

Enclosure B

VIRGIN ISLANDS – SPECIAL CONDITIONS

PREAMBLE: These special conditions are imposed on the Virgin Islands Department of Education's federal fiscal year (FFY) 2003 Part B of the Individuals with Disabilities Education Act (IDEA) grant award from the U.S. Department of Education (Department) to the Virgin Islands Department of Education (VIDE) under the Department's regulations governing "high risk" grantees in 34 CFR §80.12. The special conditions are imposed to help ensure that the VIDE award is expended in accordance with applicable legal requirements.

I. EXPLANATION OF HIGH RISK STATUS

Under the authority of the Education Department General Administration Regulations (EDGAR), 34 CFR §80.12, the Department has determined that VIDE is a "high risk" grantee for purposes of its FFY 2002 Grant Award because of the inability of VIDE to meet all of the conditions of the Compliance Agreement between the U.S. Department of Education and the Office of Special Education Programs dated December 10, 1999.

As part of the 1999 Compliance Agreement, VIDE agreed, by no later than December 2002, to meet certain benchmarks or outcomes to bring it into compliance with the requirements of Part B of the Individuals with Disabilities Education Act (IDEA). The December 2000 and February 2002 onsite visits by OSEP and subsequent May 2001 and October 2002 OSEP monitoring reports, as well as the quarterly progress reports required under the 1999 Compliance Agreement and OSEP's February 2003 on-site monitoring visit demonstrated that, despite progress in many areas, certain benchmarks and outcomes were not met. These documents are incorporated by reference herein. Specifically, OSEP makes the following findings regarding unmet provisions of the Compliance Agreement of 1999.

A. Timeliness of Evaluations

VIDE: 1) was to have eliminated its existing backlog of 302 overdue initial evaluations (due prior to 10/99); 2) was to have eliminated its existing backlog of 667 overdue triennial evaluations (due prior to 10/99); and 3) was to have eliminated the current backlog of initial evaluations and triennial evaluations for newly due evaluations (those due on or after 10/99). See Compliance Agreement Outcomes 1.1a through 1.1d. OSEP finds that, although there are concerns regarding the accuracy of its reporting system, VIDE is still reporting a backlog of overdue initial and triennial evaluations. In February 2003, VIDE reported approximately: zero overdue initial evaluations (due after 10/99); 234 overdue initial evaluations (due after 10/99); 18 overdue triennial evaluations (due before 10/99); and 178 overdue triennials (due after 10/99) for a total of 430 overdue evaluations. Further, while VIDE reported that some of the more severely overdue evaluations were due to a lack of cooperation from parents and students, it was unable to produce any documentation regarding contacts with parents or students or other school system efforts to schedule the evaluations. Moreover, VIDE staff indicated that it was

unable, in certain cases, to verify the numbers being reported, and that it has yet to implement its proposed computerized student information system (GoalView) for special education students. The bi-monthly progress reports in April and June 2003 reported 77 overdue initial evaluations (due after 10/99), 57 overdue reevaluations (due before 10/99),¹ and 81 overdue triennials (due after 10/99).

B. Provision of Related Services

VIDE was to have eliminated its existing backlog of students not receiving related services on their IEPs (listed on IEP prior to October 1999) and was to have eliminated its current backlog of students with related services on their IEP (added to IEP on or after October 1999) who are not receiving those services. See Compliance Agreement Items 2.1e. In its previous quarterly data reports, VIDE alleged that this area was in compliance. During the on-site visit VIDE reported a total of 27 students not receiving speech language services. In OSEP's review of 22 student files where counseling was listed as a related service, OSEP was unable to verify that any of these students received the counseling that was indicated on their IEPs. An internal memorandum reported at least 11 students not receiving counseling services. OSEP interviews indicated that VIDE has no system to verify whether students are receiving counseling as a related service. The bi-monthly progress reports in April and June 2003 reported 38 students for whom VIDE could not verify whether they received counseling due to lack of proper documentation. VIDE reported 36 students not receiving speech language services, 44 not receiving occupational therapy services, and 5 not receiving physical therapy services.

C. Provision of Transportation Services

VIDE was to have eliminated the existing backlog of students not receiving transportation services on their IEPs (listed on IEP prior to October 1999). For students with newly identified transportation needs on their IEPs (added to IEP on or after October 1999), VIDE was to have eliminate the current backlog. See Compliance Agreement Item 2.1f. VIDE's report did not include specific numbers of students not receiving transportation services but acknowledged continuing transportation problems as well as ongoing efforts to address the problems. OSEP concludes that transportation problems persist, and VIDE's failure to properly report on this issue is especially troubling in light of the findings on full school day and compensatory services below. The bi-monthly progress reports in April and June 2003 reported 35 students not receiving transportation services.

