

## Education of Students in Jails & Detention Centers

**1. Are students who are being held in the county jail or in a secure detention center entitled to an education?**

Yes. The Wisconsin Constitution guarantees a free education for all children ages 4 through 20 who have not graduated from high school.

**2. If a student is being held in a facility that is not in the school district where s/he normally resides, who is responsible for providing education?**

The school district in which the facility is located. See *State ex rel. School District No. 1 of Waukesha v. Thayer*, 74 Wis. 48 or 41 N.W. 1014 (1889). The court ruled that for school purposes, the child who resides away from his parents' home is considered a resident of the school district in which the child actually resides rather than the one in which the parents live, so long as the child's primary purpose for residing away from his parents is other than to attend the schools of the district in which the child actually resides. Every elementary school and high school shall be free to all pupils who reside in the district, s. 121.77(1), Wis. Stats.

**3. What if the student is being held in a correctional facility?**

Students who have been placed by the court in an adult or juvenile correctional facility are educated by the Department of Corrections.

**4. How is an incarcerated student counted for residency?**

Residency has different meanings for different purposes. Under the *Thayer* decision, a student living at a juvenile detention facility, jail, or any other court-ordered residential placement within a school district is a resident of that district, in terms of who is responsible to provide their education. (As with any other privately educated student, a district has no educational responsibility if the placement includes a private educational program.)

In general, residency for state aid and revenue limit purposes, or "membership," is tied to where a student lives and who is financially responsible for their education. However, a student living on the count date at a facility for which a district is eligible for State Tuition reimbursement under s. 121.79, Stats., may not be counted for that district's membership. Eligible facilities include juvenile detention centers, jails, and certain foster or group homes.

If a student who would ordinarily be counted for membership by their home district is absent on the count date due to incarceration or another court-ordered placement, they

may still be counted by the home district if:

1. The student attends school at least one day before and one day after their incarceration or placement,
2. The student does not change residency between those dates, other than by their incarceration or placement, and
3. The district that educated the student on the count date is eligible for State Tuition reimbursement under s. 121.79, Stats.

The overall principle that a student may only be counted once for membership holds true for incarcerated students.

If the student is incarcerated or placed in a facility within their home district on the count date, but the district would otherwise be eligible to count them for membership, the district may still count them. Any State Tuition reimbursement the district is eligible for will be reduced by the amount of general state aids it receives for that student.

**5. Can the student continue to work on his/her school assignments from the district where he/she normally resides?**

Yes, the school district in which the facility is located may seek to obtain assignments from the student's previous district if it is likely that the student will return to that district.

**6. If a school district supplies assignments for a student in a jail or detention facility in another school district, should the school district continue the student's enrollment?**

No, a school district supplying homework assignments assures a continuity of education, but must still exit the student on WSLs. See question 17 for more information.

**7. Is the length of time in which a student is held in the jail or detention facility relevant to which district is technically responsible for the provision of an education?**

The length of time is not relevant to the fact that the school district in which the facility is located must provide free public education for the individuals eligible for these services just as they do for others who are residents of the school district. A school district has no authority to deny enrollment to a resident of that district. Under *Thayer*, the "primary purpose" for which the student is present in the district is no different on the first day, absent a change of circumstances, than on the last day.

**8. When should a school district provide educational services for an incarcerated student?**

Services should begin as soon as the student becomes a resident of the school district in which the detention facility is located.

**9. If a student was previously expelled, who is responsible to provide educational services?**

For students expelled without educational services, the responsibility falls to the operator of the facility (e.g. Sheriff's Department, Human Services). While a school district is not required to enroll a student during the term of his/her expulsion from another school district, school districts are encouraged to work with the jail or detention facility on the provision of educational services. No service to an expelled student obligates the school district for education post release.

For students expelled with educational services the school district where the student resides in the jail or detention facility must provide educational services.

**10. If a student was previously home schooled who is responsible to provide educational services?**

Unless the facility makes arrangements for the parent to provide home-based private education consistent with s.118.165, Stats., the student who was home schooled should be enrolled in the resident district and provided educational services.

**11. If a student who was previously considered a dropout requests educational services, while in detention, must the responsible school district provide those services?**

Yes, if the student is between the ages of 18 and 21, has not graduated, and requests services, the district is required to provide educational services to the student. If the student is under 18 years of age, and has not graduated or completed a high school equivalency program, educational services are required to be provided, whether or not the student requests the services.

**12. Do Individuals with Disabilities Education Act (IDEA) protections apply to students in jails and detention centers?**

Yes, absent a specific exception, all IDEA protections apply to students with disabilities in jails and detention centers. The school district responsible for educating students in a particular jail or detention facility must ensure students with disabilities receive a free appropriate public education (FAPE) in the least restrictive environment (LRE). The due process and discipline protections afforded students by IDEA apply equally to students in jails or detention facilities. Special education and related services for students in jails and detention facilities must be provided by appropriately qualified personnel. School districts must have in place policies and procedures to identify, locate and evaluate students who are in jails or detention facilities who may have a disability.

**13. Are there statutory requirements for direct instruction to students receiving services in jail or some other form of detention, including summer school?**

State statutes make no mention of suspending educational standards for students receiving educational services in jail or detention. Any modifications in the student's school day must be made on an individual student basis by either the school board under s.118.15(1)(d), Stats. and PI 18.04, Wis. Admin. Code, or by the IEP committee. Information on shortened school days for students with disabilities is available here: <http://dpi.wi.gov/sped/laws-procedures-bulletins/bulletins/14-03>

For state operated juvenile and adult correctional institutions to be eligible for Title I Sub part 1 funds, the facility must have state funded education programs in which students are enrolled 15 hours a week. These hours cannot be included in the hours provided for Title I of ESEA or other federal funds. State licensed residential childcare institutions located within school district boundaries must have locally funded regular education programs in which students are enrolled 20 hours a week to be eligible to receive funding for Title 1, Part D, supplementary programs.

