



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

July 1, 2022

Honorable Justa Encarnacion, RN, BSN, MBA/HCM
Commissioner of Health
US Virgin Island Department of Health
1303 Hospital Ground, Suite 10
Charlotte Amalie, St. Thomas, Virgin Islands 00802

Dear Commissioner Encarnacion:

We have approved the Virgin Islands' application for Federal fiscal year (FFY) 2022 funds, under Part C of the Individuals with Disabilities Education Act (IDEA Part C). Our approval is based on our review of the IDEA Part C application, submitted by the U.S. Virgin Island Department of Health (VIDH) to the U.S. Department of Education (Department), Office of Special Education Programs (OSEP), on May 9, 2022. The effective date of this grant award is July 1, 2022.

Our approval of the Virgin Islands' (VI) FFY 2022 IDEA Part C grant includes approval of policies, procedures, methods, descriptions, assurances, and certifications identified in Section II.A, II.B, and II.C, which is incorporated by reference to this grant award letter as Enclosure A. Our approval is also based on the Virgin Islands' certification in Section II.D of its FFY 2022 application (Enclosure B), that the Virgin Islands' provisions meet the requirements of IDEA Part C as found in 20 U.S.C. §§ 1431 through 1443 and the regulations in 34 C.F.R. Part 303, and that the Virgin Islands will operate its Part C program in accordance with all of the IDEA Part C requirements including required policies, procedures, methods, descriptions, assurances and certifications. See 34 C.F.R. § 76.104.

The Virgin Islands' FFY 2022 IDEA Part C grant award is also being released subject to two sets of Specific Conditions (which are Enclosures C and D to this letter and incorporated in this grant letter by this reference). These Specific Conditions are being imposed by OSEP pursuant to the Department's authority in IDEA Sections 616(g) and 642 and 2 C.F.R. §§ 200.208 and 3474.10. Enclosure C is the Department's 2022 letter that imposes Specific Conditions on the VI Government for all Department grants to the VI (including the enclosed IDEA Part C FFY 2022 grant) to ensure fiscal accountability of grant funds. Enclosure D identifies the IDEA Part C FFY 2022 Specific Conditions imposed on the enclosed grant award to ensure the timely payment of providers of early intervention services to infants and toddlers with disabilities and their families in the VI. By accepting this grant award, VIDH and the VI Government expressly agree to comply with the Specific Conditions identified in both Enclosures C and D for throughout the period that VIDH uses its IDEA Part C FFY 2022 funds.

Enclosed is the Virgin Islands' FFY 2022 grant award for funds currently available under the Consolidated Appropriations Act, 2022 (Public Law 117-103) for the IDEA Part C program. These funds are available for obligation by IDEA grant recipients from July 1, 2022, through September 30, 2024, in accordance with 34 C.F.R. § 76.709.

Under IDEA Section 605, and 2 C.F.R. Part 200, and 34 C.F.R. § 303.104, the State must obtain prior approval to charge certain expenses as direct costs. On October 29, 2019, the Office of Special Education and Rehabilitative Services (OSERS) released a Frequently Asked Questions (2019 FAQs) document on prior approval¹. The State did not identify any such costs in Section III of its grant application. If the State plans to use its FFY 2022 IDEA Part C grant funds for such costs, and those costs fall outside of the scope of the FAQ, it must submit a request for prior approval to which OSEP will respond separate from the grant letter.

Section IV.B of the IDEA Part C FFY 2022 application requested updated information about how your lead agency implements the restricted indirect cost rate requirements in 34 C.F.R. § 303.225(c). Based on VIDH's January 31, 2022 agreement with the U.S. Department of the Interior, VIDH indicated in Section IV.B that it has a **provisional** restricted indirect cost rate of 6.70% that expires on September 30, 2022, and that VIDH as the State lead agency is in the process of negotiating a new restricted indirect cost rate that will be in effect for the FFY 2022 grant period. In Section IV.B, your lead agency also indicated it will continue to bill IDEA Part C FFY 2022 grant funds based on this previously approved restricted indirect cost rate until a final restricted indirect cost rate agreement is approved for FFY 2022. Under 2 C.F.R. § 200.210(a)(15), by accepting this IDEA Part C FFY 2022 grant, your State lead agency will continue to bill the IDEA Part C FFY 2022 grant funds based on this previously approved restricted indirect cost rate, to the extent authorized by your cognizant Federal agency, until a final restricted indirect cost rate agreement is approved for FFY 2022. When a final restricted indirect cost rate is approved by your cognizant Federal agency for FFY 2022, you must forward a copy of it to the Department's Indirect Cost Division and to your OSEP State Lead.

Section 604 of the IDEA provides that “[a] State shall not be immune under the 11th amendment to the Constitution of the United States from suit in Federal court for a violation of this [Act].” Section 606 provides that each recipient of assistance under IDEA make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under the IDEA. Therefore, by accepting this grant, the Virgin Islands is expressly agreeing as a condition of IDEA funding to a waiver of Eleventh Amendment immunity and to ensuring that positive efforts are made to employ and advance employment of qualified individuals with disabilities in programs assisted under the IDEA.

The enclosed grant award of FFY 2022 funds is made with the continued understanding that this Office may, from time to time, require clarification of information within your application, if necessary. These inquiries may be necessary to allow us to appropriately carry out our administrative responsibilities related to IDEA Part C.

If the Virgin Islands revises those IDEA Part C policies or procedures that are required under Part C of the IDEA or the regulations in 34 C.F.R. Part 303, the Virgin Islands must subject those policies and procedures to the public participation requirements in 34 C.F.R. § 303.208 and

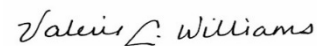
¹Prior approval must be obtained under IDEA for the following direct costs: (1) equipment (2 C.F.R. § 200.1 and 34 C.F.R. § 303.104); (2) participant support costs (2 C.F.R. § 200.1); (3) rent (2 C.F.R. § 200.465 and 34 C.F.R. § 303.225(d)); and capital improvements (IDEA Section 605 and 34 C.F.R. § 303.104). Under the 2019 FAQs, OSERS granted prior approval for participant support costs under IDEA that: are associated with State Interagency Coordinating Councils; incurred during the provision of services under IDEA; do not exceed \$5000 per individual participant per training/conference. In addition, the 2019 FAQs provide prior approval for equipment that is identified on or directly related to the implementation of the IFSP.

receive OSEP approval for those policies and procedures referenced in 34 C.F.R. § 303.101(c) prior to their implementation.

As a reminder, all prime recipients of IDEA (Part B or Part C) funds, must report subaward information as required by the Federal Funding Accountability and Transparency Act of 2006 (FFATA), as amended in 2008. First-tier subaward information must be reported by the end of the following month from when the award was made or obligated. FFATA guidance is found at <https://www.fsrs.gov/>. Please contact your Fiscal Accountability Facilitator if you have further questions.

We appreciate your ongoing commitment to the provision of quality early intervention services to infants and toddlers with disabilities and their families.

Sincerely,



Valerie C. Williams
Director
Office of Special Education Programs

Enclosures

- Enclosure A (Sections II.A-C. of the State's application)
- Enclosure B (Section II.D. of the State's application)
- Enclosure C (Department-wide Specific Conditions)
- Enclosure D (OSEP Programmatic Specific Conditions)

cc: Part C Coordinator

State Name: Virgin Islands

Enclosure A

Section II

A. State Policies, Procedures, Methods, and Descriptions

As checked below, the State hereby declares that it has or has not filed the following policies, procedures, methods, and descriptions with the U.S. Department of Education, and, as of the date of the signature below, affirms and incorporates by reference those policies, procedures, methods, and descriptions with respect to Part C of the Individuals with Disabilities Education Act (IDEA or Act) in 20 U.S.C. 1431–1443 and the Part C regulations in 34 CFR Part 303 (Part C). By submission of this Section II, the State assures that throughout the period of this FFY 2021 grant award, the State will operate consistently with all requirements of Part C of the IDEA in 20 U.S.C. 1431 through 1443 and the Part C regulations in 34 CFR Part 303. The State will develop and/or make such changes to existing policies, procedures, methods, descriptions, and assurances as are necessary to bring the policies, procedures, methods, descriptions, and assurances into compliance with the requirements of the IDEA Part C Act and regulations by the date indicated below and not later than June 30, 2023.

- Check and enter date(s) as applicable.
- Enclose relevant documents.

Yes (If New or Revised is checked, the State is submitting policies, procedures, methods, and descriptions with this application. If already 'On File with OSEP', check OF.)

N = 'New' Policy and/or Procedure

R = 'Revised' Policy and/or Procedure

OF = Policy and/or Procedure is already 'On File' with the USDE

No (Policies, procedures, methods, and descriptions have not been provided. Provide date by which State will submit to OSEP required documentation, which date shall be no later than June 30, 2023.)

Yes: N	Yes: R	Yes: OF	No	State Policies, Procedures, Methods, and Descriptions
—	—	—		Subpart C—State Policies and Procedures
		X	—	1. Each application must include the name of the State lead agency, as designated under §303.120, that will be responsible for the administration of funds provided under this part. (34 CFR §303.201)
		X		2. Each application must include a description of services to be provided under Part C to infants and toddlers with disabilities and their families through the State’s system. (34 CFR §303.203(a))
—	—	—	—	3. Each application must include the State’s policies and procedures regarding the identification and coordination of all available resources within the State from Federal, State, local, and private sources as required under subpart F of 34 CFR Part 303.

				<p><i>The State must have policies and procedures that meet the requirements listed in 3(a) and the methods identified in 3(b), and must provide responses to those entries. If the State has not adopted a system of payments, it may respond "NA" to 3(a).</i></p>
			N/A	<p>(a) If the State has adopted a system of payments, each application must include any policies or procedures adopted by the State as its system of payments and those policies and procedures must meet the requirements in §§303.510, 303.520 and 303.521 (regarding the use of public insurance or benefits, private insurance, or family costs or fees).</p> <p>(34 CFR §303.203(b)(1))</p> <p><i>The policies and procedures listed in 3(a) are optional. Enter 'NA' in the cells to the left if the State has elected not to adopt a system of payments (which includes a system to use public insurance or benefits or private insurance or family fees to pay for Part C services); otherwise check the appropriate response under the 'Yes' column and, if checking 'N' or 'R', attach policies and procedures. The State's response under 3(a) of Section II.A must match the State's response under Section IV.A.</i></p>
		X		<p>(b) Each application must include the methods (State law, regulation, signed interagency or intra-agency agreements or other appropriate written method(s) approved by the Secretary) used by the State to implement the payor of last resort and fiscal responsibility requirements in §303.511(b)(2) and (3).</p> <p>(34 CFR §303.203(b)(2))</p> <p><i>If the State uses signed interagency agreements or "other appropriate written method(s)" to meet the requirements in 3(b), please check 'N' or 'R' and submit with the application. If the State's method is a State statute or regulation, the State does not need to submit that method (the statute or regulation) with its application.</i></p>
		X		<p>4. Each application must include the State's rigorous definition of developmental delay as required under §§303.10 and 303.111. Each Statewide system must include the State's rigorous definition of <u>developmental delay</u>, consistent with §§303.10 and 303.203(c), that will be used by the State in carrying out programs under Part C of the Act in order to appropriately identify infants and toddlers with disabilities who are in need of services under Part C of the Act. The definition must—</p> <p>(a) Describe, for each of the areas listed in §303.21(a)(1), the evaluation and assessment</p>

