



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

JUNE 29, 1998

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

Dear Commissioner Davis:

During the week of May 19, 1997, the Office of Special Education Programs (OSEP), United States Department of Education, conducted an on-site review of the Virgin Islands Department of Education's (VIDE) implementation of Part B of the Individuals with Disabilities Education Act (IDEA). The purpose of the review was to determine whether VIDE is meeting its responsibility to ensure that its educational programs for children and youth with disabilities are administered in a manner consistent with the requirements of Part B.

Because OSEP conducted the on-site review prior to the June 4, 1997 enactment of the Individuals with Disabilities Education Act Amendments of 1997, OSEP's compliance determinations and the findings in this report are based upon the requirements of Part B as in effect prior to the enactment of the Amendments. OSEP will work with the VIDE to ensure that all corrective actions, in addition to correcting the deficiencies identified in the Report, are consistent with the requirements of Part B as in effect at the time that the corrective actions are implemented.

Enclosure A to this letter describes OSEP's monitoring methodology, and provides information about VIDE's administrative structure, Enclosure B lists our findings.

OSEP is extremely concerned with VIDE's lack of progress in completion of the corrective action activities set forth in OSEP's 1993 monitoring report to VIDE. In that report, OSEP identified the following areas of noncompliance, which have not yet been addressed: 1) the failure to provide needed related services set forth on individualized education programs (IEPs); 2) the failure to provide personnel in needed service areas; and 3) the failure to provide triennial evaluations in a timely manner. These findings will be addressed in more detail in Enclosure B. OSEP previously addressed these concerns in a November 1, 1996 letter to you. Based on these concerns, the letter also requested that VIDE immediately begin submission of documentation of progress in completion of these corrective actions on a monthly basis. VIDE did not, however, provide OSEP with such documentation for six months. On April 10, 1997, OSEP sent a letter to Ms. Elsie Monsanto, VIDE's Director of Special Education, in preparation for OSEP's onsite monitoring review in May. In that letter, we reiterated our concern with VIDE's lack of progress in these areas, and emphasized the importance of the monthly submissions. During the onsite review, Mr. Chuck Laster discussed these matters with both you and Ms. Monsanto. Since the monthly submissions were to contain information relevant to OSEP's findings, OSEP delayed preparation of the enclosed report until VIDE began regular monthly submissions. VIDE subsequently began submission of

600 INDEPENDENCE AVE., S.W. WASHINGTON, D.C.

Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

monthly reports to OSEP in August 1997. These reports, however, did not contain all information requested, nor did they provide sufficient data to allow OSEP to determine the current status of compliance. As of the date of this report, VIDE has not yet corrected the identified noncompliance.

In addition, OSEP has been in communication with the Department's Office for Civil Rights (OCR), Region II. That office is responsible for ensuring compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act (ADA). Both of these statutes contain requirements that the public education programs in the Virgin Islands be accessible to children with disabilities, which includes the availability of a free appropriate public education. Based upon our communications, it is OSEP's understanding that VIDE is not in full compliance with these federal laws.

Turning to the results of the most recent monitoring visit, I want to note that OSEP's monitoring places a strong emphasis on those requirements most closely associated with positive results for students with disabilities. Our most recent monitoring revealed that, in addition to the areas of continued noncompliance identified above, VIDE has not ensured: provision of services to students with disabilities in the least restrictive environment; that statements of needed transition services are developed as a component of IEPs for students 16 years of age or older; and that students with disabilities receive educational services that meet the standards of the State Educational Agency regarding length of school day.

Chuck Laster, the OSEP monitoring team leader, discussed the team's preliminary findings with you, Ms. Monsanto and Ms. Carrie Johns, of VIDE, and Dr. Denise Stewart and Mr. Abby Deschappelles from the South Atlantic Regional Resource Center, at an exit conference held at the conclusion of OSEP's on-site visit. Mr. Laster also raised the Department's continued concern regarding VIDE's noncompliance. Most recently, Ms. Monsanto informed OSEP staff that there were no available hearing officers for the summer, although there were unresolved hearing requests.

The information from OCR and in the monitoring report raise significant concerns regarding VIDE's continued eligibility for federal funds under Part B of the IDEA. The Department is planning to designate VIDE a high-risk grantee under 34 CFR §80.12 and may also need to consider whether to take other enforcement action(s) provided by law. The basis for considering such determination is VIDE's history of noncompliance, unsatisfactory performance, and failure to conform to terms and conditions of previous awards.

