



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

June 23, 2014

Honorable Donna Frett-Gregory
Commissioner of Education
Department of Education
1834 Kongens Gade
St. Thomas, Virgin Islands 00802-6746

Dear Commissioner Frett-Gregory:

I am writing to advise you of the U. S. Department of Education's (Department) 2014 determination under section 616 of the Individuals with Disabilities Education Act (IDEA). The Department has determined that Virgin Islands needs intervention in implementing the requirements of Part B of the IDEA. This determination is based on the totality of the State's data and information, including the Federal fiscal year (FFY) 2012 Annual Performance Report (APR) and revised State Performance Plan (SPP), other State-reported data, and other publicly available information.

As you know, the Office of Special Education Programs (OSEP) is implementing a revised accountability framework designed to more directly support States in improving results for infants, toddlers, children and youth with disabilities, and their families. Section 616(a)(2) of the IDEA requires that the primary focus of IDEA monitoring be on improving educational results and functional outcomes for children with disabilities, and ensuring that States meet the IDEA program requirements.

OSEP's previous accountability system placed a heavy emphasis on compliance and we have seen an improvement in States' compliance over the past seven years of IDEA determinations. OSEP's new accountability framework, called Results Driven Accountability (RDA), brings into focus the educational results and functional outcomes for children with disabilities while balancing those results with the compliance requirements of IDEA. Protecting the rights of children with disabilities and their families is a key responsibility of State educational agencies (SEAs) and local educational agencies (LEAs), but it is not sufficient if children are not attaining the knowledge and skills necessary to achieve the goals of IDEA as reflected in Congressional findings in section 601(c)(1) of the IDEA Improvement Act of 2004: equality of opportunity, full participation, independent living, and economic self-sufficiency.

From the start, OSEP committed to several key principles to guide the development of a new accountability framework, including transparency, stakeholder involvement, and burden reduction. In keeping with these principles, over the past two years we have solicited input from stakeholders on multiple occasions and published a new SPP/APR for FFYs 2013 through 2018. The revised SPP/APR significantly reduces data collection and reporting burden by States, and shifts the focus to improving educational results and functional outcomes for children with disabilities by requiring each State to develop and implement a State Systemic Improvement Plan (SSIP).

The Department is committed to supporting States in the development and implementation of the SSIP which is designed to improve results for all children, including children with disabilities, and is investing significant resources toward that commitment. OSEP is implementing a system of differentiated monitoring and support, using data on performance (i.e., results data) and other information about a State to determine the appropriate intensity, focus, and nature of the oversight and support that each State will receive as part of RDA. OSEP's technical assistance network will be a key component of differentiated support to States and, through States, to local programs. We believe that only through a coordinated effort across the education system will we positively affect the school and life trajectories of children with disabilities.

In making determinations in 2013, the Department used a compliance matrix that included compliance data on multiple factors, thereby allowing us to consider the totality of a State's compliance data. In the 2013 determination letters, OSEP informed States that it would use results data when making determinations in 2014. OSEP published a Request for Information to solicit comments regarding how results data could be used in making IDEA determinations in 2014 and beyond, and has carefully reviewed these comments in deciding how to use results data in making determinations in 2014.

In making States' 2014 determinations under section 616(d), OSEP has used results data on the participation of children with disabilities on regular Statewide assessments; the proficiency gap between children with disabilities and all children on regular Statewide assessments; and the performance of children with disabilities on the National Assessment of Educational Progress (NAEP). In making the Virgin Islands' 2014 determination, OSEP did not consider results data, because the Virgin Islands is not required to report data on Statewide assessments as part of the Consolidated State Performance Report (CSPR), and the Virgin Islands does not participate in NAEP. Therefore, the Virgin Islands' 2014 determination was based only on compliance data.

