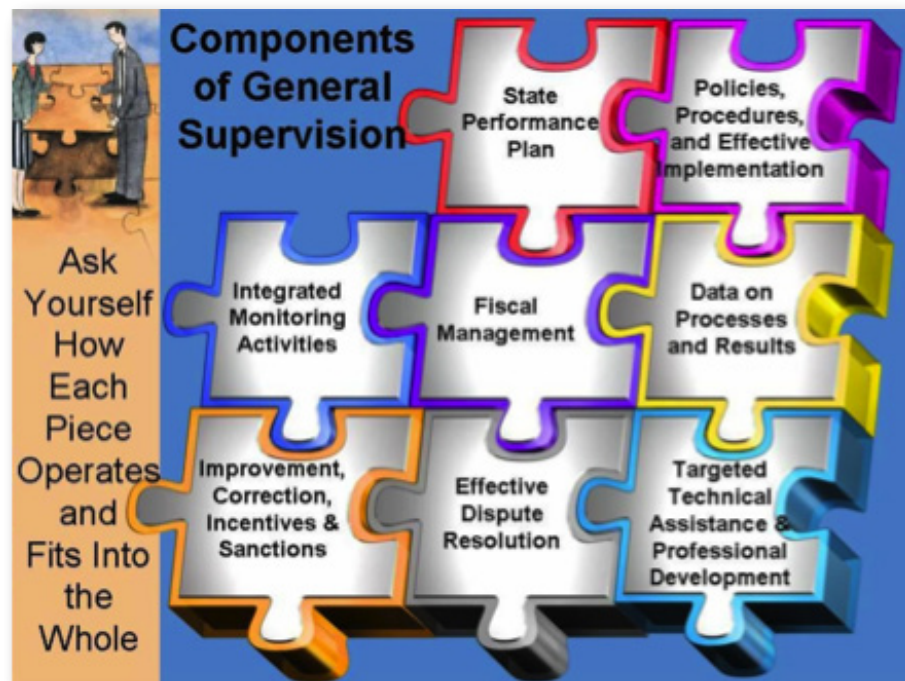


Annual Report of Compliance Monitoring Activities

2011



West Virginia Department of Education
Division of Curriculum and Instructional Services
Office of Special Programs



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2011-2012**

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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 report includes data on monitoring activities, written complaints, due process hearings, including the resolution process and mediations that were requested during FFY 11 and 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 audits (ADA), written complaints and due process hearings available to the public.

Monitoring System

The OSP places an equal focus on compliance requirements and the performance of students with exceptionalities. The Monitoring System includes various monitoring activities which occur either annually or on a four-year cycle. All districts are required to complete a District Self-Assessment for self-review and improvement planning. Although all State Performance Plan (SPP) and WV Indicators are important, the OSP has determined monitoring priority Indicators for mandatory review during the Compliance On-site Monitoring visit. The Annual Desk Audit (ADA) must be completed and submitted annually to the OSP, identifying findings of noncompliance and areas requiring program improvement. Four types of formal monitoring processes are conducted:

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

Compliance On-Site Monitoring

Compliance On-site Monitoring is a comprehensive monitoring activity occurring on a four-year cycle. Each district will receive an on-site monitoring no less than every four years and will participate in activities described in the monitoring procedures. This activity is conducted through an on-site visit in selected districts. The monitoring team consists of OSP staff and other educators as determined by the Lead Monitor. Districts selected for a Compliance On-Site Monitoring will engage in pre-monitoring activities, on-site monitoring activities and the corrective improvement process.

Annual Desk Audit (ADA)

The ADA is submitted electronically each year 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. Each ADA indicator determined Not Met requires completion of an improvement plan to be reviewed and accepted by the OSP.

Focused Monitoring

Focused Monitoring is an on-site monitoring process where a district may receive a visit based on an identified need or other data source (i.e., a district 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 focus monitoring process. This process may occur concurrently with an Compliance On-Site Monitoring or independently. A Focused Monitoring will drill down within the district's data to identify root causes and solutions to an on-going issue of compliance, performance or both. Each Focused Monitoring is individualized to the district and the situation.

Fifty-seven (57) districts 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 accountable for enforcing the requirements of the IDEA. The table below outlines the districts who were monitored during the 2010-2011 school year and the 2011-2012 monitoring schedule.

Compliance On-Site Monitoring Completed 2010 - 2011	Compliance On-Site Monitoring Scheduled 2011 - 2012
• Brook	• Barbour
• Doddridge	• Braxton
• Fayette	• Clay
• Grant	• Calhoun
• Jackson	• Hampshire
• Jefferson	• Lewis
• Mason (Follow-up)	• Marshall
• Nicholas	• Mercer
• Pleasants	• Mingo
• Preston (Follow-up)	• Monroe
• Taylor	• Pendleton
• Wayne	• Pocahontas
• Webster	• Roane
• Wetzel	• Tucker

The table below provides the total number of findings of non-compliance for the 2010-2011 school year from the ADA and Compliance On-Site Monitoring activities. The findings of noncompliance are provided to each district for review and correction. If the state finds noncompliance in a district, the State must notify the district 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 district. The written notification from the State will detail specific steps the district must take to correct the noncompliance.

