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ISSUE BRIEF:

Key Considerations in Providing a Free Appropriate Public Education for Youth With Disabilities in Juvenile Justice Secure Care Facilities

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Introduction

Research has consistently demonstrated that access to high-quality education for youth is critical to their long-term success as adults.^{1, 2, 3} Youth in juvenile justice secure care facilities, however, too often do not have access to the high-quality education and related supports and services that they need. This is particularly true for youth with disabilities residing in such facilities.⁴ In December 2014, the U.S. Department of Education (ED), in partnership with the U.S. Department of Justice, issued a Correctional Education Guidance Package (Guidance Package) designed to help State and local leaders provide high-quality education to youth in juvenile justice secure care facilities.^a As part of the Guidance Package, ED's Office of Special Education and Rehabilitative Services (OSERS) issued a "Dear Colleague Letter" to clarify State and public agency obligations under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq. and 34 C.F.R. part 300, to ensure the provision of a free appropriate public education (FAPE) to eligible students with disabilities in correctional facilities.^b As another component of the Guidance Package, ED's Office for Civil Rights and the U.S. Department of Justice issued a "Dear Colleague Letter"^c to clarify that juvenile justice secure care facilities that receive Federal funding, like all other public schools, must comply with Federal civil rights laws, including those that prohibit discrimination based on race, color, national origin, sex, religion, and disability.^d

Taken together, these letters make clear that, under laws discussed in the respective letters, FAPE must be made available to all eligible children and youth with disabilities. This brief focuses solely on FAPE in juvenile justice facilities, required by IDEA and discussed in the OSERS letter.^e However, youth with disabilities who are detained or incarcerated in juvenile justice secure care facilities are arguably at the greatest risk for not being provided FAPE on a consistent basis.^{5, 6, 7} Although FAPE

is clearly defined in IDEA regulations (see the "What Is FAPE?" insert), litigation rather than voluntary compliance has often been the driving force behind the provision of FAPE in juvenile justice secure care facilities.⁸ As of 2013, at least 56 lawsuits have been filed alleging lack of FAPE in juvenile justice settings.⁹ Judgments in these suits have revealed that there are still instances in which many of the most basic educational services are unavailable to youth with disabilities who are detained or incarcerated.^{10, 11}

Furthermore, facilities that administer programs under Title I, Part D of the Elementary and Secondary Education Act of 1965, as amended, must ensure that, to the extent feasible, youth in juvenile secure care facilities—including youth with disabilities—have the same opportunities to meet the State's challenging academic content standards and student academic achievement standards as they would have if they were enrolled in public schools in the State.¹² In doing so, State and local educational agencies must pay particular attention to youth with disabilities. For example, a State agency receiving Title I, Part D, Subpart 1 funds must provide an assurance that it will work with youth with disabilities to meet an existing IEP and notify the local school district if a child or youth intends to return to the local school and is identified as in need of special education services while in a juvenile justice secure care facility.¹³

Partnerships at the Federal, State, and local levels are critical to ensuring appropriate general education and FAPE requirements, which include providing appropriate special education and related services at no cost to the parents of eligible children and youth with disabilities in juvenile justice secure care facilities. The importance of such collaborations is highlighted throughout the Guidance Package. However, the provision of high-quality education services, particularly special education services, in juvenile justice secure care facilities is often challenging because of a lack of

What is FAPE under IDEA?

Free appropriate public education, or FAPE, is defined as "special education and related services that (a) are provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the State educational agency (SEA), including the requirements of IDEA; (c) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) are provided in conformity with an individualized education program (IEP) that meets the requirements of § 300.320 through 300.324." (Individuals with Disabilities Education Act, 34 C.F.R. § 300.17)

collaboration between government agencies and those not involved in public education, including social and health agencies, probation and parole agencies, and parents.^{14, 15} Often, partner agencies do not establish and use interagency agreements or other mechanisms for interagency coordination, as required by IDEA. Such agreements establish helpful provisions relating to (1) the financial responsibility of each agency for providing special education and related services, including reimbursement terms; (2) the resolution of interagency disputes; and (3) the coordination and delivery of education, special education, and related services, as outlined in IDEA's methods of ensuring services (34 C.F.R. §§ 300.154(a)–(c)). In addition, inadequate staffing, classroom space, funding, and instructional time, as well as frequent interruptions in the school schedule due to security concerns, often present challenges to providing appropriate

a. The Guidance Package is available online at <http://www2.ed.gov/policy/gen/guid/correctional-education/index.html>.

