

**TITLE I, PART D
OF THE ELEMENTARY AND SECONDARY
EDUCATION ACT OF 1965**

**PREVENTION AND INTERVENTION PROGRAMS FOR CHILDREN AND
YOUTH WHO ARE NEGLECTED, DELINQUENT, OR AT-RISK**

NON-REGULATORY GUIDANCE
DRAFT FOR PUBLIC COMMENT



**UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, DC**

Updated August 2024

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I. PURPOSE OF THE GUIDANCE

The Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk, is authorized by Title I, Part D of the Elementary and Secondary Education Act of 1965 (ESEA) and was most recently amended in 2015 by the Every Student Succeeds Act (ESSA). This guidance is intended to be used in conjunction with the applicable statute and regulations, including the Education Department General Administrative Regulations (EDGAR) in 34 C.F.R. Part 76 and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), 2 C.F.R. Part 200.

Title I, Part D serves some of the most vulnerable students in our nation, including students involved in juvenile justice systems and systems for neglected children. Due to their experiences, these children and youth often cope with emotional challenges and frequent educational transitions and other instabilities. This student population has higher rates of school mobility, higher rates of identification for special education services,¹ and higher rates of chronic absenteeism compared to their peers—all of which can impact these students' rates of graduation, employment, and recidivism.² Additionally, there are significant overlaps among the student populations experiencing foster care, homelessness, and juvenile justice. Education, child welfare, and juvenile justice system practitioners are encouraged to implement policies that minimize educational disruptions as students move between foster care and juvenile justice systems. Similarly, the Department encourages data-sharing requirements between education, child welfare, juvenile justice, and other agencies, as appropriate. Doing so can ensure that, as students move across different systems, relevant educational records for that student are immediately transferred so that schools and other service providers can proactively offer supportive services, and so that students are able to consistently access the educational and other services that are available to them.

All children and youth deserve the educational opportunities and supports they need to become the best version of themselves. This updated guidance is designed to assist States and subgrantees to make the most of Title I, Part D funds to enhance educational opportunities for children and youth who are neglected, delinquent, or at-risk, while connecting to and strengthening support systems that can provide a continuity of timeline and sufficient resources, services, and supports help these students succeed.

The purposes of Title I, Part D are:

1. To improve educational services for children and youth in local, Tribal, and State institutions for neglected or delinquent children and youth so that these children and youth have the opportunity to meet the same challenging State academic standards that all children and youth in the State are expected to meet;

¹ Fulks, Emily (2021). Youth Who are Incarcerated: Transitions and IEP Implementation. Washington, D.C. National Technical Assistance Center for the Education of Neglected or Delinquent Children and Youth. <https://cdn.ndtac.net/2021-Tipsheet-COVID-IEP.pdf>.

² Development Services Group, Inc. (2019). "Education for Youth Under Formal Supervision of the Juvenile Justice System." Literature review. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention. <https://www.ojjdp.gov/mpg/litreviews/Education-for-Youth-in-the-Juvenile-Justice-System.pdf>.

2. To provide these children and youth with services to enable them to transition successfully from institutionalization to further schooling or employment; and
3. To prevent at-risk youth from dropping out of school as well as to provide dropouts and children and youth returning from correctional facilities or institutions for neglected or delinquent children and youth, with a support system to ensure their continued education and the involvement of their families and communities. (ESEA section 1401(a)).

Title I, Part D consists of two distinct programs, one for State agency (SA) programs (Subpart 1, covered in Section II) and another for local agency programs (Subpart 2, covered in Section III). Subpart 1 funds SA programs for children and youth living in institutions for neglected or delinquent children and youth, attending community day programs for neglected or delinquent children and youth, or living in adult correctional institutions. Under Subpart 2, a State educational agency (SEA) awards subgrants to local educational agencies (LEAs) to serve children and youth who are in locally operated correctional facilities or are attending locally operated community day programs for delinquent children and youth. An LEA may also use Subpart 2 funds to operate programs in local schools for children and youth returning from correctional facilities and programs that serve at-risk children and youth.

Finally, Subpart 3 (covered in section IV) requires SAs and LEAs to evaluate their programs at least once every three years to determine, by using multiple and appropriate evaluation measures, the programs' effects on student achievement.

The children and youth served by this program have intensive and diverse needs, and delivery of high-quality educational programs and related services is critical to help them succeed. Educational programs should be designed to engage children and youth, be tailored to variable lengths of stay, support academic success, and focus on transition to subsequent placements and return to their communities and the timely and consistent continuation of services and supports.³

ESSA expanded the purpose of Title I, Part D to include improving educational services for youth in Tribal institutions for neglected and delinquent children and youth. Additionally, transition services supported by SAs under Subpart 1 specifically include youth moving between institutions and schools operated or funded by the Bureau of Indian Education. LEAs may use Subpart 2 funds for programs supporting "at-risk" Indian children and youth, including those who are in correctional facilities operated by the Department of the Interior or Indian Tribes.

In addition to the information included in this guidance, the Department provides critical resources that States and subgrantees may access to identify best practices and improve program design and delivery. These supports include:

1. The [National Technical Assistance Center for the Education of Neglected or Delinquent Children and Youth \(NDTAC\)](#) serves as a national resource center to provide direct assistance to States, schools, communities, and parents seeking information on the education of children and youth who are considered neglected,

³Leone, P., & Fink, C. (2017). Raising the Bar: Creating and Sustaining Quality Education Services in Juvenile Detention: First Edition. National Technical Assistance Center for the Education of Neglected or Delinquent Children and Youth (NDTAC). https://neglected-delinquent.ed.gov/sites/default/files/NDTAC_Issue_Brief_Edu.pdf.

delinquent, or at-risk. The education of youth involved in the juvenile justice system is a primary focus of the Center.

2. The [National Center on Safe Supportive Learning Environments](#) is funded by the U.S. Department of Education, Office of Elementary and Secondary School's Office of Safe and Supportive Schools. The Center offers information and technical assistance to States, districts, schools, institutions of higher education, and communities focused on improving school climate and conditions for learning.
3. **The [Center on Positive Behavioral Interventions and Supports \(PBIS\)](#)** was initially funded in 1998. Over the past 26 years, the Center has worked with state and local agencies to improve social, emotional, academic, and behavioral outcomes for all students. The Center on PBIS is grounded in evidence-based interventions that identify student needs and provide proactive student support to improve student behaviors and outcomes.
4. The [National Technical Assistance Center on Transition \(NTACT\)](#) provides support and resources for improving transition outcomes for students and youth with disabilities.
5. **The Office of Career, Technical, and Adult Education (OCTAE)** coordinates programs that are related to adult education and literacy, career and technical education, and community colleges. These programs provide important services to youth transitioning from correctional settings into postsecondary education and employment. In 1991, an [Office of Correctional Education \(OCE\)](#) was created by the Carl D. Perkins Vocational and Applied Technology Education Act, to coordinate and improve these efforts to support educational opportunities in correctional settings. And
6. **The Office of Special Education Programs (OSEP)** administers and coordinates programs that support students and youth with disabilities. OSEP has developed resources that States and Title I, Part D subgrantees may find useful in meeting the needs of students with disabilities, including a [Dear Colleague Letter](#) enumerating the requirements States must have in place to ensure procedures are in place to identify, evaluate and provide services and supports to students with disabilities as required under the Individuals with Disabilities Education Act, and a 2019 [Dear Colleague Letter](#) describing the requirements of free appropriate public education for students incarcerated in adult corrections facilities. Additionally, OSEP had developed a [toolkit](#) of evidence-based practices, tools and resources for States to improve academic and transition outcomes for youth with disabilities in juvenile corrections facilities.

This guidance supersedes the 2006 non-regulatory guidance *Title I, Part D: Neglected, Delinquent, and At-Risk Youth*.

The Department has determined that this guidance is significant guidance under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007). See <https://www.federalregister.gov/documents/2007/01/25/E7-1066/final-bulletin-for-agencygood-guidance-practices>. Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public in any way. This document is intended to provide clarity to the public regarding existing requirements under the law or agency policies.

The Department is providing a 30-day opportunity for the public to comment on this draft document. If you are interested in commenting on this guidance, please email your comments to OESE.Feedback@ed.gov with the subject line: “ESEA Title I, Part D Nonregulatory Guidance” by September 26, 2024.

Please submit succinct, substantive comments regarding the draft non-regulatory guidance, which may include:

1. Identifying Title I, Part D requirements or topics that you think the Department has not addressed but should;
2. Identifying questions or answers in the document, by question number, that you think are not clear and provide a suggestion for enhancing clarity; and
3. Providing suggestions for enhancing the document overall.

The Department will consider all comments in making revisions, as appropriate, but will not provide individual responses to comments.

II. STATE AGENCY PROGRAMS FOR NEGLECTED AND DELINQUENT CHILDREN (PART D, SUBPART 1)

A. STATE PLAN

A-1. What State plan requirements apply to Subpart 1?

To receive Subpart 1 funds, an SEA must submit for approval by the U.S. Department of Education (the Department) either (1) an individual State plan in accordance with ESEA section 1414(a) or (2) a consolidated State plan that meets the requirements of ESEA section 8302. An SEA that submitted a consolidated State plan was required to:

1. Provide a plan for assisting in the transition of children and youth between correctional facilities and locally operated programs (ESEA section 1414(a)(1)(B)); and
2. Describe the program objectives and outcomes established by the State that will be used to assess the effectiveness of the program in improving the academic, career, and technical skills of children and youth in the program (ESEA section 1414(a)(2)(A)).

The Department notes that, under the ESEA, every State has elected to submit a consolidated State plan.

A-2. May a State plan be revised?

Yes. The statute allows for plans to be reviewed and revised periodically by States. The Department encourages the State to periodically review its plan to evaluate whether it is sufficient to meet the needs of its students and to ensure the State is successfully meeting the goals of the program.

For States with an approved consolidated State plan, the State must submit its proposed amendments to the Department for review and approval prior to the State being able to implement the proposed change. Consistent with the consolidated assurances each State submitted under ESEA section 8304, prior to submitting any amendment to the Department, a State must consult with the Governor on the amendment, afford a reasonable opportunity for public comment on the amendment, and consider such comments. If a State were to submit an individual plan for Title I, Part D, the State would also have to submit any amendments to its individual plan for review and approval by the Department before such a change could be implemented.

B. FEDERAL ALLOCATION OF FUNDS (ANNUAL COUNT)

B-1. How does the Department calculate the amount of Subpart 1 funds to award to SEAs?

In accordance with ESEA sections 1402(a) and 1412, the Department determines State allocations for Subpart 1 through a statutory formula based on State per-pupil expenditures and annual counts of neglected or delinquent children and youth, aged 20 or younger, who are enrolled in a regular program of instruction for at least:

1. **15** hours per week in an adult correctional institution; or
 2. **20** hours per week in an institution for neglected or delinquent children and youth or in a community day program for neglected or delinquent children and youth.
- (34 C.F.R. § 200.91(a)(1)).

B-2. What is an institution for neglected children and youth?

An institution for neglected children and youth is, as determined by the SEA, a public or private residential facility, other than a foster home, that is operated primarily for the care of children and youth who:

1. Have been committed to the institution or voluntarily placed in the institution under applicable State law, due to abandonment, neglect, or death of their parents or guardians; and
 2. Have had an average length of stay in the institution of at least 30 days.
- (34 C.F.R. § 200.90(b)).

B-3. What is an institution for delinquent children and youth?

An institution for delinquent children and youth is, as determined by the SEA, a public or private residential facility that is operated primarily for the care of children and youth who:

1. Have been adjudicated to be delinquent or in need of supervision; and
 2. Have had an average length of stay in the institution of at least 30 days.
- (34 C.F.R. § 200.90(b)).