2010 - 2011 Findings of Noncompliance	
Annual Desk Audit (ADA)	Compliance On-Site Monitoring
57 School Districts	14 School Districts
73 Findings	92 Findings
<ul style="list-style-type: none"> ✓ Eighty (80) Day Timeline ✓ Disporportionate Representation ✓ Part C Transition ✓ Discipline ✓ Secondary Transition 	<ul style="list-style-type: none"> ✓ Services ✓ Prior Written Notice (PWN) ✓ Classrooms ✓ Instructional Day ✓ Preschool Screening ✓ Summary ✓ Timelines ✓ Eligibility ✓ Grouping ✓ Caseloads ✓ Discipline ✓ Procedural Safeguards

Annual Determinations

	Annual Determinations 2011		Annual Determinations 2010		Annual Determinations 2009		Annual Determinations 2008		Annual Determinations 2007	
District	(Data Source 2009-2010)		(Data Source 2008-2009)		(Data Source 2007-2008)		(Data Source 2006-2007)		(Data Source 2005-2006)	
Barbour	82.7	Met Requirements	86	Met Requirements	52	Met Requirements	54	Met Requirements	48	Met Requirements
Berkeley	76.6	Met Requirements	90	Met Requirements	51	Met Requirements	53	Met Requirements	49	Met Requirements
Boone	87.2	Met Requirements	78	Met Requirements	47	Met Requirements	43	Needs Assistance	50	Met Requirements
Braxton	80.2	Met Requirements	86	Met Requirements	52	Met Requirements	57	Met Requirements	46	Needs Assistance
Brooke	93.1	Met Requirements	85	Met Requirements	56	Met Requirements	59	Met Requirements	55	Met Requirements
Cabell	93.3	Met Requirements	87	Met Requirements	50	Met Requirements	56	Met Requirements	52	Met Requirements
Calhoun	79.4	Met Requirements	82	Met Requirements	49	Met Requirements	53	Met Requirements	52	Met Requirements
Clay	88.0	Met Requirements	100	Met Requirements	55	Met Requirements	57	Met Requirements	55	Met Requirements
Doddridge	76.6	Met Requirements	72	Needs Assistance	52	Met Requirements	55	Met Requirements	51	Met Requirements
Fayette	68.6	Needs Assistance	88	Met Requirements	48	Met Requirements	46	Needs Assistance	49	Met Requirements
Gilmer	84.0	Met Requirements	92	Met Requirements	58	Met Requirements	57	Met Requirements	47	Met Requirements
Grant	88.0	Met Requirements	92	Met Requirements	56	Met Requirements	59	Met Requirements	46	Needs Assistance
Greenbrier	84.2	Met Requirements	85	Met Requirements	49	Met Requirements	48	Met Requirements	53	Met Requirements
Hampshire	63.6	Needs Assistance	78	Met Requirements	52	Met Requirements	55	Met Requirements	55	Met Requirements
Hancock	83.8	Met Requirements	90	Met Requirements	58	Met Requirements	54	Met Requirements	53	Met Requirements
Hardy	77.5	Met Requirements	78	Met Requirements	55	Met Requirements	49	Met Requirements	58	Met Requirements
Harrison	85.5	Met Requirements	95	Met Requirements	47	Met Requirements	54	Met Requirements	50	Met Requirements
OIEP	93.8	Met Requirements		Met Requirements						
Jackson	77.3	Met Requirements	72	Needs Assistance	48	Met Requirements	52	Met Requirements	55	Met Requirements
Jefferson	75.0	Needs Assistance	81	Met Requirements	54	Met Requirements	51	Met Requirements	47	Met Requirements
Kanawha	82.9	Met Requirements	76	Met Requirements	47	Met Requirements	48	Met Requirements	43	Needs Assistance
Lewis	64.8	Needs Assistance	78	Met Requirements	48	Met Requirements	51	Met Requirements	51	Met Requirements
Lincoln	97.3	Met Requirements	77	Met Requirements	54	Met Requirements	49	Met Requirements	49	Met Requirements
Logan	85.3	Met Requirements	85	Met Requirements	51	Met Requirements	50	Met Requirements	53	Met Requirements
Marion	85.5	Met Requirements	90	Met Requirements	47	Met Requirements	50	Met Requirements	52	Met Requirements
Marshall	84.6	Met Requirements	88	Met Requirements	55	Met Requirements	55	Met Requirements	54	Met Requirements
Mason	58.9	Needs Intervention	63	Needs Intervention	41	Needs Assistance	47	Met Requirements	44	Needs Assistance

