



# Comprehensive Plan for a Voluntary Program of Early Learning: Progress Report

Submitted to:  
Washington Quality Education Council  
Early Learning Advisory Council

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## Executive Summary

### Background

The transition from the first five years of life into the K-12 system is a major milestone for about 75,000 children in Washington every year. Ensuring that each child has access to high-quality preschool is a key component to success in kindergarten and beyond. Research shows that children who attend high-quality preschool programs perform better in school and throughout life. They have more advanced language and math skills, and enter kindergarten with an understanding of the classroom environment.

A key component to achieving this goal is having a clear strategy to prioritize and protect investments in proven programs, like high-quality preschools. The 2009 Recommendations to the Governor, developed in partnership by the Office of Superintendent of Public Instruction (OSPI), the Department of Early Learning (DEL) and Thrive by Five Washington, recommended including a voluntary program of early learning within basic education:

*Create voluntary universal preschool program for 3- and 4-year-olds as part of basic education; phase-in to serve highest poverty communities first in coordination with the phase-in of all-day kindergarten, serving at-risk 4-year-olds first and then at-risk 3-year-olds next; implement universal pre-kindergarten through a mixed-delivery system—through a variety of settings—to draw on the strengths of diverse families, communities, and service providers.*

The 2010 Quality Education Council (QEC) recommendations also supported funding preschool for at-risk children as part of Washington’s definition of basic education.

The 2010 Legislature passed Substitute Senate Bill 6759 (SSB6759) to further this examination. SSB 6759 recognized that high-quality preschool opportunities for all children and families are essential to improving the quality of public education in Washington. It directed OSPI and DEL to convene an Early Learning Technical Workgroup that would examine the opportunities and barriers associated with implementing a preschool program as part of Basic Education, as a statutory entitlement or as a constitutional amendment.

SSB 6759 directs that the recommendations include:

- Criteria for eligible children, including program standards, direct services to be provided, number of hours per school year, teacher qualifications, transportation requirements and performance measures.
- Criteria for eligible providers in terms of level of regulation (by DEL) and criteria specific to public, private, nonsectarian, or sectarian organizations.
- Governance responsibilities for OSPI and DEL.
- Timeline and funding necessary for implementation.
- Alignment with current programs, including the Early Childhood Education and Assistance Program (ECEAP), which is Washington’s state-funded preschool program.

The research must include the following analysis and discussion:

- A review of early learning programs in Washington, including ECEAP and Head Start.
- An analysis of key, evidence-based preschool programs around the nation.

The goal of the final recommendations is to establish a clear, actionable strategy in Washington that informs the implementation of voluntary, high-quality preschool opportunities for 3- and 4-year-old children in Washington.

## Phase One

The Early Learning Technical Workgroup met five times during 2010. Much progress was made, despite the fact that funding included in the original legislation to support the work was redirected to help resolve the state revenue shortfall.<sup>1</sup>

During this time, the workgroup researched the following key topics:

- Head Start
- Early Childhood Education and Assistance Program (ECEAP)
- Legal implications of basic education and entitlement programs
- K-12 funding
- Preschool models around the nation (New Jersey, Georgia, Florida and Oklahoma)
- Second Substitute House Bill 2731 (SSHB 2731), also passed by the 2010 Legislature, which created an early learning entitlement program for educationally at-risk children

A large amount of time of the workgroup has been devoted to the topic of the implications of a preschool program that is included within the constitutional definition of basic education versus a program that is an entitlement. The following chart attempts to define the key terms and outline the different implementation processes.

	Definition	Implementation	Example
<b>Basic Education</b>	A collection of legal decisions and statutes that are protected under Section 1 of Article IX of Washington State's Constitution - <i>"It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex."</i>	<ul style="list-style-type: none"> <li>• Legal decisions</li> <li>• Policy bill</li> <li>• Budget appropriation</li> </ul>	Special education
<b>Statutory Entitlement</b>	An Entitlement is a guarantee of access to specific benefits by agreement through law.	<ul style="list-style-type: none"> <li>• Policy bill</li> <li>• Budget appropriation</li> </ul>	SSHB 2731 (Established preschool for eligible children as an entitlement)
<b>Constitutional Entitlement</b>	An Entitlement is a guarantee of access to benefits as defined in an amendment to the Washington State Constitution.	<ul style="list-style-type: none"> <li>• 2/3<sup>rds</sup> vote in House and Senate</li> <li>• Governor signature</li> <li>• Vote of the people (50%+1)</li> </ul>	EHJR 4204 (Local school levies required a 60% +1 vote to pass maintenance levies prior to passage)
<b>Categorical Expenditure</b>	A program or expenditure funded in the enacted budget.	<ul style="list-style-type: none"> <li>• Budget appropriation</li> <li>• Policy bill is not necessary</li> </ul>	National Board Teacher Certification  Home visitation programs

The workgroup focused on understanding the implications of basic education and a statutory entitlement in terms of specific program components, funding and political will. The following chart outlines specific requirements and considerations for implementing a program as part of basic education.

<sup>1</sup> SB 6759 included \$234,221 for OSPI and \$94,628 for DEL to support this work. All of this money was redirected.

<b>Program Component</b>	<b>Considerations for Basic Education</b>
Governance Eligibility	State Constitution grants OSPI supervisory authority over basic education. Individual entitlement. Could be universal or at-risk; however, anything short of universal requires objectively defined and legally defensible criteria to define <i>risk (as a proxy for educational need)</i> . Assessment tool could be used to determine risk.
Transportation	Required to provide transportation for eligible students who would be unable to participate without transportation.
Sectarian Influence	Article 9, Section 4 of the Washington State’s Constitution has been interpreted in a manner that would prohibit basic education funds from being used to support an institution with sectarian influence.  Article 1, Section 11 of Washington State’s Constitution prohibits public money from being applied to religious instruction, worship or exercise, but would likely allow a secular program to be delivered in a sectarian setting.
Where Services are Delivered	Under Article 9, Section 2 of Washington State’s Constitution, basic education must be delivered through a general and uniform system of public schools. This would allow School Districts or Educational Service Districts to oversee programs locally.

All other program components could be determined by the Legislature.

A statutory entitlement would not require specific program components and all program components could be determined by the Legislature. A program as part of basic education would provide the highest level of stability in terms of consistent funding. A statutory entitlement could be amended, delayed and/or suspended by the Legislature and Governor. A categorical expenditure could be subject to change each budget cycle.

### **Phase Two**

Moving forward, the Early Learning Technical Workgroup will build upon and align the work outlined in Washington’s 10-year Early Learning Plan and HB 2731 to develop clear, actionable recommendations to inform the implementation of voluntary, high-quality preschool opportunities for children in Washington. The final report is due November 1, 2011.

## I. Legislative Background

The 2010 Legislature passed Substitute Senate Bill 6759 (SSB 6759) in response to recommendations by the Department of Early Learning (DEL), the Office of Superintendent of Public Instruction (OSPI), Thrive by Five Washington, and the Quality Education Council (QEC) that a voluntary program of early learning be included within the overall program of “basic education.” While there was widespread support of legislators for enhancing the availability and quality of early learning opportunities in the state, there were questions about the legal and practical implications of incorporating pre-kindergarten programs in the definition of basic education. These questions were summarized in a letter to the Attorney General from four state senators in December 2009, and the Attorney General responded in an opinion in early 2010 (AGO 2009, No. 8). (See Appendix A)

In order to further explore the questions raised in the letter and the Attorney General’s response, SSB 6759 directed OSPI, with the assistance and support of DEL, to convene a technical working group to develop a plan for a voluntary program of early learning that would examine the opportunities and challenges of at least two options: 1) a program of early learning under the program of basic education, and 2) a program of early learning as an entitlement, either statutorily or constitutionally protected. (See Appendix B)

Funding was provided (\$234,000) to OSPI and DEL to convene the meetings and provide staff support, but these funds were eliminated as a result of the state’s revenue shortfall. As a result, existing OSPI and DEL staff provided support to the workgroup.

The legislation requires that the options include recommendations, at a minimum, for the following components:

- (a) Criteria for eligible children;
- (b) Program standards, including, but not limited to, direct services to be provided, number of hours per school year, teacher qualifications, and transportation requirements;
- (c) Performance measures;
- (d) Criteria for eligible providers, specifying whether or not they may be:
  - (i) Approved, certified, or licensed by DEL; and
  - (ii) Public, private, nonsectarian, or sectarian organizations;
- (e) Governance responsibilities for OSPI and DEL;
- (f) Funding necessary to implement a voluntary program of early learning, including, but not limited to, early learning teachers, professional development, facilities, and technical assistance;
- (g) A timeline for implementation; and
- (h) The Early Childhood Education and Assistance Program's (ECEAP) role in the new program of early learning.

The legislation also directed the workgroup to review early learning programs in Washington, including ECEAP and the federal Head Start program, as well as programs in other states.

The workgroup is monitored and overseen by the QEC, and this progress report is to be submitted by July 1, 2011. A final report, with the group’s recommendations, is to be submitted to the QEC and the Early Learning Advisory Council (ELAC) by November 1, 2011.

The QEC is subsequently required to submit a report to the Legislature by January 1, 2012, detailing its recommendations for a comprehensive plan for a voluntary program of early learning. Before submitting the report, the council is directed to seek input from the ELAC.

## II. Membership of the Early Learning Technical Workgroup

SSB 6759 requires that the workgroup be composed of:

- (a) At least one representative each from DEL, OSPI, Thrive by Five Washington, and the Office of the Attorney General;
- (b) Two members of the Early Learning Advisory Council; and
- (c) Additional stakeholders with expertise in early learning to be appointed by the Early Learning Advisory Council.

Consistent with these requirements, the membership includes:

Name	Organization	Title
Senator Curtis King	State Senate and ELAC Member	Senator 14 <sup>th</sup> Legislative District, Yakima
Representative Roger Goodman	House of Representatives and ELAC Member	Representative 45 <sup>th</sup> Legislative District, Kirkland
Bonnie Beukema, Co-Chair	Department of Early Learning	Assistant Director Outcomes & Accountability
Bob Butts, Co-Chair	Office of Superintendent of Public Instruction	Assistant Superintendent Policy and Planning
John Bancroft	Puget Sound Educational Service District	Assistant to the Superintendent for Early Learning
Molly Boyajian	Thrive-by-Five	Director Special Initiatives
Sally Brownfield	Squaxin Island Tribe	Education Director
Janice Deguchi	Denise Louie Education Center	Executive Director
Judy Jennings	Washington Federation of Independent Schools	Executive Director
Joyce Kilmer	Department of Early Learning	ECEAP Administrator
Hannah Lidman	League of Education Voters	Senior Policy Analyst
Lorena Lowell	Bambinos International Learning Center	Founder and CEO
Todd McNerney	Parent	Member of DEL Parent Advisory Group
Paula Quinn	Association of Washington School Principals	Director of Elementary Programs
Joel Ryan	Washington Association of Head Start & ECEAP	Executive Director
Dave Stoller	Office of the Attorney General	Senior Assistant Attorney General
Mary Carr Wilt	Longview School District	Special Education Director

### III. Current Status and Findings

Members of the workgroup were selected after the 2010 Legislative Session, and the first meeting of the group occurred in June 2010. Five subsequent meetings were held between June and December 2010. Because the majority of members were directly or indirectly involved in the Legislature, meetings were not conducted during the legislative session. The next meeting is scheduled in mid-July 2011.

The major topics explored by the group have included our current state and federal pre-kindergarten programs in Washington, the characteristics and funding of pre-kindergarten programs in other states, the legal and practical differences between a program within the basic education program versus an entitlement program, the characteristics of effective programs, and the entitlement program created in SSB 2731. Conversations regarding the recommended components to the two required options have begun, and will be the subject of the three remaining meetings of the group before its recommendations are submitted to the QEC and ELAC in November 2011.

