



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

SEP 24 2008

Honorable La Verne Terry
Acting Commissioner of Education
Virgin Islands Department of Education
1834 Kongens Gade
St. Thomas, U.S. Virgin Islands 00802-6746

Dear Commissioner Terry:

The purpose of this letter is to inform you of the results of the Office of Special Education Programs' (OSEP) verification and focused monitoring visit to the Virgin Islands during the week of November 4, 2007. My August 31, 2007 letter informed you that OSEP is conducting verification and, in some cases, focused monitoring 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, Part B of the Individuals with Disabilities Education Act (IDEA). As re-authorized in 2004, IDEA requires the Department to monitor States with a focus on: (1) improving educational results and functional outcomes for children and youth with disabilities; and (2) ensuring that States meet the program requirements, particularly those most closely related to improving educational results for children with disabilities.

The purpose of our verification and focused monitoring visit was to evaluate the State's general supervision and data systems in order to assess and improve State compliance and performance, child outcomes, and the protection of child and parent rights and to review the State's procedures for distribution and use of IDEA funds and the timely obligation and liquidation of those funds. During the verification and focused monitoring visits, OSEP: (1) analyzed the components of the State's general supervision and data systems to determine the extent to which they are designed to ensure compliance and improve performance; and (2) targeted compliance and results issues identified in our June 15, 2007 letter responding to the VIDE's Federal Fiscal Year (FFY) 2005 Annual Performance Report (APR)/State Performance Plan (SPP). OSEP also reviewed compliance issues covered under the programmatic Special Conditions attached to the Virgin Islands' FFY 2007 Part B grant award.

As part of the verification and focused monitoring visit to the VIDE, OSEP staff met with Donna Gregory, then Acting Commissioner of Education, Carrie Johns, State Director of Special Education and State personnel responsible for: (1) the oversight of general supervision (including monitoring, mediation, complaint resolution, and impartial due process hearings) and financial systems for special education; and (2) the collection and

¹ Unless stated otherwise, State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas [See 34 CFR §300.40].

analysis of State reported data. Additionally, as a part of its focused monitoring visit, OSEP staff met with local educational agency (LEA) and early intervention staff, parents and students. During the local monitoring visit, OSEP focused on program-specific Special Conditions outlined in VIDE's FFY 2007 grant award letter and other areas of noncompliance. Prior to and during the visit, OSEP staff reviewed a number of documents, including the following: (1) OSEP's previous verification visit letter to VIDE dated October 5, 2005; (2) VIDE's SPP submitted to OSEP in December 2005; (3) VIDE's FFY 2005 APR submitted to OSEP in February 2007; (4) VIDE's IDEA, Part B grant application for FFY 2007; (5) VIDE's website; (6) the individualized education programs (IEPs) of 57 children and youth with disabilities in the Virgin Islands; and (7) other pertinent correspondence and data sources. Subsequent to the verification visit, OSEP also reviewed VIDE's FFY 2006 APR submitted to OSEP in February and April 2008; a progress report and clarification under the FFY 2007 Special Conditions submitted March 27, 2008 and April 28, 2008; and VIDE's IDEA, Part B grant application for FFY 2008 submitted and received on May 20, and June 5, 2008.

OSEP's discussion, conclusions and required actions for each of the critical elements used to guide our review of each State's general supervision, data, and finance systems are provided below. In addition, the letter includes a summary of noncompliance related to the FFY 2007 Special Conditions. These were fully addressed in OSEP's FFY 2008 Part B grant awards letter, but a brief summary is included herein. OSEP also has identified three other areas of noncompliance, including one area with a long history of noncompliance, and this letter includes required actions to address them.

I. General Supervision System

Critical Element 1: Does the State have a general supervision system that is reasonably designed to identify noncompliance?

OSEP determined that VIDE did not currently have a general supervision system that is reasonably designed to identify noncompliance. VIDE acknowledged the need and reported ongoing efforts to design a general supervision system that will enable it to identify and correct noncompliance. VIDE has a long standing history of making revisions to its general supervision system and has not demonstrated the capacity to develop and implement an effective system of general supervision for its Part B programs. However, as set out below, the most recent proposed revisions appear reasonably designed to identify noncompliance.

During the verification visit, VIDE described the components and the impact of its general supervision system on VIDE's ability to identify and correct noncompliance in a timely manner. VIDE reported that its approaches to identifying and correcting noncompliance are systemic and data-driven and include: enforcement of policies and procedures for the territory; the SPP/APR; on- and off-site monitoring activities; data collection and reporting system; technical assistance and professional development; dispute resolution; improvement and corrective action planning; incentives and sanctions that are consistent with section 616 of IDEA; and fiscal management to ensure that Federal education funds are distributed and used in an efficient and appropriate manner consistent with IDEA.

During the verification visit, VIDE reported that its policies and procedures entitled the *Virgin Islands Department of Education Special Education Rules: Revised July 2007* (Rules) were used to guide the implementation of special education and related services in the Territory. VIDE reported and submitted documentation that each of the two LEAs, pursuant to the requirements of 34 CFR §300.200, had submitted assurances that it had policies, procedures and programs in place that meet the requirements of 34 CFR §§300.201 through §300.213. However, VIDE staff expressed concerns regarding those assurances given the number of findings of noncompliance in each of the LEAs. VIDE staff reported that they have made multiple requests to each LEA to submit its policies and procedures for review by VIDE in order to determine consistency with VIDE's Rules. As of OSEP's visit, neither LEA had submitted them.

