



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUN 15 2007

Honorable Lauren Larsen
Commissioner of Education
Virgin Islands Department of Education
44-46 Kongens Gade
St. Thomas, U.S. Virgin Islands 00802

Dear Commissioner Larsen:

Thank you for the timely submission of Virgin Islands' Annual Performance Report (APR) and revised State Performance Plan (SPP) under Part B of the Individuals with Disabilities Education Act (IDEA), as amended in 2004. We also appreciate the revisions to Virgin Islands' SPP received on May 15, 2007.

As you know, under IDEA section 616, each State has an SPP that evaluates the State's efforts to implement the requirements and purposes of Part B of the IDEA and describes how the State will improve its implementation of Part B. In the revised SPP due by February 1, 2007, States were required to provide information on: (1) specific new indicators; and (2) correction of any deficiencies identified in the Office of Special Education Programs' (OSEP's) SPP response letter sent to your State last year. States were also required to submit by February 1, 2007, an APR for Federal fiscal year (FFY) 2005 that describes the State's: (1) progress or slippage in meeting the measurable and rigorous targets established in the SPP; and (2) any revisions to the State's targets, improvement activities, timelines or resources in the SPP and justifications for the revisions. We appreciate the State's efforts in preparing the FFY 2005 APR and revised SPP.

The Department has reviewed the information provided in the State's FFY 2005 APR and revised SPP, other State-reported data, information obtained through monitoring visits, and other public information and has determined that, under IDEA section 616(d), Virgin Islands needs intervention in meeting the requirements of Part B of the IDEA. The State should review IDEA section 616(e) regarding the potential future impact of the Department's determination.

The Department's determination is based on the totality of the State's data in its SPP/APR and other publicly available information, including any compliance issues. The factors in States' FFY 2005 APR and February 1, 2007 SPP submissions that affected the Department's determinations were whether the State: (1) provided valid and reliable FFY 2005 data that reflect the measurement for each indicator, and if not, whether the State provided a plan to collect the missing or deficient data; and (2) for each compliance indicator that was not new (a) demonstrated compliance or timely corrected noncompliance, and (b) in instances where it did not demonstrate compliance, had nonetheless made progress in ensuring compliance over prior performance in that area. We also considered whether the State had other IDEA compliance issues that were identified previously through the Department's monitoring, audit or other activities, and

400 MARYLAND AVE., S.W., WASHINGTON, D.C. 20202
www.ed.gov

Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

the State's progress in resolving those problems. See the enclosure entitled "How the Department Made Determinations under Section 616(d) of the IDEA in 2007" for further details.

Specific factors affecting OSEP's determination of needs intervention for the Virgin Islands Department of Education (VIDE) included: the longstanding programmatic Special Conditions related to early childhood transition and assessments; low performance on Indicators 12, 15, and 16; and the Department-wide Special Conditions on financial management issues.

Under the programmatic Special Conditions attached to VIDE's FFY 2006 IDEA Part B grant award, VIDE is required to report on and ensure that all eligible students transitioning from Part C to Part B have timely individualized education programs (IEPs) or individualized family service plans (IFSPs) and are receiving special education and related services by their third birthday, consistent with Part B requirements (34 CFR §300.124); demonstrate that it is reporting publicly and to the Secretary on the participation and performance of children with disabilities on Statewide (Territorywide) assessments with and without accommodations and on alternate assessments, as required by 20 U.S.C. §1412(a)(16); and to the extent that school districts in the Virgin Islands continue to administer districtwide assessments, demonstrate that VIDE is ensuring that those districts comply with the relevant Part B requirements (20 U.S.C. 1412(a)(16) and 34 CFR §300.160). VIDE's early childhood transition submission is analyzed under Indicator 12 below. With regard to the alternate assessment issue, under Indicator 3, VIDE reported that 98 students participated on the alternate assessment but that the scores were not reported consistently by the two districts and were not incorporated into the various assessment report cards distributed to the public. VIDE submitted a letter dated June 4, 2007 in which it acknowledged that the VIDE remains out of compliance. The June 4, 2007 letter also described the districtwide assessments and argued that because these tests are used for school and classroom planning, student identification for the gifted program and for after school programs, and to assist teachers in grouping and lesson planning, these assessments are not subject to Part B requirements. The letter does not address how these scores are reported, but the VIDE website contains references to distribution of the districtwide test scores to parents. Based upon the description in the letter and the information on the website, OSEP has concluded that these are districtwide assessment programs subject to the relevant requirements of Part B (20 U.S.C. 1412(a)(16) and 34 CFR §300.160) and that the VIDE remains out of compliance with these requirements.

