



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

NOV 16 2005

Dear Commissioner Michael:

The purpose of this letter is to respond to the Virgin Islands' Department of Education's (VIDE's) May 27, 2005 submission of its Federal Fiscal Year (FFY) 2003 Annual Performance Report (APR) under the Individuals with Disabilities Education Act (IDEA) Part B for the grant period July 1, 2003 through June 30, 2004. The APR reflects actual accomplishments that the State made during the reporting period, compared to established objectives. The Office of Special Education Programs (OSEP) has designed the APR under the IDEA to provide uniform reporting from States and result in high-quality information across States. The APR is a significant data source for OSEP in the Continuous Improvement and Focused Monitoring System (CIFMS).

The State's APR should reflect the collection, analysis, and reporting of relevant data, and include specific data-based determinations regarding performance and compliance in each of the cluster areas. This letter responds to VIDE's FFY 2003 APR. OSEP has set out its comments, analysis and determinations by cluster area.

Background

The conclusion of OSEP's March 3, 2005 FFY 2002 response letter required the Territory to address the following areas of noncompliance. The Territory was required to submit a Progress Report to OSEP within six months from the date of the March 3, 2005 letter (by September 3, 2005) with data and analysis demonstrating progress toward compliance, and a Final Report no later than 30 days following one year from the date of the letter, April 2, 2006, with data and analysis demonstrating full compliance:

1. **Complaints**. Ensure that, as required by 34 CFR §300.661, each written complaint decision is issued within 60 days after the complaint is filed, unless exceptional circumstances exist with respect to a particular complaint.
2. **Early childhood transition**. Ensure that VIDE monitors compliance, and corrects identified noncompliance, with the requirement 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 birthdays.

3. Secondary transition. Ensure that VIDE monitors compliance, and corrects identified noncompliance, with the requirements of 34 CFR §300.344(b)(3)(ii) related to secondary transition. By May 3, 2005, OSEP required VIDE to submit its analysis of compliance with 34 CFR §300.344(b)(3)(ii) and, to the extent that it found noncompliance, submit a plan to ensure correction within a reasonable period of time not to exceed one year from the date OSEP accepts the plan.

VIDE included some data and information related to the above issues in its FFY 2003 APR submission, dated May 27, 2005.

OSEP's March 2005 letter also required VIDE to report, in the FFY 2003 APR, the Territory's progress in the following areas:

1. Monitoring. Data and analysis demonstrating correction of previously-identified noncompliance in a timely manner (i.e., within one year of identification) and, if necessary, that the Territory utilized appropriate sanctions to ensure timely correction.
2. Sufficient qualified personnel. Data and analysis demonstrating an adequate supply of qualified personnel was available and reporting on the implementation of the Comprehensive System of Personnel Development (CSPD).
3. Free appropriate public education (FAPE)-Disproportionality. Data and analysis required by APR instructions, including any determination of significant disproportionality. When identified, VIDE was to submit the results of the required review of policies, procedures and practices and, if appropriate, a summary of any necessary revisions to those policies, procedures and practices, consistent with the requirements of 34 CFR §300.755.
4. FAPE- Graduation and drop-out rates. Data and analysis reporting results of the implementation of the Territory's strategies and data that demonstrated improvement in these areas.
5. FAPE- Suspension/expulsion rates. Data and analysis identifying whether significant discrepancies in long-term suspensions and expulsions occurred, based upon one of two comparisons: (a) the rate of long-term suspensions and expulsions of children with disabilities among local educational agencies (LEAs); or (b) the rate of long-term suspensions of children with disabilities compared to the rates for nondisabled children within the LEAs. Where VIDE identified significant discrepancies, VIDE was required to report on the reviews and, if appropriate, revisions of policies, procedures and practices consistent with 34 CFR §300.146.
6. Preschool outcomes. Documentation of data (collected through sampling, monitoring, individual IEP review, or other methods), targets for improved performance and strategies to achieve those targets for this area, or a plan to collect the data, including a detailed timeline of the activities necessary to implement that plan.

7. Participation and performance on large-scale assessments. Data and analysis reporting VIDE's compliance with the requirements of 34 CFR §300.138 related to Territory-wide and districtwide assessments. To the extent that it is out of compliance, OSEP required VIDE to provide a plan to address the noncompliance including: (1) ensuring the participation of children with disabilities in large-scale assessments, with appropriate accommodations and modifications, if necessary; (2) providing a timetable for the development of guidelines for participation in alternate assessments; (3) providing timelines for development and implementation of alternate assessments, including staff training; and (4) providing timetables for reporting to the public and to OSEP on the participation and performance of children with disabilities on the alternate assessments, in the same detail and with the same frequency that information is reported on assessments for children without disabilities.

OSEP conducted an on-site verification visit in February 2005. The results of that visit were sent to the Virgin Islands in a letter dated October 5, 2005. Issues from the verification letter and the Special Conditions attached to the Virgin Islands' FFY 2005 Part B Grant Award are discussed in the relevant sections below.