				<p>procedures, consistent with §303.321, that will be used to measure a child's development; and</p> <p>(b) Specify the level of developmental delay in functioning or other comparable criteria that constitute a developmental delay in one or more of the developmental areas identified in §303.21(a)(1). (34 CFR §§303.203(c) & 303.111)</p>
			N/A	<p>5. If the State provides services under Part C to at-risk infants and toddlers through the statewide system, the application must include—</p> <p>(a) The State's definition of at-risk infants and toddlers with disabilities who are eligible in the State for services under Part C (consistent with §§303.5 and 303.21(b)); and</p> <p>(b) A description of the early intervention services provided under Part C to at-risk infants and toddlers with disabilities who meet the State's definition described in §303.204(a). (34 CFR §303.204).</p> <p><i>The policies and procedures listed in 5 are optional (i.e., they only apply if the State opts to serve at-risk children). Enter 'NA' in the cells to the left if the State has elected not to provide services under Part C to at-risk infants and toddlers; otherwise check the appropriate response under the 'Yes' column and, if checking 'N' or 'R', attach the definition and description.</i></p>
—	—	—	—	<p>6. Each State application must include a description of the State's use of funds under Part C for the fiscal year or years covered by the application. (34 CFR §303.205)</p> <p><i>The State must complete Section III of this application.</i></p>
		X		<p>7. Each application must include the State's policies and procedures that require the referral for early intervention services under Part C of specific children under the age of three, as described in §303.303(b) (which includes children who are the subject of a substantiated case of abuse or neglect, or directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure). (34 CFR §303.206)</p>
		X		<p>8. Each application must include a description of the procedure used by the State to ensure that resources are made available under Part C for all geographic areas within the State. (34 CFR §303.207)</p>
				<p>9. Each application must include a description of the policies and procedures used by the State to ensure that, before adopting any new policy or procedure (including any revision to an existing policy or procedure)</p>

		X	<p>needed to comply with Part C of the Act and 34 CFR Part 303, the lead agency—</p> <ol style="list-style-type: none"> (1) Holds public hearings on the new policy or procedure (including any revision to an existing policy or procedure); (2) Provides notice of the hearings held in accordance with §303.208(b)(1) at least 30 days before the hearings are conducted to enable public participation; and (3) Provides an opportunity for the general public, including individuals with disabilities, parents of infants and toddlers with disabilities, EIS providers, and the members of the Council, to comment for at least 30 days on the new policy or procedure (including any revision to an existing policy or procedure) needed to comply with Part C of the Act and 34 CFR Part 303. <p>(34 CFR §303.208(b))</p>
		X	<p>10. (a) <u>Application Requirements</u>: Each State must include the following in its application:</p> <ol style="list-style-type: none"> (1) A description of the policies and procedures it will use to ensure a smooth transition for infants and toddlers with disabilities under the age of three and their families from receiving early intervention services under Part C to preschool or other appropriate services (for toddlers with disabilities) or exiting the program for infants and toddlers with disabilities. (2) A description of how the State will meet each requirement in §303.209(b) through (f). (3) (i) (A) If the lead agency is not the SEA, an interagency agreement between the lead agency and the SEA; or (B) If the lead agency is the SEA, an intra-agency agreement between the program within that agency that administers Part C of the Act and the program within the agency that administers section 619 of the Act (ii) To ensure a seamless transition between services under Part C and under Part B of the Act, an interagency agreement under paragraph (a)(3)(i)(A) of this section or an intra-agency agreement under paragraph (a)(3)(i)(B) of this section must address how the lead agency and the SEA will meet the requirements of paragraphs (b) through (f) of this section (including any policies adopted by the lead agency under §303.401(d) and (e)), §303.344(h), and 34 CFR 300.101(b), 300.124, 300.321(f) and 300.323(b).

				<p>(4) Any policy the lead agency has adopted under §303.401(d) and (e).</p> <p>(b) <u>Notification to the SEA and appropriate LEA.</u> The State must ensure that—</p> <p>(1) Subject to paragraph (b)(4) of this section, not fewer than 90 days before the third birthday of the toddler with a disability if that toddler may be eligible for preschool services under Part B of the Act, the lead agency notifies the SEA and the LEA for the area in which the toddler resides that the toddler on his or her third birthday will reach the age of eligibility for services under Part B of the Act, as determined in accordance with State law; or</p> <p>(2) Subject to paragraph (b)(4) of this section, if the lead agency determines that the toddler is eligible for early intervention services under Part C of the Act more than 45 but less than 90 days before that toddler’s third birthday and if that toddler may be eligible for preschool services under Part B of the Act, the lead agency, as soon as possible after determining the child’s eligibility, notifies the SEA and the LEA for the area in which the toddler with a disability resides that the toddler on his or her third birthday will reach the age of eligibility for services under Part B of the Act, as determined in accordance with State law; or</p> <p>(3) Subject to paragraph (b)(4) of this section, if a toddler is referred to the lead agency fewer than 45 days before that toddler’s third birthday and that toddler may be eligible for preschool services under Part B of the Act, the lead agency, with parental consent required under §303.414, refers the toddler to the SEA and the LEA for the area in which the toddler resides; but, the lead agency is not required to conduct an evaluation, assessment, or an initial IFSP meeting under these circumstances;</p> <p>(4) The notification required under paragraphs (b)(1), (2), and (3) of this section is consistent with any policy that the State has adopted, under §303.401(e), permitting a parent to object to disclosure of personally identifiable information.</p> <p>(c) <u>Conference to discuss services.</u> The State must ensure that—</p> <p>(1) If a toddler with a disability may be eligible for preschool services under Part B of the Act, the lead agency, with the approval of the family of the toddler, convenes a conference, among the lead agency, the family, and the LEA not fewer than 90 days—and, at the discretion of all of the parties, not more than 9 months—before the toddler’s third birthday to discuss</p>
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				<p>any services the toddler may receive under Part B of the Act.</p> <p>(2) If a toddler with a disability is determined to not be potentially eligible for preschool services under Part B of the Act, the lead agency, with the approval of the family of that toddler, makes reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for the toddler to discuss appropriate services that the toddler may receive.</p> <p>(d) <u>Transition plan</u>. The State must ensure that for all toddlers with disabilities –</p> <p>(1)(i) It reviews the program options for the toddler with a disability for the period from the toddler's third birthday through the remainder of the school year; and</p> <p>(ii) Each family of a toddler with a disability who is served under Part C is included in the development of the transition plan required under this section and §303.344(h);</p> <p>(2) It establishes a transition plan in the IFSP not fewer than 90 days—and, at the discretion of all of the parties, not more than 9 months—before the toddler's third birthday; and</p> <p>(3) The transition plan in the IFSP includes, consistent with §303.344(h), as appropriate—</p> <p>(i) Steps for the toddler with a disability and his or her family to exit from the Part C program; and</p> <p>(ii) Any transition services that the IFSP Team identifies as needed by that toddler and his or her family.</p> <p>(e) <u>Transition conference and plan meeting requirements</u>. Any conference conducted under paragraph (c) of this section or meeting to develop the transition plan under paragraph (d) of this section (which conference and meeting may be combined into one meeting) must meet the requirements in §§303.342(d) and (e) and 303.343(a).</p> <p>(f) <u>Applicability of transition requirements</u>.</p> <p>(1) The transition requirements in paragraphs (b)(1) and (2), (c)(1), and (d) of this section apply to all toddlers with disabilities receiving services under this part before those toddlers turn age three, including any toddler with a disability under the age of three who is served by a State that offers services under §303.211.</p> <p>(2) In a State that offers services under §303.211, for toddlers with disabilities identified in paragraph (b)(1) of this section, the parent must be provided at the transition conference conducted under paragraph (c)(1) of this section: (i) An explanation, consistent with §303.211(b)(1)(ii), of the toddler's</p>
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				<p>options to continue to receive early intervention services under this part or preschool services under section 619 of the Act; (ii) The initial annual notice referenced in §303.211(b)(1). (3) For children with disabilities age three and older who receive services pursuant to §303.211, the State must ensure that it satisfies the separate transition requirements in §303.211(b)(6)(ii).</p> <p>(34 CFR §303.209)</p>
		X		<p>11. Each application must contain a description of State efforts to promote collaboration among Head Start and Early Head Start programs under the Head Start Act (42 U.S.C. 9801, <u>et seq.</u>, as amended), early education and child care programs, and services under Part C.</p> <p>(34 CFR §303.210)</p>
		X		<p>12. Each application must include, as required by Section 427 of the General Education Provisions Act (GEPA), a description of how the State has identified barriers and developed strategies to address the barriers and has provided a description of the steps the State is taking to ensure equitable access to, and participation in, Part C.</p> <p>(34 CFR §303.212(a))</p>
			NA	<p>13. (a) General. (1) Subject to paragraphs (a)(2) and (b) of this section, a State may elect to include in its application for a grant under Part C a State policy, developed and implemented jointly by the lead agency and the SEA, under which a parent of a child with a disability who is eligible for preschool services under section 619 of the Act and who previously received early intervention services under Part C, may choose the continuation of early intervention services under Part C for his or her child after the child turns three until the child enters, or is eligible under State law to enter, kindergarten or elementary school.</p> <p>(2) A State that adopts the policy described in paragraph (a)(1) of this section may determine whether it applies to children with disabilities—</p> <ul style="list-style-type: none"> (i) From age three until the beginning of the school year following the child’s third birthday; (ii) From age three until the beginning of the school year following the child’s fourth birthday; or (iii) From age three until the beginning of the school year following the child’s fifth birthday. <p>(3) However, in no case may a State provide services under this section beyond the age at which the child actually enrolls in, or is eligible under State law to enter, kindergarten or elementary school in the State.</p> <p>(b) <u>Requirements</u>. If a State’s application for a grant under Part C includes the State policy described in</p>

				<p>paragraph (a) of this section, the system must ensure the following:</p> <ol style="list-style-type: none"> (1) Parents of children with disabilities who are eligible for services under section 619 of the Act and who previously received early intervention services under Part C will be provided annual notice (the initial annual notice must be provided as set forth in §303.209(f)(2)(ii)) that contains— <ol style="list-style-type: none"> (i) A description of the rights of the parents to elect to receive services pursuant to §303.211 or under Part B of the Act; and (ii) An explanation of the differences between services provided pursuant to §303.211 and services provided under Part B of the Act, including— <ol style="list-style-type: none"> (A) The types of services and the locations at which the services are provided; (B) The procedural safeguards that apply; and (C) Possible costs (including the costs or fees to be charged to families as described in §§303.520 and 303.521), if any, to parents; and (2) Consistent with §303.344(d), services provided pursuant to §303.211 will include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills. (3) The State policy ensures that any child served pursuant to this section has the right, at any time, to receive FAPE (as that term is defined at §303.15) under Part B of the Act instead of early intervention services under Part C of the Act under §303.211. (4) The lead agency must continue to provide all early intervention services identified in the toddler with a disability's IFSP under §303.344 (and consented to by the parent under §303.342(e)) beyond age three until that toddler's initial eligibility determination under Part B of the Act is made under 34 CFR §300.306. This provision does not apply if the LEA has requested parental consent for the initial evaluation under §300.300(a) and the parent has not provided that consent. (5) The lead agency must obtain informed consent from the parent of any child with a disability for the continuation of early intervention services pursuant to this section for that child. Consent must be obtained before the child reaches three years of age, where practicable. (6)(i) For toddlers with disabilities under the age of three in a State that offers services under this section, the lead agency ensures that the transition
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			<p>requirements in §303.209(b)(1) and (2), (c)(1) and (d) are met.</p> <p>(ii) For toddlers with disabilities age three and older in a State that offers services under this section, the lead agency ensures a smooth transition from services under this section to preschool, kindergarten or elementary school by: (A) Providing the SEA and LEA where the child resides, consistent with any State policy adopted under §303.401(e), the information listed in §303.401(d)(1) not fewer than 90 days before the child will no longer be eligible under subsection (a)(2) of this section to receive early intervention services under this section; (B) With the approval of the parents of the child, convening a transition conference, among the lead agency, the parents, and the LEA, not fewer than 90 days—and, at the discretion of all parties, not more than 9 months—before the child will no longer be eligible under subsection (a)(2) of this section to receive, or will no longer receive, early intervention services under this section, to discuss any services that the child may receive under Part B of the Act; and (C) Establishing a transition plan in the IFSP not fewer than 90 days—and, at the discretion of all parties, not more than 9 months—before the child will no longer be eligible under subsection (a)(2) of this section to receive, or no longer receives, early intervention services under this section.</p> <p>(7) In States that adopt the option to make services under Part C available to children ages three and older pursuant to §303.211, there will be a referral to the Part C system, dependent upon parental consent, of a child under the age of three who directly experiences a substantiated case of trauma due to exposure to family violence, as defined in section 320 of the Family Violence Prevention and Services Act, 42 U.S.C. 10401, et seq.</p> <p>(c) <u>Reporting requirement.</u> If a State includes in its application a State policy described in §303.211(a), the State must submit to the Secretary, in the State's report under §303.124, the number and percentage of children with disabilities who are eligible for services under section 619 of the Act but whose parents choose for their children to continue to receive early intervention services under §303.211.</p> <p>(d) <u>Available funds.</u> The State policy described in §303.211(a) must describe the funds—including an identification as Federal, State, or local funds—that will be used to ensure that the option described in §303.211(a) is available to eligible children and families who provide the consent described in §303.211(b)(5), including fees, if any, to be charged to families as described in §§303.520 and 303.521.</p> <p>(e) <u>Rules of construction.</u></p>
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				<p>(1) If a statewide system includes a State policy described in §303.211(a), a State that provides services in accordance with this section to a child with a disability who is eligible for services under section 619 of the Act will not be required to provide the child FAPE under Part B of the Act for the period of time in which the child is receiving services under §303.211.</p> <p>(2) Nothing in this section may be construed to require a provider of services under Part C to provide a child served under Part C with FAPE.</p> <p>(34 CFR §303.211)</p> <p><i>The policies and procedures listed in 13 are optional. Enter 'NA' in the cells to the left if the State has elected not to develop and implement a policy under 34 CFR §303.211 to make Part C services to children beyond age three; otherwise check the appropriate response under the 'Yes' column and, if checking 'N' or 'R', attach policies and procedures.</i></p>
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B. Assurances and Optional Assurance

