

Understanding and Responding to the Education Needs of Special Populations in Adult Corrections

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Special populations of inmates in adult corrections present challenges to operations and programs in jails and prisons designed for older, able-bodied individuals. While the research literature on evidence-based practices in corrections education is not extensive, some information about effective programs and practices is available (Aos, Miller, & Drake, 2006; Leone, Krezmien, Mason, & Meisel, 2005; MacKenzie, 2006). What we do know about effective practices suggests that attainment of academic and vocational competencies by student inmates as well as experience in specific programs while incarcerated are key elements of preparing individuals for reentry into the community (Steurer, Smith, & Tracy, 2001). This paper describes the current state of knowledge about the education needs and services for special populations in adult corrections and the obligation of correctional agencies to meet those needs. For the purposes of this paper, this group includes individuals with mental health, sensory, cognitive, and learning impairments, as well as youthful offenders under age of 18 in prisons and jails.

In the 25 years between 1981 and 2006, the U.S. prison and jail population grew by more than 400% (Bureau of Justice Statistics, 2008). Between 1986 and 1997, the juvenile population in state prisons grew by 138% (OJJDP, 2006). However, the number and percentage of juveniles among those incarcerated in adult corrections peaked in 1995 and has decreased since then (Harrison & Beck, 2006; Snyder & Sickmund, 2006;

Hartney, 2006). While inmates under age 18 represented 2.3% of the prison population in 1996, by 2002 they represented 1.1 % of prison inmates. Similarly, youth under age 18 represented 1.4 of the jail population in 1994 and 1.0% of jail inmates in 2004 (Snyder & Sickmund, 2006; Hartney, 2006). All states have compulsory attendance laws that require parents or guardians to send their children to school until age 16, 17, or 18. In many states compulsory school attendance legislation typically requires corrections agencies to ensure that incarcerated youth receive services. In contrast to adult inmates in many states, juveniles in adult corrections who are not high school graduates or GED recipients are entitled to education services.¹ For example, in Washington State, the Department of Corrections is required to contract with school districts or other education agencies to serve juveniles in adult correctional facilities (RCW 28A.193.005). In New Jersey the Department of Corrections is required to provide academic services to all inmates under the age of 20 without a high school diploma or GED (Travis, Keenan, & Cadora, 2003)

A significant proportion of those incarcerated in jails and prisons are inmates with disabilities including persons with mental health problems (Harlow, 2003). However, developing an accurate count of the number and percentage of inmates with special needs is extremely difficult. Inmates with disabilities are entitled to “reasonable accommodations” and protections under the Americans with Disability Act (ADA, 1990) and Section 504 of the Vocational Rehabilitation Act (Section 504, 1973).

Relatively little is known about the disability status of juveniles or adults incarcerated in jails and prisons though several surveys have been conducted. For

¹ A number of states have passed mandatory education requirements for any inmate with low levels of academic achievement (MCT Institute, 2003; NJ Institute for Social Justice, 2008).

instance, in 1997, Harlow reported the results of a survey of inmates in state and federal prisons (Harlow, 1997). More than 50% of the respondents reported that they did not have a high school diploma or a GED. Of this group, 59% were identified with a speech disability and 66% were identified with a learning disability. Overall, the report suggested that approximately 31% of state and federal inmates had some type of disability, with approximately 10% identified as having a learning disability, 4% with a speech disability, 14% with a hearing or vision impairment, and 10% with a mental disability. Beyer (2006) interviewed and assessed a sample of 50 youth incarcerated in juvenile and adult corrections facilities. She reported high rates of mental health problems, and identified that 42% had learning disabilities. Finally, a large proportion of the juveniles in the Connecticut Department of Correction served in the Unified School District #1 have disabilities, with the greatest number identified with learning disabilities and emotional disturbance (Leone, Krezmien, & Wilson, 2008).