General Supervision

Identification and timely correction of noncompliance

Regulations at 34 CFR §300.600 and 20 U.S.C. 1232d(b)(3) require that each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency: (1) is under the general supervision of the persons responsible for educational programs for children with disabilities in the State educational agency; and (2) meets the education standards of the State educational agency (including the requirements of this part). Under 20 U.S.C. 1232d(b)(3), each State educational agency must monitor programs under its general supervisory authority to ensure compliance with the requirements of IDEA. States must also monitor the exercise of its general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration, and a system of transition services as defined in §§602(34) and 637(a)(9). Data and information describing compliance with these requirements may include: (1) the number of programs/agencies monitored during the reporting period; (2) the type and number of findings of noncompliance identified by the State in these programs; (3) the type and number of findings of noncompliance identified by the State during the previous reporting period along with data and other evidence of correction of the identified noncompliance within one year of identification (i.e., within one year of the date when the program was officially notified of the noncompliance); (4) data and other evidence of any sanctions imposed by the State when programs did not comply within one year; and (5) explanations for any noncompliance existing beyond one year after identification.

OSEP's March 3, 2005 letter required VIDE to report, in the FFY 2003 APR, its progress in identifying noncompliance through the monitoring system and correcting noncompliance in a timely manner, i.e., within one year of identification. The report was to include data and analysis demonstrating that VIDE corrected previously-identified noncompliance in a timely manner and,

if necessary, that the Territory utilized appropriate sanctions to ensure timely correction. During its February 2005 visit, OSEP determined that VIDE was not meeting the requirements of 20 U.S.C. §§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 was not properly identifying and correcting noncompliance consistent with its established monitoring system.

On pages one through 16 of the FFY 2003 APR, the Territory described its monitoring system and efforts to address the identification and timely correction of noncompliance. However, VIDE did not include required data demonstrating that it identified and corrected noncompliance. VIDE reported that it revised policies and procedures and developed an accountability monitoring work plan. However, VIDE reported that it has not completed all of its monitoring cycles and did not include results from the first two monitoring cycles that were completed. VIDE did not include findings from its districts or any evidence of corrective action or sanctions implemented as a result of its general supervision activities. During the verification visit, OSEP learned that, because of staffing shortages, VIDE ceased its cyclical process and implemented interim monitoring measures. OSEP determined that the interim measures did not effectively identify noncompliance. VIDE did not include documentation in its FFY 2003 APR to show its effectiveness in executing its general supervisory responsibilities.

In its October 2005 letter, OSEP required VIDE to submit, by November 4, 2005: (1) a plan outlining the steps it is going to take, including timelines, to ensure that it has a method for systematically monitoring all Part B requirements, identifying noncompliance and correcting all identified noncompliance in a timely manner; (2) documentation that all noncompliance identified in the Cycle II monitoring report has been corrected; or, where it has not been corrected, that appropriate sanctions are being imposed; and (3) documentation that the problems in the areas of extended school year services and compensatory services identified in the summer 2003 monitoring visit have been properly addressed.

In addition, the Special Conditions attached to the Virgin Islands' FFY 2005 Part B Grant Award require that VIDE ensure the elimination of the backlog of students not receiving a timely triennial evaluation for those due after October 1999. VIDE must continue to document progress in this area by submitting data reports and other relevant documentation, as appropriate, utilizing the reporting forms provided by OSEP, on the following dates: December 1, 2005, February 15, 2006, June 30, 2006.

This area is also an indicator in the State Performance Plan (SPP) under section 616 of IDEA that is due December 2, 2005. In preparation for the submission of the SPP on December 2, 2005, the Territory should carefully consider its current data collection against the requirements related to this indicator in the SPP packet to ensure that data will be responsive to those requirements. The Territory must submit responsive baseline data regarding the identification and timely correction of noncompliance.

Formal written complaints

Regulations at 34 CFR §300.661(a) require that, within 60 days after a complaint is filed, the State educational agency (SEA) must: (1) carry out an independent on-site investigation, if the

SEA determines that an investigation is necessary; (2) give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaints; (3) review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B; and (4) issue a written decision to the complainant that addresses each allegation in the complaint and contains findings of fact and conclusion and the reasons for the SEA's final decision. Data and information describing compliance with these requirements may include: (1) number of complaints filed during the reporting period; (2) timelines within which written decisions were issued for each complaint; and (3) an explanation for any timelines exceeding 60 calendar days after the date the complaint was filed.

OSEP required VIDE to submit a Progress Report by September 3, 2005, including data and analysis demonstrating progress toward compliance with the timeline requirement. On pages four and five of the APR and in Attachment 1(a) on page 103 of the FFY 2003 APR, the Territory included data and information indicating continued noncompliance in meeting the 60-day timeline for complaint resolution as required by 34 CFR §300.661(a). VIDE reported that of eight filed complaints, one was withdrawn, one was resolved through the mediation process, three were completed within timelines (50%) and three complaints were pending as of July 1, 2004. VIDE reported that one complaint investigation was pending because the complainant "decided to keep the case open." Regulations at 34 CFR §300.661 permit an extension of the 60-day timeline for completing complaint investigations only if "exceptional circumstances exist with respect to a particular complaint." A decision by a complainant to keep a case open generally is not an exceptional circumstance that warrants an extension of time. An appropriate way for VIDE to address such circumstances would be to allow the complainant to withdraw the complaint and refile, if consistent with Territory policies and any applicable statute of limitations.

