



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES**

May 10, 2001

Honorable Ruby Simmonds
Commissioner
Virgin Islands Department of Education
44-46 Kongens Gade
Charlotte Amalie
St. Thomas, Virgin Islands 00802

Dear Commissioner Simmonds:

The Office of Special Education Programs (OSEP), U.S. Department of Education appreciated the opportunity on December 8, 2000 to brief you and key staff on the results of our onsite review of the Virgin Islands Department of Education's (VIDE) progress in meeting the terms and conditions set out in year one of the Compliance Agreement between VIDE and the U.S. Department of Education dated December 10, 1999.

As background, on June 29, 1998, the United States Department of Education (ED), Office of Special Education Programs (OSEP) issued a final monitoring report that documented serious problems with respect to the Virgin Islands Department of Education's (VIDE's) compliance with Part B of the Individuals with Disabilities Education Act (Part B of the IDEA). As a result of these findings, the Department of Education designated - pursuant to 34 C.F.R. §80.12 - VIDE as a "high risk" grantee and imposed special conditions on its fiscal year 1998 grant award. The special conditions required VIDE to provide ED with monthly reports of its efforts to come into compliance with Part B of the IDEA. Those reports did not demonstrate significant progress by VIDE in meeting the requirements of Part B of the IDEA. As a result, ED concluded, pursuant to 20 U.S.C. §1234c, that VIDE was not complying with Part B of the IDEA. On April 8, 1999, ED proposed to VIDE a voluntary Compliance Agreement as a means of ensuring a continued flow of Part B funds to VIDE while a structured plan to come into full compliance was being implemented. VIDE accepted this proposal, participated in the required public hearings and on December 10, 1999 entered into a voluntary compliance agreement with the U.S. Department of Education for a period of three years, with an expiration date of December 10, 2002.

During the period that the Compliance Agreement is in effect, VIDE is eligible to receive Part B of the IDEA funds if it complies with the terms and conditions of the Agreement and other applicable Federal statutory and regulatory requirements. Specifically, the Compliance Agreement sets forth commitments and timetables for VIDE to meet to come into compliance with its Part B obligations. The compliance agreement delineates seven compliance goals to be met: (1) Timely Evaluations and Eligibility Determinations; (2) Free Appropriate Public Education; (3) Least Restrictive Environment; (4) Sufficient Qualified Personnel (5) Complaint Resolution; (6) General Supervision; and (7) Fiscal Accountability. Failure by VIDE to substantially comply with the timetables, documentation, or other requirements of the Compliance Agreement, including the reporting requirements, will authorize the Department to consider the Agreement no longer in effect. 20 USC 1234f. Under such circumstances, the

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Department may take any action authorized under the law, including the withholding of Part B of the IDEA funds from VIDE or referral to the Department of Justice.

During the week of December 4-8, 2000, the Office of Special Education Programs conducted an onsite visit to the Virgin Islands for the purpose of verifying the status of implementation and effectiveness of the first year of the Compliance Agreement. In order to make this determination, OSEP conducted its visit in a multi-faceted approach, including: site visits to six schools (2 elementary, 2 junior high, 2 senior high) on St. Croix and St. Thomas/St. John with a review of student records, interviews with teachers, related services personnel, and building administrators; meetings with the Virgin Islands Advocacy Agency and the Virgin Islands Family Information Network on Disabilities and selected parents; a meeting with Federal Magistrate Jeffrey Barnard; and interviews with VIDE Office of Special Education Program staff responsible for implementing the compliance agreement. The week culminated in an exit briefing with you, Assistant Commissioner Michael, the Insular Superintendents of Education for St. Croix and St. Thomas/St. John, your attorney, the Acting Director of Special Services, and the Assistant Director. At this meeting, all participants were briefed on the preliminary results of OSEP's onsite visit, including areas of progress, areas of concern and areas in need of continued improvement.

The attached status summary reflects the results of our data collection and verification process to determine VIDE's progress in implementing the first year requirements of the Compliance Agreement. While OSEP understands that the agreement provides VIDE up to three years to meet some of its terms, and that progress may be affected by factors outside the direct domain of the Department of Special Services and the Virgin Islands Department of Education, OSEP remains seriously concerned about VIDE's lack of progress in certain areas and its impact on VIDE's ultimate ability to meet, by December 10, 2002, all the requirements set out in the agreement. In addition to the areas noted in the agreement, OSEP noted problems with VIDE's data reporting and identified deficiencies in the ability of children and youth with disabilities to participate in the general curriculum, including participation in State and district-wide assessments.

We are very concerned about VIDE's limited progress in a number of areas, particularly evaluations, least restrictive environment, and the provision of related services. We are prepared to continue our collaboration with VIDE to ensure that all children and youth with disabilities and their families receive the special education and related services to which they are entitled, but believe additional steps by VIDE will be necessary to ensure that the terms of the compliance agreement are met. As we have noted previously, under the IDEA statutory funding formula, VIDE receives more federal Part B funds per eligible student than any of the fifty States. Unfortunately, these additional funds are not yet resulting in improved results for children with disabilities and further work is needed. We believe that there are some hard-working staff members dedicated to improvement, but lacking the tools and resources because of ineffective government systems. We will be reviewing the additional information requested in response to this report, as well as the findings of other program offices with the appropriate officials within the U.S. Department of Education and in other agencies to seek additional avenues and remedies to ensure progress in meeting the terms of the compliance agreement and in ensuring improved results for children with disabilities so that no child is left behind.

While this report addresses some of the cross-cutting issues that are affecting programs and services to students, this Department intends to address the cross-cutting issues in a more comprehensive manner in a separate letter.

Sincerely,

Patricia J. Guard
Acting Director
Office of Special Education Programs

Enclosure

cc: Assistant Commissioner Noreen Michael
Mrs. Belinda West-O'Neal

Status Summary: Year I – VIDE Compliance Agreement

Compliance Goal #1: Timely Evaluations, Eligibility Determinations and IEPs

Expected Outcome: Eliminate the number of overdue initial evaluations and triennial evaluations. Eliminate delays in eligibility determinations and the development of Individualized Education Programs. Develop and implement a system to process initial evaluations and reevaluations and determine eligibility and/or continued eligibility in a timely manner, including, but not limited to, ensuring an adequate supply of qualified evaluators.

