



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Dec 05, 2014

Dear Colleague:

We are writing to focus your attention on the educational needs of students with disabilities who are in correctional facilities<sup>1</sup> and the requirements of Part B of the Individuals with Disabilities Education Act (IDEA or IDEA, Part B) as they apply to States, State educational agencies (SEAs), and public agencies (including local educational agencies (LEAs), and responsible noneducational public agencies<sup>2</sup>) in educating these students. Absent a specific exception, all IDEA protections apply to students with disabilities in correctional facilities and their parents.<sup>3</sup> Supporting effective and accountable education for incarcerated and at-risk youth can result in cost savings to the public and enable troubled youth to obtain an education and enhance their future employment options and life choices. As the U.S. Departments of Education (Department) and Justice recently stated, the fact that a student has been charged with or convicted of a crime does not diminish his or her substantive rights or the procedural safeguards and remedies provided under the IDEA to students with disabilities and their parents.<sup>4</sup> This letter also provides information regarding technical assistance and other relevant resources to enhance students' reintegration into the school setting or participation in programs.

Students with disabilities represent a large portion of students in correctional facilities, and it appears that not all students with disabilities are receiving the special education and related services to which they are entitled. National reports document that approximately one third of students in juvenile correctional facilities were receiving special education services, ranging

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<sup>1</sup> The definition of a correctional facility varies from State to State. For the purposes of this letter, "correctional institution" or "correctional facility" refers to juvenile justice facilities, detention facilities, jails, and prisons where students with disabilities are, or may be, confined. In addition, this letter uses the term "students with disabilities" to refer to children with disabilities, as that term is defined in 34 CFR §300.8.

<sup>2</sup> The requirements in 34 CFR §300.2(b)(1)(iv) and (2) and 34 CFR §300.154 govern the responsibilities of noneducational public agencies for the education of students with disabilities in correctional facilities.

<sup>3</sup> The rights of students with disabilities in correctional facilities are also protected by two other Federal laws: Section 504 of the Rehabilitation Act of 1973 (Section 504), which prohibits disability discrimination in programs or activities of entities, such as public schools and correctional agencies, that receive Federal financial assistance (29 U.S.C. §794, 34 CFR part 104); and Title II of the Americans with Disabilities Act of 1990 (Title II), which prohibits disability discrimination by public entities, including public schools and correctional agencies, regardless of whether they receive Federal financial assistance (42 U.S.C. §§12131-12134, 28 CFR part 35). For more information about these civil rights laws, see the OCR Dear Colleague Letter (dated June 9, 2014), available at <http://www.ed.gov/blog/wp-content/uploads/2014/06/doj-dod-ltr.pdf>

<sup>4</sup> Statement of Interest for the United States, *G.F. v. Contra Costa County*, No. 3:13-cv-03667-MEJ (N.D. Cal.) (filed Feb. 13, 2014), available at [http://www.justice.gov/crt/about/spl/documents/contracosta\\_soi\\_2-13-14.pdf](http://www.justice.gov/crt/about/spl/documents/contracosta_soi_2-13-14.pdf).

from 9 percent to 78 percent across jurisdictions.<sup>5</sup> States reported that in 2012–2013, of the 5,823,844 students with disabilities, ages 6 through 21, served under IDEA, Part B, 16,157 received special education and related services in correctional facilities.<sup>6</sup> Evidence suggests that proper identification of students with disabilities and the quality of education services offered to students in these settings is often inadequate.<sup>7</sup> Challenges such as overcrowding, frequent transfers in and out of facilities, lack of qualified teachers,<sup>8</sup> inability to address gaps in students' education, and lack of collaboration with the LEA contribute to the problem.<sup>9</sup> Providing the students with disabilities in these facilities the free appropriate public education (FAPE) to which they are entitled under the IDEA should facilitate their successful reentry into the school, community, and home, and enable them to ultimately lead successful adult lives.

This letter is organized into three main areas. The first summarizes the key points in the letter. The second addresses States' and SEAs' responsibilities to students with disabilities in correctional facilities. The third addresses the responsibilities of public agencies, including LEAs, and correctional facilities that operate as LEAs, and noneducational public agencies that are responsible for providing education to students with disabilities in correctional facilities to carry out IDEA requirements. Because the responsibilities of these entities in certain areas overlap, some matters are discussed more than once.

The following are the key points made in this letter regarding IDEA, Part B requirements, as they pertain to students with disabilities:

- Absent a specific exception, all IDEA protections apply to students with disabilities in correctional facilities and their parents.

#### *Shared Responsibility to Provide FAPE*

- Every agency at any level of government that is involved in the provision of special education and related services to students in correctional facilities must ensure the provision of FAPE, even if other agencies share that responsibility.

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<sup>5</sup> Quinn, M., Rutherford, R., Leone, P., Osher, D., & Poirier, J. (2005); Center for Juvenile Justice Reform, Georgetown University, Addressing the Unmet Educational Needs of Children and Youth in the Juvenile Justice and Child Welfare Systems 2012 Edition <http://cjjr.georgetown.edu/resources2/cjirpublications/educationpaper.html>

<sup>6</sup> U.S. Department of Education, ED Facts Data Warehouse (EDW), OMB # 1875-0240: "IDEA, Part B Child Count and Educational Environments Collection," 2012. The definition of "correctional facilities" for this data collection is "children who received special education in correctional facilities. These data are intended to be an unduplicated count of all children receiving special education in short-term detention facilities (community-based or residential) or correctional facilities."

<sup>7</sup> Richard A. Mendel, *No Place for Kids: The Case for Reducing Juvenile Incarceration*, Annie E. Casey Foundation (2011).

<sup>8</sup> Mary M. Quinn, Robert B. Rutherford, Peter E. Levine, David M. Osher, and Jeffrey M. Poirier, *Youth with Disabilities in Juvenile Corrections: A National Survey*, Exceptional Children, Vol 71, No. 3, pp. 339-345 (2005).

<sup>9</sup> Robert Balfanz, Kurt Spiridakis, Ruth C. Neild, and Nettie Legters, *High-Poverty Secondary School and Juvenile Justice Systems: How Neither Helps the Other and How That Could Change*, 99 *New Directions for Youth Development* 71-89 (2003).

- States must have interagency agreements or other methods for ensuring interagency coordination in place so that it is clear which agency or agencies are responsible for providing or paying for services necessary to ensure FAPE for students with disabilities in correctional facilities.