VIDE must continue to report on its progress toward compliance with the 60-day timeline for complaint resolution required by 34 CFR §300.661(a) in the SPP and submit a final report demonstrating compliance no later than April 2, 2006.

This is an indicator in the SPP under §616 that is due December 2, 2005. In preparation for the submission of the SPP on December 2, 2005, the Territory should carefully consider its current data collection against the requirements related to this indicator in the SPP packet to ensure that data will be responsive to those requirements. The Territory must submit responsive baseline data regarding the 60-day timeline for complaint resolution.

Mediation

On page five and in Attachment 1(b) on page 104 of the FFY 2003 APR, the Territory included data and analysis demonstrating performance in this area. From July 2003 to June 2004, two mediations were held related to requests for due process hearings. One of the mediations resulted in a settlement agreement and the second was pending at the conclusion of the reporting period. OSEP looks forward to reviewing the Territory's data in the SPP regarding the percent of mediations resulting in settlement agreements.

Due process hearings

On page five and in Attachment 1(c) on page 105 of the FFY 2003 APR, the Territory reported that two due process hearings were requested between July 1, 2003 and June 30, 2004. One due process hearing request was withdrawn and the second request was resolved through mediation. OSEP looks forward to reviewing the Territory's updated data regarding the percent of fully adjudicated due process hearing requests that were fully adjudicated within the 45-day timeline or a timeline that is properly extended by the hearing officer at the request of either party in the SPP, due December 2, 2005.

During the February 2005 on-site verification visit, OSEP determined that VIDE had 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 or a system to document correction of noncompliance and the completion of corrective actions required under decisions or agreements reached under the dispute resolution systems.

OSEP's October 2005 verification letter required VIDE to submit, by November 4, 2005: (1) a plan that outlined the steps VIDE will take to ensure that all corrective actions ordered in State complaint decisions, mediation agreements and due process hearings were implemented as directed and that VIDE had a method for tracking and monitoring the implementation of those corrective actions; (2) a copy of its revised complaint, mediation and due process logs that incorporated 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.

Personnel

As stated above, OSEP required VIDE to report its progress in ensuring that the Territory had sufficient qualified personnel. On pages ten and 11 of the FFY 2003 APR, the Territory included data and analysis demonstrating continued performance in this area to ensure that sufficient personnel were available to meet the identified educational needs of all children with disabilities in the Territory.

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)).

Collection and timely reporting of accurate data

On pages one through 16 of the FFY 2003 APR, the Territory included data and analysis regarding the collection and reporting of accurate and timely data. Throughout the FFY 2003 APR, VIDE identified significant data collection and reporting needs. OSEP has included VIDE's comments regarding these needs, in the appropriate sections below. OSEP reported in its October 2005 letter following its on-site verification visit that it believed 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 was reasonably calculated to collect the data required by section 618 of IDEA. OSEP suggested that VIDE pursue arrangements with the VIDE's School Administrative Student Information database (SASI) to have access to the data generated by SASI and that VIDE investigate other ways to benefit from information collected by SASI. OSEP strongly encourages VIDE to continue to assess its data needs, including data for VIDE's SPP due December 2, 2005 and the VIDE FFY 2005 APR due February 1, 2007. VIDE is also encouraged to determine the root causes that prevent the Territory from reporting accurate data.

In preparation for the submission of the SPP on December 2, 2005, the Territory should carefully consider its current data collection against the requirements related to this indicator in the SPP packet to ensure that data will be responsive to those requirements. The Territory must submit data about the collection and timely reporting of accurate data in the SPP. OSEP looks forward to reviewing information in the SPP and the APR that includes both implementation of strategies and improved data quality.

Early Childhood Transition

OSEP's March 2005 letter required VIDE to monitor for compliance with the requirements of 34 CFR §300.132 that eligible children with disabilities transitioning from Part C to Part B, have an individualized education program (IEP) or, at the Territory's discretion, an individualized family service plan (IFSP), by their third birthday and ensure the timely correction of any noncompliance that it identified. VIDE was also required to provide OSEP with a Progress Report, including data and analysis demonstrating progress toward compliance, by September 3, 2005.

During the February 2005 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.

On pages 17 through 23 of the FFY 2003 APR, VIDE described the status of early childhood transition, including, on page 18, that VIDE did not "systematically" collect and analyze data

regarding this requirement. However, VIDE reported that during the 2002-2003 and 2003-2004 school years, 22 of 28 (79%) of the children referred to Part B in the St. Croix district received services by their third birthdays and justifications were provided for the remaining six children. However, in the St. Thomas/St. John district, only one of 14 (7%) Part B eligible children received services by his/her third birthday. VIDE did not include adequate data and/or analysis to support its conclusion that the previously-identified noncompliance described in OSEP's March 2005 letter was corrected.

In its October 2005 letter, OSEP required VIDE to: (1) no later than November 4, 2005, provide OSEP with a plan for monitoring the requirements at 34 CFR §300.132(b) that an IEP or IFSP had 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.

