



# Overview of Special Education Requirements in Juvenile Detention Centers (JDCs)

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**BEST** FOR  
**ALL**

We will set all students on a path to success.

## ACADEMICS

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ALL TENNESSEE STUDENTS WILL HAVE  
ACCESS TO A HIGH-QUALITY EDUCATION,  
NO MATTER WHERE THEY LIVE

## STUDENT READINESS

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TENNESSEE PUBLIC SCHOOLS WILL BE  
EQUIPPED TO SERVE THE ACADEMIC  
AND NON-ACADEMIC NEEDS OF ALL  
STUDENTS IN THEIR CAREER PATHWAYS

## EDUCATORS

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TENNESSEE WILL SET A NEW PATH FOR  
THE EDUCATION PROFESSION AND BE  
THE TOP STATE IN WHICH TO BECOME AND  
REMAIN A TEACHER AND LEADER FOR ALL

# Agenda

- Statistical Data
- General Education Requirements
- JDC Survey
- Special Education Requirements
  - Federal
  - State
- Department of Justice (DOJ) Concerns
- Closing



# Statistical Data

# Juvenile Detention Center (JDC)

- What defines a JDC in TN?
- A "temporary" holding facility in TN, licensed by the Department of Children's Services (DCS) under Tenn. Code Ann. **§ 37-5-502**, to detain pre-adjudicated youth until they are able to be adjudicated in a TN juvenile court or transferred to adult court.
- There are 17 JDCs across the state of Tennessee.



# Statistical Data: National

According to Office of Juvenile Justice and Delinquency Prevention (OJJDP), 2019 data was as follows:

- There were 36,479 juveniles in residential detention centers on any given day in the United States.
- The length of a stay in a juvenile detention facility was 27 days on average.
- 65-70% of youth involved within the juvenile justice system have a disability.
- Students with disabilities are almost 3X more likely to be arrested than their nondisabled peers.
- State-level data shows that rates of youth rearrest within one year are 55%, on average.

Unlocking Futures- Youth with Learning Disabilities & the Juvenile Justice System: <https://www.nclid.org/unlocking-futures/>



# Statistical Data: TN

- According to the 2023-24 Consolidated State Performance Report (CSPR) data:
  - Total Youth Detained in a JDC: **3374**
  - Total Females: **671**
  - Total Males: **2703**
  - Total Youth Detained in a JDC Receiving Special Education Services: **554**
  - Total Youth Detained in a JDC that Received Transition Services: **607**

*Note: These numbers are based on the CSPR data that only includes JDCs receiving federal funding (16 of the 17 JDCs). These are preliminary numbers and are for internal informational purposes only.*



# Statistical Data: TN

- According to the 2023-24 Consolidated State Performance Report (CSPR) data:
  - **264** youth earned credit while in a JDC.
  - **10** youth enrolled in a HiSET program.
  - **30** youth earned a HiSET diploma.
  - **14** youth obtained a high school diploma.
  - **2** youth accepted/enrolled in post-secondary education.
  - **29** youth enrolled in a job training course/program.
  - **4** youth obtained employment.

*Note: These numbers are based on the CSPR data that only includes JDCs receiving federal funding (16 of the 17 JDCs). These are preliminary numbers and are for internal informational purposes only.*





# Statistical Data: TN

- According to current year Department of Children's Services (DCS) exit data,
  - approximately 60-70% of youth are released within 72 hours.
  - 628 youth exited a JDC within the month of June 2023.
  - JDC placement is approximately between 70-80% male and 30-20% female.



# General Education Requirements



# Chapter 0520-01-12 of the State Board of Education (SBE) Rules

- Currently, these rules shall apply to general education students only.
  - The local education agency (LEA) in which the JDC is located provides educational services for general education students. However, students remain enrolled in their home LEA.
  - Minimum Length of the school day is **4 hours**.
  - Instruction must be provided by a **teacher with a valid Tennessee teacher license**.



# Chapter 0520-01-12 of the SBE Rules

## Testing:

- The student must complete a nationally norm-referenced pre-test by the 5th instructional day.
- The student must also complete a benchmark assessment at least every four (4) weeks while incarcerated at the detention center.
- The receiving LEA is responsible for ensuring the required tests are administered.



