

Enclosure C

Special Conditions

1. Basis for Imposing Special Conditions

On October 21, 2005, the Department imposed programmatic Special Conditions on the Virgin Islands' Federal Fiscal Year (FFY) 2005 Grant Award under Part B of the Individuals with Disabilities Education Act (Part B). Those Special Conditions were based on Virgin Islands' progress reports that demonstrated progress in some areas but also indicated that some of the noncompliance issues had not been fully corrected. The FFY 2005 Special Conditions required the Virgin Islands Department of Education (VIDE) to:

- A. Eliminate the backlog of students not receiving a timely triennial evaluation for those due after October 1999;
- B. Ensure that all eligible students transitioning from Part C to Part B have timely individualized education programs (IEPs) or individualized family service plans (IFSPs) and are receiving special education and related services by their third birthday, including those eligible children who turn three during the summer months, consistent with Part B requirements;
- C. Ensure that all children with disabilities are included in general State and districtwide assessment programs, including the provision of appropriate accommodations and alternate assessments, as appropriate, and that the State is reporting to the public on the participation of children with disabilities in the assessment programs consistent with Part B requirements; and
- D. To the extent that LEAs in the Virgin Islands continue to administer districtwide assessments, demonstrate that it is ensuring that LEAs comply with the relevant Part B requirements.

VIDE was required to provide the Office of Special Education Programs (OSEP) with progress reports on December 1, 2005 and February 15, 2006, and a final report by June 30, 2006. OSEP's analysis of VIDE's submissions related to the FFY 2005 Special Conditions follows:

- A. Triennial Evaluations: Under 20 U.S.C. §1414(a)(2) and 34 C.F.R. §300.303 (effective October 13, 2006), a reevaluation must occur at least once every three years unless the parent and public agency agree that a reevaluation is not necessary. In the December 2005 submission, VIDE reported 35 students in the St. Thomas/ St. John school district with overdue reevaluations. VIDE reported that for nine of those students, the reevaluation was overdue because the student did not show up or was otherwise not able to attend. For the St. Croix school district, VIDE reported no overdue triennials. In its April 2006 submission, VIDE reported under the heading "St. Croix District" that "[f]or the February 15, 2006 OSEP Data Report the District reported that zero (0) triennial evaluations due [sic] after 10/99." Under "St. Thomas/St. John District," VIDE reported that "[f]or the February 15, 2006 OSEP Data Report the District reported (13) [sic] triennial evaluations due after 10/99." VIDE's June 1, 2006 report indicated 22 students with overdue triennial reevaluations in the St. Croix school district. For St. Thomas/ St.

John, VIDE reported 9 students with overdue reevaluations, but indicated that for all these students the reason was that the student had failed to show up for the evaluation or because consent had not been granted. VIDE has demonstrated substantial compliance with the requirements related to triennial evaluations but must ensure that triennial evaluations are conducted, as appropriate, for the 22 students reported from the St. Croix district.

- B. Students Transitioning From Part C to Part B: Under 20 U.S.C. §1412(a)(9), a child transitioning from services under Part C of the IDEA to services under Part B, must have an IEP developed and implemented by the child's third birthday. In its December 2005 State Performance Plan submission, on page 44, VIDE reported that for FFY 2005 (2004-2005), there were 33 children with disabilities transitioning from Part C to Part B. VIDE reported that of the 27 determined eligible, 82% or 22, had an IEP developed and implemented by their third birthday. VIDE's December 2005 progress report under the Special Conditions stated that after writing to districts to notify them of discrepancies in the reports and requiring resubmission by Dec. 2, 2005, the LEAs did not meet the reporting time lines, therefore VIDE submitted the reports received and indicated that "amended reports with corrections [would] be forwarded as soon as received." No data was submitted for the St. Thomas/ St. John district in this report. The report submitted for the St. Croix district included only one child who turned age three during the reporting period. VIDE reported that the child's IEP was developed in a timely manner, but did not report the date that the IEP was implemented. In an April 2006 submission, VIDE stated that, for the February report, in the St. Croix school district, "six (6) children were eligible for transitioning from Part C to Part B at Age 3," and for St. Thomas/ St. John school district that "no children were eligible for transitioning." In a May 2006 report, VIDE reported data on the St. Croix school district for the period from Dec. 14, 2005 to January 15, 2006. Of the six children listed in the report, none turned three years of age during the reporting period. In the St. Croix report, incorrectly dated February 15, 2006, and not signed, VIDE reported on 15 students, including only two of six who had an IEP developed and implemented by the child's third birthday, six students for whom consent was not provided or who moved, and one student who died prior to the child's third birthday.

