



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Honorable Noreen Michael
Commissioner
Virgin Islands Department of Education
44-46 Kongens Gade
Charlotte Amalie
St. Thomas, Virgin Islands 00802

MAR - 3 2005

Dear Commissioner Michael:

The purpose of this letter is to respond to the Virgin Islands' April 28, 2004 submission of its Federal Fiscal Year (FFY) 2002 Annual Performance Report (APR)¹ for the Individuals with Disabilities Education Act (IDEA) Part B funds used during the grant period July 1, 2002 through June 30, 2003. The APR reflects actual accomplishments made by the Territory during the reporting period, compared to established objectives. The APR for IDEA is designed to provide uniform reporting from States and result in high-quality information across States.

The APR is a significant data source utilized in the Continuous Improvement and Focused Monitoring System (CIFMS) implemented by the Office of Special Education Programs (OSEP), within the U.S. Department of Education. The APR falls within the third component of OSEP's four-part accountability strategy (i.e., supporting States in assessing their performance and compliance, and in planning, implementing, and evaluating improvement strategies) and consolidates the self-assessing and improvement planning functions of the CIFMS into one document. OSEP's Memorandum regarding the submission of Part B APRs directed States to address five cluster areas: General Supervision; Early Childhood Transition; Parent Involvement; Free Appropriate Public Education in the Least Restrictive Environment; and Secondary Transition.

Background

On December 10, 1999, the Virgin Islands Department of Education (VIDE) entered into a three-year Compliance Agreement with the United States Department of Education (ED), Office of Special Education Programs that set forth commitments and timetables for VIDE to demonstrate compliance with certain Part B obligations. The Compliance Agreement outlined the specific activities and requirements in the following areas: timely evaluations, eligibility determinations and individualized education programs (IEPs) in accordance with 34 CFR §§300.320-321 and §§300.340-350; the provision of free appropriate public education (FAPE) in accordance with 34 CFR §§300.300, 300.24, 300.26, 300.29, and

¹ On August 12, 2004 VIDE submitted an amended APR with revisions to Cluster II – Early Childhood Transition; Cluster IV – Free Appropriate Public Education and Cluster V – Secondary Transition. On September 2, 2004 VIDE submitted revised Cluster I – General Supervision and Cluster III – Parent Involvement.

300.347(b)(1) and (2); least restrictive environment (LRE) in accordance with 34 CFR §§300.550-.556; ensuring sufficient qualified personnel in accordance with 34 CFR §§300.23, 300.136(g), and 300.382(h); dispute resolutions, including formal written complaints, mediation and due process hearings, in accordance with 34 CFR §§300.660-662, 300.506, and 300.507-.514; policies and procedures and monitoring, in accordance with 34 CFR §§300.141, 300.556, and 20 U.S.C. §1232d(b)(3).²

Despite significant progress in most areas, based upon VIDE's reporting and OSEP's onsite reviews, some of the above areas have continued to be areas of concern because VIDE has been unable to demonstrate full compliance. The Special Conditions attached to the FFY 2004 Part B grant award to VIDE included reporting requirements specifically addressing: timely evaluations; the provision of related services; the provision of transportation services; the provision of compensatory services; early childhood transition; preschool placement options; policies and procedures; and monitoring. To the extent that the APR submission overlaps with the areas in the Special Conditions, they are set out below in the specific cluster areas. The Territory's APR should reflect the collection, analysis, and reporting of relevant data, and document data-based determinations regarding performance and compliance in each of the cluster areas (as well as any other areas identified by VIDE to ensure improvement).

General Supervision

Monitoring. The Compliance Agreement required that, by March 1, 2000, VIDE implement revised monitoring procedures and submit quarterly Progress Reports to OSEP. VIDE staff implemented the new procedures and conducted its "Cycle I" monitoring visits to 12 schools and facilities during February-April 2000. At the time of OSEP's December 2000 onsite visit, VIDE had not issued its final report from these initial visits. Due to a lack of staff, VIDE had not completed any other monitoring activities (i.e. "Cycle II"). VIDE completed Cycle II monitoring and issued its first monitoring report by March 2002. At the time of OSEP's February 2002 visit, VIDE reported that 85% of the corrections required in Cycle I had been completed. VIDE established a monitoring cycle projecting that it would monitor all schools and other facilities by the 2003-2004 school year. By November 15, 2002, VIDE was required to provide OSEP with a copy of its final monitoring report for Cycle II and documentation that all noncompliance identified in Cycle I was corrected. During OSEP's February 2003 visit, VIDE provided OSEP with a copy of the Cycle II monitoring report and, with the exception of two items for which extensions were granted to December 13, 2003, all areas of noncompliance identified in Cycle I were reported as corrected.