Timeliness of Evaluations

Status and Concerns: Under the compliance agreement, by October 2000, VIDE was to have reduced its existing backlog of overdue initial evaluations (due prior to October 1999) from 302¹ to 25. By October 2000, VIDE was to have reduced its existing backlog of overdue triennial evaluations (due prior to October 1999) from 667² to 100. In addition, for newly due evaluations, VIDE was to have reduced the current backlog (those due after October 1999) of initial evaluations and of triennial evaluations by 55% of the total current backlog. VIDE's quarterly reports indicated a reduction of the existing backlog of initial evaluations to 47. VIDE's quarterly reports for triennial evaluations due prior to October 1999, indicated that the existing backlog is 462. The current backlog (due after October 1999) for both initial and triennial evaluations has significantly increased. Therefore, VIDE's quarterly reports indicate that it has not met the benchmarks for timely evaluations.

OSEP did not review records for initial evaluations. OSEP's random review of 58 student records found 27 instances where individual student's triennial evaluations were current, 21 that were overdue and 10 where the triennial evaluation information was not provided. Of those 21 overdue, 16 reevaluations were due prior to October 1999 and 5 were due after October 1999. While this sample size is small, the results are consistent with the VIDE's reported data. This remains an area of concern.

As of December 2000, VIDE reported filling vacancies for District Coordinators of the Educational Diagnostic Services offices in St. Croix and St. Thomas/St. John.³ VIDE also reported a total of 7 unfilled positions for qualified examiners. VIDE reported the purchase of a computerized database tracking system that will allow VIDE to maintain up-to-date information on all aspects of each student's progress including due dates for reevaluations, IEPs, services, etc. With regard to evaluation data, the computerized database system is not fully operational due to a lack of correct information contained in the current hand-tabulated Educational Diagnostic Services records. District Coordinators responsible for this area were completing hand recalculations of triennial evaluation due dates at the time of OSEP's visit with the expectation that the updated information would be in the system by January 31, 2001. Despite VIDE's staff

¹ VIDE originally estimated 197 overdue initial evaluations but revised this number to 302.

² VIDE originally estimated 697 overdue triennial evaluations but revised this number to 667.

³ VIDE has represented that it was operating as the state educational agency with two local educational agencies, St. Croix and St. Thomas/St. John.

training efforts, OSEP found a lack of knowledge by the majority of special education personnel interviewed regarding the IDEA '97 requirements at 34 CFR §300.533 for the determination of needed evaluation data. The majority of staff interviewed had no knowledge of this requirement and deferred to the Educational Diagnostic Services staff as the responsible party for this determination. This lack of knowledge appears to contribute to the problem since IEP team members are not aware of the requirements and do not share in the responsibility for requesting or ensuring timely evaluations.

Follow-up and Recommendations: VIDE should implement their computerized tracking system and use the data to determine the actual and projected number of qualified examiners needed to meet the timely evaluation benchmarks and come into full compliance under the terms of the compliance agreement. By July 15, 2001, VIDE must report to OSEP regarding the status of the implementation of their computerized tracking system, including submission of data generated by this new system. VIDE must contract for additional evaluation services to meet future evaluation benchmarks and conduct additional training on the Part B requirements for review of existing evaluation data when conducting triennial reevaluations. VIDE will include information regarding contracts, training, and any other efforts that impact this benchmark in VIDE's quarterly reports to OSEP starting with the July 15, 2001 report and thereafter.

Current Initial IEPs

Status and Concerns: Under the compliance agreement, by October 2000, VIDE was to have reduced its existing backlog of overdue initial IEPs (due prior to October 1999) to zero. In addition, for newly due IEPs (due after October 1999) VIDE was to have reduced the current backlog of initial IEPs by 55%. VIDE's quarterly reports indicated that the existing backlog for overdue initial IEPs has been reduced to zero. For the current backlog (after October 1999), VIDE's reports indicated a reduction of the backlog by 33%. While OSEP did not examine this component during its onsite visit, VIDE's reports indicated that it had not met the benchmark.

Follow-up and Recommendations: VIDE should implement their computerized tracking system and use the data to determine the actual and projected number of initial IEPs that local educational agencies must conduct to come into full compliance under the terms of the compliance agreement. By July 15, 2001, VIDE must report to OSEP regarding the status of the implementation of their computerized tracking system including submission of data generated by this new system for the quarterly reports due July 15, 2001 and thereafter.

Compliance Goal #2: Free Appropriate Public Education (FAPE)

Expected Outcome: Timely provision of special education programs and related services as set forth in each child's Individualized Education Program (IEP), including, but not limited to, involvement and progress in the general curriculum with appropriate supports and modifications, occupational therapy, physical therapy, speech and language therapy, psychological counseling, and transportation services that allow for a full school day and a full school year of special education and related services. Beginning at least at age 14, each student's IEP contains a statement of the transition service needs and, beginning at least at age 16, the needed transition services are listed in the IEP and provided to each student.

Provision of Related Services

Status and Concerns: Under the compliance agreement, by October 2000, VIDE was to have reduced its existing backlog of students not receiving related services (identified need prior to October 1999) by 65%. In addition, for newly identified related services needs (after October 1999), VIDE was to have reduced the total number of students not being served by 45%. The format for the VIDE quarterly reports is complicated and appears to have led to some confusion regarding how to report the number of students not receiving services. While it appears, from the quarterly reports, that the total number of students not receiving the needed related services has decreased, OSEP is concerned about differences in the way data were reported for the first two quarters and the last two quarters. This may be due to the fact that a different staff member submitted the reports for the last two quarters than submitted the first two. As a result, OSEP could not determine whether VIDE met the benchmarks. At the time of OSEP's visit, VIDE administrators reported a total of 137⁴ instances where students were not receiving the related services identified on their IEPs, but did not break down this number into the two categories listed above. VIDE identified the lack of qualified personnel as the primary reason for not providing these services.

