

## Question and Answers Related to Students with Disabilities in Adult Correctional Facilities

### 1. Are adult correctional facilities required to comply with the Individuals with Disabilities Education Act (IDEA) requirements?

The [\*Dear Colleague Letter \(December 5, 2014\)\*](#) from the Office of Special Education and Rehabilitative Services (OSERS) states, “absent a specific exception, all IDEA protections apply to students with disabilities in correctional facilities and their parents.” No specific exception excludes adult correctional facilities from compliance with IDEA requirements.

### 2. Do all the IDEA protections that apply to students with disabilities apply to students with disabilities in adult correctional facilities and their parents?

There are some provisions of IDEA that do not apply to certain students with disabilities in adult correctional facilities. The exceptions that apply relate to participation in state and district-wide assessments, the requirements for transition planning and transition services, Individual Education Program (IEP) modifications and educational placement. The exceptions apply to certain students on a case-by-case basis and are determined based on the individual “unique circumstances.” The Office of Special Education and Rehabilitative Services (OSERS) in the United States Department of Education (USED) describes the specific exceptions in more detail in the [\*Dear Colleague Letter \(December 5, 2014\)\*](#). [[34 CFR §300.102](#)]

### 3. Is a free appropriate public education (FAPE) required to be provided to students with disabilities in adult correctional facilities?

Every agency at any level of government that is involved in the provision of special education and related services to students in correctional facilities must ensure the provision of FAPE, even if other agencies share that responsibility. [[34 CFR §300.2\(b\)\(1\)\(iv\)](#)].

### 4. What types of facilities are monitored for IDEA by the state education agency (SEA)?

As stated in the [\*Letter to Yudian \(August 19, 2003\)\*](#) from the OSERS, IDEA “Part B and its implementing regulations specifically apply to all subdivisions of the State involved in the education of children with disabilities, including State and local juvenile and adult correctional facilities.” [[34 CFR §300.2\(b\)](#)]

**5. What types of facilities are not monitored by the SEA? Why?**

The SEA does not monitor federal prisons. States are not required by the IDEA to provide FAPE to students convicted as adults and incarcerated in federal prisons. Students incarcerated in federal prisons would fall under the authority of the Federal Bureau of Prisons. [[\*Office of Special Education Programs \(OSEP\) Letter to Mahaley \(March 2, 2011\)\*](#)]

**6. How are adult correctional facilities identified for monitoring by the SEA?**

Each year, the Kentucky Department of Education (KDE) monitors adult correctional facilities. The Office of Special Education and Early Learning (OSEEL) identifies adult correctional facilities, which the Department of Corrections (DOC) oversees, for monitoring on a cyclical basis. Adult correctional facilities are placed on a cyclical schedule. The monitoring order for individual facilities is randomly selected.

**7. How is the monitoring of adult correctional facilities conducted by the SEA?**

The OSEEL monitors the implementation of Part B of the IDEA in the adult correctional facilities that house IDEA-eligible inmates in the state through a cyclical schedule. Monitoring includes the completion of a Kentucky Adult Corrections Self-Assessment by the DOC, Division of Education and monitoring visits by the OSEEL.

**8. What agencies receive the adult correctional facility monitoring reports from the SEA?**

The OSEEL issues a written report of findings to the correctional facility. If the correctional facility has entered into an agreement with another public agency<sup>1</sup> to provide special education and related services, the correctional facility and public agency will both be provided the report of findings.

**9. If IDEA noncompliance is identified in the adult correctional facility, who is responsible for the corrective action plan (CAP) implementation?**

The OSEEL will issue to the correctional facility a written notification of any noncompliance identified and required corrective action through a report of findings. The DOC implements the CAP and the OSEEL provides technical assistance and support to the correctional facility through the CAP process. If the correctional facility has entered into an agreement with another public agency to provide special education and related

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<sup>1</sup> Public agency may include the SEA, local educational agencies (LEAs), and responsible noneducational public agencies.

services, the correctional facility and public agency should work to facilitate the responsibilities set forth in the agreement.

**10. Who is responsible for child find in adult correctional facilities?**

“The SEA must have child find policies and procedures in effect that ensure that all age-eligible students with disabilities, including those in correctional facilities, who are in need of special education and related services, are identified, located and evaluated, regardless of the severity of their disability ([34 CFR §300.111\(a\)\(1\)\(i\)](#)).” [[Dear Colleague Letter \(December 5, 2014\)](#)]

The DOC is responsible for implementing the SEA’s child find policies and procedures. If the correctional facility has entered into an agreement with another public agency to provide special education and related services, the correctional facility and public agency should work to facilitate the implementation of the child find policies and procedures as set forth in the agreement.