McDowell	76.0	Met Requirements	87	Met Requirements	44	Needs Assistance	43	Needs Assistance	43	Needs Assistance
Mercer	76.0	Met Requirements	87	Met Requirements	45	Needs Assistance	48	Met Requirements	44	Needs Assistance
Mineral	80.8	Met Requirements	79	Met Requirements	55	Met Requirements	57	Met Requirements	61	Met Requirements
Mingo	84.0	Met Requirements	88	Met Requirements	52	Met Requirements	53	Met Requirements	46	Needs Assistance
Monongalia	88.0	Met Requirements	87	Met Requirements	46	Needs Assistance	42	Needs Assistance	50	Met Requirements
Pocahontas	78.9	Met Requirements	92	Met Requirements	57	Met Requirements	57	Met Requirements	53	Met Requirements
Preston	81.9	Met Requirements	83	Met Requirements	51	Met Requirements	48	Met Requirements	50	Met Requirements
Putnam	84.2	Met Requirements	96	Met Requirements	55	Met Requirements	55	Met Requirements	54	Met Requirements
Raleigh	92.0	Met Requirements	88	Met Requirements	48	Met Requirements	50	Met Requirements	46	Needs Assistance
Randolph	93.3	Met Requirements	100	Met Requirements	55	Met Requirements	54	Met Requirements	56	Met Requirements
Ritchie	97.3	Met Requirements	92	Met Requirements	53	Met Requirements	54	Met Requirements	45	Needs Assistance
Roane	82.9	Met Requirements	86	Met Requirements	49	Met Requirements	49	Met Requirements	46	Needs Assistance
Summers	91.2	Met Requirements	80	Met Requirements	52	Met Requirements	56	Met Requirements	53	Met Requirements
Taylor	79.8	Met Requirements	68	Needs Intervention	46	Needs Assistance	53	Met Requirements	50	Met Requirements
Tucker	97.3	Met Requirements	100	Met Requirements	54	Met Requirements	59	Met Requirements	61	Met Requirements
Tyler	94.7	Met Requirements	100	Met Requirements	59	Met Requirements	59	Met Requirements	61	Met Requirements
Upshur	75.6	Met Requirements	90	Met Requirements	49	Met Requirements	49	Met Requirements	48	Met Requirements
Wayne	77.3	Met Requirements	73	Needs Assistance	57	Met Requirements	55	Met Requirements	53	Met Requirements
Webster	78.1	Met Requirements	74	Needs Assistance	48	Met Requirements	49	Met Requirements	55	Met Requirements
Wetzel	59.0	Needs Assistance	81	Met Requirements	52	Met Requirements	57	Met Requirements	53	Met Requirements
Wirt	82.9	Met Requirements	87	Met Requirements	52	Met Requirements	53	Met Requirements	55	Met Requirements
Wood	82.9	Met Requirements	88	Met Requirements	43	Needs Assistance	47	Met Requirements	54	Met Requirements
WVSDB	75.4	Met Requirements		Met Requirements						
Wyoming	82.9	Met Requirements	96	Met Requirements	54	Met Requirements	51	Met Requirements	46	Needs Assistance
Average	82.20	Met Requirements	85.24		51.2		52.2		51	

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, mediations, due process hearings 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 regulation are not being followed by a district or public agency. A complaint also may address a district'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	41
Total number of state complaints determined insufficient.....	2
Total number of state complaints where agreement was reached through early resolution	14
Total number of state complaints where agreement was reached through mediation	3
Total number of Letter of Findings issued.....	22

Mediations:

Total number of mediations requested.....	18
Total number of written agreements	10
Total number of mediations without agreements or withdrawn	8

Due Process Hearings:

Total number of due process hearings requested.....	13
Total number of cases dismissed (closed due to a resolution meeting, mediation agreement, withdrawal or other resolution without having a hearing).....	9
Total number of cases resulting in a decision by a hearing officer.....	4

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.

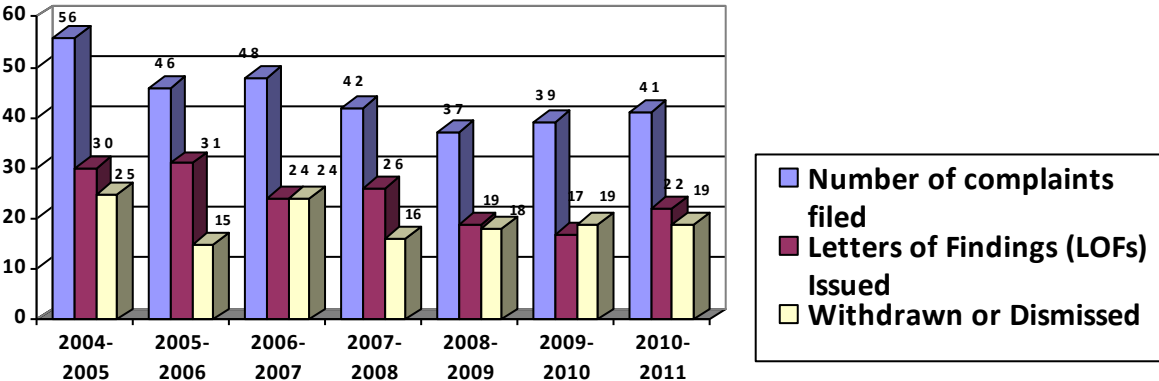
Early Resolution of State Complaints

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.

