ecta Early Childhood Technical Assistance Center

Preschool LRE Reference Points and Discussion Prompts

Updated October 7, 2025. This content appears online at https://ectacenter.org/topics/iep/iep-reference.asp

This summary of the Least Restrictive Environment (LRE) provisions of the IDEA as applicable to preschool aged children with disabilities is intended to be used as both a quick reference guide and training tool.

Reference Points are drawn from IDEA regulations, comments in the Federal Register, and guidance and clarification provided in letters from the U.S. Department of Education and other agencies.

Discussion Prompts are provided for state and local teams to supporting the inclusion of young children with disabilities by appropriately applying LRE provisions and placement decisions for individual children.

IDEAs that Work

Office of Special Education Programs
U.S. Department of Education

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The ECTA Center is a program of the FPG Child Development Institute of the University of North Carolina at Chapel Hill, funded through cooperative agreement number H326P170001 from the Office of Special Education Programs, U.S. Department of Education. Opinions expressed herein do not necessarily represent the Department of Education's position or policy. Project Officer: Julia Martin Eile

The IDEA Mandate

Provision	Reference Points	Discussion Prompts
The Importance of Inclusion	The U.S. Departments of Health and Human Services and Education have underscored the importance of each agency to support children with disabilities. The 2023 joint Policy Statement on the Inclusion of Children with Disabilities in Early Childhood Programs is a detailed resource that outlines the beliefs, research, requirements, and strategies that states, and communities should undertake to ensure the inclusion of infants, toddlers, and preschool children with disabilities in high-quality early childhood programs. "All young children with disabilities should have access to high-quality inclusive early childhood programs that provide individualized and appropriate support so they can fully participate alongside their peers without disabilities, meet high expectations, and achieve their full potential. The responsibility to ensure that young children with disabilities and their families are included in high-quality early childhood programs is shared by federal, State, and local governments, early childhood systems, early childhood programs and providers, local educational agencies (LEAs), and schools." — U.S. Departments of Health and Human Services and Education (2023). *Policy Statement on the Inclusion of Children with Disabilities in Early Childhood Programs* The IDEA statute also emphasizes the importance of inclusion: "Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities." — Individuals With Disabilities Education Act (2004). *20 U.S.C. §1400(c)(1)*	• Discuss and document how your state and/or LEA provides guidance and resources on this topic. • How does your state and/or local vision, mission, and commitment to all children address inclusion? • How does your state communicate the value of inclusion regarding monitoring, professional development, web resources, and public awareness materials?

Provision	Reference Points	Discussion Prompts
Laws and Guidance Supporting Children with Disabilities	The U.S. Department of Education has emphasized IDEA's strong preference for educating children with disabilities in regular classes and that the LRE requirements apply to children ages three through five: "...all young children with disabilities should have access to inclusive high-quality early childhood programs where they are provided with individualized and appropriate supports to enable them to meet high expectations." — U.S. Department of Education, Office of Special Education and Rehabilitative Services (2017). *Dear Colleague Letter on Preschool Least Restrictive Environment* The Individuals with Disabilities Education Act (IDEA), The Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act of 1973 require schools and agencies to provide equal educational opportunities for children with disabilities.	• Discuss and document how your state and/or LEA provide guidance and resources on federal laws related to serving young children with disabilities. • What information on these legal requirements, supports and protections are shared with families and across the early childhood system?

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Free Appropriate Public Education (FAPE)	IDEA regulations require public schools to provide each child with a disability ages three through 21 a free appropriate public education (FAPE) in their least restrictive environment (LRE). "*Free appropriate public education* or *FAPE* means special education and related services that— a) Are provided at public expense, under public supervision and direction, and without charge; b) Meet the standards of the SEA, including the requirements of this part; c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.320 through 300.324." — IDEA Regulations. *34 CFR §300.17*	• Discuss and document how your state and/or LEA provide guidance and resources on federal laws related to serving young children with disabilities. • What information on these legal requirements, supports and protections are shared with families and across the early childhood system?

