

Archived Information

Enclosure B

VIRGIN ISLANDS – SPECIAL CONDITIONS

PREAMBLE: These Special Conditions are imposed on the Virgin Islands Department of Education's federal fiscal year (FFY) 2004 Part B of the Individuals with Disabilities Education Act (IDEA), 20 USC 1401 et seq., grant award from the U.S. Department of Education (Department) to the Virgin Islands Department of Education (VIDE) from appropriated funds for federal fiscal year (FFY) 2004. This grant is being made in accordance with the U.S. Department of Education's (the Department's) regulations governing "high risk" grantees, at 34 CFR §80.12, and the terms of the Compliance Agreement between the Virgin Islands government and the Department, signed on September 23, 2002. The special conditions are imposed to help ensure that the VIDE award is expended in accordance with applicable legal requirements, the Compliance Agreement, and the appropriate fiscal accountability measures and management practices and controls.

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 2004 Grant Award because of the inability of VIDE to meet all of the conditions of the FFY 2003 Special Conditions and because of problems in VIDE's fiscal and program accountability and related areas. Additionally, the Department determined that a Compliance Agreement with the VIDE and the Virgin Islands government related to fiscal issues was appropriate in accordance with 20 U.S.C. § 1234f in 2002. Our conclusion that VIDE is a "high risk" grantee is based on the following specific findings:

A. Programmatic Issues: As part of the 1999 Compliance Agreement covering Part B of the IDEA, VIDE agreed, by no later than December 2002, to meet certain compliance targets or outcomes to bring it into compliance with the requirements of Part B of the Individuals with Disabilities Education Act (IDEA). Because some of these targets had not been met, the Department imposed Special Conditions on the FFY 2003 Part B grant award which required, among other things, that VIDE submit reports on its progress toward meeting the compliance targets, as set out in those Special Conditions. The quarterly progress reports required under the FFY 2003 Special Conditions and submitted by VIDE, demonstrated progress in some areas but also indicated that some of the compliance targets had not been met. The status of each remaining noncompliance area is set out below.

1. Timeliness of Evaluations. As set out in the FFY 2003 Special Conditions, VIDE was to have eliminated its existing backlog of overdue initial and triennial evaluations. The most recent progress reports submitted by VIDE indicated a backlog of 20 overdue triennials (due before 10/99) and 2 overdue triennials (due after 10/99).

VIDE's reports indicate progress, but VIDE has not met the targets set out in the previous Special Conditions.¹

2. Provision of Related Services. Under the FFY 2003 Special Conditions, VIDE was to have eliminated its backlog of students not receiving all of the related services listed on their IEPs. In its most recent progress report, VIDE indicated that the following number of students did not receive the following related services for reasons other than student absences: Occupational Therapy – 16; Physical Therapy - 16; Speech/Language Therapy - 127. VIDE has not met the targets as set out above.

3. Full School Day/Transportation. Under the FFY 2003 Special Conditions, for those students eligible to attend school for a full school day, VIDE was to have ensured that they received a full school day. VIDE was also to have eliminated the backlog of students not receiving appropriate transportation services as set out in their IEPs. In the progress reports, VIDE reported a total of 38 students who are not receiving a full school day due to late arrival and early departure from school due to transportation problems. VIDE has not met the targets set out above.²

4. Compensatory Education. As set out in the FFY 2003 Special Conditions, VIDE was to have ensured that compensatory services and reimbursement for parentally-funded compensatory services were provided or reimbursed in a timely manner. OSEP was unable to verify that all students that VIDE reported as not receiving all the related services on their IEPs were considered for and, where eligible, were provided compensatory services or reimbursement. VIDE did not fully report on those students who were entitled, and to whom VIDE provided compensatory services and/or reimbursement. For example, VIDE did not report on the dates when compensatory speech and language services were provided to students entitled to such services. VIDE indicated that staff were identified to provide services, per diem payments approved by the Insular Superintendent, and transportation services were arranged. St. Thomas reported the hiring of two speech therapists to provide compensatory services. However, while these statements indicate that VIDE appears to have taken some of the needed steps to ensure the provision of compensatory services and/or reimbursement, VIDE did not report on the actual provision of services and/or reimbursement in a timely manner and, therefore, has not demonstrated full compliance with the target, as set out above.