# Notification and Transfer of Records

Time	Required Action
72 hours after student arrives in detention center outside of home LEA	Notify, in writing, including student's name, location of incarceration and date of incarceration: 1. the home LEA, 2. the receiving LEA, and 3. the Tennessee Department of Education (department)
After 5 instructional days at the detention center	The Receiving LEA shall request the student's transcripts from the home LEA
No later than the 10th instructional day	The home LEA shall ensure the student's educational records are received by the receiving LEA
No later than the 15th instructional day	The receiving LEA shall work with the home LEA to develop an ESP for the student
No later than the 20th instructional day	The receiving LEA shall ensure the student begins receiving educational services in accordance with the ESP
Exiting	Return to home LEA: Receiving LEA return all educational records

# Proposed Changes to Chapter 0520-01-12 of the SBE Rules

Proposed revisions were presented to the TN SBE on August 4, 2023.

[Department of State \(tn.gov\)](https://www.tn.gov)

Key revisions to Chapter 0520-01-12 include, but are not limited to:

- Requirements for students with disabilities.
- Aligns timelines for implementing services for students with and without disabilities.
- Provides clarity around the requirement and timeline for the local LEA to enroll students with disabilities

\*Rules must go before the Board on two readings. After approval on final reading, they are submitted for the rule promulgation process, which includes review by the Attorney General and filing with the Secretary of State. Revised rules become effective 90 days after publication in the Tennessee Administrative Register, absent a stay of the effective date by the Government Operations Committee or the request for rulemaking hearing.



# JDC Survey

# JDC Survey

- Completed by the 17 LEAs in TN which serve a JDC in their jurisdictional boundaries.

## Top 5 identified needs:

1. Delivery of special education services
2. Disciplinary requirements under the IDEA
3. Accommodations and Modifications
4. Age-appropriate transition assessment
5. Manifestation determination reviews





# Special Education Requirements: Federal



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“Ensuring that students in correctional facilities are receiving a high-quality education will have a clear, positive effect in reducing recidivism and increasing post-release success in higher education, employment, and other life endeavors.”

See U.S. Dep't. of Educ., [Dear Colleague Letter](#) (Dec. 5, 2014).

# Special Education in Correctional Facilities

- Absent a specific exception, **all protections listed in the Individuals with Disabilities Education Act (IDEA) and state special education law apply** to students with disabilities in JDCs, including:
  - Child find
  - Comparable services for transfer students
  - Individualized Education Program (IEP) development, revision, and implementation
  - FAPE
  - Least restrictive environment (LRE)
  - Disciplinary protections
  - Teacher qualifications

See U.S. Dep't of Educ., [Dear Colleague Letter](#) (Dec. 5, 2014)





# Which LEA is Responsible for Providing FAPE?

If a student with a disability is placed in...

- A **JDC**, the LEA in which the center is located is responsible for enrolling and serving the student. See Tenn. Code Ann. § 49-6-3023.

Additional placements and LEA responsibilities:

- A **county/city jail**, the LEA in which the jail is located is responsible for enrolling and serving the student. See [Tennessee IDEA Interagency Agreement](#).
- A **youth development center**, the Tennessee Department of Children's Services (DCS) is responsible for serving the student.



# Child Find

- LEAs have an **affirmative, ongoing obligation to identify, locate, and evaluate** all students with disabilities residing within the jurisdiction who are in need of special education and related services. See 34 C.F.R. § 300.111(a)(1).
- Students suspected of having a disability must be evaluated in a timely manner, **even if the student will not be in the facility long enough to complete the evaluation**. See U.S. Dep't of Educ., [\*Dear Colleague Letter\*](#) (Dec. 5, 2014).
- The Home LEA and Receiving LEA **may need to collaborate** to ensure that evaluations and reevaluations are conducted in a comprehensive and timely manner.



# Comparable Services

- If a student with an IEP moves to a new LEA in the same state within the same school year, the new LEA **must provide comparable services to those the student received in the old LEA** until the new LEA adopts the existing IEP or develops a new IEP. *See 34 C.F.R. § 300.323(e).*
- Comparable services do not need to be identical, but they **must be similar.**
- LEAs cannot avoid the obligation to provide comparable services by agreeing to a temporarily “reduced” IEP. *See Tenn. Dep’t of Educ., Williamson Cnty. Schs. (Oct. 20, 2010).*
- If you cannot provide comparable services, **document** the services missed and **plan** for how you will provide **compensatory education and services.**