In addition, OSEP addressed this continued noncompliance through Special Conditions attached to VIDE's FFY 2005 Grant Award. The Special Conditions required that as soon as possible, but no later than June 30, 2006, VIDE must ensure that all eligible students transitioning from Part C to Part B have timely IEPs or IFSPs and are receiving special education and related services by their third birthdays, including those eligible children who turn three during the summer months. VIDE must continue to document progress in this area by submitting data reports and other relevant documentation, as appropriate, on or before December 1, 2005, February 15, 2006, and June 30, 2006 utilizing reporting forms provided by OSEP. OSEP is willing to work with VIDE to ensure that the December report and the SPP do not require duplication of efforts.

Data describing compliance with the requirements at 34 CFR §300.132 may include: (1) the number of children exiting Part C during the reporting period who might have been eligible for services under Part B; (2) the number of those children found eligible for Part B services during the reporting period; (3) the number of eligible children for whom an IEP (or IFSP) was developed and implemented by the child's third birthday; and (4) an explanation for any eligible children who did not have an IEP (or IFSP) developed and implemented by the child's third birthday.

This is an indicator in the SPP under §616 that is due December 2, 2005. In preparation for the submission of the SPP on December 2, 2005, the Territory should carefully consider its current data collection against the requirements related to this indicator in the SPP packet to ensure that data will be responsive to those requirements. The Territory must submit data regarding the percentage of children referred by Part C prior to age 3 and who are found eligible for Part B and have an IEP developed and implemented by their third birthdays, in the SPP. VIDE must include data supporting its conclusion that the identified noncompliance has been corrected, in the SPP. OSEP will review the information submitted and determine what, if any, further action may be required.

Parent Involvement

On pages 24 through 31 of the FFY 2003 APR, VIDE discussed progress in reaching its goal that the provision of FAPE was facilitated by parent involvement. VIDE continued to support meaningful parent involvement by sponsoring a five-day workshop for stakeholders, including parents. Consultants from the Southeast Regional Resource Center (SERRC) and the National Early Childhood Technical Assistance Center assisted VIDE in this endeavor. VIDE also conducted parent empowerment meetings, parent training workshops, and the Commissioner of Education appeared on local television to better inform parents about special education programs.

The SPP instructions establish a new indicator in the area of parent involvement, for which the Territory must provide baseline data in the FFY 2005 APR due February 1, 2007. Absence of this information at that time will be considered in OSEP's annual determination on the status of the Territory's performance and compliance required under §616(d) of the IDEA. The Territory should carefully review the instructions to the SPP in developing its plans for this collection.

Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE)

Disproportionality

OSEP's March 2005 letter required VIDE to include, in the FFY 2003 APR, a determination of whether VIDE identified significant disproportionality and that, when identified, ensured the review of policies, procedures and practices and, if appropriate, their revision. On pages 32 through 46 of the FFY 2003 APR, VIDE included data and analysis regarding its efforts to ensure compliance. On page 34, the Territory stated that it used the WESTAT risk ratio to calculate the disproportionality data. The results of the analysis demonstrated no disproportionality in the disaggregated placement data. The Territory reported differences in the District Weighted Ratios for mental retardation (MR) and emotional disturbance (ED) between the St. Thomas/St. John district and the St. Croix district. VIDE attributed these differences to data collection and calculations of risk ratios as these differences did not appear in other risk ratios of the same categories other than the District Weighted Ratio table.

While the Territory identified no significant disproportionality during this reporting period, VIDE reported that the Territory had significant validity problems in its data collection system. The Territory requested technical assistance from the National Center on Special Education Accountability and Monitoring (NCSEAM) to develop a work plan that would improve the accuracy of the Territory's data collection system. In its plan to collect the data for the new indicators in the SPP due December 2, 2005, VIDE must identify specific steps it will take to obtain accurate data about disproportionality so that the Territory is able to provide accurate data.

The SPP instructions establish two new indicators (#9 and #10) for this area in the SPP, for which the Territory must provide baseline data in the FFY 2005 APR due February 1, 2007. Absence of this information at that time will be considered in OSEP's annual determination on the status of the Territory's performance and compliance required under section 616(d) of the

IDEA. The Territory should carefully review the instructions to the SPP in developing its plans for this collection.

Graduation and drop-out rates

OSEP's March 2005 letter required VIDE to report on its progress for improving graduation and drop-out rates. On pages 35 through 47, pages 77 through 79 and on page 86 (Table 13) of the FFY 2003 APR, the Territory submitted data related to graduation and drop-out rates. VIDE reported on page 35 that it is unable to access data for nondisabled children to compare graduation and drop-out rates. VIDE also reported a discrepancy in the numerical graduation data for students with disabilities and that a preliminary review identified a significant discrepancy between the graduation rates of students with and without disabilities in St. Thomas. VIDE planned to improve data collection procedures to enable the reporting of accurate data in reports.

