



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Honorable Noreen Michael
Commissioner
Virgin Islands Department of Education
44-46 Kongens Gade
Charlotte Amalie
St. Thomas, Virgin Islands 00802

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Dear Dr. Michael:

The purpose of this letter is to inform you of the results of the Office of Special Education Programs' (OSEP's) recent verification activities in the Virgin Islands. As indicated in my letter to you on February 3, 2005, OSEP is conducting verification visits to a number of States¹ as part of our Continuous Improvement and Focused Monitoring System (CIFMS) for ensuring compliance with, and improving performance under, Parts B and C of the Individuals with Disabilities Education Act (Parts B and C of IDEA). We conducted our visit to the Virgin Islands during the week of February 28, 2005. This letter addresses our findings regarding your systems as well as the status of compliance under the Special Conditions attached to the Federal fiscal year (FFY) 2004 Part B Grant Award.

The purpose of our verification reviews of States is to determine how they use their general supervision, State-reported data collection, and statewide assessment systems to assess and improve State performance; and to protect child and family rights. The information gathered through the verification visits are intended to assist OSEP to: (1) understand how the systems work at the State level; (2) determine how the State collects and uses data to make monitoring decisions; and (3) determine the extent to which the State's systems are designed to identify and correct noncompliance.

As part of the verification visit to the Virgin Islands Department of Education (VIDE), OSEP staff met with Mrs. Carrie Johns, Acting VIDE Director of Special Education, and members of VIDE's staff who are responsible for the oversight of general supervision activities (including monitoring, mediation, complaint resolution, and impartial due process hearings); the collection and analysis of State-reported data; and ensuring the participation in, and reporting of student performance on, Statewide assessments. Prior to and during the visit, OSEP staff reviewed a number of documents², including the following: (1) VIDE's FFY 2002 Part B Annual Performance Report (APR); (2) VIDE's

¹ Because the term "State" under the Individuals with Disabilities Education Act includes the outlying area of the Virgin Islands, a United States Territory, the terms "State" "Territory" and "Outlying Area" will be used interchangeably.

² Documents reviewed as part of the verification process were not reviewed for legal sufficiency but rather to inform OSEP's understanding of the Territory's systems.

Part B of IDEA application for FFY 2004; (3) documentation submitted under the Special Conditions to the FFY 2004 Part B grant award, including the November 2004 and February 2005 data reports, the State complaint procedures, parents' rights handbook, the interagency agreement for children transitioning from Part C to Part B, the territory's preschool continuum plan, least restrictive environment (LRE) monitoring procedures and the Virgin Islands policies and procedures (VIPP); (4) VIDE's written responses to OSEP's desk audits for the three systems; (5) U.S. Virgin Islands Territorial Assessment of Learning (VITAL) manual - Inclusion of Students with Disabilities and English Language Learners (VIDE, 2005); (6) VIDE's complaint, mediation and due process logs and a random sample of complaint and due process decisions; and (7) other information provided by the State.

OSEP also conducted conference calls on February 17 and 22, 2005 with parents, stakeholders, advocates and members from the Virgin Islands' Steering Committee to hear their perspectives on the strengths and weaknesses of the State's systems for general supervision, data collection, and State-wide Assessment. VIDE Part B staff participated in the calls and assisted OSEP by recommending and inviting the participants.

The information that Mrs. Johns and other VIDE staff provided during the OSEP visit, together with all of the information that OSEP staff reviewed in preparation for the visit, greatly enhanced our understanding of VIDE's systems for general supervision, data collection and reporting, and Statewide assessment.

General Supervision

In reviewing the State's general supervision system, OSEP collected information regarding a number of elements, including whether the State: (1) has identified any barriers (e.g., limitations on authority, insufficient staff or other resources, etc.) that impede the State's ability to identify and correct noncompliance; (2) has systemic, data-based and reasonable approaches to identifying and correcting noncompliance; (3) utilizes guidance, technical assistance, follow-up, and—if necessary—sanctions, to ensure timely correction of noncompliance; (4) has dispute resolution systems that ensure the timely resolution of complaints and due process hearings; and (5) has mechanisms in place to compile and integrate data across systems (e.g., section 618 State-reported data, due process hearings, complaints, mediation, large-scale assessments, previous monitoring results, etc.) to identify systemic issues and problems.

Monitoring

Under 20 USC §§1412(a)(11) and 1232d (b), and 34 CFR §300.600, VIDE has general supervisory responsibilities, including utilizing proper methods for ensuring that program requirements are met. During OSEP's previous monitoring reviews (December 2000, February 2002 and February 2003), VIDE presented a 5-year cyclical monitoring process intended to enable VIDE to monitor all of its schools and programs beginning in 2000. The monitoring process described by VIDE included a two-tier process designed to focus

federal, state and local resources on improving educational results for children with disabilities, while also maintaining a focus on compliance.

Tier I activities were described as including on-going monitoring of district-level activities through monthly and/or quarterly reports submitted by the District Coordinator/Directors regarding child count, provision of special education and related services, personnel vacancies, and state complaint/due process/mediation requests.