VIDE reported entering into contracts with two off-island agencies to provide qualified related services personnel for the 1999-2000 school year. However, VIDE continues to lack sufficient qualified related services personnel, either as department employees or contracted service providers, to meet the IEP- identified related services needs of students with disabilities. VIDE continues to try to address this problem by advertising for related service providers, compensating parents for related services they obtain independently and/or providing the related services as compensatory services during summer months when school is not in session.

Follow-up and Recommendations: Based upon a shared concern regarding the reporting format for needed related services, OSEP and VIDE have agreed to revisit and revise the data report forms to address these concerns. Updated and accurate data for the period ending September 30, 2000 and the periods thereafter must be resubmitted to OSEP by no later than July 15, 2001. Absent the hiring of new personnel, VIDE must ensure that local educational agencies contract for additional related service providers to reduce the backlog and meet the benchmarks in the agreement. VIDE must report to OSEP on its hiring and contracting efforts in this area by no later than July 15, 2001.

Provision of Psychological Counseling as a Related Service

Status and Concerns: Although VIDE's quarterly reports to OSEP indicated that all students who needed psychological counseling services were receiving it, OSEP's review of students' IEPs revealed that the needs of many students, including those with significant behavioral needs, were not being met due to a lack of qualified staff (i.e. psychologists and/or counselors trained to address behavioral issues). While it is not clear what data VIDE relied upon for its quarterly reports, interviews with school staff revealed that, in practice, student's psychological counseling

⁴ St. Thomas: Physical Therapy = 33; Speech Language Therapy = 12; Psychological Evaluation = 4; Wheelchair Attendant = 1. St. Croix: Occupational Therapy = 51; Physical Therapy = 3; Speech Language Therapy = 18; Vision Therapy = 15

needs were not being met. Interviews with counselors and staff consistently yielded that, when students have significant behavioral needs, the students' parents are referred to seek assistance from outside agencies due to a lack of appropriate school personnel to meet the students' needs. Counselors interviewed at a high school on St. Croix were inconsistent in their responses as to how they served the counseling needs identified on students' IEPs. Their responses varied from "never seen the IEP;" "don't know what the counseling needs are until the teacher brings the student to the counselor"; and "records for 9th graders are currently stored in boxes because of school construction." One longtime counselor was even unclear as to her exact job description and duties and asked OSEP for clarification as to "what the counselor is supposed to do with students with psychological/behavioral issues."

Follow-up and Recommendations: VIDE must take steps to ensure that local educational agencies review IEPs for students with disabilities, including those with behavioral needs, to determine whether psychological counseling services are needed and to ensure that those services are provided. Where listed on the IEP, local educational agencies must ensure that counseling services are provided as part of a free appropriate public education. If referrals to outside sources are required, VIDE must either contract with that source or, in cases where the source is another public agency, develop interagency agreements and take other appropriate measures to provide the service. VIDE also must ensure that school counselors are adequately trained to provide appropriate psychological counseling services that meet the needs identified on each child's IEP. VIDE is encouraged to contact the Southeast Regional Resource Center to identify appropriate training courses and materials. VIDE also must review and revise its data collection procedures to ensure that they provide accurate information. By July 15, 2001, VIDE must report to OSEP on the steps it has taken to ensure that all students who need psychological counseling services receive them and VIDE's review and revision of its data collection procedures to ensure accurate information.

Provision of Transportation Services and Full School Day

Status and Concerns: Under the compliance agreement, by October 2000, VIDE was to have reduced its existing backlog of students not receiving appropriate and timely transportation services (due prior to October 1999) by 80%. In addition, for newly identified transportation needs (after October 1999), VIDE was to have reduced its current backlog by 70%. In addition, by November 2000 VIDE was to have ensured that all students eligible to attend for a full school day were receiving it. VIDE quarterly reports indicated a reduction of the existing backlog (prior to October 1999) from 74 to zero, but the current backlog (after October 1999) had increased from 3 to 4. On-site, VIDE stated that in the majority of instances it "believes" that students are being transported in a timely manner to and from school. However, VIDE admitted it had not implemented the transportation services Spot Check Plan included in the compliance agreement to enable VIDE to accurately determine whether or not students were being transported to and from school on a regular and timely basis so that the students receive a full school day. Therefore the data reported by VIDE was not reliable. Because of the failure to implement the Spot Check Plan, VIDE was unaware that at the two high schools visited by OSEP, students in the Specialized Instructional Environment (SIE) and Supplemental Instructional Services (SIS) classes at these schools were being delivered to school late and being dismissed early due to

transportation problems. The same problems were identified to VIDE staff during OSEP's informal school visits in May 1999.

During the 1999-2000 school year, VIDE secured transportation services through two new vendors and ordered 3 new wheelchair lift equipped buses. At the time of OSEP's visit only one new bus was in service, with the vendor waiting for full payment before delivering the additional 2 buses. As noted below, this is due to ongoing fiscal control problems involving VIDE and the Virgin Islands Department of Finance. An interview with the Director of Transportation Services on St. Thomas/St. John confirmed that, due to a lack of buses, a constant breakdown of equipment and lack of paraprofessionals to accompany and supervise students on the buses, many drivers are forced to "double-up" on their transportation runs and are unable to transport students to and from school in a timely manner.

Follow-up and Recommendations: VIDE must implement the Spot Check Plan to ensure students are receiving appropriate transportation services and a full school day. VIDE must address maintenance needs for its buses by assessing its current inventory and developing a maintenance schedule and plan. VIDE should include the need for transportation paraprofessionals as part of its overall personnel recruitment and hiring plan. VIDE must report to OSEP on these efforts by July 15, 2001.

Compensatory Education

Status and Concerns: Under the compliance agreement, by October 2000, VIDE was to have established a procedure by which IEP teams made decisions regarding compensatory services and ensured that these services or reimbursement for parentally-funded compensatory services were to be provided in a timely manner. VIDE reported providing compensatory services to all students requiring compensatory services as a result of VIDE's failure to provide special education and related services during the 1999-2000 school year. The documentation of these services was reviewed by OSEP and determined to meet the requirements of the compliance agreement.