#### *SEA Responsibility and Personnel Qualifications*

- SEAs must exercise general supervision over all educational programs for students with disabilities in correctional facilities (unless covered by an exception) to ensure that their educational programs meet State education standards and IDEA, Part B requirements. This responsibility includes monitoring public agencies that are responsible for providing FAPE to students with disabilities in correctional facilities.
- SEAs must make annual determinations on the performance of correctional facilities in their State if those facilities operate as their own LEAs.
- SEAs must ensure that students with disabilities, including those in correctional facilities, are appropriately included in general State and districtwide assessments, including assessments conducted under section 1111 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), to the extent that the ESEA requires that those students be included in those assessments.
- The State Advisory Panel must include representatives from the State juvenile and adult corrections agencies, and include other agencies involved in the financing or delivery of services to students with disabilities.
- States and their public agencies must establish and maintain qualifications to ensure that personnel providing special education and related services, including those serving students with disabilities in correctional facilities, are appropriately and adequately prepared and trained. Public school special education teachers in correctional facilities must be “highly qualified,” as defined by IDEA and its implementing regulations, and related services personnel and paraprofessionals in correctional facilities must meet State qualifications for those personnel, as described in IDEA and its implementing regulations. SEAs must monitor to ensure that there are appropriate special education teachers in schools and education programs within correctional facilities.

#### *Child Find and Evaluation*

- States and their public agencies must have child find policies and procedures in place to identify, locate, and evaluate students who are in correctional facilities who may have a disability under the IDEA and are in need of special education and related services, regardless of the severity of their disability and consistent with the State’s child find and eligibility standards. This responsibility includes students who have never been identified as a student with a disability prior to their entry into the facility.
- Students suspected of having a disability who need special education and related services must be evaluated, subject to applicable parental consent requirements, in a timely manner,

even if the student will not be in the facility long enough to complete the evaluation. If a student transfers from an LEA to a correctional facility in the same school year after the evaluation has begun, and the responsibility for FAPE transfers as well, both agencies must coordinate assessments to ensure that a timely evaluation occurs.

#### *FAPE in Least Restrictive Environment*

- When a student with an individualized education program (IEP) transfers to a correctional facility in the same State in the same school year, the new public agency (in consultation with the parents) must provide the student with FAPE through services that are comparable to those described in the student's IEP from the previous public agency until the new public agency either adopts the previous agency's IEP, or develops and implements a new IEP for the student.
- Unless there is a specific exception, all IEP content requirements apply to students with disabilities in correctional facilities, including, but not limited to, a statement of: (1) the student's present levels of academic achievement and functional performance; (2) measurable annual academic and functional goals; and (3) the special education and related services and supplementary aids and services that will be provided to the student to enable him or her to advance appropriately toward attaining his or her IEP goals and to be involved in and make progress in the general education curriculum—that is, the same curriculum as for nondisabled students.
- To ensure that students with disabilities in correctional facilities continue to receive FAPE, public agencies must have policies and procedures to ensure that the relevant records of students with disabilities who move to, and from, correctional facilities are transferred as expeditiously as possible," and also must take reasonable steps to appropriately transmit those records to facilitate the student's transition to or from the correctional facility.
- The IDEA requirements related to least restrictive environment (LRE) apply to the education of students with disabilities in correctional facilities. IEP teams or placement teams must make individualized placement decisions, and may not routinely place all students with disabilities in correctional facilities in classes that include only students with disabilities, even if this means creating placement options or using other arrangements, to the maximum extent appropriate to the student's needs. This may include, for example, having special education and general education teachers co-teach in the regular classroom.
- Public agencies must comply with all applicable IDEA secondary transition requirements to facilitate eligible students' movement from secondary education in the correctional facility to appropriate post-school activities.

#### *Due Process and Discipline*

- The IDEA due process protections apply to students in correctional facilities and their parents, including requirements related to providing any required written notices in

language understandable to the general public and in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

- Any exclusion from the classroom is particularly harmful for students with disabilities in correctional facilities. In general, even in the presence of disciplinary concerns, because correctional facilities are run by public entities, their obligation to ensure that special education and related services are provided to eligible students with disabilities continues.
- A student with a disability in a correctional facility who violates a code of student conduct is entitled to the protections in the IDEA discipline procedures that must be afforded to all students with disabilities. These protections apply regardless of whether a student who violates a code of student conduct is subject to discipline in the facility or removed to restricted settings, such as confinement to the student's cell or "lockdown" units. In any event, a removal from the current educational placement that results in a denial of educational services for more than 10 consecutive school days, or a series of removals that constitute a pattern that total more than 10 school days in a school year is a change in placement, which, in turn, requires a manifestation determination under the IDEA.

## **States' and State Educational Agencies' Responsibilities**

### *Responsibility for Ensuring FAPE in Correctional Facilities*

Every agency at any level of government that is involved in the provision of special education and related services to students with disabilities in correctional settings must ensure the provision of FAPE, even if other agencies share that responsibility (34 CFR §300.2(b)(1)(iv)).<sup>10</sup>

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<sup>10</sup> There are some provisions of the IDEA that are not applicable to certain students with disabilities in correctional facilities. With respect to students with disabilities aged 18 through 21 in adult correctional facilities, the obligation to make FAPE available does not apply to the extent that State law does not require that special education and related services be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility were not actually identified as being a student with a disability under the IDEA and did not have an IEP under the IDEA (34 CFR §300.102(a)(2)(i)). However, this exception does not apply where: (1) the student with a disability, aged 18 through 21, had been identified as a student with a disability and had received services in accordance with an IEP, but left school prior to his or her incarceration, or (2) did not have an IEP in his or her last educational setting, but had been actually identified as a student with a disability (34 CFR §300.102(a)(2)(ii)).

In addition, under 34 CFR §300.324(d), for otherwise eligible students with disabilities who have been convicted as adults under State law and incarcerated in adult prisons: (1) States and LEAs are not required to include such students in State and districtwide assessments under section 612(a)(16) of the IDEA and §300.320(a)(6); (2) the requirements in §300.320(b) (relating to transition planning and transition services) do not apply with respect to the students whose eligibility under IDEA, Part B 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; and (3) the IEP Team of a student with a disability may modify the student's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated including the requirements of §§300.320 (relating to IEPs) and 300.112 (relating to LRE).

As referenced above, under 34 CFR §300.324(d), the requirements in §300.320(b) (relating to transition planning and transition services) do not apply with respect to the students whose eligibility under IDEA, Part B 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 that apply to otherwise eligible students with disabilities who have been convicted as adults under State law and incarcerated in adult prisons. In addition, the IDEA makes no specific provision for funding educational services for individuals with disabilities incarcerated in a Federal prison. See Letter to Yudien, (August 19, 2003).