VIDE submitted a June 2006 report for both districts. The St. Croix report included data on 20 students who turned three years of age during the period from November 2005 to June 2006, which included the previous 15 and five additional students. The October 25, 2006 report for the St. Thomas/ St. John school district listed eight children, but only one of those children had turned three years of age during the reporting period. The report indicated that the parent had declined services for that child. The other seven children would not have turned three years of age prior to July 1, 2006. These reports did not demonstrate compliance and raised serious questions about VIDE's ability to gather accurate and complete data on compliance with the early childhood transition requirements.

OSEP's June 30, 2006 memorandum required that VIDE submit accurate and complete data for each LEA for each child with a disability transitioning from Part C to Part B for the period from July 1, 2005 to June 30, 2006 (born between July 1, 2002 and June 30, 2003). On October 25, 2006, VIDE submitted a report with data from the two districts.

For St. Croix, the report included information on 22 children, with inconsistencies from the previously reported data for 14 of those children. Based upon this report, only two children of eight who were found eligible for Part B services had IEPs in place by their third birthdays. For the St. Thomas/ St. John district, VIDE submitted data on 11 children, but only five turned three years of age during the reporting period, i.e., prior to July 1, 2006. Two of the five children were reported as having timely transitions from Part C to Part B.

On pages 45 and 46 of the FFY 2005 Annual Performance Report (APR) submitted on February 1, 2007, VIDE reported that for the period between June 30, 2005 and July 1, 2006, there were 34 students that were served under Part C who were eligible to transition. Of those, VIDE reported that 12 had IEPs developed and implemented by their third birthdays, six had parents who refused consent and eight were found not eligible under Part B. VIDE reported 60% compliance under Indicator 12 for timely transition of children from Part C to Part B. There was no explanation of the discrepancies between the October 25, 2006 data submission and the February 1, 2007 APR submission. Based upon all these submissions, VIDE has not demonstrated full compliance with 20 U.S.C. §1412(a)(9). VIDE must continue to report on compliance with this requirement.

- C. Statewide (Territory-wide) Assessments: Under 20 U.S.C. §1412(a)(15)-(16), if VIDE utilizes a Statewide assessment system, it must ensure that children with disabilities in the Virgin Islands participate with or without accommodations; must develop and administer an alternate assessment, if necessary; and, must report publicly on the participation and performance of children with disabilities on such Statewide assessments. These provisions are crucial to ensuring that children with disabilities are provided access to high-quality instruction in the general curriculum, and that States and districts are held accountable for the progress of these children.

On June 23, 2006, VIDE submitted to OSEP its May 1, 2006 Territorial and District Report Cards that were used to inform "the public and school system of the results of the 2004-2005 School Year Virgin Islands Territorial Assessments of Learning (VITAL)." VIDE reported that these Report Cards were disseminated to the public through various means in May 2006. VIDE's Report Cards included performance and participation information for all students, including students with disabilities on the VITAL in grades 5, 7 and 11. However, VIDE did not report on the number of students with disabilities participating in regular assessments who were provided accommodations in order to participate in those assessments; did not report on those students who participated in the alternate assessment; did not report the performance of children with disabilities on regular assessments and on alternate assessments, if the number participating is sufficient to yield statistically reliable information and will not reveal personally identifiable information; and did not compare that performance with the achievement of all children, including children with disabilities, on those assessments. See, 20 U.S.C. §1412(a)(16)(D) and 34 C.F.R. §300.160(f) (effective May 9, 2007) published at 72 Fed. Reg. 17748, 17781 (April 9, 2007).

In its October 25, 2006 submission, VIDE reported that "during the week of March 16, 2006, students in grades 2-11, including students with IEPs, participated in the [VITAL]." VIDE reported that the test manual has procedures for determining

accommodations and modifications for students with IEPs. VIDE also reported that the alternate assessment, the VITAL-A, was administered between May 14 and May 26, 2006. VIDE did not report on, or otherwise demonstrate compliance with the reporting requirements cited above.

On pages 7-22 of the APR submitted on February 1, 2007, VIDE submitted data and information regarding the participation and performance of students with disabilities on the Territorywide assessments for grades 3-8 and 11. However, this reporting does not meet the requirements of 20 U.S.C. §1412(a)(16)(D) and VIDE has not demonstrated compliance with these requirements. VIDE must continue to report on its compliance with the reporting requirements for Statewide assessments.

