

FAPE for Preschool Special Education Students



The purpose of this guidance is to reaffirm the long-standing policy of the Colorado Department of Education (CDE) regarding a free appropriate public education (FAPE) for preschool special education students in light of recent changes in state funding. This guidance specifically addresses changes enacted by the Colorado Universal Preschool Program Act (UPK) for the 2023-24 school year and replaces all prior CDE-issued guidance on this topic. The Department may issue additional guidance to address emerging issues regarding the implementation of UPK for preschool children with disabilities.

What is a Free Appropriate Public Education (FAPE)?

FAPE means special education and related services provided to a child with a disability at public expense and under public supervision and direction. FAPE must be provided through an individualized education program (IEP) that is developed consistent with the requirements of the Individuals with Disabilities Education Act (IDEA) and the Exceptional Children's Educational Act (ECEA) and meets the educational standards of the CDE. FAPE is provided at no cost to parents.¹

Prior to the implementation of UPK, what public funding was available to support the obligation to provide FAPE for IDEA-eligible preschool children?

Previously, CDE administered state preschool funding for school districts through the Public School Finance Act. The statute governing funding for preschool students through the Public School Finance Act ceased to exist at the end of June 2023. Public School Finance Act funds for both children on IEPs and the Colorado Preschool Program were reappropriated by the General Assembly into the Colorado Department of Early Childhood's (CDEC) Universal Preschool Program Cash Fund (PPCF) to support the per child rates under the new Colorado Universal Preschool Program (UPK) beginning with the 2023-24 school year. IDEA funds and ECEA funds will continue to be distributed by CDE.

What changes to state preschool funding are in effect for the 2023-24 school year?

Beginning with the 2023-24 school year, the CDEC will administer the PPCF to support the new UPK program. Although the UPK Act and CDEC regulations set funding standards for instructional hours, FAPE for each preschool child is determined by the child's IEP team and must not be defined by the amount or availability of funding provided by CDEC. Consistent with the IDEA and ECEA, the UPK Act requires that every eligible preschool child with a disability be offered preschool services in accordance with the child's IEP.²

How do local preschool program offerings relate to FAPE?

Students with disabilities are expected to receive a preschool education commensurate with what their local public system makes available to their nondisabled peers. From a practical standpoint, this means that *most preschool students* with IEPs will attend a *regular preschool classroom* for the same amount of time as their nondisabled peers.

To ensure FAPE, *IEP teams must determine* the amount of instruction, regular and specialized, across the school year that will allow the child to access and make progress in the general curriculum. This determination must be based on each child's unique strengths and needs. Because FAPE must be individually determined, a preschool student with a disability may require more or less instructional time than the standard hours offered by the local preschool program.

¹ 34 C.F.R. § 300.17; [CDE Academic Standards](#); [CDE Guidance on Placement of Preschoolers with IEPs](#)

² § 26.5-4-204(3)(a)(II), C.R.S.

In sum, public preschool providers may operate preschool programs that meet the state’s minimum standard for funding, while increasing or decreasing instructional hours based on an IDEA-eligible child’s individualized needs. Providers may also choose to increase program hours for some or all sub-populations, based on local needs and priorities. When a preschool program offers additional hours, students with disabilities must be given the same opportunities to enroll as their nondisabled peers. The rationale for departing from the preschool program’s standard schedule for an IDEA-eligible child should be documented in the IEP.

May FAPE be supplemented with additional preschool hours?

Yes. Apart from the IEP team’s determination of the regular and specialized instruction required for a child to receive FAPE, CDEC may allocate funding for “additional preschool hours” for specific populations, including students with IEPs.³ When a program providing additional preschool hours is available in a location where FAPE can be provided, this may result in additional preschool hours, and associated funding, as a *supplement* to FAPE.⁴ Children enrolled in supplemental preschool are entitled to the accommodations and supplementary aids and services described in their IEP across their entire school day. AUs should carefully document services required for the provision of FAPE and services that would be provided as a supplement to FAPE on the IEP.

How does FAPE relate to the least restrictive environment requirement?