In the APR, on pages 4-22 of revised Cluster I, VIDE reported the results of its Cycle I and Cycle II monitoring, covering school years 2000-2001 and 2001-2002. VIDE did not provide data related to correction of noncompliance for these two cycles. On pages 23-25,

² In addition, the issue of fiscal accountability, an area of concern under other ED grants to the Virgin Islands, was initially addressed in the Compliance Agreement by referencing Department-wide Special Conditions. It was subsequently included as part of a 2002 Compliance Agreement that is cross-cutting and includes other agencies beyond VIDE.

VIDE reported Cycle III monitoring activities that focused on: (1) monitoring extended school year (ESY) programs; (2) reviewing IEPs for middle school students to check for inclusion of statements of transition services needs for students by age 14 or younger and needed transition services for students by age 16 or younger; and (3) reviewing guidance counselors' weekly schedules to verify the provision of counseling services to eligible students. VIDE reported that its monitoring of the provision of counseling as a related service indicated that 23% of children whose IEPs indicated counseling as a related service did not receive counseling during the 2002-2003 school year and that provision of counseling services for another 6% of the children could not be verified due to counselors' inability to produce copies of daily schedules. VIDE did not report any corrective actions required as a result of this Cycle III monitoring or indicate whether other IDEA Part B requirements were monitored.

On page 27 of the APR in revised Cluster I, VIDE reported that it has revised its monitoring procedures and began conducting monitoring activities on a regular basis utilizing a variety of methods, such as size of special education population in a particular school, number of due process hearings requested, formal written complaints, previous SEA monitoring findings, Office of Civil Rights (OCR) monitoring reports and prior OSEP Monitoring Reports. On page 28 of the APR in revised Cluster I, VIDE reported that inadequate and insufficient data resulted from an inability to interface with data collection systems at the VIDE district and State levels and lack of special education data at these levels. VIDE reported it was in the process of addressing these issues through the use of a special education data collection form and in-service training for all education personnel.

VIDE reported progress in identifying noncompliance by utilizing its general supervision instruments and procedures; however, VIDE reported that local education agencies (LEAs) did not submit required documentation of correction in a timely manner. VIDE did not include strategies to address its ability to ensure timely correction of previously-identified noncompliance. In the next APR, VIDE must include data and analysis demonstrating that previously-identified noncompliance has been corrected in a timely manner and, if necessary, that the State is utilizing appropriate sanctions to ensure timely correction. In addition, VIDE's monitoring system will be reviewed in greater detail as part of OSEP's onsite verification visit, currently scheduled for the first week of March 2005.

Formal Written Complaints. The Compliance Agreement required that VIDE resolve and issue timely written findings of fact and conclusions for written complaints under 34 CFR §§300.660-300.662. VIDE hired an additional compliance officer responsible for complaint investigations and monitoring; contracted with the Great Lakes Regional Resource Center for training for staff on Federal requirements and effective ways to monitor the implementation of complaint decisions; and established a complaint tracking system, that included logging corrective actions, a master calendar and onsite verification of correction through a review of records. At the conclusion of the Compliance Agreement, OSEP determined that VIDE had corrected the noncompliance related to issuing complaint findings of fact and conclusions within the timelines required by 34 CFR §300.661. In addition, OSEP has reviewed VIDE's revised policies and procedures

(submitted July 8, 2004) relating to State complaints, and OSEP's acceptance of this submission will be provided under separate cover.

