by parent.</li> <li>• Advocate parent request.</li> <li>• Parent request for an aide. It was resolved.</li> <li>• Parent wanted to transfer student to their place (school) of employment.</li> <li>• Suspension of students-yes</li> </ul>
If the mediation was not successful, what do you consider to be the reasons for the failure?		<ul style="list-style-type: none"> <li>• Was successful.</li> <li>• Parent on one solution.</li> <li>• Parent requested and we agreed.</li> </ul>

<p>If this dispute or related issue arose again what method of dispute resolution would you pursue?</p>	<ul style="list-style-type: none"> <li>• Mediation</li> <li>• A lawyer</li> <li>• At the home</li> </ul>	<ul style="list-style-type: none"> <li>• County would not give what parents wanted-felt unreasonable.</li> <li>• Of the four topics-2 were resolved-the other 2 not resolved-simply not agreeing to issues.</li> <li>• Mediation</li> <li>• We would not initiate early resolution/or mediation.</li> <li>• Mediation fine.</li> </ul>
<p>General Comments:</p>	<ul style="list-style-type: none"> <li>• This school needs help badly in the special education area.</li> <li>• At the time of the mediation I didn't think counsel of BOE had a full grasp of the evidence until after the mediation was over.</li> </ul>	<ul style="list-style-type: none"> <li>• It will be back in a year and I am not sure what can be done other than give parents what we did this time.</li> <li>• Mediation</li> <li>• I would suggest all parties come back to the table to further discuss concerns.</li> </ul>

# **Due Process Hearing**

Special education laws and regulations ensure that all students with exceptionalities have available a free appropriate public education. The West Virginia Department of Education (WVDE), Office of Special Programs (OSP), is required to receive 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 a party may request a due process complaint regarding the school district's proposal or refusal to initiate or change the identification, evaluation, educational placement and/or the provision of FAPE to the student.

# **Due Process Complaint Resolution Meeting**

In the Individuals with Disabilities Education Act of 2004 (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 holds 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, which provides the LEA an opportunity 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 for the LEA 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 request for the due process hearing 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 for a due process hearing begin.

IDEA is silent regarding the confidentiality of resolution discussions. There is nothing in IDEA or the regulations that would prohibit the parties from entering into a confidentiality agreement at the beginning of the resolution meeting or as a part of their resolution agreement. A state cannot, however, require that the participants in a resolution meeting keep the discussions confidential or make a confidentiality agreement a condition of a parent's participation in the resolution meeting.

## Due Process Complaints Requested by Month 2013-2014

Month	Number Requested
July	1
August	1
September	3
October	4
November	2
December	1
January	0
February	1
March	3
April	2
May	2
June	2
<b>Total</b>	<b>22</b>

## IDEA Due Process Hearing Decisions Summary Report by District

Local Educational Agency	Number of Hearings Requested	Withdrawn/Resolution Agreement/Mediation/Due Process Decision
Berkeley	2	2 Resolution Agreements
Brooke	1	Due Process Decision
Cabell	1	Resolution Agreement
Calhoun	1	Withdrawn
Fayette	1	Resolution Agreement
Grant	1	Resolution Agreement
Hancock	4	3 Withdrawn; 1 Due Process Decision
Harrison	1	Withdrawn
Kanawha	4	1 Resolution Agreement; 1 Withdrawn; 1 Resolution after the mediation resulted in no agreement; and 1 Pending
Lewis	1	Resolution Agreement
Marion	1	Resolution Agreement
Mineral	1	Resolution Agreement
Putnam	1	Withdrawn
Webster	2	2 Resolution Agreements
<b>Total</b>	<b>22</b>	

Of the 22 due process hearing complaints filed for FFY 14, two (2) due process hearing complaints were fully adjudicated. The 45 day timeline after the expiration of the resolution thirty-day period or adjusted time-lines were extended beyond the required timeline at the request of either party and the approval of the hearing officer.

