

Mediation and Due Process Hearing Report 09

Office of Assessment , Accountability and Research

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2009-2010**

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Introduction

The West Virginia Department of Education, Office of Assessment, Accountability and Research (OAAR) has the primary responsibility for ensuring that educational services are provided to all eligible students with exceptionalities. The Individuals with Disabilities Education Improvement Act (IDEA 2004) and State special education laws and regulations ensure that all students with exceptionalities have available a free appropriate public education (FAPE).

School districts and parents may have disagreements regarding the education of students with exceptionalities and they need to make every effort to resolve their differences. When a concern arises about a student's education the issues may be resolved through informal conferences or individualized education program (IEP) team meetings. When these steps do not resolve the issue, the OAAR is required to administer a system for mediation and due process hearings regarding the identification, evaluation, placement and/or provision of FAPE for students with exceptionalities.

This annual report includes data on mediations and due process complaints which were requested during FY 09 and documents the Department's efforts to meet the requirements under IDEA 04 and Policy 2419: Regulations for the Education of Students with Exceptionalities and The West Virginia Procedures Manual for the Education of students with Exceptionalities pertaining to:

- administering mediation and due process hearing systems, and
- making findings and decisions from due process hearings and mediations available to the public.

Mediation

Total number of mediations requested	17
Total number of written agreements	10
Total number of mediations without written agreements	6
Total number of mediations withdrawn	1

Due Process Hearings

Total number of due process hearings requested	20
Total number of due process hearings dismissed (closed due to a settlement agreement through resolutions session or mediation, withdrawal or other resolution without a hearing)	17
Total number of due process hearing decisions	3

Mediation

Mediation is an informal process for assisting parents and school districts 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 school districts 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