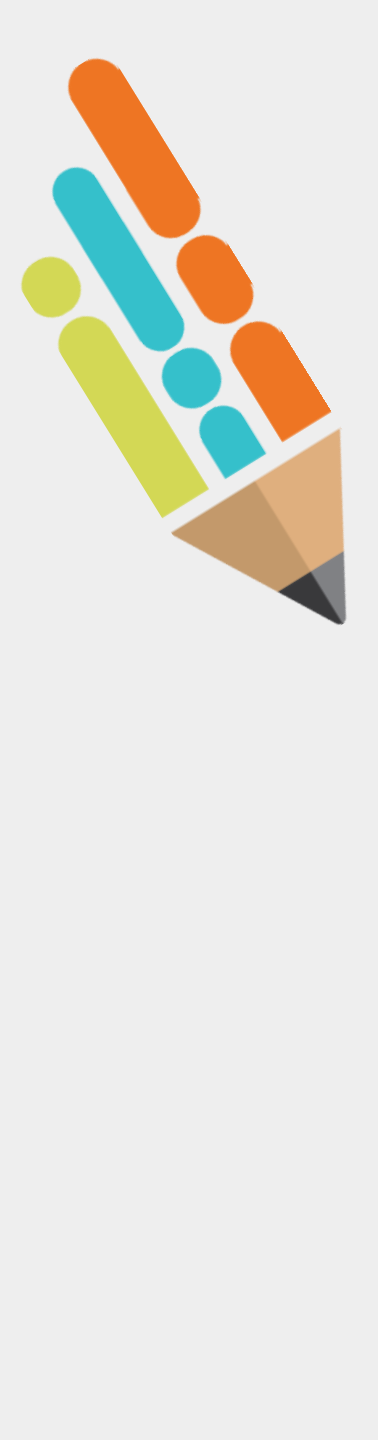
# IEP Development and Revision

- **IEPs must be developed in accordance with the IDEA regulations and state special education law.** All IEP content requirements apply to students with disabilities in JDCs, including statements on:
  - The student's present levels of academic achievement and functional performance.
  - The measurable annual academic and functional goals.
  - The special the special education, related services, and supplementary aids and services that will be provided to the student to enable the student to advance appropriately toward attaining IEP goals and to be involved in and make progress in the general education curriculum.
- The services included in the student's IEP **must not be solely based on the services available at the JDC.**
- Again, if you cannot provide appropriate services, **document** the services missed and **plan** for how you will provide **compensatory education and services.**



# FAPE and IEP Implementation

- Students with disabilities are still entitled to an educational program that “is reasonably calculated to enable [the] child to make **progress appropriate in light of the child’s circumstances.**” *Endrew F. v. Douglas Cnty. Sch. Dist. Re-1*, 137 S. Ct. 988.
- An **appropriate education** for a student with a disability **should generally be the same** regardless of whether the student is in a public school or a JDC.





# Least Restrictive Environment

- LEAs must ensure that students with disabilities are educated with students who are nondisabled to the maximum extent appropriate. *See* 34 C.F.R. § 300.114(a)(2).
- **“The IDEA requirements related to LRE apply to the education of students with disabilities in correctional facilities.** IEP teams or placement teams must make individualized placement decisions and may not routinely place all students with disabilities in correctional facilities in classes that include only students with disabilities, even if this means creating placement options or using other arrangements, to the maximum extent appropriate to the student’s needs.” *See* U.S. Dep’t of Educ., [Dear Colleague Letter](#) (Dec. 5, 2014).



# Disciplinary Protections

- LEAs must conduct a **manifestation determination review (MDR)** within 10 school days of “any decision to change the placement of a child with a disability because of a violation of a code of student conduct.” 34 C.F.R. § 300.530(e).
- A change of placement occurs when the (1) the removal is for more than 10 consecutive school days, or (2) the student has been subjected to a series of removals that constitute a pattern because the removals total more than 10 school days in a school year and because the behavior is substantially similar in previous incidents. See 34 C.F.R. § 300.536.
- Students with disabilities **are still entitled to the disciplinary protections** available under IDEA, including the right to a manifestation determination review.



# Disciplinary Protections

- If the behavior is NOT a manifestation of the student's disability, then the student may be disciplined, but **must be given the opportunity to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the student's IEP**, albeit in a different setting. *See* 34 C.F.R. § 300.530(d)(1).
- For example, the student may be provided educational services in the student's cell or in a "lockdown" unit.
- When the student engages in behavior that results in a "change of educational placement," the student's IEP team should also **consider the need to conduct a functional behavior assessment (FBA) and implement a behavior intervention plan (BIP)**. *See* SBE Rule 0520-01-09-.24.