# IDEA Due Process Hearing Decisions

Case Number	Alleged Violation	Action
D14-001	<p>Issues Alleged:</p> <ul style="list-style-type: none"> <li>• provide the parent access to the student’s records;</li> <li>• determine eligibility without formally evaluating the student in all areas of suspected disability, therefore a denial of FAPE;</li> <li>• use technically sound instruments to determine eligibility;</li> <li>• provide the student’s right to ESY;</li> <li>• develop an appropriate IEP to meet the student’s needs; and</li> <li>• doesn’t have trained staff to implement the student’s IEP.</li> </ul>	Resolution Agreement
D14-002	<p>Issues Alleged:</p> <ul style="list-style-type: none"> <li>• administrative staff made IEP Team decisions;</li> <li>• administered restraint on the student;</li> <li>• denial of speech services; and</li> <li>• student confidential information was released.</li> </ul>	Resolution Agreement
D14-002	<p>Issues Alleged:</p> <ul style="list-style-type: none"> <li>• administrative staff made IEP team decisions;</li> <li>• staff not trained to assist with student’s communication needs;</li> <li>• the IEP was not implemented; and</li> <li>• when student injured, the parents were not notified.</li> </ul>	Resolution Agreement
D14-003	<p>Issues Alleged:</p> <ul style="list-style-type: none"> <li>• the student was on a modified schedule from August 11-December 11;</li> <li>• the district did not implement the student’s IEP;</li> <li>• the district did not provide instruction from December 2011 until January 2012 when the student transferred to another school within the district; and</li> <li>• the parent was denied the right to meaningful participation in the IEP process.</li> </ul>	Resolution Agreement
D14-004	<p>Issues Alleged:</p> <ul style="list-style-type: none"> <li>• improper disciplinary change of placement;</li> <li>• the district did not provide the supports and accommodations to allow the student to remain in his LRE; and</li> <li>• The BIP was not individualized to meet the student’s needs and was a denial of FAPE.</li> </ul>	Resolution Agreement
D14-005	<p>Issues Alleged:</p> <ul style="list-style-type: none"> <li>• the IEP was not implemented in the area of math.</li> </ul>	Resolution Agreement

<b>Case Number</b>	<b>Alleged Violation</b>	<b>Action</b>
D14-007	Issues alleged: Whether the comprehensive Psycho-educational Evaluation completed by the LEA's School Psychologist on August 15, 2013 is an appropriate evaluation of the student pursuant to the Resolution Session Agreement between the parties dated March 7, 2013 and WVBE Policy 2419, Chapter 10, §7(C).	Decision for District
D14-008	Issues alleged: Whether the district denied the student FAPE, and whether the district failed to follow procedural safeguards.	Resolution Agreement
D14-009 (District Filed)	Issues alleged: Whether the district denied the student FAPE; failed to provide appropriate behavioral supports; and whether the student was suspended and a change of placement occurred.	Withdrawn
D14-010	Issues alleged: Whether the district denied the student FAPE; failed to provide appropriate behavioral supports; and whether the student was suspended and a change of placement occurred.	Withdrawn
D14-011	Issues alleged: Whether the district failed to follow child find; failed to hold a manifestation determination meeting which led to the inappropriate expulsion of the student; provided an inappropriate placement; provided inappropriate services to the student placed in an OOS environment; did not provide extended school year (ESY); failed to provide appropriate supports when student returned from expulsion; did not hold IEP Team meeting when returning from placement which led to an expired IEP; and did not provide an education for the 2012-2013 school year.	Withdrawn
D14-012	Issues alleged: Whether the district predetermined an inappropriate placement and implemented an inappropriate IEP which resulted in a denial of FAPE; and did not hold a manifestation determination meeting.	Resolution Agreement
D14-013	Issues alleged: Whether the district failed to appropriately address the student's behaviors; and inappropriately placed student in an interim alternative educational setting.	Withdrawal

<b>Case Number</b>	<b>Alleged Violation</b>	<b>Action</b>
D14-014	Issues Alleged: Whether the student's communication needs have been met; whether the student has been provided adequate teaching of adaptive skills, including personal care and community life skills; whether student's current IEP is being implemented during the school day; whether behavioral issues are properly being addressed; whether student's time in the classroom is devoted to instruction; student is failing to learn social skills and community navigation skills necessary to adult life because he is in a self-contained classroom; the student's transition plan is inadequate and is not implemented; and is not offered skilled instruction and related therapies needed for his progress.	Decision (Split)
D14-015	Issues alleged: The student was denied FAPE because language comprehension skills have not been addressed; adaptive skills have not been appropriately addressed; and the student has not been provided with a functional curriculum.	Resolution Agreement
D14-016	Issues Alleged: The IEP Team would not let the student take part in the WESTEST 2 with accommodations previously agreed to; and the district failed to properly evaluate the student.	Resolution Agreement
D14-017	Issue alleged: The parent requested an IEE.	Withdrawn
D14-018	Issues alleged: The parent is in disagreement with the student's IEP. Note: parent failed to participate in an initial telephone conference repeatedly requested by the hearing officer, parent indicated on two occasions that she will not participate in the process without legal counsel, parent will not provide the name and address for an attorney or when the attorney will be available to the parent, and parent has refused to engage in the resolution process without counsel.	Hearing Officer dismissed the case.
D14-019	Issues alleged: The district denied the student FAPE and the parent requested a private school placement.	Withdrawn: district settled before hearing was held.
D14-020	Issues Alleged: The improper placement of the student in the GEE 100% resulting in denial of FAPE; the district did not implement the student's IEP and did not initiate the special education services in the student's IEP; the districts failure to conduct a functional behavior assessment (FBA) and implement an appropriate positive behavior support plan for the student; and the district denied the parent meaningful participation in the IEP process.	Resolution Agreement

