

# Education Services for Students Incarcerated

## 24 P.S. Section 13-1306.2

**DATE OF ISSUE:** July 1, 1999

REPLACES: Educational Services for Students Incarcerated in Local Correction Institutions, BEC 24 P.S. Section 13.1306.2, issued January 15, 1998

### **PURPOSE**

Act 33 of the Special Session of 1995, authorizing the adjudication of school age individuals as adults, has increased the student population in local correction institutions. Incarceration, however, does not negate the responsibility of a school district in which a local correction institution is located to provide education to the students residing in the institution. These students should receive basic and special education in the manner described below.

### **I. Basic Education**

Until they reach 17 years of age, students are subject to compulsory education laws. Further, persons under 21 years of age who have not graduated have rights to an education upon request. It is the law and policy of the Commonwealth that all school-age individuals who are of compulsory school age must attend a program of basic instruction as further defined below, and that these programs must be offered to all school-age individuals ages 17-21 who have not received a high school diploma and who wish to continue their education.

Act 30 of 1997 amended the Public School Code by including Section 1306.2 to define the minimum level of education that must be provided to school-age individuals incarcerated in adult local correction institutions. Section 1306.2(e) expressly defines local correction institutions to include any jail, prison or detention facility operated by a county or jointly by more than one county or by a municipality. Section 1306.2 delineates between school-age individuals that have been charged with a criminal offense and those individuals that have been convicted of a criminal offense.

### **A. School Age Individuals Charged with a Criminal Offense**

Section 1306.2(b) requires that persons under twenty-one (21) years of age who are confined to an adult local correction institution following a charge for a criminal offense shall be eligible for educational services in the same manner and to the same extent as a student who has been placed in an alternative education program for disruptive students pursuant to Article XIX-C (Disruptive Student Programs). Alternative education programs for disruptive youth may operate outside the normal school day, and these programs may modify the requirements established in Sections 1327, 1501 and 1504 of the Public School Code insofar as they require a particular number of days or hours of instruction.

In order to receive these waivers of the School Code, however, a district must annually either apply, or be a party to an application filed jointly with other districts or by an intermediate unit, to the Department pursuant to Article XIX-C. Local school districts who do not submit an application to operate an alternative education program for disruptive youth must provide basic education programs in the county prisons in conformity with all of the

requirements of the School Code, including the days, hours and curriculum requirements of the Code.

While Section 1306.2(b) provides flexibility in the days and hours requirements of the School Code, Department approved alternative education programs for disruptive youth must permit students to make normal academic progress and achieve requirements for graduation as defined by either the home or host district.

It is anticipated that alternative education programs in county jails and prisons will operate five days per week. In order to secure Department approval, programs must offer at least twenty (20) hours of instruction per week or fewer hours of instruction per week covering at least four of the following curricular areas: Language Arts, Math, Science, Social Studies, Health or Life Skills and show that normal academic progress may be achieved in fewer than twenty (20) hours of weekly instruction. Districts must explain in detail in their applications how their programs will meet these criteria.

The Department will perform monitoring to confirm that all districts in which local correction institutions are located are offering alternative education programs that comply either with Department approved waivers or with the full requirements of the School Code and regulations.

## **B. School Age Individuals Convicted of a Criminal Offense**

Section 1306.2(a) requires that persons under twenty-one (21) years of age who are confined to an adult local correction institution following conviction for a criminal offense shall be eligible for educational services in the same manner and to the same extent as a student who has been expelled pursuant to Section 1318 of the Public School Code. Pursuant to 22 Pa. Code Section 12.6(e), expelled students who are less than 17 years of age are still subject to the compulsory school attendance law, and districts must make some provision for the students' education.

Applicable to programs for both charged and convicted individuals, Section 1306 of the School Code requires the "host" district (the district in which the jail is located) to allow nonresident students residing in institutions within the district to attend the public schools of the host school district. Where this is not possible, the host district shall conduct an educational program at the institution.

Historically, the host district has charged the school district where the student's parents live, or "resident" district, the host district's tuition rate as determined by Section 2561 of the School Code. Act 30 of 1997, by the addition of Section 1306.2(c), requires the Department of Education to effectuate necessary procedures for the transfer of funds from the school district of residence to the host school district in which the local correction institution is located. Pursuant to these procedures, the Department, not the host district, effectuates the transfer of funds. In doing so, the Department may deduct the appropriate amount from the basic education funding allocation of any school district whose resident students were provided educational services in a local correction facility.

Districts educating individuals in local correction institutions should secure and file all applicable forms with the Department's Bureau of Budget and Fiscal Management, Division of Subsidy Data and Administration to ensure appropriate billing by the Department.

## II. Special Education

The federal Individuals with Disabilities Education Act (IDEA) imposes a duty on state educational agencies (SEAs) to ensure the rights of students with disabilities to a free appropriate public education (FAPE) in order to receive federal funds. As the SEA, the Department provides general supervision of services and programs under Pennsylvania's special education regulations and standards, Chapter 14. The Commonwealth has delegated to school districts the operational responsibility to offer FAPE to each student who is eligible for special education until the student or students who turn 21 during the school term are entitled to finish that school term, whichever occurs first.