D. Full School Day

For those students eligible to attend school for a full school day, VIDE was to have ensured that all eligible students were receiving a full school day. See Compliance Agreement Item 2.1i. OSEP found reports of late arrival and early pick-ups by the bus at one of the four schools visited. VIDE was unaware of these problems despite reporting that its spot-check plan for transportation had been implemented. OSEP found that late arrival and early pick-ups due to transportation problems have resulted in some students

¹ It is not clear why this number has been revised upward from previous reporting.

not receiving a full school day. The bi-monthly progress reports in April and June 2003 reported 18 students impacted.

E. Compensatory Education

VIDE was to have ensured that all families requiring compensatory services and/or reimbursement for parentally-funded compensatory services were to be provided in a timely manner. See Compliance Agreement Item 2.1g. OSEP finds that VIDE failed to accurately report on those students who were entitled to or were provided compensatory services and/or reimbursed for parentally-funded services. For example, VIDE reported numbers of students not receiving related services, but some of these students were not reported as requiring compensatory services. Further, OSEP found additional students who were denied services, who were not included on the list of students requiring compensatory services.

F. Extended School Year Services

VIDE was to have implemented an appropriate system that ensures that, by May 15 of each year of the agreement, students who required extended school year services (ESY) in order to receive a free appropriate public education receive those services. See Compliance Agreement Item 2.1d. OSEP finds that at one of the four schools visited, the teachers were not aware of the guidelines or requirements for ESY.

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

VIDE was to have ensured 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. See Compliance Agreement Item 2.1j. OSEP finds that VIDE and VIDH have failed to adequately revise the interagency agreement that covers the responsibilities of the two agencies with regard to students' transition from Part C to Part B. OSEP finds that VIDE does not provide preschool summer school services because public school staff do not work during the summer, and that currently, Part C students whose third birthday occurs during the summer months remain in the Part C program until the next school year. Due to the lack of a revised agreement, the financial responsibility for the services that VIDH is providing during the summer months also remains at issue.

H. Continuum of Placement Options

Under the Compliance Agreement VIDE was to have ensured that services and programs are provided in the least restrictive environment and that VIDE has made available a full continuum of placement options. As part of this goal, VIDE was to have implemented a revised placement process and ensured physical accessibility to services and programs. See Compliance Agreement Items 3.1a through 3.1f. VIDE appears to have made significant progress in the area of physical accessibility to its programs and the use of the regular content standards for students with disabilities. VIDE acknowledged that the continuum of placement options for preschool students continues to be a problem. For school-age students, at one school visited, OSEP found that even though the children's IEPs indicated participation in regular classes with nondisabled peers, staff confirmed that participation in nonacademic classes was not integrated consistent with student's

abilities. Students with disabilities attend these classes as a segregated group and staff reported a class size rule that was a barrier to integration. At two schools, regular education teachers reported no mechanism for receiving information about children with disabilities in their classes.

I. Sufficient Qualified Personnel

Under the Compliance Agreement, VIDE was required to ensure a sufficient supply of qualified personnel by seeking appropriate legislative and/or executive authority to hire needed staff. VIDE was to have eliminated its staff vacancies by December 2002. See Compliance Agreement Items 4.1a through 4.1d. OSEP finds that VIDE reported a small number of vacancies for special education teachers and administrators that represents a very small percentage of total positions. However, OSEP is concerned with VIDE's report of vacancies for both of the two speech language therapist positions on St. Croix. These positions have remained vacant for more than a year. While VIDE indicated it is continuing to work on filling those vacancies and is using contractors in some instances, as a result of these long-standing vacancies, approximately 27 students on St. Croix did not receive speech and language therapy as required by their IEPs. VIDE did not submit the required documentation to address this issue by July 1, 2003, as required in the Special Conditions to the FFY 2002 Part B grant award.

J. General Supervision and Monitoring

By December 2002, in order to meet the terms of the compliance agreement, VIDE was to have ensured that its policies and procedures are consistent with IDEA, including but not limited to, implementation of a comprehensive and effective monitoring system. See Compliance Agreement Items 6.1a and 6.1b. VIDE submitted its revised policies and procedures September 15, 2002. In a letter dated March 13, 2003 OSEP identified a number of areas in which VIDE policies and procedures were not consistent with the IDEA. On July 2, 2003, VIDE submitted revised policies and procedures that includes both changes that OSEP required in its March 13, 2003 letter and chart and additional changes not required by OSEP and impacting OSEP's prior review. Due to these additional changes, OSEP must review all revised submissions to determine whether the new documentation meets the eligibility requirements under Part B of the IDEA.