Follow-up and Recommendations: None at this time.

Extended School Year Services (ESY)

Status and Concerns: Under the compliance agreement, VIDE was to determine, by May 15 of each year, which students required extended school year services in order to receive a free appropriate public education. VIDE developed and disseminated policies/procedures for determining the need for extended school year services. Through a review of IEPs and interviews with special education teachers in six schools, OSEP staff determined that extended school year services are not consistently determined on an individual basis and not provided to all eligible students. VIDE's practice appears not to be based upon an individualized determination of the need for ESY and provided through an IEP, but instead is used to provide compensatory services when forced to do so through a complaint or due process decision.

Follow-up and Recommendations: VIDE must conduct appropriate training for IEP teams regarding proper implementation of the extended school year services procedures and monitor on this issue. By July 15, 2001, VIDE must report to OSEP on the implementation of training and its monitoring activities.

Interim Alternative Education Setting

Status and Concerns: Under the compliance agreement, by October 2000, VIDE was to have provided an interim alternative education setting for all students who required it prior to October 1999. In addition, for those who required an interim alternative education setting after October 1999, VIDE was to have reduced its current backlog by 90%. VIDE reported establishing a committee to draft policies and procedures for determining and providing an interim alternative education setting for students requiring this option. VIDE reported that this option was provided to all students requiring this setting. OSEP did not review individual student IEPs, but reviewed the data provided by VIDE concerning the number of students actually receiving this option and stated that all students who needed this option received it.

Follow-up and Recommendations: None at this time.

Therapeutic Placements

Status and Concerns: Under the compliance agreement, by October 2000, VIDE was to have reduced its existing backlog (prior to October 1999) of students who required a therapeutic setting but were not receiving it by 65%. In addition, for those who required it after October 1999, VIDE was to have reduced its current backlog by 45%. VIDE reported that all students who required this placement received it. VIDE reported contracting with on- and off-island facilities to provide therapeutic placements for students requiring this placement option. OSEP reviewed data (IEPs) provided by VIDE for students in need of and placed in therapeutic placements both on- and off-island and found that VIDE appeared to be meeting the needs of students requiring this type of placement.

Follow-up and Recommendations: None at this time.

Secondary Transition

Status and Concerns: Under the compliance agreement, by October 2000, VIDE was to have ensured that all students who required a statement of transition service needs (prior to October 1999) had it on their IEP and all students who required a statement of needed transition services (prior to October 1999) had it on their IEP. In addition, for those students requiring a statement of transition services needs or a statement of needed transition services on their IEPs after October 1999, VIDE was to have reduced its backlog by 75%. VIDE reported 1) conducting training with special education personnel on the secondary transition requirements of IDEA '97; and 2) having reviewed and revised all IEPs for students ages 14 through 21, or younger as appropriate, to meet the IDEA '97 requirement at 34 CFR §300.347(b)(1), statement of transition services needs and for students beginning at least at age 14, and the requirement at 34 CFR §300.347(b)(2), statement of needed transition services for students beginning at least at age 16.

VIDE also drafted an interagency agreement with other agencies who might be responsible for the provision of transition related services and had developed a draft Directory of Agency Linkages, at the SEA level.

In its quarterly reports, VIDE indicated, for those students who required a statement of transition service needs in their IEP prior to October 1999, a reduction from 73 to 6 or a 92% reduction. For those requiring it after October 1999 VIDE's quarterly report indicated a slight increase in the current backlog from 0 to 6. For those students beginning at least at age 16, who required a statement of needed transition services in their IEP prior to October 1999 VIDE's quarterly reports indicated a reduction from 53 to 5 or a 91% reduction. For those requiring it after October 1999, VIDE's quarterly reports indicated no backlog. Of the 16 randomly selected IEPs that OSEP reviewed, two IEPs had not been revised in well over a year. As a result, there was one student, age 14, whose IEP lacked a current statement of transition service needs; and one student, age 16, whose IEP lacked a current statement of needed transition services. Both of these students required these statements after October 1999. Therefore, VIDE's reported data were not fully consistent with data from OSEP's onsite review. Further, it appears that VIDE's data review may not have included some students whose IEPs were overdue.

Follow-up and Recommendations: VIDE must ensure that students' IEPs are reviewed at least annually, and that members of IEP teams are adequately trained to ensure that each child's IEP meets the transition requirements. VIDE is encouraged to contact the Southeast Regional Resource Center to identify appropriate training courses and materials. VIDE also must review and revise its data collection procedures to ensure that they provide accurate information. VIDE must report to OSEP on its training and its review and revision of data collection to ensure accurate information by July 15, 2001.

Transition from Part C (early intervention services) to Part B

Status and Concerns: Under the compliance agreement, by June 30, 2000, VIDE was to ensure that all eligible preschoolers transitioning from Part C to Part B have timely IEPs or Individualized Family Service Plans (IFSPs) and are receiving special education and related services under Part B by their third birthday.

Based upon interviews with VIDE staff responsible for Part C early intervention services and for Part B preschool services, OSEP noted that there continues to be a lack of a smooth effective transition from Part C to Part B. Staff specifically identified the lack of procedures for sharing information (i.e. records, evaluations) and the lack of a formal communication process between Part C and Part B staff.

Follow-up and Recommendations: VIDE should continue to review and monitor the effectiveness of the implementation of the current interagency agreement with the Virgin Islands Department of Health, the lead agency for Part C, to ensure a smooth and effective transition from Part C to Part B. This review should also focus on whether additional procedures for sharing information and for communication between agency personnel are necessary and appropriate. VIDE must report on its efforts, conclusions, and, if appropriate, submit revised procedures to OSEP by July 15, 2001.