**11. What are the child find requirements for incarcerated students?**

The SEA child find policies and procedures would be in effect to ensure that all age-eligible students with disabilities, including those in adult correctional facilities, who require special education and related services, are identified, located and evaluated, regardless of the student’s length of stay [[707 KAR 1:300, Section 1 \(1\)](#); [34 CFR §300.111\(a\)](#)]. However, for incarcerated students who had not been previously identified as eligible for special education or who had not had an IEP, there is no obligation for SEAs and local education agency’s (LEAs) to identify and evaluate these individuals under Part B. [[Letter to Yudien \(August 19, 2003\)](#)]

**12. Who is responsible for Admissions and Release Committee (ARC) meetings for students in adult correctional facilities?**

The correctional facility is responsible for ensuring ARC meetings are conducted for IDEA-eligible students in adult correctional facilities. If the correctional facility has entered into an agreement with another public agency to provide special education and related services, the correctional facility and public agency should work to facilitate the ARC meeting requirements as set forth in the agreement.

**13. Who is responsible for IEP implementation for students in adult correctional facilities?**

The [Dear Colleague Letter \(December 5, 2014\)](#), includes information specific to the process of developing, adopting and implementing an IEP for students who arrive or

transfer from another state or in-state public agencies and schools to an adult correctional facility. The public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either

- (1) Adopts the child's IEP from the previous public agency; or
- (2) Develops, adopts and implements a new IEP that meets the applicable requirements in [34 CFR §§300.320](#) through [300.324](#).

The DOC is responsible for implementing the student's IEP. If the correctional facility has entered into an agreement with another public agency to provide special education and related services, the correctional facility and public agency should work to facilitate the implementation of the student's IEP as set forth in the agreement.

**14. Is there a dispute resolution process available for IDEA-eligible students with disabilities in adult correctional facilities?**

“All of the due process protections under the IDEA extend to eligible students with disabilities in correctional facilities and their parents.” [[Dear Colleague Letter \(December 5, 2014\)](#)] An explanation of each process can be found on the [Dispute Resolution Process](#) webpage.

**15. Which incarcerated students are excluded from IDEA services and protections? Why?**

The obligation to make FAPE available to children aged 18-21 with disabilities as provided by IDEA that requires special education and related services under Part B be provided, does not apply to students who in the last educational placement prior to their incarceration in an adult correctional facility were not identified as being a child with a disability and did not have an IEP under Part B. [[34 CFR §300.8](#); [34 CFR §300.102\(a\)\(2\)\(i\)](#)]

**16. Which formerly IDEA-eligible incarcerated students are now excluded from IDEA services and protections? Why?**

Individuals that have been identified as being a child with a disability, convicted as adults and incarcerated in federal prisons are not required to be provided FAPE by the state. Individuals in the federal correctional system fall under the jurisdiction of the Federal Bureau of Prisons. [[OSEP Letter to Mahaley \(March 2, 2011\)](#)]

**17. Can incarcerated students in adult correctional facilities earn a diploma?**

According to the [Corrections Academics Guidance](#), all inmates without a General Equivalency Diploma (GED) or a high school diploma are eligible to participate in the

GED program. The program may be provided at no cost to the inmate with flexible scheduling to allow the inmate to proceed and learn at their own pace and the curriculum shall be competency based. The educational program shall submit documentation of the earned diploma, certificate or degree to the institutional offender records office.

[\[Educational Programs and Educational Goodtime, CP 20.1\]](#) When an inmate has successfully completed an educational program and received a diploma or certificate, shall receive credit towards their sentence in the amount of 90 days per diploma, certificate, or technical education program as approved by the department. [\[KRS 197.045 \(1\)\(a\)\(2\)\]](#)

**18. How does Section 504 apply to incarcerated students in adult correctional facilities?**

Section 504 provides that: "No otherwise qualified individual with handicaps in the United States . . . shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...." [\[The Civil Rights of Students with Hidden Disabilities Under Section 504 of the Rehabilitation Act of 1973\]](#)

**19. How does Section 504 apply to the parental rights of incarcerated students in adult correctional facilities?**

According to the Office for Civil Rights (OCR) Letter to Copenhaver, correctional facilities should address Section 504 requirements in a responsible and reasonable manner. "Certain education rights and procedures contained in Section 504 are not available to juveniles in penal institutions because of their incarcerated status. Likewise, certain parental rights specified under Section 504 are extinguished due to the incarcerated status of the juvenile... When juvenile inmates are incarcerated the justice system has usurped the rights of the parents to be intimately involved in their child's educational rights." [\[Letter to Copenhaver \(July 9, 1997\)\]](#)