5. Transition from Part C (Early Intervention Services) to Part B. Under the FFY 2003 Special Conditions, VIDE was to have ensured that all eligible preschoolers transitioning from Part C to Part B had timely IEPs or Individualized Family Service Plans (IFSPs) and were receiving special education and related services under

¹ In addition, the information that VIDE reported, raised concerns as to whether VIDE was continuing to ensure that initial individualized education programs (IEPs) were developed in a timely manner for children with disabilities who received an initial evaluation and were determined eligible under the IDEA. Although this issue was not part of the 2003 Special Conditions, based upon VIDE's data submissions for FFY 2003, further information and clarification is needed and will be sought through on-site verification and/or the Annual Performance Report in order to determine current levels of compliance.

² Because these two issues appear to overlap with each other, the Department has chosen to consolidate both issues into one item in these Special Conditions.

Part B by their third birthday. In addition, VIDE was required to make all revisions necessary to ensure that the final Interagency Agreement between VIDH and VIDE for Part C to Part B transition met all federal requirements. Although VIDE and VIDH submitted a revised draft interagency agreement, on May 10, 2004, OSEP provided an analysis of the draft and indicated the additional changes that were needed to ensure consistency with all federal requirements. In addition, VIDE submitted its Annual Performance Report which indicated that, although data was only available for the St. Croix district for the 2002-2003 and 2003-2004 school years, approximately 12% of students with disabilities transitioning from Part C to Part B in that district were not receiving the needed special education and related services by their third birthday. VIDE has not met the targets for this issue, as set out above.

6. Continuum of Placement Options. As part of the FFY 2003 Special Conditions, VIDE had to demonstrate that services and programs were provided in the least restrictive environment and that VIDE made a full continuum of placement options available, including preschool options. As part of its reporting, OSEP requested and VIDE provided draft documents addressing preschool continuum of placement options and methods of monitoring on the least restrictive environment requirements. OSEP reviewed these documents and directed VIDE to make additional changes to ensure consistency with federal requirements. Therefore, additional actions are required in order to meet the targets set out above.

7. General Supervision and Monitoring. Pursuant to the FFY 2003 Special Conditions, VIDE was to have ensured that its policies and procedures were consistent with IDEA. On July 2, 2003, VIDE submitted revised documents that included some of the changes that OSEP required in its March 13, 2003 letter and chart and additional changes not required by OSEP. OSEP reviewed the entire submission and on April 1, 2004, provided VIDE a chart containing the results of this review and setting out the additional changes that were required. On July 8, 2004, VIDE once again submitted revised documents. OSEP's September 2004 analysis indicated that additional changes are required in order to ensure consistency with the requirements of Part B of the IDEA. This analysis is being provided under separate cover.

8. Sufficient Qualified Personnel. Under the FFY 2003 Special Conditions, VIDE was required to ensure a sufficient supply of qualified personnel including submitting a revised plan to address all long-standing vacancies (more than one year) impacting the provision of services to students with disabilities. VIDE reported a total of 28 vacancies for personnel who provide special education and related services. Specifically, for St. Croix, VIDE reported 17 vacancies, of which four were long-standing and one was a newly created position. For St. Thomas/St. John, VIDE reported 10 vacancies, of which two were long-standing and three were newly created positions. Although VIDE indicates that most of the vacancies represent normal turnover in staff that occurs during the summer and that some services have been provided by contractors, VIDE is still reporting that some students with disabilities are not receiving all of the related services listed on their IEPs. Therefore, this issue continues to be included in the Special Conditions.

B. Fiscal and Accountability Issues: Each of the documents mentioned below is incorporated by reference into this document.

1. The Virgin Islands has not been in compliance with the Single Audit Act, and has generally submitted its single audits late, although progress is being made. Additionally, some resolution issues remain from single audits involving past FFYs.