Involvement and Progress in the General Curriculum with Appropriate Supports and Services

Status and Concerns: Although not specifically addressed in the compliance agreement, the IDEA regulations at 34 CFR 300.347 set out specific requirements for the IEP that address students' involvement and progress in the general curriculum with appropriate supports and services and the child's participation in State and district-wide assessments. During the on-site interview, VIDE indicated that it was reviewing content standards in the general curriculum and exploring a summer institute with the University Affiliated Program for regular education and special education teachers to address issues of providing students with disabilities access to the general curriculum. A workshop series on general education subject area curriculum content and performance standards in English/Language Arts, Social Studies, Mathematics and Science is planned for general/special education teachers during the 2000-2001 school year. VIDE reported that it has proposed curriculum content standards to the Board of Education. VIDE also is working with the Board of Education to make graduation requirements for students with disabilities comparable to requirements for students without disabilities.⁵

Interviews with teachers revealed that even when students with disabilities are placed in regular education classrooms, the students and teachers are not provided the necessary supports or modifications that would allow them to participate appropriately in the general curriculum. For students with disabilities currently placed in self-contained or more restrictive placements, VIDE lacks any curriculum standards for these students that are comparable to their nondisabled peers. Teachers reported limited or no knowledge of the general curriculum requirements/objectives; limited knowledge, experience and training in curricular modifications; and limited access to current textbooks and materials used in the regular education classroom.

In addition, in all of the IEPs reviewed, OSEP found that students with disabilities were excluded from participation in statewide or district-wide assessments. Teachers also reported that even when a student's IEP identified an appropriate placement in a regular education class, students with disabilities were still generally excluded from that class.

Follow-up and Recommendations: VIDE must develop a strategic plan for ensuring that special education teachers are trained in the general curriculum requirements/objectives and curricular modifications and that they receive access to current textbooks and materials used in the regular education classroom. This may be addressed as part of VIDE's comprehensive system of personnel development. This plan must also address participation, by students with disabilities, in the general curriculum with appropriate supports and modifications and participation in State and district-wide assessments. This plan must be submitted to OSEP by September 1, 2001, and implemented upon approval by OSEP.

Compliance Goal #3: Least Restrictive Environment (LRE)

⁵ The current graduation requirements for regular education students is 21 credits; for special education students the requirement is 18 credits

Expected Outcome: Access to a full continuum of placement options, including, but not limited to, access to the general curriculum and access to facilities and programs, is available to students in all disability classifications and that services and programs are provided in the least restrictive environment.

Continuum of Placement Options

Status and Concerns: Under the compliance agreement, by October 2000, VIDE was to have revised its placement process and implemented that process to ensure that placements decisions are individualized and consistent with the least restrictive environment requirements at 34 CFR §300.550-300.556. VIDE was also responsible for conducting training regarding the new process and training for both special and regular education teachers and administrators. VIDE reported revising the placement process and providing training in the new requirements regarding the least restrictive environment for all special education teachers and administrators during the 1999-2000 school year. Follow-up implementation by special education supervisors is scheduled for the 2000-2001 school year. VIDE also reported providing technical assistance to regular education teachers and developing draft performance goals and standards.

OSEP's review of IEPs and interviews with special education teachers and administrators revealed that VIDE continues to lack a full continuum of placement options for the majority of the students it serves. For each IEP reviewed, OSEP found that the consideration of the least restrictive environment begins with the resource program option rather than the consideration of regular classes with appropriate supports and modifications. Teachers and administrators reported a variety of factors that contribute to the inability of students with disabilities to participate in the regular education classroom including teacher and administrator attitudes; lack of training for regular educators in strategies for including students with disabilities in their classes; and the isolated physical location of special education classes on school campuses or off-campus annexes. For students, ages three to five, OSEP found a serious lack of preschool continuum options. The options, described to OSEP by special education staff, including administrators for children transitioning from the early intervention program (Part C) to Part B, are limited to Head Start and/or self-contained special education classes, regardless of the needs identified by the child's IEP or IFSP.

OSEP staff also observed first-hand that students with disabilities, despite their needs or abilities, were unable to interact with their nondisabled peers, in many nonacademic situations, due to the isolated physical location of the special education classrooms-- apart from the main school campus or buildings. This physical isolation creates a barrier to the participation of students with disabilities, despite their needs or abilities, in meaningful nonacademic interactions with their nondisabled peers such as assemblies, lunch, and sports activities. This was particularly true with the Supplemental Instructional Services (SIS) class at Gladys Gabriel Annex, which is located in a separate building at least two blocks from the main campus of Charlotte Amalie High School⁶ and with the Specialized Instructional Environment (SIE) class located in a separate building at the far-end of the Central High School campus.

⁶ Since OSEP's visit, VIDE has reported that the students at Gladys Gabriel Annex have been relocated to the main campus of Charlotte Amalie High School.

Data regarding placements/continuum options previously submitted by VIDE in its quarterly reports to OSEP were found to be inaccurate. While onsite OSEP requested that VIDE provide OSEP with corrected information. The revised data provided by VIDE indicates that there is a total of 1,736 students between the ages of 3-21 being served in special education placements throughout the Territory. These data appear to further support OSEP’s finding that VIDE continues to fail to provide special education in the least restrictive environment for the majority of its students.⁷ For a total of 1,569 students ages 6-21, placement by continuum option and the corresponding national averages are as follows:

Virgin Islands Educational Placement for Children Ages 6-21 (all disability categories)⁸			
Educational Placement	Total Number of Children in this placement	Percentage of total enrollment of special education children ages 6-21	National Average Percentage of children ages 6-21 served in different educational environments during 1997-98 SY ⁹
Special education outside the regular classroom <u>less than 21% of day</u>	423	27%	46.42%
Special education outside the regular class at <u>least 21% of day but not more than 60%</u>	781	50%	29.04%
Special education <u>outside regular class for more than 60% of day</u>	330	21%	20.41%
Special education in <u>public separate facility</u>	0	0%	1.85%
Special education in <u>private separate facility</u>	0	0%	1.04%
Special education in <u>public residential facility</u>	0	0%	0.40%
Special education in <u>private residential facility</u>	22	1%	0.30%
Special education in <u>homebound/hospital placement</u>	13	1%	0.55%

As the chart indicates, the national average data shows approximately 46 % of students with disabilities receiving most of their instruction in the regular classroom, whereas in the Virgin Islands only 27% of students with disabilities are instructed in the regular classroom for most of the school day. These data support OSEP’s finding that the regular class with appropriate supports and services is rarely considered as a placement option for students with disabilities in the Virgin Islands.