Under 34 CFR §300.661, VIDE must ensure that each written complaint decision is issued 60 days after the complaint is filed, unless exceptional circumstances exist with respect to a particular complaint. On page 2 of the APR in revised Cluster I, VIDE reported an area of noncompliance that had previously been resolved: failure to issue complaint decisions within the timelines required by 34 CFR §300.661. VIDE reported that, for 2002-2003, three of seven complaints (43%) were not resolved within the required timelines.

Therefore, VIDE must ensure correction of this noncompliance and provide OSEP with a progress report, six months from the date of this letter, and a final report, no later than 30 days following one-year from this letter. These reports must include updated data and analysis demonstrating progress and, by no later than one year from the date of this letter, full compliance with the timeline requirements at 34 CFR §300.661.

Due Process Hearings. The Compliance Agreement required that, by October 2000, VIDE reduce to zero the number of hearing requests where decisions were untimely or otherwise unresolved and hire an adequate number of hearing officers and mediators to address its needs. VIDE reported, and OSEP confirmed in February 2002, that VIDE had hired and trained due process hearing officers and mediators and reduced the backlog of due process hearings to zero.

On page 4 of the APR in revised Cluster I, VIDE reported that no due process hearings were requested or pending for July 2002-June 2003. On page 29 of the APR in revised Cluster I, VIDE reported training eleven hearing officers and seven mediators; providing parents with information on their rights through a variety of resources and activities; and collaborating with the Parent Training and Information Center and other advocacy groups. OSEP looks forward to reviewing data and analysis in the next APR demonstrating continued performance and compliance in this area.

Sufficient Qualified Personnel. The 1999 Compliance Agreement addressed the issue of qualified personnel in the context of development of a Comprehensive System of Personnel Development (CSPD) and filling new and existing personnel vacancies. VIDE's FFY 2004 grant award Special Conditions require that by November 1, 2004, VIDE implement all needed revisions to its CSPD to address long-standing vacancies and continue to document progress through progress reports to OSEP. In November 2004, VIDE reported 26 total vacancies: 10 special education teacher vacancies for St. Croix; 6 special education teacher vacancies for St. Thomas/St. John; 7 evaluation and related service personnel vacancies for St. Croix; and 2 evaluation and related service personnel vacancies for St. Thomas/St. John.

On pages 31-32 of the APR in revised Cluster I, VIDE reported developing a CSPD in conjunction with the Departments of Health, Labor, and Human Services resulting in a variety of programs to address the lack of sufficient qualified personnel to provide special education and related services. Activities included: (1) implementation of a specialist degree program to address the shortage of school psychologists; (2) revising the teacher

preparation program at the University of the Virgin Islands; (3) providing tuition assistance for six speech therapists obtaining a masters degree from the University of South Carolina, resulting in five candidates obtaining masters degrees and working in the Virgin Islands; (4) initiating a paraeducator certification program, resulting in nine candidates completing the program; (5) hiring of one adolescent psychiatrist through a memorandum of agreement with the Department of Health to recruit qualified allied health personnel and teachers; and (6) developing trainers and technical assistance providers to deliver training on critical special education issues. VIDE must continue to ensure compliance with the requirements related to CSPD through July 1, 2005, when those provisions expire under the Individuals with Disabilities Education Improvement Act of 2004. OSEP will be providing additional guidance to all States regarding the new personnel requirements of the Act.

On pages 33-36 of the APR in revised Cluster I, VIDE included Table 2 that reported the number and types of teachers employed from 1999-2002. This table reflected the numbers of fully certified, not fully certified and total number employed. On page 37 of the APR in revised Cluster I, VIDE reported it experienced slippage in this area because teaching personnel resigned due to higher salaries in other jurisdictions, attrition of staff due to upward mobility, lateral transfers, health conditions and familial considerations. In the APR, VIDE reported barriers to having an adequate supply of qualified personnel. In the FFY 2003 APR, VIDE must continue to report on its performance in this area.