With respect to Indicator 12, VIDE was required to report the percent of children referred by Part C prior to age 3, who are found eligible for Part B, and who have an Individualized Educational Program (IEP) implemented by their third birthdays. VIDE reported 60% compliance for FFY 2005, which represents slippage from 82% compliance previously reported for FFY 2004. In its June 1, 2007 report under the FFY 2006 Special Conditions for the period between July 1, 2006 and April 30, 2007, VIDE reported that 55.26% (21 of 38) of the children referred by Part C prior to age 3, who were found eligible for Part B, were receiving services or the parent had refused services by their third birthdays and reported that 71.05 % (27 of 38) of the children referred by Part C prior to age 3, who were found eligible for Part B, had an Individualized Educational

Program (IEP) in place by their third birthdays. VIDE's low level of compliance on this critical indicator demonstrates that it is not ensuring that all children transitioning from Part C to Part B are receiving special education and related services by their third birthdays. This has been a long-standing area of noncompliance for VIDE.

With respect to Indicator 15, VIDE's exercise of general supervision, the Territory was required to report the percent of noncompliance corrected within one year of identification, broken down by the number of findings of noncompliance and the number of corrections completed as soon as possible but in no case no later than one year from identification. For FFY 2005, VIDE reported 64% compliance. This remains a low level of compliance in an area with longstanding noncompliance. In addition, VIDE did not report on and OSEP could not determine the status of correction for noncompliance findings made in FFY 2003 that were not timely corrected in FFY 2004.

With respect to Indicator 16, VIDE reported 28.57% compliance with the requirement for timely resolution of State complaints for FY 2005, with slippage from the FFY 2004 data of 83.3%. Investigating and resolving State complaints is an important part of general supervision, and continued efforts are required to ensure compliance.

In addition to the programmatic Special Conditions discussed above, the Department has designated VIDE a high-risk grantee and imposed Special Conditions on all of its grants to VIDE. The Special Conditions require a contract with a third-party fiduciary to address financial management responsibilities concerning the grants, including, but not limited to, processing payments and disbursements, maintaining financial records, financial reporting, property procurements, and other related financial issues.

OSEP will carefully review VIDE's compliance in these areas. Failure to demonstrate correction of this noncompliance in VIDE's FFY 2006 APR will affect OSEP's determination of VIDE's status under section 616(d) of the IDEA, and will likely result in a finding of needs substantial intervention.

The table enclosed with this letter provides OSEP's analysis of the State's FFY 2005 APR and revised SPP and identifies, by indicator, OSEP's review and acceptance of any revisions made by the State to its targets, improvement activities (timelines and resources) and baseline data in the State's SPP. It also identifies, by indicator, the State's status in meeting its targets, and whether the State's data reflect progress or slippage, and whether the State corrected noncompliance and provided valid and reliable data. The table also lists, by indicator, any additional information the State must include in the FFY 2006 APR or, as needed, the SPP due February 1, 2008, to address the problems OSEP identified in the revised SPP or FFY 2005 APR. The State must provide this required information. We plan to factor into our determinations next year whether or not States provided the additional information requested in this table in their FFY 2006 APR, due February 1, 2008, and may take other actions as well, if the State's data, or lack of data, regarding these issues indicates continuing noncompliance.

As you know, your State must report annually to the public on the performance of each local educational agency (LEA) located in the State on the targets in the SPP under IDEA section 616(b)(2)(C)(ii)(1). The requirement for public reporting on LEA performance is a critical provision in ensuring accountability and focusing on improved results for children with disabilities. Please have your staff notify your OSEP State Contact when

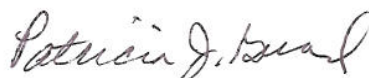
and where your State makes available its public report on LEA performance. In addition, States must review LEA performance against targets in the State's SPP, especially the compliance indicators, determine if each LEA meets the requirements of the IDEA and inform each LEA of its determination. For further information regarding these requirements, see SPP/APR Guidance Materials at <http://www.rrfcnetwork.org/>.

We hope that the State found helpful, and was able to benefit from, the monthly technical assistance conference calls conducted by this Office, ongoing consultation with OSEP State Contacts and OSEP-funded Technical Assistance Center staff, materials found on the IDEA 2004 website, and attendance at OSEP-sponsored conferences. OSEP will continue to provide technical assistance opportunities to assist your State as it works to improve performance under Part B of the IDEA. If you have any feedback on our past technical assistance efforts or the needs of States for guidance, we would be happy to hear from you as we work to develop further mechanisms to support State improvement activities.

As noted above, your State has been determined to need intervention. Pursuant to section 616(d)(2)(B) of the IDEA and 34 CFR §300.603(b)(2), a State that is determined to need intervention or need substantial intervention, and does not agree with this determination, may request an opportunity to meet with the Assistant Secretary for Special Education and Rehabilitative Services to demonstrate why the Department should change its determination. To request a hearing, submit a letter to John H. Hager, Assistant Secretary, Office of Special Education and Rehabilitative Services, 400 Maryland Avenue SW, Room 5107, Potomac Center Plaza, Washington, DC 20202-2600 within 30 days of the date of this letter and provide in the letter the basis for your request.

OSEP is committed to supporting Virgin Islands' efforts to improve results for children with disabilities and looks forward to working with your State over the next year. If you have any questions, would like to discuss this further, or want to request technical assistance, please do not hesitate to call Michael Slade, your OSEP State Contact, at 202-245-7527.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education Programs

Enclosures

cc: State Director of Special Education