



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

April 22, 2008

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 25, 2008 letter to Patricia J. Guard of the Office of Special Education Programs (OSEP) concerning educational standards recently issued by the U.S. Immigration and Customs Enforcement (ICE) for children housed at ICE residential family facilities. You indicate the standards describe special education services under the Individuals with Disabilities Education Act (IDEA) that ICE facilities must provide to children with disabilities and express concern that these standards conflict with OSEP's earlier response to you regarding a State's obligation under the IDEA to children in ICE facilities.

In OSEP's December 21, 2007 letter to you, responding to your January 20, 2007 letter in which you requested clarification of the Texas Education Agency's (TEA's) obligation to provide special education and related services, including child find, to children housed in an ICE facility, we indicated that the IDEA makes no specific provision for funding child find or educational services for individuals with disabilities through the ICE or Department of Homeland Security (DHS). We stated that, absent any other applicable law, the State has no child find obligations under the IDEA for children residing in ICE's residential facility, similar to a State's responsibility for children with disabilities in Federal prisons. We indicated, however, that the ICE facility and the State or local school district could enter into a voluntary agreement to provide child find or other educational services.

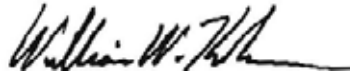
We contacted DHS's Enforcement Law Division regarding the ICE Standards and the T. Don Hutto Family Residential Facility and confirmed that the standards are neither statutory nor regulatory and thus, do not create an additional requirement of law or impact the State's or local educational agency's (LEA) obligations under the IDEA. DHS acknowledged that ICE could not compel any State agency to provide educational services that are not mandated by law. Notwithstanding, DHS informed us that ICE, through its contractor The Corrections Corporation of America, entered into a negotiated memorandum of understanding (MOU) with the Taylor Independent School District and services are currently being provided to school-aged children in the Hutto facility pursuant to that MOU. OSEP encourages these collaborative processes in order to provide educational services to children in the ICE family residential facilities.

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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.

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

Sincerely,

A handwritten signature in black ink, appearing to read "William W. Knudsen". The signature is fluid and cursive, with a long horizontal stroke at the end.

William W. Knudsen
Acting Director
Office of Special Education Programs

cc: Kathy Clayton