

STATE OF COLORADO
Memorandum of Understanding Between
The Colorado Department of Education and the Colorado Department of Early Childhood
For Preschool Special Education Services
In Accordance with the Individuals with Disabilities Education Act (IDEA) of 2004, the
Exceptional Children's Educational Act (ECEA),
And Colorado's Universal Preschool Program Act

This Memorandum of Understanding (MOU) between the Colorado Department of Education (CDE) and the Colorado Department of Early Childhood (CDEC) (collectively the Parties) is made pursuant to section 26.5-4-206, C.R.S. to ensure all children with disabilities are served equitably in the Colorado Universal Preschool Program, ensure access to classrooms that meet the individual needs of children with disabilities based on their individualized education programs, and ensure that Preschool Program Providers operate in accordance with federal and state law concerning education for children with disabilities.

I. AUTHORITY FOR AND PURPOSES OF AGREEMENT

- A. Section 26.5-4-206, C.R.S. requires the CDEC and the CDE to collaborate to ensure that preschool services delivered through the CDEC to children with disabilities comply with the federal Individuals with Disabilities Educational Act (IDEA) and the Exceptional Children's Educational Act (ECEA).
- B. The CDE is the designated lead agency and State Educational Agency for administering IDEA Part B and ensures that a Free Appropriate Public Education (FAPE) is available to all children ages 3-21. Administrative Units (AUs) are responsible for ensuring FAPE at the local level.
- C. The CDEC administers the Universal Preschool Program in Colorado, in which children with disabilities may be enrolled.
- D. The MOU must define the roles and responsibilities of both AUs and Preschool Program Providers. § 26.5-4-206(2)(a), C.R.S.
- E. The MOU must recognize that the CDE is responsible for compliance with special education laws and has final authority over any special education and related services that may be delivered through the Universal Preschool Program. § 26.5-4-206(2)(a), C.R.S.
- F. The MOU must describe each department's role in helping Preschool Program Providers and communities provide inclusive, individualized, meaningful, culturally relevant, linguistically relevant, active, and participatory learning for all children with disabilities enrolled in Universal Preschool Program, in accordance with each child's individualized education program (IEP). § 26.5-4-206(2)(c), C.R.S.
- G. The MOU must establish procedures to hold all Preschool Program Providers accountable for providing access and supports for children with disabilities. § 26.5-4-206(2)(d), C.R.S.

- H. The MOU must recommend training programs for Preschool Program Providers in working with children with disabilities. § 26.5-4-206(2)(e), C.R.S.
- I. The MOU must ensure that Preschool Program rules comply with and do not conflict with IDEA and ECEA. § 26.5-4-206, C.R.S.
- J. The MOU must ensure that Preschool Program rules address all legal requirements for the provision of services to eligible children with disabilities. § 26.5-4-206(2)(f)(II), C.R.S.
- K. The MOU must describe data collection and sharing responsibilities in accordance with federal requirements and timelines and ensure that all critical data can be disaggregated, while adhering to requirements for protecting personally identifiable information. § 26.5-4-206(2)(b), C.R.S.
- L. The Parties are committed to ensuring State and local Part B systems adhere to the policies and procedures set forth in this MOU, and the requirements set forth in IDEA Part B, the ECEA, and all other applicable state and federal laws.

NOW THEREFORE, the Parties, in consideration of the mutual covenants and agreements of this MOU, agree as follows:

II. AGREEMENT TERMS

- A. Roles and Responsibilities: The Parties agree that these agencies have the following roles and responsibilities related to preschool and special education:
 - 1. **CDE.** The CDE is the State’s Lead Educational Agency under IDEA and ensures compliance with all requirements under IDEA and the ECEA. The CDE is responsible for:
 - a. *Reporting:* The CDE shall report all required information to the Federal Office of Special Education Programs (OSEP), including, without limitation, the State Performance Plan (SPP) and Annual Performance Report (APR) for IDEA Part B. The CDE shall respond to all communications from OSEP and the U.S. Department of Education related to special education and related services for children enrolled in the Universal Preschool Program.
 - b. *Procedures:* The CDE, in coordination with the appropriate AU, shall establish relevant procedures, monitor all special education and related services for children enrolled in the Universal Preschool Program, and issue corrective actions and other actions to ensure that any Preschool Program Providers who provide special education and related services to children in the Universal Preschool Program are accountable for and comply with all special education laws, rules, and regulations. The CDE will report a Preschool Program Provider’s noncompliance with any special education requirements to the CDEC. The CDE shall ensure that all AUs comply with all IDEA and ECEA requirements. The CDE shall enforce all special education rules applicable to preschool as promulgated by the State Board of Education, including, without

limitation, rules related to Child Find and other IDEA and ECEA obligations for all Universal Preschool Program participants.