Follow-up and Recommendations: VIDE must revise its data compilation to ensure that the data submitted to OSEP is accurate. By July 15, 2001, VIDE must review, and where necessary revise its data collection procedures to ensure accurate information. Updated and accurate data for the period ending September 30, 2000 and the periods thereafter must be resubmitted to

⁷ The data showing that a large percentage of students with disabilities are pulled out of the regular classroom for 21% to 60% of their school day, also supports the interview finding that more restrictive placements, such as resource room, are routinely recommended, whereas regular classroom placement with appropriate modifications and supports are not generally considered.

⁸ VIDE submitted OSERS Table 3 – Part B, Individuals with Disabilities Education Act Implementation of FAPE requirement (1999-2000 school year), Sections A-F

⁹ National Average for U.S. and Outlying Areas, Twenty-second Annual Report To Congress on the Implementation of the Individuals with Disabilities Education Act, U.S. Department of Education, 2000.

OSEP by no later than July 15, 2001. VIDE must continue its activities under the compliance agreement, but must develop and implement additional training and monitoring strategies to address this issue. VIDE must also ensure that students and teachers have appropriate supports available to ensure that placements in the least restrictive environment are available and provided. VIDE is encouraged to contact the Southeast Regional Resource Center for additional resources and training. VIDE also must address the availability of placements at the preschool level, including the use of private preschool facilities if less restrictive public facilities are not available. VIDE must continue to work with school administrators to relocate special education classrooms to facilitate participation by students with disabilities in extracurricular and other nonacademic activities. VIDE must submit appropriate documentation of these efforts to OSEP in its quarterly reports, starting July 15, 2001 and thereafter.

Facility Access

Status and Concerns: Under the compliance agreement, VIDE agreed to continue its work with the U.S. Department of Education, Office for Civil Rights (OCR) to address prior complaints and a resolution agreement between VIDE and OCR regarding physical accessibility to educational facilities. Compliance with the accessibility requirements of Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act would constitute sufficient physical access for Part B implementation. VIDE reported establishing an Accessibility Task Force and developing an interagency agreement between the Virgin Islands Department of Education, the Public Works Department, the Planning and Natural Resources Department and the Property and Procurement office to address and correct physical accessibility violations in six schools on St. Thomas/St. John and St. Croix.¹⁰ At the time of OSEP's visit, VIDE had completed a physical survey with photo documentation of all the violations in the six schools and completed action plans (timelines, responsible agency and costs for repairs) for two of the schools.

Follow-up and Recommendations: OSEP is encouraged by VIDE's apparent progress in addressing long-standing problems with accessibility to educational facilities and encourages VIDE to continue its cooperation and progress on the requirements contained in the OCR resolution agreement.

Compliance Goal #4: Sufficient Qualified Personnel

Expected Outcome: An adequate supply of qualified, prepared and trained special education and regular education teachers, and related services personnel that meet State standards. All vacancies for these positions are filled.

Sufficient Qualified Personnel

Status and Concerns: Under the compliance agreement, by October 2000 VIDE was to have filled 65% of its existing personnel vacancies (those that were open as of October 1999) and to have hired qualified personnel to fill 35% of any vacancies (those occurring after October 1999). OSEP's review of VIDE's quarterly reports indicated that VIDE was not properly reporting

¹⁰ Charlotte Amalie High School/Gladys Gabriel Annex; Cancryn Junior High; Sprauve; Woodson Junior High; Gardine Elementary.

vacancies and positions filled. For example, VIDE reported no existing vacancies of administrators for the period from April 10, 2000 to June 30, 2000, but reported hiring two administrators for existing vacancies during the period from July 1, 2000 to September 30, 2000. Similar errors were made for other staff positions. On-site, VIDE reported adding 15 new positions on St. Thomas and filling 11 of the posted positions. In addition, VIDE reported reducing vacancies on St. Croix to two positions. Although OSEP staff examined school rosters for each local educational agency to determine vacancies in classrooms, they were unable to verify the numbers that VIDE had reported. OSEP is concerned about the way that personnel data are being collected and reported.

VIDE initiated a Memorandum of Agreement for an expedited Notice of Personnel Action (NOPA) process and instituted a paraprofessional certification program. While VIDE is attempting to recruit and retain qualified special education and related services personnel, it identified serious barriers that impede its progress in this area--specifically, the NOPA process for hiring; lack of salaries competitive with the United States mainland; and a cumbersome and slow Board of Education process for determining teacher certification. Under the compliance agreement, VIDE was to seek authority for waivers and/or pay bonuses for hard to fill positions. Although VIDE has documented its requests for this additional authority, to date, they have not been granted.

As reported to OSEP, the absence of local control over personnel matters continues to impact the local educational agency's ability to ensure compliance with federal and State requirements. The building principal has the responsibility for evaluating staff and making recommendations for personnel action to the Insular Superintendent. The final decision regarding the hiring and dismissal of school personnel is the sole purview of the Governor. The local educational agency special education staff and school principals, those with the most knowledge regarding staff performance and competence, lack the authority to make specific personnel changes. As explained to OSEP, there is a general belief that this lack of local control over school staff remains a major obstacle to improving services for all students, including students with disabilities.

In situations where there is no qualified teacher available, OSEP found that there are special education classes consistently being taught by noncertified teachers or by paraprofessionals. OSEP found this to be the case in all of the six schools visited. This deficiency was especially egregious in classes for students with the most significant disabilities, where paraprofessionals with only a high school diploma were in charge of the class, were not supervised by a certified special education teacher, and were unable to meet the multiple needs of the students. Interviews with paraprofessionals revealed that they lack any systematic training, are unprepared to "teach" and are often used to "substitute" for absent regular education teachers, even though they are assigned to special education classes.

