

**Enclosure C**  
**Special Conditions**

**1. Basis for Requiring Special Conditions**

Pursuant to 34 CFR §80.12, the Office of Special Education Programs (OSEP) is imposing Special Conditions on Virgin Islands' Federal Fiscal Year (FFY) 2007 grant award under Part B of the Individuals with Disabilities Education Act (Part B). The basis for these Special Conditions is that the Virgin Island's June 1, 2007 progress report under the 2006 program-specific Special Conditions did not demonstrate that the previously-identified noncompliance had been fully corrected. The FFY 2006 program-specific Special Conditions required the Virgin Islands Department of Education (VIDE) to:

- A. 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, including those eligible children who turn three during the summer months, consistent with Part B requirements;
- B. Ensure that all children with disabilities are included in general State and districtwide assessment programs, including the provision of appropriate accommodations and alternate assessments, as appropriate, and that the State is reporting to the public on the participation of children with disabilities in the assessment programs consistent with Part B requirements; and
- C. To the extent that LEAs in the Virgin Islands continue to administer districtwide assessments, demonstrate that it is ensuring that LEAs comply with the relevant Part B requirements.

VIDE was required to provide the Office of Special Education Programs (OSEP) with a final progress report by June 1, 2007 with appropriate documentation to demonstrate full compliance. VIDE submitted documents on June 1 and 4, 2007. OSEP's analysis of VIDE's submissions related to the FFY 2006 Special Conditions follows:

- A. Students Transitioning from Part C to Part B: Under 20 U.S.C. §1412(a)(9) and 34 CFR §300.124, a child transitioning from services under Part C of the IDEA to services under Part B, must have an IEP developed and implemented by the child's third birthday. In its June 1, 2007 progress report 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 IEP in place by their third birthdays. This has been a long-standing area of noncompliance for VIDE.
- B. Statewide (Territorywide) Assessments: Under 20 U.S.C. §1412(a)(16), if VIDE utilizes a statewide assessment system, it must ensure that children with disabilities in the Virgin Islands participate with and without accommodations, must develop and administer an alternate assessment, if necessary; and, must

report publicly on the participation and performance of children with disabilities on such statewide assessments. VIDE's June 1, 2007 and June 4, 2007 letters reported that VIDE is unable to report at this time compliance with the relevant Part B requirements for reporting to the public 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.

- C. Districtwide Assessments: Under 20 U.S.C. §1412(a)(16), the same requirements that apply to statewide assessments also apply to assessments administered on a districtwide basis only. See also, 72 Fed. Reg. 17748, 17781 (April 9, 2007) (codified at 34 CFR §300.160 (effective May 9, 2007)]. VIDE's June 1, 2007 and June 4, 2007 letters reported that VIDE is unable to report at this time compliance with the relevant Part B requirements for the administration of districtwide assessments and that the required reporting occurs. 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 tests 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 and that the VIDE remains out of compliance with these requirements.

## 2. **Nature of the Special Conditions**

By February 1, 2008, VIDE must submit appropriate documentation to demonstrate compliance with IDEA requirements related to the areas listed below. Specifically, VIDE must do all of the following:

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.

### **3. Evidence Necessary for Conditions To Be Removed**

The Department will remove the Special Conditions if, at any time prior to the expiration of the grant award period, the Virgin Islands provides documentation, satisfactory to the Department, that it has fully met the requirements and conditions set forth above, which require Virgin Islands to submit data demonstrating compliance with the Part B requirements that apply to each of the three areas listed above and that are the same subject of the Special Conditions under Part B.

### **4. Method of Requesting Reconsideration**

The State can write to the Office of Special Education Programs Acting Director, Patricia J. Guard, at the address below, if it wishes the Department to reconsider any aspect of these Special Conditions. The request must describe in detail the changes to the Special Conditions sought by the State and the reasons for those requested changes.

### **5. Submission of Reports**

All reports that are required to be submitted by Virgin Islands to the Department under the Special Conditions should be submitted to:

U.S. Department of Education  
Office of Special Education and Rehabilitative Services  
Attn: Michael F. Slade  
400 Maryland Ave., SW  
Washington, DC 20202-2550