

Enclosure C

VIRGIN ISLANDS – SPECIAL CONDITIONS

PREAMBLE: These Special Conditions are imposed on the Virgin Islands Department of Education's federal fiscal year (FFY) 2005 Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1401 et seq., grant award from the U.S. Department of Education (Department) to the Virgin Islands Department of Education (VIDE) from appropriated funds for FFY 2005. This grant is being made in accordance with the Department's regulations governing "high risk" grantees, at 34 CFR §80.12. The Special Conditions are imposed to help ensure that the VIDE grant award is expended in accordance with applicable legal requirements.

I. EXPLANATION OF HIGH RISK STATUS

Under the authority of the Education Department General Administration Regulations (EDGAR), 34 CFR §80.12, the Department has determined that VIDE is a "high risk" grantee for purposes of its FFY 2005 Grant Award because of the inability of VIDE to meet all of the conditions of the FFY 2004 Special Conditions and because of problems in VIDE's program accountability and related areas. Our conclusion that VIDE remains a "high risk" grantee is based on the following specific findings:

As part of the 1999 Compliance Agreement (CA'99) covering Part B of the IDEA, VIDE agreed, by no later than December 2002, to meet certain compliance targets or outcomes to bring it into compliance with the requirements of Part B of IDEA. Because some of these targets had not been met, the Department imposed Special Conditions on the FFY 2004 Part B grant award which required, among other things, that VIDE submit reports on its progress toward meeting the compliance targets, as set out in those Special Conditions. The quarterly progress reports required under the FFY 2004 Special Conditions and submitted by VIDE, demonstrated progress in some areas but also indicated that some of the compliance targets had not been met. In addition, OSEP conducted an onsite verification visit during the week of February 28, 2005. The findings from that visit and status of compliance from the reports are set out in OSEP's October 5, 2005 verification letter. That letter is incorporated by reference herein. The status of each of the remaining areas of noncompliance is set out below.

- A. **Timeliness of Evaluations – Triennial Evaluations.** Under the FFY 2004 Special Conditions, VIDE was to eliminate the backlog of students not receiving a timely triennial evaluation for those due after October 1999. In its final progress report (May 16, 2005), VIDE reported a total of 138 triennial evaluations remaining. Of this total 97 were for St. Croix and were scheduled for completion between May 16 and May 31, 2005. VIDE has not demonstrated full compliance for the timely provision of triennial evaluations due after October 1999 and must continue to report on the completion of those evaluations.
- B. **Transition from Part C (Early Intervention Services) to Part B.** Under the FFY 2004 Special Conditions, VIDE was to have ensured that: (a) all eligible preschoolers transitioning from Part C to Part B had timely Individualized Education Programs (IEPs) or Individualized Family Service Plans (IFSPs) and were receiving special education and related services under Part B by their third birthday. In addition, VIDE was required to make all revisions necessary to ensure that the final Interagency Agreement between the Virgin Islands Department of Health (VIDH) and the Virgin Islands Department of Education (VIDE) for Part C to Part B transition met all federal requirements. OSEP approved the final interagency agreement between VIDH and VIDE on February 16, 2005. In addition, VIDE submitted its FFY 2003 Annual Performance Report which indicated that, although data was only available for the St. Croix district for the 2002-2003 and 2003-2004 school years, approximately 12% of students with disabilities transitioning from Part C to Part B in that district were not receiving the needed special education and related services by their third birthday. VIDE has not demonstrated full compliance in this area.

- C. **State and Districtwide Assessments.** In its March 2005 FFY 2002 APR response letter, OSEP required VIDE to report in the next APR (FY 2003) data and analysis of compliance with the requirements of 34 CFR §300.138 as related to Statewide and districtwide assessments. To the extent that VIDE determined that it was out of compliance, it was required to provide OSEP a plan to address the noncompliance. VIDE's FFY 2003 APR does not contain a plan. From record reviews and VIDE staff interviews conducted as part of the verification visit during the week of February 28, 2005, OSEP determined that VIDE is not in compliance with the requirements at 34 CFR §§300.138 and 300.139 that require that VIDE demonstrate that children with disabilities are included in general State and districtwide assessment programs, with accommodations and modifications in administration, if necessary, and that the State make available and report to the public and the Secretary on the participation and performance of children with disabilities with the same frequency and in the same detail as it reports on the assessment of children without disabilities. (See also 20 U.S.C. §1412(a)(16).)

