

Special Education and Universal Preschool



This document was developed in response to questions related to preschool special education and universal preschool (UPK). The Colorado Department of Education (CDE) is responsible for administering special education, while the Colorado Department of Early Childhood (CDEC) is responsible for administering UPK. These answers were developed by CDE with consultation from CDEC.

For additional information about Universal Preschool go to:

[CDEC – Universal Preschool Provider Information](#)

For additional information about preschool special education go to:

[CDE - Early Childhood Special Education Services](#)

Frequently Asked Questions

1. What are the requirements of all licensed childcare providers in relation to serving children with disabilities?

There are many federal nondiscrimination laws and regulations that apply to all facilities licensed by the Colorado Department of Early Childhood under the Child Care Licensing Act, whether or not the program is an educational program in which an IDEA-eligible preschool student may be placed.

All child care providers are encouraged to view the [Child Care Licensing Act](#) for a list of federal non-discrimination laws that apply to child care facilities and to become familiar with the following laws and regulations related to serving young children with disabilities:

- The [Americans with Disabilities Act](#) prohibits discrimination based on disability by public entities, regardless of whether they receive federal financial assistance.
- [Section 504 of the Rehabilitation Act](#) of 1973 is a federal statute administered by the Office of Civil Rights that prohibits discrimination based on disability in any program or activity operated by recipients of federal funds.

To qualify as an appropriate preschool program under the Individuals with Disabilities Education Act (IDEA), programs must meet the standards of the Colorado Department of Education, which are described below in Question 4. In addition to the non-discrimination laws required of all licensed childcare programs, preschool programs designated by the public school system as a provider of IDEA services must follow the specific disciplinary provisions that apply to all children ages 3 to 21 with an Individualized Education Program (IEP). These apply whether the child attends a public preschool program operated by the school district, or a preschool program operated by public agencies other than a school district (such as Head Start or community-based childcare), as well as those placed in a private preschool program by the school district to ensure the provision of a Free and Appropriate Public Education (FAPE). Learn more from the US DOE guidance [Questions and Answers Addressing the Needs of Children with Disabilities and the Individuals with Disabilities Education Act's \(IDEA's\) Discipline Provisions](#).



2. What is the Individuals with Disabilities Education Act (IDEA) and how does it relate to state funded preschool services?

IDEA is a federal law that makes available a free appropriate public education to eligible children with disabilities throughout the nation and ensures special education and related services to those children. The IDEA governs how states and public agencies provide early intervention, special education, and related services to over 7 million eligible infants, toddlers, children, and youth with disabilities across the nation. Infants and toddlers, birth through age 2, with disabilities and their families receive early intervention services under IDEA Part C. The Governor of each state designates which agency in the state will lead Part C of IDEA. In Colorado, the Colorado Department of Early Childhood (CDEC) is the designated lead for Part C.

Children and youth ages 3 through 21 receive special education and related services under IDEA Part B. Part B in each state is administered by the State Education Agency, and in Colorado it is the Colorado Department of Education (CDE). As a part of our public system of special education for children ages 3 to 21 years old, access to preschool education before kindergarten entry is a legal entitlement to children identified with an educational disability. Special Education Administrative Units (AUs) are responsible for ensuring access to a Free and Appropriate Public Education for IDEA-eligible children. An AU is a CDE-authorized school district, Board of Cooperative Education Services (BOCES), a multi-district administrative unit, a charter school network, a charter school collaborative, or the State Charter School Institute (CSI). CDE distributes state and federal special education funds directly to administrative units for the provision of special education and related services.

The publicly administered education funds historically utilized to provide access to general educational programming for preschool-aged children with Individual Education Programs (IEPs) are being moved to the Preschool Cash Fund administered by the Colorado Department of Early Childhood effective July 1, 2023. After that date, CDEC is responsible for distributing this funding to preschool providers designated to serve preschool students with an IEP.

3. What is a Free and Appropriate Public Education (FAPE)?

Children ages 3 to 21 years old with identified disabilities that impact their ability to receive reasonable benefit from general education programs generally have a legal entitlement under the IDEA to receive free access to an educational program and specially designed instruction along with any necessary related services to enable the child to benefit from the special educational services. FAPE must be provided at public expense, under public supervision and direction, and without charge. Every educational program in which an IDEA-eligible preschool student is placed must meet the standards of the Colorado Department of Education (CDE), offer an appropriate preschool education, and be provided in conformity with each child's IEP. AUs may make FAPE available to a preschool child with a disability in the school district's public preschool program (when they have one available) or identify alternative options such as Head Start or community based preschool programs, when those programs have an agreement with the AU.