VIDE reported that it used the established targets and the priority areas described in its SPP to analyze the performance of each LEA as required under 34 CFR §300.602(a). VIDE provided data and information supporting its determination that each of the public agencies needs intervention in implementing the requirements of Part B of the IDEA. VIDE's public reports of LEA program performance and its determinations provide data and information to the LEAs on how each LEA's performance compares to the targets set by VIDE in its SPP/APR. OSEP was unable to determine how VIDE planned to use data and information related to the LEA performance, where available, to compare against the targets established in its SPP/APR, as a component of its general supervision system as required under 34 CFR §300.602(b).

VIDE reported that it has not consistently implemented a particular on- and off-site monitoring process since 2001. As of OSEP's visit, VIDE reported that it was again transitioning between monitoring procedures because it determined, in part through OSEP's review of and response to VIDE's SPP and longstanding noncompliance at both the State Educational Agency (SEA) and LEA levels, that the previous monitoring procedures were not sufficient to ensure the timely identification and correction of noncompliance. VIDE reported that the previously described tiered, cyclical monitoring process was never fully implemented due to a staffing shortage. As a result, VIDE reported that it implemented a temporary monitoring protocol focusing on evaluation procedures, extended school-year services and compensatory education. VIDE reported that these monitoring procedures were supported by desk audits, random sampling of IEPs, and data report reviews to identify noncompliance related to the Special Conditions identified in VIDE's FFY 2004 and FFY 2005 grant awards. VIDE returned to the tiered, cyclical monitoring process in 2006 after hiring more staff. Monitoring was completed and findings of noncompliance were issued to both LEAs in April 2006. VIDE reported that, after issuing the letters of findings of noncompliance to each of its LEAs, it focused on ensuring that each corrective action plan was fully implemented and previously identified noncompliance was corrected. As noted below, neither LEA had demonstrated correction of the previously identified noncompliance as of OSEP's verification visit in November 2007.

During the verification visit, VIDE provided OSEP a copy of its *Monitoring Policy and Procedural Manual* that described its new monitoring process that it would implement

beginning March 2008. Under its new monitoring process, VIDE plans to conduct on- and off-site monitoring of LEA compliance with VIDE's priority areas including the IEP provisions, general supervision activities, and the FAPE provisions, on cyclical basis of one LEA per cycle (i.e., each year). The monitoring will occur at four elementary schools, one middle and/or one junior high school, one secondary high school, and one program (i.e., Early Childhood Special Education Program, on- and off-island residential programs, and the interim alternative education programs, etc.). For Cycle II, the alternate LEA is slated for monitoring. In the 3rd and 4th years of the cyclical monitoring, monitoring activities will be conducted in each of the LEAs but the monitoring will occur at a different group of schools/facilities and programs. The Manual described VIDE's targeted monitoring procedures which involved focused compliance reviews of LEA policies, procedures and practices related to VIDE's priority areas.

OSEP believes that the proposed revisions to the monitoring system are reasonably calculated to enable VIDE to identify and correct noncompliance in a timely manner. However, without reviewing the actual implementation of the new system and also collecting data and conducting reviews at the local level, OSEP cannot determine the effectiveness of VIDE's efforts.

Critical Element 2: As part of its general supervision system, does the State have mechanisms in place to compile and integrate data across systems (e.g., 618, State-reported data, due process hearings, complaints, mediation, large-scale assessments, and previous monitoring results) to identify systemic noncompliance issues?

OSEP has determined that the State does not have mechanisms in place to compile and integrate data across systems to identify systemic noncompliance issues. VIDE reported that the mechanisms currently being used to compile data to identify systemic issues and problems are not integrated across systems or readily accessible. VIDE's efforts to develop and implement such a system has been a longstanding issue which has impacted its capacity to identify and correct systemic noncompliance.

VIDE staff described the current data systems and provided documentation including its Goalview database (i.e., the data system that collects student-specific data including section 618 child count data and educational environment data) reports; VIDE's State Administration Student Information (SASI) data system which includes exiting, assessment, and discipline data; and its dispute resolution complaint log. VIDE reported that the Goalview system was slated for an upgrade in December 2007 increasing its capacity to address all section 618 data needs and other reporting requirements and, given increased collaborative activities across agencies including VIDE's administrators for the SASI system, data sharing, data entry, reporting and use of data for identifying systemic issues will continue to improve. State complaints and other dispute resolution data are maintained in a separate database.

As discussed further under the data-related critical elements, VIDE reported that the lack of data sharing, irregularities in data entry, reporting and use, and the limited capacity of the State data system have compromised section 618 data accuracy as well as VIDE's ability to meet its SPP/APR reporting obligations. VIDE also reported that these data

systems do not interface. LEA administrators, teachers, counselors and related service providers in both St. Thomas/St. John LEA and St. Croix LEA confirmed that data are not integrated across systems or readily accessible. For example, prior to OSEP's verification visit, LEA special education directors were not able to produce requested data on LEA performance on SPP/APR targets. Additionally, local administrators of special education reported that they did not have access to the SASI system because VIDE does not allow LEA special education directors to access SASI data.