II. SPECIAL CONDITIONS

Under the authority of the Education Department General Administrative Regulations, 34 CFR §80.12, the Department is imposing these Special Conditions on the Virgin Islands Federal Fiscal Year 2003 awards under Part B of the IDEA.

- A. As soon as possible, but no later than March 31, 2004, VIDE must eliminate the backlog of overdue initial and triennial evaluations and document progress on this item by submitting bi-monthly reports, beginning October 14, 2003, utilizing reporting forms provided by OSEP;
- B. As soon as possible, but no later than March 31, 2004, VIDE must eliminate the backlog of students not receiving related services on their IEPs and document

progress on this item by submitting bi-monthly reports, beginning October 14, 2003, utilizing reporting forms provided by OSEP;

C. VIDE must:

1. As soon as possible, but no later than March 31, 2004, eliminate the backlog of students not receiving transportation services on their IEPs;
2. As soon as possible, but no later than October 14, 2003, implement appropriate changes to the transportation spot-check plan to address VIDE's failure to identify transportation problems at certain schools;
3. Beginning October 14, 2003, document progress on this item by submitting bi-monthly reports utilizing reporting forms provided by OSEP.

D. As soon as possible, but no later than March 31, 2004, VIDE must ensure that all students with disabilities receive a full school day and document progress on this item by submitting bi-monthly reports, beginning October 14, 2003, utilizing reporting forms provided by OSEP;

E. As soon as possible, but no later than March 31, 2004, VIDE must ensure that compensatory services and reimbursement for parentally-funded compensatory services are provided in a timely manner and document progress on this item by submitting bi-monthly reports, beginning October 14, 2003, utilizing reporting forms provided by OSEP;

F. As soon as possible, but no later than March 31, 2004, 1) VIDE must ensure that all school personnel have received training on the ESY guidelines and that it conducts monitoring to ensure that the ESY guidelines are being properly implemented; and 2) VIDE must document progress on this item by submitting bi-monthly reports, beginning October 14, 2003, utilizing reporting forms provided by OSEP;

G. VIDE must:

1. As soon as possible, but no later than March 31, 2004, ensure that all eligible students transitioning from Part C to Part B have timely IEPs or IFSPs and are receiving special education and related services by their third birthday, including those eligible children who turn three during the summer months;
2. As soon as possible, but no later than March 31, 2004, make all revisions necessary to ensure that the final Interagency Agreement between VIDH and VIDE for Part C to Part B transition meets all federal requirements.

H. VIDE must:

1. As soon as possible, but no later than March 31, 2004, ensure that services and programs are provided in the least restrictive environment and that VIDE makes a full continuum of placement options available, including preschool options; and
 2. Document progress on this item by submitting bi-monthly reports, beginning October 14, 2003, utilizing reporting forms provided by OSEP.
- I. As soon as possible, but no later than the October 14, 2003 report, VIDE must submit a revised plan to address all long-standing vacancies (more than one year) impacting the provision of services to students with disabilities, including but not limited to the vacancies for speech language therapists on St. Croix.
- J. As soon as possible, but no later than December 15, 2003 VIDE must either fully implement its previously purchased computerized student information system for special education or implement another special education information management system, that must be approved by OSEP and that, at a minimum, provides accurate student information for all reports required under Special Conditions for II.A through G.
- K. As soon as possible, but no later than March 31, 2004 VIDE must submit the following final documents, based on OSEP's March 13, 2003 letter and chart and final approval by OSEP: (1) state complaint procedures; (2) procedural safeguards; and (3) interagency agreement between Part C (early intervention services) and Part B.
- L. As soon as possible, but no later than March 31, 2004, VIDE must resubmit its final revised policies and procedures (VIPP) addressing all issues identified in OSEP's March 13, 2003 letter and chart and resolving any other issues identified by OSEP in VIDE's July 2, 2003 submission.
- M. VIDE must promptly provide the Department any requested records and information.

III. EVIDENCE NECESSARY FOR SPECIAL 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 of the 1999 Compliance Agreement as set out in Section I, Subsections A-J of this document.

IV. METHOD OF REQUESTING RECONSIDERATION

The Virgin Islands may write to Assistant Secretary Robert H. Pasternack, if it wishes the Department to reconsider any aspect of these Special Conditions. Any such request should describe in detail the changes to the Special Conditions sought by the Territory and the reasons for those requested changes.

V. SUBMISSION OF REPORTS

All documents and reports that are required to be submitted by the Virgin Islands to the Department under these Special Conditions should be signed by the State Director of Special Education and submitted to:

Maral Taylor
Office of Special Education Programs
330 C Street SW, Room 3624
Washington, DC 20202

Dated: _____