

**Virgin Islands Department of Health – Special Conditions
FFY 2003 IDEA Part C Grant**

PREAMBLE: These special conditions are imposed by the U.S. Department of Education (Department) under the Department's regulations governing "high risk" grantees at 34 CFR §80.12 on the Virgin Islands Department of Health's (VIDH's) grant award under Part C of the Individuals with Disabilities Education Act (IDEA) for federal fiscal years (FFY) 2003. The special conditions are imposed to address compliance problems with the timely provision of early intervention services to infants and toddlers with disabilities and their families in the Virgin Islands under Part C.

I. EXPLANATION OF HIGH RISK STATUS

Under the authority of the Education Department General Administrative Regulations (EDGAR), 34 CFR §80.12, the Department has determined that VIDH is a "high risk" grantee for purposes of Part C of IDEA for FFY 2002 because of problems in addressing waiting lists for early intervention services and because it lacks internal procedures for ensuring the timely payment of service providers. VIDH received Part C grants for federal fiscal year 2002 as a "high risk" grantee with special conditions attached due to programmatic noncompliance and fiscal accountability issues.

In FFY 2002, special conditions were attached to VIDH's Part C grant to ensure prompt reimbursement to all vendors for appropriate expenditures and to prevent interruption of early intervention services to infants and toddlers with disabilities. VIDH is currently reimbursing all vendors in a timely manner through a contract with a third party financial management contractor and obtaining per-diem early intervention providers because timely payments for services are provided. However, because VIDH has not demonstrated that it has instituted its own procedures for ensuring that early intervention provider vendors are paid in a timely manner (to ensure uninterrupted provision of early intervention services to infants and toddlers with disabilities and their families) without using the third party financial management contractor, the Department is continuing the third party financial management contractor special condition provisions to ensure continued, timely payment of early intervention services. OSEP has also aware of ongoing vehicle security and accountability concerns and is continuing the special conditions regarding securing of property only as to the vehicles purchased for use by the Part C program.

In addition, VIDH has not eliminated waiting lists for evaluations and assessments, although substantial progress has been made in reducing the time line for infants and toddlers waiting for evaluations and assessment on the island of St. Croix (according to VIDH's FFY 2002 quarterly reports dated December 23, 2004, April 13, 2004, and July 1, 2004.) VIDH provided no data regarding whether the waiting lists for early intervention services to infants and toddlers with disabilities and their families reported during the FFY 2002 grant year (that were described in VIDH's Quarterly Report submissions to OSEP dated September 16, 2002, December 16, 2002, March 17, 2003, and July 8, 2003 and OSEP's site visit report to VIDH dated September 2, 2003) have been eliminated.

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Having waiting lists for needed Part C services means VIDH is not in compliance with IDEA because Part C requires that each eligible infant or toddler with disabilities and his or her family receive early intervention services based on individualized need in accordance with an Individualized Family Service Plan (IFSP). Federal regulations specify that VIDH must make available in a timely manner to each eligible child early intervention services designed to meet the developmental needs of each eligible child and the needs of the family related to enhancing the child's development. 34 CFR §303.12(a)(1).

Although these Special Conditions are attached to the FFY 2003 Part C grant awards administered by VIDH, the Department acknowledges that it continues to be important for VIDH to have interdepartmental cooperation and communication (with VI Office of Management and Budget, VI Office of Personnel, and VI Office of Finance) so that VIDH can meet its timetable to hire and recruit needed personnel, and, in turn, eliminate waiting lists for services.¹