Tier II activities were described in four levels:

- Level I: One month prior to an onsite visit, a planning meeting or phone conference is held with the District Superintendent and other designated staff to discuss the overview of the monitoring process, schedule onsite visits, schedule file review visits, and explain the purpose of surveys and timelines for submission of district information.
- Level II: During the onsite visit, the monitoring team uses the Student File Review form to review ten percent of student records (or at least 25 student records) to verify compliance and visits to classrooms to conduct interviews with appropriate staff. VIDE uses checklists or surveys to conduct interviews with special education teachers, general education teachers, related service providers, administrators and supervisors, students and parents. Entities not selected for an onsite visit are monitored using the reports generated monthly through the Virgin Islands' State Special Education Information Management System, Goalview, (i.e. timely implementation of IEPs, reevaluations, student records, and general education placement).

A final monitoring report, based on the data collected during the site visit, is issued to the Insular Superintendents, District Director and other appropriate staff, requiring the submission of a corrective action plan within 60 days for any identified noncompliance.

- Level III: The State Compliance Unit notifies the State Director and District Directors of Special Education if the corrective actions are not completed in a timely manner. If substantial progress is not made, the District Superintendent is notified that the school district has thirty days to implement the required actions or sanctions will be implemented.
- Level IV: If the local educational agency (LEA) fails to comply with the corrective actions, the State Director of Special Education will initiate sanctions. The LEA must still implement the corrective actions.

VIDE reported that it has authority to enforce correction of identified deficiencies under the U.S. Virgin Islands Bill of Rights of Handicapped Children (Act 4667) and the Individuals with Disabilities Education Act. Following the dissemination of final monitoring findings, the SEA director writes to the respective LEAs requesting

documentation that it has corrected all identified systemic deficiencies. If a district requests technical assistance from the SEA in order to correct identified noncompliance, assistance is provided by the SEA. Districts are also required to demonstrate progress in correcting identified systemic deficiencies by including performance measures in their LEA application for Part B funds for the current fiscal year. Also, LEAs were required to include in their application, performance measures that correlate reporting under the Special Conditions and corrective action plans, as appropriate.

Based on the cyclical monitoring process described above, VIDE was to have completed the five year cycle by 2005. However, because of staffing shortages, VIDE ceased its cyclical monitoring process after Cycle II and instead, for what would have been Cycle III, implemented interim monitoring measures and only conducted a focused monitoring review of extended school year services and compensatory education during the summer of 2003. Although this review was completed and VIDE reported in its FY'02 APR that a "final monitoring report" was issued, VIDE acknowledged that there was actually no official written report of findings of noncompliance issued, but rather an identification of strengths, weaknesses and areas for improvement for both LEAs. Through document review and interviews, OSEP confirmed that VIDE targeted the areas of noncompliance identified in OSEP's FY'04 Grant Award through various means such as desk audits, random sampling of IEPs through its special education student database, and data reports under the 2004 Special Conditions. However, VIDE cannot demonstrate that it has an effective method for identifying and correcting noncompliance with Part B requirements. The interim monitoring measures were limited to two areas under IDEA and did not identify new noncompliance that was identified by OSEP during the verification visit and set out in this letter.

At the time of OSEP's visit, VIDE indicated that it had not completed the 5 year cyclical monitoring process due to staff shortages and that it has not been able to ensure correction of all noncompliance identified in Cycle II. Originally, VIDE reported having 5 staff members available to monitor. VIDE currently only has 2 people available to monitor and they both have other full-time responsibilities. The positions of VIDE Compliance Monitor and VIDE Assistant Director are currently vacant. The Acting VIDE Director advised OSEP that she has requested 3 new positions for monitoring and one new position for data entry in an effort to get back on track with cyclical monitoring and/or other monitoring strategies that would enable VIDE to identify and correct noncompliance in both LEAs. In the interim, in lieu of the cyclical monitoring process described above, VIDE has been utilizing other available methods to identify noncompliance including: (1) periodic desk audits using the Goalview database for student's individualized education programs (IEPs), educational diagnostic records, and students' special education records; (2) data reported under the 2004 Special Conditions; (3) data reports generated to meet the requirements of section 618; (4) OCR monitoring reports and resolution agreements; and (5) prior OSEP monitoring reports

OSEP has determined that VIDE is not meeting the requirements of 20 USC §§1412(a)(11) and 1232(b) and 34 CFR §300.600 to utilize proper methods for ensuring that program requirements are met. That is, VIDE is not properly identifying and

correcting noncompliance consistent with its established monitoring system. In its March 2005 letter, OSEP required that VIDE address this issue in the FFY 2003 APR. VIDE's FFY 2003 APR is currently under review and will be responded to under separate cover.

Within 30 days of the date of this letter, VIDE must submit: (1) a plan outlining the steps, including timelines, it is going to take to ensure that it has a method for systematically monitoring all Part B requirements and identifying and correcting all identified noncompliance; (2) documentation that all identified noncompliance identified in the Cycle II monitoring report has been corrected; or in the event that it has not, sanctions have been applied to the specific LEA(s); and (3) documentation that the areas of weakness identified in the summer 2003 monitoring visits focused on extended school year and compensatory services have been addressed.

