Division of Special Education/Early Intervention Services

Incarcerated Youth with Disabilities, ages 18 - 21

This document will guide and assist local school system (LSS) personnel in ensuring that incarcerated youth with disabilities, ages 18 - 21, in local adult correctional facilities (LACFs), are appropriately provided the special education and related services for which they are eligible. This Bulletin will also provide guidance as to eligibility and related documentation procedures.

1. What is a local adult correctional facility (LACF)?

A local adult correctional facility (LACF) is a correctional facility located within the physical catchment area of a LSS which is not a state operated adult correctional institution under the jurisdiction of the Department of Public Safety and Correctional Services (DPSCS).

2. Which agencies provide education services to youth and what is the difference between a LACF, a state operated adult correctional institution, and a Department of Juvenile Services (DJS) facility?

The LSS is required to provide special education and related services to students with disabilities incarcerated in LACFs (jails) located within the jurisdiction of the LSS.

The LSS is not required to provide special education and related services to students with disabilities incarcerated in state operated adult correctional institutions under the jurisdiction of the DPSCS. The Department of Labor, Licensing, and Regulation (DLLR) is responsible for providing special education and related services within these institutions. The LSS may choose to work collaboratively with the DLLR to provide special education and related services to students with disabilities, but is not required to do so.

The LSS is not required to provide special education and related services to students with disabilities at a DJS residential facility. These students are currently served either by the Maryland State Department of Education, Juvenile Services Education Program (MSDE-JSEP) or DJS. By 2014 MSDE will provide education services at all DJS
residential facilities.

[Md. Code Ann., Correctional Services, §3-507; Labor & Employment, §§11-101, 11-801 et seq. COMAR 13A.05.01.09C; COMAR 13A.05.11.01 et seq.]

3. **Is the LSS required to provide special education and related services to incarcerated youth with disabilities in LACFs?**

   Yes. Each LSS is required to provide special education and related services to students with disabilities incarcerated in LACFs located within the jurisdiction of the LSS to ensure the provision of a free appropriate public education (FAPE).

   [20 USC §1401(9); 34 CFR §300.102; COMAR 13A.05.01.09C(1)]

4. **Under what circumstances does the LSS not have to provide FAPE to incarcerated youth with disabilities?**

   The LSS is not required to provide FAPE to youth with disabilities that are incarcerated in state operated adult correctional institutions under the jurisdiction of the DPSCS. The special education and related services provided within these institutions are the responsibility of the DLLR.

   For youth in LACFs, the LSS does not have to provide FAPE to incarcerated youth with disabilities ages 18 - 21 if the youth in the last educational placement prior to their incarceration in an adult correctional facility:

   1. Was never identified as being a youth with a disability as set out in 34 CFR §300.8; and
   2. Did not have an Individualized Education Program (IEP) under Part B.

   However, this exception does not apply where the incarcerated youth with a disability:

   1. Had been identified as a youth with a disability and had received services in accordance with an IEP, but who left school prior to their incarceration; or
   2. Did not have an IEP in their last educational setting, but who had actually been identified as a youth with a disability under IDEA.

   [34 CFR §300.102(a)(2); COMAR 13A.05.01.09C ]

5. **May the LSS modify the IEP and placement of an incarcerated youth?**

   Yes. The IEP Team of a youth with a disability who is convicted as an adult under State law and incarcerated in a LACF may modify the child's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

   [34 CFR §300.324(d)(2)]
6. What is expected of the LSS once notified by their LACF that a student with an IEP is incarcerated in the facility?

The LSS contact person, for the LSS in which the LACF is located, must:

1. Take reasonable steps to promptly obtain the child’s records, including the IEP and supporting documents and other records relating to the provision of special education or related services to the child from the previous public agency in which the child was enrolled.

2. Review the student records to ensure that previously received special education and related services or was identified as a child with a disability under 34 CFR §300.8.

3. Initiate services for students who were identified as in need of services but not previously receiving services.

4. Ensure that the IEP services are initiated so the current IEP can be implemented. If the current IEP cannot be implemented, the LSS must ensure that an IEP meeting takes place as soon as possible and all of the required steps are taken prior to conducting the IEP team meeting.

[34 CFR §99.31; 34 CFR §§300.304(c)(5); 300.323(g); COMAR 13A.08.01.07, Maryland Student Records Manual]

7. Does the LSS have any role in the implementation of the IEP once all relevant records have been received?

Yes. The LSS must ensure that an IEP is in effect before special education and related services are provided to students with disabilities incarcerated in a LACF and in need of special education and related services from the LSS. The LSS and LACF shall work together to develop, adopt, or implement a new or existing appropriate IEP. If the IEP is expired the LSS shall develop a new IEP as per established policy and procedure. The LSS provides special education and related services by qualified personnel to the incarcerated youth. The LSS shall have copies of the qualifications of all special education teachers and related service providers.

8. If no IEP or related special education records can be obtained from the last known LSS of attendance must the LSS convene an IEP meeting?

Yes. In the event that no IEP or special education related records can be obtained, the LSS is expected to proceed in a similar manner as for those students transferring districts either within or from outside the State. The LSS and LACF, in cooperation with the youth shall convene an IEP team meeting to provide FAPE to the youth, including services comparable to those provided by the last LSS attended until the LSS locates/adopts the youth’s previously approved IEP or develops, adopts, and implements a new IEP.

[COMAR 13A.05.01.09E]
9. **Must special education and related services be provided to an incarcerated youth who refuses educational services?**

No. If the student refuses educational services, this information is logged in accordance with the LSS’s policies and procedures. This information is maintained with the student’s educational records.

