

## What Happens Now? Juvenile Justice and Special Education

### RHODE ISLAND EDUCATION LAW

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### THE PROBLEM

Not all students with disabilities in correctional facilities are getting the special education services they are entitled to under federal law. Only about one-third of students with disabilities in correctional facilities are receiving services. This is a problem because more than **three times** as many youths in custody need special education than youths in public schools.

### APPLICABLE LAW: KNOW YOUR RIGHTS

Students with disabilities in correctional facilities are **protected by the Individuals with Disabilities Education Act (“IDEA”)**. Students with disabilities are entitled to:

- All IDEA protections, including protections in the IDEA discipline procedures;
- A Free and Appropriate Public Education (“FAPE”);
- Placement in the Least Restrictive Environment (“LRE”);
- Retention of student’s previous Individual Education Plan (“IEP”) or development and implementation of a new IEP.

In addition to these rights and consistent with *Child Find*, correctional facilities are responsible for identifying, locating, and evaluating students with disabilities. Correctional facilities also should ensure that personnel providing the special education services are highly qualified, adequately prepared, and trained.

### CHALLENGES TO IMPLEMENTING IDEA IN CORRECTIONAL FACILITIES

The implementation of the IDEA in correctional facilities proves to be particularly challenging. For example, the availability of special education services varies considerably depending on the State. Reliant on the resources of the correctional facility, identification and assessment of students with disabilities may be difficult if the facility does not have adequate support or personnel. Lastly, the implementation of the IDEA is confounded by the high rate of mobility among incarcerated youths. In the juvenile justice system, youths are frequently transferred or stay for shorter periods of time.

## WHAT ADVOCATES CAN DO

Despite the challenges involved with implementing the IDEA in correctional facilities, students with disabilities are entitled to federal protections. It is important to be aware of what rights students with disabilities have in correctional facilities and how to advocate on behalf of these rights at all stages of the juvenile justice process.

- **Intake:** During intake proceedings, counsel should notify the court and present information about the juvenile's disability. The juvenile's disability can be considered in decisions regarding detention or alternative sentencing.
- **Pre-Sentencing Proceedings:** Parents/guardians should ensure that the probation office has an updated and accurate IEP. Special education needs should be part of the social study report prepared by the probation department.
- **Detention:** Parents/guardians can request an evaluation from the correctional facility, assist in timely transfer of school records, and participate in developing the IEP plan.
- **Accountability:** Juvenile advocates should be aware of exactly who is responsible for implementing the IEP and performing evaluations.

Juveniles with disabilities in correctional facilities are entitled to due process protections under IDEA. A parent/guardian who disagrees with the correctional facility on matters arising under the IDEA has the right to file a due process complaint or request a due process hearing. Additionally, students with disabilities in correction facilities are entitled to protections in the IDEA discipline procedures.

For additional information, please contact:

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