Technical Assistance Bulletin

Division of Early Intervention and Special Education Services | Bulletin # 22-02

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**Incarcerated Youth with Disabilities, ages 18 - 21**

**Background**

A free appropriate public education (FAPE) must be available to all students in Maryland, even if they are incarcerated, including students with disabilities who have been suspended or expelled from school. Local education agencies (LEAs) must ensure a FAPE for all children with disabilities within their jurisdiction in accordance with the Individuals with Disabilities Education Act (IDEA).

This document will guide and assist LEA 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 document will also provide guidance as to eligibility and related documentation procedures.

# 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 an LEA which is not a state-operated adult correctional institution under the jurisdiction of the Department of Public Safety and Correctional Services (DPSCS).

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

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

The LEA 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 Maryland Department of Labor is responsible for providing special education and related services within these institutions. The LEA may choose to work collaboratively with the Maryland Department of Labor to provide special education and related services to students with disabilities, but is not required to do so.

The LEA is not required to provide special education and related services to students with disabilities at a Department of Juvenile Services (DJS) residential facility. These students are currently served either by the DJS, Juvenile Services Education Program (JSEP).

# Is the LEA required to provide special education and related services to incarcerated youth with disabilities in LACFs?

Yes. As mentioned above, each LEA is required to provide special education and related services to students with disabilities incarcerated in LACFs located within the jurisdiction of the LEA 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)]

# Under what circumstances does the LEA NOT have to provide FAPE to incarcerated youth with disabilities?

The LEA 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 Maryland Department of Labor.

For youth in LACFs, the LEA 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 ]

# May the LEA 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 an 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)]

# What is expected of the LEA once notified by their LACF that a student with an IEP is incarcerated in the facility?

The LEA contact person, for the LEA 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 LEA 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]

# Does the LEA have any role in the implementation of the IEP once all relevant records have been received?

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

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

Yes. In the event that no IEP or special education-related records can be obtained, the LEA is expected to proceed in a similar manner as for those students transferring districts either within or from outside the State. The LEA 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 LEA attended until the LEA locates/adopts the youth’s previously approved IEP or develops, adopts, and implements a new IEP.

[COMAR 13A.05.01.09E]

# 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 LEA’s policies and procedures. This information is maintained with the student’s educational records.

# Is the LEA 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 LEA is required to provide special education and related services to students with disabilities incarcerated in LACFs located within the jurisdiction of the LEA to ensure FAPE.

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

# Is the LEA responsible for the provision of special education and related services at all adult correctional facilities within their jurisdiction?

No. The LEA is required to provide special education and related services to students with disabilities incarcerated in LACFs located within the jurisdiction of the LEA. The LEA 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 Maryland Department of Labor is responsible for providing special education and related services within these institutions. The LEA may choose to work collaboratively with the Maryland Department of Labor to provide special education and related services to students with disabilities, but is not required to do so.

[COMAR 13A.05.01.09C]

# Is the LEA required to administer state assessments for incarcerated students with disabilities?

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

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

# Is the LEA 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 LEA 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)]

# Must the LEA provide procedural safeguards for incarcerated youth with disabilities?

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

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

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

# 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 to be met:

1. The student must have reached 18 years of age; and
2. The student cannot have been adjudged incompetent under Maryland law; plus
3. 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 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 their control 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 LEA 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]

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

Yes. The State requires each LEA to report incarcerated youth determined eligible to receive special education and related services in SSIS.

For more information, call 410-767-0249

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