Upon the Department's determination of eligibility for fiscal year 1998 (FY '98) funds under 20 U.S.C. §1412, OSEP will issue VIDE's FY '98 Part B grant award on a quarterly basis. As a condition of receipt of such funds, VIDE will be required to meet the conditions specified in the grant award letter, including submission of specific data to document compliance with Federal requirements. OSEP will conduct an onsite review to verify the accuracy of VIDE's data.

The findings in this letter are final, unless--within 15 days from the date on which VIDE receives this letter--VIDE concludes that evidence of noncompliance is significantly inaccurate or that one or more findings is incorrect and requests reconsideration of such finding(s). Any request for reconsideration must specify the finding(s) for which VIDE requests reconsideration, and the factual and/or legal basis or bases for the request, and must include documentation to support the request. OSEP will review any VIDE request for reconsideration and, if appropriate, issue a letter of response informing VIDE of any revision to the findings. Requests for reconsideration of a finding will not delay the proposed visit or other actions of the Department.

In order to begin immediate correction of the findings set forth in Enclosure B, VIDE must develop a memorandum informing all schools within VIDE's system of OSEP's findings, and directing them to determine whether they have complied with Part B requirements, as clarified by OSEP's Letter of Findings. The memorandum must further direct these schools to discontinue any noncompliant practices and implement procedures that are consistent with Part B. VIDE must submit this memorandum to OSEP within 30 days of the date of this letter. Within 15 days of OSEP's approval of the memorandum, VIDE must disseminate it to all schools throughout the Virgin Islands providing special education or related services to students with disabilities.

I would like to again emphasize our commitment to working with you and the VIDE staff to bring VIDE into compliance with these requirements. Our staff and the regional resource center continues to be available to provide technical assistance during the proposed visit and throughout this process.

Prior to the enactment of the IDEA and its predecessor the Education of All Handicapped Children Act, one million children with disabilities were excluded from our nation's schools altogether, and another 3.5 million were not receiving appropriate programs within the public schools. The enactment of the IDEA, and the joint actions of schools, school districts, State educational agencies and the Department, have now made it possible for more than 5.4 million children with disabilities to participate in our country's public educational programs.

Sincerely,

Thomas Hehir
Director
Office of Special Education
Programs

Enclosures

cc: Ms. Elsie Monsanto

ENCLOSURE A

OSEP's Monitoring Methodology

Pre-site Document Review: As in all States and entities, OSEP used a multifaceted process to review compliance in the Virgin Islands. In addition to the on-site visit, this process included: review of the Virgin Islands' statutes and regulations, policies and procedures, and interagency agreements that impact the provision of services to students with disabilities; and review of complaints, requests for secretarial review, other correspondence, and telephone calls that OSEP received regarding the Virgin Islands' compliance. Prior to its visit to the Virgin Islands, OSEP also requested and reviewed additional documentation regarding implementation of compliance with requirements regarding due process hearings, complaint resolution, and monitoring, as well as child count and placement data.

Involvement of Parents and Advocates: On May 20, 1997, Mr. Chuck Laster met with a group of parents and advocates on St. Croix. Also during that week, Mr. Laster met with representatives from the Virgin Islands Advocacy Agency. The purpose of the meetings with parents and the Virgin Islands Advocacy Agency was to solicit comments regarding their perceptions of VIDE's compliance with Part B.

Selection of Monitoring Issues and Agencies to Visit: OSEP focuses its compliance review in all States and entities on those core requirements that are closely related to learner results: States' systems for identifying and ensuring the correction of deficiencies through monitoring; ensuring that all eligible students with disabilities receive a free appropriate public education as determined through the development and implementation of an IEP; the provision of needed transition services; and ensuring that parents of children with disabilities are appropriately included in decision-making regarding the education of their child. The information that OSEP obtained from its meetings with parents and advocates, interviews with VIDE officials, and review of documentation referenced above, assisted OSEP in: (1) identifying the issues confronted by consumers and others interested in special education in the Virgin Islands; (2) selecting additional monitoring issues for review while on-site; and (3) confirming the sites to be visited.