2. Based on the audit of the US Department of Interior, Office of Inspector General, Audit Report No. 98-1-670 (September 1998), certain agencies of the Virgin Islands have been found to have systemic financial weaknesses such as: (a) drawing down funds from the Department that are not always promptly spent, in violation of the Cash Management Improvement Act, and (b) making improper interfund transfers between various Federal accounts. These actions affected funds of the VIDE.

3. The problems outlined in the then Deputy Secretary William D. Hansen's letter dated May 25, 2001, which enclosed a number of reports that provided details on program-specific and cross-cutting problems in the VIDE's and other VI agencies' administration of various programs.

4. Additional problems with property management and other fiscal accountability requirements have been identified in recent audits conducted by the Department's Office of Inspector General.

5. VIDE has not always obligated or drawn down funds or liquidated obligations on a timely basis. Often, funds for VIDE are left in Federal accounts and not drawn down several years after the period of availability for obligating and liquidating the funds has ended.

6. The Department continues to have significant concerns about the lack of progress by the Virgin Islands government, including VIDE, in meeting the terms of the Compliance Agreement. While progress is being made in some areas by VIDE, there are areas in which very limited progress is being made. A final Virgin Islands Site Visit Report prepared by Department officials, providing information on VI's progress with the Compliance Agreement was transmitted by Chief Financial Officer Jack Martin and sent to VI representatives on January 5, 2004. Further discussions about this limited progress have recently taken place between Department and Virgin Islands representatives.

II. PROGRAMMATIC 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 2004 award under Part B of the IDEA.

A. 1. As soon as possible, but by no later than April 30, 2005, VIDE must ensure that the 20 triennial evaluations due before 10/99, have been conducted, or must provide documentation that the public agency made good faith efforts to schedule the evaluations, including proper notice to the parents. VIDE must continue to document progress on this item by submitting data reports and other relevant documentation, as appropriate, utilizing reporting forms provided by OSEP, on the following dates: November 15, 2004, February 16, 2005 and May 16, 2005.

2. As soon as possible, but by no later than April 30, 2005, VIDE must eliminate the backlog of students not receiving a triennial evaluation (due after 10/99). VIDE must continue to document progress on this item by submitting data reports and other relevant documentation, as appropriate, utilizing reporting forms provided by OSEP, on the following dates: November 15, 2004, February 16, 2005 and May 16, 2005.

B. As soon as possible, but by no later than April 30, 2005, VIDE must eliminate the backlog of students not receiving all the related services listed on their IEPs by ensuring that there are sufficient qualified personnel available to provide such services, as set out in paragraph H, below. VIDE must continue to document progress on this item by submitting data reports and other relevant documentation, as appropriate, utilizing reporting forms provided by OSEP, on the following dates: November 15, 2004, February 16, 2005 and May 16, 2005.

C. As soon as possible, but by no later than April 30, 2005, VIDE must ensure that all students who are eligible, receive appropriate transportation services in order to attend school for a full school day. VIDE must continue to document progress on this item by submitting data reports and other relevant documentation, as appropriate, utilizing reporting forms provided by OSEP, on the following dates: November 15, 2004, February 16, 2005 and May 16, 2005.

D. As soon as possible, but by no later than April 30, 2005, VIDE must ensure that all students who do not receive all the services set out in their IEPs are considered for compensatory services and that, where appropriate, such services are provided or reimbursement for parentally-funded compensatory services is provided in a timely manner. VIDE must continue to document progress on this item by submitting data reports and other relevant documentation, as appropriate, utilizing reporting forms provided by OSEP, on the following dates: November 15, 2004, February 16, 2005 and May 16, 2005.

E. VIDE must:

1. 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, as soon as possible, but by no later than April 30, 2005;

2. Continue to document progress on this item by submitting data reports and other relevant documentation, as appropriate, utilizing reporting forms provided by OSEP, on the following dates: November 15, 2004, February 16, 2005 and May 16, 2005

3. Make and submit all revisions necessary to finalize an Interagency Agreement between VIDH and VIDE for Part C to Part B transition that meets all federal requirements and addresses the issues identified in OSEP's analysis dated May 10, 2004, as soon as possible, but by no later than April 30, 2005.

