

**Virgin Islands Department of Health – Special Conditions
FFY 2006 IDEA Part C Grant
Enclosure B**

I. Basis for Requiring Special Conditions

Pursuant to 34 CFR §80.12, the Office of Special Education Programs (OSEP) is imposing Special Conditions on the Virgin Islands Department of Health (VIDH) for its Federal Fiscal Year (FFY) 2006 grant award under Part C of the Individuals with Disabilities Education Act (Part C or Part C of IDEA). The Special Conditions are imposed to ensure: (1) the maintenance of VIDH's vendor payment and financial recordkeeping responsibilities through VIDH's use of a third party agent, Lutheran Social Services (LSS), to ensure prompt payment of vendors that provide Part C services to infants and toddlers with disabilities and their families in the Virgin Islands; and (2) the recruitment of adequate full-time qualified personnel who can provide timely early intervention services under Part C. VIDH has resolved the data and timely evaluation, assessment and service provision Special Conditions that were attached to its FFYs 2004 and 2005 Part C grants.¹ OSEP appreciates VIDH's efforts to ensure the timely evaluation, and assessment of, and service provision to, infants and toddlers with disabilities and their families under Part C.

Because of the significant progress VIDH has demonstrated in meeting its timely evaluation, assessment and service provision Special Conditions and maintaining fiscal responsibility, OSEP is reducing the frequency of VIDH's required reporting under these Special Conditions from quarterly (four times a year) to semi-annually (twice a year). However, due to other fiscal management problems of the Virgin Islands government, the U.S. Department of Education (Department) has imposed Special Conditions on the VI government, which are set forth in Enclosure C to this FFY 2006 Part C grant letter and which require the VI government to obtain a separate third party agent (not LSS) for its fiscal management responsibilities.

Regarding the first purpose of the Special Conditions (vendor payor and financial recordkeeping responsibilities), OSEP has imposed Special Conditions on Virgin Islands' Part C grants since FFY 2001 due to VIDH's inability to pay its vendors in a timely manner to ensure the provision of Part C services. Since receipt of its FFY 2001 Part C grant award and due to the use of LSS, VIDH has been able to reimburse all vendors in a timely manner and thus ensure the provision of early intervention services because it has a third party financial management contractor. However, because the Virgin Islands Government and VIDH have not demonstrated that they have instituted procedures for ensuring that vendors who provide Part C services can be paid in a timely manner (to ensure uninterrupted provision of early intervention services to infants and toddlers with disabilities and their

¹ VIDH's January 30, 2006 progress report under its FFY 2004 and 2005 Part C grants demonstrated significant improvement in ensuring compliance. In its April 15, 2006 progress report submissions, VIDH provided data indicating that it had met the following four Special Conditions attached to its FFYs 2004 and 2005 Part C grants: (1) Provided timely payments for goods and services utilizing procedures with a financial management contractor; (2) Conducted timely evaluations and assessments within the required 45-day timeline; (3) Provided timely services in accordance with Part C; and (4) Implemented a data collection process and reported the data required by the Special Conditions, in its FFY 2003 Annual Performance Report (APR) in April 2005 and its State Performance Plan (SPP) in December 2005. OSEP appreciates VIDH's efforts to demonstrate compliance with these four requirements. In its FFY 2005 APR due in February 2007, VIDH is required to report data on the last three requirements under Indicators 7, 1 and 14 of its State Performance Plan (SPP). OSEP looks forward to reviewing VIDH's SPP/APR data that demonstrate continued compliance.

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families) without using the third party financial management contractor, the Department is continuing the third party financial management contractor special condition provisions in VIDH's FFY 2006 Part C grant to ensure continued, timely payment of early intervention services administered by VIDH.

Regarding the second purpose of the Special Conditions (personnel recruitment), OSEP imposed personnel-related Special Conditions on VIDH's FFYs 2004 and 2005 grants. These conditions required VIDH to: (1) hire full-time personnel and expedite its payroll procedures so that new personnel could be paid in less than one month of being hired; and (2) implement personnel recruitment strategies identified in VIDH's memorandum of agreement with the Virgin Islands Department of Education (VIDE). During FFY 2005, VIDH hired two new early intervention personnel to address service needs. However, VIDH indicated in its January 30, and April 15, 2006 progress report submissions that it still lacked nine full-time personnel to be able to provide Part C services and was using per diem and other contracted employees. VIDH has yet to formally approve and implement its personnel recruitment and retention plan submitted to OSEP.