Dispute Resolution

VIDE reported that it utilizes the State complaint system, due process hearings and mediation to resolve disputes. Under the Special Conditions to the FFY 2004 Part B grant award, VIDE was required to revise its State complaint procedures and its parents' rights handbook to be consistent with the requirements of the IDEA as amended in 1997. VIDE resubmitted and received OSEP approval of both of these items in February 2005.³ At the time of OSEP's visit, the Acting State Director stated that she would be redistributing the revised documents to all parents at every opportunity where the documents would naturally be presented (i.e. filing a complaint, requesting a due process, initial and reevaluation meetings and at IEP meetings).

OSEP reviewed VIDE's state complaint logs, mediation and due process hearing logs and found that the one due process hearing that was filed exceeded the 45-day timeline for issuing a final decision to the parties. The decision had not been issued at the time of the visit. (34 CFR §300.511 (2004)) In discussions regarding this instance of noncompliance, OSEP clarified with VIDE that the 45-day timeline applies unless a specific extension of time is granted by the hearing officer at the request of a party and that mediation may not be used to delay or deny a parent's right to a due process hearing or to deny any other rights under Part B (See 34 CFR §300.506(b)).

As part of OSEP's interview regarding the SEA's ability to monitor and enforce the corrective actions ordered under State complaint decisions, due process hearing decisions, and/or a mediation agreement, VIDE/State Disability Compliance Manager stated that upon receipt of mediation agreements and due process hearing decisions, the SEA notifies the respective LEA of the decision and reiterates the timelines for completing the corrective actions. She also stated that, although the SEA issues required corrective actions for formal State complaints with required timelines for implementation, the SEA does not have a mechanism to monitor the implementation of the corrective actions.

³ The 2004 amendments to the IDEA took effect July 1, 2005 and VIDE will need to review and, if appropriate, revise its policies and procedures accordingly.

OSEP determined that VIDE has ineffective procedures for tracking and monitoring the implementation of corrections resulting from final State complaint decisions, due process decisions and mediation agreements. At the time of OSEP's visit, VIDE was unable to provide evidence of the implementation and completion of all corrective actions ordered through these dispute resolution mechanisms. OSEP learned that VIDE does not have procedures nor a system to document correction of noncompliance or of the completion of corrective action plans issued through the dispute resolution systems. VIDE Disability Compliance Manager reported that VIDE could not demonstrate that all noncompliance was corrected in a timely manner or that VIDE had procedures to verify correction of noncompliance. VIDE's Disability Compliance Manager stated that in the future, phone calls will be followed-up in writing and that the SEA will use its enforcement options, including rewards and sanctions approved by the Commissioner of Education, to address continued noncompliance. The SEA is planning to revise its current state complaint, mediation and due process logs to include detailed information on the status of corrective actions and allow the SEA to track the status of correction of noncompliance as well as establishing a new filing system.

Within 30 days of the date of this letter, VIDE must submit: (1) a plan that outlines the steps VIDE will take to ensure that all corrective actions ordered in State complaint decisions, mediation agreements and due process hearings are implemented as directed and that VIDE has a method for tracking and monitoring the implementation of these corrective actions; (2) a copy of its revised complaint, mediation and due process logs that incorporate sufficient information to allow VIDE to determine the status of correction at all times; and (3) a copy of the final due process decision that was overdue at the time of the visit.

Status of FFY 2004 Special Conditions on Part B Issues

On September 24, 2004, VIDE's FFY 2004 Part B Grant Award was issued with Special Conditions related to programmatic requirements under Part B. The programmatic special conditions directed VIDE to address the following areas: (1) timeliness of evaluations; (2) provision of special education and related services; (3) provision of transportation services to ensure full school day attendance; (4) sufficient supply of qualified personnel to ensure that all needed special education and related services are provided; (5) provision of compensatory services where the related services specified on a child's IEP were not provided; (6) ensuring that all eligible children transitioning from Part C to Part B had timely IEPs/IFSPs and received special education and related services by their third birthday, including those eligible children who turned three during the summer months; (7) availability of a preschool continuum of placement options to ensure a free appropriate public education; and (8) the revision of State complaint procedures, Parents Rights Handbook and the Virgin Islands Special Education Policies and Procedures (VIPP). In order to determine the status of VIDE's compliance under the 2004 Special Conditions, OSEP reviewed the November 2004 and February 2005 data reports submitted by VIDE and interviewed LEA and SEA staff responsible for monitoring, collecting and reporting data under the 2004 Special Conditions.