The State makes the following assurances and provisions as required by Part C of the Individuals with Disabilities Education Act. (20 U.S.C. 1431 et. seq.; 34 CFR §§303.101-126; 303.220; 303.227)

<p>Yes</p> <p><i>(Assurance is hereby provided.)</i></p>	<p>No</p> <p><i>(Assurance cannot be ensured. Provide date on which State will complete changes in order to provide assurance.)</i></p> <p><i>Check and enter date(s) as applicable</i></p>	<p>Subpart B—Assurances</p> <p>(20 U.S.C. 1434; 1435; and 1437(b); 34 CFR §§303.101-126; 303.220; 303.227)</p>
X		<p>1. The State has adopted a policy that appropriate early intervention services, as defined in 34 CFR §303.13, are available to all infants and toddlers with disabilities in the State and their families, including—</p> <ul style="list-style-type: none"> (a) Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State; (b) Infants and toddlers with disabilities who are homeless children and their families; and (c) Infants and toddlers with disabilities who are wards of the State. <p>(34 CFR §303.101(a))</p>
X		<p>2. The State has in effect a statewide system of early intervention services that meets the requirements of section 635 of the Act, including policies and procedures that address, at a minimum, the components required in 34 CFR §§303.111 through 303.126. (34 CFR §303.101(a))</p>
X		<p>3. The State ensures that any State rules, regulations, policies, and procedures relating to 34 CFR Part 303 conform to the purposes and requirements of 34 CFR Part 303. (34 CFR §303.102)</p>
	—	<p>4. Each statewide system (system) must include, at a minimum, the components described in §§303.111 through 303.126. (34 CFR §303.110)</p>
X		<p>5. The State has a policy in effect that ensures that appropriate early intervention services are based on scientifically based research, to the extent practicable, and are available to all infants and toddlers with disabilities and their families, including—</p> <ul style="list-style-type: none"> (a) Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State; and

		(b) Infants and toddlers with disabilities who are homeless children and their families. (34 CFR §303.112)
X	—	6. (a) The Statewide system ensures the performance of— (1) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State; and (2) A family-directed identification of the needs of the family of the infant or toddler to assist appropriately in the development of the infant or toddler. (b) The evaluation and family-directed identification required in paragraph (a) of this section must meet the requirements of 34 CFR §303.321. (34 CFR §303.113)
X	—	7. The Statewide system ensures that, for each infant or toddler with a disability and his or her family in the State, an IFSP, as defined in 34 CFR §303.20, is developed and implemented that meets the requirements of 34 CFR §§303.340 through 303.345 and that includes service coordination services, as defined in 34 CFR §303.34. (34 CFR §303.114)
X	—	8. The Statewide system includes a comprehensive child find system that meets the requirements in 34 CFR §§303.302 and 303.303. (34 CFR §303.115)
X	—	9. The Statewide system includes a public awareness program that— (a) Focuses on the early identification of infants and toddlers with disabilities; and (b) Provides information to parents of infants and toddlers through primary referral sources in accordance with 34 CFR §303.301. (34 CFR §303.116)
X	—	10. The Statewide system includes a central directory that is accessible to the general public (i.e., through the lead agency's Web site and other appropriate means) and includes accurate, up-to-date information about: (a) Public and private early intervention services, resources, and experts available in the State; (b) Professional and other groups (including parent support and training and information centers, such as those funded under the Act) that provide assistance to infants and toddlers with disabilities eligible under Part C of the Act and their families; and (c) Research and demonstration projects being conducted in the State relating to infants and toddlers with disabilities. (34 CFR §303.117)
	—	11. The Statewide system includes a comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services

X		<p>available in the State. The State’s comprehensive system of personnel development—</p> <p>(a) Includes—</p> <ul style="list-style-type: none"> (1) Training personnel to implement innovative strategies and activities for the recruitment and retention of EIS providers; (2) Promoting the preparation of EIS providers who are fully and appropriately qualified to provide early intervention services under Part C; and (3) Training personnel to coordinate transition services for infants and toddlers with disabilities who are transitioning from an early intervention services program under Part C of the Act to a preschool program under section 619 of the Act, Head Start, Early Head Start, an elementary school program under Part B of the Act, or another appropriate program. <p>(b) May include—</p> <ul style="list-style-type: none"> (1) Training personnel to work in rural and inner-city areas; (2) Training personnel in the emotional and social development of young children; (3) Training personnel to support families in participating fully in the development and implementation of the child’s IFSP; and (4) Training personnel who provide services under this part using standards that are consistent with early learning personnel development standards funded under the State Advisory Council on Early Childhood Education and Care established under the Head Start Act, if applicable. (34 CFR §303.118)
X		<p>12. The Statewide system includes policies and procedures relating to the establishment and maintenance of qualification standards to ensure that personnel necessary to carry out the purposes of Part C are appropriately and adequately prepared and trained. These policies and procedures provide for the establishment and maintenance of qualification standards that are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the profession, discipline, or area in which personnel are providing early intervention services. Nothing in Part C of the Act may be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained and supervised in accordance with State law, regulation, or written policy, to assist in the provision of early intervention services under Part C of the Act to infants and toddlers with disabilities. (34 CFR §303.119(a)–(c))</p>
X	—	<p>13. The Statewide system includes a single line of responsibility in a lead agency designated or established by the Governor that is responsible for the following—</p> <p>(a) (1) The general administration and supervision of programs and activities administered by agencies, institutions, organizations, and EIS providers receiving assistance under Part C of the Act; and</p> <p>(2) The monitoring of programs and activities used by the State</p>

		<p>to carry out Part C of the Act (whether or not the programs or activities are administered by agencies, institutions, organizations, and EIS providers that are receiving assistance under Part C of the Act), to ensure that the State complies with Part C of the Act, including—</p> <ul style="list-style-type: none"> (i) Monitoring agencies, institutions, organizations, and EIS providers used by the State to carry out Part C of the Act; (ii) Enforcing any obligations imposed on those agencies, institutions, organizations, and EIS providers under Part C of the Act and 34 CFR Part 303; (iii) Providing technical assistance, if necessary, to those agencies, institutions, organizations and EIS providers; (iv) Correcting any noncompliance identified through monitoring as soon as possible and in no case later than one year after the lead agency’s identification of the noncompliance; and (v) Conducting the activities in paragraphs (a)(2)(i) through (a)(2)(iv) of this section, consistent with 34 CFR §§303.700 through 303.707, and any other activities required by the State under those sections. <p>(b) The identification and coordination of all available resources for early intervention services within the State, including those from Federal, State, local, and private sources, consistent with subpart F of 34 CFR Part 303.</p> <p>(c) The assignment of financial responsibility in accordance with subpart F of 34 CFR Part 303.</p> <p>(d) The development of procedures in accordance with subpart F of 34 CFR Part 303 to ensure that early intervention services are provided to infants and toddlers with disabilities and their families under Part C of the Act in a timely manner, pending the resolution of any disputes among public agencies or EIS providers.</p> <p>(e) The resolution of intra- and interagency disputes in accordance with subpart F of 34 CFR Part 303.</p> <p>(f) The entry into formal interagency agreements or other written methods of establishing financial responsibility, consistent with 34 CFR §303.511, that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination as set forth in subpart F of 34 CFR Part 303.</p> <p>(34 CFR §303.120)</p>
X		<p>14. The Statewide system includes a policy pertaining to the contracting or making of other arrangements with public or private individuals or agency service providers to provide early intervention services in the State, consistent with the provisions of Part C of the Act and 34 CFR Part 303, including the contents of the application, and the conditions of the contract or other arrangements. The policy —</p>

		<p>(a) Includes a requirement that all early intervention services must meet State standards and be consistent with the provisions of Part C; and</p> <p>(b) Is consistent with the Education Department General Administrative Regulations in 34 CFR Part 80.</p> <p>(34 CFR §303.121)</p>
X		15. The Statewide system includes procedures for securing the timely reimbursement of funds used under Part C of the Act, in accordance with subpart F of 34 CFR Part 303. (34 CFR §303.122)
X		16. The Statewide system includes procedural safeguards that meet the requirements of subpart E of 34 CFR Part 303. (34 CFR §303.123)
X	—	17. The Statewide system includes a system for compiling and reporting timely and accurate data that meets the requirements of 34 CFR §§303.700 through 303.702 and 303.720 through 303.724 and the following requirements. The data system includes a description of the process that the State uses, or will use, to compile data on infants or toddlers with disabilities receiving early intervention services under Part C, including a description of the State’s sampling methods, if sampling is used, for reporting the data required by the Secretary under sections 616 and 618 of the IDEA and 34 CFR §§303.700 through 303.707 and 303.720 through 303.724. (34 CFR §303.124)
X	—	18. The Statewide system includes a State Interagency Coordinating Council (Council) that meets the requirements of subpart G of 34 CFR Part 303. (34 CFR §303.125)
X		<p>19. The Statewide system includes policies and procedures to ensure, consistent with 34 CFR §§303.13(a)(8) (early intervention services), 303.26 (natural environments), and 303.344(d)(1)(ii) (content of an IFSP), that early intervention services for infants and toddlers with disabilities are provided—</p> <p>(a) To the maximum extent appropriate, in natural environments; and</p> <p>(b) In settings other than the natural environment that are most appropriate, as determined by the parent and the IFSP Team, only when early intervention services cannot be achieved satisfactorily in a natural environment.</p> <p>(34 CFR §303.126)</p>
X		20. The Statewide system ensures that Federal funds made available to the State under section 643 of the Act will be expended in accordance with the provisions of 34 CFR Part 303, including §§303.500 and 303.501. (34 CFR §303.221)
X		21. The Statewide system will comply with the requirements in §§303.510 and 303.511 in subpart F of this part. (34 CFR §303.222)
	—	22. The Statewide system ensures that—

X		<p>(a) The control of funds provided under 34 CFR Part 303, and title to property acquired with those funds, will be in a public agency for the uses and purposes provided in 34 CFR Part 303; and</p> <p>(b) A public agency will administer the funds and property.</p> <p>(34 CFR §303.223)</p>
X	—	<p>23. The Statewide system ensures that it will—</p> <p>(a) Make reports in the form and containing the information that the Secretary may require; and</p> <p>(b) Keep records and afford access to those records as the Secretary may find necessary to ensure compliance with the requirements of 34 CFR Part 303, the correctness and verification of reports, and the proper disbursement of funds provided under 34 CFR Part 303.</p> <p>(34 CFR §303.224)</p>
X	—	<p>24. The Statewide system ensures that –</p> <p>(a) Federal funds made available under section 643 of the Act to the State –</p> <ol style="list-style-type: none"> (1) Will not be commingled with State funds; and (2) Will be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds. <p>(b) To meet the requirement in paragraph (a) of this section, the total amount of State and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under this part and their families must be at least equal to the total amount of State and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available. Allowance may be made for—</p> <ol style="list-style-type: none"> (1) A decrease in the number of infants and toddlers who are eligible to receive early intervention services under this part; and (2) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of facilities. <p>(c) Requirement regarding indirect costs.</p> <ol style="list-style-type: none"> (1) Except as provided in paragraph (c)(2) of this section, a lead agency under this part may not charge indirect costs to its Part C grant. (2) If approved by the lead agency's cognizant Federal agency or by the Secretary, the lead agency must charge indirect costs through either— <ol style="list-style-type: none"> (i) A restricted indirect cost rate that meets the requirements in 34 CFR 76.560 through 76.569; or (ii) A cost allocation plan that meets the non-supplanting requirements in paragraph (b) of this section and 34 CFR Part 76 of EDGAR.