School districts, within whose boundaries a local correction institution is located, should comply fully with the requirements of the IDEA and Chapter 14 regarding the identification, evaluation, placement and provision of special education services to all eligible school-age individuals housed therein. Eligible students are entitled to receive special education both when they are charged with a criminal offense and are awaiting trial and after they have been convicted of a criminal offense. Specifically, school districts providing special education services to incarcerated school-age individuals are required to:

1. comply with the "child-find" obligations of IDEA;
2. utilize appropriate evaluation procedures and diagnostic/screening instruments to determine the eligibility and educational needs of inmates;
3. implement, timely review and/or develop Individualized Education Programs ("IEPs") for eligible students in accordance with state and federal laws and regulations, including compliance with procedural safeguards; and
4. provide FAPE in conformity with the IEP.

Section 1309 of the School Code permits the district providing special education to charge the district of residence a special education charge not to exceed the total net cost of the special education program provided. Again, pursuant to Section 1306.2(c), the Department of Education will effectuate necessary procedures for the transfer of funds from the school district of residence to the school district in which the local correction institution is located which may include a deduction of the appropriate amount from the basic education funding allocation of any school district whose resident students were provided educational services in a local correction facility. In addition, the Department of Education will perform monitoring to confirm the appropriate provision of special education to children confined in local correction institutions.

Districts have a responsibility to adopt and use a system to locate and identify all students within the district's jurisdiction who are thought to be eligible and to determine those students' needs through a screening and evaluation process which meets the requirements of Chapter 14.

Part of this responsibility is to provide annual public notice under Section 14.121. Districts should send their annual public notice to the warden of each county jail or prison within their jurisdiction. Furthermore, districts in which local correction institutions are located must develop a systematic, on-going means of communicating with these institutions to ensure that all incarcerated students who may be eligible for special education are located, identified, evaluated, and, when deemed eligible, offered FAPE. In addition, districts may obtain information from the Department's PennData database to determine whether school-age inmates have been previously identified as eligible for special education by contacting the Records Center at 717-541-8575 or 1-800-945-7854.

Obviously, the provision of special education in local correction institutions is somewhat unique. Added pursuant to the 1997 amendments to the IDEA, Section 614(d)(6) recognizes the atypical nature of providing services to children with disabilities who are convicted as adults under State law and who are incarcerated in adult prisons. Section 614(d)(6)(A) provides that the following requirements of IDEA do not apply:

- A. participation of children with disabilities in general assessments as is required in section 612(a)(17) and paragraph (1)(A)(v); and
- B. transition planning and transition services as is required in subclauses (I) and (II) of paragraph (1)(A)(vii) with respect to children whose eligibility will end, because of their age, before they will be released from prison.

Finally, Section 614(d)(6)(B) provides that if a child with a disability is convicted as an adult under state law and incarcerated in an adult prison, the child's IEP team may modify the child's IEP or placement notwithstanding the requirements of section 612(a)(5)(A) and 614(d)(1)(A)(least restrictive environment) if a bona fide security or compelling penological interest that cannot otherwise be accommodated is demonstrated. Where the continued delivery of services in a student's IEP is superseded by the duty of the local correction institution to maintain and control security, the school district must conduct an IEP meeting and revise the IEP accordingly, following the usual procedural safeguards provided for under Chapter 14.

It should be noted that Section 614(d)(6) of the IDEA applies only to individuals with disabilities who have been convicted as adults under State law, not to those individuals who have merely been charged as an adult and are awaiting trial. Questions regarding this Basic Education Circular should be addressed to the Bureau of Community and Student Services (Basic Education), the Bureau of Special Education or Bureau of Correction Education (Special Education), or the Bureau of Budget and Fiscal Management (Funding issues).

## **REFERENCES:**

### **Purdon's Statutes**

24 P. S. Section 13-1306  
24 P. S. Section 13-1306.2 (Act 30 of 1997)  
24 P. S. Section 13-1308  
24 P. S. Section 13-1309  
24 P. S. Section 13-1318  
24 P. S. Section 19-1901-C  
24 P. S. Section 25-2561

### **State Board of Education Regulations**

[22 Pa. Code § 11.6](#)

[22 Pa. Code Chapter 14](#)

### **Department of Education Standards**

[22 Pa. Code Chapter 342](#)

**Federal Statutes**

20 U.S.C. Section 1400, et seq. (IDEA), including Amendments of 1997 to Sections 612(a)(1) and 614(d)(6).

**Federal Regulations**

34 C.F.R. Part 300

**CONTACT BUREAU/OFFICE:**

Bureau of Special Education  
717.783.2311

School Services Unit  
717.787.4860 (Basic and Correction Education)

Bureau of Budget and Fiscal Management  
Division of Subsidy Data and Administration  
717.787.5423 (Funding issues)

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