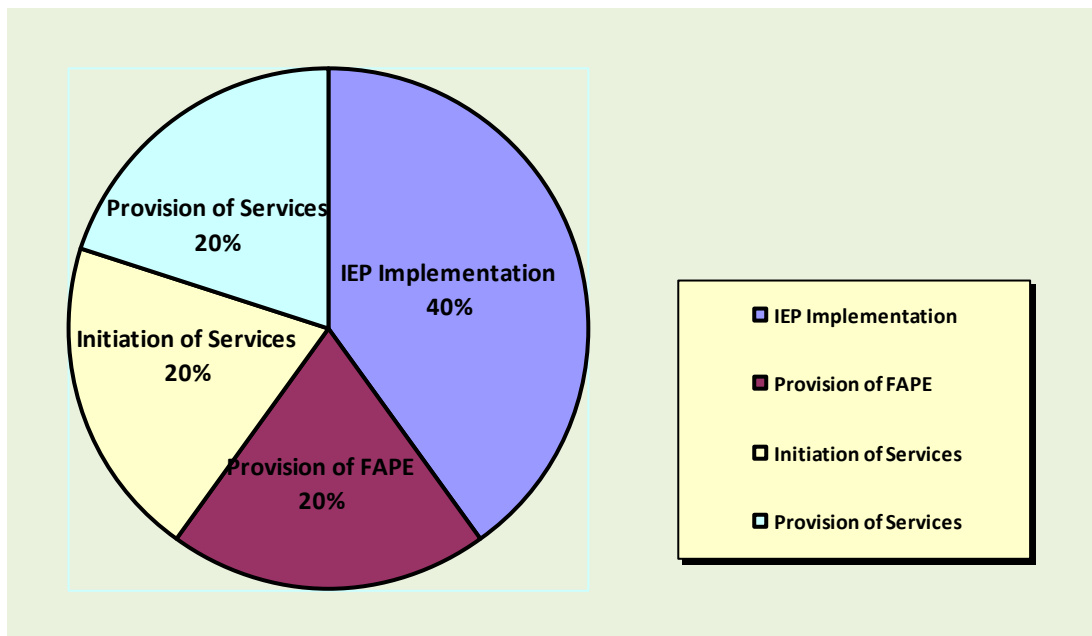
State Complaint Trend Data 2004-2011



An analysis of data over a seven year period reveals a gradual decrease in the number of formal state complaints submitted to the WVDE by parents and other non-parent complainants from 2006-2007 to 2009-2010, with a slight increase in the total number of complaints filed in 2009-2010 and 2010-2011. Additionally, these data indicate parents and districts are utilizing the early resolution process to resolve the issues alleged in the letters of complaint in approximately half of the cases filed. While three (3) complaints were resolved through mediation agreements in 2010-2011, the early resolution process continues to be the preferred method utilized by special education directors to resolve issues alleged in state complaints.

Current data for 2010-2011 show IEP implementation as the allegation most often alleged by parent and non-parent complainants. This allegation was alleged a total of fourteen times in the 41 complaints filed and determined a violation in six letters of findings. The second allegation most often asserted was the district's failure to provide classrooms that are comparable and located in proximity to those for non-exceptional students. The consideration of the parents' concerns and the provision of qualified personnel were the 3rd and 4th most often alleged by parents and non-parent complainants.

Prevalence of Violations in State Complaint Investigations 2010-2011



The pie chart reveals data pertaining to the violations most often determined in the 41 complaints that were investigated during 2010-2011. The violations pertaining to IEP implementation were specific to the provision of the support personnel specified in the IEP, the implementation of the student's behavior intervention plan (BIP) and the provision of the supplementary aids, services and program modifications in the general education environment (GEE). Three letters of findings

(LOFs) cited violations in the initiation of IEP services for students at the beginning of the school year. Additionally, three cases determined violations pertaining to the provision of services specific to classrooms that were not comparable to and in close proximity to those of the students' non-exceptional peers. Furthermore, the provision of a free appropriate public education (FAPE) was determined a violation in three complaint investigations. The FAPE violations included two separate incidences of failure to provide a full instructional day and one violation of the failure to provide the services in the Out-of-School Environment (OSE).

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 Agreement	Mediation Without Agreement
Barbour	1			1
Boone	1			(1 Withdrew)
Cabell	3	1	1	2 (1 Withdrew)
Greenbrier	1			(1 Withdrew)
Hampshire	1		1	
Jefferson	1		1	
Marion	1		1	
Mercer	3		2	1
Nicholas	2	1	1	(1 Withdrew)
Raleigh	2		2	
School for the Deaf and Blind	2	1	1	1
Totals	18	3	10	8

Mediations Requested by Month

Month	Mediations Requested
July	4
August	2
September	1
October	0
November	3
December	4
January	0
February	1
March	0
April	1
May	1
June	1
Total	18

Mediation Issues Chart

Mediation Issues	Mediation with Agreement	Mediation without Agreement
M11-001: The parent requested mediation to resolve the disagreement regarding the days in her child’s school year that were not covered by an aide or adult supervision as the IEP reflects.		Withdrew mediation request
M11-002: The parent requested mediation to resolve the issue to receive preschool services in the student home school and not receive direct services from the teacher of autism.		No Agreement
M11-003: The parent requested mediation to resolve the issue to receive preschool services in the student home school and not receive direct services from the teacher of autism.	Agreement	
M11-004: The parent requested mediation to resolve the issue to receive special education services in the student home school as regular education with support services.	Agreement	
M11-005: The parent requested mediation to resolve the issue of receiving special education services in the student home school.		No Agreement
M11-006: The parent requested mediation to resolve the disagreement in their request for a one-on-one full time speech language pathologist or placement in an out-of-state school.	Agreement	
M11-007: The parent requested mediation to resolve the disagreement in Due Process Hearing #D11-002 concerning the implementation of the IEP goals and services.	Agreement	
M11-008: The parent requested mediation to resolve the disagreement of placement in Due Process Hearing #D11-005.	Agreement	
M11-009: The parent requested mediation to resolve the disagreement of placement in Due Process Hearing #D11-006.		No Agreement
M11-011: The parent requested mediation to resolve the issue the modifications on the student’s IEP were not implemented.		No Agreement
M11-012: The parent requested a mediation to resolve Complaint C11015 regarding a disagreement with an evaluation.	Agreement	

M11-013: The parent requested mediation to resolve Complaint C11014 regarding a disagreement with an evaluation.	Agreement	
M11-014: The parent requested mediation to resolve the issue of the student's IEP was not implemented, the student was not provided an aide on 12/8/10.	Agreement	
M11-015: The parent requested mediation to resolve the issue of eligibility.	Agreement	
M11-016: The parent requested mediation to resolve the disagreement in Due Process Hearing #D11-011 in lieu of resolution process. The parent withdrew from mediation and the hearing filed and was withdrawn due to personal circumstances.		Withdrew Mediation Request
M11-017: The parent requested mediation to resolve the disagreement regarding the request for a one-on-one aide.	Agreement	
M11-018: The parent requested mediation to resolve two issues; 1) the student is not receiving the autism services as described on the IEP, and 2) the parent request for a one-on-aide. The parent withdrew from mediation.		Withdrew Mediation Request

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 11 were \$15,875.04. The chart below is a breakdown of mediation costs by case.