In its FFY 2002 APR, the SEA reported that both LEAs administered the Iowa Test of Basic Skills as a districtwide assessment. VIDE did not ensure that children with disabilities were included in these districtwide assessments with appropriate accommodations and modifications, if necessary. VIDE reported that there was "no revised and current policy for alternate assessment of students with disabilities." During the verification visit, OSEP learned that St. Thomas administered the test to grades 3-5-7-11 and St. Croix administered it to grades 2-10. Results were provided to parents of participating students. The SEA director confirmed that not all students may have participated, there was no alternate to the test and accommodations were not consistently provided. The Director also stated that it is a district decision regarding the administration of districtwide assessments (outside the Territorial assessment system).

During OSEP's verification visit, SEA staff reported that the Territory was in the process of developing a standards-based accountability system and that in December 2004, the Territory adopted a new assessment system called the U.S. Virgin Islands Territorial Assessments of Learning (VITAL).² The accountability system includes a standard instrument (VITAL-S), an alternate assessment for students with severe cognitive disabilities (VITAL-A), and an alternate assessment for English Language Learners (ELL) who are native speakers of Spanish (VITAL-B). The VITAL-S is developed specifically to align with the academic content standards and academic achievement standards of VIDE. The implementation of the system will be phased in the following manner for the 2004-05 to 2007-08 school years:

- 2004-05: reading and mathematics in grades 5, 7, and 11
- 2005-06: reading and mathematics in grades 3-8 and 11
- 2006-07: reading and mathematics in grades 3-8 and 11
- 2007-08: reading and mathematics in grades 3-8 and 11 and science in three grade spans (3-5, 6-9, and 10-12)

² Title I of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001, also includes a number of requirements related to including children with disabilities in State assessment programs and reporting on their participation and performance on regular and alternate assessments that in many instances are more specific than requirements in the IDEA. For example, the Title I regulations require, at 34 CFR §200.2(b)(3) and (4), that all State assessments must, "(3)(i) Be aligned with the State's challenging academic content and student academic achievement standards; and (ii) Provide coherent information about student attainment of those standards. (4)(i) Be valid and reliable for the purposes for which the assessment system is used; and (ii) Be consistent with relevant, nationally recognized professional and technical standards." This discussion does not, and should not be interpreted to, address compliance by the Virgin Islands with requirements of Title I.

Staff reported that the Office of Planning, Research, and Evaluation (PRE) is responsible for the administration of the Territory's assessment system. When assessments take place, a report of the administration, scoring, results and interpretation are prepared jointly by the PRE in conjunction with the test publisher. Statewide testing was scheduled to take place in the Virgin Islands March 14-18, 2005. Statewide alternate assessments were scheduled to begin at the end of February 2005 and continue for approximately four weeks. The VITAL-A and VITAL-B were to be implemented within the same timeframe as the regular statewide assessment (VITAL-S).

OSEP learned that the total and subgroup non-participation rates (related to the VITAL) would be reported on school, district, and state report cards. The school and district report cards will report aggregate assessment data (percent proficient in mathematics and reading), as well as results disaggregated by subgroup (ELL, SWD, migrant, economically disadvantaged). Beginning in 2004-05, participation rates will be based on the enrollment at the time of the test and will be calculated for each student subgroup. All public schools and districts will be held accountable for reaching the 95% participation rate for each subgroup. Staff reported that testing accommodations that preserve the reliability and validity of the VITAL-S would be allowed with the intention that the maximum number of students with disabilities can successfully participate in the VITAL-S. VIDE has developed templates to produce school, district, and state report cards but none have been issued to date. Presently, the templates are being updated to include all the data elements required under the NCLB Act. It is anticipated that report cards to communicate the results of the VITAL will be produced and field-tested in mid-2005. The reports will be published in English. In addition, VIDE will explore options for facilitating access to the reports in a variety of formats. However, VIDE has yet to report on the participation and performance of children with disabilities on Statewide assessment consistent with 34 CFR §§300.138 and 300.139 and 20 U.S.C. 1412(a)(16).