<https://www2.ed.gov/policy/speced/guid/idea/letters/2003-3/yudien081903fape3q2003.pdf>

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. This responsibility applies to correctional facilities with which the State contracts to provide education, including special education and related services (34 CFR §§300.2(b)(1)(iv), 300.101, and 300.149(a)). Indeed, the requirements in IDEA, Part B apply to all political subdivisions of a State<sup>11</sup> that provide special education and related services to students with disabilities, including State and local juvenile and adult correctional facilities, regardless of whether that agency receives funds under Part B (34 CFR §300.2(b)(1)(iv) and (2)).

States have different administrative structures or arrangements for providing education, including special education and related services, to students with disabilities in correctional facilities. These arrangements include assigning the responsibility for providing special education and related services in correctional facilities to: (1) the SEA; (2) the correctional facility as an LEA; (3) the LEA where the correctional facility is located or another LEA; (4) a noneducational public agency<sup>12</sup> through an interagency agreement or other mechanism for interagency coordination that meets the requirements in 34 CFR §300.154; and (5) a transfer of authority pursuant to 34 CFR §300.149(d).<sup>13</sup>

When the State assigns responsibility for providing FAPE to a noneducational public agency, the IDEA expressly requires the Chief Executive Officer of a State, or his or her designee, to ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency and the SEA (34 CFR §300.154(a)). The purpose of this requirement is to ensure that the responsibility for the provision of FAPE for all students with disabilities is clear and that services necessary to ensure FAPE are provided in a timely and appropriate manner. This is particularly important in the context of correctional facilities, where it is not uncommon for multiple agencies to share responsibility for the operation of distinct functions within the same facility. The State may meet this requirement through a contract, or other methods, such as a State statute or regulation, or a signed interagency agreement, between

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<sup>11</sup> The definition of “State” includes the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas (34 CFR §300.40).

<sup>12</sup> Under 34 CFR §300.154(b)(1)(i), a “noneducational public agency” is described as “any public agency that is otherwise obligated under Federal or State law, or assigned responsibility under State policy, or pursuant to [§300.154(a)] to provide or pay for any services that are also considered special education or related services.”

<sup>13</sup> The Governor, or another individual pursuant to State law, may assign to any public agency in the State the responsibility for ensuring that the requirements of IDEA are met with respect to students with disabilities who are convicted as adults under State law and incarcerated in an adult prison (34 CFR §300.149(d)). However, such an assignment does not relieve the State, or the assigned public agency, of its responsibility to meet all the requirements of IDEA, even if the public agency does not receive IDEA, Part B funds (34 CFR §300.2(b)(2)). This letter does not address the circumstances covered by 34 CFR §300.149(d).

respective agency officials that clearly identifies the responsibilities of each agency<sup>14</sup> (34 CFR §300.154(b) and (c)(1) and (2)).

Interagency agreements, or other mechanisms for interagency coordination, must include provisions relating to: (1) the financial responsibility of each agency for providing special education and related services,<sup>15</sup> including reimbursement terms;<sup>16</sup> (2) the resolution of interagency disputes; and (3) the coordination and delivery of special education and related services (34 CFR §300.154(a)). In addition to these required provisions, as a best practice, States are encouraged to include additional provisions in their interagency agreements or other mechanisms to ensure that the needs of students with disabilities will be properly identified and appropriately addressed so that these students timely receive the special education and related services to which they are entitled under the IDEA. For example, States should consider including provisions that identify the: (1) location of IEP Team meetings and, if not within the correctional facility, the responsibility for ensuring that the student is transported to the meeting, if appropriate for the student to attend<sup>17</sup>; and (2) where applicable, the responsibility of the correctional facility to ensure that it grants appropriate access to facilities to all personnel necessary to implement the IDEA requirements. Granting appropriate access may be essential to ensure that evaluations (including the administration of any necessary assessments or other evaluation materials), IEP Team meetings, and the provision of required special education and related services occur in a timely manner.

#### *Accountability, Data Collection, and Reporting*

SEAs must ensure that all students with disabilities, including those in correctional facilities, are appropriately included in all general State and districtwide assessment programs, including assessments described in section 1111 of the ESEA, to the extent that the ESEA requires that students in correctional facilities be included in those assessments.<sup>18</sup> Students with disabilities

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<sup>14</sup> A State may also meet this requirement through other appropriate written methods, as approved by the Chief Executive Officer of a State, or his or her designee and approved by the U.S. Department of Education (34 CFR §300.154(c)(3)).

<sup>15</sup> Under 34 CFR §300.154(b)(1)(i), a noneducational public agency, including the State Medicaid agency and other public insurers of children with disabilities, may be assigned the responsibility to pay for special education and related services. In that case, the financial responsibility of the noneducational public agency precedes the financial responsibility of the LEA (or the State agency responsible for developing the child's IEP) (34 CFR §300.154(a)(1)). Even though these statutory and regulatory provisions specifically refer to the State Medicaid agency or other public insurers of students with disabilities, they are equally applicable to any noneducational public agency that is otherwise obligated under State or Federal law to provide or pay for special education and related services. This requirement includes the corrections context where an agency other than an SEA or LEA is responsible for providing or paying for special education and related services.

<sup>16</sup> If a noneducational public agency fails to provide or pay for special education and related services, the LEA (or, if applicable, the State agency) responsible for developing the student's IEP must provide or pay for these services in a timely manner. The LEA or State agency may then claim reimbursement pursuant to the terms of the interagency agreement or other mechanism for interagency coordination (34 CFR §300.154(b)(2)).

<sup>17</sup> A parent and a public agency may agree to use alternative means of satisfying the IEP Team meeting participation requirements, such as through video conferences and conference calls. (34 CFR §300.328).

<sup>18</sup> This requirement does not apply to students in correctional facilities who have been convicted as adults under State law and incarcerated in adult prisons.

who are required to take any general State assessment during the time that they are confined to a correctional facility must be provided appropriate accommodations on the State assessment, or administered an appropriate alternate assessment, if determined to be necessary for the student by the student's IEP Team (34 CFR §§300.160(a) and 300.320(a)(6)). The SEA must also exercise general supervision over all educational programs for students with disabilities in correctional facilities (34 CFR §300.149) to ensure that such programs meet the education standards of the SEA and IDEA requirements. As part of this responsibility, the SEA must monitor public agencies that are responsible for providing FAPE in correctional facilities (34 CFR §300.149)).<sup>19</sup> Furthermore, SEAs must make annual determinations about the performance of each correctional facility that is its own LEA (34 CFR §300.600(a)(2)). States must include students with disabilities in correctional facilities when collecting and reporting data, including data reported in connection with IDEA section 618 data submissions and in the State's Annual Performance Report.

### *Personnel Qualifications*

The IDEA personnel qualifications requirements continue to apply even though personnel are providing special education and related services to students with disabilities in a correctional facility. Accordingly, the SEA must: (1) establish and maintain qualifications to ensure that those personnel necessary to carry out the purposes of the IDEA are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve students with disabilities (34 CFR §300.156(a)); (2) ensure that qualifications of related services personnel and paraprofessionals are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services (34 CFR §300.156(b)); and (3) ensure that each person employed as a public school special education teacher in the State is "highly qualified" (34 CFR §§300.18 and 300.156(c)).