Graduation and drop-out rates are indicators in the SPP under §616 that is due December 2, 2005. In preparation for the submission of the SPP on December 2, 2005, the Territory should carefully consider its current data collection against the requirements related to this indicator in the SPP packet to ensure that data will be responsive to those requirements. The Territory must submit data about the graduation and drop-out rates in the SPP.

Suspension and expulsion

On pages 35 through 47 and 91 through 98 of the FFY 2003 APR, the Territory reported data about suspensions and expulsions. OSEP's March 2005 letter required VIDE to report about the Territory's progress in reducing suspension and expulsion rates in the FFY 2003 APR, specifically whether significant discrepancies in long-term suspensions and expulsions were occurring based upon one of two comparisons (the rate of long-term suspensions and expulsions of children with disabilities among LEAs or the rate of long-term suspensions and expulsions of children with disabilities within LEAs compared to the rates for nondisabled children within LEAs). Where it identified significant discrepancies, VIDE was required to report on the reviews and, if appropriate, revisions of policies, procedures and practices consistent with 34 CFR §300.146.

VIDE did not include consistent and complete data to fully respond to OSEP's request. On page 35 of the FFY 2003 APR, VIDE reported that suspension and expulsion rates could not be compared between LEAs or between students with disabilities and nondisabled students because no data were available. On pages 91 through 98 of the APR, VIDE only reported the number of children with suspensions or expulsions totaling greater than ten days during the 2003-2004 school year. This data is incomplete and OSEP is unable to determine VIDE's compliance in this area. VIDE reported that it had met with SASI administration regarding the collection of suspension and expulsion data and was waiting for new protocols and procedures to access that type of data. VIDE reported that it planned to review suspension and expulsion policies to ensure the collection of accurate data so that it can be compared with data for nondisabled students. However, VIDE did not report that it reviewed and, if appropriate, revised policies, procedures and practices to ensure compliance with the requirements at 34 CFR §300.146

regarding suspension and expulsion rates. VIDE must include data and analysis to address this indicator in the SPP, due December 2, 2005.

The percent of districts identified by the Territory as having a significant discrepancy in the rates of suspensions and expulsions of children with disabilities for greater than 10 days in a school year is an indicator in the SPP under §616 that is due December 2, 2005. In preparation for the submission of the SPP on December 2, 2005, the Territory should carefully consider its current data collection against the requirements related to this indicator in the SPP packet to ensure that data will be responsive to those requirements. The Territory must submit responsive baseline data for this indicator.

The percent of suspensions and expulsions of greater than 10 days in a school year of children with disabilities by race and ethnicity is a new indicator in the SPP. VIDE must provide baseline data in the FFY 2005 APR due February 1, 2007. Absence of this information at that time will be considered in OSEP's annual determination on the status of the Territory's performance and compliance required under §616(d) of the IDEA. VIDE should carefully review the instructions to the SPP in developing its plans for this collection.

Territory-wide and districtwide assessment

OSEP's March 2005 letter required VIDE to report on the Territory's progress in student participation and performance on large-scale assessments, in the FFY 2003 APR. Specifically, VIDE was to report whether the Territory was out of compliance with the requirements of 34 CFR §300.138 as related to Territory-wide and districtwide assessments. To the extent that it was out of compliance, VIDE was required to provide a plan to address the noncompliance, including: (1) ensuring the participation of children with disabilities in large-scale assessments, with appropriate accommodations and modifications, if necessary; (2) a timetable for the development of guidelines for participation of children with disabilities in alternate assessments; (3) timelines for development and implementation of alternate assessments, including staff training; and (4) timetables for public reporting on the participation and performance of children with disabilities in the alternate assessments. The plan was to include periodic reporting to OSEP on the status of correction.

In the October 2005 letter, OSEP reported that during the February 2005 on-site verification visit, the SEA director confirmed that not all students might have participated, there was no alternate assessment for the Territory-wide assessment, and that accommodations were not consistently provided. The SEA director also stated that it is a district decision regarding the administration of districtwide assessments. From record reviews and VIDE staff interviews, OSEP found that VIDE is not in compliance with the requirements at 34 CFR §§300.138-300.139 that: 1) VIDE demonstrate that children with disabilities are included in general Territory-wide and districtwide assessment programs, with accommodations and modifications in administration, if necessary; and 2) VIDE shall make available to the public and report to the public the participation and performance of children with disabilities on such assessments with the same frequency and in the same detail as it reports on the assessment of children without disabilities.

The FFY 2003 APR did not include data and analysis to demonstrate compliance in this area or a plan to address the noncompliance including the components identified in OSEP's March 2005 letter. The Territory reported it would conduct Territory-wide assessments in the 2004-2005 school year. The Territory conducted a pilot between March 14 and April 2, 2005. Preliminary results of the pilot indicated that some children with disabilities did not have appropriate accommodations and that some children with disabilities, who were eligible for an alternate assessment, did not have access to an alternate assessment.