Moreover, as will be addressed under separate cover, OSEP's review of VIDE's submission of eligibility documents demonstrated a failure to properly institute a comprehensive system of personnel development that meets the requirements of Part B of the IDEA.

Follow-up and Recommendations: Based upon a shared concern regarding the reporting formats for personnel vacancies, OSEP and VIDE have agreed to revisit and revise the forms to address these concerns. VIDE needs to develop a more consistent basis for gathering and reporting this data. VIDE must revise its reports for the period ending September 30, 2000 and the periods thereafter and resubmit these revisions to OSEP by July 15, 2001. Moreover, VIDE must develop an appropriate comprehensive system of personnel development, including an effective way to determine and project personnel needs and additional ways to address current shortages. VIDE also must continue its efforts to address the NOPA process so that local officials can have more effective tools for personnel and programmatic reform.

While working to fill current vacancies, VIDE needs to address ways in which paraprofessionals can be appropriately trained and supervised to assist in the provision of special education and related services, as allowed under the regulations. However, paraprofessionals may not be used in place of certified teachers and related service personnel.

Prepared and Trained Staff

Status and Concerns: Under the compliance agreement, VIDE committed to conducting periodic training of staff on revised policies and procedures. VIDE created a Division of Special Services newsletter, *Exceptionally Speaking*, and disseminated it to teachers, counselors, administrators and advocacy groups. Although VIDE submitted documentation of training and workshops offered throughout the 1999-2000 school year, the teachers interviewed consistently were unable to tell OSEP staff what specific training they had received. Teachers reported that often the announcement of training opportunities is at the last minute and in cases where they were able to pre-register for a workshop, their participation is often denied by the building administrator due to a lack of "coverage" for their duties. Teachers indicated a need for additional training in the following areas: behavior management, IDEA '97, curriculum development and planning, assessments, discipline, and collaboration with regular education teachers.

Follow-up and Recommendations: As noted in many of the recommendations above, training is an essential part of the programmatic changes that VIDE must effect. However, there appear to be systemic barriers to the way in which VIDE provides training opportunities to teachers and other personnel. Without addressing these systemic barriers, VIDE will not be able to address the programmatic goals that the compliance agreement requires. VIDE is strongly encouraged to seek consultation with the Southeast Regional Resource Center to address this issue. By July 15, 2001, VIDE must submit a training plan that addresses the training required under this report and that contains specific strategies (for example, paying for substitutes, creating additional in-service days) for correcting the systemic barriers to effective training.

Compliance Goal #5: Complaint Resolution

Expected Outcome: Parents are fully informed of their due process rights. Complaints filed by parents or the public are resolved in a timely manner pursuant to the requirements for due process hearings. State Complaint procedures and/or mediation, including, but not limited to, the hiring and training of qualified complaint investigators, qualified mediators and qualified hearing officers and a system for logging and tracking complaints, mediation, and hearing requests and

decisions. Elimination of the backlog of complaints and hearing requests. Timely implementation of all unappealed decisions and mediation agreements.

Due Process Hearings

Status and Concerns: Under the compliance agreement, by October 2000, VIDE was to have reduced to zero the number of hearing requests where decisions were untimely or otherwise unresolved. VIDE was also to have hired an adequate number of hearing officers and mediators to address its needs. VIDE reported hiring due process hearing officers and mediators and reducing the backlog of due process hearings to zero. OSEP's review of documentation confirmed that the benchmark had been met.

Follow-up and Recommendations: None at this time.

State Complaints

Status and Concerns: Under the compliance agreement, VIDE was to resolve and issue written findings and decisions for all outstanding (prior to October 1999) State complaints at once and issue timely written findings and decisions for any current State complaints (filed after October, 1999). VIDE hired an additional compliance officer responsible for complaint investigations and monitoring and reported investigating the backlog of complaints.

OSEP found that VIDE's complaint procedures are inconsistent with IDEA '97 requirements and staff were unable to document or verify implementation of the existing complaint procedures. Further, after reviewing the complaint logs and conducting interviews with VIDE staff responsible for complaint management, OSEP concluded that VIDE currently lacks any systematic way to follow-up on, and to ensure the implementation of, due process hearing decisions, mediation agreements or complaint decisions. Also, it was evident to OSEP that the VIDE staff responsible for this function are in need of additional training and supervision.

At the time of OSEP's visit, VIDE staff responsible for State complaints, were unable to produce documentation of written findings and decisions for the 19 State complaints documented in the State's complaint log.¹¹

Follow-up and Recommendations: OSEP is currently reviewing VIDE's revised complaint procedures and will address needed changes under separate cover. VIDE also must develop and submit to OSEP, by July 15, 2001, a plan for training VIDE staff on the federal Part B requirements and on effective ways to monitor, and enforce the implementation of State complaint decisions.

Compliance Goal #6: General Supervision

¹¹ Additional documentation of complaint decisions was provided to OSEP after the December on-site visit for 11 of the 19 complaints filed.

Expected Outcome: Develop and implement policies and procedures that are consistent with IDEA 1997, including but not limited to, implementation of a comprehensive and effective monitoring system.

Policies and Procedures

Status and Concerns: VIDE submitted revised policies and procedures intended to be consistent with IDEA '97 to OSEP for review and approval. These are currently under review by OSEP and will be addressed under separate cover. OSEP determined through interviews with local educational agency staff on St. Croix and St. Thomas/St. John, that there is inconsistent implementation of these revised policies and procedures across the two LEAs because the SEA lacks effective oversight mechanisms and strategies to monitor the functioning of the LEAs. While each LEA has comparable administrative staff and categories of duties, there is a lack of effective communication between LEAs and with the SEA, a duplication of efforts in program development and inconsistent/inefficient utilization of resources. For example, at one high school visited by OSEP on St. Croix, there was an entire class of students for which current IEPs were just being developed due to the lack of a qualified teacher in the classroom for the entire 1999-2000 school year. In such instances, the LEA Supervisor could have taken responsibility for ensuring that the IEPs were current and appropriately implemented by monitoring the class and supervising the paraprofessional until a certified teacher is hired. This failure to communicate and coordinate resources and needs contributes to the inadequate provision of special education and related services to children with disabilities in a Territory where the total number of students with disabilities being served is relatively small.