### *Child Find*

The SEA must have child find policies and procedures in effect that ensure that all age-eligible students with disabilities, including those in correctional facilities, who are in need of special education and related services, are identified, located, and evaluated, regardless of the severity of their disability (34 CFR §300.111(a)(1)(i)).<sup>20</sup> To meet these requirements, we strongly encourage SEAs to develop child find policies and procedures that address the unique challenges associated with identifying students with disabilities in correctional facilities. For example, State child find policies and procedures frequently focus on teachers and staff in traditional schools, as well as the local medical community. State child find policies and procedures should also include those

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<sup>19</sup> In addition, as the IDEA, Part B grantee, each State must provide auditors and Department officials with access to financial and programmatic records, supporting documents, statistical records, and other records under program regulations or the grant agreement, and maintain such records and documents to facilitate an audit and to demonstrate compliance with program requirements (34 CFR §§76.730 through 76.731). See also 2 CFR 200.302(b)(3).

<sup>20</sup> However, there is no obligation for States to identify and evaluate those students with disabilities in adult correctional facilities for whom the State is otherwise not required to provide FAPE.

individuals in the community who come in contact with students in the juvenile justice system, including intake staff, social workers, probation officers, truant officers, police, and medical and mental health professionals who treat students in correctional facilities, as well as other staff in the juvenile justice system and in correctional facilities.

### *Surrogate Parents*

In circumstances where the appointment of a surrogate parent is necessary, as described in 34 CFR §300.519(a), the SEA must make reasonable efforts to ensure the assignment of a qualified surrogate parent not more than 30 days after a public agency determines that the student needs a surrogate parent. The surrogate parent may represent the student in all matters relating to the identification, evaluation, and educational placement of the student, and the provision of FAPE. The surrogate parent must meet the knowledge, skills, impartiality, and other required criteria described in the IDEA and its implementing regulations. 34 CFR §300.519(d), (g), and (h).

### *Transfer of Parental Rights at Age of Majority*

The IDEA permits, but does not require, a State to transfer all rights accorded to parents under the IDEA to students who are in an adult or juvenile, State or local correctional facility when the student with a disability reaches the age of majority under State law, unless the student has been determined to be incompetent under State law (34 CFR §300.520). Once a student reaches the age of majority, questions regarding guardianship as an adult may arise. As a best practice, it is advisable for students, families, and the IEP Team to consider alternatives to guardianship first, in order to preserve a young person's legal independence to the maximum extent possible.

### *State Advisory Panel*

To implement the supports and interventions needed by students with disabilities entering, attending classes, and exiting the corrections system, requires significant collaboration and communication across agencies. The State Advisory Panel (SAP) is in a position to advise on such matters, particularly since it must include representatives from the State juvenile and adult corrections agencies, and other agencies involved in the financing or delivery of services to students with disabilities (34 CFR §300.168). As an advisory body, the SAP can work to address concerns regarding interagency record sharing, coordinated efforts between agencies, shared databases, and other related activities.<sup>21</sup>

## **Responsibilities of Public Agencies, Including LEAs, Correctional Facilities, and Noneducational Public Agencies, to Ensure a Free Appropriate Public Education**

As noted above, in *Responsibility for Ensuring FAPE in Correctional Facilities*, States have different methods for assigning responsibility for FAPE for students with disabilities in

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<sup>21</sup> For further information regarding collaborative efforts to support youth with disabilities in the juvenile justice system, see <http://csgjusticecenter.org/youth/publications/addressing-the-unmet-educational-needs-of-children-and-youth-in-the-juvenile-justice-and-child-welfare-systems-2/>

correctional facilities. In some cases, the correctional facility is itself an LEA or is a noneducational public agency with the responsibility for FAPE. For the purposes of this letter, we refer to public agency or LEA interchangeably when discussing specific responsibilities. However, these requirements apply to any public agency, LEA, correctional facility, and noneducational public agency responsible for providing FAPE to children with disabilities in correctional facilities.

### *FAPE and Transfer of Records*

The rules governing the responsibility for FAPE in connection to students with IEPs who transfer from one public agency to another apply when a student with a disability is in a correctional facility and the responsibility for the provision of FAPE transfers from one public agency (generally an LEA) to another public agency (generally another LEA that is, or includes, the correctional facility).<sup>22</sup> All agencies involved must have policies and procedures that ensure that the education records of students with disabilities who move to, and from, correctional facilities are transferred as expeditiously as possible.

The failure of a public agency to obtain educational records promptly can interfere with the student's ability to receive FAPE and to receive credits towards graduation. Therefore, it is critical that public agencies and correctional facilities have systems in place to ensure compliance with the transmittal of records requirements in 34 CFR §300.323(g). Public agencies are encouraged to assign specific staff the responsibility to work with correctional staff to promptly transfer education records to facilitate the student's timely connection to educational or training activities.

The new public agency in which the student enrolls must take reasonable steps to promptly obtain the student's records (including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student) from the previous public agency in which the student was enrolled, pursuant to the Family Educational Rights and Privacy Act (FERPA)<sup>23</sup> (34 CFR §300.323(g)). The previous public agency in which the student

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<sup>22</sup> If a student with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the student (including services comparable to those described in the student's IEP from the previous public agency), until the new public agency either: (1) adopts the student's IEP from the previous public agency; or (2) develops, adopts, and implements a new IEP that meets the applicable requirements in 34 CFR §§300.320 through 300.324 (34 CFR §300.323(e)). If a student with a disability (who had an IEP that was in effect in a previous public agency in another State) is moved to a correctional facility in a new State within the same school year, the new public agency (in consultation with the parents) must provide the student with FAPE (including services comparable to those described in the student's IEP from the previous public agency), until the new public agency: (1) conducts an evaluation pursuant to 34 CFR §§300.304 through 300.306 (if determined to be necessary by the new public agency); and (2) develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in 34 CFR §§300.320 through 300.324 (34 CFR §300.323(f)).

<sup>23</sup> The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; 34 CFR part 99, generally requires that school districts and schools obtain the prior written consent of a parent or eligible student (i.e., a student 18 years of age or older or enrolled in a postsecondary institution) before disclosing personally identifiable information from education records; however, there are a number of exceptions to this prior consent requirement. The IDEA also contains confidentiality of information provisions that require prior written consent for disclosure of personally

was enrolled must take reasonable steps to promptly respond to the request from the new public agency (34 CFR §300.323(g)(2)).<sup>24</sup> In addition, the parent of a student with a disability may provide a copy of the IEP directly to the new public agency.

