
TENNESSEE EDUCATION POLICY AND PROCEDURES
FOR
INCARCERATED CHILDREN WITH DISABILITIES

I. SUBJECT

Right to education.

II. PURPOSE

Each local education agency (LEA) in Tennessee shall provide a free appropriate public education (FAPE) to all eligible children with disabilities who are detained or incarcerated in county/city-operated detention centers.

III. APPLICABILITY

This policy applies to all children with disabilities who are legally mandated to receive an education in Tennessee through the school year in which their 22nd birthday occurs while being detained or incarcerated in county-operated detention centers; however, the obligation to make FAPE available to all children with disabilities does not apply with respect to children aged 18 through 21 who, in their last educational placement prior to their incarceration in an adult correctional facility, were not actually identified as being a child with a disability and did not have an IEP.

IV. REFERENCES

- State Board of Education Rules, Regulations and Minimum Standards, *TN ADC 0520-1-9*.
- Individuals with Disabilities Education Act (IDEA), *20 U.S.C. §1400 et seq.* and accompanying regulations, *34 C.F.R. § 300 et seq*
- Section 504 of the Rehabilitation Act 1973, *29 U.S.C. § 706(8), 794, 794a, 794b* and accompanying regulations, *34 C.F.R. § 104.1 et seq.*
- Americans with Disabilities Act (ADA), *42 U.S.C. § 12101*

V. DEFINITIONS

Words and phrases used in this Policy shall have the following definitions:

“Detainee” – a person who is being held awaiting trial or has been convicted of a crime and is incarcerated.

“Local Education Agency” – means a public school district within the State of Tennessee which is mandated to provide educational services to eligible children.

“County-operated Detention Centers” – shall include, but not be limited to, the local juvenile detention center, the county and/or city jail, and penal farms. Detainees who are county prisoners shall be educated or caused to be educated by the LEA. Detainees who are state prisoners, and who are in the custody of the county jail, shall be educated by the Department of Corrections (DOC) and/or the Department of Children’s Services (DCS), or caused to be educated by the LEA serving the county-operated detention center.

VI. PROCEDURES

A. Identification of Children with Disabilities in County-Operated Detention Centers

Upon determining that a detainee will be detained for 10 days or longer, each county-operated detention center shall implement systematic referral procedures to assure that detainees who are identified as having disabilities, or suspected of having disabilities, are referred to the LEA or other appropriate agency. The referral procedures will include the following steps:

- (1) The county-operated detention center shall identify each detainee who has a disability, is suspected of having a disability, or who previously received special education services under IDEA, Section 504, or the ADA.
- (2) Identification data to be obtained shall include information pertaining to:
 - any known or suspected disability;
 - the last school attended and any special services received;
 - school records (assessment/evaluation reports, cumulative records, etc.) if available;
 - the detainee’s age and desire to receive educational services;
 - if the detainee is over 18 years of age and does not want to receive educational services, a written explanation shall be obtained.

[Detention centers may utilize Form A (attached) to obtain identification information from detainees.]

B. Referral to the LEA for Assessment

County-operated detention centers shall forward all available identification information on detainees to the LEA where the facility is located. If the detainee is a state prisoner, the information will be forwarded to the DOC or DCS. Upon receipt of the information, the LEA shall ensure that the following steps are completed within 45 days from the date of referral:

- (1) Within 72 hours, a review will be conducted to determine whether the detainee has current academic and special education records, received special education services in the last placement, and had an Individual Education Plan (IEP).
- (2) Where the detainee has current records and an IEP, the LEA or appropriate agency shall proceed to Part C of this Policy – Implementation of Educational Plan.

- (3) For detainees suspected of having a disability and/or do not have current assessment data or an IEP available, special education staff will request the academic and special education records from the detainee's last school placement. Periodic follow-up shall be made to ensure that the records are received in a timely manner.
- (4) Upon receipt of the school records, special education staff shall determine whether further assessments are warranted based on a suspected physical and/or mental impairment, including: health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities.
- (5) Detainees shall be evaluated in accordance with the State Board Rules for Special Education Programs and Services.
- (6) Within 10 days of receiving a referral from a county-operated detention center, the LEA or appropriate agency shall designate a staff member who will serve as the IEP team Chairperson and who shall be responsible for:
 - providing written notice to parents of detainees who have not reached the age of 18 years, requesting consent from the parents to evaluate the detainee. Signed parental consent shall be obtained prior to an initial evaluation. If parental consent cannot be obtained after reasonable efforts, the LEA may initiate a due process hearing to obtain consent.
 - designating members of the IEP team.
- (7) The IEP team Chairperson shall also be responsible for developing a written plan which identifies areas where information needs to be collected through individual or in-depth assessment of all areas related to the suspected disability. Each person who conducts an individual assessment shall prepare a written report for consideration by the IEP team.
- (8) If the IEP team Chairperson is not knowledgeable in the area of the suspected impairment, he/she shall make sure that such persons help develop the assessment plan. The individual assessment should provide descriptive and prescriptive information that is adequate to assist in planning an appropriate program for the detainee. The individual assessment shall include a comprehensive vocational assessment for every detainee 16 years of age or older. In the IEP team's discretion, a comprehensive vocational assessment may be included for detainees who have not reached 16 years of age.
- (9) No single procedure shall be used to assess whether or not a detainee has a physical or mental impairment or as the sole criterion for determining an appropriate educational program. Tests and other materials used to assess a detainee must be selected and administered so as not to be discriminatory on a racial or cultural basis and must be provided and administered in the detainee's native language or other mode of communication and in a form most likely to yield accurate information on what the detainee knows and can do academically, developmentally and functionally.
- (10) The integrated assessment report shall be completed and submitted to the IEP team Chairperson. After receiving the Assessment Team Report, the Chairperson shall convene an IEP team meeting for the purpose of determining whether the detainee is eligible for special education and related services. The IEP team shall include the following participants:

- (1) The parents of the detainee;
 - (2) Not less than one regular education teacher of the detainee (if the detainee is, or may be, participating in the regular education environment);
 - (3) Not less than one special education teacher of the detainee, or where appropriate, not less than one special education provider of the detainee;
 - (4) A representative of the LEA who--
 - (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of detainee with disabilities;
 - (ii) Is knowledgeable about the general curriculum; and
 - (iii) Is knowledgeable about the availability of resources of the LEA;
 - (5) An individual who can interpret the instructional implications of evaluation results;
 - (6) At the discretion of the parent or LEA, other individuals who have knowledge or special expertise regarding the detainee, including related services personnel as appropriate; and
 - (7) Whenever appropriate, the detainee.
- (11) If the IEP team determines that a detainee is eligible to receive special education and/or related services, the IEP team shall be responsible for developing an IEP or an appropriate plan for the detainee. If parental consent for special education and/or related services is refused, or the parent fails to respond to a request for consent to the provision of special education and/or related services, the LEA may not initiate a due process hearing to obtain an order that services be provided and the LEA will not be in violation of its duty to provide FAPE to the detainee in such instances.
- (12) In conducting psychological or psychiatric evaluations to determine eligibility for educational services or to assist in formulating an appropriate educational plan, evaluators will adhere to detainees' constitutional rights as they pertain to criminal matters that may be unrelated to the proposed psycho-educational assessment. Detainees should not be questioned in educational evaluations about underlying events or charges that led to their confinement.

C. Implementation of Educational Plan

Each LEA or appropriate agency, in coordination with the county-operated detention center, must provide special education and related services to detainees with disabilities in accordance with the IEP or a Section 504 Plan. Current IEPs must be reviewed and one of the following actions shall be implemented:

- (1) Continuation of current IEP

Implement the IEP as written. The LEA or appropriate agency can determine that the IEP is current, appropriate, and can be implemented as written in the county-operated detention center.

- (2) Development of a New IEP
 - o The IEP or Section 504 Plan must be implemented after completion by the IEP team. The LEA or appropriate agency shall ensure that all IEPs or Section 504 Plans meet the standards specified in the State Board of Special Education Rules and Regulations and Section 504 of the Rehabilitation Act 1973 and accompanying regulations, respectively.

D. Detainee/Parental Rights & Confidentiality of Records

- (1) The LEA or appropriate agency shall implement, with respect to actions regarding the identification, evaluation, or educational placement of persons, who because of disability, need or are believed to need special instruction or related services, a system of procedural safeguards that includes prior written notice, an opportunity for the parents/guardians to examine relevant records, an impartial hearing with opportunity for participation by the person's parents/guardians and representation by counsel, and a review procedure.
- (2) The LEA or appropriate agency shall ensure that the detainee and parents/guardians are given their procedural safeguards and due process rights consistent with the State Board Rules for Special Education Programs and Services.
- (3) Parents/guardians maintain the right to inspect any and all data that are subject to collection and the right to appeal the accuracy of any such information. The access of unauthorized persons to personally identifiable data without parent/guardian consent is forbidden. Confidentiality standards will be maintained in accordance with State Board Rules for Special Education Programs and Services.

VII. SPECIAL CONSIDERATIONS

In delivering educational services to detainees in minimum- and maximum-security county-operated detention centers, special consideration shall be given to the following:

- o Location of the educational program in a secure area with adequate security staff assigned in and/or outside of the classroom as needed.
- o Implementation of Discipline Rules which detainees will be required to follow in order to participate in the educational program. The Rules shall prohibit any behavior or conduct (verbal or physical) which poses a threat to the safety of the detainee or others in the educational setting.
- o Training of all staff involved in implementing the educational program in county-operated detention centers.
- o Contracting with outside agencies (where appropriate) to deliver education services in county-operated detention centers.
- o Ensuring that the educational program is staffed appropriately with certified or licensed special education staff to render services designated in a detainee's IEP or Section 504 Plan.
- o Developing a plan for delivering educational services to detainees through the joint efforts of more than one LEA.

EDUCATIONAL INFORMATION - FORM A

NAME: _____ D. O. B. _____

ADDRESS: _____

City / State

ZIP

Last School Attended: _____ County: _____

What year did you attend: _____

School District / County: _____

1. Do you have a regular high School diploma? Yes No

2. Do you have a special education diploma? Yes No

3. Were you enrolled in school before you were arrested? Yes No

4. Were you receiving special education or related services, or were you eligible for modifications in your school program before you were arrested?

Yes No

5. If you are over 18, do you wish to obtain educational services?

Yes No

If you marked "No" to question #5, please explain why you do not wish educational services.

Detainee

Correctional Officer

Date

NOTICE: In compliance with an agreement with the U.S. Department of Education, Office of Civil Rights, this form must be completed and forwarded to the local education agency serving the jurisdiction where This detention center is located.