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General Education Curriculum	IDEA regulations 34 CFR §300.320 require the IEP to include each child's present levels of academic achievement and functional performance, including how each child's disability affects their involvement and progress in the general education curriculum, which for preschool children is child's "participation in appropriate activities". Access to the general curriculum for all children birth-kindergarten is supported by state early learning and development standards, for which The Federal Register provides the following definition: "Early Learning and Development Standards means a set of expectations, guidelines, or developmental milestones that: a) Describe what all children from birth to kindergarten entry should know and be able to do and their disposition toward learning; b) Are appropriate for each age group (e.g., infants, toddlers, and preschoolers); for English learners; and for children with disabilities or developmental delays; c) Cover all Essential Domains of School Readiness; and d) Are universally designed and developmentally, culturally, and linguistically appropriate." — U.S. Department of Education (2013). *Federal Register, Vol. 78, No. 169, p.53979*	• Discuss and document how your state and/or LEA provides guidance and resources on this topic. • How do the state early learning guidelines apply to and reference children with disabilities? • How are learning guidelines used to support IEP development, (for example, in the Present Level of Academic and Functional Performance)?

LRE Requirements

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Least Restrictive Environment (LRE)	IDEA regulations provide the requirements for Least Restrictive Environment: "Each public agency must ensure that— i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." — IDEA Regulations. *34 CFR § 300.114(a)(2)*	• Discuss and document how your state and/or LEA provides guidance and resources on this topic as it applies to preschool. • How are supplementary aids and services considered for every child with an IEP, regardless of the nature or severity of the disability?

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Supplementary Aids and Services	When developing the IEP, IDEA regulations 34 CFR §300.324 detail required elements, which include a statement of the special education and related services, supplementary aids and services, and modifications or supports for school personnel that will assist each child in attaining their annual goals and making progress in the general education curriculum, and being educated with their peers. The use of supplementary aids and services must be discussed and documented as part of every child's IEP before considering a more restrictive placement. "Before a child with a disability can be placed outside the regular educational environment, the group of persons making the placement decision must consider whether supplementary aids and services could be provided that would enable the education of the child, including a preschool child with a disability, in the regular educational setting to be achieved satisfactorily." "If a determination is made that the education of a particular child with a disability cannot be achieved satisfactorily in the regular educational environment, even with the provision of appropriate supplementary aids and services, that child then could be placed in a setting other than the regular educational setting." — U.S. Department of Education, Office of Special Education and Rehabilitative Services (2017). *Dear Colleague Letter on Preschool Least Restrictive Environment* IDEA regulations provide the following definition for supplementary aids and services: "*Supplementary aids and services* means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§300.114 through 300.116." — IDEA Regulations. *34 CFR §300.42* "Supplementary aids and services can also include: • direct services and supports to the child, and • support and training for staff who work with that child." — Center for Parent Information & Resources. *Supplementary Aids and Services (Component of the IEP)*	• Discuss and document how your state and/or LEA provides guidance and resources on this topic as it applies to preschool? • How does your state and/or LEA ensure the discussion of supplementary aids and services for participation in regular early childhood programs are understood by administrators, staff, families and community partners?

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Determining Placement	After an IEP has been developed as laid out in IDEA, the placement team (including the child's parent, and might include the child's current teacher) determines educational placement. "In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that— a) The placement decision— 1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and 2) Is made in conformity with the LRE provisions of this subpart, including §§300.114 through 300.118 b) The child's placement— 1) Is determined at least annually; 2) Is based on the child's IEP; and 3) Is as close as possible to the child's home; c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled; d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum." — IDEA Regulations. *34 CFR §300.116* The Federal Register further clarifies placement decisions: "In all cases, placement decisions must be individually determined on the basis of each child's abilities and needs and each child's IEP, and not solely on factors such as category of disability, severity of disability, availability of special education and related services, configuration of the service delivery system, availability of space, or administrative convenience." — U.S. Department of Education (2006). *Federal Register Vol. 71, No. 156, p.46588*	• Discuss and document how your state and/or LEA provides guidance and resources on this topic as it applies to preschool. • How does your state and/or LEA provide guidance to ensure that placement decisions are individually determined, based on the child's abilities and need as described in the IEP and not on factors such as the category or severity of a child's disability or for administrative convenience? • What are your state and/or LEA policies (or guidance) related to IDEA services for children in community programs: ○ regarding LEA liability and responsibility? ○ considering modifications in the general education curriculum? ○ understanding potential harmful effect on the child or on the quality of services needed?