However, if, after taking reasonable steps, the new public agency is not able to obtain the IEP from the parent or from the previous public agency, the new public agency must, at a minimum, place the student in the regular school program, conduct an evaluation, and make an eligibility determination pursuant to 34 CFR §§300.304 through 300.306, if the new public agency determines an evaluation is necessary (34 CFR §300.323(f)(1)). Although the new public agency is not required to provide special education and related services to the student because it would be unable to determine what constitutes comparable services for the student without an IEP from the previous public agency, excluding the student from all educational services is not permissible. Moreover, even if the new public agency is unable to obtain the student's IEP from the previous public agency, if the new public agency decides that an evaluation is necessary because it has reason to suspect that the student has a disability, nothing in the IDEA or its implementing regulations would prevent the agency from providing special education services to the student while the evaluation is pending, subject to an agreement between the parent and the agency.<sup>25</sup>

### *Child Find and Evaluations*

LEAs are responsible for implementing the SEA's child find policies. It is not sufficient to assume that a student that enters a correctional facility is not a student with a disability simply because he or she has not yet been identified as such. Therefore, LEAs should work with individuals who are most likely to come into contact with students in the juvenile justice system (see *Child Find* above) to identify students suspected of having a disability and ensure that a timely referral for an evaluation is made. To determine if a student has a disability, a parent or a public agency may initiate a request for an evaluation. Moreover, the evaluation of a student suspected of having a disability must occur once parental consent has been obtained even if the student will not be in the facility long enough to complete the process.

Generally, the IDEA requires completion of initial evaluations within 60 days of receiving parental consent for the evaluation or within the State-established time frame

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identifiable information from education records and that generally incorporate the FERPA exceptions to the prior consent requirement. 20 U.S.C. 1417(c) and 34 CFR §300.622. The FERPA exception to the prior consent requirement that would be most relevant to a school district's or school's disclosure of education records of students who are entering a correctional facility is in 34 CFR §§99.31(a)(2) and 99.34 of FERPA regulations, which permits schools and school districts that are subject to FERPA to disclose personally identifiable information from education records without prior written consent to officials of another school or school district, including a school or school district run by a juvenile justice agency, where a student is enrolled, or seeks or intends to enroll, so long as the disclosure is for purposes related to the student's enrollment or transfer. See <http://www2.ed.gov/policy/gen/guid/ptac/pdf/idea-ferpa.pdf> for further clarification regarding the IDEA and FERPA confidentiality provisions and the transmission of education records to the correctional facility.

<sup>24</sup> See *Reentry Myth Buster on Student Records*, Federal Interagency Reentry Council, June 2013. <http://csgjusticecenter.org/wp-content/uploads/2013/06/Student-Records.pdf>

<sup>25</sup> See Questions and Answers on Individualized Education Programs (IEPs), Evaluations, and Reevaluations. Retrieved July 11, 2014, from <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C3%2C>

(34 CFR §300.301(c)(1) (procedures for initial evaluation) and 34 CFR §300.9 (definition of consent)). In addition, it is important to note that assessments and other evaluation materials used to assess a student must be selected and administered so as not to be discriminatory on a racial or cultural basis and must be provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information, unless it is clearly not feasible to so provide or administer (34 CFR §300.304(c)(1)(i) and (ii)).

If the student is transferred to a correctional facility in the same school year, in the same State or in a different State, after the previous LEA has begun but has not completed the evaluation, both public agencies must ensure that assessments are coordinated to ensure completion of the evaluation. This must occur as necessary and as expeditiously as possible (34 CFR §300.304(c)(5)). However, the relevant time frame does not apply when the following two conditions are present: (1) the new school district is making sufficient progress to ensure prompt completion of the evaluation; and (2) the parent and new school district agree to a specific time when the evaluation will be completed (34 CFR §300.301(d)(2) and (e)). As noted in *FAPE and Transfer of Records* above, 34 CFR §300.323(g) requires public agencies to take reasonable steps to promptly exchange relevant records when a child transfers to a new public agency and enrolls in a new school in the same school year, subject to FERPA. Relevant records could include existing evaluation data on the child, consistent with 34 CFR §300.305. Prompt exchange of any relevant records avoids duplicating previously conducted evaluations, and provides critical data to the new public agency to ensure the timely completion of the evaluation.<sup>26</sup>

### *Personnel Qualifications and Training*

The public agency must ensure that all personnel necessary to fulfill the requirements of the IDEA are appropriately and adequately prepared, subject to the requirements of 34 CFR §300.156, relating to personnel qualifications (34 CFR §300.207).<sup>27</sup> Public agencies should consider including noneducational correctional staff in professional development activities regarding the IDEA, including positive behavioral interventions and supports and discipline procedures, and provide opportunities for discussions across agency staff regarding any problems students with disabilities may experience in correctional facilities.

### *Individualized Education Programs*

All of the IEP content requirements apply to students with disabilities in correctional facilities (34 CFR §300.320),<sup>28</sup> including, but not limited to, a statement of: (1) the student's present levels

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<sup>26</sup> See Office of Special Education Programs' Dear Colleague Letter on Education for Highly Mobile Children, July 19, 2013, for a more thorough discussion of IDEA requirements applicable when students transfer. <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/12-0392dclhighlymobile.pdf>

<sup>27</sup> See the *Personnel Qualifications* section discussed above.

<sup>28</sup> In States that have opted to make available FAPE to students with disabilities convicted as an adult under State law and incarcerated in an adult prison, the LEA may modify an IEP for such a student if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated (34 CFR §300.324(d)(2)).

of academic achievement and functional performance (IEP Teams need to have the student's academic and other school records in order to determine the student's present levels of achievement and performance); (2) measurable annual academic and functional goals; and (3) the special education and related services and supplementary aids and services that will be provided to the student to enable him or her to advance appropriately toward attaining his or her IEP goals and to be involved in and make progress in the general education curriculum (the general education curriculum is the same curriculum provided to students without disabilities in the State).

When a student with an existing IEP from another public agency arrives in a correctional facility in the same State, the facility either must implement the existing IEP or hold an IEP Team meeting to modify the contents of the IEP (34 CFR §300.323(e)). If a student with an existing IEP from another public agency arrives in a correctional facility in a different State, the new public agency either must conduct its own evaluation and make a new eligibility determination pursuant to 34 CFR §§300.304-300.306, if determined to be necessary by the new public agency, or develop and implement a new IEP for the student (34 CFR §300.323(f)). However, as an initial matter, the new public agency, in consultation with the parents, must provide the student FAPE (including services comparable to those described in the student's IEP from the prior public agency) in accordance with 34 CFR §300.323(e) or (f), as appropriate.