- c. *Point of Contact:* The CDE shall serve as the sole point of contact for the CDEC, the OSEP, and the U.S. Department of Education on all Universal Preschool Program special education issues. The CDE shall also serve as a secondary point of contact to Local Coordinating Organizations (LCOs) and Preschool Program Providers on all issues related to special education and related services for children enrolled in Universal Preschool Program, the local AU being the primary contact.
 - d. *Communications:* The CDE shall be primarily responsible for communications related to Part B special education for children enrolled in the Universal Preschool Program, including, without limitation: communications with parents, community members, and the media. To ensure consistent information that conforms to state and federal special education laws, the CDEC, LCOs, and Preschool Program Providers shall not communicate any information related to special education and related services for children enrolled in Universal Preschool Program unless such communications were drafted or approved by the CDE. The CDEC shall refer all questions and concerns related to special education and related services to the CDE.
 - e. *Training:* The CDE shall establish the specific training and certification requirements for Part B for the CDEC, LCOs and Preschool Program Providers.
 - f. *Data:* The CDE shall collect, share, manage, and protect all preschool special education data relevant to its reporting requirements to OSEP and data needed to fulfill CDE's support in implementing Part B services, and shall be the sole decision-maker as to whether and how data is shared, consistent with state and federal legal requirements.
 - g. *Technical Assistance and Guidance:* The CDE shall provide the CDEC, LCOs, AUs and Preschool Program Providers with agency guidance and technical assistance regarding the implementation of special education laws and rules, and evidence-based practices necessary to fulfill the State's obligations for providing special education services under state and federal law.
2. **CDEC.** The CDEC administers Colorado's Universal Preschool Program. The CDEC is responsible for:
- a. *Legal Compliance.* The CDEC shall monitor LCOs and Preschool Program Providers for compliance with all CDEC licensing requirements and regulations. The CDEC shall establish licensing rules and regulations that require all LCOs, where applicable, and Preschool Program Providers that provide special education services to comply with all relevant state and federal special

education laws, regulations and requirements. To avoid potential conflicts and confusion between the CDEC rules and the CDE rules, the CDEC shall not make any other rules related to special education and related services for children enrolled in the Universal Preschool Program other than the rules agreed to in this Agreement. If CDE or an AU notifies CDEC that an LCO or Preschool Program Provider is out of compliance with any special education state or federal laws, rules or requirements, CDEC will take appropriate licensing action as defined in CDEC rule.

- b. *Training.* The CDEC will require that Preschool Program Providers complete all required special education training and certification programs prior to providing special education services to children enrolled in the Universal Preschool Program and will promulgate those requirements in rule. CDEC will require that LCOs complete all applicable required special education training and certification programs and will promulgate those requirements in rule. If a Preschool Program Provider or LCO is out of compliance with any training or certification requirements, CDEC will take appropriate licensing action as defined in CDEC rule.
- c. *Cooperation with the CDE.* The CDEC shall cooperate with the CDE and AUs as necessary to ensure proper implementation of any special education programs to children enrolled in the Universal Preschool Program in compliance with state and federal law and relevant regulations.
- d. *Notices:* The CDEC shall transmit and maintain the confidentiality of any data to CDE and AUs in accordance with all applicable laws.

2. **AUs.** AU means a school district, a board of cooperative services, a multi-district administrative unit, a charter school network, a charter school collaborative, or the state charter school institute, that is providing educational services to exceptional children and that is responsible for the local administration of article 20 of title 22, C.R.S. § 22-20-103(1), C.R.S. The CDE is responsible for monitoring AUs and shall recommend minimum standards for them to the state board of education. *See* § 22-20-104(1)(a), C.R.S. The CDE, in coordination with the appropriate AU, shall establish relevant procedures, monitor all special education and related services for children enrolled in the Universal Preschool Program, and issue corrective actions and other actions to ensure that any Preschool Program Providers who provide special education services to children in the Universal Preschool Program are accountable for and comply with all special education laws, rules, and regulations. AUs shall report a Preschool Program Provider's noncompliance of any IDEA and ECEA requirements to the CDEC.