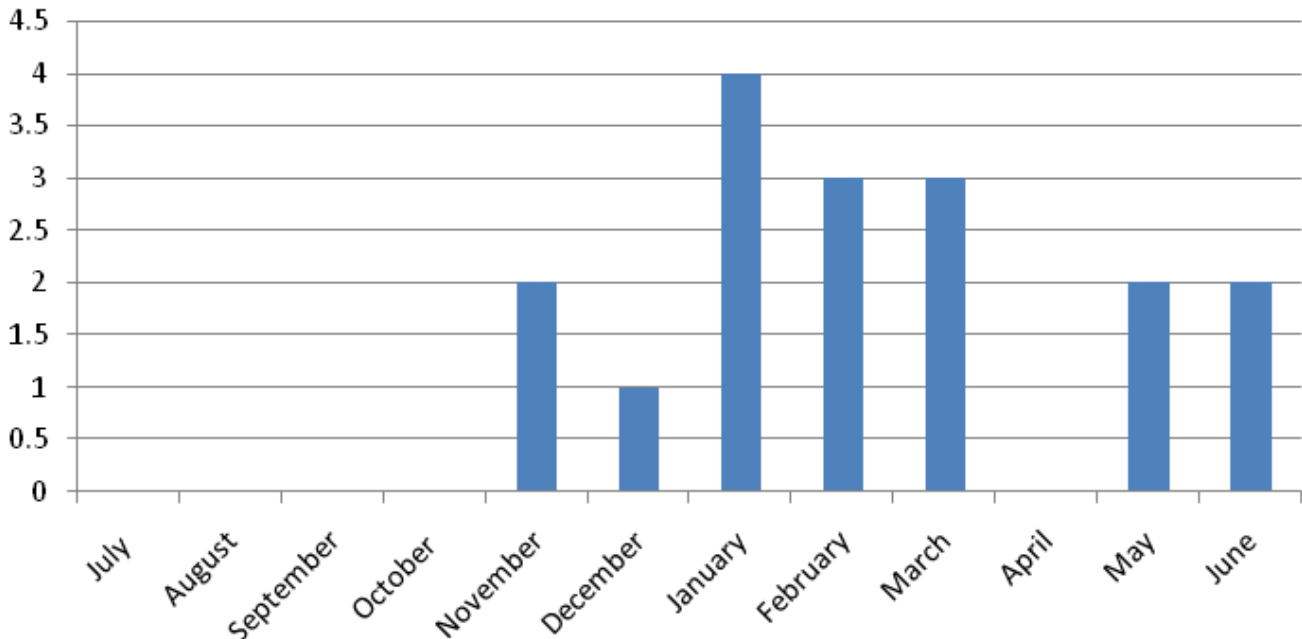
FY 2009

Local Educational Agency	Number of Mediations Requested	Number of Mediations Requested in Lieu of Resolution Meetings	Mediation Agreement	Mediation without Agreement
Brooke	1	1		1
Doddridge	1		1	
Gilmer	1		1	
Hampshire	2		1	1
Hancock	2		1	1
Jefferson	2		2	
Marshall	3	2	1	2
Monongalia	2			2
Pocahontas	1		1	
Raleigh	1	1	1	
Wood	1			1
Totals	17	4	9	8

- One mediation requested settled external of the mediation process and was withdrawn.

Month	Mediations Requested
July	0
August	0
September	0
October	0
November	2
December	1
January	4
February	3
March	3
April	0
May	2
June	2
Total	17

Mediation Requested by Month



Mediation Issues Chart

Mediation Issues	Mediation with Agreement	Mediation without Agreement
M09-001: The parents requested mediation to include one on one reading instruction with a reading specialist on the student's individual educational program (IEP).	Agreement	
M09-002: The parents and district agreed to waive the resolution meeting and proceed to mediation to resolve the issues in a due process hearing. The parents requested reimbursement for the costs of a private school placement to provide the student free appropriate public education (FAPE).		No Agreement
M09-003: The parents and district agreed to waive the resolution meeting and proceed to mediation to resolve issue in a due process hearing. The parents stated their child was denied a FAPE because the schools did not identify and place a student in an autism program, failed to provide a one-on-one paraprofessional, and failed to provide female staff due to religious reasons.	Agreement	
M09-004: The district requested mediation to resolve an IEP/course placement issue regarding Pre-Algebra.	Agreement	
M09-005: The district requested mediation to resolve whether the IEP was developed to meet the student's needs specific to positive behavioral supports and interventions, a transition plan and to prove the parents the evaluation and observation reports utilized in the student's manifestation determination meetings.	Agreement	
M09-006: The district requested mediation to resolve whether the IEP teams determination of an appropriate alternative setting for serious safety concerns for a student with autism.	Agreement	
M09-007: The parents requested mediation to resolve a compensatory education requirement resulting from a formal written complaint corrective action plan.		No Agreement
M09-008: The parents requested a waiver for the physical education towards credits for graduation.	Agreement	

Mediation Issues Chart

M09-009: The parents and district agreed to waive the resolution meeting and proceed to mediation to resolve the issues in a due process hearing. The parents requested reimbursement for the costs of a private school placement to provide the student FAPE.		No Agreement
M09-010: The parents and district agreed to waive the resolution meeting and proceed to mediation to resolve the issues in a due process hearing. The parents requested reimbursement for the costs of private speech therapy from September 2007-June 2009.		No Agreement
M09-011: The parent requested mediation to resolve the issue of the student's receiving services in the home due to a safety issue.		No Agreement
M09-012: The district requested mediation to resolve an issue to provide FAPE.	Agreement	
M09-013: The parent requested mediation to resolve the amount of speech services, placement in the least restrictive environment (LRE) and Extended School Year (ESY).	Agreement	
M09-014: The parent requested mediation to continue one-on-one reading intervention, appropriate student teacher ratio in the resource environment, collaborative math, pre-assigned mentor, alternative method of intercom system volume, increase ESY, annual Woodcock-Johnson evaluation and an extra set of science and history texts including CD to enhance studies during the school year.	Agreement	
M09-015: The parent requested mediation because the IEP does not meet the student's needs.		No Agreement
M09-016: The district requested mediation to resolve issues as to a specific psychologist for reevaluation, eligibility and location of services.	Agreement	
M09-017: The district requested mediation regarding a mediation agreed in principle to obtain parent signature and unsuccessful attempts in establishing a mutually agreeable date to hold an IEP meeting for the student as agree through the mediation session in March 09.		Mediation withdrawn

Mediation Costs

The West Virginia Department of Education, Office of Assessment, Accountability and Research (OAAR) assume 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 Improvement Act (IDEA 04) and Policy 2419: Regulations for the Education of Exceptional Students and The West Virginia Procedures Manual 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 FY 09 were \$13, 848.08. The chart below is a breakdown of mediation costs by case.