II. SPECIAL CONDITIONS

A. Financial Management Contractor.

1. **General.** By accepting the FFY 2003 Part C grant of the Individuals with Disabilities Education Act, VIDH is agreeing to continue to contract with the financial management contractor, VI Lutheran Social Services, that was approved by the Department in a letter dated July 31, 2002. If VIDH wishes to amend its contract with the current financial management contractor or decide to change the current contractor, approved by the Department, VIDH will submit to the Department for approval prior to implementation: 1) the name of a proposed contractor for financial management services to provide accurate accounting and timely payments of all obligations under Part C of the Individuals with Disabilities Education Act; 2) the fee or rate that such contractor will charge for such services prior to entering into final negotiations with said proposed contractor; and 3) the proposed contract provisions in accordance with Section II.A.2 of this document. Any such proposed contractor must have both adequate capacity and previous successful experience in the financial management of one or more federal grants awarded to an agency of the Virgin Islands where the amount of such federal grant funds is no less than the amount of the Part C grant.
2. **Contract Provisions.** The contract for financial management must include provision that address the following:

¹ VIDH has an extensive and lengthy hiring process under its current VI personnel hiring system as follows: VIDH must process paperwork through the VI Office of Management and Budget, the VI Office of Personnel, and VI Office of Finance. Lastly, the Governor must approve VIDH's candidate. This procedure typically last 6 – 12 months but can take longer if VIDH is creating a new full-time position

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- a. The contractor's role is limited to processing payments and disbursements, maintaining financial records and reporting. VIDH, and not the contractor, is responsible for approving proposed payments and for any recruiting, hiring, evaluating, licensing, and monitoring of vendors or providers of goods and services for the Part C program;
- b. During all times relevant to this contract, the contractor must maintain adequate insurance to cover all potential liability and loss from misfeasance and/or malfeasance by the contractor and/or its employees. Such insurance will be consistent with the requirements of Virgin Islands law;
- c. At the beginning of the contract period and prior to any draw downs or disbursements, VIDH must provide the contractor with a line item budget for the total amount of the Part C grant, to be used by the contractor to track projected and actual expenditures for the Part C program;
- d. Prior to any drawdowns or disbursements, the contractor must establish and utilize a separate bank account for the Part C program. Any and all Part C funds that VIDH draws down must be deposited directly into this account. The contractor will be responsible for disbursing any and all Part C funds from that account pursuant to approved payment requests submitted by VIDH. Any interest earned by or unclaimed funds remaining in such account must be returned to the United States Department of Education at least quarterly (see 34 CFR §80.21(i));

As long as VIDH continues to expend funds within three business days from the time that VIDH "draws down" the funds from the Department (i.e., the funds are obligated and liquidated by VIDH), the United States Department of Education will not require that an interest-bearing bank account be maintained. However, any interest liability by VIDH is determined under EDGAR Part 80 and the Cash Management Improvement Act.

- e. Prior to any draw downs or disbursements, VIDH and the contractor must follow established procedures and timelines for prompt and timely draw downs by VIDH and disbursements by the contractor consistent with Federal requirements that disbursement occur within 3 business days of draw downs and the requirements below;
- f. VIDH will continue to present approved requests to the contractor for processing and payment no later than 14 business days from the date of the receipt of a notice of an account payable that is an allowable

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expense under Part C, or earlier if needed to ensure timely payment to one or more vendors or providers;

- g. VIDH and the contractor will continue to coordinate the timing of drawdowns and disbursements to ensure that payments to staff, vendors and providers are prompt and timely. VIDH will draw down sufficient Part C funds to cover each approved request for payment into the separate account.
- h. Disbursements must occur no later than 28 business days from the date of the receipt of an account payable that is an allowable expense under Part C, which includes the above-referenced 14 business days for VIDH to present requests for payment to the contractor and 14 business days for VIDH and the contractor to coordinate draw downs and disburse funds, or earlier than 28 business days if needed to ensure timely payment to one or more vendors or providers.
- i. All transactions under this contract are consistent with all applicable federal requirements, including Office of Management and Budget (OMB) Circular A-87 and EDGAR at 34 CFR Parts 76 and 80;
- j. The contractor will continue to maintain financial records in accordance with federal requirements and produce quarterly reports for VIDH detailing: a) the date of its receipt of, and the amount of, each approved payment request; b) the date and amount of each draw down deposit; c) the date and amount of each payment or disbursement by the contractor; and d) any interest or other funds remaining in the account at the end of the quarter. These amounts must also be grouped by and comparable with the projections in the line item budget listed above;
- k. Any other such terms, consistent with items a-j above, as the parties believe are necessary to ensure timely drawdowns and payments to staff, providers and vendors under the Part C program.

