

receive a FAPE and if so will ensure that FAPE is provided pursuant to the IDEA and California Education Code. To receive special education services while incarcerated, a qualified individual must consent to the receipt of such services.

Limitations

The following special education requirements do not apply to eligible individuals who are convicted as adults under State law and incarcerated 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)(i)(VI)* (relating to participation in general assessments) do not apply. Eligible individuals convicted as adults under State law and incarcerated 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 transition 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 incarcerated 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. 1412(a)(5)(A)* and the IEP content 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.

The federal regulations (*34 CFR 300.102(a)(2)(ii)*) identify two exceptions to the above:

- a. Individuals who had been identified as eligible for special education and had received services in accordance with an IEP, but who left school prior to their incarceration
- b. Individuals who did not have an IEP in their last educational setting, but who had been identified as eligible for special education.

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)*, (*Education Code section 56040(b)*), *20 U.S.C. section 1412(a)(1)(B)(ii)*, *34 C.F.R. section 300.102(a)(2).*)