Case Number	Status	Cost
M09-001	Agreement	\$756.88
M09-002	No Agreement	\$352.50
M09-003	Agreement	\$946.83
M09-004	Agreement	\$1,505.89
M09-005	Agreement	\$607.89
M09-006	Agreement	\$1,839.94
M09-007	No Agreement	\$427.45
M09-008	Agreement	\$1,066.89
M09-009	No Agreement	\$756.88
M09-010	No Agreement	\$689.45
M09-011	No Agreement	\$724.84
M09-012	Agreement	\$835.50
M09-013	Agreement	\$664.00
M09-014	Agreement	\$874.00
M09-015	No Agreement	\$481.01
M09-016	Agreement	\$1,318.13
M09-017	Withdrawn	\$0.00
Total Costs		\$13,848.08

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 perceptions of those individuals participating in the mediation process and provide valuable data in 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 on page five (5) provides a summary of the survey responses received from parents and school districts from July 1, 2008 through June 30, 2009. Seventeen mediations were conducted during FY 09. A total of ten (10) satisfaction surveys were returned to the OAAR; six (6) district surveys and four (4) parent surveys.

Mediation Survey Summary

Questions	Parent Response Yes	Parent Response No	School District Response Yes	School District Response No
The mediation was attempted before a due process hearing was requested.	2 (one response not sure)	1	6	
The rights in the mediation process were explained prior to entering into mediation.	4		6	
The mediator was knowledgeable about the mediation process.	4		6	
I felt comfortable discussing my concerns in the mediation.	2	2	6	
I believe the mediator was fair to both sides.	4		5	1

Mediation Survey Summary

I had an opportunity to fully express my concerns in the mediation.	2	2	4	2
Mediation helped me understand the other parties concerns.		4	4 (one response not sure)	1
Mediation helped resolve issues that most likely would not have been resolved without mediation.	3	1	5	1
Mediation was cost effective in this case.			6	
I was satisfied with the mediation process.	2	2	6	
I would recommend mediation to others.	4		6	
The mediation resulted in a written agreement.	4		6	
If an agreement was reached, I received a copy of the agreement.	4		6	

Parent comments:

- Mediation was unnecessarily delayed because [Director] did not allow me to file the request directly with the state. The [County School District] does not follow the state's codes for IEP that is the bottom line to this case. I was not given the procedural safeguards until I requested them and my child was placed in classes with no parental input.
- Everything agreed upon in the mediation was agreed upon in previous IEP meetings. Nothing was followed through then and I don't have high hopes for this either.
- I am very satisfied with the process and the mediator.

District Comments:

- I felt that [Mediator] was extremely knowledgeable and professional. I would definitely recommend mediation to others.
- The mediation process itself is an excellent opportunity to work out and resolve differences. In our case it wasn't the mediation, but the issues we were trying to work on with the parents. We did not work on our issues but worked on what the parents felt was the issue. The county school system requested the mediation – but we ended up mediating the parent's issues not ours.
- I felt that this particular mediator did not have an adequate understanding of public school policy.

