



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

June 20, 2019

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

Dear Commissioner Berry-Benjamin:

I am writing to advise you of the U. S. Department of Education's (Department) 2019 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) 2017 State Performance Plan/Annual Performance Report (SPP/APR), other Entity-reported data, and other publicly available information.

Protecting the rights of children with disabilities and their families is a key responsibility of States, 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: equality of opportunity, full participation, independent living, and economic self-sufficiency. To address this concern, the Office of Special Education Programs (OSEP) has been using results data when making annual determinations for States under IDEA section 616(d) since 2014. 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 2019, as it did for determinations in 2018.

Virgin Islands's 2019 determination is based on the data reflected in the Entity's "2019 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;
- (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 2019:

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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 2019, OSEP used 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.

The Secretary is considering modifying the factors the Department will use in making its determinations in June 2020 as part of its continuing emphasis on results for children with disabilities. Section 616(a)(2) of the IDEA requires that the primary focus of IDEA monitoring must be on improving educational results and functional outcomes for all children with disabilities, and ensuring that States meet the IDEA program requirements, with an emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

The proposed Part B determinations process will include the same compliance factors as in past years, with one addition. For the 2020 determinations, rather than weighting each compliance factor equally, OSEP is considering assigning greater weight to those compliance factors most directly related to improving results for children with disabilities. For the 2020 determinations process we are also considering, as two additional results factors, State-reported data on: preschool child outcomes and the State Systemic Improvement Plan (SSIP). Using preschool outcomes for Part B determinations is consistent with the use of the early childhood outcomes factor that has been used for Part C determinations since 2015. Use of this factor emphasizes the importance of preschool outcomes in promoting later school success for students with disabilities. The inclusion of the SSIP as a results factor in making determinations would continue OSEP’s emphasis on incorporating a results-driven approach as States identify evidence-based practices that lead to improved outcomes for children and youth with disabilities. In addition, we are considering several changes to the results factors related to the participation and performance of children with disabilities on assessments, including: (1) using Statewide assessment results, rather than the National Assessment of Educational Progress performance data; (2) looking at year-to-year improvements in Statewide assessment results and taking into account the full Statewide assessment system, including alternate assessments; and (3) no longer comparing each State’s assessment performance with that of other States. Finally, OSEP will be revisiting ways of measuring improvement in the graduation rate of students with disabilities. As we consider changes to how we use the data under these factors in making the Department’s 2020 determinations, OSEP will provide parents, States, entities, LEAs, and other stakeholders with an opportunity to comment and provide input through OSEP’s Leadership Conference in July 2019 and other meetings.

You may access the results of OSEP’s review of Virgin Islands’ SPP/APR and other relevant data by accessing the SPP/APR module using your Entity-specific log-on information at <https://osep.grads360.org>. When you access Virgin Islands’ 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 to the Progress Page:

- (1) Virgin Islands’ RDA Matrix;
- (2) the HTDMD document;
- (3) a spreadsheet entitled “2019 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 2017-18,” 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’ 2019 determination is Needs Assistance. A State’s or Entity’s 2019 RDA Determination is Needs Assistance if the RDA Percentage is at least 60% but less than 80%. A State or Entity would also be Needs Assistance if its RDA Determination percentage is 80% or above but the Department has imposed Special or Specific Conditions on the State’s or Entity’s last three IDEA Part B grant awards (for FFYs 2016, 2017, and 2018), and those Specific Conditions are in effect at the time of the 2019 determination. Virgin Islands’ RDA percentage is 45%. However, in its FFY 2017 submission Virgin Islands provided information regarding the impact of the 2017 hurricanes for OSEP to consider when making determinations under 616(d)(2) of the IDEA. Specifically, Virgin Islands was unable to collect valid and reliable assessment data because it was not able to administer its reading/language arts and mathematics assessments in FFY 2017 as a result of the damage to the territory’s infrastructure. Therefore, Virgin Islands was unable to report data on the participation of children with disabilities in the general statewide assessment and this element of the Results Matrix could not be scored. In addition, Virgin Islands reported that the damaged infrastructure and the challenges locating families after the hurricanes impacted Virgin Islands’ ability to meet timelines related to Part C to Part B transition. Virgin Islands received a score of zero for this indicator on the Compliance Matrix. Prior to the hurricanes, Virgin Islands had maintained high levels of compliance for this indicator since 2009 and received the full points for this indicator on the Compliance Matrix.

Virgin Islands’s determination for 2018 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 Special 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 website: <https://osep.grads360.org/#program/highlighted-resources/>, 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: <http://www2.ed.gov/programs/newccp/index.html>. 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 2018 SPP/APR submission, due February 3, 2020, 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.

States and Entities were required to submit Phase III Year Three of the SSIP by April 1, 2019. OSEP appreciates Virgin Islands' ongoing work on its SSIP and its efforts to improve results for students with disabilities. We have carefully reviewed your submission and will provide feedback in the upcoming weeks. Additionally, OSEP will continue to work with Virgin Islands as it implements the fourth year of Phase III of the SSIP, which is due on April 1, 2020.

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 2017 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.

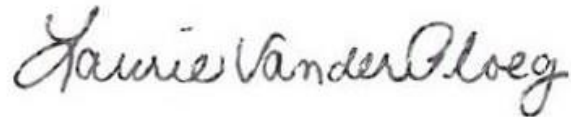
Further, Virgin Islands must make its SPP/APR available to the public by posting it on its agency's website. Within the next several days, OSEP will be finalizing an Entity Profile that:

- (1) will be accessible to the public;

- (2) includes Virgin Islands' determination letter and SPP/APR, and all related State and OSEP attachments; and
- (3) can be accessed via a URL unique to your Entity, which you can use to make your SPP/APR available to the public. We will provide you with the unique URL when it is live.

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,



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Laurie VanderPloeg  
Director  
Office of Special Education Programs

cc: Virgin Islands Director of Special Education