With the exception of a November 2004 deadline for addressing the system of comprehensive personnel development (CSPD)⁴, a revised preschool continuum option plan, state complaint procedures and the procedural safeguards notice, VIDE was required to complete all the other programmatic conditions no later than April 30, 2005. At the time of OSEP's February 2005 visit, OSEP determined VIDE's compliance under the 2004 Special Conditions as follows:

Timeliness of Evaluations

At the time of the 2004 Special Conditions VIDE was reporting a backlog of 20 overdue triennials (due before 10/99) and a backlog of 181 overdue triennials (due after 10/99). At the time of OSEP's February 2005 visit, the total number of overdue triennials (due before 10/99) was reduced to zero and the total number of overdue triennials (due after 10/99) was reduced by 54% to a balance of 74 (17 for St. Croix and 57 for St. Thomas/St. John). Both LEAs cited staff shortages as the reason for the continued backlog, despite continued efforts to complete evaluations using strategies such as a Saturday Initiative for testing on St. Thomas; use of per diem options to hire evaluators and summer testing on St. Croix, and ongoing recruitment efforts. LEA and SEA staff reported that barriers to hiring necessary evaluation personnel include lack of competitive salaries, VIDE's policy of granting only five years of creditable service from other jurisdictions and the delays in the Board of Education processing applicants credentials. VIDE has met the requirements of the Special Conditions for the triennial evaluations that were due before October 1999 and no further action is required. However, VIDE has not demonstrated full compliance for the triennial evaluations due after October 1999 and must continue to report on the completion of those evaluations.

Provision of Special Education and Related Services and Adequate Supply of Qualified Personnel

The 2004 Special Conditions required that VIDE reduce the backlog to zero of students not receiving all the related services listed on their IEPs by using appropriate methods including ensuring that a sufficient supply of qualified personnel are available to provide such services. In the November 2004 data report, St. Croix reported that 42 students did not receive speech therapy services in two schools due to a lack of speech therapists and a total of 11 students did not receive resource special education services due to the lack of a resource teacher. During OSEP's February 2005 visit, St. Croix staff reported that the 42 students reported in the November 2004 data report as not receiving speech therapy services were receiving services as the result of two new therapists being hired in January and February 2005. A resource teacher was also reassigned in January to address the 11 students not receiving special education resource services. Compensatory services were provided to those students. St. Thomas/St. John staff reported that it was tracking the approximately 108 students who did not receive related services for at least 1-3 sessions due to a lack of substitute therapists and that these students would receive compensatory services either during the school year or during the summer. Staff also reported that, of the 108 students who did not receive related services, 7 students did not receive speech

⁴ As set out below, the statutory basis for this requirement has been removed.

therapy for 1 year, 5 students did not receive speech therapy for 1 month and 29 students did not receive counseling services for 2 months. Staff reported that compensatory services were being provided to those students by adding additional time onto students' sessions or by providing the services during summer sessions. In addition, to ensure the provision of related services on an ongoing basis, VIDE reported strategies to actively recruit personnel, shift the schedules of existing personnel and contract with outside providers to provide related services. VIDE has met the requirements of the FFY 2004 Special Conditions related to the provision of special education and related services and no further action is required.

The 2004 Special Conditions required that VIDE implement all needed revisions to its Comprehensive System of Personnel Development to address long-standing vacancies and continue to report on personnel vacancies. In the November 2004 data report personnel vacancies were reported including a total of 4 speech therapists; 18 teachers; 3 school psychologists; 2 social workers; 2 educational diagnosticians; and 5 paraprofessionals. At the time of OSEP's February visit a total of 38 vacancies were reported. These vacancies represent a total of 1 occupational therapist; 1 physical therapist; 5 speech therapists; 16 teachers; 3 school psychologists; 3 social workers; 3 educational diagnosticians; 5 paraprofessionals and 1 special education supervisor. LEA strategies to address these personnel vacancies included the use of substitute teachers, combining classes with low enrollment, reassigning related services staff caseloads and ongoing recruitment. Barriers to securing staff were reported to include the lack of a provisional certification option, noncompetitive salaries, high cost of living, and no reciprocity with the States. The SEA is pursuing negotiations with several universities regarding the options of using speech therapy assistants, social work assistants and psychology assistants working under the supervision of licensed professionals as a means to address personnel shortages.

The IDEA requirements regarding a comprehensive system of personnel development and personnel standards (see section 612(a)(14) and (15) (1997)) have been removed from the statute and replaced by statutory provisions related to States' establishment and maintenance of personnel qualifications for special education teachers that align Part B with the highly qualified teacher provisions in section 1119(a)(2) of the Elementary and Secondary Education Act, and that also address personnel qualifications for related services providers and paraprofessionals (see section 612(a)(14) (effective July 1, 2005)).

OSEP appreciates the efforts made by VIDE in this area. Because the requirements related to qualified personnel have been superseded by statutory changes and are no longer appropriate, no further action is required to address this special condition.

