



# STUDENTS' RIGHT TO SPECIAL EDUCATION IN JUVENILE DETENTION

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## **Introduction to the publication**

This publication provides information about youth rights to special education while in juvenile detention.

Here, the term 'juvenile detention facilities' refers to county juvenile halls, youth correctional facilities, and juvenile camps. The term 'court schools' refers to the schools within those facilities.

This publication provides general legal information. If you have questions or concerns please contact Disability Rights California. Disability Rights California's intake line is provided at the end of this document.

### **1. Are students entitled to special education inside a juvenile detention center?**

Yes. Under the Individuals with Disabilities Education Act (IDEA), every child with a disability between the ages of 3 and 21 is entitled to a free and appropriate public education in the least restrictive environment, including those in a juvenile detention center. [20 U.S.C. Sec. 1412(a)(1)].

Juvenile and youth detention centers must provide special education and related services. The education and services must meet the student's individual needs. All students with disabilities in the juvenile correctional system are entitled to be assessed for special education and qualify for protections under state and federal law.

### **2. How is special education different inside a juvenile detention center?**

The following are some differences between special education inside a juvenile detention facility and special education in the community. Preparing to address these differences may help to ensure you or your child receives the education they need inside juvenile detention.

*i. Delays in transferring records can delay the implementation of an IEP or the provision of special education*

The transfer of educational records can sometimes delay the implementation of a student's IEP within a juvenile court school.

Families can prepare for this possibility by obtaining students' records. Both state and federal law provide parents with the right to inspect and review educational records. [34 C.F.R. Sec. 300.613; Cal. Ed. Code Sec. 56504]. Under state law, a school district is required to provide a student's records within five days of an oral or written request. [Cal. Ed. Code Sec. 56504.] It is best to make a written request to track ensure the school district follows the five-day timeline.

There are specific requirements for record transfers when students change school districts, as they would when entering a juvenile detention center:

- 72 hours when the student with the IEP is released from juvenile hall. [Cal. Ed. Code Sec. 48647(c)(1)]
- 2 business days for foster youth. [Cal. Ed. Code Sec. 49069.5(d)]
- 5 days for all other transfers. [Cal. Ed. Code Sec. 56043(o)]

Requesting your child's records can help to provide a school within a juvenile facility records without delay.

*ii. A student without an IEP may enter and leave a facility before the completion of assessments*

Students in juvenile facilities often receive short sentences or are only in facilities pending adjudication, or until their court cases are decided. In the case of these short stays, a court school may begin the special education assessment planning process but fail to complete it before the student is released to the community.

The IDEA requires that "[a]ssessments of children with disabilities who transfer from one public agency to another in the same school year are

coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible[.]” [20 U.S.C. Sec. 1414(b)(3)(D); 34 C.F.R. Sec. 300.304(c)(5)].

If your child will leave a facility before their assessments are complete, it may be helpful to contact staff within the facility or to convene an IEP meeting to discuss how the assessments will be completed.

*iii. A juvenile facility may suggest that limited space, staff, or other resources prevent them from providing special education or the provision of related services.*

Space, staffing, or funding issues aside, schools within juvenile facilities are required to provide special education and to provide related services consistent with students' IEPs. [20 U.S.C. Sec. 1412(a)(1)]. Similarly, schools within juvenile detention centers must provide education in the least restrictive environment, which means that students with disabilities must participate in education with their nondisabled peers to the maximum extent appropriate. [20 U.S.C. Sec. 1412(a)(5)(A)].

If the juvenile court school is not providing your child with a free appropriate public education in the least restrictive environment, you have the right to file for Due Process hearing or a noncompliance complaint with the California Department of Education. Like neighborhood schools, juvenile court schools must provide notices of parental rights which include descriptions of Due Process and noncompliance complaints.

### **3. Can a student get assessed for special education inside a juvenile detention center?**

Yes. Like public schools, juvenile court schools are required to identify, locate, and evaluate all children with disabilities who may need special education and related services. [20 U.S.C. Sec. 1412(a)(3)(A); 34 C.F.R. Sec. 300.111].