Follow-up and Recommendations: VIDE's revisions to its policies and procedures must address coordination of programs and resources between public agencies. Once the revised policies and procedures are approved by OSEP, VIDE must develop a systematic way to ensure that public agencies appropriately and consistently implement the new policies and procedures. In the quarterly reports starting July 15, 2001 and thereafter, VIDE must report to OSEP on its efforts and progress.

Monitoring

Status and Concerns: Under the compliance agreement, by March 1, 2000, VIDE was to have implemented revised monitoring procedures and begun submitting quarterly reports to OSEP. VIDE submitted revised monitoring procedures to OSEP for review and approval. These procedures are currently under review by OSEP and will be addressed under separate cover. In the interim, VIDE staff implemented its new procedures and conducted monitoring visits to a total of 12 schools and facilities in St. Croix and St. Thomas/St. John during February-April 2000 (Cycle I). Even though VIDE monitoring staff produced a final draft report for OSEP's review that was fairly comprehensive in the scope of potential findings, as of the December 2000 visit, this report had not yet been issued.¹² Therefore, OSEP could not determine whether VIDE can correct the systemic noncompliance identified in this report. VIDE staff also admitted that due to a lack of staff, it has not completed any other monitoring activities (i.e. Cycle II).

¹² This report issued on March 22, 2001.

Follow-up and Recommendations: VIDE must conduct Cycle II monitoring and ensure that correction occurs for those areas of deficiency identified through its monitoring activities.

Compliance Goal #7: Fiscal Accountability

Expected Outcome: Fiscal policies/procedures ensure IDEA funds spent appropriately. VIDE must comply with special conditions regarding fiscal accountability.

Fiscal Accountability - Procedures and Expenditures

Status and Concerns: VIDE's efforts to comply with the special conditions regarding fiscal expenditures have been limited.¹³ Moreover, OSEP's review confirmed that the lack of progress in fiscal management directly impacts the local educational agency/school's ability to provide appropriate services to students with disabilities. The SEA director reported to OSEP that for fiscal year 1999¹⁴ Part B funds, the following budget expenses were incurred: (1) Personnel/salaries: \$8.3 million; (2) Materials and supplies: \$730,000; and (3) Equipment (computers): \$340,000. During school building tours and interviews with teachers, building administrators and SEA staff, OSEP found little or no tangible evidence of the reported expenditures for books, materials, school furniture, and computers. Teachers consistently reported not receiving materials ordered through the requisition and procurement process. They reported that it generally takes up to 2 years to have a requisition filled. One teacher interviewed stated she had been ordering for 21 years and has yet to receive anything ordered. SEA administrators stated that different requisition processes and decisions were used between St. Croix and St. Thomas/St. John and that the lack of consistency in ordering, has resulted in a backlog of requisitions being submitted for processing. Even though some teachers reported that they are now beginning to see some of the orders filled this school year, VIDE indicated that most orders submitted this school year, likely will not be filled until after the school year ends.

The other remaining barrier appears to be the cumbersome government-wide procurement process in the Virgin Islands. In spite of recent Virgin Islands legislation (April 2000) that specifies that orders less than \$50,000 can be expedited without the procurement process, VIDE staff advised OSEP that there are no procedures yet in place to implement this legislation. Teachers were unaware of this new legislation. This problem seems to be compounded by the SEA's inconsistent procedures for teachers and staff for submitting requisitions; the Virgin Islands government-wide procurement system; lack of security systems to enable valuable equipment, like computers, to be secured; poor payment history with vendors; and problems with warehouse distribution practices.

Follow-up and Recommendations: VIDE must take immediate steps to implement the new procurement legislation that allows for expediting orders valued at less than \$50,000. VIDE must standardize the way that requisitions are submitted and approved. VIDE must institute a

¹³The January 19, 2001 letter from Frank Holleman, found that VIDE was not meeting the special conditions on its grant awards.

¹⁴VIDE's prior grant awards were \$7,822,943 in fiscal year 1998 and \$8,852,007 in fiscal year 1999.

tracking system for their requisitions. Documentation of these efforts must be submitted to OSEP as part of VIDE's quarterly reports.

This area is also being addressed on a department-wide basis between the U.S. Department of Education and the Virgin Islands government. OSEP will continue to work within this process to address these fiscal concerns.

Conclusion

Throughout the onsite review, OSEP met some dedicated staff members, many of them were knowledgeable about what to do for children with disabilities, were creative in their approaches and resourceful in obtaining the necessary materials to provide special education and related services. The Acting Director of the Division of Special Services is working hard to change the way VIDE does business and to positively impact on services to children with disabilities. Although OSEP acknowledges some progress and hard work at the State level in terms of procedural changes, OSEP saw limited progress in the day-to-day delivery of special education and related services for children and youth with disabilities. It is OSEP's opinion that little has changed for children since OSEP's last visit in May 1999. As noted in each of the sections above, there are additional steps that VIDE must take to ensure that the goals and benchmarks of the compliance agreement are met. OSEP continues to urge VIDE to seek technical assistance and implement systemic reform in order to have an impact on and improve services for children with disabilities.

Further, OSEP believes that there are three major systems outside the Virgin Islands Department of Education and Division of Special Services that have a major impact on their ability to provide special education and related services to children with disabilities: (1) the NOPA process for hiring and firing personnel; (2) the procurement process and (3) the timely payment for goods and services rendered by vendors. While the compliance agreement allows two more years for VIDE to come into full compliance with the requirements of federal law, VIDE's very limited progress in year one of the agreement raises serious concerns. Therefore, additional systemic support from the Superintendent's and Governor's offices appears to be needed to make effective changes and progress. OSEP will continue to closely monitor VIDE's efforts and coordinate with other offices of the Department and other agencies to ensure that no child is left behind.