**20. Do IDEA disciplinary procedures apply to students with IEPs in adult correctional facilities?**

"A student with a disability in a correctional facility is entitled to the protections in the IDEA disciplinary procedures that must be afforded to all students with disabilities. These protections apply regardless of whether a student who violates a code of student conduct is subject to discipline in the facility or removed to restricted settings... In any event, a removal from the current educational placement that results in a denial of educational services for more than 10 consecutive school days, or a series of removals that constitute a pattern that total more than 10 school days, in a school year is a change in placement, which, in turn, requires a manifestation determination under the IDEA." [\[Dear Colleague Letter \(December 5, 2014\)\]](#)

The federal requirements for discipline procedures are found in the regulations at [34 CFR §300.530 – §300.536](#). The procedural safeguards and state complaint procedures found at [707 KAR 1:340](#) contain the state discipline procedures and manifestation determination requirements that apply to students with IEPs.

However, the ARC may modify an IEP or placement for a student if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. [[34 CFR §300.324\(d\)](#)]

**21. What is the process to release educational records of students with disabilities in adult correctional facilities?**

As stated in the [Dear Colleague Letter \(December 5, 2014\)](#) “To ensure that students with disabilities in correctional facilities continue to receive FAPE, public agencies must have policies and procedures to ensure that the relevant records of students with disabilities who move to, and from, correctional facilities are transferred as expeditiously as possible,” and also must take reasonable steps to appropriately transmit those records to facilitate the student’s transition to or from the correctional facility.” [[707 KAR 1:320, Section 6](#)].

[Kentucky Revised Statute \(KRS\) 160.720](#) includes information regarding the requirements for the release of records. Parties may need to contact public agencies including but not limited to the correctional facility or LEA to determine the specific policies and procedures for the release of educational records.

**22. Who is responsible for conducting special education evaluations for students in adult correctional facilities?**

As stated in the [Dear Colleague Letter \(December 5, 2014\)](#), “If the student is transferred to a correctional facility in the same school year, in the same State or in a different State, after the previous LEA has begun but has not completed the evaluation, both public agencies must ensure that assessments are coordinated to ensure completion of the evaluation. This must occur as necessary and as expeditiously as possible.” [[34 CFR 300.304 \(c\)\(5\)](#)]

“The SEA must have child find policies and procedures in effect that ensure that all age-eligible students with disabilities, including those in correctional facilities, who are in need of special education and related services, are... evaluated, regardless of the severity of their disability ([34 CFR §300.111\(a\)\(1\)\(i\)](#)).” [[Dear Colleague Letter \(December 5, 2014\)](#)]

The DOC is responsible for implementing the SEA’s child find policies and procedures which include evaluations for students with disabilities. If the correctional facility has

entered into an agreement with another public agency to provide special education and related services, the correctional facility and public agency should work to facilitate the implementation of the child find policies and procedures as set forth in the agreement.

**23. How is IDEA implementation funded for students incarcerated in adult correctional facilities?**

“Regardless of the structure in a State, the State, as the IDEA, Part B grantee, has ultimate responsibility for ensuring FAPE is made available to all eligible students with disabilities residing in State and local juvenile and adult correctional facilities. This responsibility applies to correctional facilities with which the State contracts to provide education, including special education and related services ([34 CFR §§300.2\(b\)\(1\)\(iv\)](#), [300.101](#), and [300.149\(a\)](#)). Indeed, the requirements in IDEA, Part B apply to all political subdivisions of a State that provide special education and related services to students with disabilities, including State and local juvenile and adult correctional facilities, regardless of whether that agency receives funds under Part B ([34 CFR §300.2\(b\)\(1\)\(iv\) and \(2\)](#)).”  
*[Dear Colleague Letter (December 5, 2014)]*

Individuals in the federal correctional system fall under the jurisdiction of the Federal Bureau of Prisons and IDEA makes no specific provision for funding educational services through the bureau. *[Letter to Yudien (August 19, 2003)]*

**Additional Resources**

- [Monitoring](#) This page includes resources related to the general supervision responsibilities for all public agencies involved in the provision of special education and related services.
- [Department of Corrections](#) This page includes information regarding all correctional facilities located in Kentucky.
- [Kentucky Corrections Policies and Procedures](#) This document includes the educational programs and educational goodtime policies and procedures for correctional facilities in Kentucky.
- [Kentucky DOC, Division of Education Course Catalog for Adult Institutions](#) This document provides information on adult education and post-secondary education opportunities provided by the DOC.
- [Kentucky Revised Statute 197.045](#) This statute includes information regarding credit on sentence for educational accomplishment.