Honorable David A. Berns  
Director  
Department of Economic Security  
1717 West Jefferson Street  
P.O. Box 6123  
Phoenix, Arizona 85005

Dear Director Berns:

This is to inform you that we have conditionally approved Arizona's Application, including policies, procedures, methods, descriptions, and assurances, for Federal Fiscal Year (FFY) 2005 under Part C of the Individuals with Disabilities Education Act (IDEA). Our determination that you are eligible for a conditional approval is based on our receipt of the Part C Application for FFY 2005, including the policies, procedures, methods, descriptions, assurances, certifications, and submission statement submitted on May 5, 2005, and amended on May 31, 2005 by the Arizona Department of Economic Security (DES) to the U.S. Department of Education, Office of Special Education Programs (OSEP), in which it assures that it will:

1. Operate consistent with the Part C requirements of PL 108-446 and its applicable regulations;
2. Ensure that the Statewide system of early intervention services required by Part C and its implementing regulations is in effect throughout the FFY 2005 grant period;
3. Make such changes to, and submit for OSEP's approval, existing policies, procedures, methods, and descriptions as are necessary to bring those policies, procedures, methods and descriptions into compliance with the requirements of Part C of the IDEA, as amended, as soon as possible, and not later than the earlier of the date indicated by the State in Section II of its application or July 1, 2006. Section II of the State's application (which is incorporated by reference and enclosed with this grant letter) identifies the IDEA statutory sections for which the State needs to amend policies, procedures, methods and descriptions and the timelines by which the State will amend its policies, procedures, methods and descriptions in order to comply with Part C of the IDEA. Within Section II, the State has included the date by which it expects to complete necessary changes associated with any policies, procedures, methods and descriptions that are not yet in compliance with the requirements of Part C of the IDEA, as amended; and
4. Operate consistently with the State's December 17, 2004 IDEA Part C Compliance Agreement with the U.S. Department of Education (Department), in which DES has agreed to implement all activities identified in the Compliance Agreement and to provide all verification required under the Compliance Agreement, including quarterly progress updates due on March 31, June 30, September 30, and December 31, of each year during which the Compliance Agreement is in effect, to OSEP as required by the Agreement and to demonstrate that, within three years of the date of the Agreement, DES is in compliance with Part C, including specifically those Part C requirements that are the subject of the Compliance Agreement.

Please note that as part of your State’s Application for FFY 2005, your State has made an assurance, under 34 CFR §80.11(c), that it will comply with all applicable Federal statutes and regulations in effect with respect to the FFY 2005 grant period. Any changes made by the State, after OSEP approval, to the State’s Part C application (including policies, procedures, descriptions
and methods) must meet the public participation requirements of IDEA, including those in 20 U.S.C. 1232d(b)(7).

Section IV.B of the FFY 2005 application for Part C funds requested updated information about each State's restricted indirect cost rate. Although your FFY 2005 application indicated that DES was in the process of negotiating a new restricted indirect cost rate agreement, our records indicate that DES has not yet submitted a restricted indirect cost rate proposal to the Department, which is DES's Federal cognizant agency. The Department's June 7, 2005 letter to DES informed DES that DES had failed to respond to the Department's December 7, 2004 letter reminding DES to submit its proposal and indicating that DES would not be able to bill indirect costs to Department programs until a new indirect cost rate is approved by the Department. Therefore, by accepting this FFY 2005 grant award, DES is agreeing not to charge indirect costs in an amount greater than fifty percent (50%) of the restricted indirect cost rate approved for use through June 30, 2005 during the Part C FFY 2005 grant until such time that the Department approves a restricted indirect cost rate for DES. Please contact Alan Shumard at (540) 639-0444 at your earliest opportunity to submit a proposed indirect cost rate agreement.

The enclosed grant award for FFY 2005 is made with the continued understanding that this Office may, from time to time, require clarification of information within your application and appendices, if necessary. These inquiries are needed to allow us to appropriately carry out our administrative responsibilities related to Part C.

Section 604 of the IDEA provides that "[a] State shall not be immune under the eleventh amendment to the Constitution of the United States from suit in Federal court for a violation of this Act." Therefore, by accepting this grant a State is expressly agreeing to a waiver of Eleventh Amendment immunity as a condition of IDEA funding.

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

Sincerely,

Troy R. Justesen
Acting Director
Office of Special Education Programs

Enclosure

cc: Molly Dries
Part C Coordinator