



Child Find

CHILDREN WHO ARE INCARCERATED

August 2023

Disclaimer: This information is provided for educational purposes only to facilitate a general understanding of the law or other regulatory matter. This information is neither an exhaustive treatment on the subject nor is this intended to substitute for the advice of an attorney or other professional advisor. Consult with your attorney or professional advisor to apply these principles to specific fact situations.

©2020 by Texas Association of School Boards, Inc.

TASB grants members/subscribers of TASB Student Solutions™ the limited right to customize this publication for internal (non-revenue generating) purposes only.



CONTENTS

CHILDREN WHO ARE INCARCERATED..... 1

 What is Required 1

 Students in Adult Prisons 1

 Transfer of Parental Rights 1

 Definitions..... 1

 Additional Procedures 2

 Provision of FAPE to Students Ages 18-21 2

 Students in Adult Prisons 2

 Transfer of Parental Rights 2

 Evidence of Procedure..... 3

 Resources..... 3

CITATIONS..... 3

CHILDREN WHO ARE INCARCERATED

What is Required

The obligation to make FAPE available to all students with disabilities, including the child find obligations, does not apply to individuals ages 18 through 21 who, in the last educational placement prior to their incarceration in an adult correctional facility were not identified as having a disability and who did not have an IEP. This exception to FAPE does not apply to individuals with disabilities ages 18 through 21 who (a) had been identified as a student with a disability and had received services in accordance with an IEP, but who left school prior to his/her incarceration or (b) did not have an IEP in their last educational setting, but who had been identified as a student with a disability under the IDEA.

Students in Adult Prisons

For students with disabilities who are convicted as adults under state law and incarcerated in adult prisons the requirements related to state and districtwide assessments do not apply; and the requirements related to transition services do not apply with respect to students whose age eligibility under the IDEA will end before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

If the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated, the student's ARD Committee may modify the student's IEP or placement notwithstanding LRE and IEP content requirements of the IDEA.

Transfer of Parental Rights

All rights provided to parents under the IDEA transfer to adult students at age 18 who are incarcerated in an adult or juvenile federal, state, or local correctional institution, unless the parent or other individual has been granted guardianship under Texas law. See [TRANSITION].

Definitions

"Correctional facility" is a place designated by law for the confinement of a person arrested for, charged with, or convicted of a criminal offense.

"Bona fide security or compelling penological interest" includes a state interest relating to the treatment of the student convicted of the crime(s).

Additional Procedures

The ARD Committee will determine the special education services to be provided to incarcerated special education students to ensure that the students continue to receive FAPE in a special education setting. The ARD Committee will ensure that a student with a disability in a correctional facility is not placed in classes that include only other students with disabilities, if that is not the student's LRE.

Provision of FAPE to Students Ages 18-21

District Special Education Administration will maintain a database of all students between the ages of 18 and 21 that have been identified as a student with a disability that are currently incarcerated. District Special Education Personnel will ensure that FAPE is offered to any student that has received special education services in accordance with an IEP from the District and left school prior to incarceration. District Special Education Personnel will also ensure that FAPE is offered to any student that did not have an IEP while last enrolled in a District campus but who had been identified by the District as a student with a disability.

District Special Education Personnel will document all services provided to students with disabilities in correctional facilities.

Students in Adult Prisons

The ARD Committee of an incarcerated youth with a disability who is in an adult prison will hold an ARD meeting to develop an appropriate IEP at the beginning of the period of incarceration. The ARD Committee may modify the student's IEP or placement notwithstanding the LRE and IEP content requirements under the IDEA if a bona fide security or compelling penological interest cannot be accommodated. For example, the District will not violate the IDEA if it cannot provide special education services to an incarcerated student with a disability if it is prevented from accessing the student due to safety concerns.

The ARD Committee may incorporate the services necessary to obtain a GED into the student's IEP where a bona fide security or compelling penological interest prevents the student from receiving a high school diploma.

Transfer of Parental Rights

District Special Education Personnel will provide the parent and the incarcerated student with a disability the notice of the transfer of parental rights not later than one year before the student's 18th birthday. See [TRANSITION].

The District will maintain documentation requirements of compliance associated with Texas Student Data System (TSDS), Public Education Information Management System

(PEIMS), and State Performance Plan (SPP). District staff will provide training, with follow up, to ensure the documentation required is in place and compliant.

Evidence of Procedure

- Database of Incarcerated Youth
- Child Find Documentation Showing Contacts with Correctional Facilities in District
- ARD/IEP
- FIE
- Communications Between the District and the Correctional Facility
- Transfer of Rights
- Documentation for the state in TSDS, PEIMS, and SPP

Resources

[The Legal Framework for the Child-Centered Special Education Process: Children Who Are Incarcerated - Region 18](#)

[OSERS Dear Colleague Letter \(Dec. 5, 2014\) - U.S. Department of Education](#)

[OSERS Letter to Yudien \(Aug. 19, 2003\) - U.S. Department of Education](#)

[OSERS Letter to Mahaley \(Mar. 2, 2011\) - U.S. Department of Education](#)

[Supporting Youth with Disabilities in Juvenile Corrections - U.S. Department of Education](#)

[Notice of Procedural Safeguards - Texas Education Agency](#)

[Guide to the ARD Process - Texas Educational Agency](#)

CITATIONS

Board Policy EHBAC; 20 USC 1412; 34 CFR 300.8, 300.102(a)(2), 300.324(d)