OSEP has addressed this noncompliance through Special Conditions attached to VIDE's FFY 2005 Part B Grant Award. The Special Conditions required that as soon as possible, but by no later than June 30, 2006, VIDE must ensure that all children with disabilities are included in general Territory and districtwide assessment programs including the provision of appropriate accommodations and alternate assessments, as appropriate and that the Territory is reporting to the public on the participation and performance of children with disabilities in the assessment programs with the same frequency and in the same detail as it reports on the assessment of nondisabled children. In the SPP, VIDE must report to OSEP on the participation and performance of children with disabilities on the Territory-wide assessments, including alternate assessments, as administered in 2005. By June 30, 2006, VIDE must provide documentation on how it has reported to the public on the participation of children with disabilities on the Territory-wide assessments, including alternate assessments.

In addition, as required by the Special Conditions, to the extent that Territory policy continues to allow LEAs to administer districtwide assessments, as soon as possible, but by no later than June 30, 2006, VIDE must demonstrate that it is ensuring that LEAs comply with the requirements of 34 CFR §§300.138-300.139 and 20 U.S.C. 1412(a)(16). With the SPP, due December 2, 2005, or within 60 days of the date of this letter, VIDE must submit a description of the measures it is taking to ensure compliance with the requirements related to districtwide assessments. By no later than June 30, 2006, VIDE must submit documentation demonstrating compliance by the LEAs with 34 CFR §§300.138-300.139 and 20 U.S.C. 1412(a)(16) in any administration of districtwide assessments.

This is an indicator in the SPP that is due December 2, 2005. In preparation for the submission of the SPP on December 2, 2005, the Territory should carefully consider its current data collection against the requirements related to this indicator in the SPP packet to ensure that data will be responsive to those requirements. The Territory must submit responsive baseline data regarding this indicator.

Least restrictive environment (LRE)

On pages 32 through 46 and on pages 82 through 85 of the FFY 2003 APR, VIDE included information about attempts to obtain data to report on requirements concerning placement of children with disabilities in the LRE. On page 36 of the FFY 2003 APR, VIDE reported that there was "little evidence" of "an effective system to collect/analyze data." On page 40, VIDE stated that the new *Standards in Content and Achievement* would be aligned to the alternate and general assessments and that such alignment would "greatly enhance integration of general and special student placements" and provide "greater access to the general education curriculum for

all students.” The Territory stated that personnel participated in training to ensure access of children with disabilities to the general education curriculum and the LRE. VIDE reported that “about half” of all special education teachers and “about 15%” of the general education teachers participated in LRE workshops. VIDE reported an increase in the number of students with disabilities that have access to the general curriculum and that spend more time with their nondisabled peers, but did not include student population data and analysis, including the numbers or percentages of students in various educational environments, addressing the requirements at 34 CFR §§300.550-300.556 regarding the provision of services in the LRE.

On pages 33 through 46 of the FFY 2003 APR, VIDE did not provide OSEP with data or a plan to ensure the Territory would be able to respond to this indicator in the SPP. VIDE did not establish a target for preschool children with disabilities in the least restrictive environment. On page 40, VIDE provided information regarding transition from Part C to Part B but did not provide data and/or analysis regarding placement of preschool children with disabilities in the LRE.

Under §612(a)(5)(A) of the IDEA, the SEA must ensure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. The full continuum of alternative placements at 34 CFR §300.551, including integrated placement options, such as community based settings with typically developing peers, must be available to preschool children with disabilities and meet all the requirements of 34 CFR §§300.550-300.556 requiring placement to be in the least restrictive environment. Under §614(d)(1)(A)(i)(V) of IDEA, the IEP must contain an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class. If the IEP team determines that a preschool-aged child’s IEP is to be implemented in a setting with other nondisabled children and a particular program where non-disabled peers are educated does not have enrollment slots available, then the LEA must locate other placements where the child’s IEP can be implemented consistent with the placement decision made by the placement team.

OSEP is unable to determine VIDE’s performance in this area because the required data were not included in the FFY 2003 APR. In the SPP, due December 2, 2005, the Territory must provide data and analysis to address its implementation of the requirements at 34 CFR §§300.550-300.556. Consistent with the instructions to the SPP indicators #5 and #6, data must include the percent of children with IEPs aged six through 21: removed from regular class less than 21% of the day; removed from regular class greater than 60% of the day; served in public or private separate special education schools, residential placements, or homebound or hospital placements. For preschool-aged children, data must include the percent of preschool children with IEPs who received special education and related services in settings with typically developing peers. OSEP will review that information and determine what further action, if any, is required.

Preschool performance outcomes

Under the Government Performance and Results Act of 1993, 31 U.S.C. 1116, the effectiveness of the IDEA section 619 program is measured based on the extent to which early language/communication, pre-reading, and social-emotional skills of preschool children with disabilities receiving special education and related services are improving. OSEP's March 2005 letter required VIDE to report on the Territory's progress in addressing the area of preschool performance outcomes in the FFY 2003 APR. VIDE was to either submit documentation of data (whether collected through sampling, monitoring, individual IEP review, or other methods) and targets for improved performance and strategies to achieve those targets for this area, or to submit a plan to collect the data, including a detailed timeline of the activities necessary to implement that plan. On page 36 of the FFY 2003 APR, the Territory reported to OSEP that no data had been analyzed to determine outcomes for preschool children with disabilities. VIDE did not provide OSEP with specific data or a specific plan to collect data for this performance indicator. On page 40, VIDE reported that it was unsuccessful in identifying comprehensive resources for individual and group assessment by the preschool early childhood special education staff and in collecting other existing assessment data from Head Start to establish outcomes for preschool children with disabilities. VIDE reported that it planned to seek technical assistance from the Early Childhood Outcomes Center (ECO).