b. This letter is available online at <http://www2.ed.gov/policy/gen/guid/correctional-education/idea-letter.pdf>.

c. This letter is available online at <http://www2.ed.gov/policy/gen/guid/correctional-education/cr-letter.pdf>.

d. Juvenile justice facilities and their schools that receive Federal financial assistance must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, which prohibits disability discrimination, and juvenile justice facilities and their schools that are State or local public entities must comply with the requirements of Title II of the Americans with Disabilities Act, which prohibits disability discrimination regardless of the receipt of Federal funds (29 U.S.C. § 794, 34 C.F.R. part 104 [Section 504]; 42 U.S.C. §§ 12131–12134, 28 C.F.R. part 35 [Title II]). This brief discusses *IDEA-related* requirements and protections for youth with disabilities in juvenile justice secure care facilities only.

e. There may be circumstances in which the obligation to make FAPE available under IDEA would not apply to youth with disabilities between the ages of 18 and 21 convicted as adults under State law and incarcerated in adult prisons. See footnote 10 of the December 5, 2014, "Dear Colleague Letter on the Individuals with Disabilities Education Act for Students with Disabilities in Correctional Facilities" at <http://www2.ed.gov/policy/gen/guid/correctional-education/idea-letter.pdf>. As noted, this brief focuses solely on IDEA requirements. See 20 U.S.C. § 1400 et seq. and 34 C.F.R. part 300. References to provisions in 34 C.F.R. part 300 throughout this document are to ED's regulations implementing Part B of IDEA.

general education and special education services in juvenile justice settings.^{16, 17} Finally, as researchers have noted, there is a frequent lack of oversight of the provision of FAPE as well as incomplete understanding among facility and school staff of all of the IDEA requirements.^{18, 19, 20}

This brief discusses three key components within IDEA necessary for the provision of FAPE to youth with disabilities who are detained and incarcerated in juvenile justice secure care facilities: (1) Child Find (identification, location, and evaluation of eligible children and youth with disabilities), (2) FAPE in the least restrictive environment (education with peers who are nondisabled) to the maximum extent appropriate), and (3) IEPs and related protections, including parental participation.²¹ It is important to note that this brief does not address all requirements within IDEA regulations. Rather, the purpose is to highlight common challenges that agencies and facilities face in meeting the unique educational needs of youth with disabilities in juvenile correctional facilities. Each section also provides recommendations for improvement that are grounded in many of the *Guiding Principles for Providing High-Quality Education in Juvenile Secure Care Settings* (see the *Guiding Principles* insert).^f

Child Find

IDEA requires that all age-eligible students with disabilities, including those in State and local juvenile correctional facilities, who are in need of special education and related services be identified, located, and evaluated, regardless of the severity of their disability.⁹ This requirement is known as Child Find.^{22, 23} Specifically, IDEA states the following:

- (1) The State must have in effect policies and procedures to ensure that—(i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and (ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services (34 C.F.R. § 300.111).²⁴

Some best practices for juvenile detention and correctional facilities to consider for Child Find include (1) intake policies and practices to identify youth who are already identified as having a disability and (2) implementation of a multi-tiered system of supports (MTSS). MTSS is a schoolwide approach that addresses the needs of all students, including struggling learners and students with disabilities, and integrates assessment and intervention within a multilevel instructional and behavioral framework to maximize student achievement and reduce problem behaviors. With a multi-tiered instructional framework, schools identify students at risk for poor learning outcomes through universal screening, including those who may have a specific learning disability (SLD)²⁵—including but not limited to conditions such as, dyslexia, dyscalculia, and dysgraphia—monitor their progress, provide evidence-based interventions, and adjust the intensity and nature of those interventions, depending on a student’s responsiveness. Students who do not respond, or who minimally respond, to interventions may be referred for an evaluation to determine whether they are eligible for special education and related services; those students who simply need intense, short-term interventions would be provided those interventions. It is important to emphasize

Guiding Principles for Providing High-Quality Education in Juvenile Justice Secure Care Settings:

<http://www2.ed.gov/policy/gen/guid/correctional-education/guiding-principles.pdf>

In 2014, the ED and the U.S. Department of Justice issued, as part of a Correctional Education Guidance Package, a document describing five guiding principles to promote the provision of high-quality free and appropriate public education in juvenile justice secure care settings. The principles are as follows:

- 1. Positive Climate.** A safe, healthy, facility-wide climate that prioritizes education; provides the conditions for learning; and encourages the necessary behavioral and social support services that address the individual needs of all youth, including those with disabilities and English learners.
- 2. Adequate Resources and Comparable Opportunities.** Necessary funding to support educational opportunities for all youth within long-term secure care facilities, including those with disabilities and English learners, comparable to opportunities for peers who are not system involved.
- 3. Qualified Personnel.** Recruitment, employment, and retention of qualified education staff with skills relevant in juvenile justice settings who can positively impact long-term student outcomes through demonstrated abilities to create and sustain effective teaching and learning environments.
- 4. Connected Rigorous and Relevant Curricula.** Rigorous and relevant curricula aligned with State academic and career and technical education standards that utilize instructional methods, tools, materials, and practices that promote college and career readiness.
- 5. Formal Transition Process and Procedures.** Formal processes and procedures—through statutes, memoranda of understanding, and practices—that ensure successful navigation across child-serving systems and smooth reentry into communities.

f. The *Guiding Principles* cover correctional education more broadly beyond the provision of FAPE, and the principles are relevant to serving students with disabilities.

g. Footnote 20 of the December 5, 2014, “Dear Colleague Letter on the Individuals with Disabilities Education Act for Students with Disabilities in Correctional Facilities” clarifies that there is no obligation under IDEA for States to identify and evaluate those students with disabilities in adult correctional facilities for whom the State is otherwise not required to provide FAPE.

that interventions are not necessarily required prior to a referral, and, consistent with applicable parental consent requirements, either a parent of a youth or a public agency may initiate a request for an initial evaluation to determine whether the youth is a “child with a disability,”²⁶ and MTSS may not be used to deny or delay a youth’s right to a full and individual evaluation under 34 CFR §§300.304-300.311.²⁷ Nonetheless, there may be situations wherein information is needed to evaluate student progress when provided empirically validated instruction. Once parental consent has been obtained and required notices have been provided to parents, consistent with 34 C.F.R. § 300.300, a timely individual evaluation must be conducted, in accordance with 34 C.F.R. §§ 300.304 through 300.311, to determine whether a youth has a disability, as defined in IDEA, and the nature and extent of the youth’s special education and related services needs.

The implementation of an effective Child Find system is critical to ensuring that youth with disabilities are identified and evaluated promptly and without undue delay so that FAPE is made available to those eligible youth.²⁸ Despite its importance and the clarity within the regulations, research shows that effective Child Find procedures are not always used consistently and appropriately in juvenile justice secure care settings.^{29, 30} For example, facilities often lack, or poorly implement, systematic processes for record exchange between juvenile justice facilities and public schools.³¹ Some challenges to timely record exchange that have been reported include lack of collaboration and coordination between education and justice entities as well as inconsistent and sometimes inaccurate interpretations of the FERPA and IDEA confidentiality provisions.³² As a best practice, once juvenile justice secure care facilities receive a student’s education records, the record review should be supplemented with consistent and comprehensive

academic and behavioral intake screenings, as well as discussions with the youth, his or her parents/guardians/surrogates, and other professionals who have been involved in the education of, or have otherwise represented, the youth. Screening and discussions are suggested practices that can help identify students who may require general education interventions and the potential need for an evaluation for special education services.³³

Several general recommendations for meeting the Child Find requirements in juvenile secure care settings align with the *Guiding Principles*, consider the common state of affairs in juvenile correctional facilities, and ultimately focus on the practical steps necessary to facilitate adherence to Child Find. First, providing research-based, multi-tiered general education interventions is recommended and aligns with Guiding Principle 1 (positive climate). For example, graduated instructional approaches (i.e., progressive or scaffolded instruction that moves from concrete to representational to abstract) and contextualized video instruction are two research-based mathematics instructional approaches recommended for youth at risk for, and classified with, learning or behavioral disabilities.³⁴ Studies show, however, that such interventions are not widely used in juvenile justice settings, and teachers and other education staff often indicate that they need additional training and materials to implement research-based practices.³⁵ Therefore, a best practice toward practically implementing this recommendation is the “recruitment, employment, and retention of qualified education staff,” as noted in the *Guiding Principles*, as well as comprehensive professional development noted by researchers.³⁶ Relatedly, facilities may need to overcome barriers to providing teachers and other instructional staff with the materials and resources necessary to implement research-based instructional practices.

