

CEA Guidance Regarding Special Education in Adult Correctional Settings

The Individuals with Disabilities Act (IDEA) is a federal law that makes available a free appropriate public education (FAPE) to eligible people with disabilities and ensures special education and related services to them. The IDEA governs how states and public agencies provide early intervention, special education, and related services. Individuals aged 3 through 21 receive special education and related services under IDEA Part B. (See 20 U.S. Code Subchapter II § 1411-1418).

Under IDEA, FAPE must be available to all individuals with disabilities between the ages of 3 and 21, inclusive, consistent with State law. **This includes individuals who are incarcerated in juvenile and adult correctional facilities.** CEA offers the following guidance to jurisdictions regarding IDEA in adult correctional settings

CHILD FIND: Jurisdictions are obligated to identify those individuals who qualify for services.

1. Interview ALL individuals in the facility who are under the age of 22 (even those not enrolled in school) to see who has received special education services in the past.¹
2. For those individuals who have received special education services and want to attend school:
 - a. Enroll in school immediately
 - b. Verify previous school records
 - c. Develop an Individualized Education Program (IEP)
3. For those individuals who report they have not received special education services in the past:
 - a. Document in writing
 - b. Maintain the record
4. For those individuals who report they have received special education in the past but do not want to go to school:
 - a. Document in writing
 - b. Advise them of their rights through age 22

Note: In order to receive special education services post-conviction in adult corrections, the student must have been identified as eligible to receive special education services PRIOR to incarceration and must have had an IEP in place at the previous educational placement. Individuals who are in adult jails and detention centers have the right to education services even if they were not previously identified.²

PREVIOUS SCHOOL RECORDS:

- a. Ask the student for the name of his most recent educational placement
- b. Send for records (school-to-school sharing of records does not violate FERPA)
- c. Develop an IEP within 10 school days of verification

¹ A set of intake questions about education is essential. Initial questions should ask about prior school experiences, class sizes, and if the individual received extra help or tutoring. The last questions asked in an intake interview should be “Did you ever have an IEP?” and “Were you enrolled in special education?”

² See Letter to Geoffrey A. Yudien, Esq., August 19, 2003 from the U.S. Department of Education, Office of Special Education Programs. <https://www2.ed.gov/policy/speced/guid/idea/letters/revpolicy/tpfapepris.html>

Note the following: It is helpful to develop a working relationship with the state's Department of Education to get guidance to establish an efficient process for obtaining a student's previous school records.

INDIVIDUALIZED EDUCATION PLAN (IEP):

- a. Must include Present Levels of Performance (these can be gleaned from previous school records and current assessments such as TABE).
- b. Must include measurable annual goals
- c. Must define the services/supports to be provided
- d. Must describe how student progress will be monitored and reported
- e. Must describe what happens if the student is placed in segregation or other change of placement

SEGREGATION (CHANGE OF PLACEMENT)

- a. After 10 days, a Manifestation Determination meeting must be held to determine if the behavior that caused the change of placement was a function of the individual's disability.
- b. If no, a plan must be put into place to provide the student with the services he needs to progress towards his goals.
- c. If yes, he must be returned to his original educational placement with continued services.

CURRICULUM:

- a. The student must be able to choose between obtaining a high school diploma or a high school equivalency certificate (HSE).
- b. If a student chooses to obtain the HSE, he must follow the state's procedures for withdrawing from school to complete the HSE. He can still receive special education services while he obtains the HSE.
- c. If a student chooses to obtain a high school diploma, the state must provide the student with access to the curriculum necessary to achieve this goal.

Note the following: While many youths in the community opt to pursue the HSE, if a state provides options for completing high school past the age of 18, those who are incarcerated should have the same option. There is adequate case law showing adult corrections are required to provide education services to juveniles, even those charged as or convicted as adults. The best scenario occurs when jails and prisons can offer both coursework and HSE exams. Through credit recovery options and creative scheduling, this is possible.

The Correctional Education Association can be a resource for those jurisdictions who want or need more detailed support and guidance. Additionally, please access the following resources available through the US Department of Education:

- 1. US Department of Education Office of Special Education Programs (OSEP) [Guidance Letter](#)
- 2. US Department of Education Office of Special Education Programs [website](#)
- 3. Individuals with Disabilities Education Act (IDEA) [website](#)