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

MAR 28 2012

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Dear [redacted]

In telephone conversations with members of my staff during the summer of 2011, you asked if a State may impose a residency requirement under Part C of the Individuals with Disabilities Education Act (IDEA) so that an infant or toddler with a disability who is temporarily in that State (e.g., visiting grandparents during a summer vacation where the grandparents are not acting as the parents) would not be eligible to receive IDEA Part C early intervention services from that State.

Under IDEA section 634(1), each State must adopt a policy that appropriate early intervention services are available to all infants and toddlers with disabilities and their families, including: Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State; infants and toddlers with disabilities who are homeless children and their families; and infants and toddlers with disabilities who are wards of the State.

Part C of the IDEA neither requires a State to implement, nor prohibits a State from implementing, a residency requirement as long as such a requirement does not prevent the State from making IDEA Part C services available to eligible infants and toddlers with disabilities who are homeless or wards of the State, or who reside on a reservation. As we have noted in past letters, the requirement to make IDEA Part C services available to all eligible children in the State also applies to children who often do not have a specific State residency; e.g., children who are highly mobile, such as migrant children; children who are temporarily homeless or displaced by a catastrophic event such as a hurricane or a flood; or children of foreign residents. However, a State ("State A") may adopt a residency requirement that precludes children and parents who reside in and receive services from another State ("State B") from also receiving early intervention services under IDEA Part C from State A, when they are only temporarily in State A and and reside permanently in State B.

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.

If you have additional questions, please do not hesitate to contact Priscilla Irvine at 202-245-6913 or by email at Priscilla.Irvine@ed.gov.

Sincerely,

Melody Musgrove, Ed.D.
Director
Office of Special Education Programs

cc: [redacted]