



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

SEP 24 2004

Honorable Darlene A. Carty
Commissioner
Virgin Islands Department of Health
Sugar Estate #48
St. Thomas, USVI 00802

Dear Commissioner Carty:

We have determined that the Virgin Islands' application for Federal Fiscal Year (FFY) 2003 funds under Part C of the Individuals with Disabilities Education Act (Part C) can be approved with special conditions, under the regulations governing "high risk" grantees at 34 CFR §80.12. I am enclosing the Virgin Islands' Part C award, and an attachment detailing the special conditions and the reasons for considering the Virgin Islands Department of Health (VIDH) a high-risk grantee.

Under the authority of the Education Department General Administrative Regulations (EDGAR), 34 CFR §80.12, the Department has determined that VIDH is a "high risk" grantee for purposes of Part C of IDEA for FY 2003. The special conditions are imposed to ensure that the funds are expended for appropriate and timely early intervention services to infants and toddlers with disabilities and their families in the Virgin Islands.

VIDH is currently reimbursing all vendors in a timely manner through a contract with a financial management contractor and obtaining per-diem early intervention providers because timely payments for early intervention services are provided. However, VIDH has not demonstrated that it has procedures for ensuring that early intervention provider vendors can be paid in a timely manner (to ensure uninterrupted provision of early intervention services to infants and toddlers with disabilities and their families) without using the third party financial management contractor. The Department is also aware of the ongoing problems in the jurisdiction in ensuring the timely and appropriate obligation, liquidation, and accountability of Federal funds granted by the Department to the VI Government and, therefore, is continuing the third party financial management contractor special condition provisions to ensure continued, timely payment of early intervention services.

In addition, VIDH has not eliminated waiting lists for evaluations and assessments, although substantial progress has been made to reduce the time line for infants and toddlers waiting for evaluations and assessment on the island of St. Croix (according to VIDH's FFY 2002 quarterly reports dated December 23, 2004, April 13, 2004, and July 1, 2004). Moreover, VIDH has failed to meet the special conditions of its FFY 2002 Part C grant and failed to provide any information regarding waiting lists for early intervention services to infants and toddlers with disabilities and their families and whether waiting lists previously reported have been eliminated. Therefore, the

Department is requiring that VIDH develop and implement a data collection system by February 2005 that can collect and report accurate data about any child or family waiting for needed early intervention services and related data.

During the FFY 2002 grant period, VIDH met the special condition to secure, track and control access to materials, office equipment, and other supplies; therefore, OSEP is removing from VIDH's FFY 2003 grant award the special conditions related to property procurement and management for materials, office equipment and supplies. However, the Department is continuing to require VIDH to ensure that vehicles bought with Federal funds for the Part C program are secured and remain on the appropriate premises for use by authorized early intervention staff as noted in Section E. of the attached special conditions as VI governmental staff and VIDH staff have identified to OSEP ongoing vehicle security and accountability concerns.

In addition, VIDH has not yet submitted its FFY 2002 Annual Performance Report (APR) for the Individuals with Disabilities Education Act (IDEA) Part C funds used during the grant period July 1, 2002 through June 30, 2003 that was due to the Office of Special Education Programs (OSEP) on March 31, 2004 under 34 CFR §80.40. OSEP granted VIDH two requests for extensions for its APR submission date (first to April 30, 2004 and then to June 14, 2004). However, VIDH has failed to submit its FFY 2002 APR. VIDH must submit its FFY 2002 APR no later than October 29, 2004. The Virgin Islands' acceptance of this grant award constitutes an agreement to meet the special conditions and to submit its FFY 2002 APR no later than October 29, 2004.

This year, a number of States have either established systems of payments or are considering establishing or revising their systems of payments. Under 34 CFR §303.173(a), each State's Part C application must include the State's policies and procedures that identify: (1) how it will pay for early intervention services (under 34 CFR §303.520(a)); (2) any system of payments that the State chooses to establish (under 34 CFR §303.521(a)); and (3) all funding sources (under 34 CFR §303.522). Although a State is not required under Part C to access public and private insurance available to a family, if a State requires parents under Part C to access their public and/or private insurance, the State must include this information in its Part C application as well as an assurance, under 34 CFR §303.520(b)(3)(ii), that the inability of a parent to pay will not result in the denial of any service under Part C.

States must ensure that all of the functions and early intervention services under 34 CFR §303.521(b) are carried out at public expense (i.e., no cost to the family). Additionally, under 34 CFR §303.521(c), States that provide children with disabilities under age 3 with a free appropriate public education (FAPE) under State law (i.e., birth-mandate States) must ensure that no fees are charged for the FAPE services provided to these children and their families. If a State has a system of payments under 34 CFR §303.521(a), any parent fees collected (for co-payments or other fees for services charged and received by the State's Part C program) are "program income" under 34 CFR §80.25. Program income is not included as part of total "State and local expenditures" for purposes of a State's

meeting the non-supplanting requirements under Part C at 20 U.S.C. §1437(b)(5)(B) and 34 CFR §303.124.

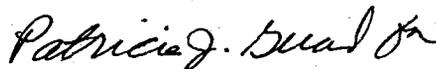
Section I.C. of the FFY 2003 application for Part C funds requested updated information about each State's restricted indirect cost rate. Our records indicate that VIDH has a restricted indirect cost rate of 6.28% that was approved by VIDH's cognizant agency on February 4, 2004 and is effective for FFY 2003 through FFY 2005. Part III of VIDH's Part C Application indicates that your agency will continue to apply the currently approved restricted indirect cost rate throughout the FFY 2003 grant year until a new rate is negotiated and approved by VIDH's cognizant Federal agency. Please forward to us any revisions to your restricted indirect cost rate once it is approved by VIDH's cognizant agency.

Section 604 of the IDEA provides that "[a] State shall not be immune under the eleventh amendment to the Constitution of the United States from suit in Federal court for a violation of this Act." Therefore, by accepting this grant a State is expressly agreeing to a waiver of Eleventh Amendment immunity as a condition of IDEA funding.

In addition to the special conditions, the enclosed grant award for FFY 2003 is made with the continued understanding that this office may, from time to time, require clarification of information within your application and appendices, if necessary. These inquiries are needed to allow us to appropriately carry out our administrative responsibilities related to IDEA.

I am encouraged by the commitment of your office to address the problems and challenges that you face. My staff is ready to provide helpful technical assistance should you request it. We are looking forward to working with you on these matters to ensure the success of the program.

Sincerely,



Stephanie Smith Lee

Director

Office of Special Education Programs

Enclosure

cc: Renee Joseph-Rhymer, Part C Coordinator