4. What are the CDE standards for appropriate preschool education for IDEA-eligible preschool students?

The AU must ensure that each preschooler with an IEP be offered a placement in an educational program that meets or exceeds the following standards, whether the program is administered directly by the public school system, Head Start or other non-public preschool programs:

1. The program has a child care center license in good standing.
2. Classrooms serving children with IEPs always have fewer than 50% students with IEPs, recognizing that it is best practice for children with IEPs to be represented in classrooms in natural proportions as in the community where they live. The remainder of the classroom is made up of age appropriate non-disabled peers.
 - If a child with an IEP is placed in a classroom with more than 50% students with IEPs, the more restrictive placement is documented and explained in the IEP.
3. All special education and special services personnel are appropriately licensed by the CDE.
4. Culturally inclusive practices are delivered by appropriately qualified professionals.
5. Special education and related services are embedded into classroom routines (unless otherwise specified on the IEP), and in collaboration between the general education teaching team and special educators and special services providers.
6. Supplementary aids and services that are needed and identified in the IEP are provided to enable the child to receive benefit from the program and makes progress in the curriculum.
7. The program collects, uses, and appropriately reports ongoing assessment data and summative reporting for Results Matter, Colorado's process for completing federal Indicator 7/Preschool Outcomes requirements. Personnel completing children's ratings on approved tools are current on their Inter-Rater Reliability.
8. The program implements an evidence-based curriculum aligned to Colorado Academic Standards and the Early Learning and Development Guidelines.
9. When the educational program is not provided directly by the AU or school district, the AU has an MOU in place to ensure expectations of each party are explicit and accountability of these standards is maintained.

Additional information about each standard, including references and resources for each one is available in [CDE Standards for Placement of Preschoolers with IEPs in Educational Programs](#).

5. What entities are responsible for ensuring a FAPE and delivery of special education and related services for students with an Individualized Education Program (IEP)?

IDEA Part B services and entitlements are a part of the public education system. The Colorado Department of Education, as the Lead Agency for Part B of IDEA in Colorado, is responsible for establishing and enforcing policies and procedures to ensure full implementation of child find and other



IDEA requirements to ensure that FAPE is made available to all eligible children with disabilities in the State, from age 3 years old to 21 years old.

The Exceptional Children's Educational Act, Colorado's law for the implementation of IDEA, specifies that the **AU of the child's residence** responsible for identifying, locating, and evaluating children ages 3 and older suspected of having an educational disability. When a child is suspected to have a need for special education, the AU must evaluate in a timely fashion and develop and implement an IEP for eligible children with disabilities in accordance with the applicable IDEA requirements. An AU is a CDE-authorized school district, Board of Cooperative Education Services (BOCES), a multi-district administrative unit, a charter school network, a charter school collaborative, or the State Charter School Institute (CSI). AUs may work with other public agencies and programs, such as Head Start and local school districts, to ensure FAPE, but the AU is ultimately responsible for ensuring a FAPE for each student with an IEP.

6. Who determines the educational program in which preschool and special education services will be provided for students with IEPs?

The AU, through the IEP decision-making process (which includes the child's family), must select an educational placement in the least restrictive environment in which the specially designed instruction and related services may be delivered to ensure the child will receive educational benefit from the IEP. Colorado statute requires that the final determination for the placement in a special education program of any eligible child with a disability be made by the child's IEP team as designated by the AU (C.R.S. 22-20-102).

The AU may provide special education and related services to a preschool child with a disability in a variety of settings, including a public program administered by a school district or AU. Services may also be provided in Head Start programs or in private or community-based programs, as long as the private or community-based program meets the educational standards of the AU and CDE and the IEP team determines such placement can provide FAPE. If there is a school district preschool program available, the AU may choose, in accordance with the child's IEP, to make FAPE available to a preschool child with a disability in the school district preschool program.

When there are no AU administered preschool program options available, or if they otherwise choose to, the AU may develop agreements with Head Start and other community based child care programs determined to be appropriate educational placements, to ensure each preschooler with a disability has access to a Colorado Academic Standards aligned preschool curriculum and special education and related services in the least restrictive environment (LRE). In these instances, the AU is responsible for providing oversight of the delivery of FAPE and is ultimately accountable that each child receives services in conformity with the child's IEP.

7. If a parent of an IDEA-eligible child selects a different preschool provider than the educational program offered as a FAPE by the public school system, is the AU obligated to implement the IEP services in the program of the parent's choice?

Educational placement and FAPE can only be determined by the IEP team, which includes the parents. When a family enrolls in UPK and their child is suspected of having a need for special education, the



preschool program provider, LCO, or CDEC must notify the AU to initiate the special education referral process. If the child is determined eligible for special education, the AU must make an offer of FAPE. If the parent declines the offer of FAPE by the public school system and chooses a community based preschool provider unilaterally, the AU is not obligated to provide special education and related services to that child.