If your child is in a juvenile detention facility and has not been assessed, you can request an assessment. You should make this request in writing, include the date of the request, and the specific types of assessments you would like your child to receive. This request is called a “referral.” [Cal. Ed. Code Sec. 56029]. Under California regulations, all written referrals begins the assessment process. [5 C.C.R. Sec. 3021].

Once you have made a request for assessments, the juvenile court school must provide you with an assessment plan within 15 days under most circumstances. If you provide a referral within 10 days of the end of the regular school year, the assessment plan may be provided within 10 days of the start of the commencement of the next school year. [Cal. Ed. Code Sec. 56321(a)].

Once you receive the assessment plan, you have at least 15 days to respond to or approve the assessment plan. [Cal Ed. Code Sec. 56321(c)(4)]. Once you have signed and returned the assessment plan, the juvenile court school has 60-days to conduct the assessments and to hold an IEP meeting to determine eligibility and, if the student is eligible, to create an IEP document. [Cal Ed. Code Sec. 56344(a)].

**4. Will a student's IEP be implemented in a juvenile detention center?**

Yes. A juvenile court school is required to provide special education and related services. It is also required to update a student's IEP as appropriate. Juvenile court schools, just as neighborhood schools, are also required to provide progress reporting on IEP goals to parents while the student is in juvenile detention.

**5. Will a student still receive related services like Speech and Language, Counseling, or Occupational Therapy in a juvenile detention center?**

Yes, eligible students with disabilities in juvenile detention are still entitled to received related services. Related services are designed to ensure that they benefit from their educational program.

If a student already has IEP services when entering juvenile detention, the facility must provide comparable services to those described in the student's IEP until the juvenile court school either adopts the previous IEP, or develops a new IEP for the student. [34 C.F.R. Sec. 300.323; Cal. Ed. Code Sec. 56325(a)(1)].

**6. Will IEP meetings be held inside the juvenile detention center? Can parents or advocates attend them?**

When placed in juvenile detention, the school must hold a transfer IEP meeting within 30 days. [34 C.F.R. Sec. 300.323; Cal. Ed. Code Sec. 56325(a)(1)].

IEP meetings can also be called on an as-needed basis by the parent. The school must hold an IEP meeting within 30 days of the request. [Cal. Ed. Code Sec. 56043(l), Cal. Ed. Code Sec. 56343.5]. It is best to make this request in writing so that you can keep track of the 30-day timeline.

Parents are still required members of the IEP and hold all rights under the IDEA when the student is in juvenile detention, unless a court has limited their rights or the student turns 18 years old. [34 C.F.R. Sec. 300.322]. Parents must be allowed to attend the IEP meeting.

If neither parent can attend an IEP meeting, the juvenile court school must still try to ensure parent participation, including by conference telephone calls. [34 C.F.R. Sec. 300.322(c); 34 C.F.R. Sec. 300.328]. The juvenile court school must ensure that the parents understand IEP meeting proceedings—this includes arranging for an interpreter for parents with deafness or whose native language is other than English. [34 C.F.R. Sec. 300.322(e)].

Parents must also be allowed to bring an attorney to the IEP meeting. [34 C.F.R. Sec. 300.321(a); 34 C.F.R. Sec. 300.322(a)]. Other individuals, including advocates, may also attend IEP meetings at the discretion of the parent or school if such individual has knowledge or special expertise regarding the student. [34 C.F.R. Sec. 300.321(a)(6)]. The determination of the knowledge or special expertise of these individuals must be made by the person who invited the individual to be a member of the IEP team. [34 C.F.R. Sec. 300.321(c)].

Students with disabilities in juvenile detention should also participate as a member of the IEP team. [34 C.F.R. Sec. 300.321(a)(7)]. Student participation can significantly assist the IEP team in identifying student's needs.

