

# A PEATC

Do You Know....



## Factsheet for Virginia's Parents The Right to Special Education Services During Incarceration

### Students With Disabilities Who Are Incarcerated

According to the U.S. Department of Education Office of Special Education and Rehabilitative Services, the **percentage of youth with disabilities residing in juvenile correctional facilities** on any given day ranges from **30-60 percent**, and at times as high as **85 percent**. The **most common disabilities** are learning disabilities, emotional or behavioral disorders, intellectual disabilities, and attention deficit hyperactivity disorders. Nearly **four times as many youth** residing in correctional facilities require special education and related services compared to youth in the general population.

The **Individuals with Disabilities Education Act (IDEA)** requires that youth with disabilities be identified and **receive the special education and related services to which they are entitled**, including while incarcerated. The fact that a student has been charged or convicted of a crime **does not take away their rights or the procedural safeguards under IDEA** (such as consent, due process, prior written notice, and the right to a free appropriate public education (FAPE)). The [Regulations Governing Special Education Programs for Children with Disabilities in Virginia](#) apply to students in correctional settings.

### Virginia Department of Education (VDOE) Responsibilities

Here are some of the key responsibilities of the Virginia Department of Education when it comes to incarcerated students who are eligible for special education.

- ✓ **Approve interagency agreements** between school divisions and local and regional jails for the operation of special education programs for eligible students incarcerated for more than 10 calendar days.
- ✓ Provide **technical assistance and consultative services** to local and regional jails in interpreting and implementing state and federal laws relating to the education of incarcerated students.
- ✓ **Monitor the provision** of special education services; ensure that programs in facilities meet **state education standards and IDEA requirements**.
- ✓ Ensure students with disabilities in correctional facilities for more than 10 days **are identified through local school division child find activities**.
- ✓ Ensure that students are **evaluated in a timely manner** even if the student will be in the facility for a short time.
- ✓ Ensure that incarcerated students are **included in statewide and district-wide assessments**.

### References/Resources

[Educational Practices | OSEP Ideas That Work](#)

[PROCEDURAL SAFEGUARDS \(peatc.org\)](#)

[USDOE-OSEP Dear Colleague Letter](#)

[USDOE - Supporting Youth with Disabilities In Juvenile Detention](#)

[VDOE- Special Education in Local and Regional Jails web page](#)

[VDOE - Special Education and Related Services in Local and Regional Jails: Guidelines for Best Practice](#)



#### Contact Us:

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- ✓ Ensure along with other relevant public agencies that staff serving students with disabilities are **adequately prepared and trained**.

## Special Education While Incarcerated

- Eligible youth in correctional settings are **entitled to an Individualized Education Program (IEP)** just like other students with disabilities. All IEP requirements apply.
- **Staffing or other resource shortages** do not exempt correctional facilities from providing high-quality special education and related services. Students are entitled to **highly qualified teachers** who can not only address their academic needs but also social/emotional skill development.
- **Parents have the right to be involved** in their child's education. They maintain these rights **even if their minor child is convicted as an adult** and incarcerated in an adult prison. Decision-making authority **transfers to the student at age 18** unless other legal arrangements have been made
- **Planning for reentry** into the public (or private) school should begin when the student arrives at the facility. This needs to be a **coordinated effort** among facility staff, the youth, the community-based school, and other providers, like the community services board, for example.
- Students with disabilities **maintain the right to be served in the least restrictive environment**. IEP or Placement teams cannot place all students with disabilities in classes that only serve students with disabilities even if it means creating new placement or co-teaching options.
- IDEA **secondary transition requirements remain in effect** for these students to ensure effective movement from secondary to post-secondary activities. However, **this does not apply to students who will turn 22 prior to their eligibility for release** from the facility as their IDEA eligibility will be over.
- Students with disabilities who **violate the Code of Conduct within the correctional facility are entitled to IDEA discipline procedures and protections**, including as applicable, manifestation determination reviews.
- A student over 18 can **waive participation** in special education services.
- Upon release **all records** must be sent to the receiving school division.

## Other Laws Protecting Incarcerated Students

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)**, prohibits disability discrimination in programs or activities of entities, such as public schools and correctional agencies, which receive Federal financial assistance (29 U.S.C. §794, 34 CFR part 104). Some students with disabilities who are incarcerated will require a 504 plan instead of an IEP.

Title II of the **Americans with Disabilities Act of 1990 (Title II)** 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).

**PEATC's mission focuses on building positive futures for Virginia's children by working collaboratively with families, schools, and communities to improve opportunities for excellence in education and success in school and community life. For more information about us, please contact:**

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