When developing or modifying an IEP for a student in a correctional facility, IEP Teams should consider whether there has been an interruption in the provision of special education and related services during the student's transfer to the correctional facility, and how the break in services has affected the type or amount of special education and related services needed to provide FAPE to the student. In addition, the special factors that the IEP Team must consider in developing, reviewing, and revising the IEP of each student with a disability are particularly relevant to students with disabilities in correctional facilities. Among these special factors is the requirement for the IEP Team to consider the use of positive behavioral interventions and supports and other strategies to address behavior in the case of a student whose behavior impedes his or her learning or the learning of others (34 CFR §300.324(b)(2)). Appropriate implementation of these positive behavioral interventions and supports and other strategies to address behavior should ensure that the student is able to benefit from his or her educational program in the correctional facility, and hasten the student's transition from the facility and re-entry into the community.

Students identified with a disability either before or during incarceration in a correctional facility, who: (1) did not transfer to the correctional facility with an IEP; or (2) were not attending or enrolled in school at the time of incarceration, must have a meeting to develop an IEP within 30 days of the determination that the student needs special education and related services (34 CFR §300.323(c)(1)).<sup>29</sup> As soon as possible following the development of the IEP, the public agency must make available special education and related services to the student

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<sup>29</sup> Please see fn. 11 for a discussion of the responsibility to make FAPE available to students with disabilities aged 18 through 21 in adult correctional facilities

(34 CFR §300.323(c)(2)). IEP Teams should pay particular attention to those related services that are likely to be required for students in correctional facilities -- for example, counseling, parent counseling and training, psychological services, transportation, and social work services in schools (34 CFR §300.34(c)(2), (c)(8), (c)(10), (c)(14), and (c)(16)).

### *Least Restrictive Environment*

The IDEA emphasizes the importance of educating students with disabilities in regular classes and in extracurricular and other nonacademic activities with nondisabled students to the maximum extent appropriate (34 CFR §§300.114, 300.117, and 300.320(a)(4) and (5)). Therefore, each public agency must ensure that special classes, separate schooling, or other removal of students with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (34 CFR §300.114(a)(2)). If a determination is made that a student with a disability cannot be educated satisfactorily in the regular educational environment, even with the provision of appropriate supplementary aids and services, that student then could be placed in a setting other than the regular educational setting. Placement decisions must be made on an individual basis by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options (34 CFR §300.116(a)). In addition, the IEP must also include an explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular classroom or in extracurricular or other nonacademic activities (34 CFR §300.320(a)(5)).

Each public agency must ensure that a continuum of alternative placements is available to meet the needs of students with disabilities for special education and related services (34 CFR §300.115). These options must be available to the extent necessary to implement the student's IEP. Any alternative placement selected for the student outside of the regular education environment (education with nondisabled peers) must maximize opportunities for the student to interact with nondisabled peers, to the extent appropriate to the needs of the student. Accordingly, IEP Teams must make individualized placement decisions, and may not routinely place all students with disabilities in correctional facilities in classes that include only students with disabilities, even if this means creating a placement that is appropriate for the student, through methods such as having special education and general education teachers co-teach in the regular classroom (34 CFR §§300.116(a) and (b)).

### *Secondary Transition*

There are inherent difficulties associated with reentry from a correctional facility to home or another community environment. Therefore, it is particularly important that public agencies comply with the IDEA requirements related to secondary transition (34 CFR §300.320(b)).<sup>30</sup>

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<sup>30</sup> Transition services requirements are not applicable to students with disabilities in adult prisons and to students whose eligibility for IDEA services 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 (34 CFR §300.324(d)(1)(ii)).

Accordingly, beginning no later than the first IEP to be in effect when the student turns 16 (or younger if determined appropriate by the IEP Team), and updated annually thereafter, the IEP must include: (1) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and (2) the transition services (including courses of study) needed to assist the student in reaching those goals. In addition, the public agency must invite the student with a disability to attend the student's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals, as required in 34 CFR §300.321(b).<sup>31</sup> If the student does not attend the IEP Team meeting, the public agency must take other steps to ensure that the student's preferences and interests are considered. Moreover, to the extent appropriate, with the consent of the parents or a student who has reached the age of majority, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services (34 CFR §300.321(b)(1)–(3)). Finally, beginning not later than one year before the student reaches the age of majority under State law, the IEP must document that the student has been informed of the student's rights under the IDEA, if any, that will transfer to the student on reaching the age of majority under 34 CFR §300.520 (34 CFR §300.320(c)).

#### *Due Process Protections*

All of the due process protections under the IDEA extend to eligible students with disabilities in correctional facilities and their parents. Parents remain required members of the IEP and placement teams and retain all rights under IDEA, Part B unless a court has limited their rights or parental rights have transferred to the student at the age of majority. A parent who disagrees with the public agency on matters arising under the IDEA, including matters arising prior to the filing of a due process complaint, must have the opportunity to resolve the dispute through the mediation process described in 34 CFR §300.506 (34 CFR §300.500). In addition, a parent has the right to file a due process complaint to request a due process hearing on any matter relating to the identification, evaluation, or educational placement of the student, or the provision of FAPE to the student, in accordance with procedures in 34 CFR §§300.507 through 300.518 (34 CFR §300.507(a)(1)). If a student has been assigned a surrogate parent, the due process rights that are available to parents are afforded to the surrogate parent, and the prior written notice and procedural safeguards notice must be provided to the surrogate parent (34 CFR 300.519(g)). Similarly, the surrogate parent may utilize mediation or exercise due process rights on behalf of the student or themselves. (See *Parental Engagement* below for a discussion of affording parents prior written notices in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.)

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<sup>31</sup> Students with disabilities in correctional facilities should already be participating as a member of the IEP Team, where appropriate (34 CFR §300.321(a)(7)). Because students with disabilities in a correctional facility are physically in the facility where the IEP Team is likely to be meeting, absent a significant medical or security concern that cannot be accommodated, the student should be participating as a member of the IEP Team, as such participation is likely to improve the student's cooperation and should assist the IEP Team in identifying the special education and related services that must be included in the IEP.

## *Discipline Procedures*

Any exclusion from the classroom is particularly harmful for students with disabilities in correctional facilities because they often have already lost instructional time due to their involvement in the juvenile justice system. Collaboration between the correctional facility and the public agency responsible for FAPE, if different, is essential to minimize behavioral incidents and avoid disciplinary exclusions from school. For students whose behavior impedes the student's learning, or that of others, the IEP Team must consider, behavioral intervention strategies, including the use of positive behavioral interventions and supports, when developing the initial IEP, or modifying an existing IEP, so as to reduce the need for discipline of students with disabilities (34 CFR §300.324(a)(2)(i)). Public agencies cannot avoid their IDEA obligations, including the discipline procedures, by contracting, transferring them to, or sharing them with another agency.<sup>32</sup> Therefore, we expect that correctional facilities will not use discipline methods that deprive eligible students with disabilities of FAPE.