#### A. Existing State and Federally-funded Preschool Programs in Washington

The Early Childhood Education and Assistance Program (ECEAP) and Head Start are high-quality early learning programs that aim to ensure that the most vulnerable children in Washington enter kindergarten healthy and ready to succeed. They provide free, comprehensive early learning, health and family support services to children and their families who are low-income or who face circumstances that make it difficult for them to be ready for school. ECEAP, created by the Legislature in 1985, is state-funded. DEL establishes ECEAP Performance Standards and monitors program quality. The federal government funds Head Start, directly to grantees, and establishes Head Start Program Performance Standards and monitors quality. In Washington, there are 19 ECEAP-only agencies, 10 federal Head Start-only agencies, and 21 agencies that operate *both* ECEAP and Head Start.

ECEAP and Head Start have three interdependent components:

- **Early Learning.** Early learning experiences are designed to fit each child's individual needs and developmental level. Children in ECEAP and Head Start receive developmental screenings to identify areas of concern, such as a possible delay or disability. Teachers regularly assess children's progress in cognitive, language, early literacy, social-emotional and physical development. Classroom staff use the assessment results to adjust curriculum and instruction for individual children and whole classrooms.
- **Health.** Health is a critical aspect of children's school readiness. Children cannot learn optimally if they are unhealthy, or have vision or hearing problems. Program staff work with families to attain medical and dental coverage. They help establish a medical and dental home for each child, a place where the child can receive regular and ongoing care. Children receive health screenings to check vision, hearing, height and weight. Each child also receives a medical well-child exam and dental screening, and any needed follow-up treatment. Families are referred to community health, mental health and nutrition services, as needed, for follow-up evaluation, preventive care or treatment. While children are enrolled, the staff and parents continue to monitor their health and progress. ECEAP and Head Start also promote children's health and physical development by providing healthy meals and snacks, offering safe indoor and outdoor settings for play and movement, and providing health and nutrition education.

- Family Engagement and Support.** ECEAP and Head Start recognize that parents are their child’s first and most important teachers. Children’s learning improves when the programs involve their parents and respect their language and culture. ECEAP and Head Start invite parents to get involved in a variety of ways. For example, parents can volunteer in the classroom or serve on a policy council. Many grantees/contractors offer workshops in parenting skills and leadership. All three programs also work with families to help them assess their own priorities and needs, set goals—such as for self sufficiency, education, housing or employment—and make progress toward those goals. For example, if parents want to get a better job, the staff might help them find and enroll in a general education diploma (GED) or job training program. Staff work with community partners to maximize and streamline health, education, and social services and plan transitions to kindergarten. Parents also learn about child development, parenting skills and advocating for their children’s education.

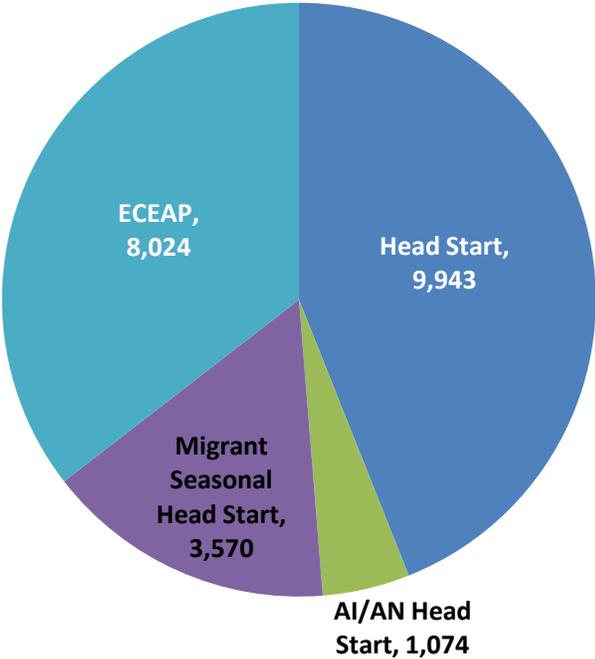
The following chart compares additional components of ECEAP and Head Start:

	ECEAP	Head Start
<b>Date Founded</b>	1985	1965
<b>Funding Source</b>	State	Federal
<b>Average Funds per Slot to Grantees/Contractors</b>	\$6,662 per slot	<ul style="list-style-type: none"> <li>Head Start: \$9,175 per slot</li> <li>American Indian/Alaska Native Head Start: \$8,423 per slot</li> <li>Migrant and Seasonal Head Start: \$8,409 per slot</li> </ul> These amounts include the dedicated staff training and development funds.
<b>Administration</b>	Washington State Department of Early Learning: Eight staff design, contract, provide oversight, monitor, and provide training and technical assistance.	U.S. Department of Health and Human Services/Administration for Children and Families. Larger staff than ECEAP in relation to program size, including federal staff for design and distribution of funds; regional staff for oversight and monitoring; and contracted staff for training and technical assistance.
<b>Available Slots for Children in 2010-11</b>	8,024 slots	<ul style="list-style-type: none"> <li>9,887 in Head Start</li> <li>1,075 in American Indian/Alaska Native Head Start</li> <li>3,570 in Migrant/Seasonal Head Start</li> </ul>
<b>Ages of Children Served</b>	3 and 4 years old by August 31 of the school year, with a priority for 4-year-olds.	3 to 5 years
<b>Populations Served</b>	<ul style="list-style-type: none"> <li>Families up to 110 percent of federal poverty level.</li> <li>Families not income-eligible but impacted by development risk factors (e.g., delays) or environmental risk factors (e.g., child protective services involvement,) up to 10 percent statewide.</li> <li>Children who qualify for the</li> </ul>	<ul style="list-style-type: none"> <li>Families up to 130 percent of federal poverty level (prioritizing those below 100 percent).</li> <li>Families not income-eligible but impacted by development risk factors (e.g., delays) or environmental risk factors (e.g., child protective services involvement) up to 10 percent per grantee.</li> <li>Children with special needs (required to be 10 percent of enrolled children).</li> <li>Children who are homeless, in foster care or child welfare, or receiving TANF, regardless of income.</li> </ul>

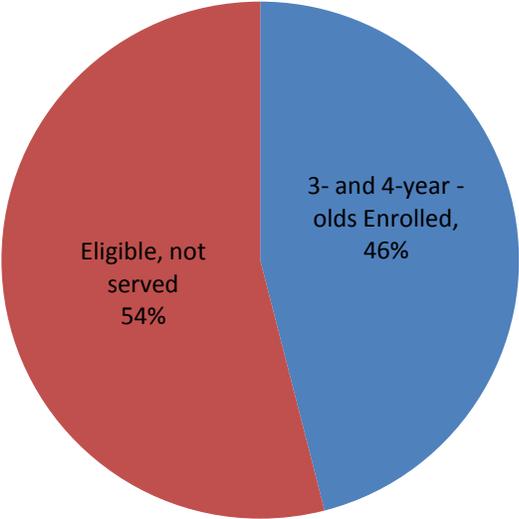
	ECEAP	Head Start
	<p>special education, regardless of income.</p> <ul style="list-style-type: none"> <li>• Children in foster care or receiving TANF qualify based on income.</li> <li>• Children from families with the lowest incomes, homeless, in foster care or with multiple risk factors are <b>prioritized</b> for the limited slots.</li> </ul>	
<b>Children with Specific Risk Factors – 2009-10</b>	<ul style="list-style-type: none"> <li>• Foster Care: 3 percent</li> <li>• Homeless: 7 percent</li> <li>• Individualized Education Program (IEP) for children with disabilities: 9 percent</li> </ul>	<ul style="list-style-type: none"> <li>• Foster Care: Head Start 4 percent; AI/AN Head Start 10%; Migrant Head Start less than 1percent</li> <li>• Homeless: Head Start 6 percent; AI/AN Head Start 3percent; Migrant Head Start 2 percent</li> <li>• Individual Education Program (IEP) for children with disabilities: Head Start 13 percent; AI/AN Head Start 16 percent; Migrant Head Start 2 percent</li> </ul>
<b>Minimum Classroom Hours</b>	Required: minimum of 320 preschool classroom hours per year.	Required: minimum of 448 preschool classroom hours per year.
<b>Family Partnership</b>	3 hours of family support <i>and</i> 3 hours of parent-teacher conferences per child per year.	At least 3 home visits per child per year.
<b>Health Screening and Exam</b>	Child receives a health and developmental screening, a well-child exam, and a dental screening within 90 days.	Child receives a health and developmental screening by the first 45 days of enrolling in the program, a well-child exam, and a dental screening within 90 days.
<b>Grantees/Contractors</b>	The state contracts with local organizations to operate ECEAP sites. Contractors may be public or private <b>nonsectarian</b> organizations, including school districts, educational service districts, community and technical colleges, local governments, or nonprofit organizations.	The federal Office of Head Start provides grants to operate local Head Start and Early Head Start sites. Grantees may be any local public or nonprofit agency, including community-based and faith-based organizations, government agencies, tribal governments or for-profit agencies, pursuant to the requirements of the Head Start Act.
<b>Teacher Qualifications</b>	<p>Lead teachers must have one of the following:</p> <ul style="list-style-type: none"> <li>• Associate degree or higher with 30 quarter credits in early childhood education; or</li> <li>• A Washington state teaching certificate with an endorsement in Early Childhood Education (PreK-3) or in Early Childhood Special Education.</li> </ul> <p>Assistant teachers must have one of</p>	<p>As of 10/1/2011, a teacher in each classroom must have one of the following:</p> <ul style="list-style-type: none"> <li>• Associate, bachelor's or advanced degree in early childhood education; or</li> <li>• Associate, bachelor's or advanced degree in a related field and coursework equivalent to a major relating to early childhood education, with experience teaching preschool; or</li> <li>• Bachelor's degree, admission to the Teach for America program, success in an early childhood content exam, and attendance at a Teach for America summer training institute that includes</li> </ul>

	ECEAP	Head Start
	<p>the following:</p> <ul style="list-style-type: none"> <li>• 12 quarter credits in early childhood education; or</li> <li>• A child development associate (CDA) credential.</li> </ul>	<p>teaching preschool children.</p> <p>Starting in 2013, 50 percent of the lead teachers in center-based Head Start agencies nationwide must have at least a bachelor’s degree in early childhood education, or in a related field with coursework equivalent to a major in early childhood education.</p> <p>Assistant teachers: Starting in 2013, all teaching assistants in center-based Head Start agencies must:</p> <ul style="list-style-type: none"> <li>• Have a child development associate (CDA) credential; or</li> <li>• Be enrolled in a CDA program to be completed in two years; or</li> <li>• Have an associate or bachelor’s degree in any area, or be enrolled in a program leading to this degree.</li> </ul>
<b>Staff Training and Development</b>	<p>ECEAP lead teachers and family support specialists must attend at least 15 hours of professional development workshops or classes per year.</p> <p>All staff who work with children must have training in first aid and infant/child cardiopulmonary resuscitation; disease prevention; disaster planning; and preventing, identifying and reporting child abuse and neglect.</p> <p>DEL provides training and technical assistance to ECEAP and contractors support additional training with their regular per slot funds.</p>	<p>Teachers must attend at least 15 hours of professional development workshops or classes per year.</p> <p>All staff who work with children must have training in first aid and infant/child cardiopulmonary resuscitation; disease prevention; disaster planning; and preventing, identifying and reporting child abuse and neglect.</p> <p>Fifty percent of federal Head Start training and technical assistance funds are distributed directly to grantees for staff training and development.</p>
<b>Early Learning Framework (Outcomes)</b>	<p>ECEAP contractors must use an early learning framework to plan developmentally appropriate early childhood education. This framework informs the environment, daily routine, curriculum, adult-child interactions, guidance, screening and referral, assessment and individualization, and parent-teacher conferences. The curriculum must be aligned with the <i>Washington State Early Learning and Development Benchmarks</i>.</p>	<p>Head Start’s Child Development and Early Learning Framework guides staff and parents in selecting curricula and assessment tools to support each child in making progress. The framework uses 11 areas of knowledge and development, or “domains” that are comparable to the domains and sub-domains of the <i>Washington State Early Learning and Development Benchmarks</i>.</p>

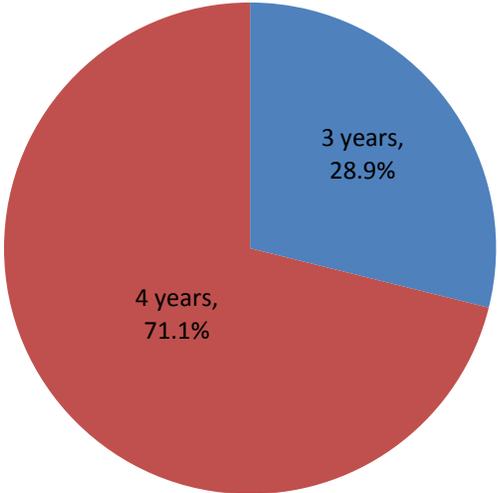
**Available slots by program:** There is funding for approximately 23,000 children in ECEAP and the three Head Start programs.