Full School Day/Transportation

The 2004 Special Conditions required that VIDE ensure that all students who are eligible, receive appropriate transportation services in order to attend school for a full school day. VIDE's November 2004 and February 2005 data reports indicate that the "Spot Check Plan" that VIDE instituted with the LEAs to monitor the provision of transportation

services to enable a full school day is consistently identifying problems with transportation services. At the time of OSEP's February 2005 visit, each LEA reported a total of 8 students had not received transportation for 1-2 days due to bus equipment failure. Each LEA is self-monitoring through the Spot Check Plan required by the SEA⁵. St. Croix reported working with the building principals and the bus company to address late arrivals and early departures. St. Thomas reported working to address the issue of equipment maintenance and delays in repairing recently purchased busses. VIDE has met the requirements of the Special Conditions in the area of transportation services needed in order for children to attend school for a full school day. No further action is required.

Compensatory Education

The 2004 Special Conditions required that VIDE ensure that all students who do not receive all the services set out in their IEPs are considered for compensatory services and that, where appropriate, such services are provided or reimbursement for parentally-funded compensatory services is provided in a timely manner. At the time of OSEP's February 2005 visit, St. Croix reported that it had instituted after school programs at six schools in order to provide compensatory services. St. Thomas reported addressing compensatory services by adding extra time to therapy sessions and providing compensatory services through summer school sessions. OSEP found that St. Croix sends letters to parents notifying them of the need for and date of provision of compensatory services.

However, OSEP learned through staff interviews that St. Croix was not providing transportation for compensatory services at the schools where it was offered. VIDE must monitor to ensure the provision of transportation for compensatory services when necessary for the child to receive compensatory services (34 CFR §300.24(b)(15)). VIDE must submit a plan to OSEP within 60 days of the date of this letter, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance as soon as possible, not to exceed one year from the date OSEP accepts the plan. No later than six months from the date of this letter, the State must submit a Progress Report including data and analysis demonstrating progress toward compliance and provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following one year from the date OSEP accepts the plan.

Transition from Part C (Early Intervention Services) to Part B

The 2004 Special Conditions required that, no later than April 30, 2005, VIDE ensure that all eligible students transitioning from Part C to Part B had timely IEPs or IFSPs and were receiving special education and related services by their third birthday, including those eligible children who turned three during the summer months; and submit all

⁵ The Spot Check Plan was developed through the Compliance Agreement for the purpose of creating a mechanism by which the LEA and the SEA could monitor on a frequent basis whether or not students were receiving transportation services to enable a full day school day attendance.

revisions necessary to finalize an Interagency Agreement between the Virgin Islands Department of Health (VIDH) and VIDE for Part C to Part B transition that met all federal requirements and addressed the issues identified in OSEP's analysis dated May 10, 2004.

VIDE submitted a revised interagency agreement for the transitioning of children from Part C to Part B that was approved on February 16, 2005. OSEP found that although the interagency agreement effectively delineates the responsibilities of VIDE and VIDH in meeting the transition requirements, there are no clearly established procedures for implementing the terms of the agreement. VIDE and VIDH agreed to meet in the near future to ensure that the referral procedures are clarified and to develop procedures that enable staff to appropriately implement the agreement.

At the time of OSEP's February 2005 visit, St. Croix reported a total of 30 children referred by Part C to Part B and that 19 had been determined eligible and were receiving Part B services. However, OSEP found that the remaining 11 children who had been referred were on a waiting list for Part B services. OSEP advised the SEA Director that eligibility for those children would need to be immediately addressed and, if appropriate, the children should be transitioned to Part B services. St. Thomas reported 7 students were referred from Part C to Part B. Of this total, 4 were receiving Part B services; 3 were waiting for paperwork to be processed by HeadStart. LEA placement staff responsible were unable to verify whether or not these 3 students were receiving Part B services at the time of OSEP's visit.

During the verification visit, through interviews with Part B and Part C staff responsible for transition from Part C to Part B and onsite review of files and IEPs for preschool children with disabilities, OSEP determined that VIDE has no current method for monitoring and ensuring that children transitioning from Part C to Part B, who have been determined eligible for Part B services, are indeed receiving those services. In its March 2005 letter, OSEP required that VIDE ensure that it was monitoring for compliance with the requirements of 34 CFR §300.132 that eligible children with disabilities transitioning from Part C to Part B receive special education and related services by their third birthday. OSEP required VIDE to provide OSEP with a progress report on September 3, 2005, six months from the date of that letter. OSEP has not yet received that report. Therefore, VIDE must: (1) no later than 30 days from the date of this letter, provide OSEP with a plan for monitoring the requirements at 34 CFR §300.132(b) that an IEP or IFSP has been developed and is being implemented for all children found eligible for Part B services, by their third birthday; and (2) in the State Performance Plan (SPP) due December 2, 2005, submit data and analysis demonstrating progress towards full compliance and provide a final report to OSEP, with data and analysis demonstrating full compliance, as soon as possible, but not later than 30 days following the end of the one-year timeline.

Continuum of Placement Options

The 2004 Special Conditions required that VIDE revise and resubmit the preschool continuum option plan and related LRE monitoring documents to address the issues identified in OSEP's July and September 2004 analyses. VIDE revised and resubmitted the preschool continuum option plan and related LRE monitoring documents. At the time of OSEP's February 2005 visit, OSEP found that St. Thomas had a full continuum of preschool options that included HeadStart and four private preschools. VIDE has met the requirements of this Special Condition and no further actions is required.