Reporting of Accurate Data in a Timely Manner. Based upon its inability to generate fully accurate and timely submissions of data reports as required under the 1999 Compliance Agreement, VIDE purchased a computerized student information system for special education data management. In November 2003, VIDE confirmed the roll out of its special education student information system (GOALVIEW) but reported problems with implementation of the system and continued concerns with accuracy. To address this, VIDE has been receiving technical assistance from two OSEP-funded projects: the Southeast Regional Resource Center (SERRC) and the National Center on Special Education Accountability and Monitoring (NCSEAM). On page 38 of the APR in revised Cluster I, VIDE reported it was using GOALVIEW and the Territory-wide Student Administration Student Information (SASI) system to generate routine management reports (e.g., Annual Child Count Report, Annual Educational Environments Reports, Monthly Child Count Report, Monthly Evaluation Timeline Report, etc.). VIDE reported that it had the capability to run *ad hoc* reports on an as-needed basis at the State, district and school levels and that an Annual Data Reporting Workbook for public schools was utilized to collect and report on children with disabilities (e.g., annual exiting report, annual suspension/expulsion report, etc.). On page 39 of the APR in revised Cluster I, VIDE reported concerns regarding its ability to compare data for nondisabled students to data for students with disabilities. VIDE has included strategies for improving its data collection. OSEP strongly encourages VIDE to continue to assess its data needs including data needed for its APR submissions, and that it continue to plan for and address those needs. OSEP looks forward to reviewing information in the next APR that includes both implementation of strategies and improved data.

Early Childhood Transition

The Compliance Agreement included provisions related to Part C to Part B transition including a requirement that the interagency agreement between the Part C lead agency and VIDE be properly revised, implemented and monitored. In addition to requirements related to the interagency agreement, the Special Conditions attached to the Part B grant awards for FFY 2003 and FFY 2004, included reporting requirements related to early childhood transition activities and progress. After numerous drafts and revisions, on September 1, 2004, VIDE submitted the final, signed version of the interagency agreement. This document has been reviewed by OSEP and OSEP's acceptance will be provided under separate cover.

However, OSEP continues to be concerned about VIDE's implementation of, and monitoring the requirements related to, the interagency agreement, including monitoring for compliance with the requirements of 34 CFR §300.132. On page 6 of the APR in revised Cluster II, VIDE reported that it did not systematically collect and analyze data regarding referral and eligibility determination of children with disabilities transitioning from Part C to Part B. For purposes of its APR submission, VIDE collected data from the St. Croix district for the 2002-2003 and 2003-2004 school years. VIDE reported that of 17 children determined eligible for Part B services, two (12%) did not receive the needed special education and related services by their third birthday. VIDE did not report compliance data for St. Thomas/St. John in its APR submission. The data reported under the Special Conditions were insufficient for OSEP to determine whether VIDE is ensuring full compliance with the requirements of 34 CFR §300.132. As part of its APR submission, VIDE also included strategies to improve its coordination and collection of transition-related data.

VIDE must ensure that it is monitoring for compliance with the requirements of 34 CFR §300.132 that eligible children with disabilities transitioning from Part C to Part B receive special education and related services by their third birthdays and ensuring correction of any noncompliance that it identifies. Therefore, VIDE must provide OSEP with a progress report, six months from the date of this letter, and a final report, no later than 30 days following one-year from this letter. These reports must include updated data and analysis demonstrating progress and, by no later than one year from the date of this letter, full compliance with the requirements of 34 CFR §300.132.

Parent Involvement

On page 3 of the APR in revised Cluster III, VIDE reported increased parental participation in workshops focusing on a variety of topics related to increasing parent knowledge. On pages 5-6 of the APR in revised Cluster III, VIDE reported collecting parent data during Cycle II monitoring from training activities and a parent survey instrument. VIDE reported that individual school data on parental involvement was collected by each school but that the data was not collected or analyzed at the district or State level. On page 8 of the APR in revised Cluster III, VIDE reported an increase in parental attendance at parent empowerment training activities and a decrease in complaint,

mediation and due process hearings filed since 1999-2000. VIDE included strategies, proposed evidence of change, targets and timelines designed to continue improving performance in this cluster. OSEP looks forward to reviewing the implementation of these strategies and their impact on children with disabilities in the FFY 2003 APR.