VIDE should carefully review the instructions to the SPP in developing its plans for this collection. The SPP instructions establish a new indicator in this area, for which the Territory must provide entry data in the FFY 2005 APR due February 1, 2007. Absence of this information at that time will be considered in OSEP's annual determination on the status of the Territory's performance and compliance required under section 616(d) of the IDEA.

Secondary Transition

Effective July 1, 2005, §614(d)(1)(A)(I)(VIII) of IDEA 2004 requires that beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter, the IEP contain: (1) appropriate measurable post-school goals based upon age-appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills; and (2) the transition services (including courses of study) needed to assist the child in reaching those goals. Effective July 1, 2005, IDEA 2004 no longer requires the beginning of transition planning by age 14. OSEP continues to encourage the early planning of the transition from school to work for children with disabilities; however, this is no longer a compliance requirement.

OSEP's March 2005 letter required VIDE to submit a report by May 3, 2005 on its progress in meeting the requirements of 34 CFR §300.344(b)(3)(ii). On pages 48 through 57 of the FFY 2003 APR, submitted May 27, 2005, VIDE included data and analysis that demonstrated the identification of noncompliance with the requirements of 34 CFR §300.344(b)(3)(ii) as required by OSEP's March 2005 letter; however, VIDE did not indicate whether LEAs were complying with the requirement regarding taking steps to ensure participation of another agency where the invited representative does not attend the IEP meeting. OSEP's letter required that, to the extent that it identified noncompliance, VIDE submit a plan to ensure correction within a reasonable

period of time not to exceed one year from the date OSEP accepts the plan. The FFY 2003 APR included a strategy to address this issue through the use of the Transition Outcome Project but did not include a plan including 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. VIDE must ensure that it is monitoring compliance with the requirements of 34 CFR §300.344(b)(3)(ii), and ensuring correction of any identified noncompliance in a timely manner (i.e., within one year of identification). Therefore, with the SPP, VIDE must submit a plan to ensure correction within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan. If an acceptable plan is not received in a timely manner, OSEP will consider imposing specific corrective actions and timelines.

VIDE also reported an inability to collect and analyze post-school outcome data that would enable a comparison of the percentages of students with and without disabilities participating in post-school activities. VIDE outlined strategies to ensure that GOALVIEW and the VIDE student information system contained data fields to enable VIDE to collect post-school outcome data.

The SPP instructions establish two new indicators in this area (#13 and #14), for which the Territory must provide baseline data in the FFY 2005 APR due February 1, 2007 (#13) and the FFY 2006 APR due February 1, 2008 (#14). Absence of this information at that time will be considered in OSEP's annual determination on the status of the Territory's performance and compliance required under section 616(d) of the IDEA. The Territory should carefully review the instructions to the SPP in developing its plans for these collections.

Conclusion

As noted above, VIDE must address the requirements for each of the areas included in this letter, including those incorporated from the October 2005 verification letter and the FFY 2005 Special Conditions for programmatic requirements under Part B of the IDEA.

General Supervision

Identification and timely correction of noncompliance

VIDE must report in the SPP, due December 2, 2005 on the identification and correction of noncompliance in a timely manner (34 CFR §300.600 and 20 U.S.C. 1232d(b)(3)).

In addition, VIDE must submit the following documentation as required in OSEP's October 2005 verification letter: (1) a plan outlining the steps it is going to take, including timelines, to ensure that it has a method for systematically monitoring all Part B requirements, identifying noncompliance and correcting all identified noncompliance in a timely manner; (2) documentation that all noncompliance identified in the Cycle II monitoring report has been corrected; or, where it has not been corrected, that appropriate sanctions are being imposed; and (3) documentation that the problems in the areas of extended school year services and compensatory services identified in the summer 2003 monitoring visit have been properly addressed. VIDE also must ensure the elimination of the backlog of students not receiving a

timely triennial evaluation for those due after October 1999. VIDE must continue to document progress in this area by submitting data reports and other relevant documentation, as appropriate, utilizing the reporting forms provided by OSEP, on the following dates: December 1, 2005, February 15, 2006, June 30, 2006.

Formal written complaints, mediation and due process hearings

VIDE must continue to report on its progress toward compliance with the 60-day timeline for complaint resolution required by 34 CFR §300.661(a) in the SPP and submit a final report demonstrating compliance on or before April 2, 2006.

In addition, VIDE must submit the following documentation as required in OSEP's October 2005 verification letter: (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 such 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 February 2005 verification visit.

Collection and timely reporting of accurate data

In preparation for the submission of the SPP on December 2, 2005, the Territory should carefully consider its current data collection against the requirements related to this indicator in the SPP packet to ensure that data will be responsive to those requirements. The Territory must submit data about the collection and timely reporting of accurate data in the SPP.