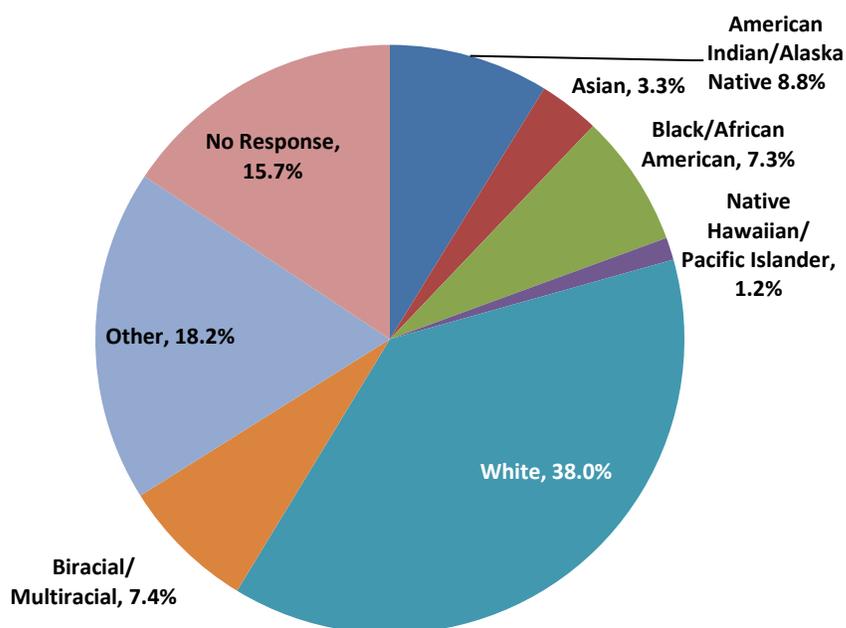
**Eligible Unserved Children:** There are 19,000 eligible children who are not served by ECEAP or Head Start in Washington. This represents 54% of the eligible children.



**Age of Children in ECEAP and Head Start**



## Race of Children in ECEAP and Head Start



## B. Preschool Programs in Other States

As part of our work to make recommendations on the required elements specified by law, the workgroup reviewed prekindergarten programs in other states. In December 2010, Hannah Lidman from the League of Education Voters, made a presentation to the group on prekindergarten policies around the nation, including a comprehensive comparison of state-funded prekindergarten programs across a large number of criteria.

The workgroup has since focused on only the 10 states receiving high marks for programmatic quality and serving 25 percent or more of 4-year-old children in the state: Arkansas, Georgia, Illinois, Iowa, Kentucky, Louisiana, Maryland, North Carolina, Oklahoma and West Virginia. Initial explorations into the elements of public prekindergarten in the selected states have revealed a number of broad commonalities in the programs that provide insight to the workgroup's deliberations.

### Eligibility and Access

- Most states focus exclusively on 4-year-olds with very little, if any, participation by 3-year-old children. Only one of the 10 states reviewed (IL) has more than 10 percent of 3-year-olds enrolled in the state prekindergarten program – Washington's ECEAP serves 7 percent of the state's 4-year-olds and just 2 percent of 3-year-olds.
- Half of the programs are available to all age-eligible children, regardless of income. Five states limit eligibility by income level as determined by federal poverty level or percentage of state median

income – Eligibility in Washington is primarily determined by family income (110 percent of the federal poverty level).

- Almost all of the states offer the programs to children and families free of charge. Two states charge a sliding scale to families above income eligibility caps (AR and LA) and two allow the policy to be determined locally (KY and IA) – Washington’s ECEAP is free of charge to attending children.
- All the programs serve more children than the ECEAP program in Washington State ranging from about 10,000 in IA to 95,000 children in IL – In Washington, current funding supports just over 8,000 children in ECEAP per year.
- The programs are a mix of full and part-day, but all run only during the school year and most are five days a week – ECEAP is typically a half-day program operating four days a week during the academic year though some programmatic scheduling decisions can be made at a more local level.

### **Services and Standards**

- In every state, class sizes in prekindergarten classrooms have a maximum of 20 students and all have a teacher-to-student ratio of 1:10 or below – The maximum class size in ECEAP is 20 with a ratio of 1 teacher per 9 children.
- Every state has its own early learning standards or benchmarks linked specifically to prekindergarten – Washington has both specific performance standards for ECEAP and broader early learning benchmarks.
- All programs include some screenings and referrals, most commonly vision, hearing or dental. Some programs have more comprehensive wrap-around services including developmental screenings and immunizations – In Washington, each year all ECEAP children receive a health and developmental screening and a comprehensive well-child exam and dental screening within 90 days of starting the program. ECEAP also requires health services coordination, to ensure children have medical and dental coverage, medical and dental homes, and receive needed follow-up care.
- All programs include other support services for children and families, most commonly parent involvement, training, or transition to kindergarten activities – ECEAP includes 3 hours of one-on-one individualized family support based on the federal Head Start model, in addition to parent involvement and training.
- All programs require a BA degree for lead teachers in public settings and many require BA degrees in nonpublic settings as well. In all cases, teachers are required to have some type of certification or endorsement for working with young children – This is the one area where Washington’s ECEAP program falls short of receiving all 10 National Institute for Early Education Research (NIEER) marks for quality as the program only requires lead teachers to have an AA degree of higher with 30 quarter credits in early childhood education.
- Though a number of the states do not yet have a statewide quality and improvement rating system (QRIS), two states (LA and NC) do require that sites offering the state prekindergarten program meet a minimum quality rating – Washington is in the process of developing and implementing a statewide QRIS and thus minimum quality ratings are not required for ECEAP program sites. ECEAP has extensive performance standards addressing similar quality measures, and monitored by DEL.

### **Funding and Service Delivery Model**

- The majority of state programs are administered by or in collaboration with state departments of education – ECEAP in Washington is administered by DEL.
- Most programs are funded through a combination of sources: state general appropriations, lottery, federal, and local funds. However, the state contribution typically makes up the vast majority of the funds – In past, all funds for ECEAP in Washington have come from state sources but the 2011-13 budget allocated a small amount of federal funds for the program in the coming biennium.

- Across the states, average spending runs a little over \$6,000 per child (including state, federal and local). Five states spend close to or over \$8,000 per child – Washington’s ECEAP per child spending is \$6,812 per year (updated for 2010-11 spending).
- IDEA part B and Title I are the most common federal funds tapped for the programs – Washington will be using a small amount of federal Child Care and Development Fund dollars for ECEAP in the 2011-13 biennium.
- Half of the states restrict receipt of funds to public schools but all of those also allow the schools to subcontract the program to private and nonprofit providers. A significant number of students across all the states receive instruction in child care rather than a school setting – In Washington, the state contracts ECEAP with public or private nonsectarian organizations, including school districts, educational service districts, community and technical colleges, local governments, or nonprofit organizations and subcontracting is allowed. Currently 27.3 percent of ECEAP sites are child care centers.

Please see Appendix E for a more comprehensive comparison of the 10 selected states to Washington in key areas related to the workgroup’s legislative direction.

### **C. Basic Education versus Entitlement Programs**

A large amount of time of the workgroup has been devoted to the topic of the implications of a preschool program that is included within the constitutional definition of “basic education” versus a program that is an “entitlement.”

There are two sections in Article IX of the Washington State Constitution that provide the parameters for the concept of the Legislature’s definition of “basic education”:

*Article IX*

*Section 1. —It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.*

*Section 2. —The legislature shall provide for a general and uniform system of public schools ... which shall include the common schools, and such high schools, normal and technical schools as may hereafter be established ....*

In response to a funding lawsuit initiated in 1976 by Seattle School District, the State Supreme Court interpreted the two constitutional provisions above as requiring the state Legislature to define and fully fund a program of “basic education” for all students in Washington. In response, the Legislature adopted the Basic Education Act of 1977. In subsequent sessions, the Legislature has modified and expanded this definition, most recently in HB 2261 (2009) and HB 2776 (2010).

The most significant advantage of being included within the definition of basic education is that basic education fulfills the state’s “paramount duty.” While the precise contour of the paramount duty is still being considered by the courts, at the very least it means that the Legislature is obligated to give first consideration to providing and preserving programs and funding streams defined as “basic education.” As a result, during times of revenue shortfalls, the Legislature is less likely to cut these programs and revenue streams.

Entitlements, on the other hand, generally “entitle” eligible individuals to services offered in a program. For example, if you meet the eligibility requirements of the special education program, you are entitled to services identified in an Individualized Education Program (IEP). Other examples of entitlement programs include Social Security, Medicare, and English language instruction provided by the Transitional Bilingual Instruction Program.

Appendix D includes a table that illustrates the differences and similarities that would be required of a pre-school program that was included within the definition of “basic education” versus a program that would be an “entitlement.”

#### **D. Existing Preschool Expansion Plans and Recommendations**

##### **House Bill 2731 – Early Learning Program Expansion**

During the 2010 legislative session, which was the same session that SB 6759 passed, the Legislature adopted Second Substitute House Bill 2731 (SSHB 2731), which expands the state’s current preschool opportunities for 3- and 4-year-olds. The bill created a timeline for a voluntary comprehensive program providing early childhood education and family support; options for parental involvement; and health information, screening, and referral services. (See Appendix C)

The first phase is to use the standards and eligibility criteria of ECEAP. As the program is phased in, DEL’s director is to adopt rules, as appropriate and necessary, regarding:

- (a) Minimum program standards, including lead teacher, assistant teacher, and staff qualifications;
- (b) Approval of program providers; and
- (c) Accountability and adherence to performance standards.

According to the legislation, funding for the program in 2011-12 and 2012-13 school years is not to be less than 2009-11 enacted budget, and additional funding is to be phased-in at school districts with state-funded full-day kindergarten beginning in the 2013-14 school year.

Full statewide implementation of the early learning program is to be achieved in the 2018-19 school year, at which time any eligible child is **entitled** to enroll in the program.

The legislation allows school districts and approved community-based early learning providers to contract with DEL, and the department is to collaborate with school districts, community-based providers, and educational service districts to promote an adequate supply of providers.

***With the passage of this legislation, the Legislature made a decision that the state’s preschool program should be an entitlement and not part of basic education. Presumably, however, if there are compelling reasons to make the program part of basic education, they could do so in future legislative sessions.***

##### **Washington Early Learning Plan**

In September 2010, DEL, OSPI and Thrive by Five Washington, in consultation with hundreds of other individuals around the state, completed the 10-year Washington State Early Learning Plan. Included within the plan was a strategy to enhance ECEAP designed to reduce the preparation gap by expanding high-quality, culturally competent comprehensive ECEAP education, health coordination and family support services to cover all low-income and at-risk 3- and 4-year-olds not served by Head Start.

The plan proposed that the expansion of ECEAP take place in three phases, with one parallel process.