While these data are useful they have limitations. For the most part, available information on the prevalence of inmates with disabilities in adult corrections consists of estimates generated through self-report and figures generated through program evaluation and file review. In contrast, some of the available data on youth with disabilities in the juvenile system consists of independent assessments of individuals in correctional facilities and national surveys of service delivery. Some of these reports of the prevalence of disabilities used criteria aligned with the Individuals with Disability Education Act (IDEA) of 2004 (Quinn, et al., 2005). Other studies and reports used criteria from the Diagnostic and Statistical Manual of Mental Disorders (DSM) or the Diagnostic Interview Schedule for Children (DISC-IV) to generate estimates of the

prevalence of specific mental disabilities (Skowrya & Coccozza, 2007; Teplin, 2002). The relative dearth of information about disabilities among inmates in American jails and prisons represent a shortcoming of the penal system. Some of the consequences associated with failure to identify and serve this special inmate population are discussed later in this paper.

Another way to gauge the prevalence of individuals with disabilities in adult corrections is to examine prevalence rates in the juvenile justice system. Although there are limitations in our ability to adequately track juvenile delinquents who later enter the criminal justice system, empirically rigorous investigations suggest that a substantial number of delinquent youth reoffend and enter the adult prison systems. For instance, Sampson and Laub (2005) found a fairly consistent trajectory of criminal behavior among adolescent offenders that suggest that substantial numbers of delinquent youth will eventually become incarcerated as adults, although the authors identify variability in the trajectory based upon numerous individual and environmental factors. We can make a reasonable, yet cautious, proposal that the characteristics of juvenile delinquents will help us to better understand the characteristics of inmates in state and federal prisons.

Disability data obtained about juvenile delinquents, though limited, are more readily available than the data from adult offenders. Recently, Quinn and her colleagues (2005) surveyed directors of education in juvenile corrections agencies nationally to determine the rates of special education service delivery for youth with disabilities, as incarcerated in juvenile corrections facilities (Quinn, Rutherford, Leone, Osher, & Poirier, 2005). They found that 33.4% of the juveniles in education programs in juvenile corrections nationally were identified as having a disability with variability across states.

They found five states identifying and serving more than half of their students in special education. Nationally, nearly half of those youth with a disability were identified as having emotional disturbance (47.7%) while another 38.6 % had a learning disability, 9.7 % had mental retardation, and 2.9% had other health impairments including attention deficit hyperactivity disorder. Krezmien and his colleagues (Krezmien, Mulcahy, & Leone, 2008) assessed 555 youth in a juvenile commitment facility for boys during a 12 month period. They identified nearly 45% as having a disability and an IEP (individualized education program) indicating they had previously been served in a special education program prior to their incarceration. Of those, 44% had an emotional disturbance, 26.4% had a learning disability, and 17% had an other health impairment, a disability classification that includes individuals with attention deficit / hyperactivity disorder. Additionally, Skowrya and Coccozza (2007) in a report issued by the National Center for Mental Health and Juvenile Justice (NCMHJJ) estimated that 70.4% of all youth in the juvenile justice system meet Diagnostic Interview Schedule for Children (DISC-IV) criteria for one or more mental health disorders (Skowrya & Coccozza, 2007). A number of other researchers have identified high rates of mental health disorders among delinquent populations (Caufmann, 2004; Teplin, 2002; Wasserman, 2004).

IDEA, Section 504, and the ADA

Youth prosecuted in the criminal courts as well as adults with disabling conditions are being placed in jails and prisons. Several statutes and case law govern treatment of these special populations.. Juveniles with greater educational, mental health and behavior management needs than older inmates present special problems for corrections agencies (Austin, Johnson, Gregoriou, 2000; Kupchik, 2007). For example, youthful offenders

typically have state rights to education not afforded to other inmates and these youth typically are not commingled with older inmates (Kupchik, 2007). Further, over the past 25 years, state and federal courts have consistently ruled that federal statutes regulating access, accommodations, and education services to youthful offenders and individuals with disabilities apply to those in adult correctional institutions and agencies (Greifinger, 2006; *Pennsylvania v. Yesky*, 524 U.S. 206 (1998); *Donnell C. v. Illinois* 829 F. Supp. 1016 (N. D. Ill.1993); *Green v. Johnson* 513 F. Supp. 965 (D. Mass. 1981); *Armstrong v. Wilson*, . 942 F. Supp. 1252 (N.D. Cal. 1996) aff'd 124 F.3d 1019 (9th Cir. 1997).

