



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

OFFICE OF VOCATIONAL AND EDUCATIONAL SERVICES FOR INDIVIDUALS WITH DISABILITIES
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To: Selected Superintendents of Schools
BOCES District Superintendents
Selected Directors of Special Education
New York State Association of Incarcerated Education Programs
Correctional Facilities Maintained by a County or the City of New York

From: James P. DeLorenzo *James P. DeLorenzo*

Subject: Special Education Responsibilities for Students Incarcerated in County Correctional Facilities

The purpose of this memorandum is to remind school districts of their responsibilities related to the Committee on Special Education (CSE) and for the provision of special education services to students with disabilities who are incarcerated in county correctional facilities maintained by a county or by the City of New York for 10 or more calendar days or who, in the judgment of the chief administrative officer of the correctional facility, can reasonably be expected to be incarcerated for a period of 10 or more calendar days. Section 3202(7) of the Education Law and Part 118 of the Regulations of the Commissioner require the school district where the county correctional facility is located (district of location) to provide education services to incarcerated youth.

District of Location

The school district of location has the responsibility to provide education services to incarcerated youth pursuant to the education program plan annually approved by the Commissioner. For any student suspected of or identified as having a disability, this responsibility must include the functions of the Committee on Special Education (CSE) and, as appropriate, the provision of special education services pursuant to the student's individualized education program (IEP).

- For any student suspected of having a disability, the CSE of the district of location must accept a referral or request for referral for special education pursuant to section 200.4(a) of the Regulations of the Commissioner of Education. County correctional or facility educational staff may make a request for referral. The CSE of the district of location must, as appropriate, arrange for the initial individual evaluation to determine the student's eligibility for special

education services. For a student identified as a student with a disability, the CSE must develop an IEP and the district of location must ensure the implementation of the IEP.

- For a student with a disability who had an IEP that was in effect prior to placement in the county correctional facility, upon placement in the correctional facility, services comparable to the student's IEP (as described below) must be implemented until the district of location can meet to develop a new IEP for the student.
- Upon notification to the district of location that services recommended in the IEP are no longer appropriate for the student, the CSE must review, and if appropriate, revise the student's IEP.
- The CSE of the district of location must conduct annual reviews and reevaluations as appropriate.

Transfer students

For any youth identified as having a disability who is incarcerated in a county correctional facility, except where such facility is located in the same school district as the district where the student's parents reside, the student should be considered as a transfer student.

- For a student who had an IEP in effect in this State and who is incarcerated in a county correctional facility within the same school year, the district of location must provide the student with a free appropriate public education (FAPE), including services comparable to those described in the previously held IEP, in consultation with the student's parent(s), until such time as the school district of location adopts the previously held IEP or develops, adopts and implements a new IEP.
- In the case of a student with a disability who had an IEP in effect in another state and who is incarcerated in a county correctional facility within the same school year, the school district of location must provide the student with FAPE, including services comparable to those described in the previously held IEP, in consultation with the student's parent(s), until such time as the school district conducts an initial evaluation to determine the student's eligibility for special education in this State, if determined necessary by the district of location, and develops a new IEP, if appropriate

Transmittal of Records

To ensure the timely provision of special education services to a student described above, the district of location 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 services to the student, from the previous school in which the student was enrolled. The previous school in which the student was enrolled must take reasonable steps to promptly respond to such request from the new school. For purposes of 34 CFR section 99.31(a)(2) and the Federal Education Rights and Privacy Act (FERPA), parent consent, (or for students age 18 and older, consent of the student) is not needed because the district of location for an incarcerated youth is the school in which the student "intends to enroll or is enrolled in [34 CFR §99.31(1)(2)].

School superintendents are asked to share this notice with Directors of Special Education, CSE Chairpersons, Directors of Pupil Personnel Services, and Guidance Counselors and with any individuals responsible for the timely request and transfer of student records. Administrators of county correctional facilities are asked to share this with education program coordinators.

Thank you for your attention to these important safeguards for youth incarcerated in correctional facilities. Should you have any questions or concerns, please call the Nondistrict Unit at (518) 473-1185.