Case Number	Cost
M10-001	\$262.50
M10-002	\$1,244.75
M10-003	\$1,311.96
M10-004	\$1,042.62
M10-005	\$1,420.35
M10-006	\$1,189.18
M10-007	\$453.57
M10-008	\$933.48
M10-009	\$375.00
M10-010	\$866.50
M11-011	\$624.90
M11-012	\$761.33
M11-013	\$712.90
M11-014	\$1,777.90
M11-015	\$535.43
M11-016	\$375.00
M11-017	\$1,419.67
M11-018	\$750.00
Total Costs	\$15,875.04

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 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, 2010, through June 30, 2011. Fifteen (15) mediations were conducted during FFY 11. A total of 15 satisfaction surveys were returned to the OSP; ten (10) district and five (5) parent surveys were returned.

Questions	Parent Response Yes	Parent Response No	District Yes	District No
The mediation was attempted before a due process hearing was requested.	5		10	
The rights in the mediation process were explained prior to entering into mediation.	5		9	1
The mediator was knowledgeable about the mediation process.	5		10	
I felt comfortable discussing my concerns in the mediation process.	5		10	
I believe the mediator was fair to both sides.	5		9	1
I had an opportunity to fully express my concerns in the mediation.	5		6	4
Mediation helped resolve issues that most likely would not have been resolved without mediation.	3	2	4	4 (2/No Response)
Mediation was cost effective in this case.	3	2	9	1
I was satisfied with the mediation process.	5		8	1 (No Response)
I would recommend mediation to others.	5		10	
The mediation resulted in a written agreement.	5		9	1
If an agreement was reached, I received a copy of the agreement.	5		9	1

Parent Comments:

- No comments received.

District Comments:

- The [Mediator] is extremely knowledgeable and patient. He has an intuitive sense that allows him to get to the heart of the matter.
- I felt that the mediator gave too much credence to the parents' viewpoint. I felt intimidated by a statement he made concerning due process. We did reach an agreement, but I was not satisfied with the outcome.
- Although [Mediator] is very personable and professional mediator I would prefer to have a mediator who is more versed in school law for any future mediations.
- The mediator sat the structure of the meeting at the onset. We stayed specifically with the issues identified by the WVDE when the parent had filed a complaint. It was time efficient and addressed all the concerns of the parent and the system. Very professionally done.
- The time of the mediation was extended due to the fact that:
 - ✓ I had attempted to set some structure because there were significant issues that were not related to Policy 2419 that I knew the parent wanted to discuss, but were not special education issues. When I stated that we would be discussing the two areas identified by WVDE regarding the complaint that had been filed, the mediator corrected me and stated that anything was open for discussion.
 - ✓ The mediator went on to say, in opening the mediation, that she knew nothing about the child. She wanted to know something so she could be knowledgeable about the student. She asked that parent what her wishes, hopes, dreams were. While this is nice to know, I do not think it is germane to the issues that were identified, and opened the discussion to a broader range of topics that I did not feel was appropriate.
 - ✓ The time in the mediation lasted a long time as a result.
- The mediator was wonderful. However, I feel strongly that if the parents would have notified me directly the same outcome would have occurred.

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 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

The IDEA requires the use of resolution meetings. 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. A LEA representative who has decision-making authority for the LEA must participate in the resolution meeting. The resolution meeting must be used unless the parents and LEA agree in writing to waive the resolution meeting or agree to use mediation. When 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.

Due Process Complaints Requested by Month

Month	Number Requested
July	0
August	0
September	2
October	0
November	6
December	0
January	1
February	0
March	1
April	0
May	2
June	1
Total	13

IDEA Due Process Hearing Decisions Summary Report by District

Local Educational Agency	Number of Hearings Requested	Withdrawn/Resolution Agreement/Mediation	Decisions	Prevailing Party/Parent	Prevailing Party/District	Prevailing Party/Split
Berekeley	1	1				
Calhoun	1	1				
Cabell	2	1	1		1	1
Harrison	1		1		1	
Hancock	2	1	1		1	
Mingo	1	1				
Nicholas	1	1				
Roane	1	1				
West Virginia Schools for the Deaf and the Blind	3	2	1	1		
Total	13	9	4	1	3	1