Critical Element 3: Does the State have a system that is reasonably designed to timely correct identified noncompliance, including the use of State guidance, technical assistance, follow-up, and, if necessary, sanctions?

OSEP determined that VIDE does not currently have a system that is reasonably designed to timely correct identified noncompliance, including the use of State guidance, technical assistance, follow-up, and if necessary, sanctions. As noted above, monitoring was completed and findings of noncompliance were issued to both LEAs in April 2006. The St. Croix LEA submitted, and VIDE approved a corrective action plan (CAP) in February 2007. The St. Thomas/St. John LEA submitted its CAP in September 2006. At the time of OSEP's verification visit, VIDE was not able to provide documentation that it had responded to the St. Thomas/St. John CAP. Neither LEA had demonstrated correction of the previously identified noncompliance as of OSEP's verification visit in November 2007. VIDE reported that it will soon implement a new monitoring process (see General Supervision Critical Element 1). VIDE's proposed revisions to its general supervision system include adopting the incentives and sanctions identified in 34 CFR §§300.604 and 300.608.

In its FFY 2006 APR submission, VIDE reported that 58 of 74 findings of noncompliance identified in FFY 2005 were corrected in a timely manner and that the remaining findings were corrected by December 2007. The State reported that all noncompliance findings identified in FFY 2003 and FFY 2004 were corrected.

Critical Element 4: Has the State identified any barriers (e.g., limitations on authority and insufficient staff or other resources) that impede the State's ability to identify and correct noncompliance in a timely manner? If barriers have been identified, what mechanisms has the State put in place to address those barriers?

VIDE reported several barriers that impede its ability to identify and correct noncompliance in a timely manner and plans to address the reported barriers. Barriers included: (1) the lack of stable senior leadership; (2) the failure of LEAs to respond to the SEA's correspondence regarding noncompliance; (3) insufficient number of qualified staff to (a) provide services (including evaluations) as required by the child's IEP (also verified through interviews with LEA personnel and parents), (b) conduct single audits, (c) provide technical assistance, and (d) conduct professional development activities; (4) inaccurate and untimely submission of data by LEAs, as caused by a lack of (a) qualified staff, (b) standards for data validity and reliability, and (c) data sharing across agencies; and (5) the lack of State and LEA fiscal oversight mechanisms.

VIDE reported that it has mechanisms in place or is developing mechanisms to address these barriers. VIDE indicated ongoing efforts to recruit and hire new staff and train current staff to address barriers noted above. VIDE noted that it had partnered in the past with the University of the Virgin Islands to recruit and train staff to meet the needs of the LEAs and was working again to establish that relationship. VIDE also reported that it is actively recruiting off-island for qualified staff to fill positions at the SEA and in the LEAs. VIDE reported intensified collaboration between general and special education data managers regarding establishing standards for data validity and reliability and data sharing across agencies. Finally, VIDE reported ongoing training by and assistance from the third-party fiduciary to ensure the availability of fiscal oversight mechanisms.

Critical Element 5: Does the State have dispute resolution systems that ensure the timely resolution of complaints and due process hearings?

VIDE described its dispute resolution system, demonstrated the operations of that system, and provided data from the dispute resolution tracking system. Staff informed OSBP that VIDE's Monitoring and Compliance Unit is responsible for ensuring the timely resolution of complaints, mediations, and due process hearings. VIDE reported that ongoing training for State and local staff, hearing officers, and mediators on dispute resolution processes and IDEA requirements is provided.

VIDE reported for the 2005-2006 School Year four of 16 written complaints were resolved within the 60-day timeline with two withdrawals and no extensions for exceptional circumstances, resulting in 28.57% of signed written complaints resolved within the 60-day timeline or a timeline extended for exceptional circumstances with respect to a particular complaint. Additionally, of the eight due process hearing requests, three were fully adjudicated but only two were adjudicated within the proper timeline. For those written complaints and hearing decisions that required corrective actions, VIDE reported that multiple correspondences were issued to LEAs directing them to correct the identified noncompliance. However, VIDE reported that no sanctions were imposed on the LEAs that had not implemented corrective actions (see General Supervision Critical Element 3). Additionally, VIDE reported that VIDE staff, not hearing officers, granted specific time extensions for due process hearings. This is inconsistent with 34 CFR §300.515(c) whereby a hearing or reviewing officer may grant specific extensions of time beyond the 45 day timeline for due process hearings, at the request of either party.

For FFY 2006, VIDE reported in its APR that of 12 State complaints, eight had written decisions, seven of those were timely, and four were still pending. Additionally, of four due process hearing complaints, two decisions were timely, one was not, and one was resolved without a hearing. Finally, of nine mediation requests, seven resulted in mediation agreements and two were not held or still pending.

OSEP was informed by VIDE that mediation procedures were in place to allow parties to resolve disputes. VIDE reported that six of the eight mediation requests during the 2005-2006 school year resulted in mediation agreements consistent with 34 CFR §300.506. However, resolution meetings were not being conducted due to the lack of LEA training regarding the resolution process. Mediations were being used in lieu of conducting

resolution meetings and, as required under 34 CFR §300.510, neither the parent or the agency agreed to use the mediation process in lieu of the resolution meeting nor was there a written agreement between the parent and the LEA to waive the meeting or an agreement to use mediation in lieu of the meeting.