Thus, the Department (through OSEP) is imposing Special Conditions related to personnel recruitment and third party vendor payor and fiscal record keeper. Although these Special Conditions are attached to VIDH's FFY 2006 Part C grant award, the Department acknowledges that it is extremely important for VIDH to have interdepartmental cooperation and communication (with the VI Office of Management and Budget, the VI Office of Personnel, the VI Office of Finance, and any third party agent contracted by the VI government in response to the Department's September 27, 2006 letter) so that VIDH can meet its timetable to hire and recruit needed personnel and provide timely early intervention services to infants and toddlers with disabilities and their families as required under Part C of IDEA.

II. Nature of the Special Conditions

A. Recruitment of Adequate Qualified Personnel to Provide Part C Services

Under these FFY 2006 Part C Special Conditions, the Virgin Islands Department of Health (VIDH) must:

1. On **February 1, 2007 and June 1, 2007**, submit a progress report to OSEP that identifies: (1) number and type of personnel needed and hired to ensure the timely provision of early intervention services under Part C of IDEA and that no infants and toddlers are waiting for early intervention services; (2) procedures that were implemented to expedite hiring and deployment of staff within one month of being hired and to provide their first paycheck within one month of starting work; and (3) activities VIDH has implemented in accordance with its memorandum of agreement with the Virgin Islands Department of Education (VIDE) that provides for each agency to jointly recruit and share needed qualified personnel.
2. By **February 1, 2007**, review and approve (including approval by the VIDH Commissioner), VIDH's proposed long-term recruitment and retention plan (developed by VIDH's Part C Coordinator and submitted to OSEP on December 17, 2002) and implement the plan as soon as possible, but not later than June 30, 2007.

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In its **February 1, 2007** Special Conditions report, VIDH must confirm in writing to OSEP that this plan has been approved and provide OSEP with a copy of the approved plan. In the event, VIDH wishes to modify its proposed 2002 plan, it must submit to OSEP for its review any revisions to the plan no later than **December 31, 2006**.

B. Vendor Payor and Fiscal Recordkeeping Third Party Agent

1. General. By accepting its FFY 2006 Part C grant, VIDH must continue to contract with the financial management contractor, VI LSS with the terms of the contract that were approved by the Department in a letter dated July 31, 2002. If VIDH wishes to amend its contract with the current financial management contractor or change the current contractor approved by the Department, VIDH must submit, in writing, a request for the Department's written approval of any new contractor or revised contract terms, and obtain the Department's approval for any such changes, prior to implementation. VIDH must provide: 1) the name of any proposed contractor for financial management services that will be able to provide accurate accounting and timely payments of all obligations under Part C of the Individuals with Disabilities Education Act; 2) the fee or rate that such contractor will charge for such services prior to entering into final negotiations with said proposed contractor; and 3) the proposed contract terms and provisions in accordance with Section II.B.2 of this document. Any such proposed contractor must have both adequate capacity and previous successful experience in the financial management of one or more Federal grants awarded to an agency of the Virgin Islands where the amount of such Federal grant funds is no less than the amount of the Part C grant. A new contract may not be implemented by VIDH under Part C until the Department approves it.
2. Contract Provisions. The contract for financial management must include provisions that address the following:
 - a. The contractor's role is limited to processing payments and disbursements and maintaining financial records and reporting as required under the Education Department General Administrative Regulations in 34 CFR Parts 76 and 80. VIDH, and not the contractor, is responsible for approving the reasonableness and necessity of any proposed payments and for any recruiting, hiring, evaluating, licensing, and monitoring of vendors or providers of goods and services for the Part C program;
 - b. During all times relevant to this contract, the contractor must maintain adequate liability insurance to cover all potential liability and loss from misfeasance and/or malfeasance by the contractor and/or its employees. Such insurance will be consistent with the requirements of Virgin Islands law;
 - c. At the beginning of the contract period and prior to any draw downs or disbursements, VIDH must provide the contractor with a line item budget for the total amount of the Part C grant, to be used by the contractor to track projected and actual expenditures for the Part C program;