		<p><u>(3) In charging indirect costs under paragraph (c)(2)(i) and (c)(2)(ii) of this section, the lead agency may not charge rent, occupancy, or space maintenance costs directly to the Part C grant, unless those costs are specifically approved in advance by the Secretary.</u></p> <p>(34 CFR §303.225)</p>
X	—	<p>25. The Statewide system ensures that fiscal control and fund accounting procedures will be adopted as necessary to ensure proper disbursement of, and accounting for, Federal funds paid under 34 CFR Part 303.</p> <p>(34 CFR §303.226)</p>
X		<p>26. The State ensures that policies and practices have been adopted to ensure that—</p> <p>(a) Traditionally underserved groups, including minority, low-income, homeless, and rural families and children with disabilities who are wards of the State, are meaningfully involved in the planning and implementation of all the requirements of Part C; and</p> <p>(b) These families have access to culturally competent services within their local geographical areas.</p> <p>(34 CFR §303.227)</p>
—	—	Assurance Regarding Optional Policy
	N/A	<p><i>Enter 'NA' in the cell to the left if this assurance is not applicable to your State.</i></p> <p>27. A State may adopt and has adopted a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in paragraphs (a) and (b) of this section. (34 CFR §303.119(d))</p>

C. Certifications

The State Lead Agency is providing the following certifications:

Yes	Certification
X	<p>1. The State certifies that ED Form 80-0013, <i>Certification Regarding Lobbying</i>, is on file with the Secretary of Education.</p> <p>With respect to the <i>Certification Regarding Lobbying</i> the State recertifies that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making or renewal of Federal grants under this program; that the State shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," when required (34 CFR Part 82, Appendix B); and that the State Agency shall require the full certification, as set forth in 34 CFR Part 82, Appendix A, in the award documents for all sub awards at all tiers.</p>
X	<p>2. The State certifies that it has met the certifications in the Education Department General Administrative Regulations (EDGAR) at 34 CFR §80.11 relating to State eligibility, authority and approval to submit and carry out the provisions of its State application, and consistency of that application with State law are in place within the State.</p>
X	<p>3. The State certifies that the arrangements to establish financial responsibility for the provision of Part C services among appropriate public agencies under §303.511 and the lead agency's contracts with EIS providers regarding financial responsibility for the provision of Part C services meet the requirements in §§303.500 through 303.521 and are current as of the date of submission of the certification. (34 CFR §303.202)</p>

D. Statement


I certify that the State of United States Virgin Islands has provided the policies, procedures, methods, descriptions, and assurances checked as 'yes' in Sections II.A and II.B and the certifications required in Section II.C of this application. These provisions meet the requirements of Part C of the Individuals with Disabilities Education Act as found in 20 U.S.C. 1431-1443 (as amended) and the 2011 regulations in 34 CFR Part 303 (as amended). The State will operate its IDEA Part C program in accordance with all of the required policies, procedures, methods, descriptions, assurances and certifications.

If any policies, procedures, methods, descriptions, and assurances have been checked 'no', I certify that the State will operate throughout the period of this grant award consistently with the requirements of the IDEA as found in 20 U.S.C. 1431-1443 (as amended) and the 2011 regulations in 34 CFR Part 303 (as amended), and will make such changes to existing policies and procedures as are necessary to bring those policies and procedures into compliance with the requirements of the IDEA, as amended, as soon as possible, and not later than June 30, 2023. (34 CFR §76.104)

I, the undersigned authorized official of the

United States Virgin Islands Department of Health

am designated under Part C by the Governor of this State to submit this application for FFY 2022 funds under Part C of the Individuals with Disabilities Education Act (IDEA).

Printed/Typed Name and Title of Authorized Representative of the State: Justa Encarnacion RN, MBA/HCM	
Signature: 	Date: 5/5/2022

ENCLOSURE C



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF FINANCE AND OPERATIONS
OFFICE OF ACQUISITION, GRANTS, AND RISK MANAGEMENT

June 29, 2022

The Honorable Albert Bryan Jr., Governor
Office of the Governor
No. 21 Kongens Gade
Charlotte Amalie
St. Thomas, Virgin Islands 00802

Dear Governor Bryan,

The purpose of this letter is to convey to you the enclosed specific conditions, which the U.S. Department of Education (Department or ED) is imposing on all grants awarded to the Government of the Virgin Islands and/or its agencies (Virgin Islands) for Federal fiscal year (FFY) 2022. These specific conditions apply to all grants awarded by the Department to the Virgin Islands on or after the date of these specific conditions.

In addition to applying to all grants awarded to the Virgin Islands for FFY 2022, the specific conditions also apply to all Department grants under the following programs awarded to any Virgin Islands agencies for FFY 2023: Vocational Rehabilitation (Title I of the Rehabilitation Act of 1973, as amended (Rehabilitation Act)), Supported Employment (Title VI of the Rehabilitation Act), Client Assistance Program (section 112 of the Rehabilitation Act), Protection and Advocacy of Individual Rights (section 509 of the Rehabilitation Act), and the Independent Living Services for Older Individuals Who Are Blind (Title VII, Chapter 2 of the Rehabilitation Act) (collectively, Rehabilitation Act programs).

These specific conditions are also applicable to grant funds previously awarded by the Department to the Virgin Islands that are still available for obligation or liquidation as of the date of these specific conditions.

The Department will continue to partner with the Virgin Islands to determine the type of needed actions and support that would be most helpful moving forward to administer and manage Federal education funds with fidelity to meet the social, emotional, mental health, and academic needs of students. The Department acknowledges the progress made by the Virgin Islands over the past year. Specifically, we received acceptable documentation from the Virgin Islands' Office of Management and Budget (VIOMB) as it pertains to its responsibility for deposits to its third-party fiduciary agent (Agent), from its Department of Property and Procurement (VIDPP) for its procurement functions, both its VIDPP and the Department of Education (VIDE) for fixed assets, and with assistance from

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by fostering educational excellence and ensuring equal access.*

the Agent, the Government's completion of its physical inventory. In response to the Additional Conditions imposed in section II.C of the FFY 2021 specific conditions, VIDE has also formed its Internal Audit Division and continues to add resources to that unit and has provided procedures for its program monitoring. The Department will continue to monitor VIDE for successful implementation of the procedures that have been submitted before removing the condition related to program monitoring. The Department also acknowledges that VIOMB has submitted acceptable documentation for the implementation of its Federal Grants Specialized Processing Unit/Self-Contained Model (FGSPU/SCM) and is now working on Phase 5 of this implementation to have the Agent validate and monitor its processes. Once the Agent has validated and monitored the FGSPU/SCM's processes, the FGSPU/SCM may request ED to perform a formal validation.

These specific conditions are largely maintained from FY 2021 because, despite the noted progress, the Virgin Islands has not yet demonstrated that it has fully and effectively developed and implemented its own procedures for resolving the systemic fiscal deficiencies that have affected its ability to properly administer and manage Department funds.

The conditions are imposed in accordance with applicable regulations governing specific conditions and "high-risk" grantees in 2 CFR §§ 200.207 and 3474.10 of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance).

We believe the services of an Agent continue to be necessary to ensure that the Virgin Islands is managing and administering Department funds in accordance with applicable Federal requirements. This is because VI still has not fully addressed several of the specific conditions and continues to demonstrate inefficient implementation of documented processes.

These specific conditions describe the responsibilities of the Virgin Islands and its agencies to continue working with the Agent in administering Department funds. As with the FY 2021 specific conditions, failure of the Virgin Islands and/or its agencies to comply with any of the specific conditions – including working cooperatively and in a timely manner with the Agent to implement the activities described in these specific conditions, and notifying the Department if a dispute arises and remains unresolved between the Agent and the Virgin Islands and/or its agencies concerning implementation of the contract or the administration of grant funds – will negatively impact the ability of the Virgin Islands and/or its agencies to continue to receive Department grants.

These specific conditions also prescribe requirements for the Virgin Islands to continue to make significant improvements in all aspects of its fiscal management of Department grant funds. These improvements include ongoing updates to the Corrective Action Plan (CAP), submitted through VIOMB's FGSPU/SCM, designed to address tasks not completed under previous versions of the CAP, as well as any ongoing tasks, and issues identified by the Agent as part of its assessment of the Virgin Islands' readiness to reassume management of the Federal funds awarded by the Department.

In July 2015, the Virgin Islands Post Compliance Agreement Task Force (PCAT) implemented the FGSPU/SCM as the approach for coordinating financial management across Virgin Islands agencies. In May 2019, the VIOMB developed the SCM Transition Implementation Plan (Plan) which was presented to ED as the proposed multi-phased strategy for reassuming financial oversight of Department grant funds. Implementation of the FGSPU/SCM was suspended in FFY 2020. In FFY 2021, the newly contracted Agent assessed the feasibility of the FGSPU/SCM to operate as designed. After the Agent's review and recommendations, the VIOMB made the decision to reinstate the unit in FFY 2021. The current Agent will continue to assist the Virgin Islands with validating and monitoring the implementation of the model until VIOMB implements Phase 6 of its plan.

Under these specific conditions, the Virgin Islands, VIDE, the Virgin Islands Department of Human Services (VIDHS), and VIOMB must continue to update the CAP to include, among other things, the tasks and actions to be completed as part of the Virgin Islands' implementation of the FGSPU/SCM and any other initiatives that they are undertaking to build fiscal management capabilities and capacity within the Virgin Islands and VIDE. The specific conditions also require the Virgin Islands to submit detailed quarterly reports documenting its progress with meeting the requirements of the CAP. Fully implementing the CAP includes completing and implementing effectively any planned initiatives, tasks, and actions included in the CAP. Additionally, the Virgin Islands must resolve any issues and findings from A-133 single audits, resolve any issues and findings from ED's Office of Inspector General (OIG) audits and/or alert memoranda, and continue to implement improved fiscal management procedures and controls, including those previously required by the 2002 Compliance Agreement. The responsibilities undertaken by the Agent, as prescribed under the specific conditions, may not be carried out by, or transferred to, the FGSPU/SCM or any other Virgin Islands entity or unit until such time as the Department has given approval after determining that the Virgin Islands and VIDE have demonstrated the capacity to ensure fiscal management of Department funds without the services of an Agent. Additionally, these specific conditions require VIDE's, the Virgin Islands Department of Health's (VIDH), and VIDHS's compliance with regulations enforced by the Department's Office for Civil Rights (OCR) and cooperation with OCR on all complaint investigations involving VIDE and/or the VIDHS.