B-4. What is an adult correctional institution?

An adult correctional institution is a facility in which persons (including persons under 21 years of age) are confined as a result of a conviction for a criminal offense. (ESEA section 1432(1)).

B-5. What is a community day program?

A community day program is a regular program of instruction provided by an SA at a community day school operated specifically for neglected or delinquent children and youth. (ESEA section 1432(3)).

B-6. What is a regular program of instruction?

As noted in question B-1, Subpart 1 allocations are based on counts of children and youth who are neglected or delinquent and who are in a “regular program of instruction.” A regular program of instruction is an educational program (not beyond grade 12) in an institution or a community day program for neglected or delinquent children that consists of classroom instruction in basic school subjects such as reading, mathematics, and career and technical education. Resources related to teaching and learning in the content areas for neglected, delinquent and at-risk youth can be found at NDTAC’s website at <https://neglected-delinquent.ed.gov/topic-areas/teaching-and-learning>.

In addition, to be counted as a regular program of instruction, the program must be supported by non-Federal funds. For example, additional instructional time provided with funding from Title I, Part A of the ESEA or other Federal programs may not be counted towards the minimum hours

of instruction described in question B-1. In addition, neither the manufacture of goods within the institution nor activities related to institutional maintenance are considered classroom instruction. (34 C.F.R. § 200.90(b)).

B-7. When must the annual child count be submitted by the SEA to the Department?

The SEA must annually submit the child count by January 31. (34 C.F.R. § 200.91(c)).

B-8. Does the count in a facility need to be adjusted to reflect the relative length of the school year?

Yes. The SEA must adjust the enrollment for each institution or community day program served by an SA by—

1. Multiplying the number determined through the child count (see question B-1) by the number of days per year the regular program of instruction operates; and
2. Dividing this number by 180. (34 C.F.R. § 200.91(b)).

B-9. Is there a specific date on which the child count must be taken by the SA?

The Department does not specify a date on which the child count must be taken by an SA. Instead, each SA must specify the date on which the enrollment of neglected or delinquent children and youth is determined. If a State has more than one SA, the SAs need not choose the same date. The date that each SA specifies for the annual count must be—

1. Consistent for all institutions or community day programs operated by the SA; and
2. Represent a school day in the calendar year preceding the year in which funds become available. (34 C.F.R. § 200.91(a)(2)).

B-10. How does an SA determine the number of children and youth to include in the annual count of eligible children and youth for determining Subpart 1 allocations?

The SA must identify eligible institutions, including adult correctional institutions, or community day programs for neglected or delinquent children and youth (as defined in B-2 through B-5) for which an SA is responsible for providing free public education and is providing a regular program of instruction. The average length of stay in an institution for neglected or delinquent children and youth must be at least 30 days. A child or youth must be 20 years or younger and in an eligible institution or community day program to be included in the count. In addition, to be counted, a child or youth must be enrolled in a regular program of instruction provided by the SA for at least 20 hours per week if in an institution for neglected or delinquent children and youth or a community day program for neglected or delinquent children and youth or 15 hours per week if in an adult correctional institution.

The SA is responsible for totaling the adjusted enrollment counts for children and youth in all of the neglected or delinquent institutions, adult correctional facilities, or community day programs that it operates and for providing the adjusted count to the SEA. The State count submitted to the Department by the SEA is the sum of the individual SA counts.

B-11. May an SA include children and youth who are placed in State institutions but whose families reside outside the State in the annual counts for the Subpart 1 fund allocation?

Yes. If out-of-State neglected or delinquent children and youth reside in an institution located within a State, those children and youth are eligible to be included in the State's count, provided those children and youth are under the age of 21 and are enrolled in a regular program of instruction operated or supported by SAs in institutions or community day programs for neglected or delinquent children and youth and in adult correctional institutions.

B-12. May a State include neglected or delinquent children and youth served in private facilities under the jurisdiction of the SA in the annual count of eligible children and youth submitted to the Department for Subpart 1 allocation purposes?

Yes, provided that the neglected or delinquent children and youth counted are:

1. The responsibility of the SA;
2. Under the age of 21; and
3. Enrolled in a regular program of instruction operated or supported by SAs in institutions or community day programs for neglected or delinquent children and youth and adult correctional institutions as specified in 34 C.F.R. § 200.91.

C. STATE SUBGRANTS TO ELIGIBLE STATE AGENCIES

C-1. How does the SEA make subgrants to SAs?

Once the Department determines a State's Subpart 1 allocation, the SEA makes subgrants to each SA that submits an application on the basis of its proportionate share of the State's adjusted enrollment count of children and youth who are neglected or delinquent. (ESEA section 1412).

C-2. What are the eligibility requirements for an SA to receive Subpart 1 funds?

An SA is eligible to receive Subpart 1 funds if it is responsible for providing free public education for children and youth in institutions for neglected or delinquent children and youth, attending community day programs for children and youth who are neglected or delinquent, or in adult correctional institutions. (ESEA section 1411).

The number of eligible SAs varies from State to State, but almost all States have at least one eligible agency. Several States have an agency that administers both adult correctional institutions and institutions for youth who are delinquent or may have a separate agency that administers institutions for children and youth who are delinquent. In States serving children and youth who are neglected, a separate SA often administers institutions for these children and youth. Several States have created a correctional education agency that provides education to students in institutions and community day programs.

C-3. In order to receive a subgrant under Subpart 1, must an SA directly operate schools for children and youth who are neglected or delinquent?

No. To be eligible, the SA must be responsible for providing free public education for children and youth in institutions for neglected or delinquent children and youth, attending community day programs, or in adult correctional institutions. (ESEA section 1411). The statute does not require that the SA provide the services directly. An SA may provide educational services directly in State-operated schools or through contracts or other arrangements with another SA, an LEA, a private organization, or an institution of higher education. Whether or not services are provided directly by the SA, the SA is responsible for ensuring that the program operates in accordance with all applicable statutory and regulatory requirements, including Subpart 1 program requirements, the Uniform Guidance (2 C.F.R. Part 200), the Individuals with Disabilities Education Act (IDEA) (see question G-8), and civil rights requirements.

C-4. Is an SEA eligible to receive Subpart 1 funds as an SA?

Yes. An SEA may be an eligible SA if it meets the SA eligibility requirements described above in question C-2. Regardless of whether the SEA is an eligible SA, the SEA has administrative responsibility for ensuring that each SA (including the SEA, if applicable) operates its Subpart 1 program in accordance with all applicable statutory and regulatory requirements (see question J-7).

D. STATE AGENCY APPLICATIONS

D-1. What are the requirements of a Subpart 1 SA application?

Under ESEA section 1414(c) an SA must submit an application to the SEA that addresses all of the following components:

1. Describes the procedures to be used, consistent with the State plan under ESEA section 1111, to assess the educational needs of the children to be served under Subpart 1 and, to the extent practicable, provide for such assessment upon entry into a correctional facility;
2. Provides an assurance that in making services available to children and youth in adult correctional institutions, priority will be given to such children and youth who are likely to complete incarceration within a two-year period;
3. Describes the program, including a budget for the first year of the program, with annual updates to be provided to the SEA;
4. Describes how the program will meet the goals and objectives of the State plan;
5. Describes how the SA will consult with experts and provide the necessary training for appropriate staff, to ensure that the planning and operation of institution-wide projects under ESEA section 1416 are of high quality (please see question H-1 for select resources on planning and operating institution-wide projects);
6. Describes how the SA will use the results of the most recent evaluation under ESEA section 8601 to plan and improve the program;
7. Includes data showing that the SA has maintained the fiscal effort required of an LEA, in accordance with ESEA section 8521;
8. Describes how the programs will be coordinated with other appropriate State and Federal programs, such as programs under Title I of the Workforce Innovation and Opportunity

Act, career and technical education programs, State and local dropout prevention programs, and special education programs (please see section G for related resources and strategies);

9. Describes how the SA will encourage correctional facilities receiving funds under this subpart to coordinate with LEAs or alternative education programs attended by incarcerated children and youth prior to and after their incarceration to ensure that student assessments and appropriate academic records are shared jointly between the correctional facility and the LEA or alternative education program in order to facilitate the transition of such children and youth between the correctional facility and the LEA or alternative education program (please see section G for related resources and strategies);
10. Describes how appropriate professional development will be provided to teachers and other staff (please see question G-1 for related resources and strategies);
11. Designates an individual in each affected correctional facility or institution for neglected or delinquent children and youth to be responsible for issues relating to the transition of such children and youth between such facility or institution and locally operated programs;
12. Describes how the SA will endeavor to coordinate with businesses for training and mentoring for participating children and youth (please see section G for related resources and strategies);
13. Provides an assurance that the SA will assist in locating alternative programs through which students can continue their education if the students are not returning to school after leaving the correctional facility or institution for neglected or delinquent children and youth (please see questions I-2 and I-3 for related resources);
14. Provides assurances that the SA will work with parents to secure parents’⁴ assistance in improving the educational achievement of their children and youth, and preventing their children’s and youth’s further involvement in delinquent activities (please see section G for related resources and strategies);
15. Provides an assurance that the SA will work with children and youth with disabilities in order to meet an existing individualized education program and an assurance that the agency will notify the child’s or youth’s local school if the child or youth—
 - A. Is identified as in need of special education services while the child or youth is in the correctional facility or institution for neglected or delinquent children and youth; and
 - B. Intends to return to the local school (please see section G for related resources and strategies);
16. Provides an assurance that the SA will work with children and youth who dropped out of school before entering the correctional facility or institution for neglected or delinquent children and youth to encourage the children and youth to reenter school and attain a regular high school diploma once the term of the incarceration is completed or provide the child or youth with the skills necessary to gain employment, continue the education of the child or youth, or attain a regular high school diploma or its recognized equivalent if

⁴ ESEA section 8101(38) defines “parent” as including a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child’s welfare).

the child or youth does not intend to return to school (please see section G for related resources and strategies);

17. Provides an assurance that certified or licensed teachers and other qualified staff are trained to work with children and youth with disabilities and other students with special needs taking into consideration the unique needs of such students;
18. Describes any additional services to be provided to children and youth, such as career counseling, distance learning, and assistance in securing student loans and grants;
19. Provides an assurance that the program under this subpart will be coordinated with any programs operated under the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601 et seq.) or other comparable programs, if applicable; and
20. Describes how the SA will, to the extent feasible—
 - A. Note⁵ when a youth has come into contact with both the child welfare and juvenile justice systems; and
 - B. Deliver services and interventions designed to keep such youth in school that are evidence-based (to the extent a State determines that such evidence is reasonably available).

D-2. May an SEA approve an SA’s application for more than one year?

Yes, under certain circumstances. If an SA operates a program or project under Subpart 1 in which individual children or youth are likely to participate for more than one year, the SEA may approve the SA’s application for a subgrant under this subpart for a period not to exceed three years. (ESEA section 1417). Consistent with the SEA’s assurance in ESEA section 8304(a)(1) to administer programs in accordance with all applicable statutes, regulations, program plans, and applications, the SEA may require an SA to update annually information included in its original application if substantial changes occur in the numbers and needs of the children and youth to be served or the services to be provided.

D-3. When must an SA submit its application to the SEA?

Each SEA sets the deadline for submission of applications. Therefore, the deadline will vary from State to State.

D-4. May an SEA require information in the SA application that goes beyond the Federal statutory requirements?

Yes. The SEA prescribes the format for the SA application and determines the specific information the SA must submit as part of its application, in addition to the requirements in ESEA section 1414. The SEA may require information that is in addition to the Federal statutory requirements. However, the SEA may not use the application process to impose requirements that are inconsistent with the requirements of the ESEA or other applicable Federal statutes and regulations.

