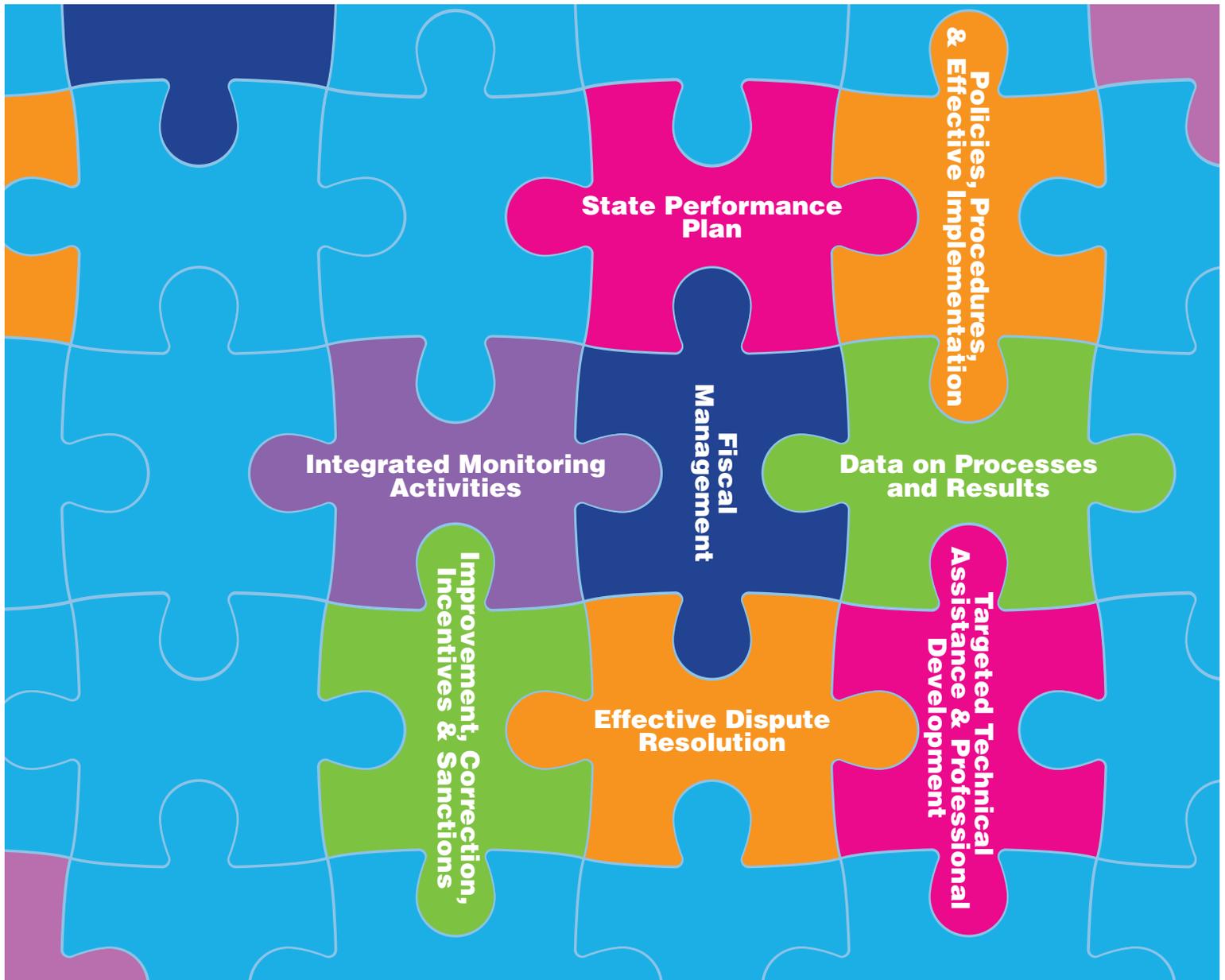


# Annual Report of Compliance Monitoring Activities

2015-2016

*West Virginia Department of Education  
Division of School Effectiveness  
Office of Federal Programs*





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# Annual Compliance Report 2015-2016

**West Virginia Department of Education  
Division of School Effectiveness  
Office of Federal Programs**



**December 2016**

**ONE VOICE**  
**ONE FOCUS**  
All Students Achieving

## **Introduction**

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

This annual compliance report includes data on monitoring activities, written complaints, due process hearings, including the resolution process and mediations that were requested during the 2015-2016 school year, and documents the Department's efforts to meet the requirements under IDEA and Policy 2419 pertaining to:

- administering the monitoring system, facilitated Individualized Education Programs (IIEP), written complaints, due process hearings, including the resolution process and mediation, and;
- identifying findings and making decisions based on the compliance on-site monitoring, annual desk audit (ADA), annual LEA determinations, written complaints and due process hearings available to the public.

