



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

June 25, 2020

Honorable Racquel Berry-Benjamin  
Commissioner of Education  
Virgin Islands Department of Education  
1834 Kongens Gade  
St. Thomas, Virgin Islands 00802

Dear Commissioner Berry-Benjamin:

I am writing to advise you of the U. S. Department of Education's (Department) 2020 determination under section 616 of the Individuals with Disabilities Education Act (IDEA). The Department has determined that the Virgin Islands needs intervention in implementing the requirements of Part B of the IDEA. This determination is based on the totality of the Virgin Islands' data and information, including the Federal fiscal year (FFY) 2018 State Performance Plan/Annual Performance Report (SPP/APR), other State-reported data, and other publicly available information.

The Office of Special Education Programs (OSEP) is continuing to use both results and compliance data in making determinations for outlying areas, freely associated States, and the Bureau of Indian Education (the Entities) in 2020, as it did for determinations in 2019.<sup>1</sup> The Virgin Islands' 2020 determination is based on the data reflected in the Virgin Islands' "2020 Part B Results-Driven Accountability Matrix" (RDA Matrix). The RDA Matrix is individualized for each State and consists of:

- (1) a Compliance Matrix that includes scoring on Compliance Indicators and other compliance factors;
- (2) a Results Matrix that includes scoring on Results Elements;
- (3) a Compliance Score and a Results Score;
- (4) an RDA Percentage based on both the Compliance Score and the Results Score; and
- (5) the Virgin Islands' Determination.

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<sup>1</sup> OSEP has used results data on the participation and performance of children with disabilities on the National Assessment of Educational Progress (NAEP) in making determinations for States (but not Entities) since 2014. Although the BIE is the only Entity that administers the NAEP, OSEP has not used NAEP data in making the BIE's determinations because the BIE's NAEP data were previously not available. However, given that the BIE's NAEP data are now available, OSEP is considering using the NAEP data in making the BIE's 2021 determination under IDEA section 616(d).

The RDA Matrix is further explained in a document, entitled “How the Department Made Determinations under Section 616(d) of the Individuals with Disabilities Education Act in 2020: Freely Associated States, Outlying Areas, and the Bureau of Indian Education-Part B” (HTDMD).

The specifics of the determination procedures and criteria are set forth in the HTDMD and reflected in the RDA Matrix for the Virgin Islands. In making Part B determinations in 2020, OSEP continued to use results data related to:

- (1) the participation of children with disabilities (CWD) on regular Statewide assessments;
- (2) the percentage of CWD who graduated with a regular high school diploma; and
- (3) the percentage of CWD who dropped out.

You may access the results of OSEP’s review of the Virgin Islands’ SPP/APR and other relevant data by accessing the EMAPS SPP/APR reporting tool using your Entity-specific log-on information at <https://emaps.ed.gov/suite/>. When you access your Entity’s SPP/APR on the site, you will find, in applicable Indicators 1 through 16, the OSEP Response to the indicator and any actions that the Entity is required to take. The actions that the Entity is required to take are in two places:

- (1) actions related to the correction of findings of noncompliance are in the “OSEP Response” section of the indicator; and
- (2) any other actions that the Entity is required to take are in the “Required Actions” section of the indicator.

It is important for you to review the Introduction to the SPP/APR, which may also include language in the “OSEP Response” and/or “Required Actions” sections.

You will also find all of the following important documents saved as attachments:

- (1) the Virgin Islands’ RDA Matrix;
- (2) the HTDMD document;
- (3) a spreadsheet entitled “2020 Data Rubric Part B,” which shows how OSEP calculated the Virgin Islands’ “Timely and Accurate State-Reported Data” score in the Compliance Matrix; and
- (4) a document entitled “Dispute Resolution 2018-2019,” which includes the IDEA section 618 data that OSEP used to calculate the Virgin Islands’ “Timely State Complaint Decisions” and “Timely Due Process Hearing Decisions” scores in the Compliance Matrix.

As noted above, and 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 IDEA. The Department identifies a State or Entity as needing intervention under IDEA Part B if its RDA Percentage is less than 60%. The Virgin Islands’ RDA Percentage is 52.5% primarily due to its very low results score (0%). Specifically, the Virgin Islands received a score of ‘0’ on the following results elements: the average percentage of third through eighth grade children with disabilities participating in regular Statewide assessments, the percentage of children with disabilities exiting school by dropping out over the previous three years, and the percentage of

children with disabilities exiting school by graduating with a regular high school diploma over the previous three years. In addition, the Virgin Islands received a score of ‘0’ for longstanding noncompliance because the Department has imposed Specific Conditions on the Virgin Islands’ last three IDEA Part B grant awards (as part of the Departmentwide Specific Conditions imposed on all Departmental grants awarded to the Virgin Islands) and those Specific Conditions are in effect at the time of the 2020 determination.

Pursuant to section 616(d)(2)(B) of the IDEA and 34 C.F.R. § 300.603(b)(2), an Entity that is determined to be “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 Entity’s determination. To request a hearing, submit a letter to Mark Schultz, Delegated the authority to perform the functions and duties of the 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 your Entity’s determination.

States and Entities were required to submit Phase III Year Four of the SSIP by April 1, 2020. OSEP appreciates the Virgin Islands’ ongoing work on its SSIP and its efforts to improve results for students with disabilities. We have carefully reviewed and responded to your submission and will provide additional feedback in the upcoming weeks. Additionally, OSEP will continue to work with the Virgin Islands as it implements the fifth year of Phase III of the SSIP, which is due on April 1, 2021.

As a reminder, the Virgin Islands must report annually to the public, by posting on your agency’s website, the performance of each local educational agency (LEA) located in the State on the targets in the SPP/APR as soon as practicable, but no later than 120 days after the Virgin Islands’ submission of its FFY 2018 SPP/APR. In addition, the Virgin Islands must:


- (1) review LEA performance against targets in the Virgin Islands’ SPP/APR;
- (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.

Further, the Virgin Islands must make its SPP/APR available to the public by posting it on your agency’s website. Within the upcoming weeks, OSEP will be finalizing an Entity Profile that:

- (1) includes the Entity’s determination letter and SPP/APR, OSEP attachments, and all Entity attachments that are accessible in accordance with Section 508 of the Rehabilitation Act of 1973; and
- (2) will be accessible to the public via the ed.gov website.

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. Please contact your OSEP State Lead if you have any questions, would like to discuss this further, or want to request technical assistance.

Sincerely,



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Laurie VanderPloeg  
Director  
Office of Special Education Programs

cc: Virgin Islands Director of Special Education