⁵ The term “note” means that the Stage Agency will describe how it will identify when a youth has come into contact with both child welfare and juvenile justice systems. Please see section G for related resources.

D-5. May an SA submit an application that consists only of separate applications from each of its facilities?

No. The SA must submit its own application addressing the requirements in ESEA section 1414(c) because the SA is the entity that applies for and receives the Subpart 1 subgrant and is responsible for the administration and control of funds. However, the SA may incorporate individual program plans from each of its facilities into its application.

D-6. Does an SA apply to the SEA for Subpart 1 funds when a contractor or other party provides the education services to children and youth in institutions or community day programs?

Yes. The SA, not the contractor, must apply to the SEA for funds because the SA is responsible for providing a free public education to the children and youth in the institutions and community day programs. The SA may contract with or arrange for another entity (such as an LEA, a community college, a private provider, or a university) to provide the education services either at the institution or off-site. An SA, however, is responsible for exercising administrative control over the program and ensuring that the contractor or other party complies with all applicable statutory and regulatory requirements.

D-7. If the eligible SA is the SEA, must it complete an SA application?

Yes. An SEA that receives Subpart 1 funds as an SA must have an application on file that meets all the SEA's requirements for an SA application.

E. ELIGIBLE INSTITUTIONS UNDER SUBPART 1

E-1. What types of institutions are eligible to receive Subpart 1 funds from SAs?

Once an SA receives Subpart 1 funds, it distributes the funds to eligible institutions within its jurisdiction in accordance with the needs assessment described in its application submitted to the SEA. Eligible institutions are institutions for neglected or delinquent children and youth, community day programs for neglected or delinquent children, and adult correctional institutions (as defined in B-2 through B-5) in which the SA is responsible for providing free public education to children and youth. (See ESEA section 1411).

E-2. Are short-term institutions (those with an average length of stay of fewer than 30 days) eligible to receive Subpart 1 funds?

No. The average length of stay in an institution for delinquent children and youth or an institution for neglected children and youth must be at least 30 days for these institutions to be eligible to receive Subpart 1 funds. (34 C.F.R. § 200.90(b)).

This average length of stay requirement does not apply to community day school programs serving neglected or delinquent children and youth or to adult correctional institutions.

E-3. May an SA use its Subpart 1 allocation to serve children and youth in privately operated facilities?

Yes. An SA may contract with private facilities to serve neglected or delinquent children and youth. However, the SA is responsible for ensuring that a private facility operates a program in accordance with all applicable statutory and regulatory requirements.

E-4. Is the SA required to allocate its Subpart 1 funds to each facility that generated a count?

No. With SEA approval, the SA determines the facilities to which it allocates Subpart 1 funds. The SA has the discretion, based on its assessment of the educational needs of the children to be served under Subpart 1, to concentrate services on those institutions that have children and youth with the greatest need. SAs should consider the amount of funding needed to provide a high-quality Subpart 1 program and may choose to concentrate funds and services in facilities with higher numbers or percentages of eligible students rather than serving all facilities with an eligible student. The SEA should ensure that the SA's approach is consistent with the State plan. The Department encourages the SEA to request this information in its SA application.⁶

F. ELIGIBLE CHILDREN AND YOUTH

F-1. Which children and youth are eligible for services under Subpart 1?

To participate in the SA's neglected or delinquent program, a child or youth must be:

1. 21 years of age or younger (34 C.F.R. §§ 200.90(a) and 200.103(b)(1));⁷
2. Entitled to free public education up to grade 12 (34 C.F.R. §§ 200.90(a) and 200.103(b)(1)); and
3. Enrolled in a regular program of instruction at either an eligible institution or community day program for the required length of time (20 hours per week if in an institution or community day program for youth who are neglected or delinquent; 15 hours per week if in an adult correctional institution). (ESEA section 1412(a)(1)(A); 34 C.F.R. § 200.90(b)).

F-2. May children and youth who were not included in the annual count receive services under Subpart 1?

Yes. While decisions about which children, youth, and facilities to include in (or exclude from) the annual counts must be based on statutory and regulatory requirements, SAs have considerable flexibility and discretion in determining which students may be served with grant funds available for activities under Subpart 1. In other words, the students counted do not need to be the same students receiving services (see question E-4 and F-4).

⁶ A resource on developing Title I, Part D applications for Subpart 1 and Subpart 2 can be found at <https://neglected-delinquent.ed.gov/events/march-2023-ndtac-webinar-applications-topical-call>.

⁷ While students eligible for services may be 21 years of age or younger, only students *under* the age of 21 may be included in the annual count (34 C.F.R. § 200.91).

F-3. Is a youth who has completed the General Educational Development (GED) program eligible to receive Subpart 1 services?

Yes. A student aged 21 or younger who is otherwise eligible to receive services under Subpart 1 and who has earned a GED or other type of high school diploma equivalent but takes courses that lead to a high school diploma is eligible to receive Subpart 1 services. Earning a high school diploma falls within the definition of “regular program of instruction” found in 34 C.F.R. § 200.90(b) because it involves schoolwork that would not be considered part of an educational program that goes beyond grade 12.

F-4. How does an SA identify and select children and youth to be served?

An SA that receives Subpart 1 funds must assess the educational needs of eligible children and youth in eligible institutions and community day programs. (ESEA section 1414(c)(1)). The Department encourages an SA to make these assessments on the basis of educationally objective criteria such as course credits earned, grades, performance on reading/language arts and mathematics diagnostic assessments given upon entering the facility, performance on State assessments, or identification for special education or as an English learner. The needs assessment enables the SA to identify the unique educational needs of these children and youth and the general instructional areas on which the program will focus. Using the assessment data, an SA can select those most in need of special assistance and determine the specific needs of participating children and youth to ensure that the services provided will be of sufficient size, scope, and quality to enable the participants to make significant progress toward meeting State performance standards. If available funds are insufficient to meet the needs of all eligible youth, those most in need should be served first. In making services available to children and youth in adult correctional facilities, however, an SA must give priority to those who are likely to complete incarceration within a two-year period. (ESEA section 1414(c)(2)). Additionally, SAs are not limited to providing services only to those students included in the annual count, nor must they serve every student counted.

G. USES OF FUNDS AND PROGRAM IMPLEMENTATION

G-1. What activities may Subpart 1 funds support?

An SA must use Subpart 1 funds for programs and projects that are consistent with, as applicable, the State plan submitted under section 1414(a) or the consolidated State plan (see Section A) and that concentrate on providing participants with the knowledge to make a successful transition to secondary school completion, career and technical education, further education, or employment. (ESEA section 1415(a)(1)).

In addition, these programs and projects must be designed to support educational services that:

1. Except for institution-wide projects (see section H), are provided to children and youth identified by the SA as failing or most at-risk of failing to meet the challenging State academic standards;
2. Respond to the educational needs of such children and youth, including by supplementing and improving the quality of educational services provided to these children and youth by the SA; and

- Afford such children and youth an opportunity to meet challenging State academic standards.
(ESEA section 1415(a)(2)(B)).

These programs and projects may include the acquisition of equipment, pay-for-success (PFS) initiatives (see G-5), or providing targeted services for youth who have come into contact with both the child welfare system and juvenile justice system. (ESEA section 1415(a)(2)(A)).

Among the assurances that an SA must provide (described in question D-1), an SA must assure that it will provide services and interventions designed to keep children and youth in school that are evidence-based (to the extent a State determines that such evidence is reasonably available). For example, funds might support evidence-based activities that assist with dropout prevention, such as mentoring, acceleration and evidence-based tutoring, service-learning opportunities, academic enrichment activities such as structured reading interventions, and career and technical education programs.⁸

Subpart 1 funds may also support professional development used to improve the quality of educational services provided to participating children and youth. The Department encourages educators to evaluate the content and evidence-base of professional learning to ensure that funded trainings are most effectively meeting the needs of the program and participants.⁹

G-2. What types of student information should be shared between LEAs and SAs to support student’s educational progress?

The educational records of students who transfer from LEAs to placements in SA facilities, or are moving back to LEAs, should include all information necessary to provide the student with continuity in their education. For example, records may include transcripts with credits attempted and earned, grades, education plans, and other relevant academic information. [The Family Educational Rights and Privacy Act](#) (20 U.S.C. § 1232g(b)(1)(B); 34 C.F.R. §§ 99.31(a)(2) and 99.34) allows schools and school districts to disclose education records without the prior written consent of a parent or an eligible student (an elementary or secondary student who is 18 or older) to officials of other schools and school districts to which a student is transferring or is already enrolled, as long as the purpose of the disclosure is related to the student’s enrollment or transfer, under the conditions set forth in 34 C.F.R. § 99.34(a). A school that discloses education records under this exception must make a reasonable attempt to notify the parent of the disclosure, unless the disclosure is initiated by the parent, or the school’s annual notification of rights under FERPA includes a notice that it forwards education records to other schools that have requested the records and in which the student seeks or intends to enroll or is already enrolled, as long as the disclosure is for purposes related to the student’s enrollment or transfer. Under this

⁸ For additional information on providing high-quality education in secure care settings, see, e.g., U.S. Departments of Education and Justice, Guiding Principles for Providing High-Quality Education in Juvenile Justice Secure Care Settings, Washington, D.C., 2014. <https://www2.ed.gov/policy/gen/guid/correctional-education/guiding-principles.pdf>.

⁹ Nicole Breslow and Georgia Bock, “Evaluating Professional Learning: A Tool for Schools and Districts,” December 2020, https://ies.ed.gov/ncee/edlabs/regions/northeast/pdf/NE_5.3.5_Evaluation_PD_Brief_12-22-20_accessible.pdf.

exception, a school has the discretion to disclose academic, disciplinary, or any other personally identifiable information (PII) from the student's education records to the new school. Further, a parent does not, under FERPA, have the right to prevent a school from disclosing such PII from the student's education records, or from communicating information about a student more generally, to the school in which the student seeks or intends to enroll.

G-3. May Subpart 1 funds be used for training and mentoring programs?

Yes, provided the training and mentoring program is designed to meet the educational needs of the children and youth in the facility and is otherwise consistent with the requirements in ESEA section 1415. An SA must coordinate with businesses for training and mentoring for participating children and youth, consistent with ESEA section 1414(c)(12). Such programs may focus on specific student needs and could include voluntary training and mentoring from community-based organizations, local business professionals, individuals in careers in which the student has expressed an interest, or academic or career counselors. Facilities should also consider mentors that support a student's cultural identity, such as Tribal elders or others familiar with the child's native language or culture. Mentoring programs using a number of different approaches (e.g., peer, group, in-school and community-based) have demonstrated the potential to contribute to positive outcomes for youth across a variety of demographic groups; in particular, they have been shown to both prevent and reduce delinquency.¹⁰

G-4. How can Subpart 1 programs effectively coordinate with other relevant State and Federal programs?

There are many ways that an SA operating a Subpart 1 program can ensure effective coordination with other programs serving high-need youth and leverage existing funding to foster cross-system collaboration. For example, NDTAC has developed a brief specific to meeting the needs of homeless children and youth who are involved in the criminal justice system.¹¹ Examples of collaborative activities include:

- Sharing student level data can help to ensure that students receive the supports, including the continuation of prior or existing supports, they need to ensure housing stability and access to education (see question G-2).
- Consistently attending cross-sector meetings to determine supports for students such as best interest determination and transition meetings. For example, Title I, Part D staff can work with local Education for Homeless Children and Youth staff at these meetings to ensure that students' educational rights are protected and they are able to access a school that meets their needs. When students are released, transition teams should consider strategies to secure permanent housing prior to discharge.
- Working collaboratively with community partners to understand students' needs. Collaborating with community organizations can help school administrators understand

¹⁰ David L. DuBois, "Mentoring Programs for Youth: A Promising Intervention for Delinquency Prevention," May 26, 2021, <https://nij.ojp.gov/topics/articles/mentoring-programs-youth-promising-intervention-delinquency-prevention>.

