

Adults in Correctional Facilities

Adopted by OSC March 23, 2012
Revised, OSC, May 6, 2020

Child Find

Marin County SELPA Member LEAs in conjunction with the Marin County Office of Education shall actively and systematically seek out all "eligible adults" residing within its boundaries. The LEAs within the SELPA shall ensure that they are identified and provided FAPE consistent with this policy.

Free Appropriate Public Education

Every individual with exceptional needs who is eligible to receive special education instruction and related services under the Individuals with Disabilities Education Act (IDEA) and state special education laws, shall have access to that instruction and those services at no cost, as appropriate, to him or her. FAPE shall be available to individuals with exceptional needs in accordance with Section 1412(a) (1) of Title 20 of the United States Code and Section 300.101 of Title 34 of the Code of Regulations.

Eligible Adults in Federal and State Prisons

Individuals in the federal correctional system fall under the jurisdiction of the Federal Bureau of Prisons within the Department of Justice. IDEA makes no specific provision for funding services for individuals with disabilities through the Bureau of Prisons. Individuals in the state correctional facilities fall under the jurisdiction of the State Department of Corrections. This Policy is to address adult students who are incarcerated in the County Jail within the County of Marin.

Adults who are aged 18 to 21 years, who have not graduated with a high school diploma, who, at the time they turned 18 were identified as an individual with exceptional needs and had an individualized educational program (IEP) under the IDEA, are also entitled to a FAPE (hereinafter referred to as "eligible adults".) (See 20 U.S.C. § 1400 (d)(1)(A), (B), (C); 20 U.S.C. § 1412 (a)(1)(A); Cal. Ed. Code, §§ 56000, 56026(c)(4).) This applies to adults incarcerated in California adult jails and prisons. However, individuals aged 18 through 21, who in the educational placement prior to his or her incarceration in an adult correctional facility was not identified as an individual with exceptional needs or did not have an IEP under the IDEA, is not entitled to a FAPE (20 U.S.C. § 1412(a)(1)(B); Cal. Educ. Code, § 56040(b).)

District of Special Education Accountability

For eligible adults the District of Special Education Accountability (DSEA) shall be the last DSEA in effect prior to the pupil's attaining the age of majority shall become and remain as the responsible educational agency, as long as and until the parent or parents relocate to a new DSEA. (See Cal. Educ. Code § 56041 (a).)

Individualized Education Program

Marin County Office of Education (MCOE) shall, on behalf of the DSEA, be the provider of services identified in the FAPE offer as described above. If an eligible adult consents to receive services, MCOE will work with the DSEA and the correctional facility staff to offer

services to the eligible adult student with disabilities consistent with the services currently offered through MCOE in the adult correctional facilities.

Once MCOE is informed that an eligible adult is incarcerated in an adult correctional facility, they will determine whether the eligible adult requests to receive FAPE. Once the request has been made, MCOE will contact the DSEA, who shall review and revise the IEP as necessary, subject to the cooperation of the correctional facility where the eligible adult is located. The eligible adult must consent to the receipt of such services in order to receive said services while incarcerated. The DSEA shall provide MCOE staff with instructional materials that will provide FAPE.

Limitations

Should MCOE cease to provide educational services at the County Jail, the Advisory Steering Committee would reconvene to review this policy and make changes as appropriate.

The following special education requirements do not apply to eligible individuals who are convicted as adults under State law and incarcerated in adult prisons:

1. The requirements set out in 20 U.S.C. § 1412(a)(16) and 20 U.S.C. § 1414(d)(1)(A)(i)(VI) (relating to participation in general assessments) do not apply. Eligible individuals convicted as adults under State law and incarcerated in adult prisons are exempted from participation in State and district-wide assessment programs under the IDEA
2. The requirements of items (aa) and (bb) of 20 U.S.C. § 1414(d)(1)(A)(i)(VIII) (relating to transition planning and transition services), do not apply with respect to such individuals whose eligibility under the IDEA will end, because of their age, before such individuals will be released from prison.
3. In an individual with a disability is convicted as an adult under state law and incarcerated in an adult prison, the individual's IEP Team may modify the individual's IEP or placement notwithstanding the least restrictive environment ("LRE") requirements of the 20 U.S.C. § 1412(a)(5)(A) and the IEP contents requirements of 20 U.S.C. § 1414(d)(1)(A) if there is a bona fide security or compelling penological interest that cannot otherwise be accommodated.

Legal Reference: 20 U.S.C. § 1414(d)(7); 34 C.F.R. §§ 300.102, 300.324(d); Cal. Educ. Code, §§ 56040-56041; Cal. Gov. Code, § 7579(d); Letter to Yudien, 39 IDELR 270, 103 LRP 37913 (OSEP 2003)