IDEA Due Process Hearings

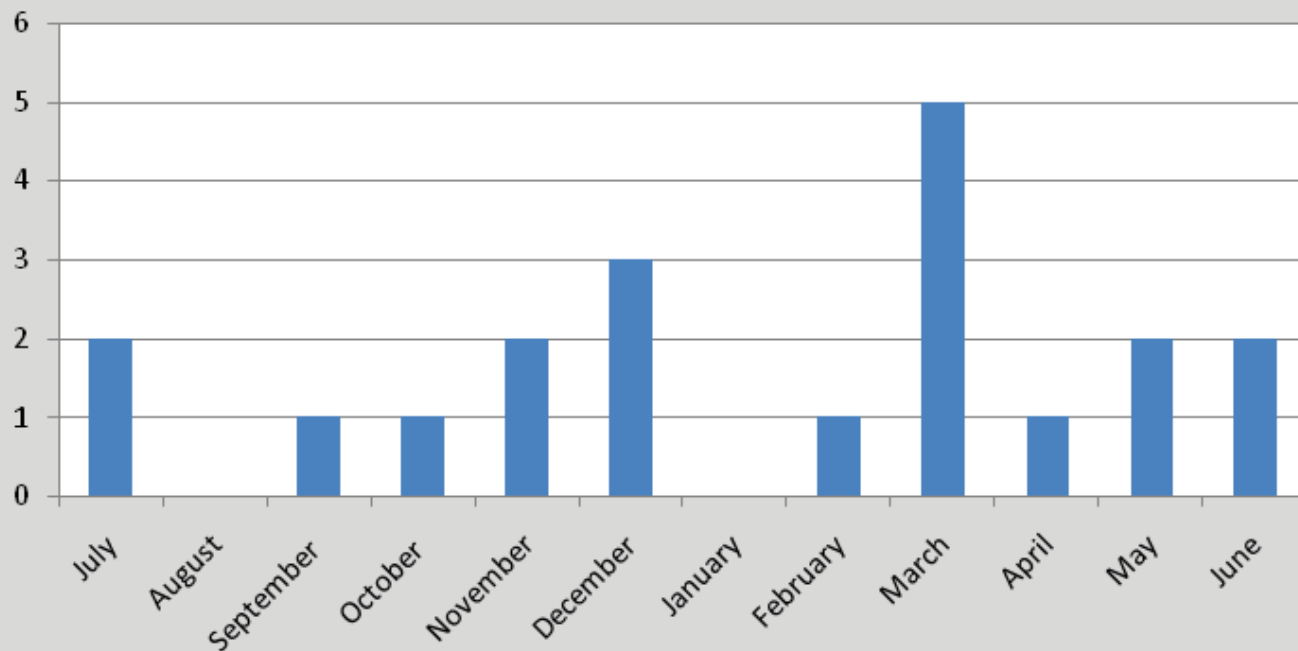
A due process hearing is a formal process which provides a forum to have an impartial hearing officer settle disagreements. With the reauthorization of IDEA 04 congress recognized the need to provide additional opportunities for early dispute resolution. The resolution process was added as another way parents and schools districts can work out their differences whenever a parent has filed a due process complaint. The hearing officer issues a written decision from the expiration of the 30-calendar day resolution period, with certain exceptions for adjustments made to the 30-calendar day resolution period. If either the parents or the school district disagree the hearing officer's decision, either party may appeal through civil action within 120 calendar days of the date of the decision.

FY 09

IDEA Hearing Complaints filed by Month

Month	Hearings Filed
July	2
August	0
September	1
October	1
November	2
December	3
January	0
February	1
March	5
April	1
May	2
June	2
Total	20

IDEA Due Process Hearings filed by the Month



FY 09

IDEA Due Process Hearing Decisions Summary Report by District

Local Educational Agency	Number of Hearing Complaints	Withdrawn	Decisions	Prevailing Party/Parent	Prevailing Party/District
Brooke	1	1			
Calhoun	1	1			
Hampshire	1	1			
Harrison	1	1			
Jefferson	1	1			
Kanawha	4	4			
Lincoln	1	1			
Marshall	2	1	1	1	
Ohio	1	1			
Putnam	1	1			
Raleigh	2	2			
Ritchie	1		1	1	
Roane	2	2			
Wood	1		1		1
Total	20	17	3	2	1