¹¹ Shaw, Sara., and St. John, Victor. (2023). Supporting Students Experiencing Homelessness and Involved in the Criminal Justice System. Washington, D.C. National Technical Assistance Center for the Education of Neglected or Delinquent Children and Youth (NDTAC). [NDTAC Research Brief – Supporting Students Experiencing Homelessness Involved in the Criminal Justice System](#).

the supports available to students experiencing homelessness or other challenges. Part D staff can also develop needs assessments, in coordination with community organizations and other program staff, to further understand the needs of the students they are serving.

- At the SEA level, coordinating across programs on policy and funding decisions to leverage supports for students impacted by multiple systems.

An SA may engage in similar activities when coordinating with other Federal and State programs.

G-5. How may Title I, Part D funds be used for a pay-for-success (PFS) initiative?

A PFS initiative is defined as a performance-based grant, contract, or cooperative agreement awarded by a public entity in which a commitment is made to pay for improved outcomes that result in social benefit and direct cost savings or cost avoidance to the public sector. (ESEA section 8101(40)).

PFS initiatives must include—

1. A feasibility study on the initiative describing how the proposed intervention is based on evidence of effectiveness;
2. A rigorous, third-party evaluation that uses experimental or quasi-experimental design or other research methodologies that allow for the strongest possible causal inferences to determine whether the initiative has met its proposed outcomes;
3. An annual, publicly available report on the progress of the initiative; and
4. A requirement that payments are made to the recipient of a grant, contract, or cooperative agreement only when agreed upon outcomes are achieved, except that the entity may make payments to the third party conducting the evaluation described above.

(ESEA section 8101(40)).

Paying for rewards for students to take assessments or complete schoolwork is not considered a PFS initiative.

G-6. Is an SA required to support parental and family involvement?

Yes. In its application, an SA must assure that it will work with parents and families to secure their assistance in improving the educational achievement of their children and youth and, as appropriate, preventing further involvement in delinquent activities. (ESEA section 1414(c)(14)). An SA, to the greatest extent possible, must give parents and families the opportunity to participate in their child's educational plans. ESEA section 8101(38) defines "parent" as including a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare.

G-7. How can SAs support parents and families in improving educational achievement of their children and youth and preventing further involvement in the juvenile justice system?

Family engagement activities are most effective when they are linked to learning, focus on building relationships between home and school, build the development of the whole child, are

group activities, and allow for interaction. Educational programs housed within facilities should build programs that are system-wide, integrated into the program's structures and processes, and sustainable.

Facilities should focus on a range of activities that engage families from the time a student enters the facility until the student transitions into the next step in their educational or life journey. Many of the same types of activities offered to families in a regular public school may be adapted to meet the needs of the families of children and youth in SA facilities. However, facilities should be mindful that families may not be located near the facility where their child is currently staying and should offer virtual opportunities for families that are unable to travel. Facilities are encouraged to use NDTAC's [Family Engagement Toolkit](#) for ideas and templates. Suggested activities include:

- A school website with links to parent/family handbooks, staff bios, curriculum, and other activities that students may participate in, including athletics, career and technical education, and fine arts;
- A welcome letter and periodic newsletters that are emailed or printed and mailed to families that may not have internet access, including communications written in a language that families can understand;
- Parent-teacher conferences with both in-person and virtual options, including meetings related to individualized education plans (IEPs) or plans under Section 504 of the Rehabilitation Act of 1973 (Section 504);
- On-site and virtual family engagement events that may include resources for families and students, opportunities for families to meet with teachers, and opportunities for families to tour the school building or classrooms;
- Family engagement activities and information focused on the social-emotional development of their child/youth; and
- Involving families in their child's transition back to the home community by inviting them to participate in meetings, providing them with resources, providing a copy of their student's transcripts, IEPs, or other school records, and connecting families to community-based resources including housing assistance, adult education, job training, drug or alcohol counseling, mental health supports, or other supports as appropriate to each family's or student's needs.

Please note that facilities have an obligation to ensure meaningful communication with parents and guardians who have limited English proficiency, including providing information about its programs, services, and activities in a language that parents can understand. Additionally, under Section 504 and Title II of the Americans with Disabilities Act, a facility must ensure that communications with individuals with disabilities are as effective as communications with others (28 C.F.R. § 35.160 and 34 C.F.R. § 104.4(b)(1)(iii)).

G-8. What responsibilities does an SA have to identify and serve children with disabilities?

As noted in question D-1, the SA application for a Subpart 1 subgrant must include several assurances related to identifying and serving children with disabilities.¹² Consistent with these assurances, an SA must work with children and youth with disabilities in order to meet existing IEPs and notify the child's or youth's local school if the child or youth is identified as in need of special education services while in the correctional facility and intends to return to the local school. (ESEA section 1414(c)(15)). An SA also must ensure that certified or licensed teachers and other qualified staff are trained to work with children and youth with disabilities and other students with special needs. (ESEA section 1414(c)(17)).

Under the IDEA, an SA must have child find policies and procedures in effect, in compliance with SEA requirements, to ensure that all age-eligible students with disabilities, including those in correctional facilities, who are in need of special education and related services, are identified, located, and evaluated, regardless of the severity of their disability. (34 C.F.R. § 300.111(a)(1)(i), 300.2(b)(1)(iv)).¹³ Students suspected of having a disability who need special education and related services must be evaluated, subject to applicable parental consent requirements, in a timely manner, even if the student will not be in the facility long enough to complete the evaluation. (34 C.F.R. §§ 300.300(a), 300.301(c)(1)).

If a student transfers from an LEA to a correctional facility in the same school year after the evaluation has begun, both the correctional facility and LEA must coordinate an assessment to ensure that a timely evaluation occurs.¹⁴ *Id.* To meet these requirements, the Department strongly encourages SEAs to develop child find policies and procedures that address the unique challenges associated with identifying students with disabilities in correctional facilities. *Id.*

In addition, SAs must comply with all applicable IDEA secondary transition requirements to facilitate eligible students' movement from secondary education in the correctional facility to appropriate post-school activities. (34 C.F.R. § 300.320(b)).

A student with a disability is entitled to the protections in the IDEA discipline procedures. Students who miss more than 10 consecutive school days or a series of removals that total more than 10 days in a school year due to facility disciplinary policies require a manifestation determination under IDEA as this constitutes a change in placement. SAs should work with LEAs and local delinquent facilities to transfer records, including special education records and evaluation information, in a timely manner in accordance with State law. (34 C.F.R. §§ 300.530–300.535).

¹² This term has the same meaning as children with disabilities under IDEA Part B, 34 C.F.R. § 300.8.

¹³ This is not applicable to children with disabilities who are convicted as adults in an adult correctional facility for whom the State is otherwise not required to provide FAPE (with some exception). The IDEA child find requirement applies to students in juvenile correction facilities who have not yet been identified as needing special education and related services because of a disability. (See [Dear Colleague Letter](#) OSEP/OSERS (December 5, 2014)).

¹⁴ If a student with a disability arrives at a correctional facility from out of state, under the IDEA, the SA must conduct its own evaluation and make a new eligibility determination pursuant to 34 C.F.R. §§ 300.304-300.306.

G-9. What are the responsibilities of an SA regarding youth who have come into contact with both the child welfare and juvenile justice systems?

An SA must describe in its subgrant application how it will, to the extent feasible, identify when a youth has come into contact with both the child welfare and juvenile justice system. (ESEA section 1414(c)(20)(A)). The SA application must also describe how the SA will provide timely, evidence-based services and interventions to help those youth stay in school. (ESEA section 1414(c)(20)(B)).

The [Connections with Youth in the Child Welfare System](#) website has additional information about the overlapping risk factors for this population. In addition, NDTAC offers a number of [practices and strategies](#) for supporting students involved in both the child welfare and juvenile justice systems, such as maintaining transcripts of progress in courses at all times during the school year so that transcripts can be transferred immediately when youth changes system, providing youth with access to trained counselors to learn about postsecondary education options, and seeking and using authentic family and caregiver input.¹⁵

H. INSTITUTION-WIDE PROJECTS

H-1. What are institution-wide projects?

ESEA section 1416 authorizes an SA that provides free public education for children and youth in an institution for neglected or delinquent children and youth (other than an adult correctional institution) or attending a community day program for neglected or delinquent children and youth to use Subpart 1 funds to serve all children and youth in, and upgrade the entire educational effort of, that institution or program. To operate an institution-wide project, the SA must have developed, and the SEA must have approved, a comprehensive plan for that institution or program. (ESEA section 1416).

The purpose of the institution-wide approach is similar to that of schoolwide programs operated under Title I, Part A. The authority enables an SA to:

1. Focus on strategies built on institution-wide reforms that improve the overall educational program of an institution, rather than on add-on services for individual students;
2. Use Subpart 1 funds in coordination with other State and Federal funds for education programs to support comprehensive approaches that meet the educational needs of all children and youth in neglected or delinquent institutions; and
3. Use Subpart 1 funds more flexibly.

An SA operating an institution-wide project is not required to identify particular children and youth in an institution as eligible for services and may use these funds in any manner it chooses, so long as the use is consistent with the SA's comprehensive plan approved by the SEA, as

¹⁵ Gonsoulin, S., Griller Clark, H., & Rankin, V. E. (2015). Quality education services are critical for youth involved with the juvenile justice and child welfare systems. Washington, DC: National Evaluation and Technical Assistance Center for Children and Youth Who Are Neglected, Delinquent, or At-Risk (NDTAC). https://neglected-delinquent.ed.gov/sites/default/files/NDTAC_Correctional_ED_Practice_Guide_508.pdf.

described in question H-2. (ESEA section 1416). An SA may use its comprehensive needs assessment, for example, to identify students with greater needs and focus on services for those students.¹⁶

H-2. How does an SA apply to operate an institution-wide project?

ESEA section 1416 requires that an SA apply to operate an institution-wide project by submitting for approval by the SEA a comprehensive plan that:

1. Provides for a comprehensive assessment of the educational needs of all children and youth in the institution or program serving juveniles;
2. Provides for a comprehensive assessment of the educational needs of youth aged 20 and younger in adult facilities who are expected to complete incarceration within a 2-year period;
3. Describes the steps the SA has taken, or will take, to provide all children and youth under age 21 with the opportunity to meet challenging State academic standards in order to improve the likelihood that the children and youth will attain a regular high school diploma or its recognized equivalent, or find employment after leaving the institution;
4. Describes the instructional program, specialized instructional support services, and procedures that will be used to meet the needs described in paragraph (1), including, to the extent feasible, the provision of mentors for the children and youth described in paragraph (1), and how relevant and appropriate academic records and plans regarding the continuation of educational services for such children or youth are shared jointly between the SA operating the institution or program and LEA in order to facilitate the transition of such children and youth between the LEA and the SA;
5. Specifically describes how such funds will be used;
6. Describes the measures and procedures that will be used to assess and improve student achievement;
7. Describes how the agency has planned, and will implement and evaluate, the institution-wide or program-wide project in consultation with personnel providing direct instructional services and support services in institutions or community day programs for neglected or delinquent children and youth, and with personnel from the SEA; and
8. Includes an assurance that the SA has provided for appropriate training for teachers and other instructional and administrative personnel to enable such teachers and personnel to carry out the project effectively (please see question G-1 for related resources).

H-3. May an adult correctional institution use its funds for an institution-wide project?

No. Institution-wide programs may only be operated in an institution for neglected or delinquent children and youth or in a community day program for neglected or delinquent children and youth. (ESEA section 1416).