IDEA Due Process Hearing Decisions

Case Number/ Prevailing Party	Issue(s)	Decision Summary
<p>#D11-007 Parent</p> <p>The decision is in appeal.</p>	<p>#1 Whether Student can lawfully be involuntary removed from the West Virginia Schools for the Deaf and the Blind (WVSDB) or whether such removal would deprive this student of her right to a free appropriate public education (FAPE).</p>	<p>The hearing officer (HO) ruled:</p> <ul style="list-style-type: none"> • Pursuant to her most recent valid IEP dated April 22, 2011, she requires a total communication environment in which to receive her educational services. A subsequent IEP renewal document dated October 21, 2010, also included that same requirement although that IEP has been ruled invalid on other grounds. • Such a total communication environment requires that all teachers and her school peers be conversant in verbal as well as nonverbal modes of communication. • That such an environment is available, at the WVSDB and is not capable of reproduction in the child's home school district. • Consequently, as long as Student's IEP shall support and document that she requires a total communication environment, she should be permitted to attend the WVSDB, and her mandated removal would violate her right to FAPE. • The need for assessments in the areas of academic achievement and Intelligence (IQ) Testing have been recognized, and such testing should be performed and the results made available the next time her IEP is reviewed. • The IEP document of October 21, 2010, is fatally flawed because: <ul style="list-style-type: none"> • The placement decision is completely inconsistent with the programmatic elements described in the document. • Present levels of performance, as well as goals and objectives, were not included for all identified areas where Student's exceptionality negatively impacts her ability to benefit from the IEP. • No regular education teacher participated in the writing of that document. • Consequently, the IEP document preceding it, dated April 22, 2010, should be deemed her last valid IEP, and an annual review of that IEP will be due in April 2011.

ORDER	<ol style="list-style-type: none"> 1. Pursuant to the identified needs of this Student for a total communication environment as documented in her IEPs of April 22, 2010 and October 21, 2010, Student should be permitted to remain in her present educational placement program located at the WVSDB (The Elementary School for the Deaf). 2. Student shall be evaluated in the areas of academic achievement and should also receive Intelligence (IQ) Testing as soon as practicable, so that the reports of these assessments are available to the IEP Team at the next annual IEP review. 3. An annual IEP review for this Student will be due no later than April 22, 2011. 	
Case Number/ Prevailing Party	Issue(s)	Decision Summary
#11-010 District/Parent	<p>#1 Does a local education agency, such as Respondent, owe a duty of FAPE to a student who is home-schooled?</p> <p>#2 Did Respondent deny the student's parents a meaningful opportunity to participate in the IEP process by predetermining the contents of the student's February 23, 2009 IEP?</p> <p>#3 Did Respondent deny FAPE to the student by developing an IEP on February 23, 2009 that provided a transition from homebound to a full schedule of regular classes on too rapid of a transition period thereby depriving the student of FAPE?</p>	<p>The HO ruled:</p> <p>#1 Home-schooled students are not private school students, therefore are not eligible to receive FAPE or tuition reimbursement under the unilateral placement principals of IDEA. The Respondent's duty to provide FAPE to this student ended on March 25, 2009 when the student's parents disenrolled him from Respondent and classified him as a home-schooled student. The relevant timeline for the following discussion of the issues raised by this complaint ends, therefore, on March 25, 2009.</p> <p>#2 The District had prepared a draft IEP for discussion was not predetermination where the parents offered suggestions and changes many of which were adopted in the IEP. It is clear that Respondent's representatives on the IEP team had an open mind with respect to the matters contained on the draft IEP. Indeed, numerous changes to the draft were made after the input of the parents was considered by the team. Accordingly, the evidence does not support a conclusion that Respondent predetermined the February 23, 2009 IEP. The evidence in the record reveals that the parents had a full and meaningful opportunity to participate in the IEP team process and that they did actively participate in the IEP process.</p> <p>#3 To the extent that the testimony of Respondent's witnesses may contest the testimony of Petitioner's witnesses with regard to this issue, the testimony of Petitioner's witnesses is more persuasive and credible than the testimony of Respondent's witnesses. The consistency between the testimony of Respondent's science teacher and Petitioner's witnesses is particularly persuasive. Accordingly, it is concluded the February 23, 2009 IEP deprived the student of a FAPE because the transition plan was too rapid and therefore rendered the IEP not reasonably calculated to confer educational benefit.</p>

	<p>#4 Did Respondent deny FAPE to the student by failing to provide adequate training to Respondent’s personnel?</p> <p>#5 Did Respondent unlawfully alter the student’s attendance records?</p>	<p>#4 Petitioner’s brief does allege that the Respondent did not use all of the materials supplied by the mother, however, there is no argument as to how this might constitute a violation of IDEA, the federal regulations or Policy 2419. There is also no allegation or contention by Petitioner that Respondent’s staff is not sufficiently qualified and licensed to perform their jobs. Because Petitioner has failed to provide any argument that might bring this issue within the purview of the identification, evaluation, placement or FAPE for a student with a disability, the issue is beyond the scope of any issue that may be heard at a due process hearing. No violation of IDEA or Policy 2419 has been established by Petitioner with regard to this issue.</p> <p>#5 Petitioner provides no argument in its post-hearing brief that would make this issue in any way relevant to special education. Although an IDEA hearing office has broad authority to remedy violations of IDEA and Policy 2419, a due process hearing can only involve matters concerning the identification, evaluation, placement or FAPE of a student with a disability. The issue with regard to attendance records appears to be untimely. Respondent points out in the post-hearing brief, A due process complaint must be filed within two years of the event complained of unless one of the statutory exceptions applies. The due process complaint in this matter was filed on February 22, 2011. The attendance records complained of involved the period prior to the February 23, 2009 IEP Team meeting. Anything before February 22, 2009, is time barred, unless an exception is alleged and proven. Petitioner made no argument in his post-hearing brief or otherwise that the alleged alteration of attendance records occurred within the relevant time period for purposes of the statute of limitations or that any of the three statutory exceptions applied. It is concluded that this argument is barred by the statute of limitations. No violation of IDEA or Policy 2419 has been established by Petitioner with regard to this issue.</p>
ORDER	<p>Based upon the foregoing, it is hereby ordered as follows:</p> <ol style="list-style-type: none"> 1. Unless the parties agree otherwise, Respondent shall reimburse the parents for five hours of counseling services or tutoring services specifically designed to help ease the student’s transition back to a full schedule of classes. Said counseling or tutoring services should be provided in the county that the Respondent is located and at the market rate for such services in the county where Respondent is located, unless the parties agree otherwise. Said counseling or tutoring services should be provided within the next one year after the entry of this decision; 2. All other relief requested by Petitioner herein is denied; and 3. Within 180 days of the date that this decision is issued, the Respondent shall submit a written report to the OSP documenting all steps the school has taken to comply with order. 	