8. How will the school district or AU obtain UPK funding from CDEC to fulfill their responsibility for ensuring access to a preschool classroom for each student with an IEP? Is this UPK funding guaranteed for students with an IEP?

Providers responsible for serving preschool children with an IEP may access UPK funds when the parent enrolls the child in UPK and selects the provider identified by the AU to provide FAPE. UPK funds administered by CDEC for preschoolers with disabilities are intended to provide access to the educational placement in accordance with the child’s IEP. The UPK funds must be accessed in accordance with CDEC enrollment and fiscal procedures. The AU is responsible for ensuring FAPE in the LRE for each IDEA-eligible child, whether or not they are able to access UPK funding from CDEC.

In addition to UPK funds for access to an educational program, state and federal special education funds (Exceptional Children’s Educational Act and IDEA) are distributed to the AU by CDE to support the delivery of the specially designed instruction and related services necessary to implement the IEP within the educational placement. If the combined costs for access to the educational placement in a preschool program and the provision of services on the IEP exceed the costs available through UPK and state and federal special education funds, then the school district and AU must work together to ensure the excess costs are covered from other education funds.

9. Will current CDE Results Matter preschool assessment be required to meet Indicator 7-Preschool Child Outcomes federal reporting requirements?

Yes, CDE is required by the U.S. Department of Education’s Office of Special Education (OSEP) to report the progress that preschoolers with IEPs make between their entry to special education and their transition to kindergarten or exit from special education. To fulfill these federal reporting requirements, CDE continues to require every AU work with the preschool programs in which IDEA-eligible preschoolers are placed for educational services to ensure the required reporting of each child’s developmental progress throughout the school year is submitted into the online vendor platform for the selected Results Matter assessment tool. The AU is ultimately accountable to ensuring the data is collected and submitted using Results Matter procedures.

CDE and AUs will be asked to provide input to CDEC as they determine child assessment requirements for UPK participating providers beginning in the 23-24 school year, and to support alignment between CDE and CDEC requirements for students with IEPs going forward, as much as possible. All preschool providers should plan to use the currently approved Results Matter assessment tools during the 23–24 school year to provide progress to CDE. CDE anticipates the timelines and method for submitting preschool data will remain the same for the 23-24 school year.



10. How will the CDEC ensure access to state preschool funding at whatever point during the school year that a child is identified with an educational disability, and/or on or before a child's 3rd birthday when the child transitions out of Part C Early Intervention into Part B Special Education?

A revised [Memorandum of Understanding](#) was developed between CDEC and CDE in June, 2022, which clarifies roles and responsibilities of each agency in ensuring a timely and smooth transition between Early Intervention and Part B for children determined to have an educational disability. For children transitioning from Part C, AUs are responsible for conducting initial Part B evaluations and ensuring Part B eligible children have access to FAPE on or before each child's third birthday. To support a smooth transition into preschool and to meet the AU's obligations, enrollment and access to an educational program must occur in some cases prior to a child's 3rd birthday, to meet the federal Transition from Part C to Part B timeframes. When a child has been enrolled in UPK and is later suspected of having a need for special education, the preschool program provider, LCO, or CDEC must notify the AU, which must evaluate the child if parental consent is obtained and make an offer of FAPE meeting the requirements set forth in Q4, if it determines the child qualifies.

11. Since CDE is the Lead Agency for Part B of IDEA, why is CDEC involved in UPK provider selection and enrollment procedures for IDEA-eligible preschoolers?

Some members of the field have expressed understandable confusion about CDEC's role in preschool special education, stating that because CDEC does not have IDEA oversight, it should not have a role in preschool special education enrollment. This arose after [CDE issued guidance on April 7, 2023](#) determining program placements for those students with IEPs. It is important to remember that while CDEC does not have IDEA "oversight," there is inevitable overlap between CDE's leadership as the State Education Agency for special education and CDEC's leadership because the universal preschool program is a singular system. Due to this overlap, both agencies bear some responsibility in the enrollment process and it is critical that the two agencies work together. In addition, the UPK statute requires the agencies to work together. And, from a practical perspective, each agency has information the other requires to complete their work appropriately. CDE remains the state agency responsible for special education, and the agencies have executed a [Memorandum of Understanding](#) outlining each agency's roles in UPK, including special ed. CDE will continue to work with CDEC to improve its preschool application and enrollment process to avoid the stop-gap process we needed to craft this round to secure preschool special education children's rights and optimize preschool student placements.

WHERE CAN I LEARN MORE?

Contact Us – [Early Childhood Special Education Team](#) at CDE