General Supervision and Monitoring (Eligibility Documentation)

The 2004 Special Conditions required that VIDE revise and resubmit the following documents, addressing all issues identified in OSEP's April 1, 2004, May 14, 2004, August 2004 and September 2004 analyses: (1) state complaint procedures; (2) procedural safeguards notice; (3) Interagency Agreement for Secondary Transition; and (4) its policies and procedures document (VIPP). OSEP reviewed and approved VIDE's state complaint procedures and procedural safeguards notice on February 13, 2005 and February 20, 2005, respectively. VIDE resubmitted revised policies and procedures on June 27, 2005. This document has been reviewed and fully approved. The revised Interagency Agreement for Secondary Transition also has been reviewed and fully approved. No further action is required to address eligibility documentation.

Collection of data under section 618 of the IDEA

In looking at the State's system for data collection and reporting, OSEP collected information regarding a number of elements, including whether the State: (1) provides clear guidance and ongoing training to local programs/public agencies regarding requirements and procedures for reporting data under section 618 of the IDEA; (2) implements procedures to determine whether the individuals who enter and report data at the local and/or regional level do so accurately and in a manner that is consistent with the State's procedures, OSEP guidance, and section 618; (3) implements procedures for identifying anomalies in data that are reported, and correcting any inaccuracies; and (4) has identified barriers, (e.g., limitations on authority, sufficient staff or other resources, etc.) that impede the State's ability to accurately, reliably collect and report data under section 618.

Staff reported that in 2000, VIDE designated a full time data manager position. The primary responsibility for this position focused on collecting, analyzing and completing the annual data reports required under section 618. Other responsibilities for this position included preparing reports of monitoring visits and assisting in the correction of identified noncompliance; investigation of complaints; serving on the Accessibility Task Force and other committees; and working with advocacy organizations to provide training. The Compliance Unit Manager has also been trained in the compilation of the section 618 data and serves as a back-up position to the data manager. The Acting VIDE Director of Special Education acknowledges a need to provide additional support to the

data manager position and is seeking additional personnel on a contractual basis to assist with data analysis and verification.

Through technical assistance from the Southeast Regional Resource Center (SERRC) and the National Center for Special Education Accountability and Monitoring (NCSEAM), VIDE developed a Monitoring Accountability Work plan that included a draft Special Education Data Policy, which has been submitted to the Commissioner of Education for review and approval. The draft policy provides a central location for collecting, maintaining and reporting information. The policy establishes specific procedures for ensuring that all information entered into Goalview, the special education student database, is accurate, verified and updated in a timely manner. The policy establishes that the Insular Superintendent or designee is responsible for ensuring all information is entered by established timelines by specific staff (i.e. evaluators, LEA supervisors, related service providers and the teacher). The policy requires monthly LEA random verification of data entry and accuracy and annual VIDE verification of data policies, procedures and practices.

The Virgin Islands' State Office of Special Education has implemented contractual arrangements for data collection utilizing Goalview. This system is used for collecting student data for Part B at the local level. The LEAs enter the data collected on students with disabilities into Goalview. VIDE Office of Special Education collect(s) data via electronic and paper from the schools and LEAs to complete federal data reports required under section 618 (i.e. Child Count, LRE, Discipline and Exiting Reports).

The SEA monitors the reliability in the system by completing monthly reports that track timely implementation of IEPs, timely reevaluations, student records, and placement information. The SEA utilizes year-to-year comparisons to determine if there are gaps in the data. Throughout the data collection process, the SEA uses the following methods of facilitating accurate reporting by the LEAs:

1. LEAs are required to complete data elements (i.e. age, disability condition) on their students with disabilities as of December 1 data collection.
2. At the time of the December 1 Child Count, school administrators must certify the special education data.
3. Prior to submission of reports to the District Director, school administrators must transmit child count and other reports according to instructions and schedule.
4. District directors verify information received from the schools and prepare a district report for submission to VIDE/ Director.
5. Upon receipt of report by the VIDE Director, the data manager analyzes the data to identify errors.
6. Reports are returned to the District Directors for correction, if discrepancies exist.
7. The VIDE Data manager prepares a final section 618 data report for the VIDE Director's review.
8. The final completed reports are transmitted to the Commissioner of Education for signature, if required.

Staff reported that the SEA ensures the validity and consistency of data by providing guidance and ongoing training to the LEAs and implementing the VIDE data policy and procedures for reporting data under section 618 of IDEA. VIDE reported that a variety of training has been provided to personnel responsible for local education agency data input including: (1) Goalview Distance Learning sessions via the internet provided to SEA staff regarding input of IEPs; (2) specific data entry training to special education teachers, school administrators, counselors and related services personnel provided by the SEA data system case manager and assistive technology specialist; and (3) technical assistance to LEA administrators on data verification and student record review activities provided by SEA monitoring unit staff. SEA staff also received technical assistance from SERRC and NCSEAM in completing the National Monitoring Accountability Checklist and in developing a VIDE Monitoring Accountability Work Plan. The SEA data manager attends the Annual Part B data manager's meeting sponsored by OSEP and WESTAT.

