



### Introduction

Identifying institutions for neglected and delinquent children and youth with individuals eligible to be reported in the annual count for allocations under Title I, Parts A and D of the Elementary and Secondary Education Act of 1965 (ESEA) is one of the most critical steps in ensuring that the U.S. Department of Education (ED) has accurate data to calculate allocations under these programs. Making this determination can be challenging for State coordinators as neglected and delinquent institutions vary greatly in their composition, mission, and structure.

The purpose of this tipsheet is to provide State coordinators and stakeholders with information and key requirements to assist them in identifying neglected and delinquent institutions with children and youth eligible to be counted – as opposed to served – in the annual count.

**The tipsheet has four sections:**

**[Section I: Institutions with Eligible Children and Youth to Include in the State Agency Annual Count](#)**

**[Section II: Institutions with Eligible Children and Youth to Include in the Local Agency Annual Count](#)**

**[Section III: Helpful Tips in Determining which Institutions Have Eligible Children and Youth to Include in the Annual Count](#)**

**[Section IV: Identifying New Institutions to be Included in the Annual Count](#)**

The first two sections cover the State agency and local agency counts and include definitions from the statute for the different facility types and key considerations that must be met when determining if an institution should be included in the annual count. Section three provides a list of helpful tips to consider when determining which institutions have eligible children and youth to include in the annual count. The last section provides strategies and suggestions State coordinators can use in identifying new institutions to be included in the annual count.

## Section I: Institutions with Eligible Children and Youth to Include in the State Agency Annual Count

A State Educational Agency (SEA) reports in the State agency annual count for each State agency the number 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.

[\(ESEA section 1412\(a\)\(1\)\(A\)\)](#) [\(34 C.F.R. § 200.91\(a\)\(1\)\)](#)

A State agency is eligible for assistance under this Subpart if such State agency is responsible for providing free public education for children and youth –

- 1) In institutions for neglected or delinquent children and youth;
- 2) Attending community day programs for neglected or delinquent children and youth; or
- 3) In adult correctional institutions.

[\(ESEA section 1411\)](#).

### Definitions

**An institution for neglected children and youth** is, as determined by the State educational agency (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. [\(ESEA section 1432\(4\)\(A\)\)](#); [34 C.F.R. § 200.90\(b\)](#).

**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. [\(ESEA section 1432\(4\)\(B\)\)](#); [34 C.F.R. § 200.90\(b\)](#).

**A regular program of instruction** means 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, and that is supported by non-Federal funds. Neither the manufacture of goods within the institution nor activities related to institutional maintenance are considered classroom instruction. [\(34 C.F.R. § 200.90\(b\)\)](#).

**Community day program** A regular program of instruction provided by a State agency at a community day school operated specifically for neglected or delinquent children and youth. [\[ESEA section 1432\(3\)\]](#).

**Adult correctional institution** 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\(1\)\]](#).

## Key Requirements Charts

The charts below provide key considerations in determining institutions with eligible children and youth to be included in the State agency annual count. For children and youth in an institution to be included in the annual count, responses to all questions must be ‘yes.’

State Institution for Neglected Children and Youth	
Yes/No	Key Requirements*
	Is the State agency responsible for providing free public education to the children and youth in this program? <a href="#">[ESEA section 1411]</a>
	Are students placed in the institution under applicable State law due to abandonment, neglect, or death of their parents or guardians? <a href="#">[ESEA section 1432(4)(A); 34 C.F.R. § 200.90(b)]</a>
	Do the students in the institution have an average length of stay of at least 30 days? <a href="#">[34 C.F.R. § 200.90(b)]</a>
	Are the students enrolled in a regular program of instruction for at least 20 hours per week? <a href="#">[34 C.F.R. § 200.91(a)(1)(i)]</a>
	Does the program serve students who are under the age of 21? <a href="#">[34 C.F.R. § 200.91]</a>
State Institution for Delinquent Children and Youth	
Yes/No	Key Requirements*
	Is the State agency responsible for providing free public education to the children and youth in this program? <a href="#">[ESEA section 1411]</a>
	Have the students in the institution been adjudicated to be delinquent or in need of supervision? <a href="#">[ESEA section 1432(4)(B); 34 C.F.R. § 200.90(b)]</a>  <i>Note the term “adjudicated” generally refers to a judicial determination (e.g., by a court or other tribunal), rather than a determination by a parent or guardian that a child is delinquent or in need of supervision.</i>
	Do the students in the institution have an average length of stay of at least 30 days? <a href="#">[34 C.F.R. § 200.90(b)]</a>
	Are the students enrolled in a regular program of instruction for at least 20 hours per week? <a href="#">[34 C.F.R. § 200.91(a)(1)(i)]</a>
	Does the program serve students who are under the age of 21? <a href="#">[34 C.F.R. § 200.91]</a>
Community Day Program	
Yes/No	Key Requirements*
	Is a State agency responsible for providing free public education to the children and youth in this program? <a href="#">[ESEA section 1411]</a>
	Does the program operate specifically for neglected or delinquent children and youth? <a href="#">[ESEA section 1432(3)]</a>