## **Monitoring System**

The Office of Federal Programs (OFF) is responsible for ensuring West Virginia'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, the OFF 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 for self-review and improvement planning which is overseen by the Office of Special Education (OSE). Four types of formal monitoring processes are conducted by the West Virginia Department of Education.

- Compliance 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 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 an on-site visit in selected districts. The monitoring team during the 2015-16 school year consisted of Office of Federal Programs (OFF) staff and other educators as determined by the Lead Monitor. Districts selected for a Compliance On-Site Monitoring engaged in pre-monitoring activities, on-site monitoring activities and the corrective improvement process.

Fifty-seven (57) LEAs were 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 table below provides the four year cycle.

<b>Compliance On-Site Monitoring 2014-2015</b>	<b>Compliance On-Site Monitoring 2015-2016</b>	<b>Compliance On-Site Monitoring 2016-2017</b>	<b>Compliance On-Site 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>• Wetzell</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>• WVSDDB</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 from the Office of Special Education (OSE). Each ADA indicator determined “Not Met” requires completion of an improvement plan to be reviewed and accepted by the OSE. The ADA must be completed and submitted annually to the OSE to identify findings of noncompliance and areas requiring program improvement.

**Focused Monitoring**

Focused Monitoring is a monitoring process whereby an LEA may receive a visit based on an identified need or other data source (i.e., an LEA receiving a large number of complaints on a specific issue). Focused Monitoring will drill down within the LEA’s data to identify root causes and solutions to an on-going issue of compliance, performance or both. Each Focused Monitoring is individualized to the district and the situation.

**Dispute Resolution Process**

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

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

The United States Department of Education, Office of Special Education Programs (OSEP) issued a memorandum (OSEP 09-02 Memorandum of Correction) to states on October 17, 2008 clarifying expectations for correction of noncompliance by the LEA and the verification of that correction by the state. The principles in this memorandum are the standard by which the OFP reports noncompliance and correction in the SPP/APR and determines whether or not each LEA has made the appropriate corrections. The memorandum requires two levels, or prongs, of verification showing correction for all findings identified in writing to an LEA, excluding state complaints or due process hearing decisions.

### 2015-2016 Findings of Noncompliance

The data below provides the total number of findings of non-compliance for the 2015-2016 school year from the ADA and Compliance On-Site Monitoring activities. The findings of noncompliance are provided to each LEA for review and correction. If the state finds noncompliance in an LEA, the State must notify the LEA in writing of the noncompliance and the requirement that the noncompliance be corrected as soon as possible, but in no case more than one year from identification. The one year correction requirement begins the date the State provides written notification to the LEA. The written notification from the State will detail specific steps the LEA must take to correct the noncompliance. To assure the LEA is correctly implementing the specific regulatory requirement(s) that were found to be noncompliant, a random sample of current IEPs will be reviewed in approximately six months following the initial finding of noncompliance (Prong 2). Correction is completed on the date the State determines both prongs are in compliance.

### 2015-2016 Compliance On-Site Monitoring Findings

Compliance on-site monitoring occurs on a four-year cycle. Fourteen (14) districts received an on-site compliance monitoring visit during the 2015-2016 school year and are as follows: Barbour, Braxton, Calhoun, Clay, Hampshire, Lewis, Marshall, Mercer, Mingo, Monroe, Pendleton, Pocahontas, Roane and Tucker. The information below provides the number of districts monitored that were noncompliant for the specific area indicated.

#### Administrative Review

<b>Administrative Findings</b>	<b>Noncompliant Districts</b>
AF2: Time/Effort	3 districts
AF4: Instructional Groupings	1 districts
AF5: Certification/Caseloads	6 districts
AF7: Classroom Location & Size	1 districts
AF8: Other: <ul style="list-style-type: none"><li>• Continuum of Services</li></ul>	1 districts

## Student File Review

File Review Summary of Percentage of Noncompliance	Districts Below 75%
<b>General Supervision</b>	
Amendment	1 districts
<b>Notice of IEP/EC Meeting</b>	
<b>IEP Participation &amp; Development</b>	6 districts
<b>Assessment (Initial and Re-Evaluation)</b>	1 districts
<b>Discipline Procedures</b> (Students over 10 days)	1 districts
<b>Service Verification</b>	6 districts

The OSE revised the data collection process for Indicator #13 during the 2011-2012 school year. The OFP collects and reports the transition age IEPs reviewed during the districts on-site monitoring reviews. In addition, the OSE continues to mandate the annual self-assessment process for Indicator 13 for those districts who are not receiving an on-site monitoring review. The table below provides the compliance data for those districts who received the on-site monitoring review and does not include the self reporting during the ADA.