Case Number/ Prevailing Party	Issue(s)	Decision Summary
#D11-008 District	<p>#1 Is the LEA denying the student FAPE by failing to implement an IEP which is more than one year old where the student is transferring to the public school from home school?</p> <p>#2 Is the LEA denying the student FAPE by unlawfully delaying the eligibility determination and subsequent development of an IEP for the student?</p>	<p>#1 The first issue presented is resolved rather simply by a failure of the Petitioner to offer any evidence in support of the claim. Petitioner alleges that at the time student was enrolled in LEA an IEP was in place for the student. LEA refutes this assertion and offers the most recent public school records of student. It is important to note that student was homeschooled during the school year immediately prior to the school year at issue in this matter. Consequently, there are no public school educational records for such year. Additionally, the most recent public school records, which are two years prior to the school year at issue in this matter, indicate that student was enrolled in private school and only received speech services through a service plan. It is clear from a review of these documents that they are not an IEP. The LEA has met its burden in showing that no current IEP exist when student enrolled at the beginning of the 2010/2011 school year. Therefore, as to the first issue presented, the LEA did not deny student FAPE by failing to implement an IEP which is more than one year old where the student is transferring to the public school from home school.</p> <p>#2 The second issue presented is really two separate timeline issues and is resolved rather easily once the proper legal timeline is established. The eligibility determination is to be completed within eighty days of parental consent. Assuming that the language of the August 30, 2010, letter from parent to LEA is a grant of consent, the eligibility must be determined by November 18, 2010. LEA met this requirement by determining eligibility on the fifty third day during an Eligibility Committee meeting on October 22, 2010. LEA has met its burden of proof by showing that it was well within the deadlines to determine eligibility and develop an IEP. Therefore, as to the second issue presented, the LEA did not deny student FAPE by unlawfully delaying the eligibility determination and subsequent development of an IEP for the student.</p>
ORDER	The Due Process proceeding is hereby complete and therefore the file may be closed.	

Case Number/ Prevailing Party	Issue(s)	Decision Summary
D11-013 District	<p>#1 Whether the County Schools failed to properly evaluate Student by failing to conduct learning disability evaluations in reading, writing and math, by failing to develop a functional behavior assessment and by ignoring recommendations made by evaluators?</p> <p>#2 Whether the County Schools improperly placed Student by socially promoting him even through he performs at a lower level and by failing to provide an appropriate level of services for Student's needs?</p> <p>#3 Whether the County Schools failed to provide FAPE to Student by the above failures, by failing to follow the IEP, by failing to provide an aide, by failing to add services recommended by evaluators to accommodate student, by failing to develop an IEP which accommodates Student, by failing to develop and follow a proper behavior intervention plan (BIP), by instituting truancy actions against Student and Parent for missing school as a result of Student's disability, and by failing to follow a prior resolution session agreement?</p>	<p>#1 The record reflects the County Schools conducted a psycho-educational evaluation of the Student, and then retested him at the request of the parent as Student had hurt his hand. There was no evidence introduced that the evaluations were inappropriate or inaccurate.</p> <p>#2 Social Promotion: No evidence was introduced that Student's promotions from grade to grade have been carried out without proper evaluation of the necessary factors. Student appears normal sized for seventeen years of age and physically mature, has been retained earlier in his academic career and would not properly be retained in middle school. There was sufficient evidence to demonstrate that Student is academically struggling but no evidence to show that it is because he was improperly promoted from grade to grade. Promotion of Student by County Schools under these circumstances is not a denial of FAPE.</p> <p>Failure to provide appropriate level of services: There was no evidence that County Schools failed to provide the appropriate level of services to the Student but there was extensive evidence that Student chose not to take advantage of those services. This is not a denial of FAPE by the County Schools.</p> <p>#3 Failing to follow the IEP: The IEP dated October 7, 2010, contained adult supervision to get the Student from class to class. An adult was present for Student between classes but apparently stood too close and prevented the Student from talking to his friends and Student disliked this provision in the IEP. Parent wanted it to remain but implemented differently. Notices were sent to Parent to discuss this issue at an IEP Team meeting on November 12, 2011 and the Parent did not attend. This does not constitute failure to follow an IEP or a denial of FAPE by County Schools. Student's medications were the subject of inconsistent testimony. A doctor's excuse in September 2011 provided the Student be two (2) hours late each morning for sixty (60) days for mediation adjustments. However, Student was placed At Pressley Ridge by the court and managed to attend early morning classes. Under the circumstances, without more credible evidence, there is no denial of FAPE.</p>