II. PROGRAMMATIC SPECIAL CONDITIONS

Under the authority of the Education Department General Administrative Regulations, 34 CFR §80.12, the Department is imposing these Special Conditions on the Virgin Islands Federal Fiscal Year 2005 award under Part B of the IDEA.

- A. As soon as possible, but by no later than June 30, 2006, VIDE must eliminate the backlog of students not receiving a timely triennial evaluation for those due after October 1999. VIDE must continue to document progress in this area by submitting data reports and other relevant documentation, as appropriate, utilizing the reporting forms provided by OSEP, on the following dates: December 1, 2005, February 15, 2006, June 30, 2006
- B. As soon as possible, but by no later than June 30, 2006, VIDE must ensure that all eligible students transitioning from Part C to Part B have timely IEPs or IFSPs and are receiving special education and related services by their third birthday, including those eligible children who turn three during the summer months. VIDE must continue to document progress in this area by submitting data reports and other relevant documentation, as appropriate, utilizing reporting forms provided by OSEP, on the following dates: December 1, 2005, February 15, 2006, and June 30, 2006.
- C. As soon as possible, but by no later than June 30, 2006, VIDE must ensure that all children with disabilities are included in general State and districtwide assessment programs including the provision of appropriate accommodations and alternate assessments, as appropriate and that the State is reporting to the public on the participation and performance of children with disabilities in the assessment programs with the same frequency and in the same detail as it reports on the assessment of nondisabled children. (34 CFR §§ 300.138-300.139 and 20 U.S.C. 1412(a)(16)). In the State Performance Plan (SPP), due December 2, 2005, VIDE must report to OSEP on the participation and performance of children with disabilities on the Statewide assessments, including alternate assessments, as administered in 2005. By June 30, 2006, VIDE must provide documentation on how it has reported to the public on the

participation and performance of children with disabilities on the Statewide assessments, including alternate assessments.

- D. To the extent that State policy continues to allow LEAs to administer districtwide assessments, as soon as possible, but by no later than June 30, 2006, VIDE must demonstrate that it is ensuring that LEAs comply with the requirements of 34 §§300.138-139 and 20 U.S.C. 1412(a)(16). With the SPP, due December 2, 2005, VIDE must submit a description of the measures it is taking to ensure compliance with the above requirements related to districtwide assessments. By no later than June 30, 2006, VIDE must submit documentation demonstrating compliance by the LEAs with 34 §§300.138-139 and 20 U.S.C. 1412(a)(16) in any administration of districtwide assessments.
- E. VIDE must promptly provide the Department any requested records and information related to these areas of noncompliance.

IV. EVIDENCE NECESSARY FOR SPECIAL CONDITIONS TO BE REMOVED

The Department will remove one or more of the Special Conditions if, at any time prior to the expiration of the grant year, the Virgin Islands provides documentation, satisfactory to the Department, that it is in full compliance in the areas covered under these Special Conditions, as set out above.

VI. METHOD OF REQUESTING RECONSIDERATION

The Virgin Islands may write to Assistant Secretary John H. Hager, if it wishes the Department to reconsider any aspect of these Special Conditions. Any such request should describe in detail the changes to the Special Conditions sought by the Virgin Islands and the reasons for those requested changes. Further, in responding to such requests, the Department may impose additional conditions or modify these Special Conditions as appropriate.

VII. SUBMISSION OF REPORTS

All documents and reports that are required to be submitted by the Virgin Islands to the Department under these Special Conditions should be signed by the State Director of Special Education and submitted to:

Michael Slade
Office of Special Education Programs
550 12th Street, SW Suite 4175
Washington, DC 20202-2600

Dated: OCT 21 2005