##### **Phase One (by the 2014-15 school year):**

- Phase in expansion of ECEAP slots, from 8,024 in the 2010-11 school year, to serve 75 percent of all children from families at or below 110 percent of the federal poverty level, or meeting 2010 ECEAP eligibility based on disability or risk factors, who are not served by Head Start.
- Increase the intensity of ECEAP to a minimum of 450 preschool classroom hours per school year.
- Increase teacher qualifications to require that 100 percent of ECEAP teachers have an associate or higher degree with the equivalent of 30 college quarter credits in early childhood education. These 30 credits may be included in the degree or in addition to the degree (up from the current 71 percent).
- Encourage/provide incentives for pre-kindergarten through third grade alignment.
- Implement a statewide child outcomes assessment process.
- Replace the ECEAP data management system to include capacity to collect outcomes data on individual children.
- Increase rate per ECEAP slot to address program intensity and quality improvements above.

**Phase Two (by the 2018–19 school year):**

- Phase in expansion of ECEAP slots to serve 75 percent of all children from families at or below 130 percent of the federal poverty level, or meeting 2010 ECEAP eligibility based on disability or risk factors, who are not served by Head Start. The 130 percent level is consistent with Head Start and the school free lunch program by the 2020-21 school year.
- Increase the intensity of ECEAP to a minimum of 600 preschool classroom hours per school year, consistent with emerging research showing that full-day, full-school-year programs achieve the best results for low-income and high-risk children.
- Increase teacher qualifications to require that 70 percent of ECEAP teachers have a bachelor's or higher degree with the equivalent of 30 college quarter credits in early childhood education. These 30 credits may be included in the degree or in addition to the degree (up from the current 51 percent).
- Integrate ECEAP child data into the K-12 database.
- Increase rate per ECEAP slot to address program intensity and quality improvements above.

**Phase Three (by the 2020–21 school year):**

- Expand ECEAP eligibility to children from families at or below 185 percent of the federal poverty level, or meeting 2010 ECEAP eligibility based on disability or risk factors to children, consistent with the reduced-price lunch program in the schools.
- Increase teacher qualifications to require that 100 percent of ECEAP teachers have a bachelor's or higher degree with the equivalent of 30 college quarter credits in early childhood education. These 30 credits may be included in the degree or in addition to the degree.

**Parallel Process (by the 2018–19 school year):**

- Phase in regulation of currently license-exempt preschool programs, starting with registration and ending with licensing. This will provide the full picture of the supply of preschool programs available to parents, support safety including background checks, and assess quality across programs as they join the quality rating and improvement system (QRIS).

#### **IV. Next Steps**

In the remaining meetings, the workgroup will finalize its recommendations based on the legal analysis that has been completed, the legislation that has already been adopted by the Legislature, and further review and discussion of best practices in Washington and other states. A final report will be submitted to the QEC and ELAC by November 1, 2011.

Appendix A  
Attorney General Opinion 2009, No. 8

**EDUCATION—PUBLIC SCHOOL SYSTEM—RELIGION—SUPERINTENDENT OF PUBLIC INSTRUCTION—Constitutional Implications Of Adding Early Learning To Statutory Definition Of Basic Education**

- 1. The Legislature may create a basic education program of early learning that is limited to students who are at risk of educational failure. However, article IX, section 1 of the Washington Constitution would preclude limiting such a program to students from low-income households, absent a showing that low family income is an accurate proxy for the risk of educational failure. This would include showing that other students facing the risk of educational failure are not excluded based on family income.**
- 2. Public funds may be used for the operation of early learning programs by sectarian organizations only if the programs remain free of sectarian control or influence, and if the funds are not used for a religious purpose.**
- 3. An early learning program defined to constitute a component of “basic education” must be supervised by the Superintendent of Public Instruction.**
- 4. If the Legislature defines “basic education” to include a program of early learning, but the state lacks facilities to fully implement such a program immediately, the Legislature must establish a plan to overcome or correct such limitations within a reasonable period of time.**
- 5. The Legislature may establish qualifications required for teachers in an early learning program that is incorporated within “basic education.”**
- 6. The Washington Constitution does not require that transportation be provided for students in a basic education program of early learning, except perhaps where the absence of transportation would make basic education unavailable.**

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December 11, 2009

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**AGO 2009 No. 8**

Dear Senators:

By letter previously acknowledged, you requested our opinion on several questions concerning a task force recommendation and proposed legislation to create an early learning program for certain of Washington's children. For clarity and efficiency of analysis, we have paraphrased and reorganized your questions as follows:

1. **Article IX, sections 1 and 2 of the Washington Constitution require the state to make ample provision for the education of all resident children and to maintain a general and uniform system of public schools. Does either section constrain the state's ability to create a basic education program of early learning for only at-risk students from low-income families?**
2. **Does either article I, section 12 of the Washington Constitution or the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution constrain the state's ability to create a basic education program of early learning for only at-risk children from low-income families?**
3. **Some existing state early learning grants are provided to sectarian organizations under article I, section 11 of the Washington Constitution. If the Legislature were to include an early learning program for at-risk, low-income children ages three and four in the definition of "basic education," would the constitutionality of such a program be assessed instead under article IX, section 4 of the Washington Constitution?**
4. **If the answer to question 3 is yes, would article IX, section 4 of the Washington Constitution prohibit the granting or appropriation of state funds to sectarian organizations?**
5. **Under article III, section 22 of the Washington Constitution, the Superintendent of Public Instruction supervises all matters pertaining to public schools. If the Legislature were to pass legislation that replaced the current Early Childhood Education and Assistance Program, as applied to at-risk children, with a new basic education program of early learning, would the new program need to be administered by the Office of the Superintendent of Public Instruction?**
6. **If the Legislature were to create a new basic education program of early learning that replaced the Early Childhood Education and**

**Assistance Program, would the previously-mentioned constitutional provisions permit the state to maintain currently-established waiting lists of eligible students for the new basic education early learning program? Would the answer be different if the state currently does not have the building or staff capacity to provide an early learning program for all eligible children?**

- 7. If the Legislature were to create a new basic education program of early learning, do the constitutional requirements for basic education require that teachers in the early learning program be certified and have completed an education degree program?**
- 8. If the Legislature were to include transportation to and from school as part of the K-12 basic education program, would it also have to provide transportation to students who participate in a basic education program of early learning?**

#### **BRIEF ANSWERS**

1. Article IX, sections 1 and 2 of the Washington Constitution do not preclude the state from creating a basic education program of early learning for children who otherwise would be at risk of educational failure. We conclude, however, that legislation providing a basic education program only to students from low-income families would be inconsistent with article IX, section 1, absent a showing that low family income is an accurate proxy for the risk of educational failure. This would include showing that other students facing the risk of educational failure are not excluded based on family income.<sup>1</sup>
2. Because the United States Supreme Court has not recognized a fundamental right to education, and the contemplated basic education early learning program does not implicate a suspect class, a challenge under the Equal Protection Clause should be reviewed under rational basis review. Because the Washington Supreme Court has not recognized a fundamental right to education, there is no cognizable “privilege” conferred that would trigger heightened review under article I, section 12 of the Washington Constitution, and a challenge under that section also should be reviewed under rational basis review. Accordingly, the primary constraint imposed by article I, section 12 and the Equal Protection Clause is that the criteria used to determine eligibility for the program must be rationally related to the program’s objective: providing an early learning program to children who otherwise are at risk of educational failure.

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<sup>1</sup> The provisions of the state constitution that are discussed in this opinion are set forth in full as an appendix to this opinion.

3. Once an early learning program is included as part of “basic education” in Washington, it must comply with both article I, section 11 and article IX, section 4 of the Washington Constitution.
4. Read together, article I, section 11 and article IX, section 4 of the Washington Constitution prohibit the granting or appropriation of public funds to support religious instruction or any basic education program that is subject to sectarian control or influence. Public funds may be granted or appropriated for the operation of early learning programs by sectarian organizations only if the programs remain free of sectarian control or influence, and the funds are not used for a religious purpose. We conclude that the granting or appropriation of state funds to sectarian organizations for the purposes described in SB 5444 can be accomplished in compliance with article I, section 11. However, absent a fact-specific analysis of the structure and operation of each sectarian organization, the particular early learning program operated by that organization, and the conditions imposed on the organization and enforced by the state, we cannot conclude that the granting or appropriation of state funds to sectarian organizations for the purposes described in SB 5444 can be accomplished in compliance with article IX, section 4.
5. A new basic education program of early learning must be supervised by the Superintendent of Public Instruction; however, the Legislature may create an agency or institution to administer the program under the Superintendent’s supervision.
6. Whether the state could maintain currently-established waiting lists of eligible students for the new basic education early learning program ultimately would require a fact-specific analysis. However, the Legislature would be establishing a new program, and Washington courts have evidenced a willingness to give latitude and time to a new educational program established by the Legislature. If the program includes a reasonable plan to address waiting lists and building and staff shortages in a reasonable time, we would not expect those shortcomings to support a successful constitutional challenge to a basic education program of early learning.
7. The Washington Constitution does not require that teachers in the contemplated early learning program be certified or that they have completed an education degree program. Qualifications for teachers are determined by the Legislature.
8. The Washington Constitution does not require that transportation be provided for students in a basic education program of early learning except, perhaps, where a student would be deprived of basic education if transportation were not available. However, where transportation is provided for other components of basic education, it would be prudent also to provide transportation for children attending a basic education program of early learning.

## FACTUAL BACKGROUND

In your opinion request, you explain that your questions concern proposed legislation. You refer us specifically to Sections 110 and 111 of SB 5444, introduced but not enacted in the last session of the Legislature. You further advise us that Sections 110 and 111 of SB 5444 implement a recommendation of a Joint Task Force On Basic Education Finance created by the Legislature in 2007 to review the current basic education definition and funding formulas and to develop a new definition and funding structure options for basic education in Washington. *See* SB 5627 (2007).

The Task Force issued its final report on January 14, 2009, which recommended “defining basic education to include funding for pre-school programs for all children age three and four whose family income is at or below 130 percent of the federal poverty level, and whose parents choose to enroll in the program.” *Final Report of the Joint Task Force on Basic Education Finance* 14 (Jan. 14, 2009). Section 110(1) of proposed SB 5444 essentially mirrors this recommendation by providing that “the legislature intends to establish a basic education program of early learning for at-risk children that is part of the program of basic education under this chapter[.]” Section 110(3) of proposed SB 5444 defines “at-risk children” to mean “children aged three, four, and five who are not eligible for kindergarten and whose family income is at or below one hundred thirty percent of the federal poverty level, as published annually by the federal department of health and human services.” Participation in the program would be voluntary.

We analyze your questions in the context of this proposed legislation.

## ANALYSIS

Because your questions ask about constitutional constraints on the Legislature’s authority, we preface our analysis by noting the general principles Washington courts apply when considering the constitutionality of legislation.

On many occasions, the Washington Supreme Court has recognized the Legislature’s authority to determine how to satisfy the state’s obligation to provide ample funding for the education of all of the state’s children through a general and uniform system of public schools. *See, e.g., Federal Way Sch. Dist. 210 v. State*, No. 80943-7, 2009 WL 3766092 (Wash. Nov. 12, 2009); *Tunstall v. Bergeson*, 141 Wn.2d 201, 221, 5 P.3d 691 (2000), *cert. denied*, 532 U.S. 920 (2001); *Seattle Sch. Dist. 1 v. State*, 90 Wn.2d 476, 518–20, 585 P.2d 71 (1978); *Newman v. Schlarb*, 184 Wash. 147, 153, 50 P.2d 36 (1935); *Sch. Dist. 20, Spokane Cy. v. Bryan*, 51 Wash. 498, 502, 99 P. 28 (1909). The Court has emphasized that while it ultimately has the responsibility to determine whether legislation satisfies constitutional standards, it is not the function of the judiciary to micro-manage Washington’s education system. *See Brown v. State*, 155 Wn.2d 254, 261–62, 119 P.3d 341 (2005); *Tunstall*, 141 Wn.2d at 223; *see also Seattle Sch. Dist. 1*, 90 Wn.2d at 496, 520 (“While the Legislature must *act* pursuant to the constitutional

mandate to discharge its duty, the general authority to select the *means* of discharging that duty should be left to the Legislature.”).

