



# COLORADO DEPARTMENT OF EDUCATION

201 East Colfax Avenue • Denver, Colorado 80203-1799  
303.866.6600 • www.cde.state.co.us

**Dwight D. Jones**  
Commissioner of Education

**Robert K. Hammond**  
Deputy Commissioner

**Kenneth R. Turner**  
Deputy Commissioner

## Guidance Memorandum

Date: December 3, 2008  
To: Superintendents  
Administrative Unit Special Education Directors  
BOCES Executive Directors  
Charter School Administrators  
From: Ed Steinberg, Assistant Commissioner, Student Support Services  
Re: FAPE for Special Education Preschool Students

The purpose of this letter is to remind you of the long-standing policy of the Colorado Department of Education (CDE) regarding a free appropriate public education (FAPE) for special education preschool students.

### Public School Finance Count Requirements

In order for a special education preschool child to be included in the October 1 count and receive the .5 PPOR public school finance funding, the child must receive at least 90 program contact hours per semester. The 90-hour contact rule is a *minimum* standard for serving preschool special education students so that those students may be counted for funding.

### FAPE for Special Education Preschool Students

The 90-hour contact rule for counting special education preschool students for public school finance purposes must not be confused with the administrative unit's obligation to provide a FAPE to special education preschool students. Specifically, preschool special education students are entitled to receive a FAPE in the least restrictive environment (LRE). LRE means that, to the maximum extent appropriate, preschool special education students must be educated with children who are not disabled, and the removal of a special education child from the regular education environment occurs only if education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.<sup>1</sup> The special education preschool student's IEP Team must develop an IEP that will provide a FAPE in the LRE that will enable the student to be involved in and make progress in the general curriculum.<sup>2</sup>

<sup>1</sup> 34 C.F.R. §300.114

<sup>2</sup> 34 C.F.R. §300.320(a)(2); *See, L.B. and J.B. v. Nebo Board of Education*, 379 F.3d 966 (10<sup>th</sup> Cir. 2004)

The LRE for most preschool students with disabilities is in the general preschool classroom with their nondisabled peers. Preschool programs typically utilize a general curriculum that is sequential in nature for purposes of learning school readiness skills. From a practical standpoint, then, this means that most special education preschool students will attend preschool for the same amount of time as their nondisabled peers -- typically consistent with the requirements of the Colorado Preschool Program which requires a minimum of 180 contact hours per semester or 360 hours of program availability per academic year.

Ultimately, the student's IEP team must decide what is appropriate for the student *based on the student's unique needs*, not on the needs or convenience of the administrative unit or school district. In some cases, the IEP team may decide that the student needs more than 180 contact hours per semester; in other cases, the IEP team may decide that the student needs fewer than 180 contact hours per semester. Depending on the unique needs of the student, the IEP team also may decide that it is appropriate for the student to be educated in a setting different from the preschool general classroom for all or part of the typical preschool day.

Finally, 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 are noncompliant with 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.

If you have any questions regarding this policy memorandum, please contact Penny Dell by email at [dell\\_p@cde.state.co.us](mailto:dell_p@cde.state.co.us) or by phone at (303) 866-6720.

cc: Vody Herrmann, Assistant Commissioner, CDE/Public School Finance  
Jeanette Cornier, Assistant Commissioner, CDE/Teaching & Learning  
Charm Paulmeno, Director, CDE/Student Support Services  
Laura Freppel, Assistant Director, CDE/Exceptional Student Leadership