

## Enclosure D

### IDEA-specific Special Conditions

#### 1. Basis for Requiring Special Conditions

Pursuant to 34 CFR §80.12, the Office of Special Education Programs (OSEP) is imposing Special Conditions on the Virgin Islands' Federal Fiscal Year (FFY) 2009 grant award under Part B of the Individuals with Disabilities Education Act (Part B), related to the State's failure to demonstrate that previously identified noncompliance has been fully corrected. The FFY 2008 programmatic Special Conditions required the Virgin Islands Department of Education (VIDE) to:

- A. Demonstrate compliance with the requirement 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;
- B. 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 program consistent with Part B requirements; and
- C. Ensure that Local Educational Agencies (LEAs) are complying with the requirements of 20 U.S.C. §1412(a)(16) and 34 CFR §300.160, to the extent that LEAs in the Virgin Islands continue to administer districtwide assessments.

VIDE was required to submit to the Office of Special Education Programs (OSEP) a progress report by February 2, 2009 and a final report by May 15, 2009 to demonstrate full compliance. VIDE submitted documentation on June 15, 2009, June 19, 2009, June 29, 2009, July 2, 2009, and July 16, 2009. OSEP's analysis of VIDE's submissions related to the FFY 2008 Special Conditions follows:

- A. Students Transitioning from Part C to Part B: Under 20 U.S.C. §1412(a)(9) and 34 CFR §300.124, 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. OSEP required VIDE to demonstrate compliance with the transition requirements for children with disabilities transitioning from Part C to Part B by submitting a progress report on February 2, 2009, and by May 15, 2009, a final report for the period from April 1, 2008 to March 30, 2009.

The VIDE's progress and final reports were not timely and contained errors and omissions. OSEP required VIDE to clarify and correct the compliance reports and data. Based on the State's final report, OSEP calculated VIDE's compliance rate consistent with the formula required under the Annual Performance Reports for Indicator 12, and determined that VIDE reported 86% compliance for the period from April 1, 2008 to March 30, 2009.

- B. Statewide (Territory-wide) Assessments: Under 20 U.S.C. §1412(a)(16) and 34 CFR §300.160(f) the State is required to report publicly and to the Secretary, on the participation of children with disabilities on Statewide (Territory-wide) assessments with and without accommodations and on alternate assessments, as appropriate, based on alternate grade-level achievement standards, and/or alternate achievement standards with the same frequency and in the same detail as it reports on the assessment of nondisabled children. In its FFY 2007 APR submission, the State reported that the Territory-wide assessment data would be publicly reported on its website by March 1, 2009. As of July 28, 2009, OSEP's review of the VIDE website regarding Territory-wide assessments for FFY 2006 and FFY 2007 indicated that VIDE did not disaggregate the number of students with disabilities who took the regular assessment with and without accommodations or, compared with the achievement of all children including children with disabilities, the performance results of children with disabilities on regular assessments and alternate assessments consistent with the requirements of 34 CFR §300.160(f). The State separately reported on the participation of "alternate students" on the alternate assessment for FFY 2007 on its Territorial Assessment Report. This reporting does not appear to meet the requirements of 34 CFR §300.160(f). In addition, OSEP noted inconsistencies in reporting the total number of participants in VIDE's 2007-2008 St. Croix District Alternate Assessment Report in the area of Mathematics for grades 4-11.

Finally, OSEP reviewed VIDE's submission of the Draft Test Administration Manual. OSEP concluded that the Manual does not fully address the requirements of 34 CFR §300.160(b) and (c), related to guidelines for accommodations and for alternate assessments.

- C. Districtwide Assessments: Under 20 U.S.C. §1412(a)(16) and 34 CFR §300.160, the same requirements that apply to statewide assessments also apply to assessments administered and reported on a districtwide basis. The State provided a letter from the St. Croix district stating that districtwide assessments are not used to measure achievement rather certain tests are used for screenings related to placement decisions. The State submitted a letter from the St. Thomas/St. John district stating that districtwide assessments (VITAL-S) are administered to students in grades 2, 9, and 10 with and without accommodations; that the district publicly reports on the performance of students with disabilities on the districtwide assessments on the district's website; and that the district follows the guidelines set out in VIDE's Draft Test Administration Manual.