Free Appropriate Public Education in the Least Restrictive Environment

Disproportionality. On page 2 of the APR in revised Cluster IV, VIDE reported that the percentage of children with disabilities seemed “to reflect a greater percentage of Hispanic students (22%) when compared to their incidence in the total Virgin Islands population of 14%.” VIDE also reported that “the percentage of total Black students (84.8%) [was] greater than the percentage of Black children with disabilities (76%).” VIDE did not report on whether it identified this difference as significant disproportionality under 34 CFR §300.755 and, although it reported disaggregated placement data, it did not identify whether there was significant disproportionality in that data. VIDE reported that training on the least restrictive environment (LRE) took place in 12 schools and that data from six of the schools revealed that the percentage of children outside the regular class more than 60% decreased by a much higher percentage than seen nationally. VIDE reported that data from the table showed a lower percentage of all children with disabilities spending instructional time in regular class settings. On page 9 of the APR in revised Cluster IV, VIDE reported a discrepancy between the data provided by schools and LEA central offices. VIDE reported working on the development of a procedure for verifying data with assistance of NCSEAM and training was provided to LEA staff.

The Part B regulations at 34 CFR §300.755, require that VIDE, where it identifies significant disproportionality on the basis of race in the identification of children with disabilities (including identification within particular categories of disability) or their placements, must review or provide for the review and, if appropriate, revision of policies, procedures and practices used in identification or placement to ensure that the policies, procedures and practices comply with Part B. The instructions to the FFY 2002 APR required States that identify significant disproportionality to report on the results of that review of policies, procedures and practices. However, VIDE’s FFY 2002 APR, while raising concerns, did not specifically identify significant disproportionality and did not include any information indicating that, where appropriate, it reviewed or required the review, and if appropriate revision, of policies, procedures or practices used in the identification or placement of children with disabilities.

In the FFY 2003 APR, VIDE must include the information required by the instructions including a determination of whether VIDE has identified significant disproportionality and has ensured that, when identified, the policies, procedures and practices are reviewed and, if appropriate, revised. If the FFY 2003 APR does not include this information, OSEP will conclude that the Territory is not complying with the requirements of 34 CFR §300.755.

Graduation and Drop-Out Rates. On pages 11-13 of the APR in revised Cluster IV, VIDE included data and analysis that identified barriers to calculating and reporting graduation

and drop-out rates that allow comparisons between children with and without disabilities. On page 11 of the APR in revised Cluster IV, VIDE reported that for the 2002-2003 school year, 19% of all students with disabilities and 24% of students with specific learning disabilities graduated with a diploma. VIDE reported it had the ability to collect drop-out and graduation data for students with disabilities but was unable to conduct a comparative analysis with data for students without disabilities due to the unavailability of data for the specified years. VIDE did include some strategies and timelines for improving the rate of students with disabilities graduating with a diploma. In the FFY 2003 APR, VIDE must report on the implementation of the strategies and resulting data demonstrating improvement.

Suspension/Expulsion Rates. On pages 14-15 of the APR in revised Cluster IV, VIDE included Table 5, Section A – “Report of Children with Disabilities Unilaterally Removed to An Interim Alternative Education Setting or Suspended or Expelled for School Year 2001-2002.” VIDE reported a total of three children removed for drugs and weapons violations and a total of eleven children suspended for more than 10 days or expelled. VIDE reported that, since disaggregated data for nondisabled children was not available, it was not possible to compare suspensions and expulsion rates between children with and without disabilities. VIDE reported that it was significant that of approximately 1497 children with disabilities, less than 1% received suspensions for more than 10 days cumulative in a school year or expulsions. VIDE included strategies to address this area including a review of suspension and expulsion policies for children with disabilities and ensuring that the district-wide student database (SASI) had fields to specify length and date of suspensions and expulsions.

Under 34 CFR §300.146, VIDE must examine data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities either among LEAs or compared to the rates for nondisabled children within the agencies. Where the SEA determines that significant discrepancies are occurring, it must review and, if appropriate, revise (or require the affected State agency or LEA to revise) its policies, procedures and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards to ensure that the policies, procedures and practices comply with Part B.

