



FAPE in the County Jail

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Disclaimer

Although this document is not a substitute for special education laws and regulations, this guidance offers regulatory information to responsible parties to assist in meeting obligations under state and federal law, regulations, and rule when a student with a disability is confined to a county jail.

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FAPE in the County Jail

Introduction

Improving educational results for students with disabilities is an essential element of our national policy of ensuring equality of opportunity, full citizen participation, independent living, and economic self-sufficiency for individuals with disabilities (20 USC 1400(c)(1)). Michigan intermediate school districts (ISD) fulfill an important role in ensuring students have access to appropriate and supportive education which positively impacts the trajectory of their lives. A student’s confinement to jail is both a major disruption to that trajectory and an opportunity for ISDs to engage in rich collaboration with their county jails on behalf of students.

Students with disabilities confined to county jails maintain their entitlement to special education programs and services and a free appropriate public education (FAPE) as specified in their individualized education program (IEP) (34 CFR §300.1). Special education programs and services are the responsibility of all public agencies involved in the education of students with disabilities in county jails (34 CFR §300.2). This document provides information regarding the implementation of the *Individuals with Disabilities Education Act* (IDEA), *Michigan Compiled Law* (MCL), and *Michigan Administrative Rules for Special Education* (MARSE) pertaining to eligible students (birth to 26) while they are confined to county jails in the state of Michigan.

Intermediate school districts must have a system in place to ensure eligible students with disabilities confined to county jails are provided the programs and services to which they are entitled. An effective and sustainable ISD system promotes collaboration with the county jail and is student-centered, flexible, regularly assessed and continuously improved, and designed to work within the context of the county. This document includes guidance about the role of the ISD, FAPE requirements, funding, and the importance of keeping the student at the center of the system.

Navigating Two Systems

Public education and jail systems were designed for different purposes. Public education focuses on instruction and learning in an environment which exposes students to a diversity of opportunity and people. Jails provide for community safety, personal accountability, and removal of the individual from the broader community. Despite their

differing purposes, it is possible to find commonality by placing the student at the center and balancing the policies and procedures of the jail with those of the ISD.

Administrators of both systems share a student-centered approach to continuity of care, access to opportunity, and promotion of personal growth in their efforts to serve individuals with disabilities. Areas of common focus include:

- Engagement in continuous learning.
- Health and stability of the whole person.
- Development of tools to support improved decision making.
- Individual engagement in self-determination.
- Successful transition and reentry to the community.

Student-centered outcomes provide a catalyst for the development of a strong collaborative partnership between the ISD and the county jail, while maintaining the purpose and integrity of each. The development of the ISD system relies on this partnership with the jail, respecting the differences and commonalities of the two. It is the responsibility of the ISD, after collaboration with the jail, to ensure the system developed clearly identifies how to serve eligible students with disabilities while they are confined to the county jail.

In building a collaborative partnership with the jail and an effective system to serve eligible students with disabilities, areas of focus include:

- Communication.
- Flexibility and collaboration.
- Systems knowledge:
 - Jail.
 - Special education.
 - General education.
 - Adult education.
 - County at large.

Universal considerations for getting started in building a collaborative effort include:

- Identifying a point of contact at the sheriff's office.
- Assessing the jails' preparedness for providing programming in the jail.
- Integrating with existing education programs.
- Determining the level of need/number of students.
- Identifying and overcoming obstacles such as:
 - Facility access.
 - Information technology (IT) limitations.
 - Staffing.
 - Materials restrictions.

The Role of the ISD

The obligation, responsibility, and authority to ensure students with disabilities confined to county jails receive special education programs and services, through the implementation of the IEP, belong to the ISD consistent with its IDEA general supervisory responsibilities and its mandated duties in *Michigan Compiled Law* (MCL) (20 USC 1412; 20 USC 1413; MCL 380.1711). The ISD has choice and flexibility in determining how to meet their obligations and responsibilities to students with disabilities confined to county jails. Additionally, the ISD, consistent with support of the Michigan Department of Education (MDE), has an obligation for general supervision of member districts within its constituency and their provision of a FAPE, which may include students with disabilities confined to county jails.

The ISD is a sub-recipient of federal funds through the IDEA grant and, as such, must develop and implement a system of programs, procedures, and practices to ensure the provision of special education programs and services for all students with an IEP, inclusive of students confined in a Michigan county jail. A sub-recipient is a non-federal entity which receives a subaward from a pass-through entity, in this case MDE, to carry out part of a federal program (2 CFR §200.93). The ISD meets the federal definition of a sub-recipient as a local educational agency (LEA) eligible to receive IDEA grant funds from MDE, the pass through entity, and is therefore responsible for ensuring the provision of a FAPE to all students with disabilities within its jurisdiction. An LEA is

eligible for assistance under the IDEA Part B for a fiscal year if the LEA submits a plan that provides assurances to the state education agency (SEA) that the LEA meets each of the conditions in 34 CFR §§300.201 through 300.213 (34 CFR §300.200).

The ISD special education system consists of the programs, procedures, and policies implemented to ensure the provision of a FAPE to all eligible students with an IEP. The ISD special education system must account for students receiving programs and services in a traditional educational setting and alternative settings, including hospitals, residential facilities, and the county jail. This is consistent with the ISD obligation to develop, establish, and continually evaluate and modify a plan for special education which carries with it the responsibility and authority to develop a system to ensure a FAPE is provided to eligible students in the county jail (MCL 380.1711(1)(a); R 340.1832).