Legislation is presumed to be constitutional, and the burden is on a person challenging an enacted statute to prove its unconstitutionality beyond a reasonable doubt. *City of Bellevue v. Lee*, 166 Wn.2d 581, 585, 210 P.3d 1011 (2009); *Tunstall*, 141 Wn.2d at 220. The “heavy burden” of establishing that a statute is unconstitutional is met only if the challenger demonstrates through “argument and research” that there “is no reasonable doubt that the statute violates the constitution.” *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 215, 143 P.3d 571 (2006); *Larson v. Seattle Popular Monorail Auth.*, 156 Wn.2d 752, 757, 131 P.3d 892 (2006). As the Court has explained, this “demanding standard of proof” is justified because, “as a coequal branch of government that is sworn to uphold the constitution, we assume the Legislature considered the constitutionality of its enactments and afford great deference to its judgment.” *Tunstall*, 141 Wn.2d at 220.

- 1. Article IX, sections 1 and 2 of the Washington Constitution require the state to make ample provision for the education of all resident children and to maintain a general and uniform system of public schools. Does either section constrain the state’s ability to create a basic education program of early learning for only at-risk students from low-income families?**

Article IX, sections 1 and 2 do not preclude the state from creating a basic education program of early learning for children who otherwise would be at risk of educational failure. We conclude, however, that legislation providing a basic education program only to students from low-income families is inconsistent with article IX, section 1, absent a showing that low family income is an accurate proxy for the risk of educational failure. This would include showing that other students facing the risk of educational failure are not excluded based on family income.

**Article IX, section 1 of the Washington Constitution.** Article IX, section 1 provides that “[i]t is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.” As interpreted by the Washington Supreme Court, this provision imposes a duty on the Legislature to define “basic education” and support it with ample funding from dependable and regular tax sources. *Seattle Sch. Dist. 1*, 90 Wn.2d at 519–22; *accord McGowan v. State*, 148 Wn.2d 278, 283–84, 60 P.3d 67 (2002).<sup>2</sup>

Article IX, section 1 also prohibits any “distinction or preference on account of race, color, caste, or sex.” Providing early education opportunities only to low-income families might be considered to be discrimination based on “caste,” in violation of article IX, section 1. While

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<sup>2</sup> You have not asked us to address what constitutes “ample” funding for an early education program, and we do not do so.

no decision of the Washington Supreme Court has defined “caste,” the dissenting opinion in *Northshore School District 417 v. Kinnear*, 84 Wn.2d 685, 530 P.2d 178 (1974), *overruled in part by Seattle School District 1 v. State*, 90 Wn.2d 476, 585 P.2d 71 (1978), excerpted from a dictionary definition of “caste” to focus on “differences of wealth,” from which it can be inferred that economic status is an important component of “caste.” *See Northshore Sch. Dist. 417*, 84 Wn.2d at 756 n.12.

The *Final Report of the Joint Task Force on Basic Education Finance* recommended that basic education be defined to include a program of early learning only for at-risk students from low-income families. Section 110 of SB 5444 would establish such a program, defining “at-risk children” solely by reference to family income level. SB 5444, § 110(3). Limiting the availability of a component of basic education to some children, but not others, based only on economic status, raises a possible conflict with the constitutional mandate that the state “make ample provision for the education of *all* children residing within its borders, without distinction or preference on account of . . . caste[.]” Wash. Const. art. IX, § 1 (emphasis added).

Article IX, section 1 does not preclude the Legislature from providing a program of early education preferentially to children who need such a program to access subsequent components of the program of basic education in Washington. We conclude, however, that without a sufficient demonstration that family income is an accurate index of educational need, the use of family income to determine eligibility for an early education program that is part of the state’s program of basic education likely would violate article IX, section 1. In other words, once a program of early education is incorporated as a component of basic education, it is no more permissible to limit its availability based on economic status than it would be, similarly, to limit the availability of elementary schools or secondary schools.

**Article IX, section 2 of the Washington Constitution.** Turning to article IX, section 2, that section provides, in part: “The legislature shall provide for a general and uniform system of public schools.” Article IX, section 2 long has been understood as imposing a fundamental duty upon the state to create a general and uniform public school *system*. *See, e.g., Federal Way Sch. Dist. 210*, 2009 WL 3766092 at \*4, ¶ 18; *Tunstall*, 141 Wn.2d at 221; *Seattle Sch. Dist. 1*, 90 Wn.2d at 522; *Newman*, 184 Wash. at 152. The Legislature has authority to select the means of discharging this duty. *Seattle Sch. Dist. 1*, 90 Wn.2d at 520.

This uniformity requirement does not mandate a one-size-fits-all approach to education. It is not satisfied by rote equality of facilities and instruction for all students, but rather through “free access to certain minimum and reasonably standardized educational and instructional facilities” and a “degree of uniformity which enables a child to transfer from one district to another within the same grade without substantial loss of credit or standing.” *Federal Way Sch. Dist. 210*, 2009 WL 3766092 at \*4, ¶ 18 (quoting *Northshore Sch. Dist. 417*, 84 Wn.2d at 729).<sup>3</sup> It

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<sup>3</sup> Much of the decision in *Northshore School District* was overruled in *Seattle School District*. The holdings in *Northshore School District* cited in this paragraph were not overruled.

does not preclude educational assistance to individuals or groups of individuals who need such assistance to “acquire those skills and training that are reasonably understood to be fundamental and basic to a sound education.” *Northshore Sch. Dist.*, 84 Wn.2d at 729. “[T]he State is not obligated to provide an *identical* education to all children within the state regardless of the circumstances in which they are found.” *Tunstall*, 141 Wn.2d at 220. To conclude otherwise would require us to infer from the constitutional language a limitation on the Legislature’s authority that the Washington Constitution does not actually express. *See Washington State Farm Bureau Fed’n v. Gregoire*, 162 Wn.2d 284, 290, 174 P.3d 1142 (2007) (Legislature has plenary power to act, except as constitutionally limited).

In summary, we conclude that a basic education program of early learning for children who are at risk of educational failure could be implemented without violating article IX, sections 1 and 2 of the Washington Constitution. We do not read either section as mandating absolutely identical educational experiences for all children in disregard of their differing educational needs. *See Tunstall*, 141 Wn.2d at 220 (recognizing the differing circumstances of children). Accordingly, if the Legislature finds, in the exercise of its plenary authority to define basic education, that some children need a particular service and others do not, we see nothing in the constitution that would deny the Legislature the choice to provide the service to those who need it, without extending it to those who do not. That is, the Legislature need not choose between either ignoring the needs of children who are at risk of educational failure, or providing early education to all children, including those who do not need it to succeed. Consistent with article IX, section 1, however, where the Legislature defines an educational program as part of basic education, the program must be available freely to any child who needs that program, without “distinction or preference on account of race, color, caste, or sex.”

**2. Does either article I, section 12 of the Washington Constitution or the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution constrain the state’s ability to create a basic education program of early learning for only at-risk children from low-income families?**

A basic education program of early learning only for children from low-income families could be implemented without violating either article I, section 12 or the Fourteenth Amendment, if it can be demonstrated that the use of family income to determine eligibility for the program is rationally related to the program’s objective: providing an early learning program to children who otherwise are at risk of educational failure. Absent a demonstration that family income is rationally related to educational risk, there is no rational basis for concluding that children who are at risk of educational failure are being served.

**The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.** Under the Equal Protection Clause, the state may not “deny to any person within its jurisdiction the equal protection of the laws.” A statute that is challenged under the Equal Protection Clause ordinarily is upheld if it is rationally related to a legitimate government purpose. *See Kadrmas v. Dickinson Pub. Schs.*, 487 U.S. 450, 458 (1988). If the statute

interferes with a “fundamental right” or discriminates against a “suspect class,” an equal protection challenge triggers strict scrutiny, under which the statute must be supported by a compelling government interest and distinctions drawn in the statute must be necessary to further the statute’s purpose. *See San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 17 (1973).

Neither the United States Supreme Court nor the Washington Supreme Court has held that education is a fundamental right that should trigger strict scrutiny when the government interferes with an individual’s access to it. The United States Supreme Court has explicitly rejected that proposition. *See Kadrmas*, 487 U.S. at 458 (citing *Plyler v. Doe*, 457 U.S. 202, 223 (1982); *San Antonio Indep. Sch. Dist.*, 411 U.S. at 16, 33–36). Although the Washington Supreme Court has held that article IX, section 2 imposes on the state a “fundamental duty” to create a common school system, *Tunstall*, 141 Wn.2d at 221, the Court has not translated that duty into a “fundamental right to education” that could be asserted in an equal protection challenge, explaining that such an abstract right, taken to its logical extreme, improperly “would subject *all* legislation involving *education* to strict scrutiny.” *Tunstall*, 141 Wn.2d at 226 n.21.

To qualify as a suspect class for purposes of an equal protection analysis, the class must have suffered a history of discrimination; have as the characteristic defining the class an obvious, immutable trait that frequently bears no relation to ability to perform or contribute to society; and show that it is a minority or politically powerless class. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440–41 (1985); *American Legion Post 149 v. Dep’t of Health*, 164 Wn.2d 570, 609 n.31, 192 P.3d 306 (2008). Race, alienage, and national origin are examples of suspect classifications. *City of Cleburne*, 473 U.S. at 440; *American Legion Post 149*, 164 Wn.2d at 609. Accordingly, where an early learning program is made available to children who are at risk of educational failure, no suspect class is implicated that would raise an equal protection concern. Even where the eligibility is determined using family income as a proxy for educational risk, as in SB 5444, a successful equal protection challenge would be unlikely since socioeconomic condition—whether high or low—is not a suspect class. *Kadrmas*, 487 U.S. at 458 (citing *Ortwein v. Schwab*, 410 U.S. 656, 660 (1973)); *Bowman v. Waldt*, 9 Wn. App. 562, 569, 513 P.2d 559 (1973).<sup>4</sup>

It, therefore, appears that the contemplated early learning program does not interfere with a judicially-recognized fundamental right, and implicates no suspect class. Accordingly, rational basis review would govern an equal protection challenge, under which a legislatively-established

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<sup>4</sup> Although the Washington Supreme Court has noted the possibility that a classification based on wealth “may form a semi-suspect class,” it has held that more is required to justify even an intermediate level of scrutiny. *In re the PRP of Runyan*, 121 Wn.2d 432, 853 P.2d 424 (1993). The Court there explained that “intermediate scrutiny will be applied only if the statute implicates both an important right and a semi-suspect class not accountable for its status.” *Id.* at 448. Where, as in SB 5444, the target class (poor children) is given assistance (access to any early learning program), a person outside the target class would have difficulty demonstrating he or she is in a suspect class (or semi-suspect class) under the criteria identified in *City of Cleburne*, 473 U.S. at 440–41, and *American Legion Post 149*, 164 Wn.2d at 609 n.31 (history of discrimination; irrelevant defining trait; political powerlessness).

program in which eligibility criteria are rationally related to legitimate educational interests would be accorded a strong presumption of validity and likely would survive an equal protection challenge under the Fourteenth Amendment. *See generally Heller v. Doe*, 509 U.S. 312, 319–20 (1993) (a classification involving neither fundamental rights nor a suspect class is accorded a strong presumption of validity and cannot run afoul of the Equal Protection Clause if there is a rational relationship between any disparity of treatment and some legitimate governmental purpose). *See also American Legion Post 149*, 164 Wn.2d at 608–09; *Andersen v. King Cy.*, 158 Wn.2d 1, 31, 138 P.3d 963 (2006) (plurality) (citing *Heller*, 509 U.S. at 319).<sup>5</sup>

**Article I, section 12 of the Washington Constitution.** Article I, section 12 provides that “[n]o law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.” Where the Equal Protection Clause is concerned with the discriminatory *deprivation* of rights to classes of persons, article I, section 12 is concerned with the discriminatory *granting* of rights to some classes to the disadvantage of others. *Grant Cy. Fire Prot. Dist. 5 v. City of Moses Lake*, 150 Wn.2d 791, 807–09, 83 P.3d 419 (2004); *accord Madison v. State*, 161 Wn.2d 85, 96–97, 163 P.3d 757 (2007) (plurality). Article I, section 12 is analyzed independently from the federal Equal Protection Clause. *Grant Cy.*, 150 Wn.2d at 805–11.