In addition to the special considerations that must be afforded juveniles in general, individuals with disabilities in correctional institutions have statutory rights to protection and accommodations. Youth with disabilities under age 21 are entitled to services under the Individuals with Disabilities Education Act (IDEA) (Burrell & Warboys, 2000). Further, individuals with developmental, sensory, learning, and cognitive disabilities as well those with mental health disorders are eligible for protections under the Americans with Disabilities Act (ADA) (1990) and Section 504 of the Vocational Rehabilitation Act (Section 504) (1973). The protections for inmates with disabilities undoubtedly challenge a system that may not have the capacity to provide the highly specialized and individualized services required by inmates with disabling conditions.

One responsibility of correctional institutions is providing education services to juveniles and young offenders with disabilities (Austin et al, 2000). Federal statutes concerning the provision of education services to youth with disabilities apply to public school programs as well as correctional facilities. All states receiving funds from the

federal government under Part B of the Individuals with Disabilities Education Act as amended in 2004 (IDEA) guarantee a free appropriate public education to all children with disabilities in the state.² IDEA and corresponding federal regulations specify the development of IEPs (individualized education programs), procedural safeguards for children and their parents or guardians, and the development of transition plans and services for students aged 16 and older. Although correctional facilities have frequently been unresponsive to the requirements of the IDEA, federal and state courts have consistently confirmed the statute's applicability to incarcerated youth.³ However, this requirement to provide special education services may not apply to youth who were not identified and served under IDEA prior to their incarceration in adult corrections.⁴

While the IDEA guarantees appropriate educational services to youth with disabilities in school programs including correctional settings, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) of 1990 both require that public programs provide accommodations for individuals with disabilities. Section 504 requires that programs receiving federal financial assistance do not discriminate against individuals with disabling conditions. Among other things regulations implementing Section 504 require that education programs that receive Federal financial assistance identify and provide a free appropriate public education to

² 20 U.S.C. 1400 et. seq.; see for example, Title 23 of the Illinois Administrative Code. Like other states, Illinois is explicit about how schools should identify and provide education and related services to children with disabilities. Illinois defines eligible children as those with a disability between the ages of 3 and 21.

³ See *Alexander S. v. Boyd* 876 F. Supp. 773 (D.S.C. 1995), *Andre H. v. Ambach* 104 F. R. D. 606 (S. D. N.Y. 1985), *Donnell C. v. Illinois* 829 F. Supp. 1016 (N. D. Ill.1993), *Green v. Johnson* 513 F. Supp. 965 (D. Mass. 1981), *In re G. C. v. Coler* 673 F. Supp. 1093 (S.D. Fla. 1987), *In re John K.* 216 (Cal. Ct. App. 1985), *In re Marc A.*, 21 IDELR 341 & 21 IDELR 1079 (N. H. 1994), *State of Connecticut v. State Department of Education* 699 A.2d 1077 (Superior Court 1997), *State of Wisconsin v. Trent N.* 26 IDELR 434 (Wisc. Ct. App. 1997) and *Smith v. Wheaton* 29 IDELR 200 (D.Conn. 1998).

⁴ 20 U.S.C. § 1412(a)(1)(B); there is some question about the applicability of this section to youth in jail who have not been convicted but are awaiting trial as adults.

individuals with disabilities when such services are available to others without disabilities. Title II of the ADA extends the coverage of Section 504 to all programs, services, and activities provided by state and local governments, whether or not these agencies receive federal financial assistance. Public agencies do not comply with Section 504 and Title II of the ADA when they fail to provide meaningful accommodations to enable individuals with disabilities to benefit from programs and services available to other non-disabled individuals.