## Transition On-Site Monitoring File Review

County School District	File Sample Size	Compliance Percentage
District 1	10	100%
District 2	10	100%
District 3	10	100%
District 4	10	100%
District 5	10	100%
District 6	10	100%
District 7	10	100%
District 8	10	100%
District 9	10	100%
District 10	10	100%
District 11	10	100%
District 12	10	100%
District 13	10	100%
District 14	10	100%

## **Annual Desk Audit (ADA) Compliance Indicators**

Each West Virginia school district submits the ADA electronically each year on April 30 to the OSE. This assessment is a review of both compliance and results 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 OSE. Twenty-seven (27) districts received written notification of non-compliances identified in the ADA Report for the compliance SPP indicators. The data 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 10 days in a school year for children with IEPs; and (b) policies, procedures or practices that contribute to the significant discrepancy and do not comply with requirements relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards.*
- Twenty-six (26) districts were identified as noncompliant for Indicator 11: Child Find. *Percent of children who were evaluated within 80 days of receiving parental consent for initial evaluation.*
- Nine (9) districts were identified as noncompliant for Indicator 13: Secondary Transition. *Percent of youth with IEPs age 16 and above with an IEP that includes appropriate measurable post-secondary goals that are annually updated and based upon an age appropriate transition assessment, transition services, including courses of study, that will reasonably enable the student to meet those postsecondary goals, and annual IEP goals related to the student's transition services needs. There also must be evidence that the student was invited to the IEP Team meeting where transition services are to be discussed and evidence that, if appropriate, a representative of any participating agency was invited to the IEP Team meeting with the prior consent of the parent or student who has reached the age of majority.*

### **Local Educational Agency Determinations**

IDEA section 616(e) and Part B Regulations §300.600(a) and 300.604 require states to annually determine if the LEA:

- Meets the requirements and purposes of IDEA, Part B;
- Needs assistance in implementing the requirements of Part B;
- Needs intervention in implementing the requirements of Part B; or
- Needs substantial intervention in implementing the requirements of Part B.

In making each LEA's Annual Determination, the Office of Special Education used a Results/Compliance matrix. The four (4) factors considered were:

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

<b>Part B Results Matrix</b>					
<b>Part B Results Indicators</b>	<b>State Performance Plan (SPP) Target</b>	<b>SWD State Average</b>	<b>LEA Percentage</b>	<b>Score</b>	
Indicator 1: Graduation (14-15)	70.67%	69.23%			
Indicator 2: Drop Out (14-15)	2.45%	1.22%			
Indicator 3b: Participation Rate/Reading (14-15)	95.00%	97.57%			
Indicator 3b: Participation Rate/Math (14-15)	95.00%	97.51%			
Indicator 3c: Assessment Data/Reading Proficiency (14-15)	39.90%	15.60%			
Indicator 3c: Assessment Data/Math Proficiency (14-15)	42.30%	11.07%			
Indicator 4a: Suspension/Expulsion (more than 10 days)(14-15)	< 3.28%	< 3.28%			
Indicator 5a: Educational Environment General Education Full Time (6-21) (15-16)	62.50%	64.46%			
Indicator 5b: Educational Environment Separate Class (6-21) (15-16)	8.90%	8.07%			
Indicator 5c: Educational Environment (15-16)	1.40%	1.72%			
Indicator 6a: Preschool Environments (Regular Early Childhood Program) (15-16)	31.30%	30.34%			
Indicator 6b: Preschool Environments (Separate Special Education) (15-16)	10.50%	7.55%			
Indicator 7a: Preschool Outcomes (Social-Emotional Skills) (14-15)	A1. 78.00%	82.84%			
	A2. 67.00%	67.54%			
Indicator 7b: Preschool Outcomes (Knowledge & Skills) (14-15)	B1. 78.00%	83.14%			
	B2. 63.00%	63.28%			
Indicator 7c: Preschool Outcomes (Appropriate Behavior) (14-15)	C1. 79.00%	85.88%			
	C2. 78.00%	75.56%			
Indicator 8: Parent Involvement (14-15)	33.00%	39.68%			
Indicator 14c: Higher Education/Post-Secondary/Competitively Employed (14-15)	65.00%	67.56%			
<b>Results Points Available</b>	<b>Results Points Earned</b>		<b>Results Performance</b>		
<b>16</b>					
<b>Part B Compliance Matrix</b>					
<b>Part B Compliance Indicators 0% or 100%</b>	<b>State Performance Plan (SPP) Target</b>	<b>SWD State Average</b>	<b>LEA Percentage</b>	<b>Correction of Findings</b>	<b>Score</b>
Indicator 4b: Suspension by Race/Ethnicity (14-15)	0.00%	8.77%			
Indicator 9: Disproportionality/All Disabilities (15-16)	0.00%	0.00%			
Indicator 10: Disproportionality/Specific Disabilities (15-16)	0.00%	0.00%			
Indicator 11:Initial Evaluation Timelines (14-15)	100.00%	96.33%			
Indicator 12: Preschool Transition (14-15)	100.00%	100.00%			
Indicator 13: Secondary Transition (15-16)	100.00%	96.86%			
Correction of Noncompliance	100.00%				
Timely and Accurate Data	100.00%				
<b>Compliance Points Available</b>	<b>Compliance Points Earned</b>		<b>Compliance Performance</b>		
<b>16</b>					
<b>Results Driven Accountability Percentage and Determination</b>					
<b>32</b>					

