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

JUL - 1 2010

Honorable Rita Landgraf
Cabinet Secretary
Department of Health and Social Services
Herman Holloway, Administration Building
1901 N. DuPont Highway
New Castle, Delaware 19720

Dear Secretary Landgraf:

We have conditionally approved Delaware's application for Federal Fiscal Year (FFY) 2010 funds under Part C of the Individuals with Disabilities Education Act (IDEA Part C). Our conditional approval is based on our review of the application submitted by the Delaware Department of Health and Social Services (DHSS) to the U.S. Department of Education, Office of Special Education Programs (OSEP), on May 7, 2010, June 17, 2010, and June 25, 2010, including policies, procedures, methods, descriptions, assurances, and certifications identified in Section II, which is incorporated by reference to this letter as Enclosure A. In addition, the State provided the following specific assurances that it will:

1. Operate consistently with the IDEA 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 IDEA Part C and its implementing regulations is, and will remain, in effect throughout the FFY 2010 grant period; and
3. Make such changes to, and submit 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 IDEA Part C, 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, 2011. Within Section II of its application, 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 IDEA Part C.

The conditional approval for Delaware's FFY 2010 Part C grant is also based on the State's assurance, dated June 25, 2010, from the Delaware Department of Health and Social Services in which the State specifically assured that it shall:

1. Make all changes necessary to the State's Interagency Agreement and complete all actions as specified in OSEP's June 21, 2010 memorandum to comply with the IDEA Part C requirements at 20 U.S.C 1437(a)(9)(A)(ii)(I) and (II) and applicable regulations in 34 CFR 34 CFR §303.148(b)(1), and submit to OSEP the new and/or revised Interagency Agreement as soon as it is finalized but no later than June 30, 2011;
2. Ensure that, throughout the period that the State uses its Federal fiscal year 2010 grant funds under Part C of IDEA, all early intervention service programs and providers in the

State will comply with all requirements of IDEA Part C, including 20 U.S.C. 1437(a)(9)(A)(ii)(I) and (II) and applicable regulations in 34 CFR §303.148(b)(1);

3. Provide OSEP, by September 1, 2010, a copy of the memorandum notifying all early intervention service programs and providers that are part of the State's IDEA Part C early intervention system of any changes that affect the provision of early intervention services under Part C, including 20 U.S.C. 1437(a)(9)(A)(ii)(I) and (II) and applicable regulations in 34 CFR §303.148(b)(1); and
4. Ensure that the statewide system of early intervention required by IDEA Part C, in 20 U.S.C. 1431-1444 and applicable regulations in 34 CFR Part 303, will be in effect throughout the FFY 2010 grant period.

Please note that as part of your State's application for FFY 2010, 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 during the FFY 2010 grant period. Before adopting a new or revised IDEA Part C policy or procedure that is required under Section II.A of the State's FFY 2010 application, the State must subject those policies and procedures to the public participation requirements in 34 CFR §§303.110 through 303.113 and receive OSEP approval for them prior to their implementation.

Enclosed is the State's FFY 2010 grant award for funds available under the Consolidated Appropriations Act, 2010 – P.L. 111-117 for the Part C program. These funds are available for obligation by States from July 1, 2010 through September 30, 2012 in accordance with 34 CFR §76.709.

Section IV.B of the FFY 2010 application for Part C funds requested updated information about each State's restricted indirect cost rate. Your State indicated that DHSS has a final restricted indirect cost rate agreement that has been approved by DHSS's cognizant Federal agency and is effective until December 31, 2010. In Section IV.B, your agency (as the lead agency designated under Part C) indicated that it will continue to apply the currently approved restricted indirect cost rate to its IDEA Part C FFY 2010 grant funds until a new restricted indirect cost rate agreement is negotiated and approved by DHSS's cognizant Federal agency. Please forward a copy to our Indirect Cost Unit and to your OSEP State Contact of the new or revised restricted indirect cost rate agreement once it is approved by DHSS's cognizant Federal agency.

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, your 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 of FFY 2010 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.

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

Sincerely,

Alexa Posny, Ph.D.
Acting Director
Office of Special Education Programs

Enclosure

Enclosure A

cc: Part C Coordinator