OSEP reviewed the district website and, as of July 28, 2009, could not determine whether the district was meeting the requirements of 34 CFR §300.160(f) in reporting districtwide assessments. Specifically, although the IDEA does not require such reports, OSEP could not locate reports on the assessment of nondisabled children on the website to determine whether the reporting on students with disabilities was with the same frequency and in the same detail as nondisabled students. OSEP also concluded that the reporting of the performance of students with disabilities on the regular assessment and reporting on the participation of students with disabilities on the alternate assessment was not

consistent with the reporting requirements of 34 CFR §300.160(f). For example, on the alternate assessment (VITAL-A), the St. Thomas/St. John district reported that one 2<sup>nd</sup> grader participated. However, the State also reported that zero students participated in the alternate assessment based on grade level achievement standards and that zero students participated in the alternate assessment based on modified and/or alternate achievement standards. Moreover, OSEP is concerned about the district's reporting on the performance results with a very small *n* size, i.e., reporting on the results of a single student in a specific grade, because it appears likely to reveal personally identifiable information about an individual student on that assessment in violation of 34 CFR §300.160(f)(5)(ii). Finally, as set out above, OSEP noted that VIDE's Draft Test Administration Manual is not fully consistent with the requirements of 34 CFR §300.160. Therefore, reliance upon the Manual to serve as the district's guidelines for districtwide assessments presents the same problems as it does for Statewide assessments.

## **2. Nature of the Special Conditions**

- A. By May 15, 2009, VIDE must demonstrate compliance with 20 U.S.C. §1412(a)(9) and 34 CFR §300.124 by submitting a report of accurate and complete data and information, disaggregated by LEA, demonstrating compliance with the transition requirements for children with disabilities transitioning from Part C to Part B for the period from April 1, 2009 to March 30, 2010 (i.e., for children participating in Part C who were born between April 1, 2006 and March 30, 2007, inclusive). The report must include 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.
- B. With the Annual Performance Report, due February 1, 2010, VIDE must submit a revised Test Administration Manual that fully addresses the requirements of 20 U.S.C. §1412(a)(16) and 34 CFR §300.160, including but not limited to, appropriate guidelines for accommodations; for participation in alternate assessments; and for reporting.
- C. By May 15, 2009, VIDE must submit documentation and information that the State is reporting publicly and to the Secretary, with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the participation of children with disabilities on Statewide (Territory-wide) assessments with and without accommodations and on alternate assessments, as appropriate, based on alternate grade-level academic achievement standards, modified achievement standards and/or alternate academic achievement standards consistent with 20 U.S.C. §1412(a)(16) and 34 CFR §300.160(f). The documentation and information must demonstrate public reporting on the number of children with disabilities participating in regular assessments; the number of those children, if any, who were provided accommodations (that did not result in an invalid score) in order to participate in those assessments; the number of

children with disabilities, if any, participating in alternate assessments based on grade-level academic achievement standards; the number of children with disabilities, if any, participating in alternate assessments based on modified academic achievement standards; and the number of children with disabilities, if any, participating in alternate assessments based on alternate academic achievement standards; and compared with the achievement of all children, including children with disabilities, the performance results of children with disabilities on regular assessments and alternate assessments if the number of children participating in those assessments is sufficient to yield statistically reliable information and reporting that information will not reveal personally identifiable information about an individual students on those assessments.

- D. By May 15, 2009, VIDE must submit documentation and information that it is ensuring that the St. Thomas/St. John school district is complying with the requirements of 20 U.S.C. §1412(a)(16) and 34 CFR §300.160(f) that apply to districtwide assessments, including clarification of whether the district reports on assessments for nondisabled students and, as appropriate, correction of any reporting errors.
- E. OSEP also notes that the Department has continued to designate VIDE as a high-risk grantee and has imposed Special Conditions on its grants for FFY 2009. The Special Conditions require a contract with a third-party fiduciary to address financial management responsibilities concerning the grants, including, but not limited to, processing of payments and disbursements, maintaining financial records, financial reporting, property procurements, and other related financial issues. These IDEA-specific Special Conditions are in addition to, and are not intended to supersede or modify the Department-wide Special Conditions related to financial management responsibilities.

### **3. Evidence Necessary for Conditions To Be Removed**

The Department will remove the IDEA-specific 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 following requirements: 20 U.S.C. §§1412(a)(9) and 1412(a)(16); and 34 CFR §§300.124 and 300.160, that are the same subject of the Special Conditions under Part B.

### **4. Method of Requesting Reconsideration**

The State can write to the Office of Special Education Programs Acting Director, Patricia J. Guard, 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 that are required to be submitted 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: Christine Pilgrim  
400 Maryland Ave., SW  
Washington, DC 20202-2550