Staff reported that the SEA uses the section 618 data for targeting its monitoring and determining trends in order to: (1) target data collection for selected schools based on the greatest number of discrepancies in their 618 data; (2) sample student's placement and percentage of time outside the regular education classroom; (3) determine in-service and off-island training needs; (4) make decisions about equipment; (5) project personnel staffing needs, facilities allocations and instructional materials needs; (6) effectively plan curriculum; (7) determine the effectiveness of interagency agreements and memoranda of understanding; and (8) track trends related to graduation, drop-out, and suspension and expulsion rates.

The SEA reported on a variety of methods of reporting to the public on data related to students with disabilities including, the December 1 child count, placement in the least restrictive environment, student exiting and teacher certification. The data is posted on two Virgin Islands' websites, broadcast on local cable channels, and is available at the Curriculum Centers, the Insular Superintendent's Office and the Commissioner of Education's Office.

The SEA identified the following barriers that impede the SEA's ability to accurately and reliably collect and report data under section 618: (1) shortage of data entry personnel; (2) need for additional training in data collection processes, analysis, and verification of data; (3) need for additional staff training on the Goalview system; (4) need to develop and disseminate data profiles to schools; (5) need to increase the collection of trend data related to graduation with a regular diploma, drop-out and suspension/expulsion; (6) timely collection of certification data on personnel who provide special education and related services to students with disabilities; and (7) a need to develop sanctions when LEA staff do not complete required data entry.

The SEA reported that the Goalview system could not interface with the Virgin Islands' Department of Education's School Administrative Student Information (SASI). The function of the Goalview system is to capture IEP related data on students with disabilities. The function of SASI is primarily used to collect demographic information, attendance, grades and scheduling students. SASI currently maintains

suspension/expulsion information for junior and senior high schools, but does not maintain information on graduation and drop-out rates. Due to an incompatibility of systems, the SEA is unable to compare and report on graduation, drop-out, and suspension/expulsion rates of students with disabilities with nondisabled students.

Regulations at 34 CFR §300.146 require that VIDE have on file and examine data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities among LEAs in the State or compared to the rates for children without disabilities. VIDE's FFY 2002 APR submission did not include information indicating that VIDE had identified significant discrepancies in the LEAs. Instead, VIDE noted the very low rate of long-term suspension and expulsion but did not compare LEAs or conclude that no significant discrepancies were occurring. In its March 2005 letter, OSEP required VIDE to, in the FFY 2003 APR, specifically address whether significant discrepancies in long-term suspensions and expulsions are occurring based upon one of two comparisons described above, and where it identified significant discrepancies, report on the reviews and if, appropriate, revisions of (or requiring the affected State agency or LEA to revise) policies, procedures and practices consistent with 34 CFR §300.146. VIDE's FFY 2003 APR is currently under review and OSEP will respond to this issue in its response to the APR.

In an interview with a SASI data manager, OSEP learned that, although SASI protocols do not allow the importation of Goalview generated data into the SASI system, there is a special education information module available to schools that is not currently being used. It was OSEP's understanding that there is a plan in process to address compatibility of the systems. OSEP believes that, with the exception of the incompatibility of the special education and general education databases that would enable VIDE to have access to, collect and compare rates of graduation, drop-out and suspension/expulsion between students with disabilities and nondisabled students, VIDE's system of data collection is reasonably calculated to collect the data required by section 618 of IDEA. OSEP suggests that VIDE pursue arrangements with SASI to have access to the data generated by SASI and that VIDE investigate other ways to benefit from information collected by SASI. OSEP looks forward to reviewing VIDE's efforts to ensure timely and accurate data in the SPP due December 2, 2005.

Statewide and Districtwide Assessment

In 2002, VIDE entered into a Compliance Agreement (CA) with the U.S. Department of Education (ED) which designated VIDE as a "high risk grantee" under 34 CFR §80.12. Specifically related to assessment, the CA identified the following requirement related to assessment reporting: (1) all schools in VIDE are required develop school improvement plans describing how schools will provide parents with individual student academic assessment results, including interpretation of the results; and (2) the Virgin Islands presently does not have mechanisms to identify noncompliance regarding statewide assessment and reporting.

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)

Staff reported that the Office of Planning, Research, and Evaluation (PRE) is responsible for the administration of the Territory's assessment system. 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

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 letter does not, and should not be interpreted to, address compliance by the Virgin Islands with requirements of Title I.

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. VIDE must notify OSEP when scores from the statewide assessments are publicly reported consistent with 34 CFR §300.139 so that OSEP can verify compliance with those requirements.

Staff reported that when statewide or district-wide assessments take place, a report of the administration, scoring, results and interpretation are prepared by the Planning, Research and Evaluation Division of VIDE in conjunction with the test publisher.