B. Quarterly Financial Reports. VIDH will provide quarterly reports to the Department and to the VI Governor detailing: 1) the total number of disbursements (payments) made during the quarterly period; 2) for all disbursements included in number 1, the number of business days between the receipt of each account payable and the date of disbursement for that account; 3) the average number of business days for all disbursements during the quarterly period (the sum total of each number of business days listed in number 2 divided by the total number of disbursements listed in number 1); 4) an analysis of the causes for, and plan to reduce the number of, disbursements made more than 30 business days after receipt of an account payable; and 5) the amount of any interest or other funds remaining in the Part C account at the end of the reporting period. These amounts must also be grouped by and comparable to the projections in the line item budget for the Part

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C program. These reports are due to the Department on November 30, 2004, February 28, 2005, and May 30, 2005.

C. Recruiting and Hiring

Meeting short-term personnel needs

1. By November 30, 2004, VIDH will hire or continue to retain all personnel, including full-time or per diem personnel needed to ensure the provision of services to eliminate the waiting list for early intervention services that VIDH identified during the FFY 2002 grant period or during the FFY 2003 grant period prior to November 30, 2004. VIDH must submit a status report about this special condition in the first quarterly report due to the Department on November 30, 2004.
2. During the FFY 2003 grant period, VIDH will maintain its procedures to expedite its internal personnel system and related payroll process, including hiring per-diem personnel, so that all new staff can be deployed within one month of being hired and receive their first paycheck within one month of starting work and provide a status report in Quarterly Reports due to the Department on November 30, 2004, February 28, 2005, and May 30, 2005.
3. During the FFY 2003 grant period, VIDH will utilize its internal procedures for timely dismissal of non-performing personnel and provide a status report in Quarterly Reports due to the Department on November 30, 2004, February 28, 2005, and May 30, 2005.

Addressing long-term personnel needs

4. By November 30, 2004, VIDH will submit to the Department steps it has taken to implement its plan (submitted to the Department in its December 22, 2003 Quarterly Report) for meeting the long-term early intervention hiring needs, goals and priorities, accomplishments, and timetable to eliminate waiting lists, including: (1) an explanation of all the steps VIDH is taking to expedite hiring of needed personnel, including a full-time Developmental Specialist(s) or other personnel as needed;² (2) a status report of its implementation of the memorandum of agreement with VIDE that provides for each agency to jointly recruit and share needed specialized personnel, such as speech pathologists, physical therapists, occupational therapists, etc; and (3) what other VI governmental agencies are doing or will do to expedite Part C hiring and timetables for doing so.

² VIDH reported in its December 22, 2003 Quarterly Report that interviews would be conducted in April 2004 with the intention of hiring a full-time Developmental Specialist by July 2004.

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Legislative action

5. VIDH will continue to make reasonable efforts in seeking legislative authority to conduct direct hiring of personnel for the VIDH Part C program, similar to the authority currently available to VIDE. A proposal will be sent to the legislature as soon as possible. If enacted, VIDH will implement any such hiring authority within 30 days of enactment. On September 3, 2003 (forwarded in correspondence to OSEP on September 8, 2003), the former VI Commissioner of Health submitted draft legislation to the VI Governor that would empower VIDH to hire needed early intervention personnel directly. The former Commissioner requested the Governor's review and endorsement of this legislative proposal. No further action has been reported in VIDH's FFY 2002 Quarterly Reports.