Second, in implementing effective pre-referral interventions, it is important for teachers and other education staff to conduct formative and summative assessments of their students to ensure ongoing understanding of student needs and their academic and behavioral progress. The use of data is a critical component of implementing MTSS, in which the need for increasingly intensive intervention is based on collection and analysis of data.³⁷ Moreover, a verified lack of student response may indicate the need for an evaluation for special education services. Improvement requires a twofold approach. Consistent with Guiding Principle 3 (qualified personnel), facilities should hire teachers who have demonstrated the necessary skills and knowledge to plan, implement, and adapt, as needed, appropriate pre-referral interventions that are based on data. In addition, given common levels of teacher training in juvenile justice secure care settings, it is also important to provide ongoing and comprehensive professional development, consistent with Guiding Principle 3, to assist teachers in identifying and using appropriate assessment and evaluation practices aligned with research-based instruction.³⁸ Also relating to Guiding Principles 3 and 5 (formal transition processes and procedures), assigning personnel with responsibility and time dedicated to obtaining, maintaining, and transferring academic records between facilities and schools would help improve the effectiveness of Child Find systems.³⁹ Given the frequent entry and exit of students and the complexity of working with public schools and other agencies, dedicated staffing is critical for ensuring ongoing communication and cooperation.⁴⁰

Finally, Guiding Principle 5 (formal transition practices and procedures) is also important for Child Find with regard to information and record exchange across schools and agencies. It is important for juvenile justice facilities, public schools, and other agencies that serve youth to have adequate

Privacy Protection and Transferring Records for Students in Juvenile Secure Care

The Family Educational Rights and Privacy Act (FERPA) and IDEA protect the privacy of all youth education records by generally requiring prior written consent from a parent before disclosing personally identifiable information from education records. Both statutes, however, provide exceptions to the prior consent requirement. Specifically, 34 C.F.R. §§ 99.31(a)(2) and 99.34 of FERPA regulations set forth conditions under which schools and school districts that are subject to FERPA are permitted to disclose personally identifiable information from education records without prior written consent to officials of another school or school district, including a school or school district run by a juvenile justice agency, where a student is enrolled, or seeks or intends to enroll, so long as the disclosure is for purposes related to the student’s enrollment or transfer.

Continuum of Alternative Placements

IDEA requirements regarding alternative placements, which are applicable to students with disabilities in juvenile justice secure care facilities:

- “(a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.
- (b) The continuum required in paragraph (a) of this section must—
- (1) Include the alternative placements listed in the definition of “special education” under § 300.38 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and
 - (2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.”

(34 C.F.R. §300.115)

policies and procedures for communication and permissible, timely record exchange, as well as mechanisms to ensure accountability for adherence. Many jurisdictions across the country have undertaken the necessary process of linking agency databases, and such efforts are proving crucial for timely and complete record transfer.⁴¹ In addition, formal processes are necessary to ensure parental/guardian/surrogate engagement and information sharing to facilitate the Child Find process in a manner consistent with FERPA and IDEA confidentiality provisions.

FAPE in the Least Restrictive Environment

The security-focused nature of juvenile justice secure care settings, as well as the key mission of ensuring the safety of all youth and staff, can present unique challenges for the education of students with disabilities, especially students who exhibit aggressive behaviors with their nondisabled peers. However, students in juvenile justice secure care facilities who are found eligible for special education and related services must be provided FAPE in the least restrictive environment (LRE) (see also the “Continuum of Alternative Placements” insert) that meets their individualized needs. Specifically, IDEA requires that “to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities [for juveniles], are educated with children who are nondisabled” and that “special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”⁴² Therefore, because

the provision of FAPE is a core responsibility of juvenile justice secure care facilities that administer educational programs, such settings must consider the requirements for educating students with disabilities in the LRE. Judgments in lawsuits alleging violations of LRE suggest that more needs to be done to ensure that youth with disabilities are educated in the LRE in secure care.^{43, 44}