A student with a disability in a correctional facility who violates a code of student conduct is entitled to the protections that must be afforded to all students with disabilities related to discipline procedures, including those related to a change of placement, manifestation determination, and provision of services beginning with the 11<sup>th</sup> cumulative day of removal in a school year (34 CFR §§300.530 through 300.536).<sup>33</sup> These disciplinary protections apply regardless of whether a student is subject to discipline in the facility or removed to restricted settings, such as confinement to the student's cell or living quarters or "lockdown" units. In any event, a removal that results in a denial of educational services for more than 10 consecutive school days, or a series of removals that constitute a pattern that total more than 10 school days in a school year, is a change in placement, which, in turn, requires a manifestation determination in accordance with 34 CFR §300.530(e).<sup>34</sup>

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<sup>32</sup> Statement of Interest for the United States, *G.F. v. Contra Costa County*, No. 3:13-cv-03667-MEJ (N.D. Cal.) (filed Feb. 13, 2014), available at [http://www.justice.gov/crt/about/spl/documents/contracosta\\_soi\\_2-13-14.pdf](http://www.justice.gov/crt/about/spl/documents/contracosta_soi_2-13-14.pdf).

<sup>33</sup> *Honig v. Doe*, 484 U.S. 305 (1988); see also Office of Special Education and Rehabilitative Services, Questions and Answers on Discipline Procedures, June 2009, <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C7%2C> for a detailed discussion of the discipline procedures applicable to children with disabilities, including the requirements related to functional behavioral assessments in 34 CFR §300.530(d)(1)(ii) and (f)(1)(i).

<sup>34</sup> Under 34 CFR §300.536, a change of placement because of disciplinary removals occurs if the removal from the child's current educational placement is for more than 10 consecutive school days, or if the public agency determines, on a case-by-case basis, that a pattern of removals constitutes a change of placement because the series of removals total more than 10 school days in a school year; the student's behavior is substantially similar to the behavior that resulted in the previous removals; and because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another. The public agency may consider any unique circumstances, on a case-by-case basis, when determining whether a pattern of removals constitutes a change in placement under 34 CFR §300.536 (34 CFR §300.530(a)). The Department believes that "unique circumstances" are best determined at the local level by school personnel who know the individual child and are familiar with the facts and circumstances regarding a child's behavior. "Factors such as a child's disciplinary history, ability to understand consequences, expression of remorse, and supports provided ... prior to the violation of a school code [of student conduct] could be unique circumstances considered by school personnel when determining whether a disciplinary change in placement is appropriate for a child with a disability." 71 Fed. Reg. 46540, 46714 (Aug 14, 2006).

Each time a student with a disability in a correctional facility is removed from his or her current educational placement for more than 10 consecutive school days, or each time that the public agency determines that a series of removals constitutes a change of placement, the public agency must: (1) provide services to the student as provided for in 34 CFR §300.530(d) to enable the student to continue to participate in the general education curriculum, although in another setting and to progress toward meeting the goals in the student’s IEP; and (2) conduct, as appropriate, a functional behavioral assessment and provide behavioral intervention services and modifications, that are designed to address the behavioral violation so that it does not recur (34 CFR §300.530(d)(1)(ii) and (f)(1)). In addition, within 10 school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the LEA, parent, and relevant members of the student’s IEP Team must conduct a manifestation determination (34 CFR §300.530(e)). Specifically, an IEP Team is required to hold a manifestation determination to determine whether the student’s conduct in question was caused by, or had a direct and substantial relationship to, the student’s disability, or if the conduct in question was the direct result of the failure to implement the IEP. It is particularly important for IEP Teams to review carefully whether the student has, in fact, received the special education and related services that are provided in the student’s IEP when making this determination, as the failure to implement an IEP may be more common in some correctional facilities than in traditional schools.

### *Parental Engagement*

Parental<sup>35</sup> engagement in a student’s education is particularly important when a student with a disability is in a correctional facility. Parents who remain involved with their child’s education while the student is in a correctional facility will be better equipped to provide needed support to the student when he or she exits the facility and returns to the community and/or school. Unless the State has opted to transfer parental rights at the age of majority under 34 CFR §300.520(a) (see *Transfer of Parental Rights at Age of Majority*, above), parents do not lose their rights under the IDEA when their child is placed in a correctional facility, even if the student has been convicted as an adult and incarcerated in an adult prison.

Parents of students in correctional facilities are entitled to receive all “prior written notice” and procedural safeguards notice documents, as required by 34 CFR §§300.503, 300.504, and 300.520(a)(1)(i). The LEA or other responsible public agency must provide the parents with a prior written notice, in accordance with 34 CFR §300.503, a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of a child with a disability, or the provision of FAPE to the child. These notices must be written in language understandable to the general public and provided in the native language

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<sup>35</sup> The definition of parent is in 34 CFR §300.30.

of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so (34 CFR §300.503(c)(1)).<sup>36</sup>

Furthermore, correctional facilities may not assume the role of a parent under the IDEA, and therefore may not, for example, provide or refuse consent for a student's initial evaluation or reevaluation, or provide, refuse, or revoke consent for services under the IDEA or serve as the parent on an IEP Team. It may be difficult for some parents to participate in person in IEP Team meetings if the correctional facility is not located near the parent's residence. Nevertheless, the parent participation requirements in 34 CFR §300.322 are fully applicable to public agencies that are responsible for educating students with disabilities in correctional facilities.<sup>37</sup> See footnote 18 for further discussion regarding use of video conferences and conference calls.

In many States, the public agency with the responsibility for the appointment of a surrogate parent is the LEA. In carrying out this responsibility, the LEA must have a method for determining whether a student needs a surrogate parent and for assigning a surrogate parent to the student (34 CFR §300.519(b)). The IDEA also permits a judge overseeing the case of a student who is a ward of the State to appoint a surrogate parent (34 CFR §300.519(c)). A surrogate parent must meet certain requirements, including that the individual not be an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the student (34 CFR §300.519(d) and (e)). However, public agencies must not assume that all students with disabilities in correctional facilities need a surrogate parent. Rather, a surrogate parent acts in place of a student's parent only when: (1) the parent cannot be identified; (2) the parent cannot be located after reasonable efforts; (3) the student is a ward of the State under the laws of that State; or (4) the student is an unaccompanied or homeless youth, as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. §11434(a)(6)) (34 CFR §300.519(a)).