Early Childhood Transition

VIDE must submit a plan for monitoring the requirements at 34 CFR §300.132(b) that an IEP or IFSP had been developed and is being implemented for all children found eligible for Part B services, by their third birthday. As noted above, VIDE must report in the SPP, due December 2, 2005, on the provision of effective early childhood transition services for children exiting Part C services and eligible for Part B service (34 CFR §300.132). As required by the October 2005 verification letter, in the SPP due December 2, 2005, VIDE must submit data and analysis demonstrating progress towards full compliance.

OSEP also addressed the continuing noncompliance through Special Conditions attached to VIDE's FFY 2005 Part B Grant Award. VIDE must continue to document progress in this area by submitting data reports and other relevant documentation, as appropriate, utilizing reporting forms provided by OSEP, on or before December 1, 2005, February 15, 2006, and June 30, 2006. OSEP is willing to work with VIDE to ensure that the December report and the SPP do not require duplication of efforts.

Parent Involvement

The SPP instructions establish a new indicator in the area of parent involvement, for which the Territory must provide baseline data in the FFY 2005 APR, due February 1, 2007.

FAPE in the LRE

Disproportionality

VIDE must include, in the SPP, a plan to collect baseline data to be reported in the FFY 2005 APR, due February 1, 2007, regarding the determination of disproportionate representation of racial and ethnic groups in special education and related services that is the result of inappropriate identification and the percent of districts with disproportionate representation of racial and ethnic groups in specific disability categories that is the result of inappropriate identification (§616(a)(3)(C)).

Graduation and drop-out rates

In the SPP, VIDE must include the collection and analysis of accurate graduation and drop-out data (34 CFR §300.137).

Suspension and expulsion

In the SPP, VIDE must include a determination of the percent of districts identified by the Territory as having a significant discrepancy in the rates of suspensions and expulsions of children with disabilities for greater than 10 days in a school year (34 CFR §300.146) and a plan to collect baseline data to be reported in the FFY 2005 APR, due February 1, 2007, regarding the percent of districts identified by the Territory as having a significant discrepancy in the rates of suspensions and expulsions of greater than 10 days in a school year of children with disabilities by race and ethnicity.

Territory-wide and districtwide assessment

In the SPP, VIDE must report on the performance and participation of children with disabilities on Territory-wide and districtwide assessments including alternate assessments, as administered in 2005 (34 CFR §300.138). With the SPP, due December 2, 2005, VIDE must submit a description of the measures it is taking to ensure compliance with the requirements related to districtwide assessments.

In addition, the Special Conditions attached to VIDE's FFY 2005 Grant Award required that as soon as possible, but by no later than June 30, 2006, VIDE must ensure that all children with disabilities are included in general Territory and districtwide assessment programs including the provision of appropriate accommodations and alternate assessments, as appropriate, and that the Territory is making available and reporting to the public on the participation and performance of children with disabilities in such assessment programs with the same frequency and in the same detail as it reports on the assessment of nondisabled children. Additionally, by no later than June

30, 2006, VIDE must submit documentation demonstrating compliance by the LEAs with 34 CFR §§300.138-300.139 and 20 U.S.C. 1412(a)(16) in any administration of districtwide assessments.

Least restrictive environment

In the SPP, VIDE must submit data and analysis regarding children with disabilities placed in the least restrictive environment consistent with 34 CFR §§300.550-300.556, §§612(a)(5)(A) and 614(d)(1)(A)(i)(V) of IDEA 2004 and the SPP instructions.

Preschool performance outcomes

In the SPP, VIDE must include a plan to collect entry data to be reported in the FFY 2005 APR, due February 1, 2007, regarding the percent of preschool children with IEPs who demonstrate improved positive social-emotional skills (including social relationships), acquisition and use of knowledge and skills (including early language/communication and early literacy), and use of appropriate behaviors to meet their needs.

Secondary Transition

In the SPP, VIDE must include a plan to collect baseline data to be reported in the FFY 2005 APR, due February 1, 2007, regarding the percent of youth aged 16 and above with an IEP that includes coordinated, measurable, annual IEP goals and transition services that will reasonably enable the students to meet the post-secondary goals and, in the FFY 2006 APR, due February 1, 2008, the percent of youth who had IEPs, are no longer in secondary school and who have been competitively employed, enrolled in some type of post-secondary school, or both, within one year of leaving high school (§614(d)(1)(A)(I) and (II) of IDEA 2004).

With the SPP, VIDE must submit a plan to ensure correction of the noncompliance identified with the requirements of 34 CFR §300.344(b)(3)(ii) within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan.

IDEA 2004, §616, requires each State to submit a State Performance Plan (SPP) that measures performance on monitoring priorities and indicators established by the Department. These priorities and indicators are, for the most part, the same as clusters and probes in the APR. OSEP encourages the Territory to carefully consider the comments in this letter as it prepares its SPP, due December 2, 2005.

OSEP recognizes that the APR and its related activities represent only a portion of the work in the Virgin Islands and looks forward to collaborating with you as you continue to improve results for children and youth with disabilities and their families. If you have questions, please contact Michael Slade at 202-245-7527.

Sincerely,



Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Carrie Johns