¹⁶ Read, N. W. (2009). Planning and Implementing Institutionwide Projects. Washington, DC: National Evaluation and Technical Assistance Center for the Education of Children and Youth Who Are Neglected, Delinquent, or At Risk (NDTAC). <https://neglected-delinquent.ed.gov/sites/default/files/iwpBrief.pdf>.

I. TRANSITION SERVICES

I-1. Is an SA required to provide transition services?

Yes. One of the goals of the Title I, Part D program is to provide neglected, delinquent, or at-risk children and youth with services to enable them to transition successfully from institutionalization to further schooling or employment. (ESEA section 1401(a)(2)).

ESEA section 1418(a) requires that each SA reserve not less than 15 percent and not more than 30 percent of the amount it receives in any year under Subpart 1 to support transition services. Transition services projects may be conducted either directly by the SA or through a contract or other arrangement with one or more LEAs, other public agencies, or private nonprofit organizations. (ESEA section 1418(b)). Transition activities, like other activities funded by Subpart 1, must supplement and not supplant services that would in the absence of Subpart 1 funds be provided through State or local funds.

I-2. What are transition services?

Transition services focus on helping children and youth who are delinquent, to successfully reenter their local school, postsecondary education, career and technical training programs, or to find employment after they leave the institution and return to the local community.

Transition services are services that support:

1. Projects that facilitate the transition of children and youth between State-operated institutions, or institutions in the State operated by the Secretary of the Interior, and schools served by LEAs or schools operated or funded by the Bureau of Indian Education; or
2. The successful reentry of youth offenders, who are age 20 or younger and have received a regular high school diploma or its recognized equivalent, into postsecondary education, or career and technical training programs, through strategies designed to expose the youth to, and prepare the youth for, postsecondary education, or career and technical training programs, such as:
 - A. Preplacement programs that allow adjudicated or incarcerated youth to audit or attend courses on college, university, or community college campuses, or through programs provided in institutional settings;
 - B. Worksite schools, in which institutions of higher education and private or public employers partner to create programs to help students make a successful transition to postsecondary education and employment; and
 - C. Essential support services to ensure the success of the youth, such as personal, career and technical, and academic, counseling; placement services designed to place the youth in a university, college, or community college program; information concerning, and assistance in obtaining, available student financial aid; counseling services; and job placement services.

(ESEA section 1418(a)(2)).

SAs may provide these services to students directly, or may contract services out to an LEA, other public agencies, or to private nonprofit organizations in a wide variety of educational

settings designed to meet the unique needs of students served by this program. NDTAC provides resources on transition services, including a [Transition Toolkit Supplement](#) that was published September 2023.

I-3. What steps must an SEA take to ensure the timely re-enrollment of students in secondary schools or re-entry programs, including the transfer of credits?

An SEA must have procedures to ensure the timely re-enrollment of each student who has been placed in the juvenile justice system in secondary school or in a re-entry program that meets the needs of the student, including the transfer of credits that such student earned during the placement. (ESEA section 1414(a)(2)(E)). In developing these procedures, the Department encourages SEAs to consult with SAs and LEAs to identify and quickly address barriers to re-enrollment and the transfer of credits. For example, SAs should be prepared to provide information about the SA curriculum and program offerings, adherence to State standards, or other information necessary to assist LEAs in understanding the course content offered to students by the SA so that the receiving school can accept full and partial course credits and ensure appropriate course placement for the student. Students served in SA programs should be included in the State’s assessment and accountability system so that students receive the same academic programming as other youth and SAs are held accountable for the students’ academic success.¹⁷ Additionally, the Department encourages SAs to provide training and technical assistance to LEA staff, including administrators, registration clerks, and school counselors, on the need to provide timely reenrollment to students transitioning from SA facilities.

I-4. Could an SA fund both pre-release and post-release activities using funds reserved for transition?

Yes. Transition activities could include both within-institution pre-release activities as well as post-release activities. As described in ESEA section 1418(a)(1), this could include activities in State-operated institutions as well as in the schools that students are transitioning to, such as schools served by LEAs.

Examples of pre-release activities could include transition planning, preplacement programs that allow youth to audit or attend postsecondary education courses, and postsecondary education and job placement services and counseling.

Examples of post-release activities could include job-based or postsecondary education counseling and support services, as well as the support of a transition team.

¹⁷ Gonsoulin, S., Griller Clark, H., & Rankin, V. E. (2015). Quality education services are critical for youth involved with the juvenile justice and child welfare systems. Washington, DC: National Evaluation and Technical Assistance Center for Children and Youth Who Are Neglected, Delinquent, or At-Risk (NDTAC). https://neglected-delinquent.ed.gov/sites/default/files/NDTAC_Correctional_ED_Practice_Guide_508.pdf.

I-5. Can Subpart 1 transition funds be used for postsecondary education courses and placement services?

Under certain circumstances, yes. Subpart 1 funds may be used for transition activities including preplacement programs that allow adjudicated or incarcerated youth to audit or attend courses on college, university, or community college campuses. (ESEA section 1418(a)(2)(A)).

Additionally, Subpart 1 funds may be used for essential support services such as counseling, placement services designed to place the youth in a university, college, or community college program, such as SAT and ACT preparation courses, as well as for information concerning, and assistance in obtaining, available student financial aid (ESEA section 1418(a)(2)(C)), including support in completing the Free Application for Federal Student Aid ([FAFSA](#)).

J. FISCAL CONSIDERATIONS AND ACCOUNTABILITY

J-1. Does Subpart 1 have a supplement, not supplant provision?

Yes. ESEA section 1415(a)(2)(C) requires that programs and projects under Subpart 1 be carried out in a manner consistent with ESEA section 1118, which includes the supplement, not supplant requirement for Title I, Part A. As applied to Subpart 1, an SA must use Subpart 1 funds to provide services that supplement, not supplant, those services that would, in the absence of Subpart 1 funds, be provided for the education of children and youth participating in the Subpart 1 program. Subpart 1 funds may be used to increase the total number of hours of instruction that students receive from State and local sources, regardless of the subject areas in which instruction is given during those hours. (ESEA section 1415(b)). In other words, so long as an SA uses its Subpart 1 program to provide *supplemental* activities (i.e., beyond the regular program of instruction), the SA complies with the supplement, not supplant requirement.

J-2. To what extent may an SEA reserve funds from its Subpart 1 allocation for State administration activities?

As a general rule, section 1004(a) of the ESEA authorizes an SEA to reserve for State administration of Title I, Parts A, C, and D the greater of one percent of the amounts received under these parts or \$400,000. However, under section 1004(b) of the ESEA, when the total annual appropriation for Title I, Parts A, C, and D (Subpart 1) exceeds \$14 billion, the amount an SEA reserves for State administration may not exceed one percent of the amount it would otherwise receive if \$14 billion were allocated among the States for Title I, Parts A, C, and D. In recent years, because of the growth of appropriations for Title I programs, the amount States may reserve for administration has been capped, per the provision of section 1004(b) of the ESEA. Where the greater of the amounts described above that are available for State administration is \$400,000, the SEA is not required to reserve funds proportionately from each of Parts A, C, and D (Subpart 1) and may, for example, reserve funds entirely from Title I, Part A. However, in reserving \$400,000, an SEA may not reserve more funds for State administration from Part C or Part D than it would have had it reserved proportionately from Parts A, C, and D. (34 C.F.R. § 200.100(b)(2)).

J-3. May an SA carry over Subpart 1 funds?

Yes. If an SA does not obligate all of its subgrant funds in the fiscal year for which the funds were appropriated, it may carry over the excess funds for obligation during a carryover period of one additional fiscal year. There is no limitation on the amount of funds that an SA may carry over. Both the SEA and SA, however, must obligate all funds within the 27-month period of availability of the grant. (See General Education Provisions Act (GEPA) section 421(b); 34 C.F.R. § 76.709).

J-4. Can the SEA reallocate Subpart 1 funds from one SA to another?

Yes. Under ESEA section 1413, if an SEA determines that an SA does not need the full amount of a subgrant for which the SA is eligible for any fiscal year, the SEA may reallocate the amount that will not be needed to other eligible SAs that need additional funds to carry out their Subpart 1 programs. An SEA has discretion to determine the amount of the funds to be reallocated.

Unclaimed or unspent Subpart 1 funds cannot be reallocated to Subpart 2.

J-5. May an SEA transfer funds from Subpart 1 to Subpart 2?

No. Subpart 1 and Subpart 2 have separate authorizations. Only SAs are eligible to receive subgrants from SEAs under Subpart 1, and only LEAs are eligible to receive subgrants from SEAs under Subpart 2.

J-6. Is the SA required to demonstrate maintenance of effort?

Yes. All SAs, whether an SEA or a separate agency, are required to include in their application for funds “data showing that the SA has maintained the fiscal effort required of an LEA, in accordance with section 8521.” (ESEA section 1414(c)(7)).

J-7. What are the monitoring responsibilities of an SEA for SAs under Subpart 1?

An SEA is required by Federal regulations (2 C.F.R. § 200.332(d)) to monitor its subgrantees for implementation of requirements of the program statute and regulations. Those requirements include monitoring the implementation of the SA program under Subpart 1.

III. LOCAL AGENCY PROGRAMS FOR DELINQUENT AND AT-RISK YOUTH (SUBPART 2)

K. FEDERAL ALLOCATION OF FUNDS TO STATES (ANNUAL COUNT)

K-1. How are SEA Subpart 2 allocations calculated?

Unlike Subpart 1, which provides a separate allocation to SEAs, the ESEA requires an SEA to retain a portion of its Title I, Part A allocation for the Subpart 2 program. (ESEA section 1402(b)).

The Department calculates Subpart 2 allocations for each State based on the number of children and youth aged 5 to 17 who reside in locally operated institutions for delinquent children and youth. (ESEA section 1124(c)(1)(B)).¹⁸ An SEA may not include children or youth in this count that (1) have been included in the SEA's Subpart 1 count or (2) live in Federally operated institutions. (ESEA section 1124(c)(1)(B)). The caseload data must be for 30 consecutive days, at least one day of which is in October. (ESEA section 1124(c)(4)(B)). The Title I, Part A allocation tables that the Department provides to each SEA show the specific amount of Title I, Part A funds that the Department allocates for Subpart 2 purposes.

K-2. Based on the October caseload data used by the Department, how should the SEA count children and youth in a locally operated institution where some children or youth are considered neglected and others are considered delinquent?

For context, this question generally arises because in the same report through which an SEA provides the Department with the counts of children and youth in locally operated institutions for delinquent children and youth, an SEA also reports counts of children and youth in locally operated institutions for neglected children and youth (neglected count). The neglected count does not generate Subpart 2 funds; rather, it generates Title I, Part A funds for the LEA in which the local facility for neglected children and youth is located, triggering the application of a requirement in ESEA section 1113 for the LEA to provide Title I, Part A services to these children and youth.

An SEA must report all children and youth who reside in the same facility as either “neglected” or “delinquent”; it may not report some students as neglected and others as delinquent. An institution for “neglected or delinquent” students is a public or private residential facility, other than a foster home, that is operated for the care of children and youth who have been committed to the institution or voluntarily placed in the institution under applicable State law due to abandonment, neglect, or death of their parents or guardians, or a public or private residential facility for the care of children and youth who have been adjudicated to be delinquent or in need of supervision. (ESEA section 1432(4)).

¹⁸ For the purpose of the child count, all children who are in correctional institutions are considered to be living in institutions for delinquent children. (ESEA section 1124(c)(4)(D)).