# Qualifications for Special Education Teachers and Service Providers

- FAPE includes “ensuring that special education teachers and related services providers are **appropriately and adequately prepared and trained.**”
- Teachers providing special education **must have obtained State certification** as a special education teacher.
- Related services providers **must meet the State-approved licensing and registration requirements** that apply to their professional discipline.
- Paraprofessionals and assistants may be used to assist in the provision of special education and related services **if they are appropriately trained and supervised** and work **under the supervision of** a certified teacher.
- Special education teachers and related services personnel **may not have certification or licensure requirements waived** on an emergency, temporary, or provisional basis.

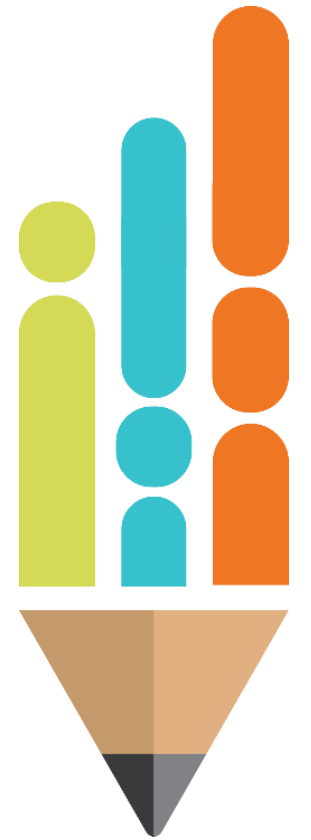
U.S. Dep’t. of Educ, [\*Memorandum to State Directors of Special Education\*](#) (Oct. 4, 2022)



# Parental Rights

Until the student turns 18-years-old, parents of a student with a disability maintain all rights identified under IDEA, including the right to:

- Participate in and provide input during IEP meetings.
- Provide consent prior to evaluations and the initial provision of special education services.
- Receive invitations and prior written notices.
- Seek one of the special education dispute resolution options.



# Special Education Requirements: State

# Rules of the State Board of Education

- [Chapter 0520-01-09 of the SBE Rules](#), “Special Education Programs and Services”
- Absent a specific exception, **all requirements listed in the state special education law apply** to students with disabilities in JDCs.
- The following review of SBE Rules and timelines contains highlights and is not exhaustive to all state requirements.





# SBE Rule 0520-01-09-.15(4)

When must a LEA send a **parent prior written notice (PWN)**?

JDC staff from the LEA must send a parent PWN **at least 10 school days** before the LEA proposes or refuses to initiate or change the identification, evaluation, educational placement, or provision of a free appropriate public education (FAPE).





# SBE Rule 0520-01-09-.15(1)

How much notice must an LEA provide to a student's parent prior to holding the IEP meeting?

JDC staff from the LEA must notify the student's parent **at least 10 calendar days** before an IEP meeting to ensure that the parent has an opportunity to attend, unless the parent agree to attend earlier.



# SBE Rule 0520-01-09-.15(3)

How much notice must an LEA provide to a student's parent prior to holding a manifestation determination review (MDR)?

The JDC staff from the LEA must notify the student's parent **at least 24 hours prior** to an MDR meeting.



# SBE Rule 0520-01-09-.15(2)

When must an LEA provide a copy of a **draft IEP** to a parent?

If an LEA creates a draft IEP prior to an IEP meeting, the JDC staff from the LEA must provide a copy of the draft IEP to a parent **at least 48 hours** prior to the scheduled meeting time.

- If a draft IEP is provided it shall become the property of the parent. The JDC staff from the LEA shall not have the final IEP completed before an IEP meeting and the staff shall make it clear to the Parent at the outset of the meeting that the services proposed are preliminary recommendations for review and discussion with the Parent.