As noted under Section II.I of the conditions, before the Virgin Islands may expend Department grant funds under the grant awards to which these specific conditions are attached, the Virgin Islands must incorporate these specific conditions as an addendum to the current contract executed on December 4, 2020, between the Virgin Islands and McConnell & Jones LLC. This approach enables us to provide funds to the Virgin Islands, while the Virgin Islands continues its efforts to complete and maintain the implementation of systemic improvements. The result we continue to seek is that, with the assistance of the Agent, the Virgin Islands will be able to regain fiscal management responsibilities for, and effectively manage, Department grant funds in the future. The Department continues its commitment to providing essential funding as well as to working closely with you to improve the delivery of Federally supported education programs and other services and will continue to provide technical assistance as needed and/or requested.

If you have any questions, please contact Kim Hicks at (202) 453-6127 or at kim.hicks@ed.gov.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Phillip Juengst".

Phillip Juengst
Deputy Assistant Secretary
Office of Acquisition, Grants, and Risk Management

Enclosures

Electronic cc:

Honorable Albert Bryan Jr., Governor
Mrs. Racquel Berry-Benjamin, Commissioner, Department of Education
Ms. Jenifer O'Neal, Director, Office of Management and Budget
Mr. Anthony Thomas, Commissioner, Department of Property and Procurement
Mr. Kirk Callwood, Sr., Commissioner, Department of Finance
Ms. Justa Encarnacion, Commissioner, Department of Health
Mrs. Kimberly Causey-Gomez, Commissioner, Department of Human Services

U.S. Virgin Islands
Virgin Islands Department of Education
Virgin Islands Department of Health
Virgin Islands Department of Human Services
Federal Fiscal Year (FFY) 2022 and 2023¹ Specific Conditions

PREAMBLE: These specific conditions are imposed on all program grants made available by the U.S. Department of Education (Department or ED) to the U.S. Virgin Islands (Virgin Islands), the Virgin Islands Department of Education (VIDE), the Virgin Islands Department of Health (VIDH), and the Virgin Islands Department of Human Services (VIDHS) on or after the date of these specific conditions. Additionally, these specific conditions apply to all grant funds previously awarded by the Department to the Virgin Islands, VIDE, VIDH, and VIDHS that are still available for obligation or liquidation on the date of these specific conditions.

These grant awards are made in accordance with regulations governing specific conditions and “high-risk” grantees in 2 CFR §§ 200.207 and 3474.10 in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). These specific conditions are imposed because, as explained further below, the Virgin Islands has not been able to demonstrate that it has the capacity to ensure fiscal management of Department grant funds to ensure compliance with Federal grant requirements and fiscal accountability without the use of a third-party fiduciary agent. Therefore, these specific conditions are imposed to help ensure that grant funds awarded by the Department to the Virgin Islands, VIDE, VIDH, and VIDHS are expended in accordance with applicable legal requirements and the appropriate fiscal accountability measures and management practices and controls.

I. BACKGROUND

As a result of serious, systemic, and recurring deficiencies in the administration of ED programs by the Virgin Islands, in 2002 the Department entered into a three-year Compliance Agreement (Agreement) with the Virgin Islands. Under the terms of the Agreement, the Virgin Islands agreed to develop integrated and systemic solutions to address problems identified in the management of ED funds and programs, so that the Virgin Islands would be fiscally accountable in managing these programs and would administer and implement the programs in a manner that would benefit people in the Virgin Islands, in accordance with Federal requirements.

¹ These specific conditions are considered FFY 2023 specific conditions only for purposes of the following programs: Vocational Rehabilitation (Title I of the Rehabilitation Act of 1973, as amended (Rehabilitation Act)), Supported Employment (Title VI of the Rehabilitation Act), Client Assistance Program (section 112 of the Rehabilitation Act), Protection and Advocacy of Individual Rights (section 509 of the Rehabilitation Act), and Independent Living Services for Older Individuals Who Are Blind (Title VII, Chapter 2 of the Rehabilitation Act) (collectively, Rehabilitation Act programs). For all other programs to which they apply, they are considered FFY2022 specific conditions.

The Virgin Islands has not yet demonstrated that it has fully and effectively developed and implemented its own procedures for resolving the systemic fiscal deficiencies; therefore, the Department is continuing these specific conditions on all Department grant awards made to the Virgin Islands, except as expressly otherwise noted in this document, and continuing to require the Virgin Islands to procure the services of a third-party fiduciary agent to manage these funds. These conditions are set forth in further detail below. In addition, because the Virgin Islands has not met the requirements in the former Part 80 of the Education Department General Administrative Regulations (EDGAR), and now the Uniform Guidance in 2 CFR Part 200, regarding the management of Department funds by States, these specific conditions require the Virgin Islands to comply with the provisions of the Uniform Guidance in 2 CFR Part 200 that apply to grantees other than States.

II. SPECIFIC CONDITIONS

A. Requirement for the Virgin Islands, VIDE, VIDH, and VIDHS to Use a Third-Party Fiduciary Agent and Responsibilities for Administration of Grant Funds

To continue to receive Department funds, the Virgin Islands must have a third-party fiduciary agent (Agent) in place (i.e., under contract and capable of performing all duties and responsibilities thereunder), and acceptable to the Department, to administer all Department grant funds that are available to the Virgin Islands for obligation or liquidation. On December 4, 2020, the Virgin Islands executed a new contract with McConnell & Jones LLC.

The Virgin Islands, and all its agencies, including VIDE, VIDHS, VIDH, the Virgin Islands Department of Finance (VIDF), the Virgin Islands Department of Property and Procurement (VIDPP), and the Virgin Islands Office of Management and Budget (VIOMB) must adhere to specific conditions described in Sections II.A and II.E under the contract with McConnell & Jones LLC. The requirement for a third-party fiduciary agent remains in effect under these specific conditions; therefore, when the current contract with McConnell & Jones LLC ends on or about December 3, 2022, the Virgin Islands must continue to use the services of an Agent and must have a new contract in place for third-party fiduciary agent services, or an extension of the current contract if appropriate, at that time. The Department shall have final review and approval of any Agent selected by the Virgin Islands. The Department does not and will not authorize the obligation, liquidation and/or expenditure of Department funds unless an Agent is in place, and operating under a fully executed contract, for the full period of these specific conditions.

In working with the Agent, the Virgin Islands must do the following:

1. The Virgin Islands, VIDE, VIDH and VIDHS are responsible for: (i) executing their respective drawdowns of funds under the grants from the Department's Grants Management System (G5) so that funds are deposited into the separate bank account established and maintained by the Agent; and (ii) providing to the Agent, for deposit into the separate bank account established by the Agent, any matching funds required for the grants. The Virgin Islands, VIDE, VIDH, and VIDHS understand and agree that they must draw down funds

and provide any applicable matching funds to the Agent within 24 hours of receipt of the written notice from the Agent. Further, the Virgin Islands, VIDE, VIDH and VIDHS must develop and implement a standard operating procedure that documents and delineates the policy, processes, and procedures for drawdowns of Department funds, thus providing reasonable assurance of appropriate internal controls. Failure by the Virgin Islands, VIDE, VIDH, or VIDHS to comply with this condition concerning the time within which they must draw down funds and the development and implementation of a drawdown standard operating procedure, may result in the Department requiring the transfer of drawdown authority for that entity (e.g., VIDE, VIDH, or VIDHS) to the Agent for that entity. In the event of the Virgin Islands', VIDE's, VIDH's, or VIDHS' failure to draw down funds in accordance with this condition, the Agent must notify the Department immediately, and the Department will determine whether drawdown authority must be transferred to the Agent. If so, then immediately upon written notice of this decision from the Department, the Virgin Islands, VIDE, VIDH or VIDHS, as appropriate, must take all steps necessary to provide the Agent with full authority to perform drawdowns, including providing any information and authorization that the Department needs to recognize the Agent as the entity withdraw down authority.

2. The Virgin Islands, VIDE, VIDH, and VIDHS must develop and implement a standard operating procedure that documents the use and application of fiscal controls and accounting procedures that ensure proper disbursement of, and accounting for, Federal funds, in accordance with 34 CFR § 75.702 (discretionary grants) and § 76.702 (formula grants), and that meet the requirements imposed on non-Federal entity grantees in 2 CFR §§ 200.302, 200.303, and 200.305(b). The Virgin Islands, VIDE, VIDH, and VIDHS must use fiscal controls and accounting procedures that ensure proper disbursement of, and accounting for, Federal funds, in accordance with 34 CFR § 75.702 (discretionary grants) and § 76.702 (formula grants), and that meet the requirements imposed on non-Federal entity grantees in 2 CFR §§ 200.302, 200.303, and 200.305(b).
3. The Virgin Islands, VIDE, VIDH, and VIDHS must develop and implement a standard operating procedure and guidance for payroll functions involving salaries paid with ED grant funds and establish and maintain an effective and accurate process for tracking and reporting time and effort spent by all employees whose salaries are paid under ED grants, including, but not limited to, maintaining accurate and up-to-date employee staffing lists and notices of personnel actions; distributing time among different funding sources for split-time employees; and properly allocating salary costs among ED grants, based on records that accurately and properly record the distribution of each employee's work on multiple cost objectives, the time the employee attends work, and, for those employees who work on a single cost objective, semiannual certifications. The Virgin Islands, VIDE, and VIDHS must carry out these responsibilities consistent with Federal requirements in 2 CFR Part 200, Subpart E, and more specifically, 2 CFR §§ 200.430 and 200.431.
4. The Virgin Islands, VIDE, VIDH, and VIDHS must develop and implement a standard

operating procedure for procurement functions involving ED grant funds and provide effective oversight for proposed procurements, including, but not limited to, training all staff (SEA and LEA) on, and reviewing all requisitions against, local and ED requirements for procuring goods and services, to facilitate the review and approval by the Agent in a timely manner of purchase orders and to reduce the number of requisitions that are disallowed by the Agent for not meeting these requirements.

5. The Virgin Islands, VIDE, VIDH and VIDHS, as appropriate, must develop and implement guidance requiring that within 24 hours of receipt of a vendor's invoice from the Agent, staff must (i) accept or reject the goods or services, and, if accepted, (ii) draw down funds for the vendor payment for deposit into the separate bank account(s) maintained by the Agent.
6. The VIDE, VIDH, and VIDHS must develop and implement a standard operating procedure for fixed asset functions involving assets acquired with ED grant funds and work with the Agent to ensure that all tangible personal property procured under all ED grants is managed in accordance with the requirements of 2 CFR §§ 200.313(a) and (c)-(e) to ensure that such property with a purchase price of \$500 or greater is properly inventoried, maintained, and stored to prevent loss, damage, or theft of such property. The standard operating procedure must include specific provisions for the safeguarding and handling of fixed assets acquired with ED grant funds in the event of a natural disaster. The Virgin Islands (through VIDPPor another agency designated by the Governor) must conduct a physical inventory of its equipment (as defined in 2 CFR § 200.1) with a purchase price of \$500 or greater that was acquired with ED grant funds at any time and provide a copy of the inventory to the Agent upon completion. A copy of the inventory report shall be provided to the Department upon request.
7. The Department's grant awards to VIDH under Part C of the Individuals with Disabilities Education Act (IDEA) for FFYs 2002 through 2022 include special or specific conditions, which are attached to, and specified in, the respective IDEA Part C grant award letters (IDEA Part C Special or Specific Conditions) for those years. These IDEA Part C Special or Specific Conditions require VIDH to continue to use a separate third party fiduciary agent, which has been Lutheran Social Services (LSS), to ensure the fiscal accountability of IDEA Part C funds and the timely payment of early intervention services providers for the timely provision of IDEA Part C services to infants and toddlers with disabilities and their families in the Virgin Islands. Under these Department-wide specific conditions, VIDH's IDEA Part C grant funds may be used to pay for the services of LSS but may not be used to pay any costs charged by the Agent for work performed pursuant to these Department-wide Specific Conditions.