If parental rights transfer to students with disabilities who have reached the age of majority under State law (except for a student with a disability determined to be incompetent under State law), the public agency must provide any notices required by the IDEA, Part B regulations to both the student and the parents, and all rights accorded to parents under IDEA, Part B transfer to the student (34 CFR §§300.320(c) and 300.520(a)(3)). Therefore, it is important that public agencies

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<sup>36</sup> If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure: (1) that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication; (2) that the parent understands the content of the notice; and (3) that there is written evidence that these requirements have been met. (34 CFR §300.503(c)(2)).

<sup>37</sup> If neither parent can attend an IEP Team meeting, the LEA or other responsible public agency must use other methods to ensure parent participation, including individual or conference telephone calls consistent with §300.328 (related to alternative means of meeting participation) (34 CFR §300.322(c)), and the public agency must maintain required documentation when the IEP Team meeting is conducted without either parent in attendance if the public agency is unable to convince the parent to attend (34 CFR §300.322(d)). Moreover, the public agency must take whatever action is necessary to ensure that the parents understand IEP Team meeting proceedings, including arranging for an interpreter for parents with deafness or whose native language is other than English (34 CFR §300.322(e)).

are aware of the applicable law in their State governing whether parental rights transfer and provide the required notices to the student and his or her parents.

## **Reentry Considerations**

Reentry services promote the effective reintegration of students back to communities upon release from correctional facilities. Evidence strongly supports the notion that juvenile offenders, both with and without disabilities, are significantly more likely to experience successful reentry into their home schools and communities if appropriate programs and supports are in place and discussed with the student prior to his or her release.<sup>38</sup> Many experts in the field recommend a comprehensive approach to reentry that includes individualized reentry plans, vocational and life skills training, behavior management systems and direct academic instruction. Reentry planning supports the successful reentry of students into their communities and includes information about State reentry options that may include the student's school prior to commitment in the correctional facility, charter schools, virtual schools, evening schools, adult education programs, community colleges, alternative schools for students with specific needs, schools with a dual focus on diploma/GED and career and technical education, and dual enrollment high/school/college programs. Informing students of their options is an important part of the reentry process. Methods to disseminate information regarding reentry options may include: (1) home visits; (2) information sharing between schools; (3) collaboration with community-based organizations; (4) school expos/reengagement fairs; (5) reengagement/transition centers; (6) print and electronic media; (7) collaboration with probation and parole practitioners from both public and private sectors; and (8) community wide campaigns.<sup>39</sup> The IDEA's requirements related to parental engagement, records sharing among public agencies, and transition planning, discussed above, complement these efforts.

On June 9, 2014, the U.S. Department of Education and the U.S. Department of Justice issued a letter addressing the Administration's efforts related to the education of students in juvenile facilities. The letter includes information on Title I, Part D of the ESEA, which is administered by the Department's Office of Elementary and Secondary Education and, among other matters, includes requirements that support juvenile correctional education and reentry. We are providing a copy of that letter and its enclosure with this letter to ensure that you and your staff are aware of this information and the resources available on this topic.

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<sup>38</sup> Reentry Programs for Students with Disabilities in the Juvenile Justice System: Four State Approaches, National Association of State Directors of Special Education (NASDSE), December 2011. *See also* National Institute of Justice, Office of Justice Programs, for resources related to reentry. <http://www.crimesolutions.gov/TopicDetails.aspx?ID=2>

<sup>39</sup> For further information regarding strategies to reenroll youth with disabilities after exiting the correctional system, see Reentry Programs for Out of School Youth with Disabilities, Julia Wilkins, National Drop Out Center for Students with Disabilities, July 2011, and A Reentry Education Model Supporting Education and Career Advancement for Low-Skill Individuals in Corrections at <http://www2.ed.gov/about/offices/list/ovae/pi/AdultEd/reentry-model.pdf>. For information regarding funding opportunities for reentry programs, see <http://www.ojjdp.gov/funding/FundingList.asp>

## Conclusion

The Department is committed to supporting all students in our nation's schools, including correctional facilities, to achieve positive educational outcomes. Ensuring that students in correctional facilities are receiving a high quality education will have a clear, positive effect in reducing recidivism and increasing post-release success in higher education, employment, and other life endeavors. Providing FAPE to students with disabilities in correctional facilities is not only required by law; it is critically important to ensuring successful outcomes.

The Department strongly encourages SEAs, LEAs, and other public agencies, and correctional facilities serving students with disabilities to review their policies, procedures, and practices to verify that they are in compliance with IDEA requirements with a focus on improved educational outcomes for these students. SEAs and LEAs must, as part of their monitoring responsibilities, ensure that identified noncompliance is timely corrected. 34 CFR §300.600(e). We encourage SEAs and LEAs and other stakeholders to review the resources enclosed with this letter. We look forward to continuing to work with you to ensure that all students with disabilities, including students with disabilities in correctional facilities, have access to high-quality educational services.

If you have any questions or comments, please contact Office of Special Education Programs Education Program Specialists, Dr. Curtis Kinnard at 202-245-7472 or [Curtis.Kinnard@ed.gov](mailto:Curtis.Kinnard@ed.gov) or Dr. Tony G. Williams at 202-245-7577 or [TonyG.Williams@ed.gov](mailto:TonyG.Williams@ed.gov).

Thank you for your support and your continued interest in improving results and ensuring equal access to educational services for students with disabilities.

Sincerely,

/s/

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Melody Musgrove, Ed.D.  
Director  
Office of Special Education Programs

/s/

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Michael K. Yudin  
Acting Assistant Secretary  
Office of Special Education and  
Rehabilitative Services

Enclosures

## RESOURCES

### U.S. Department of Education

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Individuals with Disabilities Education Act. Retrieved November 18, 2014 from <http://idea.ed.gov/explore/view/p/%2Croot%2Cstatute%2C>

Joint letter to Chief State School Officers and State Attorneys General with Attorney General Eric Holder regarding educational support for youth in the juvenile justice system, June 9, 2014. Retrieved July 11, 2014 from <http://www2.ed.gov/policy/elsec/guid/secletter/140609.html>

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### U.S. Department of Justice

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U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention. <http://www.ojjdp.gov>

U.S. Department of Justice, Civil Rights Division, Special Litigation Section. <http://www.justice.gov/crt/about/spl/juveniles.php>

U.S. Department of Justice, Civil Rights Division, Educational Opportunities Section. <http://www.justice.gov/crt/about/edu/>.

Statement of Interest of the United States, *G.F. v. Contra Costa Cnty.*, No. 3:13-cv-03667-MEJ (N.D. Cal. Feb. 13, 2014). [http://www.justice.gov/crt/about/spl/documents/contracosta\\_soi\\_2-13-14.pdf](http://www.justice.gov/crt/about/spl/documents/contracosta_soi_2-13-14.pdf)