	Are the students enrolled in a regular program of instruction for at least 20 hours per week? <a href="#">[34 C.F.R. § 200.91 (a)(1)(i)]</a>
	Does the program serve students that are under the age of 21? <a href="#">[34 C.F.R. § 200.91]</a>
<b>Adult Correctional Institution</b>	
<b>Yes/No</b>	<b>Key Requirements*</b>
	Is a State agency responsible for providing free public education to the children and youth in this program? <a href="#">[ESEA section 1411]</a>
	Are the students enrolled in a regular program of instruction for at least 15 hours per week? <a href="#">[34 C.F.R. § 200.91(a)(1)(ii)]</a>
	Does the program serve students that are under the age of 21? <a href="#">[34 C.F.R. § 200.91]</a>

\* For children and youth in an institution to be included in the annual count, responses to all questions must be ‘yes.’

## Section II: Institutions with Eligible Children and Youth to Include in the Local Agency Annual Count

A SEA reports in the annual count for local institutions the count of children a local institution for neglected children or a local institution for delinquent children for each local educational agency (LEA) in which an institution is located.

<b>Definitions</b>
<p><b>Institution for Delinquent Children and Youth</b>  A public or private residential facility for the care of children who have been adjudicated to be delinquent or in need of supervision. <a href="#">[ESEA section 1432(4)(b)]</a></p>
<p><b>Institution for Neglected Children and Youth</b>  A public or private residential facility, other than a foster home, that is operated for the care of children 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.” <a href="#">[ESEA section 1432(4)(a)]</a></p>
<p><b>Adult correctional institution</b></p> <p>The term “adult correctional institution” refers to a facility in which persons, including persons under 21 years of age, are confined as a result of a conviction for a criminal offense. <a href="#">[34 C.F.R. § 200.90(c)]</a>.</p> <p><i>Note: Although students up to the age of 21 can be served in a locally operated adult correctional facility, only students ages 5 to 17 are counted.</i></p>

\* For children and youth in an institution to be included in the annual count, responses to all questions must be ‘yes.’

## Key Requirements Charts

The charts below provide key considerations in determining institutions with eligible children and youth to be included in the Local Agency annual count. For children and youth in an institution to be included in the annual count, responses to all questions must be ‘yes.’

## Institution for Delinquent Children and Youth

Yes/No	Key Requirements*
	<p>Have the students in the institution been adjudicated delinquent or in need of supervision? <a href="#">[ESEA section 1432(4)(b)]</a></p> <p><i>Note the term “adjudicated” generally refers to a judicial determination (e.g., by a court or other tribunal), rather than a determination by a parent or guardian that a child is delinquent or in need of supervision.</i></p>
	<p>Does the institution serve students between 5 to 17 years of age? <a href="#">[ESEA section 1124(c)(4)(B)]</a></p> <p><i>Note that the institution does not have to serve students of all ages 5-17, nor does it have to serve only students ages 5 to 17. The institution does have to serve students within this age range.</i></p>
	<p>Do the students live in the facility? <a href="#">[ESEA section 1432(4)(b)]</a></p>
	<p>Is the institution locally operated (public or private)? Institutions for children for which a State agency is responsible for providing free public education and included in the count for Subpart 1 may not be included in the local institution count. <a href="#">[ESEA section 1124(c)(1)(B)]</a></p>

\* For children and youth in an institution to be included in the annual count, responses to all questions must be ‘yes.’

- Students between the ages of 5 to 17 who are living in locally operated adult correctional institutions can also be included in the count, provided the institution meets the criteria above.
- For the purpose of the local annual count, all children who are in correctional institutions are considered to be living in institutions for delinquent children and youth. [\[ESEA section 1124\(c\)\(4\)\(D\)\]](#).

## Institution for Neglected Children and Youth

Yes/No	Key Requirements*
	<p>Are students placed in the institution under applicable State law due to abandonment, neglect, or death of their parents or guardians? <a href="#">[ESEA section 1432(4)(a)]</a></p>
	<p>Does the institution serve students between 5-17 years of age? <a href="#">[ESEA section 1124(c)(4)(B)]</a></p> <p><i>Note that the institution does not have to serve students of all ages 5-17, nor does it have to serve only students ages 5-17. The institution does have to serve students within this age range.</i></p>
	<p>Do the students live in the facility? <a href="#">[ESEA section 1432 (4)(a)]</a></p>
	<p>Is the program locally operated (public or private)? Institutions for children for which a State agency is responsible for providing free public education and included in the count for Subpart 1 cannot be included in the local institution count. <a href="#">[ESEA section 1124(c)(1)(B)]</a></p>

\* For children and youth in an institution to be included in the annual count, responses to all questions must be ‘yes.’

