



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

DEC 21 2007

Mr. David Anderson, Esq.
General Counsel
Texas Education Agency
1701 North Congress Avenue
Austin, TX 78701-1494

Dear Mr. Anderson:

This letter is in response to your January 20, 2007 letter to Mr. Hugh Reid, formerly of the Office of Special Education Programs (OSEP). We apologize for the delay in this response. Your letter concerns children who are housed, with their families, for up to 90 days at the U.S. Immigration and Customs Enforcement (ICE) T. Don Hutto Family Residential Facility, until their removal from the country. The ICE is part of the U.S. Department of Homeland Security. The average length of stay for the families at the facility is reported to be 20 to 40 days. You ask whether the local school district's child find obligations under the Individuals with Disabilities Education Act (IDEA) extend to these children during their stay at the Federal facility and whether officials at the facility must facilitate the school district's identification of any children in need of special education. You question this obligation based upon the fact that the children at the detention facility have been taken into custody by ICE, a Federal agency.

The provisions of the IDEA, including the child find provisions, apply to each State that receives Federal funds under Part B of the IDEA, public agencies within the State that are involved in the education of children with disabilities, and any public agency in the State that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds under Part B. 34 CFR §300.2. The IDEA makes no specific provision for funding child find or educational services for individuals with disabilities through the ICE or the Department of Homeland Security. Thus, absent any other applicable law, the State has no child find obligations under the IDEA for children residing in ICE's residential facility. This is similar to a State's responsibility for children with disabilities in Federal prisons. Although there is no obligation under the IDEA, the facility and the State or local school district could enter into a voluntary agreement to provide child find or other educational services.

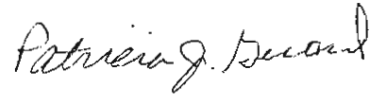
Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

400 MARYLAND AVE., S.W., WASHINGTON, D.C. 20202
www.ed.gov

Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

We hope this information is helpful. If you have further questions, please do not hesitate to contact Matthew Schneer (202-245-6755) or Dr. Deborah Morrow (202-245-7456) of my staff.

Sincerely,

A handwritten signature in cursive script that reads "Patricia J. Guard".

Patricia J. Guard
Acting Director
Office of Special Education
Programs

cc: Kathy Clayton