

Services to Adults 18 through 21 Years of Age Incarcerated in County Jail

Adults aged 18 through 21 years, inclusive, 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 education program (IEP) under the IDEA, are also entitled to a FAPE (hereinafter (“eligible adults”)).

This applies to adults incarcerated in an adult correctional facility, who:

- Were eligible for special education and related services in accordance with an IEP up to his or her incarceration;
- Were eligible for special education and related services in accordance with an IEP, but who left school prior to his or her incarceration; and
- Was eligible for special education and related services, even if the individual did not have an IEP in his or her last educational placement.

However, an individual aged 18 through 21 years, inclusive, 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.

District in which the parent resided before the student reached the age of majority (in California, 18 years of age) is responsible for serving 18 through 22 year old individuals with exceptional needs who are incarcerated.

To receive special education and related services while incarcerated, a qualified individual must consent to the receipt of such services and enroll in the adult education program at the county jail.

Once the District is informed that one of its students is an eligible adult incarcerated in an adult correctional facility, the District shall determine whether the qualified individual wishes to receive a FAPE and if so it will review and revise the individual’s IEP as necessary, including conducting an annual review, as needed, subject to the cooperation of the correctional facility where the student is located.

Requirements that Do Not Apply

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

1. The requirements related to participation in general assessments
2. The requirements 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.

However, if the State demonstrates a bona fide security or compelling penological interest that cannot otherwise be accomplished, the IEP team of an individual with exceptional needs who is convicted as an adult under State law and incarcerated in an adult prison may modify the individual's IEP or placement. The requirements related to least restrictive environment do not apply with regard to these modifications.

References:

EC 56026
EC 56040

Title 34 C.F.R. 300.102

Title 34 C.F.R. 300.324

20 U.S.C. 1400
20 U.S.C. 1412
20 U.S.C. 1414

Los Angeles Unified School District v. Garcia (Ninth Cir. 2014) 741 F. 3d 922