

Kansas Administrative Regulations

State Department of Education

Article 40.—Special Education

91-40-5. FAPE for detained or incarcerated children with disabilities.

(a) Local detention facilities.

(1) Subject to the provisions of K.S.A. 72-1046 and amendments thereto, each board shall provide FAPE to each child with a disability detained or incarcerated in a local juvenile or adult detention facility located within its jurisdiction.

(2) The requirements in this article concerning placement and LRE may be modified in accordance with the child's detention or incarceration.

(b) State juvenile correctional facilities.

(1) The commissioner of the juvenile justice authority shall make provision for FAPE for each child with a disability detained or incarcerated in any state juvenile correctional facility or other facility at the direction of the commissioner.

(2) The requirements in this article concerning parental rights, placement, and LRE may be modified in accordance with state and federal laws and the child's conditions of detention or incarceration.

(c) State adult correctional facilities.

(1) Except as otherwise provided in this regulation, provision for FAPE shall be made by the secretary of corrections for each child with a disability incarcerated in any state correctional institution or facility.

(2) In making provision for FAPE under paragraph (1) of this subsection, compliance with state or federal laws or regulations relating to the following shall not be required of the secretary of corrections:

(A) Participation of children with disabilities in state or local assessments; and

(B) transition planning and services with respect to any disabled child whose eligibility for special education services will end, because of the child's age, before the child is eligible to be released from the secretary's custody based on consideration of the child's sentence and eligibility for early release.

(3) Provision of FAPE to any person incarcerated in a state correctional institution or facility shall not be required by the secretary of corrections if the person meets both of the following criteria:

(A) The incarcerated person is at least 18 years of age.

(B) The incarcerated person, in the person's last educational placement before incarceration, was not identified as a child with a disability.

(4)(A) Except as otherwise provided in paragraph (4)(B) of this subsection, the IEP team of a child with a disability incarcerated in a state adult correctional institution or facility may modify the child's IEP or placement if personnel of the correctional institution or facility demonstrate a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(B) An IEP team of a child with a disability incarcerated in a state adult correctional institution or facility shall not modify the following requirements:

(i) That any decision regarding modifications to, and reviews and revisions of, any IEP shall be made by the IEP team; and

(ii) that, except as otherwise expressly provided in paragraph (c)(2), each IEP shall have the content specified in K.S.A. 72-987 and amendments thereto.

(Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-966; effective May 19, 2000; amended March 21, 2008.)

***** Authenticated Kansas Administrative Regulation *****