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- d. Prior to any drawdowns or disbursements, the contractor must establish and utilize a separate bank account for the Part C program. Any and all Part C funds that VIDH draws down must be deposited directly into this account. The contractor will be responsible for disbursing any and all Part C funds from that account pursuant to approved payment requests submitted by VIDH. Any interest earned by, or unclaimed funds remaining in such account must be returned to the United States Department of Education at least quarterly (see 34 CFR §80.21(i));

As long as VIDH continues to expend funds within three business days from the time that VIDH draws down the funds from the Department (i.e., the funds are obligated and liquidated by VIDH), the United States Department of Education will not require that an interest-bearing bank account be maintained. Any interest liability for delayed payments for expenditures by VIDH shall be determined under EDGAR Part 80 and the Cash Management Improvement Act;

- e. Prior to any draw downs or disbursements, VIDH and the contractor must follow established procedures and timelines for prompt and timely draw downs by VIDH and disbursements by the contractor consistent with Federal requirements that disbursement occur within 3 business days of draw downs and the requirements below;
- f. VIDH will continue to present approved requests to the contractor for processing and payment no later than 14 business days from the date of the receipt of a notice of an account payable that is an allowable expense under Part C, or earlier if needed to ensure timely payment to one or more vendors or providers;
- g. VIDH and the contractor will continue to coordinate the timing of drawdowns and disbursements to ensure that payments to staff, vendors and providers are prompt and timely. VIDH will draw down sufficient Part C funds to cover each approved request for payment into the separate account;
- h. Disbursements must occur no later than 28 business days from the date of the receipt of an account payable that is an allowable expense under Part C, which includes the above-referenced 14 business days for VIDH to present requests for payment to the contractor and 14 business days for VIDH and the contractor to coordinate draw downs and disburse funds, or earlier than 28 business days if needed to ensure timely payment to one or more vendors or providers;
- i. All transactions under this contract are consistent with all applicable Federal requirements, including Office of Management and Budget (OMB) Circular A-87 and EDGAR at 34 CFR Parts 76 and 80;
- j. The contractor will continue to maintain financial records in accordance with Federal requirements and produce quarterly reports for VIDH detailing: a) the date of its receipt of, and the amount of, each approved payment request; b)

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the date and amount of each draw down deposit; c) the date and amount of each payment or disbursement by the contractor; and d) any interest or other funds remaining in the account at the end of the quarter. These amounts must also be grouped by and comparable with the projections in the line item budget listed above; and

- k. Any other such terms, consistent with items a-j above, as the parties believe are necessary to ensure timely drawdowns and payments to staff, providers and vendors under the Part C program.

C. Financial Reports

VIDH will provide reports to the Department on **February 1, 2007 and June 1, 2007** detailing: 1) the total number of disbursements (payments) made during the reporting period; 2) for all disbursements included in number 1, the number of business days between the receipt of each account payable and the date of disbursement for that account; 3) the average number of business days for all disbursements during the reporting period (the sum total of each number of business days listed in number 2 divided by the total number of disbursements listed in number 1); 4) an analysis of the causes for, and plan to reduce the number of, disbursements made more than 30 business days after receipt of an account payable; and 5) the amount of any interest or other funds remaining in the Part C account at the end of the reporting period. These amounts must also be grouped by and comparable to the projections in the line item budget for the Part C program.

III. 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 years, the Virgin Islands provides documentation, satisfactory to the Department, that it has fully met the requirements and conditions set forth above in Sections I and II.

IV. Method of Requesting Reconsideration

VIDH can write to Alexa Posny, Ph.D., Director, OSEP, if it wishes the Department to reconsider any aspect of these FFY 2006 Part C Special Conditions. The request must describe in detail the changes to the Special Conditions sought by the Virgin Islands and the reasons for those requested changes.

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V. Submission of Reports

The Virgin Islands Department of Health must submit all reports required under the Special Conditions. These reports should be submitted to:

Sheryl Parkhurst

U.S. Department of Education

Office of Special Education and Rehabilitative Services

550 12th Street, SW, Room 6148

Washington, DC 20202 or

by e-mail to:

Sheryl.Parkhurst@ed.gov