VIDE’s FFY 2002 APR submission did not include information indicating that VIDE had identified significant discrepancies in the LEAs. Instead, VIDE noted the very low rate of long-term suspension and expulsion but did not compare LEAs or conclude that no significant discrepancies were occurring. In the FFY 2003 APR, VIDE must specifically address whether significant discrepancies in long-term suspensions and expulsions are occurring based upon one of two comparisons described above, and where it identifies significant discrepancies, VIDE must report on the reviews and if, appropriate, revisions of (or requiring the affected State agency or LEA to revise) policies, procedures and practices consistent with 34 CFR §300.146.

Participation and Performance on Large-Scale Assessments. On page 19 of the APR in revised Cluster IV, VIDE stated that, VIDE would first administer the Territory-wide

assessment during Spring 2005 in a sample of schools.³ VIDE stated that no large-scale assessments, including alternate assessments, were conducted by the VIDE in the past three years. VIDE reported that in 2003-2004, the Iowa Test of Basic Skills was administered in both districts as the district-wide assessment. OSEP could not determine whether VIDE ensured that children with disabilities were included in the district-wide assessments with appropriate accommodations and modifications, if necessary. VIDE indicated that there was “no revised and current policy for alternate assessment of students with disabilities.”

Under 34 CFR §300.138⁴, VIDE must ensure that children with disabilities are included in general State and district-wide assessment programs, with appropriate accommodations and modifications in administration, if necessary; and that the LEA, as appropriate develops guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in district-wide assessment programs including the development and administration of alternate assessments. These requirements also apply to the proposed Territory-wide assessment scheduled for Spring 2005. Based upon VIDE’s statements in the APR submission, OSEP finds that there is potential noncompliance with 34 CFR §300.138. OSEP will conduct additional review of district-wide assessments and of the proposed Territory-wide assessment during its scheduled verification visit.

In the next APR, VIDE must report on whether it is out of compliance with the requirements of 34 CFR §300.138 as related to Territory-wide and district-wide assessments. To the extent that it is out of compliance, VIDE also must provide OSEP with a plan to address the noncompliance including: 1) ensuring the participation of students with disabilities in large scale assessments with accommodations and modifications if necessary; 2) timetable for the development of guidelines for participation in alternate assessments; 3) timelines for development and implementation of the alternate assessments, including staff training; and 4) timetables for public reporting on the participation and performance of students with disabilities on the alternate assessments. The plan should also include periodic reporting to OSEP on the status of correction. This issue will also be addressed in greater detail during the scheduled onsite verification visit.

Continuum of Placement Options. On September 8, 2004 VIDE resubmitted its methods for monitoring IEP team placement decisions and a preschool continuum proposal. These documents have been reviewed by OSEP and comments will be provided under separate cover.

³ VIDE is under a Department-wide 2002 Compliance Agreement that addressed many of the programmatic requirements of the No Child Left Behind Act. VIDE also submitted an attachment titled “The U.S. Virgin Islands Education Accountability Initiative Education Alliance Overview of the Six Key Elements and Related Activities” that includes the actions and timelines to address assessment requirements.

⁴ Although IDEA does not require district-wide assessments, to the extent that such assessments are administered by the local school districts, VIDE must ensure compliance with federal requirements, and its own policies and procedures, regarding participation of students with disabilities and the availability and use of an alternate assessment.

On page 20 of the APR in revised Cluster IV, VIDE reported that, for early childhood settings, 90.5% of pre-school children with disabilities, ages three through five, were served in an early childhood setting that included Head Start or daycare and that this figure was consistent with previous data of 87.5% for 2002-2003 and 86.7% for 2001-2002. On page 21 of the APR in revised Cluster IV, VIDE reported, in the form of a chart, its placement data by categories for three consecutive school years and compared it to the national average. This data indicated that while VIDE was still above the national average for the percentage of students in the most restrictive settings, there was improvement over the three year period. On pages 21-22 of the APR in revised Cluster IV, VIDE reported the incorporation of recommendations of stakeholders in identifying target areas and strategies to facilitate access to the general curriculum for students with disabilities. VIDE also included additional strategies and timelines for its continued efforts in this area. OSEP looks forward to reviewing the implementation of these strategies and their impact on children with disabilities in the FFY 2003 APR.