In several states, education services in corrections for youthful offenders and detainees with disabilities were developed in response to litigation. For example, in Illinois, the U.S District Court issued an injunction ruling that IDEA applied to youthful offenders in the Cook County Jail (*Donnell C. v. Illinois* 829 F. Supp. 1016 (N. D. Ill.1993)). Similarly, in Massachusetts and New York, U.S. District Courts have ruled the the IDEA applied to youth in a Massachusetts detention center and Riker's Island Jails in New York (*Green v. Johnson* 513 F. Supp. 965 (D. Mass. 1981; *Handberry v. Thompson*. 92 F. Supp. 2d 244 (S.D.N.Y. 2000); 219 F. Supp. 2d 525 (S.D.N.Y. 2002)). While these cases and several others in which parties reached settlement agreements primarily involved claims under IDEA, the courts have also ruled that the ADA and Section 504 apply to corrections; when correctional institutions provide education services to inmates in general, they must provide accommodations and supports to inmates with disabilities.

Following the Supreme Courts unanimous ruling in *Pennsylvania v. Yesky* (118 S. Ct 1952 (1998) that the ADA's Title II applies to correctional agencies and state prisons, several class actions brought against the California Department of Corrections (CDC, now the CDCR) were settled (See *Armstrong v. Wilson*, 942 F. Supp. 1252, N.D. Cal.

1996, aff'd 124 F.3d 1019, 9th Cir. 1997; *Clark v. California*, 123 F.3d 1267, 9th Cir.

1997;) While the settlement of these cases extended beyond access to education, a central provision of the agreements was the requirement that the state corrections agency screen and identify inmates with disabilities. Further, the Department of Corrections agreed to provide access, accommodations, and supports that would enable inmates to benefit from education services.

Education Programs in Jails and Prisons

Public interest law firms and the U.S. Department of Justice have used the Americans with Disabilities Act (ADA), Section 504 of the Vocational Rehabilitation Act (Section 504), and the Individuals with Disabilities Education Act (IDEA) to ensure that special populations in adult corrections receive services. With regard to service delivery, private contractors, local education agencies, state departments of education, and correctional agencies have designed and delivered education services in these settings. In contrast to education services for school age youth in public schools, education programs in corrections typically do not have a funding formula that guarantees a consistent level of support over time. In many correctional facilities, the curriculum focuses on preparation for the GED (General Education Development) exam.

Despite federal mandates and litigation, the adequacy of services available for special populations in corrections across the United States is highly variable. In principle, special populations such as youthful offenders – those inmates younger than 18 or 21 and those under 21 with special education eligibility - are most likely to receive education services in corrections. The most recent Bureau of Justice Statistics (BJS) report indicates that access to education programs for all inmates is uneven. For example,

in 2000, while all federal prisons had education programs, 9% of state prisons, 12% of privately operated prisons, and 40% of local jails did not have education programs (Harlow, 2003). When we examine the availability of education services for special populations, the BJS report indicates that only 60% of federal prisons, 40% of state prisons, 22% of private prisons, and 11% of jails provide special education services.

Even when correctional systems implement screening and assessment procedures, the adequacy of the procedures may be questionable. For instance, in 2001 the Arizona Department of Correction assessed approximately 25,648 inmates to determine their needs for functional literacy, GED preparation, vocational education, and special education (Justice Center, 2001). They found that 7,918 inmates were identified as not meeting the 8th grade functional literacy level. They also assessed 2,726 inmates under the age of 22 for Special Education needs. However, they reported that only 96 inmates were identified as needing special Education services with a valid IEP were enrolled in educational services and only 109 inmates were identified as having a disability that required accommodations to participate in an education program. The disparity between the academic needs of the inmates and the number of individuals identified as having a disability (0.3%) are troubling, and suggest that the department is not adequately responding to the needs of the population (Justice Center, 2001).

