



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

June 23, 2022

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) 2022 determination under Section 616 of the Individuals with Disabilities Education Act (IDEA). The Department has determined that Virgin Islands needs assistance in implementing the requirements of Part B of the IDEA. This determination is based on the totality of Virgin Islands' data and information, including the Federal fiscal year (FFY) 2020 State Performance Plan/Annual Performance Report (SPP/APR), other Entity-reported data, and other publicly available information.

With the FFY 2020 SPP/APR submission, the Office of Special Education Programs (OSEP) requested that States and Entities report whether and how the data collection for any indicator was impacted by the COVID-19 pandemic. Specifically, OSEP requested that States and Entities include in the narrative for each impacted indicator: (1) the impact on data completeness, validity, and/or reliability for the indicator; (2) an explanation of how COVID-19 specifically impacted the State's or Entity's ability to collect and verify the data for the indicator; and (3) any steps the State or Entity took to mitigate the impact of COVID-19 on the data collection and verification. OSEP appreciates States' and Entities' level of transparency regarding the impact of COVID-19 on the data reported in the FFY 2020 SPP/APR. When making determination decisions for 2022, OSEP considered all information submitted that related to the impact of the COVID-19 pandemic. For 2022 determinations, as with 2021 determinations, no State or Entity received a determination of "Needs Intervention" due solely to data impacted by COVID-19.

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 2022, as it did for determinations in 2021.¹ Virgin Islands' 2022 determination is based on the data reflected in the Entity's "2022 Part B Results-Driven Accountability Matrix" (RDA Matrix). The RDA Matrix is individualized for each Entity and consists of:

- (1) a Compliance Matrix that includes scoring on Compliance Indicators and other compliance factors;

¹ For the 2022 determinations, OSEP is using results data on the participation and performance of children with disabilities on the National Assessment of Educational Progress (NAEP) for the 50 States, the District of Columbia, and the Bureau of Indian Education. Starting in 2022, OSEP is using the NAEP data in making the BIE's 2022 determination (as indicated in the 2021 determination letters to States and Entities). OSEP is considering whether to use the available NAEP data in making Puerto Rico's 2023 determination.

- (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 Entity's Determination.

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 2022: 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 Virgin Islands. In making Part B determinations in 2022, OSEP used results data related to:

- (1) the participation and performance of CWD on the most recently administered (school year 2018-2019) National Assessment of Educational Progress (NAEP);²
- (2) the percentage of CWD who graduated with a regular high school diploma; and
- (3) the percentage of CWD who dropped out.

In 2022, States were required to submit a new SPP/APR for FFYs 2020 through 2025. The 2022 submission of the SPP/APR is the third six-year SPP and includes baseline data and measurable and rigorous targets for FFY 2020 through FFY 2025 for each indicator in the SPP/APR. OSEP has reviewed and approved your State's SPP under IDEA Section 616(b) to include measurable and rigorous targets for FFY 2025 that reflect improvement over the State's baseline data. Any action required by the State is reflected in OSEP's response.

For the Department's 2023 determinations, the Department is reviewing and considering whether and how to use existing indicators and/or other available data in making its determinations as part of its continuing effort to prioritize equity and improve results for infants, toddlers and children with disabilities. In April 2022, the Department released an equity action plan as part of its efforts to advance racial equity and support underserved communities. Examples of existing indicators that could be considered and/or be weighted differently include indicators on child find (for Part C) and/or significant discrepancy and disproportionate representation (for Part B). We will offer opportunities for input from the public, including parents, agencies that implement IDEA and other stakeholders, to provide feedback in the coming months, starting with the OSEP Leadership Conference in July 2022 as well as through email submissions and listening sessions open to the public.

As noted earlier, for its 2021 and 2022 determinations, the Department did not issue a determination of “Needs Intervention” to any State because States' SPP/APR data collections for FFY 2019 and FFY 2020 were impacted by COVID-19. OSEP is considering, but has not yet determined, whether and how a State's FFY 2021 SPP/APR data collection that was affected by COVID-19 will be considered in the Department's 2023 determinations.

You may access the results of OSEP's review of Virgin Islands' SPP/APR and other relevant data by accessing the EMAPS SPP/APR reporting tool using your Entity-specific log-on information

² This element applies only to the BIE's determination, and not to other Entities' determinations. See footnote 1.

at <https://emaps.ed.gov/suite/>. When you access Virgin Islands' SPP/APR on the site, you will find, in applicable Indicators 1 through 17, 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 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) Virgin Islands' RDA Matrix;
- (2) the HTDMD document;
- (3) a spreadsheet entitled "2022 Data Rubric Part B," which shows how OSEP calculated Virgin Islands' "Timely and Accurate State-Reported Data" score in the Compliance Matrix; and
- (4) a document entitled "Dispute Resolution 2020-2021," which includes the IDEA Section 618 data that OSEP used to calculate Virgin Islands' "Timely State Complaint Decisions" and "Timely Due Process Hearing Decisions" scores in the Compliance Matrix.