On-site Data Collection and Findings: Chuck Laster interviewed VIDE staff and reviewed relevant VIDE documentation. He also visited an elementary school and a high school on both St. Thomas and St. Croix. Where appropriate, OSEP has included in Enclosure B data that it collected from those schools that support or clarify its findings regarding the sufficiency and effectiveness of VIDE's systems for ensuring compliance with the requirements of Part B. Because the findings in Enclosure B focus on the effectiveness of VIDE's systems for ensuring compliance rather than compliance in any particular school within either of the two districts (St. Thomas/St. John and St. Croix), OSEP has not used the name of either district or specific schools in that Enclosure.

Enclosure C outlines the specific corrective actions that VIDE must take to begin immediate correction of the findings in Enclosure B, as well as those corrective actions that remain outstanding from OSEP's 1993 Report. Unless otherwise indicated, all regulatory references in Enclosure B are to 34 CFR Part 300.

Administrative Structure of the Virgin Islands Department of Education: At the time of OSEP's 1992 monitoring visit, VIDE operated as a decentralized system, administered by VIDE as a State Educational Agency, with two component local educational agencies, or districts, St. Thomas/St. John and St. Croix. The districts were governed by a commissioner and an associate commissioner, with a superintendent and director of special education in each district. VIDE received Part B funds under a State plan, and flowed monies through to the two local districts. In 1994, by executive order of the governor, the State educational agency and local educational agencies were consolidated into one entity in a unitary system. Under this unitary system, special education is under the supervision of the Commissioner, with one special education director appointed to administer programs in both districts.

ENCLOSURE B

FEDERAL REQUIREMENTS AND FINDINGS

TRANSITION SERVICES

BACKGROUND: OSEP was informed by VIDE officials responsible for implementation of the Federal transition requirements that up until 1995, VIDE's staff included an administrator that had responsibility for supervision of transition services throughout the system; however, that position has been vacant for more than two years. VIDE administrators also informed OSEP that VIDE has not ever monitored the implementation of these requirements in the schools, but plans to include these requirements in the planned revisions to their monitoring procedures during 1998.

FINDING: OSEP finds that VIDE did not ensure that schools implement policies and procedures which complied with the transition services requirements of Part B. Specifically, VIDE did not ensure that the IEP for each student, beginning no later than age 16 (and at a younger age, if determined appropriate) includes a statement of the needed transition services as defined in §300.18, including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting, as required by §300.346(b). OSEP reviewed secondary programs in three schools within the system (located at two high schools and one program housed in an elementary school) and reviewed the records of six students 16 years of age or older. OSEP also interviewed the students' teachers and school and district administrators responsible for the provision of special education and related services. The VIDE requires that the Federal transition requirements be addressed in student IEPs on an individual transition plan, which is appended to the IEP. OSEP found that none of the secondary students' records contained a current individual transition plan (3 files contained a blank form, two files did not contain an individual transition plan and one file contained an individual transition plan that had not been reviewed or updated in four years). An administrator at one high school stated that none of the students at the school have current individual transition plans. He stated, "we are not doing them right now, and haven't for two years." The administrator further stated that some organizations, such as Vocational Rehabilitation, send parents information about their programs, but parents must then make arrangements for student participation. An administrator from another high school stated that "at grade 12, we let the parents know about outside agencies (such as Vocational Rehabilitation, Independent Living Program) and parents make the contacts and arrangements. That is all we do. When students exit high school, we make recommendations and help with program applications. We may invite representatives from some agencies to talk to groups of parents about their programs." Three of the four secondary level teachers interviewed had never participated in the development of an individual transition plan, or any statement of needed transition services as part of an IEP. One teacher of a class for severely disabled students stated, "some of my students are so disabled that there is nothing that anybody can do for them."

PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT

FINDING: OSEP finds that VIDE did not always meet its responsibility under §300.550(b)(2) to ensure that a student is removed from the regular education environment only when the nature or severity of the disability is such that education in the regular education environment with the use of supplementary aids and services cannot be achieved satisfactorily.

Interviews with administrators and teachers from three of the four schools visited by OSEP indicated that IEP teams do not consider, on an individual basis, whether, with appropriate supplementary aids and services, children with disabilities could be educated in regular education settings. One building level administrator informed OSEP that while district procedures permit a resource teacher to go into a regular education class to assist a student, there are no special education services delivered in regular education classrooms in this administrator's school. An administrator from another school stated that participation in regular education classes is based on student ability and performance, which must be at or near grade level. Children who go to regular education classes are usually those with higher abilities and reading levels. "Sometimes kids could go to the resource teacher for assistance, but there are no other supports or assistance available to them." A building administrator from a third school confirmed that students must read on grade level in order to receive services in regular education classrooms. Teachers from these schools concurred with these statements. In response to the question, "what determines if a student can receive services in a regular education classroom, one teacher stated, "...a strong academic background. Reads well, works on his own. There should be a teacher who could follow these kids to regular education, like a tutor, but supports for these kids are few. We are lacking these. As a consequence, very few kids ever move to regular education."