Recognizing the unique and diverse structure of each ISD, and their relationships with member districts, building the system to ensure the delivery of a FAPE through special education programs and services to eligible students confined to county jails is appropriately under the leadership of each individual ISD. This approach allows for flexibility in the development of a system, respecting the geographic diversity of the state, from urban to rural districts, including the diversity of available resources while meeting the needs of eligible students confined to county jails.

A strong ISD system developed to ensure the provision of a FAPE to eligible students confined to county jails is transparent, accessible, and includes the following components:

- Communication plans.
- Collaborative partnerships.
- Data collection.
- Professional development within and between systems.
- Technical assistance within and between systems.
- Opportunities to build relationships.
- Feedback channels.
- A process for continuous improvement.
- Funding requirements.
- Funding opportunities.

FAPE Requirements

All eligible students with a disability in Michigan, between birth and 26, are entitled to special education programs and services consistent with the mandate of the federal entitlement in the IDEA (20 USC 1400, et seq) and MARSE (R 340.1702). Utilizing a unique set of procedural and substantive requirements, the IDEA provides a foundation of policies, practices, and procedures which ensures the right of every student with a disability to equitable education in public schools, hospitals, juvenile justice facilities, county jails, and other educational settings alongside their nondisabled peers to the maximum extent appropriate. These policy, practice, and procedural requirements include maximization of education with nondisabled peers in the least restrictive environment (LRE) (34 CFR §§300.114-300.115); an individualized education program (IEP) (34 CFR §300.112); and, a free appropriate public education (FAPE) (34 CFR §300.17). A FAPE, as defined in an eligible student's IEP, is the foundation of the federal special education entitlement.

FAPE is an applied policy, substantive in nature and dependent in practice on a collection of procedures found in the IDEA, and prominently includes LRE and the IEP. In the provision of a FAPE, Michigan school districts are responsible for the determination of an appropriate placement and for delivery of programs and services to eligible students with an IEP (R 340.1722(3)). Additionally, the MARSE require district compliance with state standards for the delivery of special education programs and services to eligible students.

Confinement to a county jail impacts a student's general education. Access to and progress in the general education curriculum is an integral part of a student's FAPE. The ISD's knowledge and understanding of the interaction between general education and special education is essential to serve students with disabilities confined to county jails. To meet the individual needs of eligible students, the ISD has the leadership authority, obligation, and flexibility to engage in a variety of collaborative partnerships with entities outside of special education, including:

- Adult education.
- Other ISDs and counties.
- Constituent member districts.
- Juvenile Justice.

Confinement to a county jail removes a student from his or her current, appropriate educational placement and interrupts the provision of a FAPE. Well-designed systems which deliver FAPE through special education programs and services include policies, procedures, and practices to locate the whereabouts of students whose enrollment status is unknown or who are no longer attending school for unknown reasons. Locating eligible students with an IEP must be a component of the system and includes locating and serving students confined to county jails (34 CFR §300.101).

When a student is confined to a county jail, it is the responsibility of public education to ensure the interruption of the continuity of special education programs, services, and support is identified and mitigated in an appropriate and timely manner. The IDEA requires a student's special education programs and services, as defined in the student's IEP, be developed, implemented, and regularly reviewed and updated as necessary (34 CFR §§300.320-300.324).

Confinement to a county jail does not change a student's entitlement to a FAPE. The student's current IEP may require review and action to be implemented in the jail (34 CFR §300.324(b)(1)(ii)(E)). The individualization of special education programs and services reflected in the IEP will require flexibility and creativity, given the change of placement to the more restrictive environment of a county jail setting. The severity and impact of confinement on FAPE, LRE, and the IEP is often a function of the length of time the student is confined to the jail. Districts must implement their process for attempting to locate students for the provision of a FAPE when the student fails to attend their regular placement.

Funding

Funding a system designed to serve students with disabilities in county jails must comply with all state and federal funding requirements. The purpose for establishing and maintaining a system to serve students with disabilities confined to county jails is to ensure continuity in the delivery of special education programs and services, including the student's transition needs. Funds used to deliver programs and services to students in a county jail are scrutinized within the same standards as all funds used to deliver special education programs and services. Because of the diversity of ISDs across the state, funding requires thoughtful consideration, creativity, and flexibility.

Compliance with the IDEA must be maintained as well as the state funding requirements when exploring ways to fund service provision for students with disabilities in county jails. The ability to identify these sources and braid funding enhances the ability to effectively serve the individual student in the county jail environment and provide for an effective transition back into the community. Funding for programs that serve students with disabilities in county jails may include federal, state, local, and private dollars. ISDs may have specific funding questions. The MDE OSE finance unit is available to provide information and assistance.

In building the funding and budgetary component of its system for serving students confined to a county jail, the ISD should consider:

- Staffing and material needs.
- Age ranges of students in the jail (real and projected) keeping in mind the changes in funding necessary when a student turns 22.
- Length of stay (real and projected).
- Allowable costs.
- Credentialing rules.
- Contracts and agreements.
- Funding sources:
 - IDEA flow-through.
 - Applicable state funds.
 - Available local funds.
 - Workforce Innovation and Opportunity Act (WIOA) Title II.
 - Section 107 (state).
 - Title 1 Part D.
 - Sheriff's office.
 - County funds.
 - Private, state, and federal grants.

Whether the ISD in collaboration with the county jail develops a simple, complex, expansive, or limited system to serve students in an urban or rural jail environment, a complete system needs to be imagined and designed before any attempt is made to develop the funding component.