Preschool Outcomes. On page 23 of the APR in revised Cluster IV, VIDE reported that while individual data was collected at the district level on preschool children with disabilities, the SEA was in the process of analyzing the data on the performance of preschool children with disabilities in the areas of early language/communication, pre-reading and social-emotional skills. Scores were not aggregated and trends not completely analyzed. VIDE projected that it would discuss data collection and assessment processes with preschool staff and develop a process that includes pre- and post-testing and training for staff. On page 23 of the APR in revised Cluster IV, VIDE noted that it did not currently collect data as specified in this APR section and did not indicate it would develop a plan to collect the data. Under 20 U.S.C. §1418(a)(2) States are required to provide information that the Secretary requires. Moreover, under 20 U.S.C. §1232d(b)(4), States are required to cooperate in carrying out any evaluation conducted by the Secretary. Under the Government Performance and Results Act of 1993, 31 U.S.C. §1116, the effectiveness of the IDEA §619 program is being measured based on the extent to which early language/communication, pre-reading, and social-emotional skills of preschool children with disabilities receiving special education and related services are improving. In the FFY 2003 APR, VIDE must either submit documentation of data (whether collected through sampling, monitoring, individual IEP review, or other methods), targets for improved performance and strategies to achieve those targets for this area, or a plan to collect the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan.

Secondary Transition

The 1999 Compliance Agreement addressed the secondary transition requirements for students beginning at ages 14 and 16 (or younger, if appropriate).⁵ The Special Conditions to the FFY 2004 grant award required VIDE to resubmit a revised interagency agreement for secondary transition based upon OSEP's previous analysis of that document. On

⁵ Under the Individuals with Disabilities Education Improvement Act of 2004, the secondary transition requirements for students beginning at age 14, or younger if appropriate expire on July 1, 2005. However, States must continue to ensure compliance until that date.

September 1, 2004 VIDE submitted a revised interagency agreement for secondary transition. This document has been reviewed by OSEP and comments will be provided under separate cover.

On pages 2-3 of the APR in revised Cluster V, VIDE reported that monitoring of IEPs for school year 2002-2003 determined that the IEPs contained the required transition statements but that 59% of representatives of other agencies that were invited to attend IEP meetings did not attend. VIDE did not indicate whether districts were complying with the requirement, at 34 CFR §300.344(b)(3)(ii), that the agency take other steps to obtain the participation of another agency where the invited representative does not attend the IEP meeting. The APR submission included a strategy to address this issue through the use of the Transition Outcomes Project. VIDE must ensure that it is monitoring on compliance with the requirements of 34 CFR §300.344(b)(3)(ii), and ensuring correction of any noncompliance that it identifies. Therefore, within 60 days of this letter, VIDE must submit its analysis of compliance with 34 CFR §300.344(b)(3)(ii) and, to the extent that it finds noncompliance, submit a plan to ensure correction within a reasonable period of time not to exceed one year.

On page 3 of the APR in revised Cluster V, VIDE reported that although a file review conducted by the State indicated that all students age 14 had transition needs statements in the IEP, those statements did not include a focus on the course of study, as required under 34 CFR §300.347(b). VIDE must continue to ensure compliance with this requirement until July 1, 2005, when the provisions of the Individuals with Disabilities Education Improvement Act of 2004 take effect. VIDE must continue to report on its efforts in the next APR submission.

On page 10 of the APR in revised Cluster V, VIDE reported that through VIDE's partnership with the Division of Disability and Vocational Rehabilitation (VR), VIDE received post-school outcome data on students with disabilities accepted as VR clients. VIDE reported an inability to collect and analyze post-school outcome data that would enable a comparison of the percentages of students with and without disabilities participating in post-school activities. VIDE outlined strategies to ensure that GOALVIEW and the VIDE-wide student information system (SASI) contained data fields to enable VIDE to collect postschool outcome data. OSEP looks forward to reviewing the implementation of these strategies and their impact on children with disabilities in the FFY 2003 APR.

Conclusion

OSEP is extending the FFY 2003 APR due date to April 30, 2005 to allow VIDE time to address the issues listed herein. In the FFY 2003 APR, VIDE must address each of the areas below as follows:

Monitoring: VIDE must include data and analysis demonstrating that previously-identified noncompliance has been corrected in a timely manner and, if necessary, that the State is utilizing appropriate sanctions to ensure timely correction.