Critical Element 6: Does the State have mechanisms that focus on improving educational results and functional outcomes for all children with disabilities?

VIDE did not identify specific mechanisms currently in place that focus on improving educational results and functional outcomes for children within its jurisdiction. However, VIDE's description of its proposed revisions, as set out in its *Monitoring Policy and Procedural Manual*, appear reasonably calculated to enable VIDE to improve results for all children with disabilities in the Territory. These procedures have adopted and adapted the IDEA's priority areas for Federal and State monitoring activities that are closely related to improving educational results for children with disabilities. VIDE believes that implementation of these procedures will create an integrated and cohesive set of support programs, services and activities that will result in the acquisition of life skills and independence as adults.

Required Actions for General Supervision

VIDE was not able to demonstrate that, as of the verification visit, it had implemented a general supervision system that is reasonably designed to identify and correct noncompliance in a timely manner. VIDE described a revised general supervision system that it believes is reasonably designed to identify and correct noncompliance. Specifically, VIDE has adopted and adapted the monitoring priority areas and enforcement activities required under 34 CFR §§300.600 through 300.604 and 300.608. OSEP believes that the revised monitoring system is reasonably calculated to enable VIDE to identify and correct noncompliance in a timely manner. However, without reviewing the actual implementation of the revised system and also collecting data and conducting reviews at the local level, OSEP cannot determine whether the public agencies in the Virgin Islands are in compliance with Part B.

OSEP also found that VIDE staff, and not hearing officers, grant due process hearing timeline extensions. This is inconsistent with the provision, at 34 CFR §300.515(c), that a hearing officer (or reviewing officer) grants specific extensions of time. Also, OSEP found that the VIDE does not ensure that whenever a due process hearing is requested, a resolution session is conducted unless the parent and the LEA agree in writing to waive it, as required under 34 CFR §300.510.

To address this noncompliance, by no later than December 1, 2008, VIDE must submit to OSEP:

- Evidence that VIDE has implemented its revised monitoring procedures, including, but not limited to: the monitoring report(s) from its Cycle 1 monitoring activities at the four elementary schools, one middle and/or one junior high school, one secondary high school, and one program (i.e., Early Childhood Special Education Program, on- and off-island residential programs,

and the interim alternative education programs, etc.); notice of identified noncompliance, if any; corrective action plans, as appropriate; documentation of corrected noncompliance; and, documentation of enforcement actions for any outstanding noncompliance, if any.

- Evidence that hearing officers and not staff grant extensions of time for due process hearings, including, but not limited to, policy guidance or training to VIDE staff on the requirements of 34 CFR §300.515(c) and all relevant documentation on all due process hearing timeline extensions granted between the date of this letter and November 15, 2008, if any.
- Evidence that VIDE is properly implementing the requirements of 34 CFR §300.510 related to resolution meetings, including, but not limited to: policy guidance and training for relevant staff on resolution meetings; a list of all due process hearings requested by parents between the date of this letter and November 1, 2008; documentation that those parents were offered a resolution meeting; the dates that each resolution meeting was held; a copy of each signed written waiver of the resolution meeting; or documentation that the parties agreed to use mediation in lieu of the meeting.

II. Data Collection System

Critical Element 1: Does the State have a data system that is reasonably designed to collect and report to the Department and the public, timely valid and reliable data and information?

During the verification visit, VIDE staff described mechanisms to collect data and information in order to report annually to the Department and the public. VIDE reported that section 618 data reports are generated by the Goalview system (i.e., child count, educational environment, and discipline) and the SASI data system (i.e., exiting, assessment, and discipline). As discussed under the general supervision critical elements, Goalview and SASI do not interface. Personnel data are maintained in a separate Human Resources database and made available for public reporting as needed. An electronic tracking system is used to collect data related to dispute resolutions and used to determine patterns and trends related to the implementation of IDEA. Staff reported that SPP/APR data are also extracted from these systems. VIDE staff reported that interviews and document reviews conducted during its on- and off-site monitoring activities are also used as a means for verifying the accuracy of the data generated by its databases. It was reported that these systems undergo ongoing revisions to ensure they meet the data collection and reporting needs of VIDE, with the eventual (timeline unspecified) development of a single source database.

Critical Element 2: Does the State provide clear guidance and ongoing training to public agencies regarding requirements and procedures for reporting data under section 618 of IDEA and the SPP/APR?

VIDE reported that, while efforts have been undertaken to conduct Territorywide training for local data managers, on-site technical assistance, yearly audits, and year-to-year

comparisons, LEAs continue to collect and report on incorrect data elements and submit incomplete data. Additionally, VIDE reported that the required data were not submitted by the LEAs within the required timelines. VIDE requested and received technical assistance from WESTAT related to VIDE's SPP/APR data collection and reporting needs. It is OSEP's understanding that the technical assistance was of short duration, limited to SEA staff, and was discontinued at the request of VIDE staff.

Critical Element 3: Does the State have 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 sections 616 and 618, OSEP guidance, and the State's procedures?