To determine whether an institution serving both neglected and delinquent children and youth is most appropriately categorized as a delinquent or a neglected institution, an SEA should look at the purpose of the institution. In doing so, the SEA should consider a variety of factors including (1) whether the facility primarily serves delinquent children and youth, (2) the purpose of the facility as reflected in its charter, and (3) other relevant information such as statements on the facility's website regarding its purpose. For example, if the majority of children and youth served in that institution are considered neglected because they were committed to the institution or voluntarily placed in the institution under applicable State law due to abandonment, neglect, or death of their parents or guardians, all of the children and youth in that institution should be counted as neglected. The SEA should continue to count all of the children and youth in such an institution as neglected unless its charter and purpose change. It is important that the SEA be consistent in how it reports these data every year. A change in an institution's categorization without a clear change in purpose would improperly affect the LEA eligibility and allocations under Title I, Part A formulas.

K-3. May an SEA include out-of-State children and youth who reside in locally operated institutions in the count of children and youth in locally operated institutions for delinquent children and youth and adult correctional facilities it submits to the Department?

Yes. The count is based on the October caseload count of any children or youth in the facility, regardless of the child's or youth's State of origin.

L. STATE SUBGRANTS TO ELIGIBLE LEAS

L-1. How does an SEA make Subpart 2 subgrants to LEAs?

From Title I, Part A funds retained by the State for Subpart 2 purposes, the SEA awards subgrants to eligible LEAs with high numbers or percentages of children and youth residing in locally operated correctional facilities, or community day programs for delinquent children and youth not operated by the State. (ESEA section 1422(a)).

The SEA has the option of awarding subgrants to eligible LEAs by formula or through a competitive grant process. The Department encourages SEAs to consider the needs of their State in selecting the means of awarding subgrants under Subpart 2. NDTAC has provided several trainings for SEAs on factors to consider in making this determination.¹⁹ If an SEA distributes funds through a formula, it may allocate funds proportionately among the eligible LEAs based on each LEA's proportionate share of children and youth in correctional facilities or delinquent institutions, or it may choose to use a different formula for distributing funds to LEAs. If an SEA chooses to award Subpart 2 subgrants on a competitive basis, it may establish criteria or priorities (or both), consistent with State requirements for awarding subgrants. In either case, the SEA must develop procedures for determining and notifying LEAs within the State that they are eligible to apply for and receive Subpart 2 funds. (ESEA section 1422(c)). The Department

¹⁹ See <https://neglected-delinquent.ed.gov/events/2021-ndtac-webinar-lea-subpart-2-applications-considering-options> and <https://neglected-delinquent.ed.gov/events/march-2023-ndtac-webinar-applications-topical-call>.

encourages an SEA to consider how its application process can prioritize the State's areas of greatest need through setting priorities, emphasizing key requirements, and requiring specific details in program narratives and budgets.

More detail about these steps is provided in subsequent questions.

Step 1: Identify LEAs that are potentially eligible by virtue of having a locally operated correctional facility, including community day programs that serve delinquent children and youth, within their boundaries (see question L-2).

Step 2: Among potentially eligible LEAs, the SEA identifies the data it will use to determine which of these LEAs has high numbers or percentages of children and youth residing in locally operated correctional facilities or attending community day programs for delinquent children and youth (see question L-3 and L-4).

Step 3: Using the data from Step 2, the SEA identifies eligible LEAs (i.e., those LEAs with high numbers or percentages of children and youth residing in locally operated correctional facilities or attending community day programs for delinquent children and youth) (see question L-3 and L-4).

Step 4: An SEA determines subaward amounts through a formula using the data from Step 3 or through a competition among interested LEAs identified in Step 3.

L-2. What is a locally operated correctional facility?

A locally operated correctional facility is a facility in which persons are confined as a result of a conviction for a criminal offense, including persons under 21 years of age. The term also includes a local public or private institution and community day program or school not operated by the State that serves delinquent children and youth (i.e., children and youth adjudicated to be delinquent or in need of supervision). (34 C.F.R. § 200.90(c)). Please note that the average length of stay requirement for institutions for delinquent children and youth only applies to Subpart 1.

L-3. Does an SEA have discretion in determining what constitutes a high number or percentage of children and youth residing in locally operated correctional facilities?

Yes, the SEA has discretion in defining what represents a high number and a high percentage. The Department encourages the SEA to establish both what constitutes a "high number" and a "high percentage" so that small and large LEAs have opportunities to apply for the funding.

For example, an SEA might choose to aggregate the number of children and youth residing in locally operated correctional facilities and institutions, community day programs, and schools that serve delinquent children and youth across the State and divide this by the numbers of LEAs containing such institutions or facilities. Any LEA with a number higher than the State average, or a minimum number established by the SEA, could be considered to have a "high number." In determining what represents a "high percentage," an SEA might, for example, consider an LEA in which the locally operated correctional facilities and institutions, community day programs,

and schools that serve delinquent children and youth serve children and youth totaling more than 10 percent of the LEA's total school-age population as having a high percentage.

L-4. In making subgrants to LEAs, must an SEA use the same data the Department used to determine Subpart 2 allocations?

No. An SEA is not required to use the same data for purposes of making subgrants. As noted above, in allocating Subpart 2 funds to States, the Department uses an October caseload count of children and youth living in locally operated institutions for delinquent children and youth. However, when determining whether an LEA has a high number or percentage of children and youth residing in locally operated correctional facilities and determining Subpart 2 subgrant amounts, an SEA may use other data, such as the number of children and youth participating in locally operated community day school programs and schools not operated by the State that serve children and youth who are delinquent and who do not live in a facility.

M. LEA APPLICATIONS

M-1. How does an LEA apply to the SEA for funds?

In general, to receive Subpart 2 funds, each eligible LEA must submit an application to the SEA that includes the information required in ESEA section 1423. However, if an SEA uses a consolidated local plan or application under ESEA section 8305, the SEA may determine which of the elements in ESEA section 1423 are necessary for an LEA to include in its consolidated local plan or application. Regardless, the SEA should collect sufficient information to ensure that all of the requirements of the program will be carried out, such as the population served, the activities to be funded, and any other relevant information.

If the SEA awards funds competitively or does not use a consolidated local plan or application, the LEA application must include:

1. A description of the program to be assisted;
2. A description of formal agreements, regarding the program to be assisted, between—
 - A. The LEA; and
 - B. Correctional facilities and alternative school programs serving children and youth involved with the juvenile justice system, including such facilities operated by the Secretary of the Interior and Indian Tribes;
3. As appropriate, a description of how participating schools will coordinate with facilities working with delinquent children and youth to ensure that such children and youth are participating in an education program comparable to one operating in the local school such youth would attend (i.e., an education program of similar quality and scope);
4. A description of the program operated by participating schools to facilitate the successful transition of children and youth returning from correctional facilities and, as appropriate, the types of services that such schools will provide such children and youth and other at-risk children and youth;
5. A description of the characteristics (including learning difficulties, substance abuse problems, and other special needs) of the children and youth who will be returning from correctional facilities and, as appropriate, other at-risk children and youth expected to be

- served by the program, and a description of how the school will coordinate existing educational programs to meet the unique educational needs of such children and youth;
6. As appropriate, a description of how schools will coordinate with existing social, health, and other services to meet the needs of students returning from correctional facilities, at-risk children or youth, and other participating children or youth, including prenatal health care and nutrition services related to the health of the parent and the child or youth, parenting and child development classes, child care, targeted reentry and outreach programs, referrals to community resources, and scheduling flexibility;
 7. As appropriate, a description of any partnerships with institutions of higher education or local businesses to facilitate postsecondary education and workforce success for children and youth returning from correctional facilities, such as through participation in credit-bearing coursework while in secondary school, enrollment in postsecondary education, participation in career and technical education programming, and mentoring services for participating students;
 8. As appropriate, a description of how the program will involve parents and family members in efforts to improve the educational achievement of their children or youth, assist in dropout prevention activities, and prevent the involvement of their children or youth in delinquent activities (please see questions O-11 and O-12 for related resources);
 9. A description of how the program under this subpart will be coordinated with other Federal, State, and local programs, such as programs under Title I of the Workforce Innovation and Opportunity Act and career and technical education programs serving at-risk children and youth;
 10. A description of how the program will be coordinated with programs operated under the Juvenile Justice and Delinquency Prevention Act of 1974 and other comparable programs, if applicable;
 11. As appropriate, a description of how schools will work with probation officers to assist in meeting the needs of children and youth returning from correctional facilities;
 12. A description of the efforts participating schools will make to ensure correctional facilities working with children and youth are aware of a child's or youth's existing individualized education program (IEP); and
 13. As appropriate, a description of the steps participating schools will take to find alternative placements for children and youth interested in continuing their education but unable to participate in a traditional public school program.
- (ESEA section 1423).

M-2. May an agency other than an LEA apply to the SEA for Subpart 2 funds?

No. Only LEAs are eligible to apply to the SEA. An LEA, however, once it receives a Subpart 2 subgrant from the SEA, may then enter into an arrangement with another entity—either through a contract, subgrant, or cooperative agreement—to provide services. (ESEA section 1424(b)). In such instances, the LEA must exercise administrative control and assume responsibility for monitoring to ensure compliance with applicable statutory and regulatory requirements.

N. ELIGIBILITY FOR SERVICES

N-1. How does the LEA determine the eligibility of children and youth to receive services under Subpart 2?

All children and youth age 21 and younger who reside in a locally operated correctional facility are eligible to be served. In addition, children and youth returning from correctional facilities to attend a school in the LEA are also eligible for Subpart 2 services. Finally, the LEA may also serve other at-risk children and youth in local schools. (See ESEA sections 1421 and 1424; 34 C.F.R. § 200.90(a)). (Section O provides more detail about the allowable uses of Subpart 2 funds.)

N-2. What does it mean to be at-risk?

The term “at-risk,” when used with respect to a child, youth, or student, means a school-aged individual who is at-risk of academic failure, dependency adjudication, or delinquency adjudication; has drug or alcohol problem; is pregnant or is a parent; has come into contact with the juvenile justice system or child welfare system in the past; is at least one year behind the expected grade level for the age of the individual; is an English learner; is a gang member; has dropped out of school in the past; or has a high absenteeism rate at school. (ESEA section 1432(2)). This may include students who are receiving services under other Federal, State, or local programs, such as students identified as homeless or migratory students.

N-3. May children and youth who were not included in the annual count receive services under Subpart 2?

Yes. Statutory and regulatory requirements dictate which children, youth and facilities are eligible to be included in the annual counts, but LEAs have considerable flexibility and discretion in determining which students may be served with Subpart 2 funds. In many instances, this means that the students counted will not be the same students receiving services. For example, at-risk children and youth who do not reside in locally operated correctional facilities would not be included in the annual count but could be served with Subpart 2 funds in a local school that is part of the eligible LEA.

N-4. May an LEA use Subpart 2 funds to serve a particular category of at-risk youth, such as English learners or youth who are immigrants, rather than other categories of youth, without documenting that those children and youth have the greatest need?

Yes. An LEA may target Subpart 2 funds to meet the needs of one or more categories of children and youth who are at-risk without documenting that such a category or categories have greater needs than other categories. However, depending on SEA application requirements, an LEA might be required to explain its rationale for choosing to serve a particular category of children or youth who are at-risk.

N-5. May an LEA provide services to delinquent children and youth in community day programs under Subpart 2?

Yes. 34 C.F.R. § 200.91(c) defines a “locally operated correctional facility” to include a local public or private institution and community day program or school not operated by the State that serves delinquent children and youth. As States are moving towards increasing home and community-based placements rather than residential placements, the Department encourages SEAs and LEAs to consider how youth in such placements can be served, consistent with the statutory requirements of this program. In many areas, juvenile courts are prioritizing nonresidential placements where adjudicated youth must attend a community-based program while continuing to live at home. These types of programs include day treatment, reporting centers, and intensive supervision programs. LEAs should identify and address gaps in the supports offered at these facilities, such as college and career counseling, family engagement activities, and services and supports from the LEA homeless liaison, as well as educational programming such as career and technical education, dual enrollment or college preparatory coursework, and fine arts.