B. FGSPU/SCM and SCM Transition Implementation Plan

The VIOMB has adopted the FGSPU/SCM for coordinating financial management across Virgin

Islands agencies. The current Agent, McConnell & Jones, is supporting the implementation of this unit.

The VIOMB must provide detailed quarterly reports on the status of the SCM with respect to building its capacity to transition all duties outlined in the Plan to the FGSPU. Each quarterly report must provide an update on the progress made toward the full implementation of the SCM; a description of activities and progress for Plan tasks during the reporting period; documentation of measures of performance and results; evidentiary information (emails, memorandums, Standard Operating Procedures (SOPs), etc.) that support the completion status of tasks; and other data or documentation. The Department will not undertake the review and validation described in the final phase of the SCM Implementation Plan until the Virgin Islands requests reconsideration of the specific conditions in writing, as set forth in Section II.H below.

The Virgin Islands and VIOMB must ensure that the SCM Implementation Plan remains current in its description of all the tasks and actions necessary to be completed as part of the Virgin Islands' and VIOMB's operations and structure of the FGSPU/SCM and any other initiatives that they are undertaking to build fiscal management capabilities and capacity within the Virgin Islands and VIDE. All updates to the SCM Implementation Plan reflecting newly proposed initiatives, activities, tasks, or strategies must be reviewed and approved by the Department.

Finally, each quarterly report must also include updates on the status of the specific conditions in section II.A and the status of the additional condition in section C, paragraph 1 below.

The due dates for the quarterly reports are as follows:

- Quarter 1 Report: Date of FFY 2021 Departmental Specific Conditions to December 31, 2022 - Due on or before January 13, 2023.
- Quarter 2 Report: January 1, 2023, to March 31, 2023 – Due on or before April 14, 2023.
- Quarter 3 Report: April 1, 2022, to June 30, 2022 – Due on or before July 14, 2023.
- Quarter 4 Report: July 1, 2023, to September 30, 2023 – Due on or before October 13, 2022.

Quarterly reports must be submitted on time. In the event of an extraordinary circumstance that may prevent the timely submission of a quarterly report, the Virgin Islands must formally request approval for an extension; see Section II.J below for correspondence contact information.

C. Additional Condition: Program Monitoring

The Virgin Islands, VIDE, VIDH, and VIDHS must conduct comprehensive programmatic monitoring, in accordance with the Uniform Guidance at 2 CFR §§200.329 and 200.332, which require grantees to monitor activities under Federal awards to assure compliance with applicable Federal requirements and that performance expectations are being achieved, and to evaluate the risk of noncompliance. The Virgin Islands, VIDH, and VIDHS must develop and implement a risk-based monitoring protocol, monitoring tools and instruments, and standard operating procedures for monitoring, that includes a risk assessment process designed to effectively prevent, detect, and respond to program mismanagement and potential fraud associated with ED grant programs and funds. The Virgin Islands, VIDE, VIDH, and VIDHS must report implementation progress in the quarterly report submission, as required under Section II.B above.

D. Program-Specific Conditions

In accordance with 34 CFR § 76.132(a)(5), the Virgin Islands and VIDE must submit an annual performance report to the Department, as required under 2 CFR § 200.329, for each of the programs for which they are using funds received under the Consolidated Grant. Each report must contain a comparison of actual accomplishments to the objectives established in the approved Consolidated Grant plans and the reasons why established goals were not met, if appropriate.

Additional program-specific conditions may be imposed on grant awards made under one or more programs, in addition to the specific conditions that are contained herein, because in certain program areas, the Virgin Islands may be a high-risk grantee and require significant improvements in the administration of program requirements. Each such program-specific condition will be incorporated into the appropriate notification of grant award from the Department to the Virgin Islands, VIDE, VIDH or VIDHS.

E. Requirements for the Virgin Islands, VIDE, VIDH, and VIDHS to engage with the Third-Party Fiduciary Agent

1. The Virgin Islands, and its agencies, including VIDF, VIDPP, VIOMB, VIDE, VIDH, and VIDHS must work cooperatively and in a timely manner with the Agent to implement the activities and responsibilities described in these specific conditions. The Virgin Islands and its agencies, including VIDF, VIDPP, VIOMB, VIDE, VIDH, and VIDHS, acknowledge that regular communication among the Virgin Islands, the Department, and the Agent is necessary to ensure proper financial management of grant funds, consistent with approved grant applications, budgets, and applicable program statutes, regulations, and the cost principles in 2 CFR Part 200, Subpart E. Therefore, the Virgin Islands and its agencies, including, VIDPP, VIOMB, VIDE, VIDH, and VIDHS, agree that, as the Department deems necessary and appropriate, the Department shall

include the Agent in communications, both written and oral, between the Virgin Islands and the Department. VIDE also agrees that, with respect to the Consolidated Grant to Insular Areas (Consolidated Grant), VIDE must consult with, and obtain assistance from, the Agent in preparing the budgets that accompany the annual Consolidated Grant application.

2. The Virgin Islands and its agencies, including VIDF, VIDPP, VIOMB, VIDE, VIDH, and VIDHS, must permit, in a timely manner, the Agent's personnel to have access to all financial books, records, and reports related to funds made available to the Virgin Islands, VIDF, VIDPP, VIDE, VIDH and VIDHS by the Department, or used to meet matching requirements, and access to Virgin Islands, VIDF, VIDPP, VIDE, VIDH, and VIDHS personnel for discussion regarding the services the Agent must perform under these specific conditions, as provided for in the contract between the Virgin Islands and the Agent.
3. The Virgin Islands, VIDE, VIDH and VIDHS must notify the Department when any dispute arises and remains unresolved between the Agent and the Virgin Islands, VIDE, VIDH, VIDHS or VIOMB concerning the implementation or continuation of the contract with the Agent, or the implementation of activities supported by Department grants, including the financial management of grant funds. The Virgin Islands, VIDE, VIDH, VIDHS and VIOMB agree to the Department's assistance in the resolution of any such unresolved dispute and agree that this assistance may require compliance with the Department's requests for additional information from the Virgin Islands, VIDE, VIDH, VIDHS, VIDF, VIDPP and/or VIOMB and from the Agent, conference calls among representatives from these entities, and decisions or advice from the Department in resolution of the unresolved dispute. This does not preclude the Virgin Islands and the Agent from exercising formal dispute resolution mechanisms in their contract.
4. The Virgin Islands, VIDE, VIDH, and VIDHS must comply with all Federal laws and regulations that apply to the receipt and use of funds awarded under Department grants, including requirements that apply under the Uniform Guidance at 2 CFR Part 200, Parts 75 and 76 of EDGAR, and applicable Federal program statutes and regulations.
5. The Virgin Islands, VIDE, VIDH, and VIDHS remain responsible for the provision of program services under the respective grants, including the review and approval (where applicable) of local educational agency (LEA) applications for subgrants under State formula grant programs, determination of LEA allocations, and notification to the LEAs regarding their allocations under the grants.

6. The Virgin Islands, VIDE, VIDH, or VIDHS, prior to any drawdowns or disbursements, in a timely manner, must provide the Agent with a line-item budget for the total amount of each grant and subgrant, if applicable, that has been approved and verified by the Department. The line-item budget must include amounts for State administration, State-level program activities, and LEA program activities. For purposes of the Consolidated Grant to Insular Areas (Consolidated Grant), the Virgin Islands and VIDE must provide the Agent with line-item budgets for each of the programs under which the Virgin Islands and VIDE will use Consolidated Grant funds. The line-item budget for each of these programs must be based on the total amount of Consolidated Grant funds to be used for each program and include amounts for State administration, State-level program activities, and LEA program activities. The Virgin Islands, VIDE, VIDH, and VIDHS acknowledge that the Department will provide the Agent with the applications, budgets, and budget narratives that the Department has approved for their grant awards to ensure that the Agent has these documents for purposes of executing its financial management responsibilities on behalf of the Virgin Islands under these grants. The line-item budgets must be available to the Department staff upon request.
7. The Virgin Islands, VIDE, VIDH, and VIDHS must coordinate with the Agent the timing of drawdowns and disbursements to ensure that payments to staff, vendors and providers are prompt and timely. To the greatest extent feasible, the Virgin Islands, VIDE, and VIDHS must draw down funds in a timely manner so that funds under the grants are deposited to the separate bank account(s) maintained by the Agent on the same day that funds are drawn from the account(s) to liquidate obligations under the grants. The Virgin Islands, VIDE, or VIDHS, as appropriate and at the Agent's direction, must draw down sufficient funds under a grant to cover each approved request for payment.
8. The Virgin Islands, VIDE, VIDH, and VIDHS must expend Federal and matching funds only for costs that are allowable under the respective grant programs, in accordance with the regulations and cost principles in 2 CFR Part 200, Subpart E. Additionally, for purposes of the Consolidated Grant, the Virgin Islands, VIDE, VIDH, and VIDHS must expend Federal and matching funds only for allowable costs under, and included in, each Department-approved Consolidated Grant plan from FFYs 2015 through 2021. The Virgin Islands, VIDE, VIDH, and VIDHS acknowledge that the Agent also has the duty to ensure that Department funds are used only for allowable costs, including costs that are necessary, reasonable, and allocable to the respective grants as required by 2 CFR Part 200, Subpart E, and that are procured in accordance with applicable procurement requirements in 2 CFR §§ 200.318-200.327. Where there is a question as to whether a cost is allowable, the Agent must raise this question with the appropriate entity, Virgin Islands, VIDH, VIDE, or VIDHS and, if the Agent deems it necessary, may also request assistance from the Department in determining the allowability of any expenditure.
9. The Virgin Islands, VIDE, VIDH, and VIDHS must charge their grants only for costs resulting from obligations that were properly made during the period of availability for the

funds, including any carryover period. To ensure against the lapsing of Department funds, the Virgin Islands, VIDE, VIDH, and VIDHS must provide the Agent with the amount and nature of all obligations in a timely manner to ensure that the obligations are liquidated no later than 90 days after the end of the funding period or during any extension of that period authorized by the Department, in accordance with 2 CFR § 200.344(b).

10. The Virgin Islands, VIDE, VIDH, and VIDHS must work with the Agent to ensure that the charging of direct and indirect costs against the respective Department grants is consistent with the applicable restricted and unrestricted indirect cost rates negotiated with, and approved by, the U.S. Department of Interior (the Virgin Islands' cognizant Federal agency), and that copies of any indirect cost rate proposals or agreements are provided to the Agent and comply with the applicable requirements of 2 CFR Part 200, Subpart E, and 34 CFR §§ 75.560-564 (discretionary grants) and 34 CFR §§ 76.560-569 (formula grants).
11. The Virgin Islands, including VIDF, VIDPP, VIDE, VIDH, and VIDHS and its Agent must comply with the provisions for procurement set forth in 2 CFR §§ 200.318- 200.327.
12. All transactions under the contract between the Virgin Islands and the Agent must be consistent with all applicable Federal requirements, including those in the Uniform Guidance at 2 CFR Part 200 and EDGAR at 34 CFR Part 75 or 76, as appropriate.
13. The Virgin Islands, including VIDF, VIDPP, VIOMB, VIDE, VIDH and VIDHS, must work with the Agent to assist in training the appropriate Virgin Islands employees and providing transition assistance (including, but not limited to, transferring all necessary data from the Agent to the new CFMS, and communicating information from the Agent to the contractor implementing the new CFMS) when the Virgin Islands implements a new CFMS. The Virgin Islands, VIDE, VIDHS, VIDH and VIOMB acknowledge that the Agent maintains responsibility for managing and administering Department grant funds awarded to the Virgin Islands, VIDE, VIDHS, and, as appropriate, VIDH, in accordance with these specific conditions. The Virgin Islands, VIDE, VIDH, VIDHS and VIOMB shall avoid any actions that may impact the Agent's role and responsibilities under these specific conditions, which do not include oversight of any current and/or proposed fiscal initiatives of the Virgin Islands, including, but not limited to, the Federal Grants Specialized Processing Unit/Self Contained Model (FGSPU/SCM) and the proposed SCM Transition Implementation Plan. The Agent may assist the Virgin Islands' FGSPU/SCM and/or other similar financial management capacity building efforts, to the extent that this assistance does not compromise or interfere with the autonomous execution of its responsibilities under these specific conditions.
14. Except as noted herein, the Virgin Islands, VIDE, VIDH, and VIDHS shall comply with all applicable provisions of EDGAR.
15. The Virgin Islands, VIDE, VIDH, and VIDHS may include any other terms in the

contract with the Agent, consistent with those above, as are necessary to ensure timely liquidation of all Department funds, timely payment to staff, providers and vendors, and general financial management consistent with applicable Federal regulations, under the Department's grants.