There were 32 possible points on both Results and Compliance indicators. The Results/Compliance matrix reflects a percentage score that was used to determine the LEA's 2015 Annual Determination as follows:

- Meets Requirements: A LEA's Annual Determination is Meets Requirements if the matrix percentage is at least 80%.
- Needs Assistance: A LEA's Annual Determination is Needs Assistance if the matrix percentage is less than 80%.
- Needs Intervention: A LEA's Annual Determination is Needs Intervention if the total matrix percentage is less than 80%, and the LEA was determined to be in Needs Assistance for more than two consecutive years.
- Needs Substantial Intervention: The State did not make a determination of Needs Substantial Intervention for any LEA.

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

- Meets Requirements: 41 districts
- Need Assistance – One Year: 6 districts
- Needs Assistance – Two Years: 2 districts
- Needs Assistance – Three Years: 4 districts
- Needs Intervention: 4 districts

## **West Virginia Interagency Consolidated Monitoring of Out-of-State Residential Facilities**

The West Virginia Legislature created the Commission to Study Residential Placement of Children to establish a mechanism to achieve systemic reform by which all of the state's child-serving agencies involved in the residential placement of at-risk youth jointly and continually study and improve upon this system. One of the topics of study the legislation outlined when it formed the Commission, was to develop ways to certify out-of-state providers to ensure that children who must be placed out-of-state receive high quality services consistent with this state's standards. As part of this charge, the West Virginia Department of Health and Human Resources (WVDHHR) and the West Virginia Department of Education (WVDE) joined efforts to develop and implement a collaborative monitoring system to review out-of-state facilities providing treatment and educational services to West Virginia youth.

For students with disabilities, each state has a responsibility, under federal statute and regulations, to have a system of general supervision that monitors the implementation of IDEA. The WVDE began educational monitoring of out-of-state facilities in April 2002. In 2012, WVDE and WVDHHR developed the interagency consolidated monitoring process and published a manual which describes the procedures to thoroughly and consistently monitor out-of-state facilities servicing West Virginia students to ensure appropriate treatment and educational services are being provided in a safe environment. The team representing the WVDE and WVDHHR conducts on-site reviews of facilities out-of-state that are providing services for West Virginia students. A consolidated written report is issued to the facility administrator following the exit conference. Each report consists of recommendations for educational improvement, any child-specific and/or systemic findings of noncompliance under IDEA, WV state policies, WV state and federal codes, and WVDHHR rules, policies and procedures. Corrective action plans are imposed when appropriate. In addition, at the conclusion of the on-site monitoring and in the event suspension of placements or removal of members/students is ordered, the entire review team will return for a second on-site monitoring visit to determine the facility's capacity to correct the deficiencies.

The interagency team completed five (5) on-site reviews for the 2015-2016 school year. The facilities which received an on-site review were:

- Liberty Point Behavioral Health – VA
- Barry Robinson Center -VA
- Gulf Coast Treatment Center- FL
- New Hope Carolinas - SC
- UHS of Savannah dba Coastal Harbor Treatment Center – GA

All five facilities had educational findings of noncompliance and corrective action plans were required from each facility; however, none of the out-of-state facilities were found to have violations warranting suspension of placements or removal of students.

## Dispute Resolution System

When school districts and parents have disagreements regarding students with exceptionalities, the WVDE encourages the parties to make every effort to resolve their differences informally through conferences and/or IEP Team meetings. For those cases when it is not possible to informally resolve a disagreement, the WVDE administers a system for dispute resolution, which includes options for written state complaints, mediations and due process complaints regarding the identification, evaluation, placement and/or provision of a free appropriate public education (FAPE). A state complaint is a charge that a special education law or regulation is not being followed by a county school district or public agency. A complaint may also address a district's failure to implement a due process hearing decision. A due process hearing provides a forum in which to have an impartial hearing officer resolve the dispute between the parents and the county school district. 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. In addition, the state is in the second year of implementation of the Facilitated Individualized Education Program (FIEP) process whereby a trained, impartial facilitator assists the IEP Team in developing an IEP to meet the student's needs and resolve the issues in conflict.