10. **Is the LSS required to provide special education and related services to incarcerated youth with disabilities identified as being a “Drop Out”?**

Yes. If a student had been previously identified as eligible for special education and related services, but left school prior to incarceration, the youth is eligible to receive special education and related services during incarceration. Each LSS is required to provide special education and related services to students with disabilities incarcerated in LACFs located within the jurisdiction of the LSS to ensure FAPE.

[20 U.S.C. §1401(9); 34 CFR §300.102(a)(2); COMAR 13A.05.01.09C]

11. **Is the LSS responsible for the provision of special education and related services at all adult correctional facilities within their jurisdiction?**

No. The LSS is required to provide special education and related services to students with disabilities incarcerated in LACFs (jails) located within the jurisdiction of the LSS. The LSS is not required to provide special education and related services to students with disabilities incarcerated in state operated adult correctional institutions under the jurisdiction of the DPSCS. The DLLR is responsible for providing special education and related services within these institutions. The LSS may choose to work collaboratively with the DLLR to provide special education and related services to students with disabilities, but is not required to do so.

[COMAR 13A.05.01.09C]

12. **Is the LSS required to administer state assessments for incarcerated students with disabilities?**

No. The LSS is not required to provide state assessments for incarcerated students with disabilities.

[34 CFR §300.324(d)(i); COMAR 13A.05.01.09A(1)(f) and (g); COMAR 13A.05.01.09C(4) ]

13. **Is the LSS required to provide transition services for incarcerated students with disabilities?**

Transition services must be provided for incarcerated youth who will be eligible for release from the LACF before their Part B eligibility ends. An LSS is not required to
provide transition services to incarcerated youth whose eligibility under Part B will end, because of their age, before they will be eligible to be released from the LACF based on consideration of their sentence and eligibility for early release.

[34 CFR §300.324(d)(1)(ii); COMAR 13A.05.01.09C(5)]

14. **Must the LSS provide procedural safeguards for incarcerated youth with disabilities?**

Yes. The LSS must provide procedural safeguards to all of the required parties in accordance with Federal and State requirements. The LSS must also ensure that:

1. Documentation is maintained in each student’s educational record to demonstrate dissemination of procedural safeguards at required intervals in accordance with LSS procedures.
2. A representative of the LSS is available to review procedural safeguards with LACF staff upon request.
3. Procedural safeguards are provided in accordance with written LSS policies and procedures.

[34 CFR §300.500-300.537; Maryland Code Ann.; Educ., §§8-407, 8-412, 8-413; COMAR 13A.05.02.06]

15. **Do parental rights transfer to incarcerated youth who reach the age of majority?**

In Maryland, the transfer of rights under IDEA from parents to students requires three conditions be met:

- The student must have reached 18 years of age; and
- The student cannot have been adjudged incompetent under Maryland law;

Plus any one of the following:

- The parents are unavailable or unknown, as defined in Md. Code Ann., Educ. §8-412(a), the student would be eligible for a parent surrogate, and the student asks that parental rights be transferred to the student, or;
- The parents have not participated in the special education decision-making process for the child after repeated attempts by the local school system to involve the parents over the previous year, or
- The parents have affirmatively rejected participation in the special education decision making process, or
- The parents cannot participate in the special education decision-making process due to prolonged hospitalization, institutionalization, or serious illness or infirmity of one or both of the parents and the parents have consented to the transfer of rights to the child, or
- The parents cannot participate in the special education decision-making process due to extraordinary circumstances beyond the control of the parents and the parents have
consented to the transfer of rights, or
• The child is living outside of the parents’ home and is not in the care or custody of any of the public agencies listed in Md. Code Ann., §8-412(a)(7).

An incarcerated youth who satisfies the required criteria will have their educational rights transferred to them. The LSS must document this in the student’s file.

[20 U.S.C. §1415(m); 34 CFR §300.520(a)(2); Md. Code Ann., Educ. §8-412.1]

16. **Is incarcerated youth data collected and reported in Maryland’s Special Services Information Systems (SSIS)?**

Yes. The State requires each LSS to report incarcerated youth determined eligible to receive special education and related services in SSIS. Determination for eligibility and SSIS reporting instructions are described below.

**Determination of Eligibility**

The incarcerated youth is **eligible** to receive special education and related services and must be reported in SSIS:

1. If the youth had been identified as a student with a disability in accordance with 34 CFR §300.8 and had received services in accordance with an IEP, but who had left school prior to their incarceration; or
2. If the youth had actually been identified as a student with a disability in accordance with 34 CFR §300.8, but did not have an IEP in their last educational setting.

The incarcerated youth is **not eligible** and will not be reported in SSIS:

1. If in the last educational placement prior to incarceration the youth had not been identified as a student with a disability in accordance with 34 CFR §300.8; and did not have an IEP.

**SSIS Reporting Instructions**

If it is determined that the incarcerated youth is eligible for special education and related services, report in SSIS as follows:

1. If the youth was receiving special education and related services prior to incarceration, and is incarcerated in the same county:

   The school where the student was receiving service/s prior to incarceration should provide services during incarceration

   • R County = Home County
   • R School = Home School
   • S County = Service County
• **S School** = Service School

2. If the student dropped out of special education or is incarcerated in a different county than the home county:

• **R County** = County where the student is incarcerated
• **R School** = 4-digit code for the school the student would attend if not incarcerated
• **S County** = County where the student is incarcerated
• **S School** = ‘8888’

For more information, call 410-767-7548

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