IDEA Due Process Hearing Decisions

FY 2009

Case Number/Prevailing Party	Issue(s)	Decision Summary
D09-006/Parents	<p>Whether the local educational agency (LEA) denied the student a free appropriate public education (FAPE) by failing to develop an individualized education program (IEP) which included methodology needed to provide the student with educational benefit?</p> <p>Whether the Petitioner is entitled to reimbursement for prior and continued private placement?</p>	<p>The hearing officer ordered:</p> <p>The LEA shall reimburse Petitioner for tuition and expenses associated with the student's attendance at the private school. This reimbursement shall cover the period of time from January 2008 until the start of the 2009-2010 school years.</p> <p>Within forty five (45) calendar days of this Order, the IEP team shall meet to develop student's IEP for the 2009-2010 school year. During this meeting the team shall determine if the LEA is able to provide an individualized program which provides the student educational benefit using scientifically based teaching techniques.</p> <p>Note: The LEA has appeal this decision in federal court.</p>
D09-014/Parents	<p>Whether the schools violated the Individuals with Disabilities Education Act (IDEA) and West Virginia Department of Education Policy 2419 by predetermining the result when it sent a notice of recommendation of expulsion and a prior written notice (PWN) of proposing expulsion prior to any manifestation determination meeting.</p>	<p>The hearing officer ruled:</p> <p>The school district violated IDEA and Policy 2419 by predetermining the result of the manifestation determination and the school district violated IDEA and Policy 2419 by clearly reaching the wrong conclusion at the manifestation determination review meeting. Accordingly, the expulsion of the student was invalid.</p>

IDEA Due Process Hearing Decisions

FY 2009

Case Number/Prevailing Party	Issue(s)	Decision Summary
D09-014/Parents	<p>Whether the manifestation determination on February 13, 2009 was correct and whether PWN should have been provided to the parents following the meeting rather than before.</p> <p>Whether the schools are currently providing a FAPE to the student, and more specifically, whether the schools have violated Policy 2419 in not convening an IEP meeting to update the student's IEP for his new placement at the alternative school, and whether the student is being taught by a highly qualified special education teacher.</p> <p>Whether the schools conducted a proper annual IEP meeting on January 31, 2008 and whether the IEP produced on that date was appropriate.</p>	<p>The student's expulsion and subsequent placement at the alternative school were invalid. The IEP team will need to meet and develop a functional behavioral assessment and implement a behavioral intervention plan for the student and, unless the parents and school district agree to a change of placement as a result thereof, the student must be returned to the placement from which he was removed. The student is entitled to compensatory education for the period of his inappropriate disciplinary removal. The student shall be awarded services comparable to what he would have been receiving from his current March 24, 2008 IEP for the period from his unlawful removal from that placement on February 9, 2009, less the education received at the alternative school, until a new IEP and behavioral intervention plan is developed by the IEP team pursuant to the Order herein.</p> <p>The January 31, 2008 IEP is not reasonably calculated to lead to meaningful educational benefit. Accordingly, said IEP does not provide FAPE to the student.</p>

IDEA Due Process Hearing Decisions

FY 2009

Case Number/Prevailing Party	Issue(s)	Decision Summary
D09-014/Parents		<p>The district is required to reverse the manifestation determination of February 13, 2009; conduct a functional behavioral assessment and develop an appropriate behavioral intervention plan for the student; and provide the compensatory education. In addition, the LEA is to submit to the WVDE within one hundred and eighty days of the date of the Decision a written report documenting all steps the school has taken to comply with this order.</p>
D09-016/Local Educational Agency	<p>Whether the student was denied a FAPE by the LEA?</p> <p>Whether the student's grade of "F" can or should be changed because the LEA was found in violation of West Virginia State Policy 2419 by failing to implement all IEP-specific modifications in the student's Spanish 2 class?</p>	<p>The hearing office ruled there was no evidence introduced upon which to base a decision on whether the LEA failed to provide a FAPE to the student and the student and parents of the student failed to meet their burden of persuasion. Therefore, the student was provided a FAPE by the LEA. The request to alter the student's official transcript and grade records to reflect a grade increase or a reference to the Letter of Findings of the West Virginia Department of Education, Office of Assessment, Accountability and Research is denied. This Due Process Complaint is dismissed with prejudice.</p>