Additionally, despite the prevalence of inmates with disabilities, it appears that some states fail to provide adequate special education services altogether. For example, In South Dakota, a review team determined that there was no evidence of any type of special education program at the South Dakota Women's Prison. Monitors of the

program determined that there was “no clear method for identifying, evaluating and the provision of service to young women suspected of having a disability.”[cite]

The variability of education, special education, and related services for special populations represents a shortcoming of correctional agencies in general. If inmates are going to rehabilitate, they are going to require the basic skills necessary for a successful reentry into society. This is especially true for inmates from special populations. Without basic literacy, education, and job preparedness, these individuals will likely have difficulty reintegrating, will be unable to find and maintain gainful employment, and will have a high risk for recidivism. Nonetheless, the academic and vocational needs of these populations are considerable, Correctional agencies are charged with improving outcomes for individuals who have been unsuccessful in the public education system for many years.

Academic Status of Incarcerated Populations

One of the primary difficulties with the education of inmates, particularly those from special populations, is the limited academic skills that the inmates present when they enter the system. The literacy levels and education attainment of inmates in jails and prisons is significantly below the general population in the United States (Harlow, 2003; Greenberg, Dunleavy, & Kutner, 2007). Although literacy levels among adult inmates improved from 1992 to 2003, high percentages of inmates reading below proficiency creating an increased burden to correctional education systems (Greenberg, Dunleavy, Kutner, 2007). For instance, The Arizona Department of Corrections reported that 7918 of its estimated 25,000 inmates did not meet functional literacy proficiency. In Florida, the Department of Corrections reported that 25.3% of the female inmates read below the

fifth grade level (2001), while approximately one third of Missouri inmates were reported as functionally illiterate (Shriro, 2000). Finally, in North Carolina, the average Wide Range Achievement Test grade-equivalent score for the 356 inmates age 18 or younger admitted to prison in 2004 was 6.1 in reading and 5.5 in math. In general, older inmates entering prison had slightly higher achievement scores. No age group admitted in 2004 had average grade equivalent math scores higher than 6.7 and reading scores higher than 10.2 (Edwards, 2005).

The low literacy and math levels among incarcerated population are significantly lower than the levels in the general population. For example, in Missouri, only an estimated one-third of all inmates at entry to prison had earned a high school diploma or GED (Schriro, 2000). Nationally, 41% of adult inmates have not completed a high school diploma nor have received a GED (Harlow, 2003). Two factors are likely associated with the depressed achievement levels and low education attainment among incarcerated populations. First, many inmates experienced significant academic difficulties early in their school careers and left school prior to graduation (Harlow, 2003). Second, the population has high percentages of individuals with disabilities and mental health disorders. Students with learning disabilities, emotional and behavioral disorders, intellectual disabilities, and mental illness have multiple limitations to their ability to learn and / or to participate successfully in school. The limitations they likely experienced early in school are usually compounded as they proceed through school and as the emphasis of public education programs change from teaching basic skills to mastery of increasingly difficult content (Leone et al., 2005). Although there are no hard data demonstrating differences in achievement for special populations and general

populations in the adult corrections systems, limited information from the juvenile justice system exists. Krezmien and his colleagues (2008) found math and reading achievement of incarcerated youth to be more than a standard deviation below the general population. Additionally, they reported that the reading and math achievement of youth with disabilities was substantially lower than the achievement of their non-disabled peers, and was nearly two standard deviations below the population in general.

Education Services in Existing Corrections Systems

The extensive educational deficits of special populations, combined with the complex learning, social, cognitive, and emotional problems presented by a majority of this group create challenges for the development and implementation of educational programming that can meet these diverse needs. Education programs in jails and prisons typically include academic coursework, vocational programs, and specialized courses or programs tailored to social or cognitive skill development.⁵ Prisons and some short-term facilities also operate work programs that may have an educative function such as a bakery or a print shop, but the operation of these programs does not fall under the auspices of education. The academic coursework in jails and prisons is often referred to as adult basic education (ABE). Typically this includes basic literacy development, preparation for the GED, and in some settings, secondary education. In some states vocational education involves areas such as carpentry, automotive mechanics, welding, and computer maintenance although information technology programs are becoming more widely available (Legislative Analyst's Office, 2008).