	<p>Failing to provide an aide: Parent filed a state complaint and the OSP found no violation as there was no evidence the Parent had requested an aide, the IEP reflected adult supervision to transition Student from class to class and the County provided the service. In this due process the Parent failed to demonstrate she had ever requested a full-time aide. The record does not reflect any necessity for a full-time aide. Failing to provide an aide when there is no demonstrated need by the Student and/or request by the Parent is not a denial of FAPE.</p> <p>Failing to add services recommended by evaluators to accommodate Student: Parent failed to offer any evidence to demonstrate services that were recommended to accommodate Student that weren't added. There was no evidence that County schools failed to provide FAPE concerning this allegation.</p> <p>Failing to develop an IEP which accommodates Student: Parent claimed many accommodations (through a complaint filed with OSP) were discussed at Student's May 2008 IEP Team meeting were not included in final IEP. A comparison of the draft provided by the parent was identical to the final IEP and the OSP found no violation. At the hearing, the Parent failed to offer any other evidence to demonstrate that the IEP Team failed to develop an IEP that accommodates Students.</p> <p>Failing to develop and follow a proper behavior intervention plan: The IEP Teams included the Parent, developed adequate BIBs and the County Schools followed the BIPs when student was at school. Thus there is no violation of FAPE.</p>
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		<p>By instituting truancy actions against Student and Parent for missing school as a result of the Student’s disability: West Virginia Board of Education Policy 4110 requires students to attend school. If a student has excessive unexcused absences or tardies from school, the policy requires the County School’s Attendance Director to report those unexcused absences and tardies to the relevant authorities, in this case the Circuit Court of this county. The unexcused absences include suspension for behavior that is not found to be a manifestation of the disability. After a complete review of the relevant exhibits, there are a few absences that could be either excused or unexcused and it appears they were uniformly given excused status and not counted toward the truancy total. The attendance director for County Schools was properly performing his job duties in reporting the unexcused absences to the Circuit Court and his actions were not a denial of FAPE.</p> <p>Failing to follow a prior resolution session agreement: Parent filed a state complaint last year before filling the due process complaint. The state complaint was resolved through a resolution meeting agreement which indicated the County Schools would bring in a mental health care professional to educate Student’s teacher and school staff and administration about bipolar disorder as it manifests itself in Student. There was no evidence introduced at the hearing to rescind that statement. The Student has been placed by the Courts at George Junior Republic.</p>
ORDER	Based on the foregoing, the Parent’s requested relief is denied with the exception of the functional behavior assessment (FBA) at RCB High and the mental health education presentation to the faculty and staff at RCB High if Student returns to RCB High.	<ol style="list-style-type: none"> 1. Within ten (10) school days of notice that Student will return to RCB High, County Schools will arrange for the presentation of the mental health education concerning bipolar disorder and Student to RCB faculty and staff. This education presentation must be completed within thirty (30) school days of Student’s return to RCB high; and 2. The county schools are directed to conduct an FBA upon Student’s return if the student attends at least twenty (20) full days of school. If the student returns to his chronic truancy pattern at RCB High, County Schools may delay the FBA completion until Student has attended thirty (30) full days of school after his return.

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 (10) business days after the hearing. The district is responsible for the cost of the district's attorney.

Due process hearing officer fees and transcript costs ranged from \$18,868.23 to \$36,608.53. The average length of a hearing is 2 days depending on the number of issues and witnesses. The total cost of due process hearings for FFY 2011 was \$65,539.19.

Case Number	WVDE Hearing Cost	LEA Cost	WVDE Court Reporter Cost	Total Hearing Cost
D11001	\$416.67	\$208.33		\$625.00
D11002	\$1,950.00	\$975.00		\$2,925.00
D11003	\$416.67	\$208.33		\$625.00
D11004	\$3,098.23	\$1,541.67		\$4,639.90
D11005	\$358.33	\$179.17		\$537.50
D11006	\$1,137.33	\$566.67		\$1,704.00
D11007	\$5,249.24	\$2,412.50		\$7,661.74
D11008	\$7,610.47	\$2,243.54	\$2,842.00	\$9,854.01
D11009	\$1,708.33	\$854.17		\$2,562.50
D11010	\$12,133.70	\$4,852.08	\$1,882.45	\$16,985.78
D11011	\$362.05	\$177.08		\$539.13
D11012	\$2,549.13	\$1,260.37		\$3,809.50
D11013	\$730.45 (A) \$15,958.43 (B)	\$266.67 (A) \$7,114.58 (B)	\$12,538.40	\$997.12 (A) \$23,073.01 (B)
Total Costs	\$53,679.03	\$22,860.16	\$17,262.85	\$65,539.19

D11013: The original hearing officer assigned had to removed himself due to a conflict of interest with a witness. The case was assigned a second hearing officer. Which extended the time and the cost of the hearing.

Issues in Written Complaints, Mediations and Due Process Hearings

Issues that prompted written complaints:

- IEP Implementation
- Provision of Services (comparable classrooms, grouping of students)
- Consideration of Factors in IEP Development (parent concerns, results of current evaluations)
- Qualified Personnel
- IEP Development

Issues that prompted mediation:

- Student's Home School Placement
- One on One Aide
- IEP Implementation
- Evaluation
- Eligibility

Issues that prompted due process hearings:

- Eligibility
- FAPE
- Parent Participation
- Home School
- Attendance

Notes



Students deserve it • The world demands it



Jorea M. Marple, Ed.D.
State Superintendent of Schools