The Administrative Unit (AU) must ensure each IDEA-eligible preschool child receives a FAPE in the least restrictive environment (LRE). To satisfy the LRE requirement, preschool children with disabilities must be educated, to the maximum extent appropriate, with children who are not disabled. The removal of a child with an IEP from the regular education environment is allowed only if education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.⁵ The preschool student’s IEP team must develop an IEP that will provide a FAPE in the LRE to enable the student to access and make progress in the general curriculum.⁶

The LRE for many preschool students with disabilities is a *regular preschool classroom* with their nondisabled peers. Based on the unique needs of the student, the IEP team may decide that it is appropriate for the student to be educated in a setting different from the regular preschool classroom for all or part of the typical preschool day, within the requirements of IDEA. While the placement identifies the educational setting (regular preschool classroom, separate class, special school, etc.) determined for each child through the IEP process, IDEA does not require a placement decision to specify the specific location (provider, building, classroom, or teacher) in which a child’s IEP must be implemented.

Who is responsible for assigning the location where the IEP will be implemented within the public school setting?

The AU may assign IDEA-eligible children to publicly operated preschool programs with the appropriate educational setting. The assignment of a child to a specific location (provider, building, classroom, or teacher) may be an administrative determination of the AU as long as it is consistent with the following ECEA requirements: 1) the assigned location is consistent with the placement and educational setting identified on the child’s IEP; 2) the decision about

³ State law defines “additional preschool hours” as “hours of preschool services provided to a child in the year preceding enrollment in kindergarten that are in addition to the universal preschool services the child receives.” § 26.5-4-203(1), C.R.S.

⁴ § 26.5-4-204(4)(a)(II), C.R.S.

⁵ 34 C.F.R. § 300.114

⁶ 34 C.F.R. § 300.320(a)(2)-(5); *L.B. and J.B. v. Nebo Board of Education*, 379 F.3d 966 (10th Cir. 2004); [Dear Colleague Letter: Preschool Least Restrictive Environment Requirements \(OSEP 2017\)](#).

location is made with due consideration for the impact on the child's total education program; and 3) the decision about location is made with parental input and participation.⁷

If there are no appropriate public school options, the AU must identify another program, such as a Head Start or other community based childcare program, in which to implement the IEP, provided that the AU has determined FAPE can be achieved there and has a written agreement in place with the program to provide supervision and oversight of the preschool's regular and special education program. The AU is responsible for ensuring that the assigned program meets the [CDE state preschool standards for children with disabilities](#).

In both situations, the AU is ultimately responsible for ensuring the provision of FAPE, to include the delivery of services in conformity with the child's IEP.

What is the responsibility of the public school if the parent chooses a private provider?

If there are no publicly administered preschool options available that meet the requirements of the child's IEP, the AU must consider a suitable private preschool provider where FAPE can be provided.

If, however, the AU has a public preschool program that is available where the child's IEP can be fully implemented in the least restrictive environment, it does not have to determine if the IEP can be implemented by the private provider chosen by the parents. In this situation, the AU may choose to only offer and provide FAPE in its public preschool program. It is only when there are no suitable public options available that the AU must consider nonpublic options.⁸

Summary

Each preschool child's IEP team must determine what is appropriate based on the child's unique strengths and needs, not on available funding or the needs or convenience of the administrative unit or local preschool program. Preschool programs that establish a set number of contact hours for all special education preschool students without regard for the unique needs of each child do not meet the requirements of federal and state special education laws. To the extent that preschool students are systematically treated differently than their nondisabled peers, such practices raise serious equity concerns including compliance with federal and state nondiscrimination laws.

CDE is responsible for ensuring that AUs meet the requirements of Part B of the IDEA and the ECEA. To fulfill its obligation, the CDE provides guidance to support AUs in implementing IDEA and ECEA requirements. This guidance is not binding and should not be construed as legal advice. AUs are encouraged to review their policies, procedures, and practices to ensure alignment with state and federal requirements and make changes, as needed. For legal advice, AUs should consult with their legal counsel.

⁷ 1-CCR 301-8, 2220-R-4.03(8).

⁸ [Dear Colleague Letter: Preschool Least Restrictive Environment Requirements \(OSEP 2017\)](#).