The contours of the analysis used to assess alleged violations of article I, section 12 are not yet fully developed. *See Madison*, 161 Wn.2d at 95 (plurality); *Andersen*, 158 Wn.2d at 127 (Chambers, J., concurring in dissent). It is clear, however, that the only “privileges” addressed in article I, section 12 are those that implicate a fundamental right belonging to citizens of the state by reason of their state citizenship. *American Legion Post 149*, 164 Wn.2d at 607; *Grant Cy. Fire Prot. Dist. 5*, 150 Wn.2d at 812–13. A right to education has not been identified as a fundamental right of citizenship for purposes of article I, section 12. *See American Legion Post 149*, 164 Wn.2d at 607; *Grant Cy. Fire Prot. Dist. 5*, 150 Wn.2d at 813; *State v. Vance*, 29 Wash. 435, 458, 70 P. 34 (1902).<sup>6</sup>

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<sup>5</sup> Nor may a statute be challenged based upon an argument that it is not “narrowly tailored” to serve its purpose when the statute is not subject to strict scrutiny. *See Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. 1*, 551 U.S. 701, 783 (2007) (Kennedy, J., concurring) (applying the “narrow tailoring” requirement only to statutes subject to strict scrutiny).

<sup>6</sup> In a case alleging sex discrimination in access to interscholastic sports teams, the Court suggested in dictum that in Washington there is a fundamental right to education free from discrimination:

The Supreme Court of Washington has not yet expressly held that education free of discrimination based upon sex is a fundamental right within the meaning of Const. art. 1, § 12 so as to call for strict scrutiny of a classification claimed to infringe upon that right. That in Washington, education (physical and cultural), free from discrimination based on sex, is a fundamental constitutional right, is a conclusion properly drawn from Const. art. 9, § 1 adopted in 1889.

*Darrin v. Gould*, 85 Wn.2d 859, 869–70, 540 P.2d 882 (1975). The quoted passage is dictum, however, because the Court ultimately decided the case based on article XXXI, Washington’s equal rights amendment. *Id.* at 870, 877.

Where no fundamental right of citizenship is at issue, Washington courts follow federal equal protection analysis to decide whether a violation of article I, section 12 has occurred. *Madison*, 161 Wn.2d at 97–98 (plurality); *Andersen*, 158 Wn.2d at 9 (plurality). As explained above, rational basis review is appropriate here, under which a legislatively-established program in which eligibility criteria are rationally related to legitimate educational interests would be accorded a strong presumption of validity and likely would survive a challenge under article I, section 12.<sup>7</sup>

We conclude that under existing case law, the basic education program of early learning described in SB 5444 probably would not be subjected to strict scrutiny under article I, section 12 of the Washington Constitution or the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, because there is no “fundamental right to education” recognized by either the United States Supreme Court or the Washington Supreme Court, and because neither Court has recognized economic status as a suspect class. Accordingly, the primary constraint imposed by article I, section 12 and the Equal Protection Clause is the burden that the state must meet in a rational basis review: The classification must be rationally related to the legitimate educational interests served by the program. In other words, if family income is used to determine eligibility for the program, that basis for eligibility must be rationally related to the program’s objective: providing an early learning program to children who otherwise are at risk of educational failure.

**3. Some existing state early learning grants are provided to sectarian organizations under article I, section 11 of the Washington Constitution. If the Legislature were to include an early learning program for at-risk, low-income children ages three and four in the definition of “basic education,” would the constitutionality of such a program be assessed instead under article IX, section 4 of the Washington Constitution?**

If an early learning program were included as part of “basic education” in Washington, it would have to comply with article IX, section 4 of the Washington Constitution, but such inclusion would not release the program from the requirements of article I, section 11. Rather, the new program would be subject to both article I, section 11 and article IX, section 4.

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<sup>7</sup> In a due process analysis, the Washington Supreme Court stated that courts “should be reluctant to identify new fundamental rights because, in doing so, a matter is effectively placed ‘outside the arena of public debate and legislative action.’” *American Legion Post 149*, 164 Wn.2d at 600 (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997)). If the Court nevertheless were to find that Washingtonians have a fundamental right to education by reason of their state citizenship, the early learning program described in SB 5444 might be considered a “privilege” under article I, section 12, because it would be part of basic education. If that program were subjected to strict scrutiny, the state presumably would have to show that eligibility based on family income is precisely tailored to serve the compelling educational interest served by the early education program.

All Washington state programs expending public funds are subject to the prohibition in article I, section 11 of the Washington Constitution, which provides that “[n]o public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment[.]” This provision is violated if public money or property is transferred or made available for a religious purpose. *State ex rel. Gallwey v. Grimm*, 146 Wn.2d 445, 455–66, 48 P.3d 274 (2002) (citing *Malyon v. Pierce Cy.*, 131 Wn.2d 779, 799–800, 935 P.2d 1272 (1997)).

Programs that are part of the system of public schools are subject to article IX, section 4, as well as article I, section 11. *Gallwey*, 146 Wn.2d at 455–66. Article IX, section 4 of the Washington Constitution requires that “[a]ll schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence.” By expanding the definition of “basic education” to include an early learning program for at-risk, low-income children, the Legislature effectively would make such a program part of the “general and uniform system of public schools” referenced in article IX, section 2 of the Washington Constitution.<sup>8</sup>

Article I, section 11 and article IX, section 4 do not operate in isolation from one another. Both sections arose from the same “driving concern of the state constitutional convention [regarding] religious influence in, and control over, public education.” *Malyon*, 131 Wn.2d at 794. As explained in *State ex rel. Dearle v. Frazier*, 102 Wash. 369, 375, 173 P. 35 (1918), the two provisions operate together to “prevent the teaching of any of the beliefs, creeds, doctrines, opinions, or dogmas of any sect” in the public school system and to “prevent the appropriation of money for parochial and denominational schools[.]”

**4. If the answer to question 3 is yes, would article IX, section 4 of the Washington Constitution prohibit the granting or appropriation of state funds to sectarian organizations?**

Because article I, section 11 and article IX, section 4 of the Washington Constitution both apply to programs that are part of “basic education” in Washington, we turn to your question whether article IX, section 4 prohibits the granting or appropriation of state funds to sectarian organizations in support of an the early learning program described in SB 5444. Article IX, section 4, read together with article I, section 11, prohibits the granting or appropriation of public funds to support religious instruction or any basic education program that is subject to sectarian control or influence. Consistent with these provisions, public funds may be granted or

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<sup>8</sup> See *School Dist. 20, Spokane Cy.*, 51 Wash. at 504 (“common school,” within meaning of article IX, section 2 is one that is common to all children of proper age and capacity, and which is free and subject to, and under control of, qualified voters of the school district); *Litchman v. Shannon*, 90 Wash. 186, 191, 155 P. 783 (1916) (“public schools” are schools established under the laws of the state, maintained at public expense by taxation, and open without charge to all children in the district); see also *McGowan*, 148 Wn.2d at 293 (holding implicitly that basic education is to be defined by reference to types of “educational services” or “instruction”).

appropriated for the operation of early learning programs by sectarian organizations only if the programs remain free of sectarian control or influence and the funds are not used for a religious purpose. Factors useful in identifying sectarian control or influence are presented in the cases discussed below.

Article IX, section 4 of the Washington Constitution imposes a strict separation of religion and public education. In *Weiss v. Bruno*, 82 Wn.2d 199, 509 P.2d 973 (1973), *overruled on other grounds by Gallwey*, 146 Wn.2d at 455–66,<sup>9</sup> the Court applied a two-part test for determining whether article IX, section 4 was violated: (1) Does the challenged program or enactment support the school or school program in question with any public funds; and (2) if so, is the school or school program under sectarian control or influence? *Weiss*, 82 Wn.2d at 206–09. If the answer to both questions is yes, the challenged program or enactment violates article IX, section 4. *Id.*

Your question assumes that state funds would be granted or appropriated to sectarian organizations to carry out the early learning program and that the early learning program would be part of the state’s program of basic education. Consequently, the answer to the first *Weiss* inquiry is yes: The early learning program described in SB 5444 would be supported by public funds. Although public support is assumed here, we note that the Court in *Weiss* took a broad view of what constitutes “support,” holding that “[a]ny use of public funds that benefits schools under sectarian control or influence—regardless of whether that benefit is characterized as ‘indirect’ or ‘incidental’—violates this provision [article IX, section 4].” *Weiss*, 82 Wn.2d at 211; *see also Mitchell v. Consol. Sch. Dist. 201*, 17 Wn.2d 61, 66–67, 135 P.2d 79 (1943) (statute providing free transportation for school children attending sectarian schools violates article IX, section 4 and article I, section 11 “unless it may be said that the transportation of pupils to and from the [sectarian] school is of no benefit to the school itself”).

Because public support for the early learning program described in SB 5444 is assumed, consistency with article IX, section 4 therefore depends on the answer to the second *Weiss* inquiry: whether individual early learning programs established under SB 5444 are free from sectarian control or influence. *Weiss*, 82 Wn.2d at 208–09. Sectarian control may be manifest, as it was in *Weiss*, where the schools at issue were owned and operated by a religious institution and under the control of parish pastors. *Id.* at 209. In less obvious situations, Washington courts have not set forth a list of specific factors for determining whether a school or program is free from sectarian control or influence, but the factual analysis in *Weiss* suggests some relevant requirements that must be satisfied to find that a particular program is not under sectarian control or influence: (1) The program and its curriculum may not provide instruction in religion or religious practice; (2) Devotional religious symbols or items may not be displayed in the room(s) used for the program; (3) The program may not discriminate against students or staff based on

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<sup>9</sup> In *Gallwey*, the Court stated “[n]othing in today’s decision is intended to disturb this court’s holding in *Weiss* as it relates to common schools.” *Gallwey*, 146 Wn.2d at 466.

religion or sect; (4) The content of the program and its curriculum may not be determined by a religious institution or its representatives or leaders. *Weiss*, 82 Wn.2d at 209–11. *Weiss* does not state or imply that these are exclusive or comprehensive factors in determining whether a school or program is under sectarian influence or control; they merely reflect the facts in the record considered in that particular case. Under other facts and circumstances, additional factors or different factors could be relevant.

Your question assumes state funds would be granted or appropriated to sectarian organizations. It might be possible to establish standards and limitations to ensure that individual early learning programs operated by those organizations are free from sectarian control or influence. Such standards and limitations incorporated into SB 5444 or a similar bill could deflect a facial challenge under article IX, section 4.<sup>10</sup> As we noted above, the factors identified in *Weiss* could be useful in developing statutory standards and limitations, but that list of factors is neither complete nor exclusive.

Even if SB 5444 or a similar bill including statutory standards and limitations were enacted and withstood a facial challenge, specific grants or appropriations to sectarian organizations would be subject to as-applied challenges alleging a violation of article IX, section 4. Such a challenge would require a fact-specific analysis of the structure and operation of the sectarian organization and the particular early learning program operated by that organization, and the conditions imposed on the organization and enforced by the state.

Consequently, we cannot advise you that the granting or appropriation of state funds to sectarian organizations for the purposes described in SB 5444 can be accomplished in compliance with article IX, section 4. Compliance ultimately cannot be determined without analysis of the specific facts and circumstances.

**5. Under article III, section 22 of the Washington Constitution, the Superintendent of Public Instruction supervises all matters pertaining to public schools. If the Legislature were to pass legislation that replaced the current Early Childhood Education and Assistance Program, as applied to at-risk children, with a new basic education program of early learning, would the new program need to be administered by the Office of the Superintendent of Public Instruction?**

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<sup>10</sup> The term “facial challenge” is used to describe a lawsuit in which a plaintiff contends that a particular law is unconstitutional in all possible applications. *Washington State Grange v. Washington State Republican Party*, 128 S. Ct. 1184, 1190 (2008). In such a case, a plaintiff can succeed only if there are no circumstances under which the law could be constitutionally applied, and the Court will not speculate about hypothetical or imaginary cases in which unconstitutional results may be possible. *Id.* A statute that is constitutional on its face might still be challenged as unconstitutional in specific applications. *Id.* at 1191. A constitutional challenge to a specific application of a law is called an “as-applied challenge.”