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Placement and Location of Services	Comments in the Federal Register provide additional clarification on placement: "Historically, we have referred to "placement" as points along the continuum of placement options available for a child with a disability, and "location" as the physical surrounding, such as the classroom, in which a child with a disability receives special education and related services." "The Department's longstanding position is that placement refers to the provision of special education and related services rather than a specific place, such as a specific classroom or specific school." — U.S. Department of Education (2006). *Federal Register, Vol. 71, No. 156, p.46588, p.46687*	• Discuss and document how your state and/or LEA provides guidance and resources on how to consider placement and location of service as it applies to preschool.
Justification Statement	IDEA regulations require the child's IEP team to include a justification statement, which documents: "An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class..." — IDEA Regulations. *34 CFR §320(a)(5)* This statement is based on each child's individual needs, and not administrative convenience for program options.	• Discuss and document how your state and/or LEA provides guidance and resources on this topic as it applies to preschool.

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Continuum of Alternative Placements	IDEA regulations list alternative placements that each public agency must make available to children with disabilities, including: "...instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions." — IDEA Regulations. *34 CFR §300.115(b)(1)* Additionally, public agencies must: "Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement." — IDEA Regulations. *34 CFR §300.115(b)(2)*	• Discuss and document how your state and/or LEA provides guidance and resources on the continuum as it applies to preschool.

Regular Early Childhood Programs

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Regular Early Childhood Settings	The Dear Colleague Letter on Preschool Least Restrictive Environment outlines where preschool aged children might receive IDEA services, and defines the "regular class" as a "preschool setting with typically developing peers". All programs have the responsibility to meet the needs of all children in their care. State ratios for programs vary by age of the child, type of program, and funding requirements. To ensure FAPE, the LEA may provide services to a child in programs operated by community partners, such as Head Start or community-based child care, private preschool. The letter goes on to provide clarification on settings: "An LEA may provide special education and related services to a preschool child with a disability in a variety of settings, including a regular kindergarten class, public or private preschool program, community-based child care facility, or in the child's home." "If there is an LEA public preschool program available, the LEA may choose to make FAPE available to a preschool child with a disability in the LEA's public preschool program. While the number of public pre-kindergarten programs has increased, many LEAs do not offer, or offer only a limited range of, public preschool programs, particularly for three-year-olds. In these situations, the LEA must explore alternative methods to ensure that the LRE requirements are met for each preschool child with a disability... If a public agency determines that placement in a private preschool program is necessary for a child to receive FAPE, the public agency must make that program available at no cost to the parent." — U.S. Department of Education, Office of Special Education and Rehabilitative Services (2017). *Dear Colleague Letter on Preschool Least Restrictive Environment*	• Discuss and document how your state and/or LEA provides guidance and resources on regular early childhood placements. • What guidance do you provide to support collaboration between and among the LEA and community partners to ensure FAPE in the LRE for preschool children with IEPs?

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Reporting Educational Environments	For IDEA reporting purposes, data collection guidance specifies: "A Regular Early Childhood Program (RECP) for the purpose of OSEP required data collection is defined as a program that includes a majority (at least 50 percent) of nondisabled children (*i.e.*, children not on IEPs). This may include, but is not limited to the following: • Head Start • Kindergarten • Preschool classes offered to an eligible pre-kindergarten population by the public school system • Private kindergartens or preschools • Group child development center or child care" — U.S. Department of Education. *File Specifications—EDFacts* The reporting requirement is a minimum threshold for reporting and not intended to be a standard of quality.	• Discuss and document how your state and/or LEA provides guidance and resources on reporting educational environments. • How are data on Educational Environments shared with LEAs? • How do the state and LEAs use educational environments data to guide program planning?