VIDE reported that the development of the State Office of Special Education *Special Education Data Policy* serves as a means to determine whether the data entry and reporting is done accurately and consistently with the required procedures. VIDE indicated that to address local efforts in collecting, maintaining, and reporting section 618 data, the Policy states that: (1) LEAs are required to complete data elements on their students with disabilities as of the December 1 data collection; (2) at the time of the December 1 Child Count, LEA Directors must certify the accuracy of the special education data; (3) the LEA Director transmits Child Count and other reports according to the instructions and schedule; (4) upon receipt of the report by the State Director, the data manager analyzes the data to identify errors; (5) reports are returned to the LEA Director for correction, if discrepancies exist; (6) the data manager prepares a final 618 data report for the State Director's review; and (7) the final completed reports are transmitted to the Commissioner of Education for signature. VIDE reported that the data manager works collaboratively with the designated coordinator for SPP/APR data collection and reporting. In addition, VIDE's Policy requires that on a monthly basis, the Local Special Education office must conduct random verifications of data entry and accuracy; and that annually, the Department will verify procedures and practices related to the Special Education Data Policy. Real-time support and assistance are built-in features of the State data system.

Critical Element 4: Does the State have procedures for identifying anomalies in data that are reported to the State and for correcting any inaccuracies?

VIDE reported that it has procedures for identifying and notifying local programs of any anomalies in the data. Staff reported that to ensure consistencies of data submission, Excel spreadsheet reports are used and the data are then stored in the database by local data managers. The State data manager described efforts that involve various reports and double checks by verifying data child by child and by comparing spreadsheet submissions using annual trend data. The data errors are verified and a report is drafted with red flags noting significant changes. The LEAs review the report, make the needed changes, and return the corrected data to the State data manager.

VIDE's FFY 2005 SPP/APR improvement activities addressed its procedures for ensuring data accuracy. Specifically, VIDE stakeholders requested additional technical assistance related to data collection from WESTAT. VIDE noted its recent participation in a technical assistance call facilitated by the Southeast Regional Resource Center related to

the use of electronic error-checking tools. VIDE's FFY 2006 SPP/APR reported completed improvement activities that addressed efforts to ensure data accuracy including providing technical assistance to the LEAs and, as requested by VIDE stakeholders, receiving technical assistance from WESTAT, SERRC and NCSEAM. VIDE also reported an increase in staffing for data management.

Required Actions for Data Collection

OSEP identified the following areas of weakness and concerns with the data system designed by the VIDE to collect and report information required under section 618 and through the SPP/APR process:

- In VIDE's FFY 2006 APR, the data on assessments and disproportionality were not valid and reliable.
- In VIDE's submission under the FFY 2007 Special Conditions related to early childhood transition, the data were not accurate or complete.
- VIDE *Special Education Data Policy* did not include standards for validity and reliability of data for its data submissions, including rules for data entry or submission for the SPP/APR.
- VIDE self-reported that LEAs continue to collect and report incorrect data elements, submit incomplete data, and submit data beyond required timelines.

To address these weaknesses and concerns, and consistent with OSEP's June 6, 2008 letter, in its FFY 2007 APR, due February 1, 2009, VIDE must provide valid and reliable data for all required indicators. VIDE also must submit documentation with the APR that it has addressed incomplete, incorrect and untimely data at the LEA-level. Documentation may include, but is not limited to: VIDE's standards for data validity and reliability; evidence of training and technical assistance for relevant LEA data personnel; and/or an analysis of the effectiveness of VIDE's efforts on the accuracy, completeness and timeliness of data reporting by the LEAs.

III Fiscal Management System

Critical Element 1: Does the State have procedures reasonably designed to ensure appropriate distribution and use of IDEA funds at the State level?

Critical Element 2: Does the State have procedures reasonably designed to ensure appropriate distribution and use of IDEA funds at the LEA level?

Critical Element 3: Does the State have procedures reasonably designed to ensure the timely obligation and liquidation of IDEA funds?

Because the Virgin Islands failed to develop and implement a credible central financial management system (FMS), as was originally required under the Compliance Agreement with the Department that ended September 23, 2005, the FFY 2006, FFY 2007 and FFY 2008 grants from the Department included Special Conditions regarding the use of a third-party fiduciary agent (Agent) to perform the financial management duties as required under 34 CFR Parts 75, 76 and 80. On August 25, 2006, the Virgin Islands government entered

into a contract with Alvarez and Marsal to serve as the Agent and during the on-site visit, was continuing to work with the Agent, under the terms of the contract, to improve the financial management of various grants made by this Department to the Virgin Islands. The Agent's role encompasses financial management responsibilities concerning the grants, including, but not limited to, processing payments and disbursements, maintaining financial records, financial reporting, and other duties expressly set out in the Special Conditions.

Matters related to the distribution and use of IDEA funds at the LEA level are covered under the Departmentwide Special Conditions. The Virgin Islands remains responsible for the review and approval of LEA applications for subgrants, determination of LEA allocations, and notification to the LEAs regarding their allocations under the grants. Further, the Special Conditions specify that at the beginning of the contract period and prior to any drawdowns or disbursements, the Virgin Islands must provide the Agent with a line item budget for the total amount of each grant and subgrant, including amounts for State administration and State-level program activities. The Agent must use the line item budget to track projected and actual expenditures for the program under the grants and must ensure that the expenditures proposed are only for allowable purposes under each grant. The Agent must use fiscal control and accounting procedures that meet the requirements imposed on non-State governmental grantees in accordance with 34 CFR §§80.20(b) and 80.21.