- D. Districtwide Assessments: Under 20 U.S.C. §1412(a)(16), the same requirements that apply to Statewide assessments also apply to assessments administered on a districtwide basis only. See also, 34 C.F.R. §300.160 (effective May 9, 2007) published at 72 Fed. Reg. 17748, 17781 (April 9, 2007). VIDE has not submitted data and information demonstrating that districtwide assessments are conducted consistent with Part B requirements and that the required reporting occurs. Instead, VIDE, in its April 2006 submission included a statement that “districtwide assessments for grades 3-8 and 11 were tested [sic]” and that “all students who required accommodations were administered the assessment with accommodations.”

OSEP’s June 30, 2006 memorandum required VIDE to submit data and information related to both LEAs’ compliance with the requirements at 20 U.S.C. 1412(a)(16) related to districtwide assessments, including, as appropriate, policies and procedures, documentation of the administration of regular assessments with and without accommodations, documentation on the administration of alternate assessments, and the 2005-2006 reports to the public on the participation and performance of students with disabilities on the districtwide assessments. In its October 2006 submission, VIDE stated in the cover letter that the “Test Administration Manual did not contain specific language regarding procedures for the administration of District-Wide assessments for students with IEPs, [but] District personnel followed the State protocols...The performance of all students on all forms of the 2005-2006 VITAL will be publicly announced through School, District and State Report Cards as soon as they are completed [.]”

Although not specifically required, VIDE also did not submit data and information regarding the participation and performance of students with disabilities on districtwide assessments as part of the APR submitted on February 1, 2007. As of the date of this letter, VIDE has not demonstrated full compliance with 20 U.S.C. §1412(a)(16)(D). VIDE must continue to report on this issue, including the submission of policies and procedures related to districtwide assessments.

Based upon the above and pursuant to the authority in 34 C.F.R. §80.12, the Department is imposing programmatic Special Conditions on the Virgin Islands’ Federal Fiscal Year 2006 grant award under Part B.

2. **Nature of the Special Conditions**

By June 1, 2007, VIDE must submit appropriate documentation to demonstrate compliance with the areas listed below. Specifically, VIDE must do all of the following:

1. Report accurate and complete data for each LEA for each child with a disability transitioning from Part C for the period from July 1, 2006 to April 30, 2007 (born between July 1, 2003 and April 30, 2004), including the child's name or identifier, the date of birth, the date of the transition meeting, the date the child was determined eligible or ineligible for Part B services, the date of the IEP, and the date that services began or that services were refused by the parent.
2. Submit documentation and information demonstrating that VIDE is reporting publicly and to the Secretary on the participation and performance of children with disabilities on Statewide (Territorywide) assessments with and without accommodations and on alternate assessments, as required by 20 U.S.C. §1412(a)(16)(D).
3. Submit documentation and information demonstrating that VIDE is ensuring that both LEAs' are complying with the requirements at 20 U.S.C. §1412(a)(16) in the administration of districtwide assessments, if any. The documentation includes, as appropriate, each LEA's policies and procedures for administering districtwide assessments, documentation of the administration of regular districtwide assessments with and without accommodations and of the administration of an alternate districtwide assessment, and the reports to the public on the participation and performance of students with disabilities on the districtwide assessments as required under 20 U.S.C. §1412(a)(16)(D). If one or both of the LEAs are not administering a districtwide assessments, VIDE must submit a document attesting to this fact.

To the extent that all noncompliance listed above has not been fully corrected, VIDE must submit additional reports, data and information, every six months. These programmatic Special Conditions are in addition to the Department-wide Special Conditions imposed by the letter dated September 26, 2005.

3. Evidence Necessary for 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 and conditions set forth above, which require the Virgin Islands to submit data demonstrating compliance with each of the three areas that are the subject of the special conditions under Part B.

4. Method of Requesting Reconsideration

The State can write to the Office of Special Education Programs Director, Alexa Posny, at the address below, if it wishes the Department to reconsider any aspect of these Special Conditions. The request must describe in detail the changes to the Special Conditions sought by the State and the reasons for those requested changes.

5. Submission of Reports

All reports required by the Virgin Islands to the Department under the Special Conditions should be submitted to:

U.S. Department of Education
Office of Special Education and Rehabilitative Services
Attn: Michael Slade
400 Maryland Ave, SW
Washington, DC 20202-2550