F. Notification and Approval of Amendments to Contract Between Virgin Islands and Agent

The Virgin Islands must notify the Department of any proposed amendment to the contract between the Virgin Islands and the Agent and must submit the proposed amendment to the Department for approval prior to execution of the amendment by the parties.

G. Failure to Comply with Conditions

Failure of the Virgin Islands, including VIDF, VIDPP, VIOMB, VIDE, VIDH, or VIDHS to comply with any of these specific conditions as to any Department grant award will negatively impact the ability of the Virgin Islands, VIDE, VIDH, or VIDHS to continue to receive grant funds from the Department. These terms and conditions do not preclude the Department from taking any otherwise authorized enforcement actions at any time.

H. Reconsideration and Modifications

At any time, the Virgin Islands, VIDE, VIDH, VIDHS or VIOMB may request reconsideration of the above specific conditions by contacting the Department and stating in writing the reasons why they believe the conditions should be modified or are no longer needed. Further, the Department may impose additional specific conditions or modify these specific conditions as appropriate. The Department will remove the specific conditions at such time as the Virgin Islands fully demonstrates, to the Department's satisfaction, the ability to manage the Department's funds and property purchased for use under the grants in a manner that complies with applicable Federal requirements concerning accountability and funds management.

I. Incorporation of Specific Conditions as Addendum to Contract

Upon receipt of these specific conditions, and before the Virgin Islands may expend funds under grants subject to these conditions, the Virgin Islands and the Agent must incorporate these specific conditions as a further addendum to the contract between the Virgin Islands and the Agent and must provide written notice to the Department that the conditions have been so incorporated. The terms of these specific conditions supersede the terms of the specific conditions issued on June 29, 2021, to the extent that any provisions in these specific conditions have been modified and are now inconsistent with those prior conditions.

J. U.S. Department of Education Contact

All communications with the Department regarding these specific conditions, including submission of notices, requests, or reports shall be directed to:

Kim Hicks
U.S. Department of Education
Attn: Grants Risk Management Services Division
U.S. Department of Education LBJ Building, 5th Floor
400 Maryland Ave; SW Washington, DC 20202
Kim.Hicks@ed.gov

Dated: June 29, 2022

Attachment A

Responsibilities and Requirements for the Third-Party Fiduciary Agent (to be incorporated into any contract for services with the Agent)

The responsibilities and requirements for the Agent under these specific conditions are as follows:

1. The Agent must work cooperatively and in a timely manner with the Virgin Islands and all its agencies, including VIDF, VIDPP, VIOMB, VIDE, VIDH, and VIDHS to implement the activities and responsibilities described in these specific conditions. The Agent acknowledges that regular communication among the Virgin Islands, the Department, and the Agent is necessary to ensure proper financial management of grant funds, consistent with approved grant applications, budgets, and applicable program statutes, regulations and the cost principles in 2 CFR Part 200, Subpart E. Therefore, the Agent understands and agrees that, as the Department deems necessary and appropriate, the Department shall include the Agent in communications, both written and oral, between the Virgin Islands and the Department.
2. The Agent's role encompasses financial management responsibilities concerning the grants, including, but not limited to, processing payments and disbursements, maintaining financial records, financial reporting, instituting, and applying procurement, inventory, and payroll procedures that comply with applicable Federal requirements, and other duties as more fully described below. In addition, with respect to the Consolidated Grant, the Agent agrees to provide assistance to VIDE as it prepares the budgets that accompany the annual Consolidated Grant application.
3. For purposes of the IDEA Part C FFYs 2002 through 2022 grants, the Agent has been and is responsible only for the property procurement and management functions that are required to be performed under the Uniform Guidance at 2 CFR Part 200 (including 2 CFR §§ 200.311, 200.313, 200.314, and 200.318-200.327) by VIDPP, and any financial management functions needed to be performed by VIDF for the IDEA Part C grants, and which are not being performed already under the contract between VIDH and LSS. The Department's grant awards to VIDH under IDEA Part C for FFYs 2002 through 2021 include specific conditions requiring VIDH to use LSS to ensure the continued fiscal accountability of IDEA Part C funds and the timely payment of early intervention service providers for the timely provision of IDEA Part C services to infants and toddlers with disabilities and their families. Because VIDH's IDEA Part C grants for FFYs 2002 through 2022 include specific conditions requiring the use of a third-party fiduciary agent (LSS) that carries out VIDH's financial management and recordkeeping responsibilities in accordance with the applicable provisions of IDEA Part C and EDGAR, the Agent performing services under these Department-wide specific conditions, McConnell & Jones LLC, is not required to assume responsibilities

other than the responsibilities described above in this subsection. In addition, VIDH's IDEA Part C grant funds may not be used to pay any costs charged by the Agent (McConnell & Jones LLC) to the Virgin Islands or VIDH under the contract between the Virgin Islands and the Agent.

4. The Virgin Islands, VIDE, or VIDHS, prior to any drawdowns or disbursements, in a timely manner, must provide the Agent with a line-item budget for the total amount of each grant and subgrant, if applicable, that has been approved and verified by the Department. The line-item budget must include amounts for State administration, State-level program activities, and LEA program activities. For purposes of the Consolidated Grant, the Virgin Islands and VIDE must provide the Agent with line-item budgets for each of the programs under which the Virgin Islands and VIDE will use Consolidated Grant funds. The line-item budget for each of these programs must be based on the total amount of Consolidated Grant funds to be used for each program and include amounts for State administration, State-level program activities, and LEA program activities. The Agent must use the line item budgets to track projected and actual expenditures for the programs under the grants. The Agent must ensure that the expenditures proposed are only for allowable costs under each grant. The Agent will also receive from the Department copies of the applications, budgets, and budget narratives that the Department has approved for the Virgin Islands' grant awards to ensure that the Agent has these documents for purposes of executing its financial management responsibilities on behalf of the Virgin Islands under these grants.
5. The Agent must establish, maintain, and manage a separate bank account for all the funds under the grants from the Department. The Agent must provide the Virgin Islands, VIDE, and VIDHS, as appropriate, with written notice (e.g., copy of invoice) of when funds are needed for a disbursement under a particular grant.
6. The Agent must acknowledge that the Virgin Islands, VIDE, and VIDHS have drawdown authority and that they understand and agree that they must draw down funds and provide any applicable matching funds to the Agent within 24 hours of receipt of the written notice from the Agent. Failure by the Virgin Islands, VIDE, or VIDHS to comply with this condition concerning the time within which they must draw down funds may result in the Department requiring the transfer of drawdown authority to the Agent for that entity. In the event of the Virgin Islands', VIDE's, or VIDHS' failure to draw down funds in accordance with this condition, the Agent must notify the Department, and the Department will determine whether drawdown authority must be transferred to the Agent. If so, then immediately upon written notice of this decision from the Department, the Virgin Islands, VIDE or VIDHS, as appropriate, must take all steps necessary to provide the Agent with full authority to perform drawdowns, including providing any information and authorization that the Department needs to recognize the Agent as the entity with drawdown authority.
7. The Agent must use fiscal control and accounting procedures that meet the requirements

imposed on non-Federal entity grantees in accordance with 2 CFR §§ 200.302, 200.303, and 200.305(b).

8. The Agent must expend funds only for costs that are allowable under the respective grant programs, in accordance with 2 CFR Part 200, Subpart E. Additionally, for purposes of the Consolidated Grant, the Agent must expend funds only for allowable costs under, and included in, each Department-approved Consolidated Grant plan from FFYs 2015 through 2022. If the Agent questions whether an expenditure is allowable, the Agent must raise this question with the appropriate entity, the Virgin Islands, VIDE, or VIDHS. If the Agent deems it necessary, the Agent may also request assistance from the Department in determining the allowability of any expenditure.
9. The Agent must determine the value of any in-kind property or services donated to or provided by the Virgin Islands, VIDE, and VIDHS that are used to meet cost sharing or matching requirements as required by 2 CFR § 200.306 and must maintain records sufficient to document the bases for those valuations.
10. The Agent must take steps to prevent the lapsing of funds available under the grants, including ensuring timely disbursement of funds using methods and procedures for payment that minimize the time elapsing between the transfer of funds and disbursement of those funds as specified in the Virgin Islands' Treasury-State agreement, as required under the Cash Management Improvement Act and Treasury regulations at 31CFR Part 205. For grant funds not included in the Virgin Islands' Treasury-State agreement, the Agent must meet the requirements in 2 CFR § 200.305(b). The Virgin Islands, VIDE, VIDHS, and the Agent must coordinate the timing of drawdowns and disbursements to ensure that payments to staff, vendors and providers are prompt and timely. To the greatest extent feasible, the Virgin Islands, VIDE, VIDHS, or the Agent, if it has undertaken drawdown responsibility, must draw down funds in a timely manner so that funds under the grants are deposited to the separate bank account maintained by the Agent on the same day that funds are drawn from the account to liquidate obligations under the grants. The Agent must ensure that any interest earned on grant funds not subject to the Treasury-State agreement is repaid annually, as required by 2 CFR § 200.305(b)(9).
11. The Agent must charge Department grants only for costs resulting from obligations that were properly made during the period of availability for the funds, including any carryover period. To ensure against the lapsing of Department funds, the Agent must liquidate obligations no later than 90 days after the end of the funding period or during any extension of that period authorized by the Department, in accordance with 2 CFR § 200.344(b).
12. The Agent may seek approval from the Department to charge allowable pre-award costs incurred by the Virgin Islands, VIDE, VIDH, or VIDHS against any grant award from FFY 2015 through 2022 to which these specific conditions apply. The Agent must

submit any request for pre-award costs to the Department in writing and may not reimburse any pre- award costs unless it receives written approval from the Department.

13. The Agent must establish and maintain a process for tracking and reporting time and effort spent by all employees whose salaries are paid under ED grants, including distribution of time among different funding sources for split-time employees, and for properly allocating salary costs among ED grants, based on records that accurately and properly record the distribution of each employee's work on multiple cost objectives, the time the employee attends work, and, for those employees who work on a single cost objective, semiannual certifications. The Agent must carry out these responsibilities consistent with Federal requirements in 2 CFR Part 200, Subpart E, and more specifically, 2 CFR §§ 200.430 and 200.431.
14. In disbursing funds for allowable costs under the grants, the Agent must distinguish between direct and indirect costs and use accurate methods to allocate funds correctly between these two cost categories. The Agent must ensure that the charging of direct and indirect costs against the respective Department grants is consistent with the applicable restricted and unrestricted indirect cost rates negotiated with, and approved by, the U.S. Department of Interior (the Virgin Islands' cognizant Federal agency), and that copies of any indirect cost rate proposals or agreements comply with the applicable requirements of 2 CFR Part 200, Subpart E, and 34 CFR §§ 75.560-564 (discretionary grants) and 34 CFR §§ 76.560-569 (formula grants).
15. The Agent must establish contacts and working relationships with prospective vendors that can provide goods and services that the Virgin Islands, VIDE, and VIDHS need under the grants. The Virgin Islands, VIDE, and VIDHS, and, as appropriate, VIDH, must comply with the provisions for procurement set forth in 2 CFR §§ 200.318-200.327.
16. Within 24 hours of the Agent's receipt of a vendor invoice, the Agent must provide a copy of the invoice to the Virgin Islands, VIDE, VIDHS, or, as appropriate, VIDH, and ensure that the goods or services delivered are available for inspection and acceptance or rejection by the appropriate Virgin Islands, VIDE, VIDHS, or, as appropriate, VIDH, staff requesting the goods or services. The Agent must pay vendors for the delivered goods or services and must, to the extent reasonably possible, disburse funds to the vendors on the same day that funds are deposited into the separate bank account(s) maintained by the Agent. The Agent must make payments by electronic funds transfer (EFT) or by paper draft only if EFT is not available or possible for a particular vendor.
17. The Agent must manage all tangible personal property procured under the grants, with a purchase price of \$500 or greater, in accordance with the requirements of 2 CFR §§ 200.313(a) and (c)-(e). In particular, the Agent must establish and maintain a process for managing such property consistent with the requirements of 2 CFR § 200.313(d),

including reconciling the inventory conducted by the Virgin Islands under Section II.A.6 of these specific conditions with existing property records; developing a system for maintaining property records and for identifying property acquired with ED grant funds; and establishing a control system to prevent loss, damage, or theft of the property.

