



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

JUN - 1 2009

Honorable Julia Sheen-Aaron
Acting Commissioner
Virgin Islands Dept of Health
Sugar EV #48
St. Thomas, Virgin Islands 00802-6746

Dear Acting Commissioner Sheen-Aaron:

Thank you for the timely submission of Virgin Islands' Federal fiscal year (FFY) 2007 Annual Performance Report (APR) and revised State Performance Plan (SPP) under Part C of the Individuals with Disabilities Education Act (IDEA). We also acknowledge the revisions to Virgin Island's APR and SPP received on April 2, 2009. We appreciate the Virgin Islands' efforts in preparing these documents.

The Department has determined that, under IDEA sections 616(d) and 642, Virgin Islands needs assistance in meeting the requirements of Part C of IDEA. The Department's determination is based on the totality of the Virgin Island's data and information including the Virgin Island's FFY 2007 APR and revised SPP, other Territory-reported data, and other publicly available information. See the enclosure entitled "How the Department Made Determinations under Sections 616(d) and 642 of the IDEA in 2009" for further details.

One factor affecting the Office of Special Education Programs' (OSEP's) determination of needs assistance for the Virgin Islands is that the Department designated the Virgin Islands as a "high-risk" grantee and imposed Special Conditions on its FFY 2008 Part C grant. These Special Conditions require the Virgin Islands to use a third-party payor to ensure prompt payment of early intervention services (EIS) providers and additional reporting on its efforts to improve and ensure fiscal accountability. In addition, Virgin Islands reported 92.7% compliance with the timely transition conference requirements in Indicator 8C. For these reasons, we were unable to determine that the Virgin Islands met requirements for FFY 2007 under IDEA sections 616(d) and 642.

OSEP notes other areas that reflect a high level of performance, which included that the Virgin Islands reported valid and reliable data for all indicators, high levels of compliance for Indicators 1 (95.2% for timely service provision), 8A (100% for individualized family service plan transition content), 8B (100% - local educational agency notification), 9 (100% - general supervision), and 14 (100% for timely and accurate data), and correction of FFY 2006 findings for Indicators 1 and 7 (45-day timeline). We hope that the Virgin Islands will be able to demonstrate that it meets requirements in its next APR.

The enclosed table provides OSEP's analysis of the Virgin Islands' FFY 2007 APR and revised SPP and identifies, by indicator, OSEP's review of any revisions made by the Virgin Islands to its targets, improvement activities (timelines and resources) and baseline data in the Virgin Islands' SPP. The table also identifies, by indicator, the Virgin Islands' status in meeting its targets, whether the Virgin Islands' data reflect progress or slippage, and whether the Virgin Islands corrected noncompliance and provided valid and reliable data.

The Virgin Islands' determination for the FFY 2006 APR also was needs assistance. In accordance with section 616(e)(1) of the IDEA, if a Territory is determined to need assistance for two consecutive years, the Secretary must take one or more of the following actions: (1) advise the Virgin Islands of available sources of technical assistance that may help the Virgin Islands address the areas in which the Virgin Islands needs assistance; (2) direct the use of Territory-level funds on the area or areas in which the Virgin Islands needs assistance; or (3) identify the Virgin Islands as a high-risk grantee and impose special conditions on the Virgin Islands' Part C grant award.

Pursuant to these requirements, the Secretary is advising the Virgin Islands of available sources of technical assistance related to Indicator 8C (transition conference). A list of sources of technical assistance related to the SPP/APR indicators is available by clicking on the "Technical Assistance Related to Determinations" box on the opening page of the SPP/APR Planning Calendar website at <http://spp-apr-calendar.rfcnetwork.org/techassistance.html>. You will be directed to a list of indicators. Click on specific indicators for a list of centers, documents, web seminars and other sources of relevant technical assistance for that indicator. For the indicator(s) listed above, the Virgin Islands must report with its FFY 2008 APR submission, due February 1, 2010, on: (1) the technical assistance sources from which the Virgin Islands received assistance; and (2) the actions the Virgin Islands took as a result of that technical assistance. The extent to which the Virgin Islands takes advantage of available technical assistance for these indicators may affect the actions OSEP takes under sections 616 and 642 should the Virgin Islands not be determined to meet requirements next year. We encourage Virgin Islands to take advantage of available sources of technical assistance in other areas as well, particularly if the Virgin Islands is reporting low compliance data for an indicator.

As required by sections 616(e)(7) and 642, the Virgin Islands must notify the public that the Secretary of Education has taken the above enforcement action. This notification must be sufficient to notify the public within the Virgin Islands and may include such mechanisms as posting on the agency's website, distribution through the media and distribution through public agencies.

Because the Virgin Islands Department of Health (VIDH) is both the lead agency and the only EIS program in the Virgin Islands, OSEP expects VIDH to report annually to the public on its one EIS program, pursuant to IDEA sections 616(b)(2)(C)(ii)(1) and 642. For further information regarding these requirements, see the SPP/APR Calendar at <http://spp-apr-calendar.rfcnetwork.org/explorer/view/id/656>. Finally, as you included revisions to baseline, targets or improvement activities in your APR submission, and OSEP accepted those revisions, please ensure that you update your SPP accordingly and that the updated SPP is made available to the public.

In its October 17, 2008 Memorandum 09-02, "Reporting on Correction of Noncompliance in the Annual Performance Report Required under Sections 616 and 642 of the IDEA," OSEP provided Chief State School Officers and Lead Agency Directors with important information regarding: (1) requirements for identifying noncompliance and reporting on the correction of noncompliance in Virgin Islands' APRs; and (2) how OSEP will, beginning with the FFY 2008 APR, due February 1, 2010, consider the correction of noncompliance in making annual determinations for the Virgin Islands pursuant to section 616(d) of the IDEA. Most significantly, beginning with our 2010 determinations:

1. OSEP will no longer consider the Virgin Islands to be in substantial compliance relative to a compliance indicator based on evidence of correction of the previous year's noncompliance if the Virgin Island's current year data for that indicator reflect a very low level of compliance (generally 75% or below); and
2. OSEP will credit the Virgin Islands with correction of noncompliance relative to a child-specific compliance indicator only if the Virgin Islands confirms that it has addressed each instance of noncompliance identified in the data for an indicator that was reported in the previous year's APR, as well as any noncompliance identified by the Department more than one year previously. The Virgin Islands must specifically report, for each compliance indicator, whether it has corrected all of the noncompliance identified in its data for that indicator in the prior year's APR as well as that identified by the Department more than one year previously.

It is important for the Virgin Islands to review the guidance in the memorandum, and to raise any questions with your OSEP State Contact. The memorandum may be found at: <http://spp-apr-calendar.rfcnetwork.org/explorer/view/id/536>.

OSEP is committed to supporting Virgin Islands' efforts to improve results for infants and toddlers with disabilities and their families and looks forward to working with the Virgin Islands over the next year. If you have any questions, would like to discuss this further, or want to request technical assistance, please contact Sheryl Parkhurst, your OSEP State Contact, at 202-245-7472.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education Programs

Enclosures

cc: Part C Coordinator