Programs where students are placed privately by their parents or guardians do not meet the definition of a neglected institution. State coordinators should consult with the child welfare agency in their State to determine applicable State law governing placement of children and youth due to abandonment, neglect, or death of their parents or guardians.

## Section III: Helpful Tips in Determining which Institutions Have Eligible Children and Youth to Include in the Annual Count

The following factors are additional considerations in determining which institutions have children and youth that may be included in the annual count:

- Many institutions have evolved over time from caring for children to treating children. As a result, you may encounter the term “treatment” in their mission, charter, or purpose statements, instead of terms like delinquent or neglected. This is allowable as long as the primary purpose of the institution is to provide for the care of either neglected or delinquent children and youth as defined above.
- It is important to re-evaluate institutions on an annual basis to ensure they can still meet the criteria to be included in the annual count. The purpose of an institution can change over time. This means that although an institution may have been included in the count for many years, they could change their purpose and no longer meet the criteria to be included. In other words, just because an institution has historically been included in the count does not guarantee they can be included in the future. It must continue to meet the criteria of a neglected or delinquent institution annually.
- Institutions should not change their categorization from neglected to delinquent, or vice versa, unless there is an official change in the institution's operational purpose. To determine if an institution is eligible to be included in the annual count, review their charter or purpose, mission statement, and website to ensure their overall purpose aligns with that of a neglected or delinquent institution. For instance, if a neglected institution has an unusually high number of delinquent students at the time of the annual count, it should still be classified as a neglected institution unless there has been an official change in its purpose.
- State agencies with children and youth that can be included in the annual count will vary from State to State but some common examples of State agencies to include are the Department of Corrections, Department of Juvenile Justice, and the State child welfare agency. A State educational agency (SEA) itself may also operate facilities with children and youth that may be included in the annual count if the SEA is responsible for educating children and youth in such facilities. If the SEA is serving as a State agency you are strongly encouraged to contact your program officer at the Department for further guidance. SEAs serving as State agencies encounter unique challenges that are best discussed with your program officer at the Department.
- As noted earlier in the document, the term “adjudicated” generally means that an official judicial determination has been made (e.g., by a court or other tribunal), rather than a determination by a parent or guardian, that a child is delinquent or in need of supervision. Additionally, the adjudication requirement applies to both delinquency and in need of supervision.

## Section IV: Identifying New Institutions to be Included in the Annual Count

Periodically, new institutions that serve neglected or delinquent children will begin to serve children and youth who can be counted in either State or local facilities. As a State coordinator, you have the opportunity to identify new programs and determine if they can be included in the annual count. There are a multitude of ways a State coordinator can become aware of new facilities, including:

- Working with the child welfare agency in your state to find out which programs they license and place students in for residential care.
- Ensuring the Department of Corrections (DOC) notifies the SEA of any new programs they are opening that will serve delinquent students. To accomplish this, it may be helpful to have a conversation with your contact at DOC and establish a process for notification.
- Educating your contacts at the LEA level so they know to notify you if a new institution is opening in their area. It is important to include all LEAs in this conversation, not just those that are already receiving a Subpart 2 subgrant as you cannot predict where a new program will open.
- In States with large reservations or Tribal communities it is helpful to reach out to your Tribal child welfare agency, Tribal educational agency, and/or your SEA's Title VI Coordinator for Indian Education so you can explore together how to best identify new institutions in these areas.
- If a new eligible institution opens after the reporting period specified in the ESEA (i.e., after the calendar year date that a State agency selected to report its count or, for a local institution, after October), an SEA will report children from the eligible institution in the following year's annual count. It can only be added to the annual count during the annual count reporting window provided by the Department. The State agency (if the new institution is part of a State agency that receives a subgrant) or LEA may, however, choose to serve the students in the institution if funds are available from their current Title I, Part D (Subpart 1 or Subpart 2, as applicable) allocation. Additionally, in the case of a local institution, if funds are available from the LEA's Title I, Part A allocation, the LEA may choose to provide Title I, Part A services to children in the new local institution for neglected or delinquent children that opened after the annual count reporting period closed that generated those Title I, Part A funds.

### Next Steps

Identifying neglected and delinquent institutions with eligible children to be included in the annual count is only one step in the annual count process. After identifying the proper institutions to be included, the State agency or LEA will need to identify which students can be counted. Additionally, the annual count window must be determined following the separate guidelines for the State agency annual count and the Local agency annual count. The Department provides detailed instructions on this process that are sent to State coordinators in the Fall of each year. Additional resources and references are listed below that will assist State coordinators in understanding the other components of the annual count process.



## Additional Annual Count Resources

- [Instructions for Identifying Institutions and Counting Children](#)
- [Sample State Agency Worksheet](#)
- [Reporting Form](#)
- [Annual Count Webinar](#)
- [Annual Count Self-Paced Learning Guide, Subpart 1](#)
- [Annual Count Self-Paced Learning Guide, Subpart 2](#)
- [Annual Count Toolkit](#)

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