<b>Case Number</b>	<b>Alleged Violation</b>	<b>Action</b>
D14-021	Issues Alleged: The improper placement of the student in the GEE 100% resulting in denial of FAPE; the denial of a FAPE to the student as a result of district not implementing the IEP and not initiating the special education services in the IEP; and the district's failure to implement a positive behavior support plan and crisis plan for the student.	Resolution Agreement
D14-022	Issues Alleged: The IEP did not have the required IEP Team membership; the district did not follow the procedures for In Lieu of Attendance process; the district did not provide prior written notice (PWN); and the district did not provide the student opportunities in extra-curricular or nonacademic settings when appropriate.	Pending

## IDEA Due Process Hearing Costs

The WVDE has entered into a contractual agreement for due process hearing officer services at the rate of \$125.00 per hour for preparation, conducting the hearing and decision writing and half-rate for travel time. The WVDE remits payment to the hearing officer for 2/3 of the approved cost of the hearing officer's fee and 100% of approved expenses. The district remits payment to the hearing officer for 1/3 payment of the approved cost of the hearing officer's fee within 30 calendar days of receipt of the approved invoice. 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 obtaining a court reporter for the due process hearing and pays 100% of the cost. The court reporter is required to complete a hearing transcript within five (5) to ten (10) business days after the hearing. The district is responsible for the cost of the district's attorney.

Due process hearing officer fees ranged from \$305.24 to \$3,042.50. The court reporter costs paid by the WVDE was \$7,729.15. The total cost of the due process complaints for FFY 14 including the cost of the court reporter services was \$59,105.25. The chart below represents the specific data and summary of the total costs for each due process complaint filed.

Case Number	WVDE Hearing Cost	LEA Cost	WVDE Court Reporter Cost	Total Hearing Cost
D14001	\$2,028.33	\$1,014.17		\$3,042.50
D14002	\$716.67	\$358.33		\$1,075.00
D14004	\$1,000.00	\$500.00		\$1,500.00
D14005	\$1,413.33	\$704.17		\$2,117.50
D14006	\$583.33	\$291.67		\$875.00
D14007	\$9,682.70	\$3,885.42	\$1,754.65	\$13,568.17
D14008	\$209.41	\$95.83		\$305.24
D14009/D14010	\$1,671.67	\$833.33		\$2,505.00
D14011	\$416.67	\$208.33		\$625.00
D14012	\$666.67	\$333.33		\$1,000.00
D14013	\$1,166.67	\$583.33		\$1,750.00
D14014	\$13,115.67	\$3,502.08	\$5,880.50	\$16,617.82
D14015	\$1,996.67	\$995.83		\$2,992.50
D14016	\$1,163.33	\$597.17		\$1,742.50
D14017	\$1,940.67	\$923.33	\$94.00	\$2,864.00
D14018	\$1,030.44	\$489.58		\$1,520.02
D14019	\$1,671.67	\$833.33		\$2,505.00
D14-020	\$458.33	\$229.17		\$687.50
<b>D14-021</b>	<b>\$1,208.33</b>	<b>\$604.17</b>		<b>\$1,812.50</b>
D14-022				Pending
<b>Total Costs</b>	<b>\$42,140.68</b>	<b>\$16,964.57</b>	<b>\$7,729.15</b>	<b>\$59,105.25</b>

*\*Hearing officer assigned to D14-009 and D14-010 submitted one invoice.*

# Summary

## Compliance Issues in Monitoring, Written Complaints, Mediations and Due Process Hearing Decisions

<p><b>Comprehensive On-Site Monitoring</b></p> <ul style="list-style-type: none"><li>• IEP Development &amp; Implementation</li><li>• Continuum of Services</li><li>• Discipline</li><li>• Transition</li><li>• ESY</li><li>• Instructional Groupings</li><li>• Finance (Budget &amp; Expenditures, Time and Effort, Audit Findings)</li><li>• Certification/Caseloads</li><li>• Full Instructional Day</li><li>• Classroom Location &amp; Size</li><li>• Parent Notification</li><li>• Maintenance of Effort</li></ul>
<p><b>Issues that prompted written complaints:</b></p> <ul style="list-style-type: none"><li>• IEP Development &amp; Implementation</li><li>• Discipline</li><li>• ESY</li><li>• Independent Educational Evaluation</li><li>• Data Accuracy</li></ul>
<p><b>Issues that prompted mediation:</b></p> <ul style="list-style-type: none"><li>• IEP Development &amp; Implementation</li><li>• Independent Educational Evaluation</li><li>• Compensatory Education</li><li>• Location of Services</li><li>• Personnel</li></ul>
<p><b>Issues that prompted due process hearings:</b></p> <ul style="list-style-type: none"><li>• Identification</li><li>• IEP Development and Implementation</li><li>• Educational Placement</li><li>• FAPE</li><li>• Parental Participation</li><li>• Attendance</li><li>• Implementation of Mediation Agreement</li><li>• Functional Behavior Assessment</li><li>• One-on-One Aide</li><li>• LRE</li><li>• PWN</li></ul>

# Notes

# Notes