As noted above, Virgin Islands' 2022 determination is Needs Assistance. A State's or Entity's 2022 RDA Determination is Needs Assistance if the RDA Percentage is at least 60% but less than 80%. A State's or Entity's determination would also be Needs Assistance if its RDA Determination percentage is 80% or above but the Department has imposed Specific Conditions on the State's or Entity's last three IDEA Part B grant awards (for FFYs 2019, 2020, and 2021), and those Specific Conditions are in effect at the time of the 2022 determination. While the Virgin Islands' RDA percentage is 52.5%, for 2022 determinations, the Department is issuing a determination of "Needs Assistance" instead of "Needs Intervention" given that the Virgin Islands' low RDA percentage is directly attributable to the Virgin Islands' FFY 2020 SPP/APR assessment data, which were directly impacted by the COVID-19 pandemic as explained further below.

Specifically, due to the significant impact of the COVID-19 pandemic on the quality of the school year 2020-2021 Statewide assessment data, OSEP has determined that the data on participation rates in regular Statewide assessments will not be scored on the Results Matrix to ensure that the 2022 determinations for States and Entities are not negatively impacted by their use of COVID-19 flexibilities available with respect to assessments.³ In addition, because the Virgin Islands does not administer the National Assessment of Educational Progress (NAEP), the elements of the Results Matrix related to the NAEP could not be scored. Therefore, the only elements of the Results Matrix that could be scored for the Virgin Islands were the two exiting data elements, and the results score of 0% is based on only those two elements (rather than the four elements that made up the results component of the Virgin Islands' determination in 2020, when the data were not impacted by COVID-19). Given the impact of the COVID-19 pandemic on the Virgin Islands' assessment data, including the effect on the Virgin Islands' results score

³ The February 22, 2021, letter from the Department's Office of Elementary and Secondary Education to Chief State School Officers offered flexibility with respect to accountability, reporting systems, and assessments for school year 2020-2021.

due to the lack of any results elements related to assessment data and NAEP data, OSEP is issuing its determination for the Virgin Islands to be “Needs Assistance.”

The Department will continue the Specific Conditions on the Virgin Islands’ FFY 2022 IDEA Part B grant award as part of the Department-wide Specific Conditions imposed on all Departmental grants awarded to the Virgin Islands. The specific reporting requirements and other required actions will be described in OSEP’s FFY 2022 IDEA Part B grant award documents.

Virgin Islands’ determination for 2021 was also Needs Assistance. In accordance with Section 616(e)(1) of the IDEA and 34 C.F.R. § 300.604(a), if a State or Entity is determined to need assistance for two consecutive years, the Secretary must take one or more of the following actions:

- (1) advise the State or Entity of available sources of technical assistance that may help the State or Entity address the areas in which it needs assistance and require the State or Entity to work with appropriate entities;
- (2) direct the use of State or Entity-level funds on the area or areas in which the State or Entity needs assistance; or
- (3) identify the State or Entity as a high-risk grantee and impose Specific Conditions on the State’s or Entity’s IDEA Part B grant award.

Pursuant to these requirements, the Secretary is advising Virgin Islands of available sources of technical assistance, including OSEP-funded technical assistance centers and resources at the following websites: [Monitoring and State Improvement Planning \(MSIP\) | OSEP Ideas That Work, Individuals with Disabilities Education Act \(IDEA\) Topic Areas](#), and requiring Virgin Islands to work with appropriate entities. In addition, Virgin Islands should consider accessing technical assistance from other Department-funded centers such as the Comprehensive Centers with resources at the following link: <https://compcenternetwork.org/states>. The Secretary directs Virgin Islands to determine the results elements and/or compliance indicators, and improvement strategies, on which it will focus its use of available technical assistance, in order to improve its performance. We strongly encourage Virgin Islands to access technical assistance related to those results elements and compliance indicators for which Virgin Islands received a score of zero. Virgin Islands must report with its FFY 2021 SPP/APR submission, due February 1, 2023, on:

- (1) the technical assistance sources from which Virgin Islands received assistance; and
- (2) the actions Virgin Islands took as a result of that technical assistance.

As required by IDEA Section 616(e)(7) and 34 C.F.R. § 300.606, Virgin Islands must notify the public that the Secretary of Education has taken the above enforcement actions, including, at a minimum, by posting a public notice on its website and distributing the notice to the media and through public agencies.

As a reminder, the Virgin Islands must report annually to the public, by posting on its agency’s website, the performance of each local educational agency (LEA) located in the Virgin Islands 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 2020 SPP/APR. In addition, the Virgin Islands must:

- (1) review LEA performance against targets in the State’s SPP/APR;

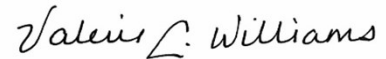
- (2) determine if each LEA “meets the requirements” of Part B, or “needs assistance,” “needs intervention,” or “needs substantial intervention” in implementing Part B of the IDEA;
- (3) take appropriate enforcement action; and
- (4) inform each LEA of its determination.

Further, Virgin Islands must make its SPP/APR available to the public by posting it on its 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 Virgin Islands’ efforts to improve results for children and youth with disabilities and looks forward to working with 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,



Valerie Williams
Director
Office of Special Education Programs

cc: Virgin Islands Director of Special Education