Matters related to the timely obligation and liquidation of IDEA funds are covered under the Departmentwide Special Conditions. Specifically, the Virgin Islands is responsible for: (i) executing the drawdowns of funds under the Part B program from the Department's Grant Administration and Payment System (GAPS) so that funds are deposited into the separate bank account established and maintained by the Agent; and (ii) providing to the Agent, for deposit into the separate bank account established by the Agent, any matching funds required for the grants. The Special Conditions provide for the transfer of drawdown authority to the Agent if the VI is failing to draw down funds consistent with the Special Conditions. The Agent must take steps to prevent the lapsing of funds available under the grants, including ensuring timely disbursement of funds through the use of methods and procedures for payment that minimize the time elapsing between the transfer of funds and disbursement as required by 34 CFR §80.21(b). The Virgin Islands and the Agent must coordinate the timing of drawdowns and disbursements to ensure that payments to staff, vendors and providers are prompt and timely. To the greatest extent feasible, the VIDE or the Agent, if it has undertaken drawdown responsibility, must draw down funds in a timely manner so that funds under the grants are deposited to the separate bank account on the same day that funds are drawn from the account to liquidate obligations under the grants. VIDE, as appropriate and at the Agent's direction, must draw down sufficient funds under the grant to cover each approved request for payment.

The Agent must allow funds under a grant to be charged only for costs resulting from obligations that were properly made during the funds' period of availability, including any carryover period. To ensure against the lapsing of funds, the Agent must liquidate obligations no later than 90 days after the end of the funding period or during any

extension of that period authorized by the Department, in accordance with 34 CFR §80.23.

Required Actions for Fiscal Management

During the verification visit, roles and responsibilities of the Agent and VIDE, as stipulated in the Departmentwide Special Conditions letter, were discussed. The roles and responsibilities of the Agent included, but were not limited to, managing cash, processing payments and disbursements, maintaining financial records, and reporting financial results. VIDE remained responsible for providing program services under the grant, including reviewing and approving LEA applications for subgrants under formula grant programs, determining LEA allocations, and notifying LEAs regarding their allocations under the grants. The Department's Office of the Secretary continues to monitor and administer the Departmentwide Special Conditions to ensure that the respective roles and responsibilities are carried out.

IV. Program-specific Special Conditions

In addition to the Departmentwide Special Conditions discussed above, the Virgin Island's FFY 2007 IDEA Part B grant award was released subject to program-specific Special Conditions. The FFY 2007 program-specific Special Conditions required that by February 1, 2008, the Virgin Islands:

1. Report accurate and complete data for each LEA demonstrating compliance with the transition requirements (20 U.S.C. §1412(a)(9) and 34 CFR §300.124) for each child with a disability transitioning from Part C to Part B for the period from July 1, 2007- January 15, 2008 (born between July 1, 2004 and January 15, 2005), including the child's name or identifier, the date of birth, the date of the transition meeting, the date the child was determined eligible or ineligible for Part B services, the date of the IEP, and the date that services began or that services were refused by the parent.
2. Submit documentation and information demonstrating that VIDE is reporting publicly and to the Secretary on the participation and performance of children with disabilities on Territorywide assessments with and without accommodations and on alternate assessments, as required by 20 U.S.C. §1412(a)(16)(D) and 34 CFR §300.160.
3. Submit documentation and information demonstrating that VIDE is ensuring that both LEAs are complying with the requirements at 20 U.S.C. §1412(a)(16) and 34 CFR §300.160 in the administration of districtwide assessments, if any. The documentation is to include, as appropriate, each LEA's policies and procedures for administering districtwide assessments, documentation of the administration of regular districtwide assessments with and without accommodations and of the administration of an alternate districtwide assessment, and the reports to the public on the participation and performance of students with disabilities on the districtwide assessments as required under 20 U.S.C. §1412(a)(16)(D) and 34 CFR §300.160(f). If one or both of the LEAs are not administering districtwide assessments, VIDE must submit documentation attesting to this fact.

During the verification visit, OSEP met with VIDE staff, conducted interviews in each LEA, and held an OSEP-sponsored Territorywide parent meeting attended by more than 75 parents to evaluate VIDE's progress towards meeting the requirements of the program-specific Special Conditions imposed on VIDE's FFY 2007 grant award under Part B.

Students Transitioning from Part C to Part B

During the verification visit, Virgin Islands' Part C and VIDE Part B staff reported increased partnering between programs. VIDE also reported the use of a Territorial Part C and Part B Tracking Form whereby the LEAs are required to report monthly on the status of each child receiving Part C services and efforts to ensure the timely and smooth transition to Part B. The tracking form is viewed by VIDE as a means to ensure accurate and timely data reporting by the LEAs regarding each child's transition to Part B.² VIDE reported to OSEP current efforts to create a State-level early childhood program coordinator position to address issues related to eligibility determinations, timely provision of services, expanding program options, data accuracy, and monitoring activities.

In interviews, LEA and Headstart personnel and parents reported that in the St. Thomas/St. John LEA, the LEA ensured that all eligible students transitioning from Part C to Part B have timely IEPs or individualized family services plans (IFSPs) and were receiving special education and related services by their third birthday. However, during the OSEP-sponsored parent meeting, Headstart personnel and parents from the St. Croix LEA reported that only children who were enrolled in Headstart after transitioning from Part C to Part B received timely evaluations.