FREE APPROPRIATE PUBLIC EDUCATION: Related Services

Finding: OSEP finds that VIDE has not fully ensured that schools provide related services, if required, to assist a child with a disability to benefit from special education. §300.300. Interviews with teachers, related service providers, building administrators and VIDE personnel indicate that due to a shortage in personnel, and the inability to hire an adequate supply of qualified individuals, VIDE is not able to ensure that children with disabilities receive related services, if necessary, as a component of a free appropriate public education.

VIDE staff have informed OSEP that as of January of 1998, there were 65 students with disabilities in one of the component districts who were not receiving the services set forth on their IEPs. Also, there were 142 students in the other district not receiving any educational services as set forth on their IEPs. The necessary services that were not being provided ranged from speech, occupational or physical therapies to services provided in self-contained and resource classrooms and homebound services. OSEP was informed by a VIDE administrator that IEP teams consider all of the educational and related service needs of each child on an individual basis, and identify all such needs on the student's IEP, regardless of whether VIDE has sufficient staff employed to fully implement the IEP.

One building level administrator interviewed by OSEP stated that only limited psychological counseling services are available at the school. The administrator stated that it has been very difficult to find therapists/counselors on the island. The administrator further stated that there are some students who should be getting counseling but are not. He stated, "we have more kids who are recommended for services than we have room for." A teacher from this school informed OSEP that "many kids badly need to see counselors, but a lack of staff is a problem. No one is available to see them." The teacher further indicated that there were waiting lists for psychological counseling, but was not aware of the numbers. A parent advocate interviewed by OSEP indicated that there is a system-wide lack of service providers for speech. "Kids are going without services. Parents complain that even though they have an evaluation that indicates a need (for speech services) none are provided. Some parents have reported that there is a waiting list for speech services for over one year." A speech therapist hired under a contract by VIDE informed OSEP that there are no waiting lists on her caseload at this time, but stated, "it would be good if we could have two people full-time. I have to do large group therapy. Some of these kids need individual therapy, but it is not feasible at this time."

FREE APPROPRIATE PUBLIC EDUCATION: Related Services

Another district speech therapist stated that there are “eight or nine” students on her caseload awaiting services, for three to four months. “It is typical that some kids who need services must wait.” A district occupational therapist informed OSEP that he is providing the maximum amount of services that his schedule will allow. Sometimes students have to be grouped because of time constraints; they could be better served individually, but due to a “tight schedule,” he has no choice.

Interviews with VIDE administrators revealed that there is a great deal of difficulty in recruiting and retaining personnel on the islands (particularly speech/language therapists, occupational therapists and physical therapists), due to the fact that VIDE is only able to pay these individuals on a teacher’s salary schedule. OSEP was informed that hiring new staff has been “next to impossible.”

FREE APPROPRIATE PUBLIC EDUCATION: Shortened School Day

Finding: OSEP finds that VIDE did not fully meet its responsibility under §300.300 and §300.8(b) to ensure that all children with disabilities are provided a free appropriate public education that meets the standards of the SEA. Data collected by OSEP indicated that students do not receive VIDE’s mandated length of school day, due to administrative problems with transportation. OSEP was informed that VIDE’s standard for length of school day for students in the Virgin Islands is six hours per day.

A building administrator informed OSEP that there are significant problems with bussing children across the island to the school. This administrator stated that every day, children from five to eight classes in the school come to school from 30 to 40 minutes late; when the buses break down (which frequently occurs) the children do not come to school at all. A teacher at this school confirmed that the students in her class lose up to 45 minutes each day, at least four days per week due to problems with transportation. This teacher stated, “the bus drivers determine which days the children will come to school. They routinely do not pick up students on the days before or after a holiday, for example.”

Interviews with VIDE administrators confirmed that problems with transportation, with children routinely missing significant portions of the school day, exist; however, transportation is administered through another office in the Department of Education, not under their jurisdiction. Further, it was noted that the bus drivers are members of a strong labor union; therefore, these issues are often out of their control.