## **7. Can a student get new assessments while inside a juvenile detention center?**

Yes, juvenile detention facilities must evaluate youth with disabilities for special education. [20 U.S.C. Sec. 1412(a)(3)(A); 34 C.F.R. Sec. 300.111]. The same procedures described above in section 4 apply.

Even when a student is only in juvenile detention for a short time, the facility must still begin the evaluation process. The facility must coordinate with the school district that the student will attend when exiting juvenile detention to ensure completion of the evaluation. [34 C.F.R. Sec. 300.304(c)(5)]. However, please note that the timeframe for completing this evaluation is less clear: the assessment must be completed “as expeditiously as possible.” [34 C.F.R. Sec. 300.304(c)(5)]. Typically, assessments must be completed within 60-days of receiving parental consent for the evaluation. [34 C.F.R. Sec. 300.301(c)]. This time frame does not apply if the student transfers districts mid-assessment. [34 C.F.R. Sec. 300.301(d)(2)]. However, the school district the students transfers to must make “sufficient progress to ensure a prompt completion of the evaluation” and must arrange with the parent “a specific time when the evaluation will be completed.” [34 C.F.R. Sec. 300.301(e)].

#### **8. How will a student’s special education be impacted by their reentry into the community?**

Reentry planning should start the moment the student enters juvenile detention. Such planning is important to ensure that a young person can begin school immediately upon release from juvenile detention with the appropriate supports and services in place. In California, youth in juvenile detention must have a learning plan for their educational reentry once they have been in detention for 20 consecutive school days. [Cal. Ed. Code Sec. 48647(f)].

Youth should not experience any road blocks to re-enrollment. All youth have the right to immediate re-enrollment in their neighborhood school once they are released from juvenile detention. Schools cannot deny enrollment to a student released from detention for lack paperwork, like immunizations or transcripts. [Cal. Ed. Code Sec. 48853.5(f)(8)(B)]. Schools also cannot deny enrollment based on a student’s juvenile justice involvement. [Cal. Ed. Code Sec. 48645.5(b)].

Youth have the right to re-enroll in the same school they attended before their incarceration, also known as their “school of origin,” unless they were expelled from that school or are facing expulsion. [Cal. Ed. Code Sec. 48853.5(f)(1)]. If a school district denies these rights, you may file a Uniform Complaint Procedure (UCP) complaint with the school district. You may also file a UCP complaint directly with the California Department of

Education under some circumstances, such as when there is a danger of retaliation. [5 C.C.R. Sec. 4650(a)].

Youth who have been incarcerated may also have the right to be connected with a school district's "educational liaison," a staff person whose job it is to help the student with things like re-enrollment. [Cal. Ed. Code Sec. 48852.5(c)]. You can usually find information about a school district's education liaison, including their contact information, on the school district's website.

### **9. Are students in juvenile detention centers still entitled to transition planning?**

Yes, under the IDEA, transition planning must occur in the first IEP meeting held after the student reaches the age of 16 or earlier if appropriate for the student. [20 U.S.C. Sec. 1414(d)(1)(A)(i)(VII); 34 C.F.R. Sec. 300.320(b)]. Transition planning includes identifying the student's goals upon their completion of high school, including education and employment goals. [34 C.F.R. Sec. 300.43]. Transition services may include career training through organizations designed to serve juvenile justice involved youth. Remember, the transition services must be individually designed for each student, based on the student's goals. You may include re-entry related goals and services as part of the transition planning in a student's IEP.

### **10. Resources**

For more information on special education, please see Disability Rights California's Special Education Rights and Responsibilities Manual: <https://serr.disabilityrightsca.org/>.

For more information on transition planning and services, please see Disability Rights California's publication, Transition Services for Students: <https://www.disabilityrightsca.org/publications/transition-services-for-students> .

If you have questions, you may contact Disability Rights California's confidential intake line at 1-800-766-5746, open Monday through Friday, 9:00am – 4:00 pm.