Provision	Reference Points	Discussion Prompts
Children Already Attending a Public Program	U.S. Department of Education provides the following guidance: "The following requirements apply when determining placement options for a child with a disability who already participates in a regular public preschool program, including a community-based regular public preschool program operated by a public agency other than the LEA. Under 34 CFR §300.116(c), unless the child's IEP requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled. In addition, under 34 CFR §300.116(d), the placement team, which includes the child's parent and may include the child's current teacher, must consider any potential harmful effect on the child and on the quality of services that he or she needs before removing the child from the current regular public preschool setting to another more restrictive setting. Consistent with these requirements, IDEA presumes that the first placement option considered for a preschool child with a disability is the regular public preschool program the child would attend if the child did not have a disability. Therefore, in determining the placement for a child with a disability who already participates in a regular public preschool program, the placement team must consider whether the LEA, in collaboration with the regular public preschool program, can ensure that the child receives all of the special education and related services and supplementary aids and services included in the child's IEP in order to meet the needs of the particular child with a disability." — U.S. Department of Education, Office of Special Education and Rehabilitative Services (2017). *Dear Colleague Letter on Preschool Least Restrictive Environment*	• Discuss and document how your state and/or LEA provides guidance on where services for children already attending a regular EC program are provided. • What guidance does your state and/or LEA provide on serving children who are attending a preschool program or child care? • How does your LEA provide guidance and support for IEP services within other settings (*e.g.*, does your LEA have itinerant teachers available to provide services within community settings; what are the suggested or required itinerant caseload requirements?

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Transportation	Related services under IDEA regulations are determined by the IEP team and may include transportation and other services. The Department of Education provides the following information: "If the IEP Team determines that transportation is required to assist the preschool child to benefit from special education and includes transportation as a reslated service on the child's IEP, the LEA would be responsible for providing the transportation to and from the setting where the special education and related services are provided." — U.S. Department of Education (2009). *Questions and Answers on Serving Children with Disabilities Eligible for Transportation, Question F-1*	• How does your state and/or LEA provide guidance on determining transportation needs as a related service?

Funding IDEA Preschool Services

Provision	Reference Points	Discussion Prompts
IDEA Funds: Excess Cost Principle	Part B IDEA funding requirements apply to Section 619: "*Excess costs* means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student..." — IDEA Regulations. *34 CFR §300.16* Additional IDEA regulations state that IDEA funds: "Must be used only to pay the excess costs of providing special education and related services to children with disabilities..." — IDEA Regulations. *34 CFR §300.202(a)(2)* Though the requirement to report these fund amounts does not include preschool children specifically, the excess cost principle still applies: "In general, LEAs must use IDEA Part B section 619 funds and as applicable IDEA Part B 611 funds, only to pay the excess costs of providing special education and related services to children with disabilities ages three through five..." — U.S. Department of Education, Office of Special Education and Rehabilitative Services (2017). *Dear Colleague Letter on Preschool Least Restrictive Environment*	• How does your state and/or LEA provide guidance and resources related to funding?

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Use of IDEA Funds for Preschool Placements	The Department of Education has provided guidance on the use of IDEA funds: "The excess cost requirement, however, does not prevent an LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages three, four, or five if no local or State funds are available for nondisabled children of these ages. For example, if an LEA offers no regular public preschool programs for children without disabilities, and a preschool child with a disability is already participating in a private preschool program that is being paid for by the child's parents, the child's placement team may determine that, based on the child's IEP and the LRE provisions, placement in a private preschool program is necessary for the child to receive FAPE in the LRE. In such situations, the LEA responsible for providing FAPE to the child must pay for all of the costs associated with the provision of special education and related services in the LRE, as stated in the child's IEP." "Specifically, if the placement team determines, based on the child's IEP, that placement in an inclusive private preschool program is necessary to provide FAPE to a child who needs interaction with nondisabled peers, the LEA is responsible for making available an appropriate program in the LRE and ensuring that tuition costs associated with that placement for the period of time necessary to implement the IEP are at no cost to the parents." — U.S. Department of Education, Office of Special Education and Rehabilitative Services (2017). *Dear Colleague Letter on Preschool Least Restrictive Environment* IDEA regulations 34 CFR §300.114(b) require that a state's funding mechanism "must not result in placements that violate" LRE requirements or fail to provide FAPE for each child with a disability.	• How does your state and or LEA provide guidance and resources on this topic? • What options are considered when there is not a public preschool placement available? • Does your state or LEA provide guidance on how to determine the costs associated with that placement for the period of time necessary to implement the IEP are at no cost to the parents?