### **Facilitated Individual Education Program (FIEP):**

Total number of FIEPs requested .....	11
Total number of FIEPs completed .....	7
Total number of FIEP requests withdrawn .....	1
Total number of FIEP requests wherein 2 <sup>nd</sup> party disagreed .....	2
*Total number of FIEP requests not assigned .....	1
*FIEP not assigned as case was pending a due process hearing	

### **State Complaints:**

Total number of state complaints requested .....	25
Total number of state complaints determined insufficient .....	3
Total number of state complaints where agreement was reached through early resolution .....	9
Total number of state complaints where agreement was reached through mediation.....	2
Total number of state complaints where issues were deferred pending due process.....	0
Total number of Letter of Findings issued .....	11

### **Mediations:**

Total number of mediations requested .....	11
Total number of written agreements .....	9
Total number of mediations without agreements or withdrawn .....	2

### **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) .....	12
Total number of cases resulting in a decision by a hearing officer .....	1

## **Facilitated Individualized Education Program (FIEP)**

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

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

The IEP Facilitator's role is to:

1. Keep the meeting focused on the student.
2. Ensure that all members at the table have an opportunity to participate.
3. Encourage active listening by all participants.
4. Keep the group from getting stuck on just one aspect of the IEP.

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

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

## **State Complaints**

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

An individual or organization may file a state complaint under the procedures described in Policy 2419, Chapter 11. The WVDE has made available a form for filing a state complaint which can be accessed 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 2.A.

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

Within sixty (60) days of receipt of a state complaint, the WVDE must complete 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 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.

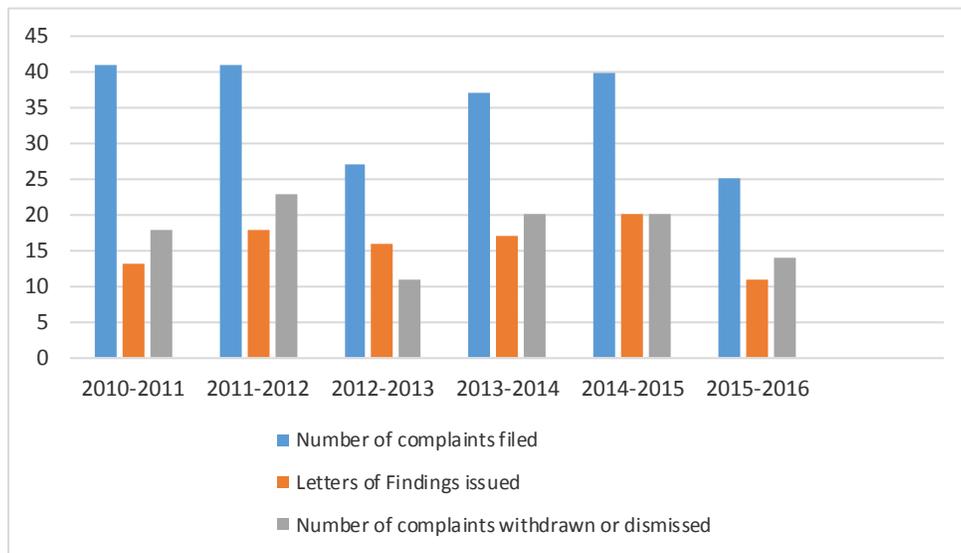
## **Early Resolution of State Complaints**

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 established procedures and timelines.

## Mediation and State Complaints

Another option for resolving issues in a 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.