The Virgin Islands' 2014 determination is based on the data reflected in the Virgin Islands' "2014 Part B Compliance Matrix." Enclosed with this determination letter are the following: (1) the Virgin Islands' "2014 Part B Compliance Matrix;" (2) a document entitled, "How the Department Made Determinations under Section 616(d) of the Individuals with Disabilities Education Act Part B in 2014: Entities with Determinations Based on Compliance," which provides a detailed description of how OSEP evaluated these entities' data using the Compliance Matrix; (3) the Virgin Islands' FFY 2012 Response Table, which provides OSEP's analysis of the Virgin Islands' FFY 2012 APR and revised SPP; and (4) a Data Display, which presents certain Virgin Islands-reported data in a transparent, user-friendly manner. The Data Display will be posted on OSEP's Web site and will be helpful for the public in getting a broader picture of the Virgin Islands' performance in key areas.

As further explained in the enclosures to this letter, the Department has determined that the Virgin Islands needs intervention in implementing the requirements of Part B of the IDEA. The Department identified an entity whose determination was based on compliance data only as needing intervention under IDEA Part B if its 2014 Compliance Matrix Percentage was below 75%, and if the entity had either very low (below 50%) or not valid and reliable data for a Compliance Indicator, or Special Conditions for multiple years for failing to comply with key IDEA Part B requirements.

Specifically, the Virgin Islands' Compliance Matrix Percentage was 68.18% due to its low performance on the following Compliance Indicators: Indicator 4B (Significant Discrepancy, by race and ethnicity, in the rate of suspension and expulsion) (50.0%), Indicator 13 (Secondary transition) (62.26%), and Indicator 15 (Timely correction) (0.0%). In addition, the Virgin Islands had findings of noncompliance it identified in FFY 2010 for which it had not yet demonstrated correction. The Virgin Island's FFY 2012 data reflecting a very low compliance level reported under Indicator 15 (0.0%) raise particular concerns about the Virgin Islands' ability to comply with this requirement. The Virgin Islands must take the steps necessary to ensure that it can report compliance.

Pursuant to section 616(d)(2)(B) of the IDEA and 34 CFR §300.603(b)(2), a State that is determined to need intervention or need substantial intervention, and does not agree with this determination, may request an opportunity to meet with the Assistant Secretary to demonstrate why the Department should change the State's determination. To request a hearing, submit a letter to Michael K. Yudin, Acting Assistant Secretary for Special Education and Rehabilitative Services, U.S. Department of Education, 400 Maryland Avenue S.W., Washington, D.C. 20202 within 15 days of the date of this letter. The letter must include the basis for your request for a change in the State's determination.

As a reminder, the Virgin Islands must report annually to the public on the performance of each LEA located in the Virgin Islands on the targets in the SPP as soon as practicable, but no later than 120 days after the Virgin Islands's submission of its FFY 2012 APR. In addition, the Virgin Islands must: (1) review LEA performance against targets in the Virgin Islands's SPP; (2) determine if each LEA "meets the requirements" of Part B, or "needs assistance," "needs intervention," or "needs substantial intervention" in implementing Part B of the IDEA; (3) take appropriate enforcement action; and (4) inform each LEA of its determination. Finally, please ensure that your APR, updated SPP, and report on the performance of each LEA located in the Virgin Islands on the targets in the SPP are posted on the SEA's Web site and made available to the public.

OSEP appreciates the Virgin Islands' efforts to improve results for children and youth with disabilities and looks forward to working with the Virgin Islands over the next year as we continue our important work of improving the lives of children with disabilities and their families. If you have any questions, would like to discuss this further, or want to request technical assistance, please contact Christine Pilgrim, your OSEP State Contact, at 202-245-7351.

Sincerely,

A handwritten signature in black ink, appearing to read "Melody Musgrove". The signature is fluid and cursive, with a long horizontal line extending to the right.

Melody Musgrove, Ed.D
Director
Office of Special Education Programs

Enclosures

cc: Virgin Islands Director of Special Education