UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUL - 1 2009

Honorable Roger Breed
Commissioner of Education
Nebraska Department of Education
301 Centennial Mall South
PO Box 94987
Lincoln, NE 68509-4987

Honorable Vivianne Chaumont
Director
Nebraska Dept. of Health and Human Services
301 Centennial Mall South
PO Box 95044
Lincoln, NE 68509-5044

Dear Dr. Breed and Director Chaumont:

This is to inform you that we have conditionally approved Nebraska's application for Federal Fiscal Year (FFY) 2009 funds under Part C of the Individuals with Disabilities Education Act (IDEA or Part C). Our conditional approval is based on our review of the application submitted by the Nebraska Department of Education (NDE) and Department of Health and Human Services (NDHHS) to the U.S. Department of Education, Office of Special Education Programs (OSEP), on May 15, 2009, and as amended on June 23, 2009, including policies, procedures, methods, descriptions, assurances, certifications, and submission statement provided in Section II, which is incorporated by reference to this letter as noted in Enclosure A. In addition, the State provided the following specific assurances that it will:

1. Operate consistently with the Part C requirements in 20 U.S.C. 1431 through 1444 and applicable regulations in 34 CFR Part 303;
2. Ensure that the statewide system of early intervention services required by Part C and its implementing regulations is in effect throughout the FFY 2009 grant period; and
3. Make such changes to, and submit, as necessary, for OSEP's approval, the State's 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, and applicable regulations, as soon as possible, and not later than the earlier of the date indicated by the State in Section II of its application or June 30, 2010. Section II of the State's application identifies the IDEA requirements for which the State needs to amend any 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 and applicable regulations. Within Section II, the State has included for each requirement that it cannot meet at this time, 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 and applicable regulations.

Please note that as part of your State's application for FFY 2009, your State has made an assurance, pursuant to 34 CFR §80.11(c), that it will comply with all applicable Federal statutes and regulations in effect with respect to the FFY 2009 grant period. Any changes made by the State to its FFY 2009 application or Part C policies or procedures that are application requirements, after OSEP approval, must meet the applicable public participation requirements under Part C in 34 CFR §§303.110 through 303.113 and, if they are requirements under Section II.A, must also be submitted to, and approved by, OSEP prior to the State's implementation of its new or revised application, policies and procedures.

Enclosed is the State's regular grant award for funds currently available under the Omnibus Appropriations Act, 2009 for the Part C program. These funds are for use primarily in 2009-2010 and are available for obligation by States from July 1, 2009 through September 30, 2011 in accordance with 34 CFR §76.709.

In addition to these regular FFY 2009 Part C funds, the American Recovery and Reinvestment Act of 2009 (ARRA) provided a one-time large increment in IDEA Part C funding. The ARRA IDEA Part C grants are a supplemental appropriation to the regular IDEA Part C appropriation. The first 50 percent of the ARRA IDEA Part C funds were awarded to States on April 1, 2009 and the second 50 percent will be available to States by September 30, 2009. Please note that each State will be required to submit additional information that addresses how the State will meet the accountability and reporting requirements in section 1512 of the ARRA before it will be considered eligible to receive the second 50 percent of the ARRA funds. Together, a State's regular FFY 2009 IDEA funds and a State's ARRA IDEA Part C funds constitute a State's total FFY 2009 Part C allocation. Given the increased IDEA Part C FFY 2009 allocation to each State, States may wish to review carefully the guidance on the ARRA IDEA Part C grant awards, available at http://www.ed.gov/fund/data/award/idea/arra/index.html.

Under 34 CFR §76.568(c), the Department is approving in this grant letter, as direct costs under the IDEA Part C program, the occupancy and space maintenance costs identified in Section III of the State's FFY 2009 grant application.

Section IV.B of the FFY 2009 application for Part C funds requested updated information about each State's restricted indirect cost rate. Your State indicated that NDE has a final restricted indirect cost rate that identifies restricted indirect costs that has been approved by the U.S. Department of Education, NDE's cognizant Federal agency, and is effective until June 30, 2011. Section IV.B of your State's Part C Application indicates that your agency will continue to apply the currently approved restricted indirect cost rate to its IDEA Part C FFY 2009 grant funds until a new restricted indirect cost rate is negotiated and approved by NDE's cognizant Federal agency. As noted in the Department's guidance to States, applying the currently approved restricted indirect cost rate to the increased FFY 2009 Part C funds due to the ARRA (which was not considered in the rate calculation) could result in an over-recovery of indirect costs in the current period. Please carefully review the responses to questions B-1 and B-2 in the guidance available at http://www.ed.gov/fund/data/award/idea/arra/index.html and direct questions regarding any proposed adjustments to your cognizant agency or our Indirect Cost Unit. When a new restricted indirect cost rate is negotiated and approved by NDE's cognizant Federal agency, please forward to our Indirect Cost Unit and to your OSEP State Contact.

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." 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 a State 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 for FFY 2009 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 are needed to allow us to appropriately carry out our administrative responsibilities related to Part C.

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

Sincerely,

Patricia J. Guard
Acting Director
Office of Special Education Programs

Enclosures

Enclosure A

cc: Part C Co- Coordinators