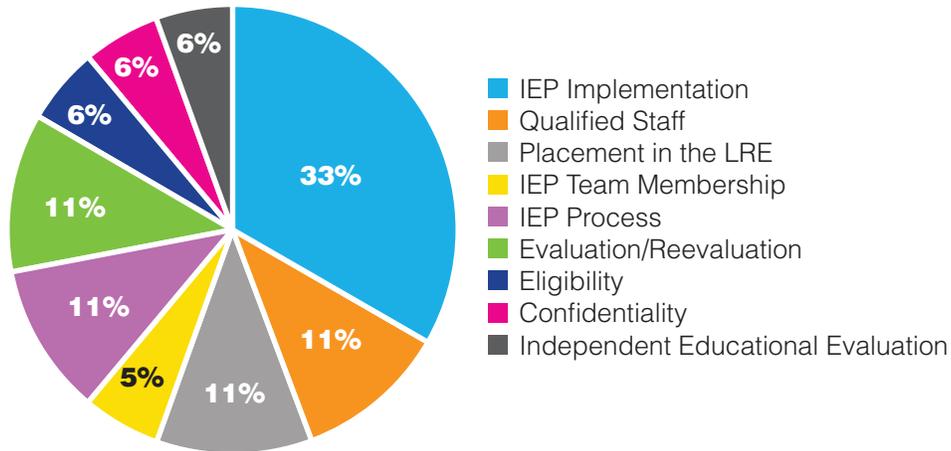
An analysis of data over a six (6) year period indicates a fairly consistent number of formal state complaints were submitted to the WVDE by parents and other non-parent complainants, with significant decreases in the 2012-13 school year and the 2015-16 school year, respectively. Additionally, the data reflects cases that were withdrawn based on resolutions, either through the early resolution process or through settlement agreements resulting from mediations requested by the parents or district, and agreed upon by both parties. Others were dismissed based on insufficient content.



### State Complaint Trend Data

Of the 25 state complaints submitted during the 2015-2016 school year, 11 were investigated and resulted in letters of findings (LOFs). A total of three (3) complaints were dismissed based on insufficient content and eleven (11) others were withdrawn based on early resolutions and/or settlement agreements resulting from mediation sessions. Specifically, nine (9) complaints were resolved through the early resolution process and two (2) others through mediation sessions.

## Prevalence of Violations in Letters of Findings Issued



## 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 career. Hopefully, when mediation is requested, parents and school personnel will have the opportunity to resolve their differences amicably, make decisions with the student's best interest in mind, and therefore, reduce the need for further dispute resolution options. Parents and LEAs are encouraged to use mediation, which is less formal than a due process hearing, to resolve disagreements.

## Mediations Requested

Local Education Agency	Number of Mediations Requested	Number of Mediations Requested in Lieu of Resolution Meetings	Mediations Withdrawn	Mediation Agreements	Mediations Held Without an Agreement
Berkeley	1	1		1	
Hampshire	1			1	
Harrison	1	1		1	
Jefferson	2			2	
Marion	1			1	
Mineral	1	1		1	
Putnam	1			1	
Taylor	1				1
Tucker	1				1
Wood	1			1	
<b>Totals</b>	<b>11</b>	<b>3</b>	<b>0</b>	<b>9</b>	<b>2</b>

## Mediation Issues Chart

<b>M16-001</b>	The parent did not want the student to be moved outside of his home school to receive his IEP services.	Agreement
<b>M16-002</b>	The parent requested the mediation to address the issue of the student needing a one-to-one aide after making attempts to resolve the issue with the county.	Agreement
<b><i>CMS System skipped M16-003</i></b>		
<b>M16-004</b>	The parent requested mediation to resolve issues alleged in a due process complaint. The issues were regarding the discipline of the student. The parent felt the student needed a plan, other than removal from school, to address behavioral issues.	Agreement & Withdrew Due Process Complaint
<b>M16-005</b>	The district requested mediation to resolve the issues in a due process complaint. The issues were related to the denial of related services and supplementary aids and services.	Agreement & Withdrew Due Process Complaint
<b>M16-006</b>	The parent requested mediation to resolve issues with eligibility determination, services and placement (LRE).	Agreement
<b>M16-007</b>	The district requested mediation regarding the issues of the student's eligibility to continue instruction beyond graduation with a standard diploma and the lack of transition services.	No Agreement
<b>M16-008</b>	The parent requested mediation regarding the student's eligibility as exceptional gifted.	Agreement
<b>M16-009</b>	The parent requested mediation regarding eligibility, denial of FAPE (i.e., lack of appropriate services), failure to implement the 504 plan and discipline.	Agreement
<b>M16-010</b>	The parent requested mediation to resolve the student's denial of FAPE, lack of appropriate modifications to the curriculum, lack of case management and the absence of measurable IEP goals.	Agreement
<b>M16-011</b>	The parent requested mediation to resolve the student's lack of a one-to-one aide also addressed in a State Complaint.	Agreement
<b>M16-012</b>	The parent requested mediation to resolve discipline issues; specifically, the failure to provide positive behavior supports.	Agreement

**Note: Mediations requested - 11**

## Mediation Costs

The West Virginia Department of Education assumes the total cost of the mediator assigned to the requested mediation. Mediators enter into an annual Service Agreement to conduct mediations pursuant to the procedures specified in the Individuals with Disabilities Education Improvement Act (IDEA) and Policy 2419: *Regulations for the Education of Students with Exceptionalities*. The mediators are compensated at the rate of \$100.00 per hour for preparation and conducting the mediation and half-rate for travel time. Total mediation costs for FFY 16 were \$ 21,732.12. The chart below is a breakdown of mediation costs by case.

