

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) 2008 grant award under Part B of the Individuals with Disabilities Education Act (Part B). The basis for these Special Conditions is that the Virgin Islands' March 27, 2008 progress report under the 2007 program-specific Special Conditions and its subsequent submission accompanying the FFY 2008 Part B application, did not demonstrate that the previously-identified noncompliance had been fully corrected. The FFY 2007 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 program 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 submit to the Office of Special Education Programs (OSEP) appropriate documentation by February 1, 2008 to demonstrate full compliance. VIDE submitted documentation on March 27, 2008 and April 28, 2008. OSEP's analysis of VIDE's submissions related to the FFY 2007 Special Conditions follows:

A. Students Transitioning from Part C to Part B: Under 20 U.S.C. §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. VIDE reported on March 27, 2008 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 on compliance. Although the VIDE reported full compliance for the reporting period, OSEP's efforts to confirm the report 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.

On April 28, 2008, VIDE submitted a letter and 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 Special Conditions. In addition,

OSEP's review of the list revealed that there were approximately eight additional students whose birthdays fell within the reporting period and reported as receiving services under Part B. However, VIDE did not report on the timely transition from Part C to Part B for these eight students. VIDE's FFY 2008 grant awards application also included an admission that VIDE has not come into full compliance with the requirements of 34 CFR §300.124. Therefore, OSEP concludes that the VIDE has failed to demonstrate full compliance under the longstanding programmatic Special Conditions related to early childhood transition.

B. Statewide (Territory-wide) Assessments: Under 20 U.S.C. §1412 (a)(16) and 34 CFR §300.160, 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. On March 27, 2008, VIDE submitted a letter indicating 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 regarding the Special Conditions on assessments stating 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. Therefore, OSEP concludes that the VIDE has failed to demonstrate full compliance under the longstanding programmatic Special Conditions related to Statewide (Territory-wide) Assessments.

C. Districtwide Assessments: 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. VIDE's March 27, 2008 letter alleges that "the issue of whether the VIDE administers districtwide assessments was discussed and cleared..." VIDE also reiterated its June 4, 2007 description of, and argument that, the assessments used by the districts are used for school and classroom planning, student identification for the gifted and talented programs, grouping and lesson planning. 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.

VIDE's FFY 2008 grant awards application included update that the VIDE's Assessment Task force met in January of 2008 to examine the assessment system in the Territory. Therefore, OSEP concludes that the VIDE has failed to demonstrate full compliance under the longstanding programmatic Special Conditions related to districtwide assessments.

2. Nature of the Special Conditions

A. With the Annual Performance Report, due February 2, 2009, VIDE must submit accurate and complete data disaggregated by LEA demonstrating compliance with the transition requirements (20 U.S.C. §1412(a)(9) and 34 CFR §300.124) for children with disabilities transitioning from Part C to Part B for the period from February 1, 2008 to December 1, 2008 (i.e., for children participating under Part C who were born between February 1, 2005 and December 1, 2005, inclusive). The report must include 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.

B. By May 15, 2009, VIDE demonstrate compliance with IDEA requirements related to the areas listed below through the following submissions:

1. A report of accurate and complete data and information, disaggregated by LEA, demonstrating compliance with the transition requirements (20 U.S.C. §1412(a)(9) and 34 CFR §300.124) for children with disabilities transitioning from Part C to Part B for the period from April 1, 2008 to March 30, 2009 (i.e., for children participating in Part C who were born between April 1, 2005 and March 30, 2006, inclusive). The report must include 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. Documentation and information that VIDE is reporting publicly and to the Secretary, with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the participation of children with disabilities on Statewide (Territory-wide) assessments with and without accommodations and on alternate assessments, as appropriate, based on alternate grade-level academic achievement standards, modified academic achievement standards, and/or alternate academic achievement standards (20 U.S.C. 1412(a)(16) and 34 CFR §300.160(f)). The documentation and information must demonstrate public reporting on the number of children with disabilities participating in regular assessments; the number of those children, if any, who were provided accommodations (that did not result in an invalid score) in order to participate in those assessments; the number of children with disabilities, if any, participating in

alternate assessments based on grade-level academic achievement standards; the number of children with disabilities, if any, participating in alternate assessments based on modified academic achievement standards; and the number of children with disabilities, if any, participating in alternate assessments based on alternate academic achievement standards.

3. Documentation and information that VIDE is ensuring that districts comply with the relevant Part B requirements (20 U.S.C. 1412(a)(16) and 34 CFR §300.160), to the extent that school districts in the Virgin Islands administer districtwide assessments or an assurance from the appropriate district officials attesting that the district does not administer any assessment on a districtwide basis other than the Statewide assessment and alternate (VITAL-S and VITAL-A). The documentation is to include, as appropriate, each LEA's policies and procedures for administering districtwide assessments, documentation of the administration 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) and 34 CFR §300.160(f). If the LEAs do not administer districtwide assessments, VIDE must submit a sworn assurance from the appropriate district official(s) in each district.

C. OSEP also notes that the Department has continued to designate VIDE as a high-risk grantee and has imposed Special Conditions on its grants for FFY 2008. The Special Conditions require a contract with a third-party fiduciary to address financial management responsibilities concerning the grants, including, but not limited to, processing of payments and disbursements, maintaining financial records, financial reporting, property procurements, and other related financial issues.

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 year, the Virgin Islands provides documentation, satisfactory to the Department, that it has fully met the requirements and conditions set forth above, which require the Virgin Islands to submit data demonstrating compliance with the Part B requirements related to: children with disabilities timely transitioning from Part C to Part B consistent with the requirements of 34 CFR §300.124; reporting on the participation and performance of children with disabilities on Statewide (Territory-wide) assessments with and without accommodations and on alternate assessments consistent with the requirements of 34 CFR §300.160(f); and the administration of districtwide assessments consistent with the requirements of 34 CFR §300.160.

4. Method of Requesting Reconsideration

The State can write to the Office of Special Education Programs Acting Director, William W. Knudsen, 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 the Virgin Islands to the Department under these 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