A new basic education program of early learning must be supervised by the Superintendent of Public Instruction; however, the Legislature may create an agency or institution to administer the program under the Superintendent's supervision.

Article III, section 22 of the Washington Constitution provides, in part, that “[t]he superintendent of public instruction shall have supervision over all matters pertaining to public schools, and shall perform such specific duties as may be prescribed by law.” As indicated above, by defining “basic education” to include an early learning program, the Legislature is defining the state’s public school system to include an early learning program. Because the Superintendent of Public Instruction is designated in the constitution as the supervisor of the state’s public school system, the Superintendent necessarily would be the supervisor of the early learning program as well. As we observed in an earlier opinion, this constitutional authority of the Superintendent cannot be made subordinate to that of another officer or body. AGO 1998 No. 6 at 4 (citing AGO 1961-62 No. 2). Nor may the authority to supervise early learning, if it is defined as an element of basic education, be vested in any other officer or body not under the Superintendent’s supervision. AGO 1998 No. 6 at 4.

The constitution does not, however, limit the Legislature’s authority to design the organizational structure under which the public education system is administered. *See Washington State Farm Bureau Fed’n*, 162 Wn.2d at 290 (“It is a fundamental principle of our system of government that the Legislature has plenary power to enact laws, except as limited by our state and federal constitutions.”). While article III, section 22 precludes the Legislature from assigning supervisory authority over basic education to any other officer or body besides the Superintendent, it otherwise leaves “the Legislature . . . quite free to shape the state’s education system as it may choose, and to define the Superintendent’s role within that system.” AGO 1998 No. 6 at 4. Accordingly, article III, section 22 does not preclude the Legislature from creating an agency or department to *administer* a new basic education program of early learning, so long as the Superintendent retains his or her constitutional authority to *supervise* the program.

**6. If the Legislature were to create a new basic education program of early learning that replaced the Early Childhood Education and Assistance Program, would the previously-mentioned constitutional provisions permit the state to maintain currently-established waiting lists of eligible students for the new basic education early learning program? Would the answer be different if the state currently does not have the building or staff capacity to provide an early learning program for all eligible children?**

Since the Legislature would be establishing a new program, Washington courts would be likely to recognize some need for time to establish the program and its resources, but the answer to both questions ultimately would depend on the facts. In *Seattle School District 1*, 90 Wn.2d at 537–38, the Court evidenced a willingness to give latitude and time to a new educational program established by the Legislature. This willingness is consistent with the Court’s recognition that the Legislature establishes the means for discharging its statutory duty

under article IX, sections 1 and 2 of the Washington Constitution. *Seattle Sch. Dist. 1*, 90 Wn.2d at 520.

Article IX, section 1 requires that the Legislature define “basic education” and support it with ample funding from dependable and regular tax sources. *McGowan*, 148 Wn.2d at 283–84; *Seattle Sch. Dist. 1*, 90 Wn.2d at 519–22. As explained above, once the Legislature includes an early learning program within the definition of “basic education,” article IX, section 1 mandates that it be provided with ample funding. Whether currently-established waiting lists could be maintained consistent with article IX, section 1 likely would depend on why they are maintained and whether all children ultimately are served. For example, if children on waiting lists did not receive early learning instruction (whether because of inadequate funding, building or staff shortages, or some other reason), a violation of article IX, section 1 would be more likely than if the lists were used to allocate students among early learning programs with different start dates, but with every qualified student eventually being served.

Article IX, section 2 requires the Legislature to “provide for a general and uniform system of public schools.” As explained in *Parents Involved in Community Schools*, 149 Wn.2d at 672–74, this section was intended to ensure a free, statewide system of nonsectarian schools with uniform content and administration of education. The focus is on the uniformity in the educational program provided, not in the detail of funding or administration, and the Court presumes that program is constitutional. See *Federal Way Sch. Dist. 210*, 2009 WL 3766092 at \*4–5, ¶¶ 18–24. A challenger conceivably could overcome that presumption of constitutionality if, for example, use of the existing waiting lists resulted in a significant disparity of educational opportunity or content across the state, or if building or staff shortages persisted over a long enough time period; again, the success of any such challenge would depend on the facts.

If access to a basic education program of early learning were limited by building or staff capacity, the legislative establishment of a reasonable plan to overcome or correct the limitations could be consistent with sections 1 and 2 of article IX of the Washington Constitution. In a challenge under article IX, sections 1 and 2, the Court deferred to the Legislature’s evolving formulas for funding basic education. *Federal Way Sch. Dist. 210*, 2009 WL 3766092 at \*4–5. Similarly, in the equal protection context, the Court in *Dandridge v. Williams*, 397 U.S. 471, 487 (1970), noted that a state should not have to “choose between attacking every aspect of a problem or not attacking the problem at all.” Assuming, therefore, that the Legislature established a plan for providing the building and staff capacity in a reasonable amount of time, and assuming there were not persistent disparities among school districts as to availability of the program, the contemplated early learning program probably would withstand a constitutional challenge premised on alleged building or staff shortages.<sup>11</sup>

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<sup>11</sup> It may be that the use of private facilities, including those owned or operated by sectarian organizations, and the operation of early learning programs by sectarian organizations are means of responding to inadequate building and staff capacity. However, inadequate capacity cannot justify or excuse noncompliance with article I, section 11 and article IX, section 4, as we explained in response to your fourth question. See *Weiss*, 82 Wn.2d at

**7. If the Legislature were to create a new basic education program of early learning, do the constitutional requirements for basic education require that teachers in the early learning program be certified and have completed an education degree program?**

No. The qualifications for teachers are not set in the Washington Constitution, but only in statute. *See* RCW 28A.410. The constitution does not require certification, and does not restrict the Legislature’s authority to set qualifications in statute. *See* Wash. Const. art. IX (providing for a system of common schools without specifying required qualifications for teachers); *Cedar Cy. Comm. v. Munro*, 134 Wn.2d 377, 386, 950 P.2d 446 (1998) (explaining that the Legislature’s authority is unrestrained except as limited by the constitution). Teacher qualifications for early learning are accordingly within the Legislature’s authority to determine.

**8. If the Legislature were to include transportation to and from school as part of the K-12 basic education program, would it also have to provide transportation to students who participate in a basic education program of early learning?**

We have found no controlling appellate decision in Washington holding, as a matter of constitutional law, that if transportation is provided for one part of basic education, it must be provided for all parts of basic education. However, the Court in *Lane v. Ocosta School District 172*, 13 Wn. App. 697, 703, 537 P.2d 1052 (1975), implied that there may be a duty to provide transportation to school if a student otherwise would be deprived of his or her right to attend school. Similarly, on remand from *Seattle School District 1*, 90 Wn.2d 476, the trial court ruled that four programs outside the basic education act were part of the state’s basic education duty—special education, remedial assistance, bilingual instruction, and some transportation—because they were needed to provide some students access to basic education. *Seattle Sch. Dist. 1 v. State*, Thurston County Superior Court No. 81-2-1713-1. Under the reasoning of these courts, transportation might be required where necessary to provide access to an early learning program that has been made part of the state’s program of basic education.

If a court were asked to decide whether the Washington Constitution requires comparable transportation for children in a basic education program of early learning where transportation already is provided to students in the K-12 basic education program, we would expect it to apply the principle articulated in *Lane*—that transportation to school is mandated for children in a basic education program of early learning where they otherwise would be unable to attend the program, thereby depriving them of a component of basic education. The Legislature has substantial discretion in determining which transportation services must be provided to

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206–07 (article IX, section 4 does not permit even a “de minimis” violation). *See also Perry v. Sch. Dist. 81, Spokane*, 54 Wn.2d 886, 896, 344 P.2d 1036 (1959) (public school teachers’ mere distribution of registration cards for voluntary, off-campus religious instruction held to be use of school facilities supported by public funds to promote a religious program in violation of article IX, section 4).

students. Presumably, the Legislature has exercised that discretion based upon an assessment of student need for transportation services; applying the *Lane* principle, transportation for children attending a basic education program of early learning should be provided if their need for transportation is comparable to that of K-12 students.

We trust the foregoing will be useful to you.

ROBERT M. MCKENNA  
Attorney General

Alan D. Copsy  
Deputy Solicitor General

WROS

APPENDIX

TABLE OF STATE CONSTITUTIONAL PROVISIONS CITED IN THIS MEMORANDUM

<b>Citation and Subject</b>	<b>Text</b>
Art. I, § 11 Religious Freedom	Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment: PROVIDED, HOWEVER, That this article shall not be so construed as to forbid the employment by the state of a chaplain for such of the state custodial, correctional, and mental institutions, or by a county's or public hospital district's hospital, health care facility, or hospice, as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.
Art. I, § 12 Privileges and Immunities	No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.
Art. III, § 22 Superintendent of Public Instruction; Duties and Salary	The superintendent of public instruction shall have supervision over all matters pertaining to public schools, and shall perform such specific duties as may be prescribed by law. He shall receive an annual salary of twenty-five hundred dollars, which may be increased by law, but shall never exceed four thousand dollars per annum.
Art. IX, § 1 Education: Preamble	It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.
Art. IX, § 2 Public School System	The legislature shall provide for a general and uniform system of public schools. The public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established. But the entire revenue derived from the common school fund and the state tax for common schools shall be exclusively applied to the support of the common schools.
Art. IX, § 4 Sectarian Control or Influence Prohibited	All schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence.

Appendix B  
Substitute Senate Bill 6759

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 6759**

Chapter 234, Laws of 2010

61st Legislature  
2010 Regular Session

VOLUNTARY PROGRAM OF EARLY LEARNING--PLAN

EFFECTIVE DATE: 06/10/10

Passed by the Senate March 11, 2010  
YEAS 48 NAYS 0

BRAD OWEN

\_\_\_\_\_  
**President of the Senate**

Passed by the House March 10, 2010  
YEAS 81 NAYS 16

FRANK CHOPP

\_\_\_\_\_  
**Speaker of the House of Representatives**

Approved March 29, 2010, 2:15 p.m.

CHRISTINE GREGOIRE

\_\_\_\_\_  
**Governor of the State of Washington**

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6759** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

\_\_\_\_\_  
**Secretary**

FILED

March 30, 2010

**Secretary of State  
State of Washington**

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**SUBSTITUTE SENATE BILL 6759**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2010 Regular Session

**State of Washington                      61st Legislature                      2010 Regular Session**

**By** Senate Early Learning & K-12 Education (originally sponsored by Senators Kauffman, Oemig, Prentice, and Kline)

READ FIRST TIME 02/04/10.

1            AN ACT Relating to a plan for a voluntary program of early  
2 learning; amending RCW 43.215.090 and 28A.290.010; and creating new  
3 sections.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            NEW SECTION.    **Sec. 1.** The department of early learning, the  
6 superintendent of public instruction, and thrive by five's joint early  
7 learning recommendations to the governor, and the quality education  
8 council's January 2010 recommendations to the legislature both  
9 suggested that a voluntary program of early learning should be included  
10 within the overall program of basic education. The legislature intends  
11 to examine these recommendations and Attorney General Opinion Number 8  
12 (2009) through the development of a working group to identify and  
13 recommend a comprehensive plan.

14            NEW SECTION.    **Sec. 2.** (1) Beginning April 1, 2010, the office of  
15 the superintendent of public instruction, with assistance and support  
16 from the department of early learning, shall convene a technical  
17 working group to develop a comprehensive plan for a voluntary program

1 of early learning. The plan shall examine the opportunities and  
2 barriers of at least two options:

3 (a) A program of early learning under the program of basic  
4 education; and

5 (b) A program of early learning as an entitlement, either  
6 statutorily or constitutionally protected.