Common challenges within juvenile justice secure care settings in applying LRE requirements are primarily financial and logistical (e.g., lack of staffing, space, materials).^{45, 46} Under IDEA, however, the youth’s IEP must form the basis for the youth’s placement.⁴⁷ For example, facilities with inadequate staffing may attempt to provide special education services solely in an inclusionary setting even though the student’s most recent IEP indicates that services provided in a separate setting are appropriate for the student, outside of the general education environment for part or all of the school day. Similarly, facilities with an insufficient number of special education teachers may attempt to place all students with disabilities in a resource room or other separate setting because there is insufficient staff to collaborate with the general educator in the regular classroom setting. Absent additional factors, where such situations result in the student not being educated with nondisabled students to the maximum extent appropriate to his or her needs, IDEA’s LRE requirements would not be properly addressed. Overall, placement decisions under IDEA must be based on a youth’s individual needs and may not be based solely on factors such as availability of special education and related services (including staffing, availability of space, or administrative convenience).

Compliance with LRE is supported by the *Guiding Principles*, particularly Principles 2 and 3, which

focus on providing necessary funding as well as recruitment, employment, and retention of qualified staff.⁴⁸ However, even with appropriate funding and staffing, juvenile justice and education administrators still need to commit to aligning their policies and practices with the first principle of providing a safe, healthy, facilitywide climate that emphasizes education and provides conditions conducive to learning.⁴⁹ Providing special education and related services to children and youth with disabilities in the LRE is only one aspect of a larger commitment to providing FAPE to children and youth with disabilities, though arguably one of the most important.

Individualized Education Programs

IDEA contains several requirements related to development, review, revision (as appropriate), and implementation of IEPs to address the unique needs of children and youth with disabilities. These requirements include, among others, IEP content, IEP team members, parent participation, and transition services.⁵⁰ While explanation of all requirements of IEPs is beyond the scope of this brief, this brief *does* highlight some of the common IEP-related challenges in juvenile secure care settings and offers recommendations for improvement that are aligned with the *Guiding Principles*. The primary focus of this section is on the development and review of IEPs, as well as on the development and implementation of appropriate instructional and behavioral interventions for youth with disabilities who are detained or incarcerated in juvenile justice secure care correctional facilities.

IEP Development and Review

There are very specific requirements for IEP development and review—and if appropriate, IEP revision—when students with disabilities are enrolled in any school, and these requirements apply to the education of students with disabilities in juvenile justice secure care facilities.⁵¹ Two issues are particularly challenging within such settings: parent or guardian/surrogate participation and development of an IEP that is appropriate to the youth's unique needs. State agencies, local educational agencies, and facilities receiving funds under Title I, Part D must involve parents, guardians, and other caregivers, when feasible, in efforts to improve the educational achievement of youth in their care.⁵² Under IDEA, parents have a right (among other prerogatives) to participate along with appropriate agency officials as members of the team that develops, reviews, or (if appropriate) revises their student's IEP.⁵³ It is important that they do so.⁵⁴ Studies show, however, that parents of incarcerated youth are often not fully involved in their child's education and special education processes.⁵⁵ Juvenile justice administrators and education staff also need to be aware that the parent and the public agency may agree to use alternative means of meeting participation for IEP team meetings, such as videoconferences and conference calls.⁵⁶ This is crucial, particularly when youth are detained or

Requirements for Individualized Education Programs

The provision of special education and related services in conformity with an IEP is part of the statutory definition of FAPE under the IDEA. Once a youth is found eligible for special education services, an IEP is developed for the student. The IEP includes, among other elements, a statement of the youth's present levels of performance, annual goals, and the special education and related services and supplementary aids and services needed to enable the youth to be involved and make progress in the general education curriculum, and to participate with nondisabled students in nonacademic and extracurricular services and activities.

incarcerated far from their homes. Moreover, IDEA includes provisions for youth to be represented by a surrogate parent in the following circumstances: when no parent, as defined in IDEA, can be identified; when the parent cannot be located after reasonable efforts; when the child is a ward of the State; or when the child is an unaccompanied, homeless youth as defined in the McKinney-Vento Homeless Assistance Act. The surrogate parent may not be an employee of the state educational agency or the local educational agency, or any other agency that is involved in the education or care of the student; must have no personal or professional interest that conflicts with the interest of the student; and must have knowledge and skills that ensure adequate representation of the student. Surrogate parents, including temporary surrogate parents, are considered the student's "parent" for special educational purposes.⁵⁷ These provisions are highly relevant for incarcerated youth who may be wards of the State. The surrogate parent must be appointed and appropriately trained to represent the best interest of the student by the agency that has educational authority for youth who are confined in secure settings.