Accountability

Provision	Reference Points	Discussion Prompts

Monitoring LRE	IDEA regulations 34 CFR § 300.149 require states to have a general supervision system for the implementation of IDEA which includes a focus on the provision of FAPE in the LRE, to improve educational and functional outcomes for all children with disabilities; and ensure that IDEA program requirements are met. To confirm that individual IEP teams are making sound placement decisions based on following LRE provisions, state and LEA administrators should review:
	• Individual justification statements in IDEA regulations 34 CFR §300.320(a)(5) are an "explanation of the extent, if any, to which each child will not participate with nondisabled children in the regular class".
	• Individual prior written notice in IDEA regulations 34 CFR §300.503 are provided to parents a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of each child or the provision of FAPE to each child. Document the discussion of the first consideration of services in a regular early childhood program with individualized supplementary aids and services. Along with other required information, the notice should include:
	  ○ a description of the action proposed or refused (placement);
	  ○ an explanation of why the agency proposes or refuses to take the action;
	  ○ a description of other options that the IEP Team considered and the reasons why those options were rejected; and
	  ○ a description of other relevant factors that are relevant to the agency's proposal or refusal.
		• How does your state and or LEA support the development, implementation, and ongoing monitoring of LRE?
		• How are IEPs monitored to ensure that a justification for removal is individually determined and documented in the child's IEP and prior written notice is documented?

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Services for Children with Disabilities Parentally Placed in Private School	Services under IDEA are available to children who are parentally-placed in private school. Some state definitions of elementary school as described below, include preschool. In these states, the service provisions of IDEA apply to children ages three through five. OSEP guidance provides the following information specific to preschool: "An LEA's obligation to serve children aged three through five under the equitable services provisions depends on whether a child is enrolled in a private school or facility that meets the definition of "elementary school" in the IDEA and the final regulations. "Elementary school" is defined in 34 CFR §300.13 as a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under State law. Accordingly, three- through five-year-old children with disabilities who are enrolled by their parents in a private school or facility that meets the State's definition of "elementary school" would be considered parentally placed and the equitable participation provisions would apply." — U.S. Department of Education, Office of Special Education and Rehabilitative Services, Office of Special Education Programs (2022). *Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools, Question J-2* A child aged three through five enrolled by his or her parents in a private school or facility that does not meet the State's definition of "elementary school" would not be eligible to be considered for services. However, the State's obligation to make FAPE available to such a child remains. Section 612(a)(1) of the IDEA requires that States make FAPE available to eligible children with disabilities aged three through 21 in the State's mandated age range (34 CFR §300.101). Because many LEAs do not offer public preschool programs, particularly for three- and four-year-olds, LEAs often make FAPE available to eligible children in private schools or facilities in accordance with 34 CFR §§300.145–300.147. In these circumstances, there is no requirement that the private school or facility be an "elementary school" under State law. In some instances, an LEA may make FAPE available in the private preschool program that the parent has selected. If there is a public preschool program available, the LEA of residence may choose to make FAPE available to a preschool child in that program. If the group of persons making the placement decision, as specified in 34 CFR §300.116(a)(1), places the child in a public or private preschool program and the parents decline the public agency's offer of FAPE because they want their child to remain in the private preschool program they have selected, the public agency is not required to provide FAPE to that child. The parent may challenge the public agency's determination of what constitutes FAPE for their child using the State complaint and due process procedures available under IDEA."	• How does your state define elementary school? • If preschool is included in your state's definition of elementary school, how does your state provide guidance to LEAs and families?