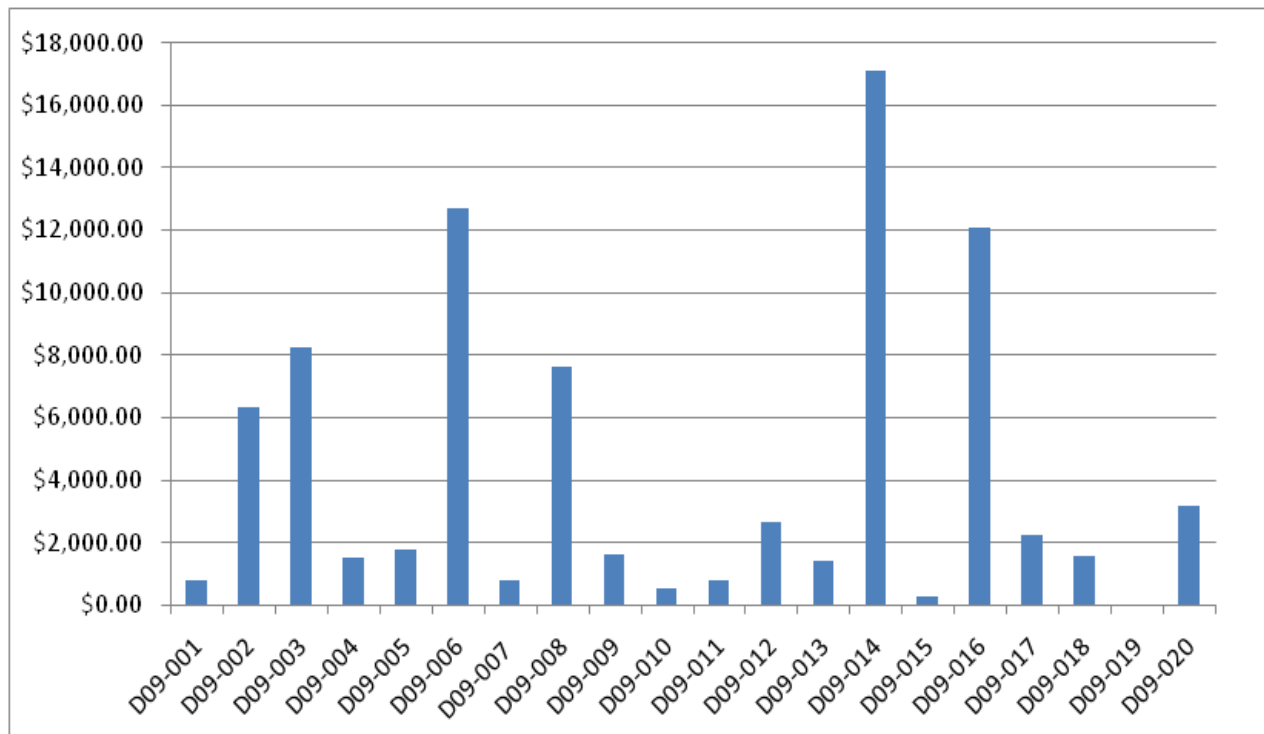
IDEA Due Process Hearing Costs

FY 09

The West Virginia Department of Education (WVDE) has entered into a contractual agreement for due process hearing officer services at the rate of \$125.00 per hour for preparation, 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 percent of approved travel and other expenses. The Local Educational Agency (LEA) 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 and scheduling a court reporter for the due process hearing and pays 100 percent of the cost. The court reporter is required to complete a hearing transcript within five (5) to 10 business days after the hearing. The LEA is responsible for the cost of the LEA's attorney.

Due process hearing officer fees and transcript costs ranged from \$768.18 to \$17,138.48 and \$700.56 to \$5,367.00 respectively. The average length of a hearing was two (2) days depending on the number of issues and witnesses. The total hearing costs including cost to WVDE and the LEAs was \$83,104.25.

IDEA Due Process Hearing Cost



Mediations and IDEA Due Process Hearings

FY 09

Summary Page

Issues that prompted mediation:

- reimbursement of private school placement
- free appropriate public Education (FAPE)
- placement
- methodology
- IEP development
- evaluation
- parental involvement
- compensatory education implementation
- discipline

Issues that prompted IDEA due process hearings:

- reimbursement of private school placement
- free appropriate public education
- methodology
- IEP development
- discipline

The reasons people decided to mediate:

- Parents were in IDEA due process hearings
- Districts to resolve issues in the IEP process
- Parents selected the mediation process as an alternative to the formal written complaint process for a due process hearing

Of the 17 mediations requested, seven (7) mediations were initiated by the parents and six (6) were initiated by the districts. Four (4) mediations were requested instead of the resolution session as required when a due process hearing is requested by the parents.



Dr. Steven L. Paine
State Superintendent of Schools