<b>Case Number</b>	<b>Cost</b>
M16001	\$1590.54
M16002	\$1920.52
M16003	<i>Number Skipped</i>
M16004	\$2101.41
M16005	\$1183.09
M16006	\$2081.32
M16007	\$3049.00
M16008	\$1441.00
M16009	\$2101.90
M16010	\$2714.28
M16011	\$1316.63
M16012	\$2232.43
<b>Total Costs</b>	<b>\$21,732.12</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 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, 2015, through June 30, 2016. Eleven (11) mediations were conducted resulting in nine (9) mediation agreements during FFY 2015-16. A total of six (6) surveys were returned to the OFP. The OFP received three (3) surveys returned from the parents and three (3) surveys from the districts who participated in mediation.

## Mediation Survey Summary

Statements	Responses
1. The mediation was attempted before a due process hearing was requested.	<ul style="list-style-type: none"> <li>• 6 yes</li> </ul>
2. My rights in the mediation process were explained prior to entering into mediation	<ul style="list-style-type: none"> <li>• 6 yes</li> </ul>
3. The mediator was knowledgeable about the mediation process.	<ul style="list-style-type: none"> <li>• 6 yes</li> </ul>
4. I felt comfortable discussing my concerns in the mediation session.	<ul style="list-style-type: none"> <li>• 6 yes</li> </ul>
5. I believe the mediator was fair to both sides.	<ul style="list-style-type: none"> <li>• 6 yes</li> </ul>
6. I had an opportunity to fully express my concerns in the mediation.	<ul style="list-style-type: none"> <li>• 6 yes</li> </ul>
7. Mediation helped me understand the concerns of the district. *This question only appears on the parent survey.	<ul style="list-style-type: none"> <li>• 2 yes</li> <li>• 1 no</li> </ul>
7. Mediation was cost effective in this case. *This question only appears on the district survey	<ul style="list-style-type: none"> <li>• 3 yes</li> </ul>
8. Mediation helped resolve issues that most likely would not have been resolved without mediation.	<ul style="list-style-type: none"> <li>• 3 yes</li> <li>• 3 no</li> </ul>
9. I was satisfied with the mediation process.	<ul style="list-style-type: none"> <li>• 5 yes</li> <li>• 1 no</li> </ul>
10. I would recommend mediation to others.	<ul style="list-style-type: none"> <li>• 6 yes</li> </ul>
11. The mediation resulted in a written agreement.	<ul style="list-style-type: none"> <li>• 5 yes</li> <li>• 1 no</li> </ul>
12. If an agreement was reached, I received a copy of the agreement.	<ul style="list-style-type: none"> <li>• 5 yes</li> <li>• 1 na</li> </ul>
General comments:	<ul style="list-style-type: none"> <li>• I was somewhat surprised that the service I agreed to pay for over summer – parent could have obtained with no cost if Medicaid could have been billed.</li> <li>• District did not have any major decision makers at the table. District is not meeting halfway and is not aware of the process.</li> </ul>

## Due Process Hearing

Special education laws and regulations ensure that all students with exceptionalities are offered a free appropriate public education. The West Virginia Department of Education (WVDE), Office of Federal Programs (OFF), 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 hearing.

### Due Process Complaint Resolution Meeting

In the Individuals with Disabilities Education Act (IDEA) of 2004, 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 must hold a resolution meeting within 15 days of receiving notice of the parents' due process complaint to discuss the issues leading to their due process hearing request, 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, an 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 issues relating to the due process hearing request during a resolution meeting, they must execute a legally binding agreement. If the LEA has not resolved the due process complaint 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 Due Process Hearing Decisions Summary Report by District

<b>Local Educational Agency</b>	<b>Number of Hearings Requested</b>	<b>Withdrawn/Resolution Agreement/Mediation/Due Process Decision</b>
Berkeley	2	Withdrawn
Harrison	1	1 Mediation Agreement
Randolph	1	Withdrawn
Jefferson	2	Resolution Agreement & Due Process Decision
Kanawha	3	1 Withdrawn, 2 Resolution Agreements
Mason	1	Resolution Agreement
Mingo	1	Resolution Agreement
Hampshire	1	Resolution Agreement
Mineral	1	Withdrawn

Of the Due Process Complaints filed with the OFF during FY 2016, the parties were able to resolve seven (7) through the resolution process or mediation and five (5) due process complaints were withdrawn. Only one (1) complaint was fully adjudicated.