In addition to academic and vocational technical education, specialized education programs in corrections may include court-mandated drug education or treatment,

⁵ A discussion of post-secondary education programs in corrections is beyond the scope of this paper.

cognitive restructuring, anger management, and decision making. Special education services in corrections provide supports and individualized accommodations for eligible individuals who have cognitive, sensory, or learning impairments. Special education teachers provide instruction to students in basic skill areas, content mastery in subject areas such as social studies and science leading to a GED or diploma, and in career and technical coursework.

Administration of Education Programs in Corrections

Administration of correctional education programs vary across states and local jurisdictions. In some locales a single agency oversees treatment, education, and security components of correctional programming. In others, one agency may administer security and treatment while another administers correctional education. One of the challenges faced by correctional education administrations is developing and implementing effective educational, vocational, and special educational services to meet the needs of a diverse population. The trends over the past 25 years have not only taxed the capacity of correctional institutions to provide educational services to a growing population; they have forced the agency to respond to individuals with complex social and educational needs. As the population of incarcerated youth has grown, so has the need for correctional educators to provide special education services as mandated by the IDEA of 2004. As result, agencies are required to hire highly qualified special education teachers, and to train general educators how to modify and adapt instruction and materials to accommodate individuals with learning, behavioral, and cognitive difficulties. While states are required to develop and implement special education programming, they have

autonomy with how they can meet the needs of their general education and special education students.

In Virginia, the Department of Correctional Education (DCE), a separate agency in the executive branch of government, functions as an independent school district with its own school board. It serves both the Department of Corrections and the Department of Juvenile Justice. The DCE operates a number of programs including literacy programs, special education, apprenticeship programs, cognitive skills training, adult basic education (GED), career and technical education, and employability skills training (VA Department of Correctional Education, 2006).

In Connecticut, Unified School District #1 (USD #1) provides education services to inmates in the Connecticut Department of Correction. The USD #1 education program uses a skills inventory as the foundation of the education program. Following intake screening that includes of the Test of Adult Basic Education (TABE), students are placed into one of several different education tracks. These include ABE I (Adult Basic Education), ABE II, ABE III (GED preparation) or TESOL (Teaching English to Speakers of Other Languages.) In addition, some students receive special education services and vocational education (Unified School District #1, 2006).

The California Department of Correction and Rehabilitation operates education program in each of the 33 prisons in the state. Following intake screening that includes a standardized achievement test, inmates are assigned to academic, vocational and other alternative education programs including distance learning. However, problems with staff vacancies, lockdowns, and funding have created conditions under which less than 50% of enrolled students are in class on any given day. (Legislative Analyst's Office, 2008).

At the Cook County Jail, Consuela B. York Alternative High School operated by the Chicago Public Schools provides academic instruction, career and technical education, and special education services inmates age 21 and younger. Similarly, in New York City, Rikers Island Jail complex the New York City Board of Education provides education services to inmates age 21 and younger at the Austin MacCormack Island Academy.

Developing Education Programs for Special Populations

While education program for special populations in jails and prisons have been developed in some jurisdictions, as the preceding narrative suggests, the availability and adequacy of academic and career and technical education services is limited. There are several essential elements that well-developed programs that comply with federal statutes and case law should include?

1. Comprehensive cognitive, academic, behavioral, and mental health screening.

Correctional facilities typically do intake screening and some assessment at intake. Ensuring that this process gathers information in support of education services is an essential first step.

Program components and services should also include:

2. Reading instruction for person with limited reading ability with specialized instruction for students with learning and cognitive impairments.
3. Education and special education services for all individuals with disabilities age 21 and under who have not received a GED or a high school diploma.

4. Career education and job training programs should be made available to all individuals from special populations with accommodations and supports to insure equal access.
5. Comprehensive prosocial behavioral supports in education and treatment settings for students with emotional and behavioral disabilities.
6. Transition services and supports to ensure successful transition of inmates to their communities.

Infrastructure supporting the education program should include:

7. Qualified teachers and support professionals and adequate instructional materials.
8. Dedicated funding streams or cost centers for the education program.
9. Adequate space for instruction and collaborative planning between custody staff and educators to ensure that inmates who choose to attend school, do not forfeit other highly prized activities such as recreation and access to the commissary.

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