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

JUL - 1 2010

Honorable Tom Oster
Secretary of Education
South Dakota Department of Education
700 Governors Drive
Pierre, South Dakota 57501-2291

Dear Secretary Oster:

We have conditionally approved South Dakota'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 South Dakota Department of Education (SD DOE) to the U.S. Department of Education, Office of Special Education Programs (OSEP), on May 4, 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 South Dakota's FFY 2009 Part C grant award was based, in part, on the State's assurance, dated June 25, 2009, that the State would make all of the necessary changes to its revised eligibility policy (policy number 24:14:07:02), as required by OSEP's June 3, 2009 memorandum. As stated in OSEP's April 10, 2010 e-mail, the revised policy that the State submitted on December 28, 2009 addressed the issues raised by OSEP's June 3, 2009 memorandum and the State's June 25, 2009 assurance.

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.

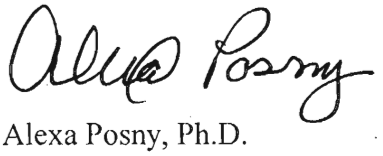
Enclosed is the State's FFY 2010 grant award for funds available under the Consolidated Appropriations Act, 2010 – P.L. 111-117 for the Part C program. These funds are available for obligation by States from July 1, 2010 through September 30, 2012 in accordance with 34 CFR §76.709.

Section 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 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