

Guidance for Serving Youth who are Detained or Incarcerated

Summary

This document provides support for serving incarcerated students with disabilities in Georgia State and Local Facilities, Department of Juvenile Justice (DJJ), Georgia Department of Corrections (GDC), and City or County Jails (community jails).

Definitions and Regulations

Each Local Educational Agency (LEA) must have in effect policies and procedures to ensure Child Find for all suspected children with disabilities, including those who are homeless, are wards of the State, are attending private schools, and those who are incarcerated. Students who need special education and related services must be identified, located, and evaluated. [An LEA must ensure the evaluation of all children with suspected disabilities age 3 to 21 to include youth who are detained or incarcerated in city/county operated jails or correctional facilities.](#)

A free appropriate public education (FAPE) must be available to all children residing in the state between the ages of 3 and 21, even if they are incarcerated, including children with disabilities who have been suspended or expelled from school. An LEA must ensure a FAPE for all children with disabilities within its jurisdiction in accordance with the Individuals with Disabilities Education Act (IDEA).

IMPORTANT REMINDER: All students incarcerated are entitled to FAPE, and it is the ultimate responsibility of the LEA where the local jail is located to ensure the provision of FAPE.

LEAs must consider:

A student with an Individualized Education Program (IEP) who is in the local jail, such as those managed by city or county agencies (i.e., the sheriff's office), is entitled to a FAPE. The LEA where the local jail is located is responsible for the provision of a FAPE. The LEA should develop procedures to ensure two-way communication and collaboration are established with their local jails so that the LEA will be notified when a student with a disability is incarcerated in the local jail. While incarcerated, the LEA responsible for providing a FAPE may enroll the student and count the student present using the attendance code reserved for students not physically present in the school building.

Student incarcerated in local jail within the jurisdiction of his/her LEA of residence

The LEA where the jail is located is responsible for providing special education services to students in that jail. The LEA must convene an IEP Team meeting and determine appropriate special education services. Students incarcerated in local jails in the LEA's jurisdiction should remain enrolled in the LEA and receive special education services.

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The LEA will need to work closely with the local jail to gain access to the student and to deliver services. The LEA should document all correspondences with the local jail, especially if the local jail will not permit the LEA to provide a FAPE to the child with a disability.

Student incarcerated in local jails outside the jurisdiction of his/her LEA of residence

The LEA where the jail is located is responsible for providing special education services even though the student is not a resident of the county/city where the jail is located. It is best practice for the LEA where the student resides to work with the LEA where the jail is located and participate in the IEP Team meeting to determine appropriate services. The two LEAs should collaborate to do what is most appropriate for the student. The student may be withdrawn from their LEA of residence and enrolled in the LEA where the jail is located. If this occurs, the LEA where the jail is located will provide the services.

FAPE for Students Incarcerated in the Georgia Department of Corrections (GDC) and Georgia Department of Juvenile Justice (DJJ)

Both the Georgia Department of Corrections (GDC) and the Georgia Department of Juvenile Justice (DJJ) function as their own LEAs; students incarcerated as juveniles must be withdrawn from their LEAs of residence and enrolled in DJJ or GDC. An IEP Team will need to convene and determine appropriate services. The U.S. Department of Education, Office of Special Education Programs (OSEP) makes it clear “that 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.” [Dear Colleague Letter on the IDEA for Students with Disabilities in Correctional Facilities, U.S. Dep’t of Educ., Office of Special Education Programs \(OSEP\), December 5, 2015.](#)

[LEAs that have youth with disabilities in adult prison do not have the responsibility of meeting the requirement for: \(1\) State and districtwide assessments; and \(2\) transition planning, and transition services if the student’s eligibility under Part B of the IDEA will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.](#) In addition, the IEP Team of a child with a disability may modify the child’s IEP or placement if there is a security or compelling penological interest that cannot otherwise be accommodated.

General Supervision

The LEA should ensure the following:

- Written policies, practices, and procedures that assure compliance with IDEA for incarcerated students.
- Have a procedure for providing professional learning activities to ensure all teachers and administrators are fully informed of their responsibilities for providing services should enrolled students become incarcerated.
- Provide sustained supervision to monitor for the compliant practices involved in providing services for students who are incarcerated.
- Districts are encouraged to develop a memorandum of understanding (MOU) with local jails and state facilities. To ensure the identification of special education students, communication lines should be open and ongoing with written procedures.

Resources

[Free Appropriate Public Education \(FAPE\)](#)
[Dear Colleague on Incarcerated Students 2014](#)
[Individualized Education Program \(IEP\) Rule](#)