## IDEA Due Process Complaint Issues

<b>Case Number</b>	<b>Alleged Violation</b>	<b>Action</b>
D16-001	The parent was in disagreement with the location of the student's special education services.  (Pro Se)	Withdrawn  <i>Mediation Agreement M16-001</i>
D16-002	The parent is requesting the student be provided a one-on-one aide and change the student classroom assignment.  (Nancy Dalby)	Resolution Session Agreement
D16-003	The district failed to implement the student's IEP, including the Behavior Intervention Plan (BIP) which resulted in expulsion. The disciplinary action was taken without a manifestation determination.  (The Lane Law Firm)	Withdrawn  Settlement Agreement outside of RS or mediation.
D16-004	The district did not provide FAPE by failing to place student in a residential setting in violation of the IEP and the resolution session. The district failed to provide an IEE upon request by the parent.  (The Lane Law Firm)	Withdrawn
D16-005	The parent filed a state complaint, a mediation request and a due process complaint regarding the school personnel's disciplinary response to the student's behavior.  (Pro Se)	Withdrawn  <i>Mediation Agreement M16-004</i>
D16-006	The parent filed the complaint in respect to Child Find and denial of FAPE.  (Legal Aid of West Virginia)	Resolution Session Agreement
D16-007	The parent was in disagreement with the student's IEP, specifically the removal of the one-on-one aide, supports and the placement in a segregated classroom.  (Mountain State Justice, Inc.)	<i>Mediation Agreement M16-005</i>
D16-008 (Expedited)	The district requested an expedited due process hearing to consider a change in placement to maintain the safety of the student and others.  (Bowles Rice Attorneys At Law)	Withdrawn  <i>Resolution reached outside of the formal resolution process.</i>

D16-009	The parent alleged the student was discriminated against at the school in which the student was placed for special education services. The parent requested the student to be returned to the home school.  (Pro Se)	Resolution Session Agreement
D16-010	The parent is in disagreement with the student's IEP; specifically, the lack of a one-to-one aide.  (Pro Se)	Resolution Session Agreement
D16-011	The parent alleged the district failed to evaluate and identify the student for special education services, and therefore, denied the student the services the student needed.  (Legal Aid of West Virginia)	Resolution Session Agreement
D16-012	The parent is in disagreement with the evaluation and identification of the student who had both academic and behavioral issues. In addition, the district did not develop an IEP to include both academic and behavioral services.  (Patrick Lane, Esq.)	Withdrawn <i>Resolution reached outside of the formal resolution process.</i>
D16-013	The school district denied the student the right to be evaluated for special education services until the parent brought an independent educational evaluation.  (Nancy Dalby)	Due Process Hearing Decision (parent prevailed)

### **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 writing the decision 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, or the complaint is settled or dismissed, the hearing officer is only paid for time accrued, which is considerably less than when a hearing occurs. In addition, the WVDE is responsible for 100% of the cost of a court reporter for the due process hearing. The 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.

The total cost of due process complaints for FY 2016 was \$33,962.03. The chart below represents the specific data and summary of the total costs for each due process complaint filed.

## IDEA Due Process Costs

Case Number	WVDE Hearing Cost	LEA Cost	WVDE Court Reporter Cost	Total Hearing Cost
D16001	\$500.00	\$250.00		\$750.00
D16002	\$583.33	\$291.67		\$875.00
D16003	\$1196.67	\$595.83		\$1792.50
D16004	\$622.02	\$279.17		\$901.19
D16005	\$916.67	\$458.33		\$1375.00
D16006	\$1021.67	\$508.33		\$1530.00
D16007	\$916.67	\$458.33		\$1,375.00
D16008	\$1121.67	\$558.33		\$1680.00
D16009	\$398.67	\$168.75		\$567.42
D16010	\$905.00	\$450.00		\$1355.00
D16011	\$125.51	\$52.08		\$177.59
D16012	\$1280.00	\$637.50		\$1917.50
D16013	\$9,948.99	\$4544.79	\$5172.05	\$19,665.83
Total Costs	\$19,536.87	\$9253.11	\$5172.05	\$33,962.03

## Summary

**Comprehensive On-Site Monitoring**

- **Findings of Non-Compliance**

**Annual Desk Audit**

- **LEA Determinations**

**Focused Monitoring**

**Dispute Resolution Process**

- **FIEP**
- **State Complaints**
- **Mediation**
- **Due Process Hearing Requests**

**Out of State Monitoring**

**Notes:**





**ONE VOICE**  
**ONE FOCUS**  
All Students Achieving



Michael J. Martirano, Ed.D.  
State Superintendent of Schools