18. The Agent must maintain records that fully show the amount of funds made available under each of the grants; how the Virgin Islands, VIDE, or VIDHS uses the funds; the total cost of each project; the share of that cost provided from other sources; and other records to facilitate an effective audit, in accordance with 34 CFR § 75.730 (discretionary grants) and § 76.730 (formula grants). The Agent, acting on behalf of the Virgin Islands, VIDE and VIDHS, must retain records in accordance with the provisions of 2 CFR § 200.334.
19. In general, the Agent must use fiscal control and fund accounting procedures that ensure proper disbursement of, and accounting for, Federal funds, in accordance with 34 CFR § 75.702 (discretionary grants), § 76.702 (formula grants), and 2 CFR §§ 200.302, 200.303, and 200.305(b).
20. The Agent must maintain insurance as required under the terms of the contract.
21. All transactions under the contract between the Virgin Islands and the Agent must be consistent with all applicable Federal requirements, including the Uniform Guidance at 2 CFR Part 200 and EDGAR at 34 CFR Part 75 or 76, as appropriate.
22. The Agent must comply generally with the requirements of 2 CFR § 200.327. More specifically, the Agent should produce quarterly reports concerning financial transactions of the Virgin Islands, VIDE, VIDHS and VIOMB for submission to those entities and the Department, detailing for each grant awarded to the Virgin Islands, VIDE, and VIDHS, including for each individual program for which the Virgin Islands and VIDE are using Consolidated Grant funds: a) the date of receipt, 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 Agent; 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 budgets described in Section II.E.6 of the specific conditions and must be reconciled with the Department's grants management system. This reconciliation must include drawdown dates, drawdown amounts and available balances, by award. These reports shall be due within 10 working days after the end of each quarter. The Agent must work with the Virgin Islands, VIDE, VIDHS, VIDF, VIDPP, and VIOMB to assist in the training of employees and to provide transition assistance (including, but not limited to, transferring all necessary data from the Agent to the new credible financial management system (CFMS), communicating information from the Agent to the contractor implementing the new CFMS, and providing feedback to the Virgin Islands, VIDE, and the Department on the Virgin Islands' implementation of the new CFMS), as the Virgin Islands implements

and fully transitions staff to the new CFMS.

23. The Agent is responsible for managing and administering Department grant funds awarded to the Virgin Islands, VIDE, VIDHS, and, as appropriate, VIDH, in accordance with these specific conditions. The Agent's role and responsibilities under these specific conditions do not include oversight of any current and/or proposed fiscal initiatives of the Virgin Islands, including, but not limited to, the FGSPU/SCM and the SCM Implementation Plan. The Agent may assist the Virgin Islands with the full implementation of the FGSPU/SCM and the SCM Implementation Plan, as the proposed strategy for the management and oversight of Department grant funds and/or other similar financial management capacity building efforts (including training, mentoring and/or shadowing), to the extent that this assistance does not compromise the execution and autonomy of its responsibilities under these specific conditions.
24. The Agent recognizes that, except as noted herein, the Virgin Islands, VIDE, VIDH, VIDHS and VIOMB must comply with all applicable provisions of EDGAR, and all actions that the Agent takes on their behalf in accordance with services provided under these specific conditions, must be in compliance with all applicable provisions of EDGAR.

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I. Basis for Requiring Specific Conditions

These specific conditions are imposed pursuant to sections 616(g) and 642 of the Individuals with Disabilities Education Act (IDEA) and 2 C.F.R. §§ 200.208 and 3474.10 by the U.S. Department of Education's (Department's) Office of Special Education Programs (OSEP). OSEP is designating the Virgin Islands Department of Health (VIDH) as a "high risk" grantee and imposing specific conditions on VIDH's Federal Fiscal Year (FFY) 2022 grant award under Part C of Individuals with Disabilities Education Act (IDEA). These specific conditions are imposed to require that VIDH continues to use its third-party agent, Lutheran Social Services (LSS or contractor herein) or other agreed-upon agent to promptly pay early intervention service (EIS) providers. VIDH's prompt payment of EIS providers is essential to ensuring the timely provision of IDEA Part C services to infants and toddlers with disabilities and their families in the Virgin Islands, as required by IDEA sections 633 and 634 and 34 CFR § 303.342(e) (timely service provision). It is also essential to manage fiscal accountability of the IDEA Part C funds as required by 2 CFR Part 200, and 34 CFR Parts 76 and 303.

These specific conditions are imposed because the Virgin Islands' (VI's) Government and VIDH do not have in place procedures to ensure prompt payment of EIS providers without using a third party contractor. LSS has served effectively and continuously as the third-party fiscal agent for VIDH's early intervention program since the Department's FFY 2001 IDEA Part C grant award.

Although these specific conditions are attached to VIDH's FFY 2022 IDEA Part C grant award, they also apply to all other IDEA Part C funds available for obligation after July 1, 2022 by VIDH as well as to the VI Government.¹ By accepting the FFY 2022 IDEA Part C grant, the VI Government and VIDH agree to comply with the following specific conditions.

II. Nature of the Specific Conditions

A. Contract to Ensure Timely Liquidations and Disbursements

1. Requirement to Maintain Contract.

- a. Use of Third Party Contractor: On December 9, 2020, VIDH submitted its updated contract between the VI Government (on behalf of VIDH) and the third party contractor, LSS. The VI Government has provided OSEP with a copy of this contract and reported that it is valid and in effect through November 5, 2023. Under these FFY 2022 Specific Conditions, the VI Government and VIDH agree to continue to implement this contract.
- b. Continuance of Contract: VI may obligate its FFY 2022 IDEA Part C funds from July 1, 2022 through September 30, 2024 (through the Tydings period). VIDH

¹ These IDEA Part C specific conditions are referenced in the FFY 2021 Department-wide Specific Conditions (DWSC), which are a separate enclosure and require the use of a separate third-party agent (not LSS) for all of the Department's grants to the VI Government for fiscal accountability and management. The Department recognizes the importance of VIDH's coordination with, and cooperation from, the Government of VI, Property and Procurement, the VI Office of Management and Budget, the VI Office of Personnel, the VI Office of Finance, and the third party agent under contract with the VI Government under the DWSC to ensure the timely provision of IDEA Part C services to infants and toddlers with disabilities and their families.

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and the VI Government must continue its contract with LSS with the contract terms contained therein until a new contract is approved by OSEP and executed.

- c. **Contract Modification:** If VIDH wishes to amend its contract with LSS or seeks another third-party agent, VIDH must submit a written request with draft contract language and any proposed contractor to OSEP. A new contract may not be implemented by VIDH unless OSEP has provided written approval for the contract terms and any revised third-party agent.
2. **Contract Provisions.** The Contract must include the following provisions.
- a. The contractor's role is limited to processing payments and disbursements and maintaining financial records and reporting as required under the Office of Management and Budget (OMB) Uniform Guidance, codified in 2 CFR Part 200, the Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 and Part C of the IDEA in 34 CFR Part 303. VIDH, and not the contractor, is responsible for approving the reasonableness and necessity of any proposed payments and for any recruiting, hiring, evaluating, licensing, and IDEA Part C general supervision responsibilities, including monitoring of IDEA Part C vendors or EIS providers of goods and services for the IDEA Part C program.
- b. During the duration of the contract, the contractor must maintain adequate liability insurance to cover all potential liability and loss from misfeasance and/or malfeasance by the contractor and/or its employees. Such insurance must be consistent with the requirements of Virgin Islands' law.
- c. At the beginning of the contract period, and prior to any liquidations by VIDH from the Department of FFY 2022 IDEA Part C funds, or disbursements of any such funds by LSS, VIDH must provide LSS with a line item budget for the total amount of the IDEA Part C grant to be used by the contractor to track projected and actual expenditures for the IDEA Part C program.
- d. Prior to any liquidations or disbursements, the contractor must establish, maintain, and utilize a separate bank account for IDEA Part C program funds. Any and all Part C funds that VIDH liquidates 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 Department at least annually. Interest amounts up to \$500 per year may be retained by the non-Federal entity for administrative expense. (See, 34 CFR § 200.305(b)(9)).
- However, as long as VIDH continues to expend its IDEA Part C funds within three business days from the time that VIDH liquidates the funds from the Department (i.e., the funds are obligated and liquidated by VIDH), the Department will not require that an interest-bearing bank account be maintained. Any interest liability for delayed payments for expenditures by VIDH shall be determined under the OMB Uniform Guidance, codified in 2 CFR §§ 200.300 through 200.309 (fiscal management requirements) and the Cash Management Improvement Act.

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- e. Prior to any liquidations or disbursements, VIDH and the contractor must follow established procedures and timelines for prompt and timely liquidations by VIDH and disbursements by the contractor consistent with Federal requirements that disbursements occur within 3 business days of draw downs or liquidations 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 by VIDH of a notice of an account payable that is an allowable expense under IDEA Part C, or earlier if needed to ensure timely payment to one or more Part C vendors or providers.
- g. VIDH and the contractor will continue to coordinate the timing of liquidations and disbursements to ensure that payments to IDEA Part C staff, vendors and EIS providers are prompt and timely. VIDH will draw down or liquidate sufficient IDEA 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 IDEA 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 the Contract are consistent with all applicable Federal grant management requirements, as reflected in the OMB Uniform Guidance, codified in 2 CFR §§ 200.300 through 200.309 (fiscal management requirements) and 200.317 through 200.326 (procurement requirements) and applicable EDGAR provisions, codified in 34 CFR Part 76.500 through 76.583.
- 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 liquidation 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 IDEA Part C program.

B. Submissions and Financial Reporting

In addition, VIDH must provide two reports due on February 1, 2023 (with VIDH's FFY 2021 state performance plan and annual performance report or SPP/APR submission) and May 1, 2023, and provide in each report:

- 1) The total number of disbursements made from the last report to OSEP through the reporting date;

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- 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 to the vendor for that account;
- 3) The average number of business days for all disbursements during the reporting period (the total 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, any 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 (grouped by, and comparable to, the projections in the line item budget for the IDEA Part C program).

III. Evidence Necessary for Conditions To Be Removed

The Department will remove the Specific Conditions during FFY 2022 if VIDH provides documentation, satisfactory to the the Department, that it has in place its own procedures to ensure the timely payment of IDEA Part C vendors and EIS providers and manage IDEA Part C funds, as set forth in the specific conditions above.

IV. Method of Requesting Reconsideration

VIDH may write to David Cantrell, Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services, at the address below, if it wishes the Department to reconsider any aspect of these FFY 2022 IDEA Part C specific conditions. The request must describe in detail the changes to the specific conditions sought by the Virgin Islands and VIDH and the reasons for those requested changes.

V. Submission of Reports

VIDH must submit all reports required under these specific conditions to:

U.S. Department of Education
Office of Specific Education and Rehabilitative Services
Attn.: Jennifer Miley
400 Maryland Avenue, S.W.
Washington, D.C. 20202-2550
By email: jennifer.miley@ed.gov