O. LEA USES OF FUNDS AND PROGRAM IMPLEMENTATION

O-1. What are allowable uses of Subpart 2 funds?

An LEA may use Subpart 2 funds for—

1. Programs that serve children and youth returning to local schools from correctional facilities, to assist in the transition of such children and youth to the school environment and help them remain in school in order to complete their education (please see questions O-3, O-5, O-6, O-8, O-11, and O-12 for related resources);
2. Dropout prevention programs which serve at-risk children and youth;
3. The coordination of health and social services for such individuals if there is a likelihood that the provision of such services, including child care, drug and alcohol counseling, and mental health services, will improve the likelihood such individuals will complete their education;
4. Special programs to meet the unique academic needs of participating children and youth, including career and technical education, special education, career counseling, curriculum-based youth entrepreneurship education, and assistance in securing student loans or grants for postsecondary education;
5. Programs providing mentoring and peer mediation;
6. Programs for at-risk Indian children and youth, including such children and youth in correctional facilities in the area served by the LEA that are operated by the Secretary of the Interior or Indian Tribes; and
7. Pay for success initiatives.²⁰
(ESEA section 1424(a)).

²⁰ For more information on pay-for-success (PFS) initiatives, please see question G-5.

Transitional and supportive programs operated in LEAs receiving Subpart 2 funds must be designed primarily to meet the transitional and academic needs of students returning to LEAs or alternative education programs from correctional facilities, and services to students at-risk of dropping out of school must not have a negative impact on meeting such transitional and academic needs of the students returning from correctional facilities. (ESEA section 1422(d)). An LEA that serves a school operated by a locally operated correctional facility in which more than 30 percent of the children and youth attending the school will reside outside the boundaries served by the LEA upon leaving the facility is not required to operate a program of support within the school and may use all of its Subpart 2 funds for programs in locally operated correctional facilities, provided that those facilities have a formal agreement with the LEA. (ESEA section 1422(b)).

O-2. What are the program implementation requirements for locally operated correctional facilities under Subpart 2?

Each correctional facility must:

1. Where feasible, ensure that educational programs in the correctional facility are coordinated with the student's home school, particularly with respect to a student with an individualized education program under part B of the Individuals with Disabilities Education Act (please also see related question O-13);
2. If the child or youth is identified as in need of special education services while in the correctional facility, notify the local school of the need of the child or youth;
3. Where feasible, provide transition assistance to help the child or youth stay in school, including coordination of services for the family, counseling, assistance in accessing drug and alcohol abuse prevention programs, tutoring, and family counseling;
4. Provide support programs that encourage children and youth who have dropped out of school to reenter school and attain a regular high school diploma once their term at the correctional facility has been completed, or provide such children and youth with the skills necessary to gain employment or seek a regular high school diploma or its recognized equivalent;
5. Work to ensure that the correctional facility is staffed with teachers and other qualified staff who are trained to work with children and youth with disabilities taking into consideration the unique needs of such children and youth;
6. Ensure that educational programs in the correctional facility are designed to assist students to meet the challenging State academic standards;
7. To the extent possible, use technology to assist in coordinating educational programs between the correctional facility and the community school;
8. Where feasible, involve parents in efforts to improve the educational achievement of their children and youth and prevent the further involvement of such children and youth in delinquent activities;
9. Coordinate funds received under this subpart with other local, State, and Federal funds available to provide services to participating children and youth, such as funds made available under title I of the Workforce Innovation and Opportunity Act, and career and technical education funds;
10. Coordinate programs operated under this subpart with activities funded under the Juvenile Justice and Delinquency Prevention Act of 1974 and other comparable programs, if applicable;

11. If appropriate, work with local businesses to develop training, curriculum-based youth entrepreneurship education, and mentoring programs for children and youth;
 12. Upon the child's or youth's entry into the correctional facility, work with the child's or youth's family members or guardians and the LEA that most recently provided services to the child or youth (if applicable) to ensure that the relevant and appropriate academic records and plans regarding the continuation of educational services for such child or youth are shared jointly between the correctional facility and LEA in order to facilitate the transition of such children and youth between the LEA and the correctional facility; and
 13. Consult with the LEA for a period jointly determined necessary by the correctional facility and LEA upon discharge from that facility, to coordinate educational services so as to minimize disruption to the child's or youth's achievement.
- (ESEA section 1425).

O-3. May Subpart 2 funds be used for mentoring programs?

Yes. ESEA section 1424(a)(5) authorizes the use of Subpart 2 funds to provide mentoring.²¹ For additional information and resources on effective mentoring programs, see question G-3.

O-4. How can Subpart 2 funds be used for dropout prevention programs for at-risk children and youth?

LEAs may use Subpart 2 funds to support dropout prevention and intervention programs for at-risk youth if doing so does not have a negative impact on meeting the transitional and academic needs of students returning to LEAs from correctional facilities. (ESEA section 1422(d)).

LEAs should consider programs that offer students multiple evidence-based pathways to success that are personalized to their unique needs and circumstances. Programs may include, but are not limited to, the ability to earn a diploma through accelerated learning, dual enrollment or early college programs; career and technical education; and summer learning and enrichment. LEAs should also offer the opportunity to earn a GED or recognized equivalent when earning a regular high diploma is not the best choice for the student, specifically those who are significantly over-aged and under-credited. As noted in this [May 2024 Dear Colleague Letter](#), youth in correctional facilities should also be connected to career and technical education programs including those programs that offer certification, such as manufacturing technicians, machinists, and medical assistants. This will enable youth served in Title I, Part D programs to acquire valuable education and workforce credentials and increase employability upon transition back to their communities. LEAs should assess students for other challenges that may impact successful learning, such as

²¹ David L. DuBois, "Mentoring Programs for Youth: A Promising Intervention for Delinquency Prevention," May 26, 2021, <https://nij.ojp.gov/topics/articles/mentoring-programs-youth-promising-intervention-delinquency-prevention>.

special education needs, language barriers, or undiagnosed mental health needs. Resources on dropout prevention and intervention may be found at the What Works Clearinghouse.²²

O-5. To what extent may Subpart 2 funds support online programs for virtual learning?

Online programs are an acceptable use of funds for Subpart 2 if the expenditure falls under one of the allowable uses of funds in ESEA section 1424(a). The Department encourages consideration of whether there is sufficient data to support their need and if the programs are of high quality and have an evidence base showing that they are likely to lead to successful outcomes for students. The Department’s [Ed Tech Evidence Toolkit](#) may be a helpful resource to support educational leaders with using evidence to inform the selection of educational technology programs in schools.

O-6. To what extent may Subpart 2 funds support access to advanced coursework?

Subpart 2 funds may be used to meet the unique academic needs of participating children and youth, which may include advanced coursework. (ESEA section 1424(a)(4)). This could include college-level academic courses, advanced career and technical education courses that count for credit at vocational colleges and/or trade schools, and high school-level academic courses that count for credit at liberal arts or community colleges.

O-7. May Subpart 2 funds be used for administration or program coordination at the LEA level?

Yes. Subpart 2 funds may be used for program administration or program coordination if such activity is necessary and reasonable for the performance of the Subpart 2 program and allocable thereto. (Uniform Guidance, 2 C.F.R. § 200.403(a)). “A cost is *reasonable* if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost” (Uniform Guidance, 2 C.F.R. § 200.404).

Moreover, consideration should be given to the relative impact of the expenditure given the amount of the grant and number of students who would benefit. Such analysis is necessarily context specific. For example, under these circumstances, funds could be used to hire an administration staff person to facilitate student records transfer.

²²Rumberger, R., Addis, H., Allensworth, E., Balfanz, R., Bruch, J., Dillon, E., Duardo, D., Dynarski, M., Furgeson, J., Jayanthi, M., Newman-Gonchar, R., Place, K., & Tuttle, C. (2017). Preventing dropout in secondary schools (NCEE 2017-4028). Washington, DC: National Center for Education Evaluation and Regional Assistance (NCEE), Institute of Education Sciences, U.S. Department of Education. <https://ies.ed.gov/ncee/wwc/PracticeGuide/24>. Additional resources on providing career and technical education for justice-involved youth include [Improving Equity and Access to High-Quality CTE for Youth and Young Adults in the Justice System - CSG Justice Center](#) and [Perkins Briefs: Justice-Involved Learners \(careertech.org\)](#).

O-8. May Subpart 2 funds be used by an LEA to support training in career and technical skills and GED prep in an independently operated institution for youth who are delinquent?

Yes, so long as the program application is approved by the LEA and meets the statutory requirements in Subpart 2.

O-9. May an LEA use Subpart 2 funds to support alternative programs for children and youth who are at-risk?

Yes. In addition to supporting community day programs for delinquent children and youth (see question N-5), Subpart 2 funds may also support children and youth who are at-risk as defined by section 1432 of the ESEA. To ensure that Subpart 2 funds are appropriately used for LEA-operated alternative programs for children and youth who are at-risk, the SEA may require an LEA to describe the procedures it uses to select participating schools and children and youth. Although the statute makes no specific provisions for selecting schools in which an LEA uses Subpart 2 funds to serve children and youth who are at-risk, an SEA that awards Subpart 2 funds on a competitive basis may prioritize subgrants to LEAs that allocate funds based on need, which could reflect concentration of poverty, dropout rates, or some other reasonable objective indicator of educational need. The SEA could also prioritize subgrants to LEAs that require participating schools to use evidence-based interventions to address the needs of at-risk students served with Subpart 2 funds.

O-10. How may Subpart 2 programs effectively coordinate with other Federal and State programs that serve high-need youth?

There are many ways that an LEA receiving a Subpart 2 grant can ensure effective coordination with other programs serving high-need youth and leverage existing funding to foster cross-system collaboration. See question G-4 for examples and resources that address this question.

O-11. What resources are available to support LEAs in working with parents and families?

Family engagement activities are most effective when they are linked to learning, focus on building relationships between home and school, build the development of the whole child, are group activities, and allow for interaction. Educational programs housed within facilities should build programs that are system-wide, integrated into the program's structures and processes, and sustainable.

Facilities should focus on a range of activities that engage families from the time a student enters the facility until the student transitions to a new program. Many of the same types of activities offered to families in a regular public school may be adapted to meet the needs of the families of children and youth in facilities. However, facilities should be mindful that families may not be located near the facility where their child is currently staying and should offer virtual opportunities for families that are unable to travel. Facilities are encouraged to use NDTAC's [Family Engagement Toolkit](#) for ideas and templates. Suggested activities include:

- A school website with links to parent/family handbooks, staff bios, curriculum, and other activities that students may participate in, including athletics, career and technical education, and fine arts;
- A welcome letter and periodic newsletters that are emailed or printed and mailed to families that may not have internet access, including communications written in a language that families can understand;
- On-site and virtual family engagement events that may include resources for families and students, opportunities for families to meet with teachers, and opportunities for families to tour the school building or classrooms;
- Family engagement activities and information focused on the social-emotional development of their child/youth;
- Involving families in their child’s transition back to the home community by inviting them to participate in meetings, providing them with resources, providing a copy of their school records, and connecting families to community-based resources.

O-12. How can LEAs involve parents and family members in efforts to improve the educational achievement of their children and prevent the involvement of their children in delinquent activities?