The VIDE did not report on February 1, 2008 as required, but did submit a report on March 27, 2008. VIDE's March 27, 2008 submission indicated that only 10 students transitioned from Part C to Part B during the reporting period. Of the ten students listed, one student was excluded from the calculation for reporting compliance. Although the VIDE reported full compliance, OSEP's efforts to confirm the reported data revealed that there were at least two other students who transitioned from Part C to Part B during the reporting period, but whose names were not included in the VIDE report.

As cited in OSEP's June 2008 determination letter and the FFY 2008 Special Conditions, VIDE submitted a letter dated April 28, 2008 that included a list of students that it generated by comparing a list of students exiting the Part C program with district reports and the State data systems under the Part B program. The list did not include the dates of initial IEPs or provision of services as required by the FFY 2007 Special Conditions. In addition, OSEP's review of the list revealed that there were approximately eight students, not previously reported, whose birthdays fell within the reporting period and who were

² VIDE reported to OSEP that St. Croix has 14 Headstart programs with 36 children with disabilities currently receiving services; 15 children with disabilities are placed among the 51 private pre-schools; and 32 children with disabilities are placed throughout the public preschool programs housed among the 10 elementary schools. In St. Thomas, 34 children with disabilities currently receive services in the 21 Headstart programs; eight children with disabilities are placed among the 87 private pre-schools; 30 children with disabilities are placed throughout the public preschool programs housed among the 13 elementary schools and one homebound child with disabilities.

reported as receiving services under Part B. However, VIDE did not report on whether these eight students were provided a timely transition from Part C to Part B. VIDE's FFY 2008 Part B grant awards application also included an admission that VIDE had not come into full compliance with the requirements of 34 CFR §300.124.

Statewide (Territorywide) Assessments

With respect to Territorywide assessments, during the visit, VIDE informed OSEP that no procedures were in place to ensure that reporting on assessment data is disaggregated to include: the number of students with disabilities participating on the regular assessment with accommodations; the number participating in alternate assessments based on grade-level academic achievement standards; the number participating in alternate assessments based on modified academic achievement standards; or the number participating in alternate assessments based on alternate academic achievement standards. Also, no procedures were in place to ensure reporting on the performance results of students with disabilities on alternate assessments based on grade-level academic achievement standards; alternate assessments based on modified academic achievement standards; or alternate assessments based on alternate academic achievement standards.

As cited in OSEP's June 2008 determination letter and the FFY 2008 Special Conditions, VIDE's March 27, 2008 submission indicated that public reporting on assessment is posted on its website, that the alternate assessment (VITAL-A) is undergoing peer review and that the "results of students with IEPs participating in the VITAL-A will be reported with the general VITAL report." The report cards on the website did not disaggregate the numbers of students with disabilities taking the regular assessment with and without accommodations or the number of those taking the alternate assessment.

VIDE's FFY 2008 grant award application included a statement that in 2006-2007, the VIDE administered the VITAL-S with and without accommodations, administered the alternate assessment to children with severe cognitive delays and that the results of these assessments were made public through the Virgin Islands Department of Education's 2006-2007 Territorial Report Card. However, as noted above, the report cards did not include, and OSEP was unable to otherwise locate on the website, disaggregated participation numbers for the regular assessment with accommodations; disaggregated participation numbers for the regular assessment without accommodations; or disaggregated participation numbers for the alternate assessment as required under 20 U.S.C. §1412 (a)(16) and 34 CFR §300.160.

Districtwide Assessments

During the verification visit, VIDE staff reported that the LEAs continue to use districtwide testing, but only for "diagnostic" purposes. This was also reported by LEA personnel in the St. Croix district. However, in the St. Thomas/St. John LEA, interviewees reported inconsistent information regarding the administration of districtwide assessments. Some LEA personnel reported that districtwide assessments were not administered; while high school and central office personnel reported that districtwide assessments were administered for assessment purposes and stated that the districtwide assessment was not

administered with accommodations and there was no alternate districtwide assessment.

As cited in OSEP's June 2008 determination letter and the FFY 2008 Special Conditions, the State submitted a letter dated March 27, 2008, reiterating that LEAs do not administer districtwide assessments for "the purpose of accountability." To date, VIDE has provided inconsistent rationales and has not submitted any specific documentation, policies, procedures, affidavits or other relevant material that clearly demonstrate that assessments, other than the Statewide assessments, are not administered on a districtwide basis and are not reported to parents. Under 20 U.S.C. §1412(a)(16) and 34 CFR §300.160, the same requirements that apply to statewide assessments also apply to assessments administered and reported on a districtwide basis.

Required Actions under the Program-specific Special Conditions

As part of the FFY 2008 Special Conditions, OSEP concluded that VIDE had not met the requirements of the FFY 2007 Special Conditions in the area of early childhood transition, public reporting on participation in Statewide (Territorywide) assessments, and in ensuring proper reporting and alternate assessments related to districtwide assessments, if and when those are administered. The required actions under the FFY 2008 Special Conditions are incorporated by reference.

V. Other Areas Identified Through Focused Monitoring

Free Appropriate Public Education at No Cost to Parents.