# Department of Justice (DOJ) Concerns

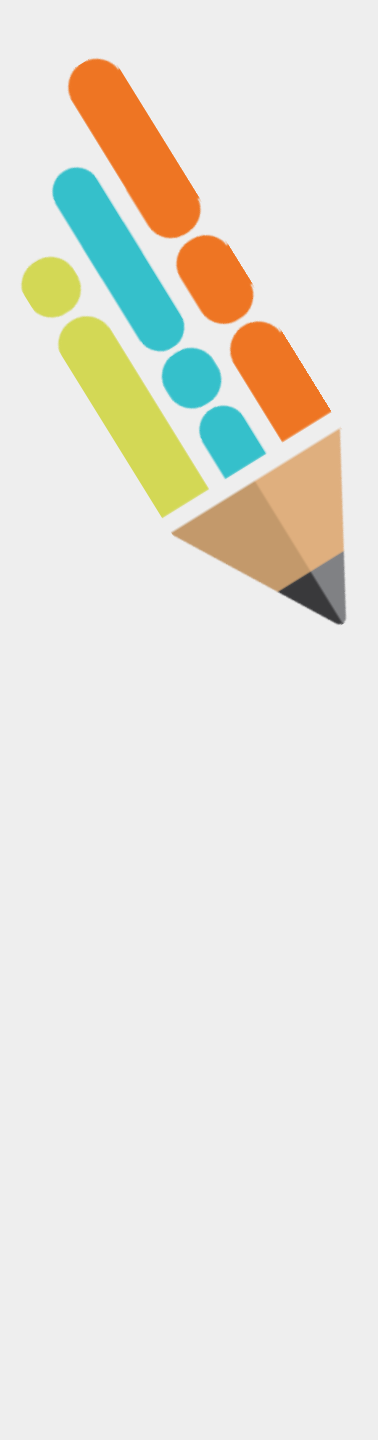
# FAPE Concern

- Failure to promptly obtain IEPs from home school districts
- Reductions in special education and related services
- Failure to implement modifications and accommodations
- Failure to provide related services
- Reliance on computer-based/packet-based instruction that is not individualized in accordance with a child's IEP
- Failure to provide special education services when children are in isolation/lockdown



# Behavioral Supports Concern

- Failure to provide adequate behavioral supports. Supports include already identified behavior intervention plans (BIPs) as part of a student's required educational services. Also, the need for a functional behavior assessment (FBA) based on behavior data.
- Failure to conduct MDR meetings. Within 10 school days of any decision to change the placement of a child with a disability because of a violation of student conduct, the LEA (JDC staff), the parent, and relevant members of the student's IEP Team (as determined by the parent and the LEA) must meet to review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents.



# Transition Services Concern

- Failure to develop adequate transition plans

## **SBE Rule 0520-01-09-.12(2)(b)**

- Age-appropriate transition assessments to include, at a minimum, education, training, and employment for students age fourteen (14) and older.
- For the IEP in which the student will be turning 14, measurable annual goal(s) that address transition, and are directly related to the student's measurable postsecondary goals, must be developed.



# Closing



# Questions?

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# Thank You!

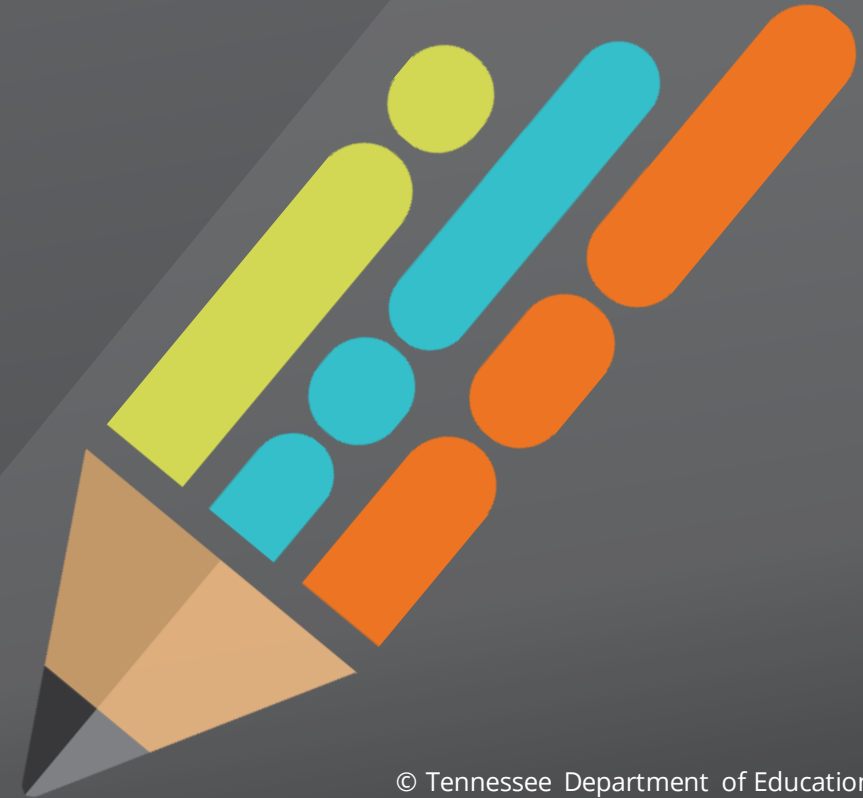
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Tuesday-Thursday

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You may access the PD by navigating here:

[https://stateofennessee.formstack.com/forms/2023fpi\\_pd\\_survey](https://stateofennessee.formstack.com/forms/2023fpi_pd_survey)



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