In its FFY 2002 APR, the SEA reported that both LEAs administered the Iowa Test of Basic Skills as a district-wide assessment. VIDE did not report that it ensured that children with disabilities were included in the district-wide 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.” In its March 2005 response to the FFY 2002 APR, OSEP found that there was potential noncompliance with 34 CFR §300.138. OSEP stated that it would conduct additional review of district-wide assessments and of the proposed Territory-wide assessment during its scheduled verification visit. 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 district-wide assessments (outside the Territorial assessment system).

In its March 2005 letter, OSEP required VIDE to report in the next APR on whether it was out of compliance with the requirements of 34 CFR §300.138 as related to Territory-wide and district-wide assessments. To the extent that it was out of compliance, VIDE was to provide OSEP with a plan to address the noncompliance. From record reviews and VIDE staff interviews, OSEP found that VIDE is not in compliance with the requirements at 34 CFR §§ 300.138-139 that require that VIDE demonstrate that children with disabilities are included in general State and district-wide assessment programs, with accommodations and modifications in administration, if necessary and that the State shall make available to the public, and report to the public and the Secretary with the same frequency and in the same detail as it reports on the assessment of children without disabilities. VIDE’s FFY 2003 APR is currently under review and will be responded to in a separate letter. OSEP’s preliminary review of the APR indicated that no plan was submitted. OSEP may address this issue through Special Conditions attached to VIDE’s FFY 2005 Grant Award.

Conclusion

Within 30 days of the date of this letter, VIDE must submit: (1) a plan outlining the steps, including timelines, it is going to take to ensure that it has a method for systematically monitoring all Part B requirements and identifying and correcting all identified noncompliance as required at 20 USC §§1412(a)(11) and 1232(b) and 34 CFR §300.600; (2) documentation that all identified noncompliance identified in the Cycle II monitoring report has been corrected; or in the event that it has not, sanctions have been applied to the specific LEA(s); and (3) documentation that the areas of weakness identified in the summer 2003 monitoring visits focused on extended school year and compensatory services have been addressed.

Within 30 days of the date of this letter, VIDE also must submit: (1) a plan that outlines the steps VIDE will take to ensure that all corrective actions ordered in state complaint decisions, mediation agreements and due process hearings are implemented as directed at 34 CFR §§ 300.506-512 and 300.660-662 and that VIDE has a method for tracking and monitoring the implementation of these corrective actions; (2) a copy of its revised complaint, mediation and due process logs that incorporate sufficient information to allow VIDE to determine the status of correction at all times; and (3) a copy of the final due process decision that was overdue at the time of the visit.

VIDE must monitor to ensure the provision of transportation for compensatory services when necessary for the child to receive compensatory services (34 CFR §300.24(b)(15)). VIDE must submit a plan to OSEP within 60 days of the date of this letter, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance as soon as possible, not to exceed one year from the date OSEP accepts the plan. No later than six months from the date of this letter, the State must submit a Progress Report including data and analysis demonstrating progress toward compliance and provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following one year from the date OSEP accepts the plan.

In addition, VIDE must: (1) no later than 30 days from the date of this letter, provide OSEP with a plan for monitoring the requirements at 34 CFR §300.132(b) that an IEP or IFSP has been developed and is being implemented for all children found eligible for Part B services, by their third birthday; and (2) in the State Performance Plan (SPP) due December 2, 2005, submit data and analysis demonstrating progress towards full compliance and provide a final report to OSEP, with data and analysis demonstrating full compliance, as soon as possible, but not later than 30 days following the end of the one-year timeline.

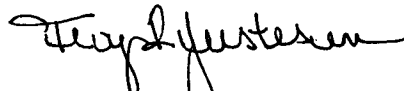
The 2004 Special Conditions on VIDE's FFY 2004 Grant Award required that, by April 30, 2005, VIDE correct the previously identified noncompliance. At the time of OSEP's February 2005 visit, OSEP was able to confirm that VIDE had demonstrated that it met the requirements for the 2004 Special Conditions and no further action is required in the following areas: (1) timeliness of evaluations (prior to October 1999); (2) provision of

special education and related services and adequate supply of qualified personnel; (3) provision of transportation services to ensure full school day attendance; (4) the availability of a preschool continuum of placement options to ensure a free appropriate public education; and (5) the revision of State complaint procedures, Parents Rights Handbook and the VIPP.

VIDE must continue to report in order to demonstrate that it has met the requirements of the remaining special conditions: (1) timeliness of evaluations due after October 1999; (2) the provision of compensatory education for all students who did not receive all the services set out in their IEPs; and (3) ensuring that all eligible children transitioning from Part C to Part B had timely IEPs/IFSPs and received special education and related services by their third birthday, including those eligible children who turned three during the summer months; by April 30, 2005 as required in the September 24, 2004 Grant Award letter.

We appreciate the cooperation and assistance provided by your staff during our visit and look forward to collaborating with the Virgin Islands as you continue to work to improve results for children with disabilities and their families.

Sincerely,



Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Mrs. Carrie Johns
Acting Director of Special Education