**14. May students who request and are granted educational release under the Huber Law attend a local school building for educational services while serving their sentences?**

Yes, a student released on Huber may attend at his or her local high school. For students whose detention or incarceration changes the school district of attendance, a written agreement signed by the school district responsible for the student's education at the time, the student and the facility should be entered into prior to release for educational services under Huber.

**15. Who is able to discipline students receiving services while in detention or jail?**

Student behavior in detention or jail is governed both by the facilities' rules of conduct as well as the rules and code of conduct issued by the school board under the authority of s.120.13(1), Stats.

**16. May 17 year olds or youth "waived" into adult court jurisdiction receive educational services in the same setting? May they be educated with youth under juvenile court jurisdiction who are being held in secure juvenile detention?**

All youth being held in the jail as "adults" for criminal purposes may be educated together. They may not be educated with other youth who are being held in juvenile detention or being held as juveniles in the county jail, because federal law mandates that "sight and sound separation" must exist between "juveniles" and "adults." As to these two groups, educational services must be provided in a "sight and sound separation" manner.

**17. What happens with enrollment and exit dates as it pertains to the Wisconsin Student Locator System (WSLS)?**

The school district where a county jail or secure detention center is located is responsible for providing educational services for youth while they reside in such facilities. This will typically mean a movement between schools if the district where the facility is located is not the district where the parents live. The enrollment date in the new district should be the date the student initially receives educational services from the new district. Under any circumstances, if a student is present at a school for a total of less than one full day, then submission of a school enrollment record is not expected or required. All students should be transferred within 96 hours if they have not left the facility.

**18. What is a school district's responsibility when a student leaves a detention facility located in the school district?**

School districts should develop a system in coordination with the detention facility to ascertain where the student intends to enroll in school after leaving the detention facility. The student's educational records should then be forwarded to the student's new school district.

**19. How is education for incarcerated students funded?**

The school district in which a student resides is responsible for funding educational services at the time they are provided. Nothing precludes a district from using targeted state or federal funds to fund education for incarcerated students. IDEA, Title I, or other funds may be used so long as the students or program at the facility meet the requirements of the program.

In the year after a district provides educational services to a student residing in a juvenile detention facility, jail, or a certain type of foster or group home, the district is eligible to claim reimbursement for those services from the State Tuition Aid Program. Claims may be submitted based upon the district's actual cost of providing those services or the daily tuition rate specified in law. More information on state tuition is available at <http://dpi.wi.gov/sfs/aid/categorical/state-tuition>

**20. Are school districts eligible for Title ID -Subpart 1 or Subpart 2 funds to assist in the financial obligations of educating the students who are receiving their education in jails and detention centers?**

Yes. Districts are eligible for Title ID Subpart 2 funds. Please see additional information on Title I at the department's website: <http://dpi.wi.gov/neglected-delinquent>

Only juvenile and adult correctional institutions operated by the Department of Corrections are eligible for Title ID Subpart 1.

**21. Chapter 938 now permits courts to use detention centers for up to 365 days as a dispositional placement, what impact does this have?**

Juvenile courts are now permitted, with authorization from the county board, to use placement in a juvenile detention facility for up to 365 days. The county board's authorization may occur without consultation with the local school district, which is responsible for the education of these students. The county, the facility and the local school district are encouraged to develop a strong collaboration to make sure that all partners are consistent in providing the most effective services to students.

One area where care should be taken is when the county social worker preparing the court report develops the mandatory educational plan. As part of that required plan, the provision of appropriate educational services to the student during the period of placement must be addressed and should be confirmed with the school district providing educational services at the facility.

**22. Is there federal guidance on educating youth in jail and detention?**

Yes, the Department of Justice and the Department of Education just released the following documents:

- *A set of Guiding Principles for Providing High-Quality Education in Juvenile Justice Secure Care Settings* from the U.S. Department of Education (ED) and U.S. Department of Justice (DOJ) identifies promising practices for improving education programs in juvenile justice facilities, as well as areas in which Federal legal obligations apply.
- *A Dear Colleague Letter on the Individuals with Disabilities Education Act for Students with Disabilities in Correctional Facilities* from ED's Office of Special Education and Rehabilitative Services clarifying State and public agency obligations under the Individuals with Disabilities Education Act to ensure the provision of a free and appropriate public education to eligible students with disabilities in correctional facilities.
- *A Dear Colleague Letter on the Civil Rights of Students in Juvenile Justice Residential Facilities* from ED's Office for Civil Rights and DOJ's Civil Rights Division clarifying that those juvenile justice residential facilities that receive Federal funding, like all other public schools, must comply with Federal civil rights laws that prohibit discrimination based on race, color, national origin, sex, religion, and disability.
- *A Dear Colleague Letter on Access to Pell Grants for Students in Juvenile Justice Facilities* for campus financial aid professionals (HTML available [here](#)), question and answer document for institutions of higher education, and factsheet for students (also in Spanish) from ED's Office of Postsecondary Education clarifying that otherwise eligible youth who are confined in juvenile justice facilities are eligible to receive

Federal Pell Grants, subject to the modified cost of attendance statutory provisions that apply to incarcerated students.

All four documents are available here: <http://www2.ed.gov/policy/gen/guid/correctional-education/index.html>

**23. Who should I contact for additional information?**

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