Sufficient Qualified Personnel: VIDE must continue to report on performance in the area of having an adequate supply of qualified personnel and implementation of the CSPD.

FAPE: Disproportionality: VIDE must include the information required by APR instructions including a determination of whether VIDE has identified significant disproportionality and has ensured that, when identified, the policies, procedures and practices are reviewed and, if appropriate, revised consistent with the requirements of 34 CFR §300.755.

FAPE: Graduation and Drop-Out Rates: VIDE must report on the implementation of the strategies and resulting data demonstrating improvement regarding graduation and drop-out rates.

FAPE: Suspension/Expulsion Rates: VIDE must specifically address whether significant discrepancies in long-term suspensions and expulsions are occurring based upon one of two comparisons (rate of long-term suspensions and expulsions of children with disabilities whether among LEAs or compared to the rates for nondisabled children within the agencies), and where it identifies significant discrepancies, VIDE must report on the reviews and if, appropriate, revisions of (or requiring the affected State agency or LEA to revise) policies, procedures and practices consistent with 34 CFR §300.146.

Preschool Outcomes: VIDE must either submit documentation of data (whether collected through sampling, monitoring, individual IEP review, or other methods), targets for improved performance and strategies to achieve those targets for this area, or a plan to collect the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan.

Participation and Performance on Large-Scale Assessments: VIDE must report on whether VIDE is out of compliance with the requirements of 34 CFR §300.138 as related to Territory-wide and district-wide assessments. To the extent that it is out of compliance, VIDE also must provide OSEP with a plan to address the noncompliance including: 1) ensuring the participation of students with disabilities in large scale assessments with accommodations and modifications if necessary; 2) timetable for the development of guidelines for participation in alternate assessments; 3) timelines for development and implementation of the alternate assessments, including staff training; and 4) timetables for public reporting on the participation and performance of students with disabilities on the alternate assessments. The plan should also include periodic reporting to OSEP on the status of correction.

In addition, based upon VIDE's admissions of noncompliance with federal requirements, VIDE must also ensure correction and provide OSEP with progress reports for the following areas.

Complaints: VIDE must ensure correction of noncompliance with the requirement at 34 CFR §300.661, that each written complaint decision is issued 60 days after the complaint is filed, unless exceptional circumstances exist with respect to a particular complaint. VIDE must provide OSEP with a progress report, six months from the date of this letter, and a final report, no later than 30 days following one-year from this letter. These reports must include updated data and analysis demonstrating progress and, by no later than one year from the date of this letter, full compliance with the timeline requirements at 34 CFR §300.661.

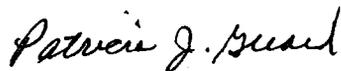
Early Childhood Transition: VIDE must ensure that VIDE is monitoring for compliance with the requirements of 34 CFR §300.132 that eligible children with disabilities transitioning from Part C to Part B receive special education and related services by their third birthdays and ensuring correction of any noncompliance that it identifies. VIDE must provide OSEP with a progress report, six months from the date of this letter, and a final report, no later than 30 days following one-year from this letter. These reports must include updated data and analysis demonstrating progress and, by no later than one year from the date of this letter, full compliance with the requirements of 34 CFR §300.132.

In addition, VIDE must ensure that it is monitoring on compliance with the requirements of 34 CFR §300.344(b)(3)(ii), and ensuring correction of any noncompliance that it identifies with regards to secondary transition.

Secondary Transition: Within 60 days of this letter, VIDE must submit its analysis of compliance with 34 CFR §300.344(b)(3)(ii) and, to the extent that it finds noncompliance, submit a plan to ensure correction within a reasonable period of time not to exceed one year.

OSEP recognizes that the APR and its related activities represent only a portion of the work in the Virgin Islands and we look forward to collaborating with you as you continue to improve results for children and youth with disabilities and their families. Please note that some of the issues raised above will also be addressed as part of the scheduled on-site verification visit. If you have questions, please contact Maral Taylor at (202) 245-7542.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education Programs

cc: Carrie Johns
Acting Director of Special Education