Another challenge for schools and programs within juvenile justice secure care facilities is the individualization of IEPs to ensure that each student's unique needs can be addressed.⁵⁸ The IEPs of youth with disabilities detained or incarcerated in juvenile justice secure care facilities must include "a statement of measurable annual goals, including academic and functional goals designed to: meet the child's needs that result from [his or her] disability to enable the child to be involved in and make progress in the general education curriculum and (b) meet each of the child's other educational needs that result from [his or her] disability."⁵⁹ In addition, each youth's IEP must include a statement of the special education and related services as well as supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the youth, or on behalf of the youth, and a statement of the program modifications or supports for school personnel that will be provided to enable the youth to advance appropriately toward attaining his or her annual goals and to be involved and make progress in the general education curriculum, in accordance with the youth's present levels of performance, and to participate in extracurricular and other nonacademic activities. Failure to develop and implement an IEP that meets these requirements may result from a number of

factors, including a lack of personnel to complete and update IEPs and lack of resources and staff to implement an IEP (e.g., courses and professional development may not be offered, materials may not be available for instruction, and there may be insufficient qualified special education teachers and related services providers).⁶⁰

The *Guiding Principles* lend support for the consistent and appropriate development and review of IEPs related to parent participation and IEP individualization. Guiding Principles 1 (positive climate) and 2 (adequate resources and comparable opportunities) are relevant in that they recognize the need for a commitment to prioritizing education and providing funding to ensure that appropriate resources for individualized support are offered to youth with disabilities who are detained or incarcerated. Similarly, a commitment to recruitment, employment, and retention of qualified education staff, as encapsulated in Guiding Principle 3 (qualified personnel), is essential to ensure the availability of teachers with the appropriate expertise to individualize youth IEPs as well as the availability of ongoing professional development for teachers to support this practice. In terms of promoting parental involvement, there is a need for development and implementation of formal processes and procedures, as noted in Guiding Principle 5, to facilitate meaningful engagement of parents in IEP processes and their children's educational experiences. Procedures may be as simple as aligning the timing of IEP meetings with visitation or other facility events that involve parents, being willing to schedule IEP meetings after typical work hours, or instituting a plan to connect with parents via tele- or videoconferencing.

Interventions

Utilizing research-based academic and behavioral interventions is important in the provision of FAPE; however, many juvenile justice secure care facilities face challenges in doing so consistently and appropriately.^{61, 62} A student's length of stay within a facility, especially if it is short in duration, may limit the extent to which the facility can fully implement such interventions. Furthermore, research suggests that many teachers and other education staff within facilities are not always fully prepared to implement research-based instruction, particularly in the areas of reading and mathematics.^{63, 64, 65} In addition, education staff in juvenile justice secure care may lack thorough training in effective behavior management approaches and

may not be working in coordination with security staff in the facility to consistently address behavior challenges.⁶⁶

Similar to the issues surrounding the lack of implementation of research-based academic and behavioral interventions, teachers may not always fully understand, be prepared for, or receive support in implementing the necessary, individualized and empirically validated interventions that may be included in student IEPs. Moreover, studies have pointed to a general lack of consistent data collection and analysis focused on student academic and behavioral progress in meeting IEP goals within secure care settings.⁶⁷ The next sections focus more specifically on challenges and recommendations related to implementing behavioral and academic interventions for youth with disabilities in juvenile justice secure care facilities.

Behavioral Interventions

IDEA addresses the use of proactive behavior improvement strategies and individualized behavioral interventions for students whose behavior impedes learning. Specifically, the IEP team must consider the use of positive behavioral interventions and supports, along with other effective strategies, to address a youth's behavior, in the case of a youth whose behavior impedes his or her learning or that of others. IDEA also would require a functional behavioral assessment and behavioral intervention services and modifications in other situations.⁶⁸ Addressing problematic behavior of all youth who are detained or incarcerated is essential, especially in light of the overrepresentation in such settings of students with emotional disturbance.⁶⁹ Studies have shown, however, that juvenile justice facilities often struggle with using proactive behavior intervention plans and individualized behavioral interventions.⁷⁰ Research has also shown that, historically, punishment and control regularly serve as the basis for dealing with youth behavior problems rather than proactive, positive, and individualized behavioral supports.⁷¹ Moreover, studies have demonstrated the effectiveness of positive behavioral interventions and classroom management approaches in addressing disruptive behaviors and providing an environment that is conducive to learning.⁷² However, adopting such approaches often requires a culture shift, and instituting this culture shift requires high-quality training and professional development for staff, as well as strong leadership to help usher in changes that ultimately can improve safety and overall