D. Data Collection and Reporting

VIDH must submit by November 30, 2004 its plan for developing and implementing by February 28, 2005 a data collection system that can accurately report by February 28, 2005 the data under sections II.D.1. and II.D.2. below.

1. In submitting required quarterly reports on November 30, 2004, February 28, 2005, and May 30, 2005 (in Section III (B) of this document), VIDH must report *by island* the:
 - a. Number of infants and toddlers with disabilities who were referred to Part C for evaluation and assessment;
 - b. Number of infants and toddlers who are waiting for evaluations and assessments in any of the five developmental areas within 45 days of initial referral;
 - c. Extent of the delay (i.e., the number of days past the 45 day timeline);
 - d. Number of additional infants and toddlers added to waiting list for evaluations and assessments during the reporting period;
 - e. Reasons for delay in evaluation/assessment including, if applicable, inadequate numbers of personnel in specific disciplines, delays in report writing, and in referring for evaluation/assessments, etc.
2. In submitting required quarterly reports on February 28, 2005, and May 30, 2005 (in Section III (B) of this document), VIDH must report *by island* the:
 - a. Number of infants and toddlers with disabilities for whom the initial IFSP meeting was not held within 45 days from the date of referral and the number of additional infants and toddlers with disabilities added to the list during that reporting period;

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- b. Number of infants and toddlers with disabilities and their families who are not receiving all the Part C services listed on the infant or toddler's IFSP;
- c. Type(s) of early intervention service(s) (including services to families as well as to infants and toddlers with disabilities) that have waiting lists and for each early intervention service, the number of infants and toddlers with disabilities on the waiting list for that particular intervention service and the number of additional infants and toddlers with disabilities added to the waiting list for that service during the reporting period;
- d. The number of minimum and maximum days that each eligible child or the family is on the waiting list for services;
- e. Reasons for delay in provision of early intervention services including, if applicable, inadequate numbers of personnel in specific disciplines and scheduling IFSP meetings, etc.
- f. The number of full-time equivalent personnel (in each discipline) for which early intervention services are listed under II.D.2.c. above.

E. Property Management and Procurement

VIDH will continue to ensure that vehicles bought with Federal funds for the Part C program remain on the appropriate premises for use by authorized early intervention staff, investigate any reports of misuse, and take appropriate action against offenders and provide a status report in Quarterly Reports due to the Department on November 30, 2004, February 28, 2005, and May 30, 2005.

III. OTHER TERMS

- A. **Enforcement.** After receipt of the grant, if VIDH fails to meet any of the special conditions, the Department may take appropriate enforcement action. These terms and conditions do not preclude the Department from taking any otherwise authorized enforcement or other action at any time.
- B. **Submission of Reports.** In addition to the financial reports required under section II (C) above, VIDH must submit to the Department quarterly reports on its progress towards meeting each of the special conditions above and maintenance of conditions outlined in II (A), (B), (C) and (D). These reports are due to the United States Department of Education on November 30, 2004, February 28, 2005, and May 30, 2005. All reports should be submitted to the following address or via e-mail:

Sheryl Parkhurst
U.S. Department of Education
Office of Special Education and Rehabilitative Services
400 Maryland Avenue, SW

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Washington, DC 20202-2550 or
Sheryl.Parkhurst@ed.gov

- C. **Reconsideration and Modifications.** At any time, VIDH may request reconsideration of the above special conditions by contacting the Department and stating reasons why VIDH believes particular conditions are no longer needed. Additionally, the Department may impose additional special conditions or modify these special conditions as appropriate. The Department will remove the special conditions at such time as VIDH demonstrates, to the Department's satisfaction, that the noncompliance has been corrected.
- D. **Relationship to Other Conditions.** These special conditions do not apply to any funds that may be still available under the FFY 1999 and FFY 2000 IDEA Part C grant awards to VIDH. However, VIDH may choose to include those funds in its financial management contract (described in section II (A) above) and those funds will be subject to the same obligation and liquidation time limits noted in section II (A) above.