



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUN 6 2008

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

Dear Commissioner Terry:

Thank you for the timely submission of Virgin Islands' FFY 2006 Annual Performance Report (APR) and revised State Performance Plan (SPP) under Part B of the Individuals with Disabilities Education Act (IDEA), as amended in 2004. We also acknowledge the revisions to Virgin Islands' SPP and APR received on April 14, 2008. We appreciate the State's efforts in preparing these documents.

The Department has determined that, under IDEA section 616(d), Virgin Islands needs intervention in meeting the requirements of Part B of the IDEA. The Department's determination is based on the totality of the State's data and information including the State's FFY 2006 APR and revised SPP, other State-reported data, and information obtained through on-site verification and focused monitoring visits, audits and related activities, and other publicly available information. See the enclosure entitled "How the Department Made Determinations under Section 616(d) of the IDEA in 2008" for further details.

The State's determination for the FFY 2005 APR was also needs intervention. The State should review IDEA section 616(e) regarding the potential impact of the Department's determination if the State is determined to need intervention for three consecutive years.

The specific factor affecting OSEP's determination of needs intervention for the Virgin Islands was the failure to report valid and reliable data under the longstanding programmatic Special Conditions related to timely transition from Part C to Part B. Therefore, the Virgin Islands has failed to demonstrate compliance with 34 CFR §300.124.

Under the programmatic Special Conditions attached to the Virgin Islands Department of Education (VIDE) FFY 2007 IDEA Part B grant award, with its APR due February 1, 2008, VIDE was required to report on and 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, consistent with Part B requirements (34 CFR §300.124). The VIDE initially reported on only 10 students who 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

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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 these eight students. Therefore, OSEP concludes that the VIDE has failed to provide valid and reliable data under the longstanding programmatic Special Conditions related to early childhood transition.

OSEP also notes that under the Special Conditions, VIDE had to demonstrate that it is reporting publicly and to the Secretary on the participation and performance of children with disabilities on Statewide (Territory-wide) assessments with and without accommodations and on alternate assessments (20 U.S.C. 1412(a)(16) and 34 CFR §300.160); and to the extent that school districts in the Virgin Islands continue to administer districtwide assessments, demonstrate that VIDE is ensuring that those districts comply with the relevant Part B requirements (20 U.S.C. 1412(a)(16) and 34 CFR §300.160).

On March 27, 2008, the 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. Although the report included a statement that "[a]lternate assessment scores based on alternate assessment achievement standards are incorporated in the report card" OSEP was unable to locate participation rates disaggregated for the alternate assessment.

As to districtwide assessments, VIDE's June 1, 2007 and June 4, 2007 letters reported that VIDE is unable to report compliance with the relevant Part B requirements for the administration of districtwide assessments but 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 did not address how these scores were reported, but the VIDE website contained references to distribution of the districtwide tests scores to parents. Based upon the description in the letter and the information on the website, OSEP 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. In its report, VIDE stated that it does not administer districtwide assessments and that the website reference was to Statewide assessments. OSEP notes that districtwide assessments would be administered by the districts, not the SEA. To date, VIDE has not submitted any specific documentation, policies, procedures, or other relevant material that clearly demonstrate that such assessments are not administered by districts and reported to parents.

OSEP also notes that the Department has designated VIDE a high-risk grantee and imposed Special Conditions on its grants to VIDE and will continue these Special Conditions in 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 payments and disbursements, maintaining financial records, financial reporting, property procurements, and other related financial issues.

The enclosed table provides OSEP's analysis of the State's FFY 2006 APR and revised SPP and identifies, by indicator, OSEP's review of any revisions made by the State to its targets, improvement activities (timelines and resources) and baseline data in the State's SPP. It also identifies, by indicator, the State's status in meeting its targets, whether the State's data reflect progress or slippage, and whether the State corrected noncompliance and provided valid and reliable data.

Your State may want to consider taking advantage of available sources of technical assistance. A list of sources of technical assistance related to the SPP/APR indicators is available by clicking on the "Technical Assistance Related to Determinations" box on the opening page of the SPP/APR Planning Calendar website at <http://spp-apr-calendar.rfcnetwork.org/>. You will be directed to a list of indicators. Click on specific indicators for a list of centers, documents, web seminars and other sources of relevant technical assistance for that indicator.

As you know, your State must report annually to the public on the performance of each local educational agency (LEA) located in the State on the targets in the SPP under IDEA section 616(b)(2)(C)(ii)(1). In addition, your State must review LEA performance against targets in the State's SPP, determine if each LEA meets the requirements of the IDEA and inform each LEA of its determination. For further information regarding these requirements, see the SPP/APR Calendar at <http://spp-apr-calendar.rfcnetwork.org/>. Finally, if you included revisions to baseline, targets or improvement activities in your APR submission, and OSEP accepted those revisions, please ensure that you update your SPP accordingly and that the updated SPP is made available to the public.

Pursuant to section 616(d)(2)(B) of the IDEA and 34 CFR §300.603(b)(2), a State that is determined to need intervention or need substantial intervention, and does not agree with this determination, may request an opportunity to meet with the Assistant Secretary for Special Education and Rehabilitative Services to demonstrate why the Department should change its determination. To request a hearing, submit a letter to Tracy R. Justesen, Assistant Secretary, Office of Special Education and Rehabilitative Services, 400 Maryland Avenue SW, Room 5107, Potomac Center Plaza, Washington, DC 20202-2600 within 30 days of the date of this letter and provide in the letter the basis for your request.

OSEP is committed to supporting Virgin Islands' efforts to improve results for children with disabilities and looks forward to working with your State over the next year. If you have any questions, would like to discuss this further, or want to request technical

assistance, please do not hesitate to call Michael F. Slade, your OSEP State Contact, at 202-245-7527.

Sincerely,

A handwritten signature in black ink, appearing to read "William W. Knudsen".

William W. Knudsen  
Acting Director  
Office of Special Education Programs

Enclosures

cc: State Director of Special Education