4. **Preschool Program Providers.** Preschool Program Providers provide preschool services and are licensed pursuant to part 3 of article 5 of title 26.5, C.R.S. § 26.5-4-203(14), C.R.S. CDEC's Executive Director shall adopt rules defining quality standards that each

preschool provider must meet to receive funding through the Colorado universal preschool program, including requirements for Preschool Program Providers that provide special education services. §§ 26.5-4-204(4)(a); 26.5-4-205(1), C.R.S. CDEC will establish rules that require Preschool Program Providers that provide special education services to comply with all relevant state and federal special education laws, regulations and requirements.

5. **Local Coordinating Organizations.** The parties understand and agree that LCOs are the entities selected by the CDEC to implement a community plan for early childhood and family support programs and services within a specified community. § 26.5-4-203(11), C.R.S. This includes, without limitation, responsibility for the application and enrollment process for the Universal Preschool Program, a process which may involve the receipt of special education information. Through rule or contract, CDEC will require LCOs to comply with all relevant state and federal special education laws, regulations and requirements.

D. **General Terms**

1. **Effective Date and Termination.** This MOU is effective when signed by the Commissioner of the CDE and the Executive Director of the CDEC. This MOU is ongoing and may not be terminated unless a Party gives at least forty-five days advance written notice of its intent to terminate, and the specific bases for termination. Any notice of intent to terminate will trigger the dispute resolution process outlined in this MOU unless the MOU is being terminated by operation of law or by mutual agreement of the Parties.

2. **Annual Review and Modifications.** The Commissioner of the CDE and the Executive Director of the CDEC or their designees shall review this MOU annually before May 30. Any modifications to this MOU must be executed in writing and signed by both Parties.

3. **Regular Special Education Meetings.** The Parties shall engage in regularly scheduled meetings throughout each year to address issues related to special education and related services at times mutually agreed upon between the Parties.

4. **Privacy and Confidentiality.** The Parties agree to comply with all state and federal laws concerning the privacy and confidentiality of all student data and information. The CDEC shall monitor all Preschool Program Providers and LCOs for compliance with these laws. The CDE shall ensure that all AUs comply with these laws.

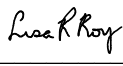
5. **Data Collection, Deadlines, and Reporting.** The CDE and AUs have sole reporting authority for all OSEP reporting requirements, and December and end of year special education data collection requirements. The CDEC shall collect data on children accessing universal preschool, including children enrolled in the Universal Preschool Program receiving special education and related services.

6. **Funding.** The CDEC pays for the general education curriculum for children receiving special education and related services in the Universal Preschool Program. The CDE pays for the

special education and related services for children receiving special education and related services in the Universal Preschool Program.

7. **Dispute Resolution.** The CDE shall establish by rule an informal special education dispute resolution process applicable to AUs, Preschool Program Providers, and LCOs that may have disputes with other Universal Preschool Program entities and shall establish rules requiring AUs to participate in the process. The CDEC, by contract or rule, shall require Preschool Program Providers and LCOs, where applicable, to participate in the special education dispute resolution process established by the CDE. The CDE and the CDEC agree that they will work together to investigate and assist the other entities in resolving disputes, as appropriate. CDEC and CDE state agency staff may implement remedies and sanctions, as needed, including requirements of local agreements, training and technical assistance from state staff, or other appropriate remedies required to effectively resolve the issues presented to the state agency. CDEC and CDE may apply sanctions or remedies, as required, under IDEA. Any decision issued by either CDEC or CDE is binding and must be implemented by the Part B entity and/or AU.

IN WITNESS WHEREOF, the CDEC and the CDE agree to the terms of this MOU.

Signature:  Date: 2/1/2023
Lisa Roy, Ed.D., Executive Director
Colorado Department of Early Childhood

Signature:  Date: 2/1/2023
Katy Anthes, Ph.D., Commissioner
Colorado Department of Education