conditions in facilities and support positive youth development and success.⁷³

Instructional Interventions

A lack of preservice training and ongoing professional development for education staff may also impact the use of appropriate instructional interventions and adaptations as required by student IEPs.^{74, 75} All youth with disabilities who are detained or incarcerated in juvenile justice secure care facilities, like their public school and nondisabled peers, should be provided access to a rigorous curriculum and research-based instruction.⁷⁶ Youth with disabilities have the right to receive appropriate instructional services and supports, as needed, and those interventions and supports determined necessary for a youth to receive FAPE must be included in his or her IEP.⁷⁷ Therefore, it is recommended that all administrators and practitioners working in juvenile secure care settings be provided with the training and support necessary to fully understand, and to consistently and appropriately use, the research-based practices that may be addressed in IEPs for youth with disabilities under their care.⁷⁸

Implementing research-based behavioral and instructional interventions, as discussed in Guiding Principles 2 (adequate resources and comparable opportunities) and 3 (qualified personnel), emphasizes the importance of having an education staff that is adequate in number, appropriately qualified, and supported via high-quality, comprehensive, ongoing professional development.⁷⁹ However, consistent with Guiding Principle 1 (positive climate), broad, systemic issues also need to be addressed for interventions to be successful. For example, it would be difficult to effectively intervene and provide individualized behavioral support to a youth with a disability in a facility that is chaotic and where reactive, punitive, and exclusionary approaches to behavior management are the norm.⁸⁰ Rather, individualized behavioral interventions should be implemented within a broader facility approach that aligns with the ED's recommendations for creating school environments conducive to student success:

1. Work deliberately to develop positive and respectful school climates and prevent student misbehavior before it occurs.
2. Institute clear, appropriate, and consistent expectations and consequences to prevent and address misbehavior.

3. Use relevant data and analyses of those data to continuously improve and ensure fairness and equity.⁸¹

Similarly, the use of research-based instruction within an academic environment to ensure that youth with disabilities have access to FAPE is supported by the *Guiding Principles*. For example, as supported by Guiding Principle 1 (positive climate), youth with disabilities who are detained or incarcerated need to receive services in accordance with their IEPs (including anticipated frequency, location, and duration of services and modifications consistent with their right to FAPE). Lack of appropriate instructional time is a serious concern in juvenile correctional facilities.⁸² Consistent with Guiding Principle 2 (adequate resources and comparable opportunities), effective instruction must ensure that youth can access the general education curriculum.⁸³ This principle is further supported by IDEA requirements that a student's IEP must include measurable, annual goals designed to meet the student's needs resulting from his or her disability, thereby enabling the student to be involved in and make progress in the general education curriculum (34 C.F.R. § 300.320(a)(2)(i)(A)).⁸⁴

Final Thoughts

Federal law ensures that all eligible youth with disabilities who are detained or incarcerated retain their right to FAPE, which includes the provision of necessary special education and related services and supports. Beyond the legality of the situation, there is a critical need to provide these youth—those most at risk for academic failure and/or continued involvement with the justice system—with every possibility for rehabilitation, education, and, ultimately, reintegration into their school, community, and workforce.⁸⁵ If these youth are not given the opportunities necessary to succeed and to avoid further system involvement, the risks to society will be great. In contrast, academic success in areas such as reading is associated with a host of positive postschool outcomes including stable employment, increased earnings, and greater social engagement.⁸⁶ This brief has addressed some of the more common challenges that juvenile justice agencies and facilities face in the provision of FAPE, although the breadth of concerns certainly extends beyond those presented. Continued conversation, research, analysis, and changes in policy and practice are vital to fully provide the support necessary to ensure that *all* youth with disabilities in juvenile justice secure care facilities truly have access to FAPE.

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21. Under 34 C.F.R. § 300.30, a parent refers to a biological or adoptive parent; a foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent; a guardian generally authorized to act as the child’s parent or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives; or an individual who is legally responsible for the child’s welfare; and a properly appointed surrogate parent.
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26. 34 C.F.R. §§ 300.300 and 300.301(b).
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