Section 1423(8) of the ESEA requires each LEA to include in its application, as appropriate, a description of how it will “involve parents and family members in efforts to improve the educational achievement of their children, assist in dropout prevention activities, and prevent the involvement of their children in delinquent activities.” Families of students who are residing in locally operated correctional facilities should have the same opportunities to participate in the LEA’s family engagement activities as the families of other students. However, LEAs should be mindful that the families of these students may not live within the LEA and should provide these families with opportunities to participate virtually. NDTAC’s Family Engagement Tool Kit provides guidance and helpful templates for LEAs.

Please note that LEAs have an obligation to ensure meaningful communication with parents and guardians who have limited English proficiency, including providing information about its programs, services, and activities in a language that parents can understand. Additionally, under Section 504 and Title II of the Americans with Disabilities Act, an LEA must ensure that communications with individuals with disabilities are as effective as communications with others (28 C.F.R. § 35.160 and 34 C.F.R. § 104.4(b)(1)(iii)).

If the students receive their education within the LEA, families should be invited to participate in all the regular activities offered at their child’s school. If students are educated within the facility, LEAs should tailor activities accordingly (see question O-11 for more information).

O-13. What are the responsibilities of an LEA in ensuring that children and youth in locally operated correctional facilities are being identified and served under IDEA, Part B?

An LEA that submits a Subpart 2 plan under section 1423 of the ESEA must describe the efforts participating schools will make to ensure that correctional facilities working with children and youth are aware of a student’s existing IEP (see question M-1). The LEA is required to

implement the IEPs of students with disabilities that have an existing IEP or hold an IEP team meeting to modify its contents. (34 C.F.R. § 300.323(e)). An LEA that is responsible for providing educational services to children and youth who are housed in a locally operated correctional facility is also responsible for identifying, evaluating, and serving those students under IDEA, Part B. (34 C.F.R. §§ 300.111(a)(1)(i), 300.300(a), 300.301, 300.323).

These services include the provision of timely evaluations, including the continuation of evaluations that may have begun in another LEA or in a correctional facility, the provision of a free and appropriate public education (FAPE), and the provision of such services in the least restrictive environment (LRE). (34 C.F.R. §§ 300.101, 300.114, 300.301(c)(1)).

LEAs should work with SAs and local delinquent facilities to transfer records, including special education records and evaluation information, in a timely manner in accordance with State law. We encourage LEAs to refer to the Department's [Dear Colleague letter issued on December 5, 2014](#).²³

O-14. How may an LEA coordinate its Subpart 2 services with Title I, Part A?

ESEA section 1113(c)(3)(A)(iii) and 34 C.F.R. § 200.77(a)(3) allow an LEA, where appropriate, to reserve Title I, Part A funds that are reasonable and necessary to provide services designed to improve the academic achievement of children and youth in local institutions for delinquent children and youth and neglected or delinquent children and youth in community day programs. The flexibility to reserve Title I, Part A funds for this purpose enables an LEA to supplement services that it already supports with Subpart 2 funds or add additional services under Title I, Part A that it is not already providing under Subpart 2.

Additionally, if a local institution for delinquent children and youth or a community day program meets the definition of “elementary school” in ESEA section 8101(19) or “secondary school” in ESEA section 8101(45), the school may be eligible to receive Title I, Part A funds from its LEA under ESEA section 1113. (See: <https://oese.ed.gov/files/2022/02/Within-district-allocations-FINAL.pdf>) This is another way that children and youth in local correctional facilities and institutions for youth who are delinquent can receive support from Title I, Part A, in addition to Subpart 2.

O-15. May an LEA use Subpart 2 funds to serve children and youth who reside in a local institution for neglected children and youth?

It depends. For context, ESEA section 1113(c)(3)(A) and 34 C.F.R. § 200.77(a)(2) require an LEA to reserve Title I, Part A funds to provide services comparable to those provided to children and youth in Title I, Part A schools to children and youth in local institutions for neglected children and youth. This means that there is already a different source of Federal funds other than Subpart 2 (i.e., Title I, Part A) that the ESEA requires an LEA to use to support these children and youth.

²³ See also U.S. Departments of Education and Justice, Guiding Principles for Providing High-Quality Education in Juvenile Justice Secure Care Settings, Washington, D.C., 2014. <https://www2.ed.gov/policy/gen/guid/correctional-education/guiding-principles.pdf>.

With respect to Subpart 2, as described above, an LEA must use Subpart 2 funds to serve children and youth in locally operated correctional facilities and children and youth transitioning from these facilities to the LEA's schools. If, after making Subpart 2 funds available to serve these children and youth, the LEA has additional Subpart 2 funds remaining, it may use them to provide services to at-risk children and youth enrolled in the LEA. If a child or youth who resides in a local facility for neglected children and youth is enrolled in the LEA and considered at-risk (see "at-risk" definition above), the LEA may provide the child or youth with Subpart 2 services, which would be in addition to services the child or youth receives under Title I, Part A. If, however, a child or youth who resides in a local facility for neglected children and youth is not enrolled in the LEA, it would not be allowable for the LEA to provide the child or youth with Subpart 2 services. The LEA must, however, still provide the child or youth with Title I, Part A services as described in the previous paragraph.

P. FISCAL CONSIDERATIONS AND ACCOUNTABILITY

P-1. What funds are available for an SEA to administer Subpart 2?

An SEA may use funds it reserves under ESEA section 1004 from its Title I, Parts A, C, and D (Subpart 1) awards to administer Subpart 2. If an SEA consolidates funds reserved under ESEA section 1004 with other State administrative funds under ESEA section 8201, the SEA may use consolidated State administrative funds to administer Subpart 2.

P-2. What options do an LEA and SEA have if a facility receiving Subpart 2 funding closes in the middle of a grant period?

The LEA should work with the SEA to identify other allowable uses of the funds, which might include support for another facility that is eligible to receive Subpart 2 services within the LEA or providing additional services to other eligible children and youth served by the LEA (e.g., children and youth transitioning from a local correctional facility to the LEA's schools).

If an LEA is unable to identify other allowable uses of funds, it should inform the SEA so that the SEA can distribute the unneeded funds to other LEAs. An SEA has the flexibility to determine how this redistribution will occur. For example, an SEA could proportionally increase the subgrant amount provided to all participating LEAs. Alternately, an SEA could establish special procedure and distribution criteria and make the additional funds available to eligible LEAs that meet those criteria. An SEA may not, however, allocate any portion of the LEA funds for use under Subpart 1 (see question P-5).

P-3. What may an LEA do if it has Subpart 2 funds remaining at the end of the year?

Under GEPA section 421(b), funds made available for a given fiscal year must be obligated by both the SEA and LEA within 27 months of the date the Department awards funds to the SEA. Because SEAs may make Subpart 2 subgrants by formula or competitively, an SEA may choose to establish a period of availability for its subgrants, not to exceed 27 months, regardless of whether it makes its Subpart 2 subgrants by formula or competitively. If an SEA establishes a

shorter period of availability for its Subpart 2 subgrants, it may choose to establish a process by which LEAs may apply to the SEA to carry over the funds from one fiscal year to the next.

P-4. Is an LEA that received Subpart 2 funds in the previous year entitled to receive an allocation based on a “hold-harmless” amount in the current year?

No. The hold-harmless provisions of Title I, Part A do not apply to Subpart 2 subgrants received by an LEA from the SEA.

P-5. Can Subpart 2 funds be reallocated to Subpart 1?

No. Subpart 2 funds may only be awarded to LEAs, and Subpart 1 funds may only be awarded to SAs. They cannot be reallocated to one another. For example, if a facility changes from an SA to a local correctional facility, the source of funding for that facility may not be changed during the grant award year from Subpart 1 to Subpart 2. If the State experiences a change in the number of students served by LEAs compared to SAs, this change will be reflected in the next year’s annual count.

P-6. Does the Subpart 2 program include a supplement not supplant provision?

There is no supplement, not supplant provision that applies to Subpart 2. However, the purpose of Title I, Part D funding is to support programs and services that are supplemental to the regular education program and meant to address the specific needs of delinquent and at-risk children and youth.

P-7. What are the monitoring responsibilities of SEAs and LEAs under Subpart 2?

SEAs and LEAs are required to monitor their subgrantees’ implementation of the LEA program funded under Subpart 2. (2 C.F.R. § 200.332(d)). Additionally, LEAs are responsible for monitoring every facility or institution with which they have contracted for services to ensure that the facility or institution is carrying out its responsibilities as outlined in its formal agreement and is complying with all applicable statutory and regulatory requirements.

P-8. How may SEAs hold LEAs accountable for their use of Subpart 2 funds?

In accounting for how effectively Subpart 2 funds are used by the LEA, an SEA may:

1. Reduce or terminate funding for LEA-based projects supported with Subpart 2 funds if the projects do not show progress in the number of children and youth attaining a regular high school diploma or its recognized equivalent; and
2. Require that local correctional facilities and institutions for delinquent children and youth demonstrate, after receiving assistance under Subpart 2 for 3 years, that there has been an increase in the number of children and youth returning to school, attaining a regular high school diploma or its recognized equivalent, or attaining employment after they are released.

(ESEA section 1426).

IV. PROGRAM EVALUATIONS (SUBPART 3)

Q. EVALUATION REQUIREMENTS

Q-1. What are program evaluation requirements for Subpart 1 and 2 programs?

Each SA or LEA that conducts a program for children and youth who are neglected, delinquent, or at-risk under Subparts 1 or 2 must evaluate the program—disaggregating data on participation by gender, race, ethnicity, and age while protecting individual student privacy—not less than once every three years to determine the program’s effect on the ability of participants—

1. To maintain and improve educational achievement and to graduate from high school in the number of years established by the State under either the four-year adjusted cohort graduation rate or the extended-year adjusted cohort graduation rate, if applicable;
2. To accrue school credits that meet State requirements for grade promotion and high school graduation;
3. To make the transition to a regular program or other education program operated by an LEA or school operated by the Bureau of Indian Education;
4. To complete high school (or high school equivalency requirements) and obtain employment after leaving the correctional facility or institution for neglected or delinquent children and youth; and
5. As appropriate, participate in postsecondary education and job training.

(ESEA section 1431(a)).

Disaggregation is not required where the number of students in a category is insufficient to yield statistically reliable information or if the results would reveal personally identifiable information about an individual student. (ESEA section 1431(b)). In conducting each evaluation, an SA or LEA must use multiple and appropriate measures of student progress. (ESEA section 1431(c)).

Each SA and LEA must:

1. Submit evaluation results to the SEA and the Department.
2. Use the results of evaluations to plan and improve subsequent programs for participating children and youth.

(ESEA section 1431(d)).

The Department collects data on Part D programs annually. The data are aggregated at the State level and made public on the Department’s website.²⁴ The Department strongly encourages SEAs to make their performance data public, while protecting individual student privacy.

Part D programs should be designed with the expectation that children and youth will have the opportunity to meet the same challenging State academic content and academic achievement standards that all children and youth in the State are expected to meet. To the extent feasible, evaluations should be tied to the standards and assessment system that the State or school district has developed for all children and youth. For additional information on developing a program

²⁴ For more information see <https://oese.ed.gov/offices/office-of-formula-grants/school-support-and-accountability/prevention-intervention-programs-children-youths-neglected-delinquent-risk/performance-2/>.

evaluation, the Regional Educational Laboratory Central has developed a Program Evaluation Toolkit that can support programs and agencies in developing, analyzing, and presenting evaluation data.²⁵

²⁵ Stewart, J., Joyce, J., Haines, M., Yanoski, D., Gagnon, D., Luke, K., Rhoads, C., & Germeroth, C. (2021). Program Evaluation Toolkit: Quick Start Guide (REL 2022–112). U.S. Department of Education, Institute of Education Sciences, National Center for Education Evaluation and Regional Assistance, Regional Educational Laboratory Central. <http://ies.ed.gov/ncee/edlabs>.