



## **NAPA COUNTY SPECIAL EDUCATION LOCAL PLAN AREA**

### **ADULTS IN CORRECTIONAL FACILITY POLICY**

#### **Free Appropriate Public Education (“FAPE”)**

Every individual with exceptional needs who is eligible to receive special education instruction and related services under the Individuals with Disabilities Act (“IDEA”) and state special education laws, shall receive that instruction and those services at no cost to his or her parents or, as appropriate, to him or her. A FAPE shall be available to individuals with exceptional needs in accordance with Section 1412(a)(1) of Title 20 of the United States Code and Section 300.101 of Title 34 of the Code of Federal Regulations.

#### **Eligible Adults**

Adults who are aged 18-21 years, have not graduated with a high school diploma, who, at the time they have turned 18 were identified as an individual with exceptional needs and had an individualized education program (“IEP”) under the IDEA, are also entitled to a FAPE (hereinafter (“eligible adults”).) (*See* 20 U.S.C. § 1400(d)(1)(A), (B), (C); 20 U.S.C. § 1412(a)(1)(A); Cal. Educ. Code § 56000, 56026(c)(4).) This applies to adults imprisoned in California adult jails and prisons. However, an individual aged 18 through 21 years, who, in the educational placement prior to his or her imprisonment in an adult correctional facility was not identified as an individual with an exceptional need or did not have an IEP under the IDEA, is not entitled to a FAPE. (20 U.S.C. §1412(a)(1)(B); Cal. Educ. Code, § 56040(b).)

#### **District of Residence**

For eligible adults who prior to reaching the age of majority resided within the Napa County Special Education Local Plan Area (“SELPA”) geographic boundaries, the applicable local educational agency within the SELPA shall ensure they have available to them a FAPE. If the parent relocates to a new district of residence, the new district of

residence shall become the responsible local educational agency (“LEA”). If the student is conserved, the residence of his or her conservator shall control. (Cal. Educ. Code, § 56041.)

### **Individualized Education Program**

Once the LEA is informed that one of its resident’s is an eligible adult imprisoned at an adult correctional facility, it will revise the individual’s IEP as necessary, including conducting an annual review, as needed, subject to the cooperation of the correctional facility where the student is located. The LEA will determine whether the qualified individual is provided a FAPE pursuant to IDEA and corresponding California special education. To receive special education services while imprisoned, a qualified individual must consent to the receipt of such services and enroll in the adult education program at the adult correctional facility.

### **Limitations**

The following special education requirements do not apply to eligible individuals who are convicted as adults under State law and imprisoned in adult prisons:

1. The requirements set out in 20 U.S.C. § 1412(a)(16) and 20 U.S.C. §1414(d)(1)(A)9i)(VI) (relating to participation in general assessments) do not apply. Eligible individuals convicted as adults under State law and imprisoned in adult prisons are exempted from participation in State and district-wide assessment programs under the IDEA.
2. The requirements of items (aa) and (bb) of 20 U.S.C. §1414(d)(1)(A)(i)(VIII) (relating to transition planning and transitional services), do not apply with respect to such individuals whose eligibility under the IDEA will end, because of their age, before such individuals will be released from prison.
3. If an individual with a disability is convicted as an adult under state law and imprisoned in an adult prison, the individual’s IEP Team may modify the individual’s IEP or placement notwithstanding the least restrictive environment (“LRE”) requirements of 20 U.S.C. § 1414(d)(1)(A) and the IEP contents requirements of 20 U.S.C. § 1414(d)(1)(A) if there is a bona fide security or compelling penological interest that cannot otherwise be accommodated.

Legal Reference: 20 U.S.C. §1414(d)(7); 34 C.F.R. §§300.102, 300.324(d); Cal. Educ. Code §§ 56040-56041; Cal. Gov. Code, § 7579(d); *Letter to Yudien*, 39 IDELR 270, 103, LRP 37913 (OSEP 2003).