F. As soon as possible, but by no later than November 15, 2004, VIDE must revise and submit the preschool continuum option plan and related monitoring documents to address the issues identified in OSEP's July and September 2004 analyses.

G. 1. As soon as possible, but by no later than November 15, 2004, VIDE must revise and submit the following documents, addressing all issues identified in OSEP's September 2004 analysis: (1) state complaint procedures and (2) procedural safeguards notice.

2. As soon as possible, but by no later than November 15, 2004, VIDE must revise and submit its policies and procedures document (VIPP) addressing all issues identified in OSEP's April 1, 2004 and September 2004 analyses.

3. As soon as possible, but by no later than November 15, 2004, VIDE must revise and submit the Interagency Agreement for Secondary Transition addressing all issues identified in OSEP's May 14, 2004 and September 2004 analyses.

H. As soon as possible, but by no later than November 1, 2004, VIDE must implement all needed revisions to its Comprehensive System of Personnel Development to address long-standing vacancies and continue to document progress on this item by submitting data reports and other relevant documentation, as appropriate, utilizing reporting forms provided by OSEP, on the following dates: November 15, 2004, February 16, 2005 and May 16, 2005.

I. VIDE must promptly provide the Department any requested records and information.

III. FISCAL AND ACCOUNTABILITY SPECIAL CONDITIONS

A. Separate Account

All Federal education grant funds received from the Department must be deposited in and spent from a separate account used solely for the appropriate purposes under each Federal education program authority. These funds are not to be commingled with other local, territory or Federal (non-Department) funds and the account for these funds must allow for a separate audit trail to facilitate an effective audit.

B. Single Audit and Resolving Audit Findings

Special conditions on these issues concerning audits and audit findings are set forth in the Special Conditions section of the grant to VIDE under the Consolidated Grant to Insular Areas from the Department for FFY 2001.

C. Prompt Access to Records

VIDE will promptly provide the Department with access to any requested records and information.

D. Reporting Requirements:

VIDE will provide quarterly reports describing the program expenditures for that quarter. Each report will be accompanied by a certification signed by an authorized official of the VIDE attesting, under penalty of Federal law, that each report is accurate and complete, and that the funds covered by the report are being spent for allowable purposes under each of the programs, are furthering the purposes of the Compliance Agreement, and are being spent in a timely manner. The certification will also attest that appropriate monitoring is being conducted by VIDE. These expenditures and the supporting documentation will also be subject to further monitoring, auditing and review by the Department or its representatives.

IV. FAILURE TO COMPLY WITH THESE SPECIAL CONDITIONS

If the Department determines that the VIDE has not made substantial progress in meeting the objectives of the program, or has not met program requirements or the Special Conditions contained in the above paragraphs, then the U.S. Department of Education may consider not continuing the grant (and VIDE would receive no further funds under this grant award), or taking further enforcement action such as the following:

A. VIDE shall receive Federal funds under this grant award only on a reimbursement basis; and

B. VIDE must contract with a third party, who must be approved by the U.S. Department of Education, to assist in financial management of this grant award. The third party will, at a minimum, assist in preparing the vouchers to be submitted to the U.S. Department of Education for reimbursement, and will verify their accuracy and legitimacy as an appropriate expenditure under this grant award.

If VIDE fails to meet any of the Special Conditions above or any other applicable statutory or regulatory requirements, the Department is authorized to take any other appropriate enforcement action at any time.

V. 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 compliance targets in these Special Conditions, as set out above.

VI. METHOD OF REQUESTING RECONSIDERATION

The Virgin Islands may write to Acting Deputy Assistant Secretary Troy Justesen, 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. Further, the Department may impose additional special conditions or modify these special conditions as appropriate.

VII. 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
550 12th Street, SW Suite 4173
Washington, DC 20202-2600

Dated: _____