Pursuant to 34 CFR §300.101(a), FAPE must be available to all children residing in a State between the ages of 3 and 21, inclusive. FAPE, as defined in 34 CFR §300.17, means special education and related services that: (a) are provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the SEA, including the requirements of this part; (c) include an appropriate preschool, elementary school, or secondary school education in the States involved; and (d) are provided in conformity with an IEP that meets the requirements of 34 CFR §§300.320 through 300.324, regarding individualized education programs. Under 34 CFR §300.101(a), FAPE must be available to all children with disabilities of eligible age who reside in the State.

In both of the LEAs, some personnel and all parents reported, and VIDE confirmed, that parents are routinely paying for related services, such as physical therapy and occupational therapy, prior to receiving those services and then must submit for reimbursement. It was reported that this procedure was implemented because related service providers would not provide the related services without receiving payment prior to providing the needed services. By requiring parents to pay for related services and then request reimbursement, VIDE is not providing FAPE at no cost to the parent. This is inconsistent with the provisions of 34 CFR §§300.17 and 300.101(a). OSEP concludes that VIDE has not ensured that FAPE is made available to eligible children with disabilities and their families without charge consistent with Part B requirements.

Transportation Issues Result in Shortened School Day

As noted above, FAPE is defined, at 34 CFR §300.17, as special education and related services that meet the standards of the SEA, including the requirements of Part B. 34 CFR §300.101(a) requires that FAPE be made available to all children with disabilities of eligible age who reside in the State. The IDEA does not specifically address the issue of the length of a school day for students. Determining the length of the school day is a decision left to the SEA. Where a child's IEP Team makes an individualized determination that a child needs a modification to the program such as a shortened school day or an extended school day in order to receive FAPE, then such modifications must be written into the IEP. See 34 CFR §300.320. Any modifications to the length of the school day must be based on the unique needs of the child and not because of the failure to provide appropriate transportation services. See, generally, 34 CFR §§300.320-300.324.

As part of a 1999 Part B Compliance Agreement and in Special Conditions subsequent to the termination of the Agreement, OSEP required VIDE to correct a noncompliance finding that transportation issues had resulted in shortened school days for some students with disabilities regardless of their needs. Specifically, OSEP found that transportation was not always available as a related service and when it was, students with disabilities often arrived after the beginning of the school day and/or were required to depart school prior to the end of the school day. VIDE had defined the school day as lasting six hours. Subsequently, VIDE reported to the Department that this area of noncompliance had been corrected and submitted documentation related to the monitoring of transportation services. However, during the verification visit, interviews with LEA personnel and parents in St. Thomas indicated that buses for students with disabilities were once again arriving late at school on most mornings, resulting in missed classes. Personnel and parents also reported that often these buses departed prior to the end of the school day to avoid traffic congestion, also resulting in shortened school days for those students with disabilities. OSEP concludes that VIDE has not ensured that FAPE that meets the standards of the SEA is made available to all eligible students with disabilities as required under 34 CFR §§300.17 and 300.101(a), because transportation problems are once again resulting in missed classes and shortened school days.

Assistive Technology

34 CFR §300.105(a) requires that each public agency must ensure that assistive technology devices, assistive technology services, or both, as defined in the IDEA regulations at 34 CFR §§300.5 and 300.6, are made available to a child with a disability if required as a part of the child's special education services, related services, or supplementary aids and services.

LEA personnel and parents reported that students with disabilities do not always receive the assistive technology that is specified in the child's IEP. For example, in one LEA, assistive technology listed on two IEPs of students with disabilities did not follow the students when they transitioned from elementary school to middle school. SEA staff acknowledged, and OSEP concludes, that VIDE has not ensured that assistive technology is consistently made available to eligible children with disabilities when required as part of

the child's special education, related services or supplementary aids and services. See 34 CFR §300.105(a).

Required Actions for FAPE at No Cost, Shortened School Day, and Assistive Technology

To address the areas of noncompliance noted above and that were not part of the FFY 2008 Special Conditions, with its FFY 2007 APR due February 1, 2009, VIDE must submit to OSEP documentation (e.g., policies and procedures, monitoring data, information, affidavits and reports) demonstrating that VIDE:

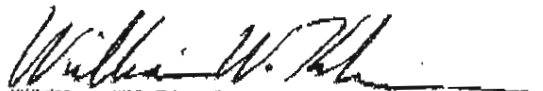
- Is ensuring that students receive the needed related services and that parents are not required to prepay and request reimbursement in order for their child to receive related services.
- Ensures every student with disabilities who receives transportation services can participate in the full school day unless his or her IEP specifies otherwise based upon the child's individual needs.
- Assistive technology needed to implement the IEPs of students with disabilities is consistently available.

VI. Conclusion

The information provided by Virgin Islands Department of Education's staff during the OSEP visit, together with all of the information that OSEP staff reviewed in preparation for the visit, greatly enhanced our understanding of the Virgin Islands Department of Education's systems for general supervision, data collection and reporting, and financial systems. As set out above, OSEP is requiring specific actions that the VIDE must take and report on to ensure that all identified noncompliance is properly corrected as soon as possible.

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

Sincerely,


William W. Knudsen
Acting Director
Office of Special Education Programs

cc: Carrie Johns
State Director of Special Education