7 (2) The working group shall, at a minimum, include in the plan the  
8 following recommendations for each option:

9 (a) Criteria for eligible children;

10 (b) Program standards, including, but not limited to, direct  
11 services to be provided, number of hours per school year, teacher  
12 qualifications, and transportation requirements;

13 (c) Performance measures;

14 (d) Criteria for eligible providers, specifying whether or not they  
15 may be:

16 (i) Approved, certified, or licensed by the department of early  
17 learning; and

18 (ii) Public, private, nonsectarian, or sectarian organizations;

19 (e) Governance responsibilities for the superintendent of public  
20 instruction and the department of early learning;

21 (f) Funding necessary to implement a voluntary program of early  
22 learning, including, but not limited to, early learning teachers,  
23 professional development, facilities, and technical assistance;

24 (g) A timeline for implementation; and

25 (h) The early childhood education and assistance program's role in  
26 the new program of early learning.

27 (3) While developing the plan, the working group shall review early  
28 learning programs in Washington state, including the early childhood  
29 education and assistance program and the federal head start program, as  
30 well as programs in other states.

31 (4) The working group shall be composed of:

32 (a) At least one representative each from the following: The  
33 department of early learning, the office of the superintendent of  
34 public instruction, the nongovernmental private-public partnership  
35 created in RCW 43.215.070, and the office of the attorney general;

36 (b) Two members of the early learning advisory council established  
37 in RCW 43.215.090 to be appointed by the council; and

1 (c) Additional stakeholders with expertise in early learning to be  
2 appointed by the early learning advisory council.

3 (5) The working group may convene advisory subgroups on specific  
4 topics as necessary to assure participation and input from a broad  
5 array of diverse stakeholders.

6 (6) The working group shall be monitored and overseen by the  
7 quality education council created in RCW 28A.290.010. The working  
8 group shall submit a progress report by July 1, 2011, and final report  
9 with the plan by November 1, 2011, to the early learning advisory  
10 council and the quality education council.

11 **Sec. 3.** RCW 43.215.090 and 2007 c 394 s 3 are each amended to read  
12 as follows:

13 (1) The early learning advisory council is established to advise  
14 the department on statewide early learning (~~((community-needs-and~~  
15 ~~progress))~~) issues that would build a comprehensive system of quality  
16 early learning programs and services for Washington's children and  
17 families by assessing needs and the availability of services, aligning  
18 resources, developing plans for data collection and professional  
19 development of early childhood educators, and establishing key  
20 performance measures.

21 (2) The council shall work in conjunction with the department to  
22 develop a statewide early learning plan that (~~(crosses-systems-and~~  
23 ~~sectors-to-promote))~~) guides the department in promoting alignment of  
24 private and public sector actions, objectives, and resources, and (~~(to~~  
25 ~~ensure))~~) ensuring school readiness.

26 (3) The council shall include diverse, statewide representation  
27 from public, nonprofit, and for-profit entities. Its membership shall  
28 reflect regional, racial, and cultural diversity to adequately  
29 represent the needs of all children and families in the state.

30 (4) Council members shall serve two-year terms. However, to  
31 stagger the terms of the council, the initial appointments for twelve  
32 of the members shall be for one year. Once the initial one-year to  
33 two-year terms expire, all subsequent terms shall be for two years,  
34 with the terms expiring on June 30th of the applicable year. The terms  
35 shall be staggered in such a way that, where possible, the terms of  
36 members representing a specific group do not expire simultaneously.

1 (5) The council shall consist of not more than (~~twenty-five~~)  
2 twenty-three members, as follows:

3 (a) The governor shall appoint at least one representative from  
4 each of the following: The department, the office of financial  
5 management, the department of social and health services, the  
6 department of health, the higher education coordinating board, and the  
7 state board for community and technical colleges;

8 (b) One representative from the office of the superintendent of  
9 public instruction, to be appointed by the superintendent of public  
10 instruction;

11 (c) The governor shall appoint (~~at least~~) seven leaders in early  
12 childhood education, with at least one representative with experience  
13 or expertise in each of the areas such as the following (~~areas~~):  
14 Children with disabilities, the K-12 system, family day care providers,  
15 and child care centers;

16 (d) Two members of the house of representatives, one from each  
17 caucus, and two members of the senate, one from each caucus, to be  
18 appointed by the speaker of the house of representatives and the  
19 president of the senate, respectively;

20 (e) Two parents, one of whom serves on the department's parent  
21 advisory council, to be appointed by the governor;

22 (f) (~~Two~~) One representative(~~s~~) of the private-public  
23 partnership created in RCW 43.215.070, to be appointed by the  
24 partnership board;

25 (g) One representative designated by sovereign tribal governments;  
26 and

27 (h) One representative from the Washington federation of  
28 independent schools.

29 (6) The council shall be cochaired by one representative of a state  
30 agency and one nongovernmental member, to be elected by the council for  
31 two-year terms.

32 (7) The council shall appoint two members and stakeholders with  
33 expertise in early learning to sit on the technical working group  
34 created in section 2, chapter . . . , Laws of 2010 (section 2 of the  
35 act).

36 (8) Each member of the board shall be compensated in accordance  
37 with RCW 43.03.240 and reimbursed for travel expenses incurred in

1 carrying out the duties of the board in accordance with RCW 43.03.050  
2 and 43.03.060.

3 ~~((8))~~ (9) The department shall provide staff support to the  
4 council.

5 **Sec. 4.** RCW 28A.290.010 and 2009 c 548 s 114 are each amended to  
6 read as follows:

7 (1) The quality education council is created to recommend and  
8 inform the ongoing implementation by the legislature of an evolving  
9 program of basic education and the financing necessary to support such  
10 program. The council shall develop strategic recommendations on the  
11 program of basic education for the common schools. The council shall  
12 take into consideration the capacity report produced under RCW  
13 28A.300.172 and the availability of data and progress of implementing  
14 the data systems required under RCW 28A.655.210. Any recommendations  
15 for modifications to the program of basic education shall be based on  
16 evidence that the programs effectively support student learning. The  
17 council shall update the statewide strategic recommendations every four  
18 years. The recommendations of the council are intended to:

19 (a) Inform future educational policy and funding decisions of the  
20 legislature and governor;

21 (b) Identify measurable goals and priorities for the educational  
22 system in Washington state for a ten-year time period, including the  
23 goals of basic education and ongoing strategies for coordinating  
24 statewide efforts to eliminate the achievement gap and reduce student  
25 dropout rates; and

26 (c) Enable the state of Washington to continue to implement an  
27 evolving program of basic education.

28 (2) The council may request updates and progress reports from the  
29 office of the superintendent of public instruction, the state board of  
30 education, the professional educator standards board, and the  
31 department of early learning on the work of the agencies as well as  
32 educational working groups established by the legislature.

33 (3) The chair of the council shall be selected from the  
34 councilmembers. The council shall be composed of the following  
35 members:

36 (a) Four members of the house of representatives, with two members

1 representing each of the major caucuses and appointed by the speaker of  
2 the house of representatives;

3 (b) Four members of the senate, with two members representing each  
4 of the major caucuses and appointed by the president of the senate; and

5 (c) One representative each from the office of the governor, office  
6 of the superintendent of public instruction, state board of education,  
7 professional educator standards board, and department of early  
8 learning.

9 (4) In the 2009 fiscal year, the council shall meet as often as  
10 necessary as determined by the chair. In subsequent years, the council  
11 shall meet no more than four times a year.

12 (5)(a) The council shall submit an initial report to the governor  
13 and the legislature by January 1, 2010, detailing its recommendations,  
14 including recommendations for resolving issues or decisions requiring  
15 legislative action during the 2010 legislative session, and  
16 recommendations for any funding necessary to continue development and  
17 implementation of chapter 548, Laws of 2009.

18 (b) The initial report shall, at a minimum, include:

19 (i) Consideration of how to establish a statewide beginning teacher  
20 mentoring and support system;

21 (ii) Recommendations for a program of early learning for at-risk  
22 children;

23 (iii) A recommended schedule for the concurrent phase-in of the  
24 changes to the instructional program of basic education and the  
25 implementation of the funding formulas and allocations to support the  
26 new instructional program of basic education as established under  
27 chapter 548, Laws of 2009. The phase-in schedule shall have full  
28 implementation completed by September 1, 2018; and

29 (iv) A recommended schedule for phased-in implementation of the new  
30 distribution formula for allocating state funds to school districts for  
31 the transportation of students to and from school, with phase-in  
32 beginning no later than September 1, 2013.

33 (6) The council shall submit a report to the legislature by January  
34 1, 2012, detailing its recommendations for a comprehensive plan for a  
35 voluntary program of early learning. Before submitting the report, the  
36 council shall seek input from the early learning advisory council  
37 created in RCW 43.215.090.

1        (7) The council shall be staffed by the office of the  
2 superintendent of public instruction and the office of financial  
3 management. Additional staff support shall be provided by the state  
4 entities with representatives on the (~~committee~~) council. Senate  
5 committee services and the house of representatives office of program  
6 research may provide additional staff support.

7        (~~(7)~~) (8) Legislative members of the council shall serve without  
8 additional compensation but may be reimbursed for travel expenses in  
9 accordance with RCW 44.04.120 while attending sessions of the council  
10 or on official business authorized by the council. Nonlegislative  
11 members of the council may be reimbursed for travel expenses in  
12 accordance with RCW 43.03.050 and 43.03.060.

Passed by the Senate March 11, 2010.

Passed by the House March 10, 2010.

Approved by the Governor March 29, 2010.

Filed in Office of Secretary of State March 30, 2010.

Appendix C  
Second Substitute House Bill 2731

CERTIFICATION OF ENROLLMENT

**SECOND SUBSTITUTE HOUSE BILL 2731**

Chapter 231, Laws of 2010

(partial veto)

61st Legislature  
2010 Regular Session

VOLUNTARY PRESCHOOL OPPORTUNITIES--AT-RISK CHILDREN

EFFECTIVE DATE: 06/10/10

Passed by the House March 11, 2010  
Yeas 70 Nays 27

FRANK CHOPP

\_\_\_\_\_  
**Speaker of the House of Representatives**

Passed by the Senate March 10, 2010  
Yeas 33 Nays 15

BRAD OWEN

\_\_\_\_\_  
**President of the Senate**

Approved March 29, 2010, 2:05 p.m., with  
the exception of Section 1 which is  
vetoed.

CHRISTINE GREGOIRE

\_\_\_\_\_  
**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of  
the House of Representatives of  
the State of Washington, do hereby  
certify that the attached is  
SECOND SUBSTITUTE HOUSE BILL 2731  
as passed by the House of  
Representatives and the Senate on  
the dates hereon set forth.

BARBARA BAKER

\_\_\_\_\_  
**Chief Clerk**

FILED

March 30, 2010

**Secretary of State  
State of Washington**

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SECOND SUBSTITUTE HOUSE BILL 2731

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AS AMENDED BY THE SENATE

Passed Legislature - 2010 Regular Session

State of Washington                      61st Legislature                      2010 Regular Session

By House Ways & Means (originally sponsored by Representatives Goodman, Haler, Maxwell, Priest, Kagi, Sullivan, Sequist, Quall, O'Brien, Jacks, Haigh, Pedersen, Darneille, Kenney, Rolfes, Hunter, Williams, Orwall, Lias, Carlyle, Roberts, Simpson, Walsh, Nelson, Kelley, Dickerson, Appleton, Eddy, Sells, and Morrell)

READ FIRST TIME 02/09/10.

1            AN ACT Relating to implementing a program of early learning for  
2 educationally at-risk children; amending RCW 43.215.020 and 43.215.405;  
3 adding new sections to chapter 43.215 RCW; adding a new section to  
4 chapter 28A.320 RCW; and creating a new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            ***\*NEW SECTION. Sec. 1. The legislature finds that a critical factor***  
7 ***in the eventual successful outcome of a K-12 education is for students***  
8 ***to begin school ready, both intellectually and socially, to learn. The***  
9 ***legislature also finds that, due to a variety of factors, some young***  
10 ***children need supplemental instruction in preschool to assure that they***  
11 ***have the opportunity to participate meaningfully and reach the***  
12 ***necessary levels of achievement in the regular program of basic***  
13 ***education. The legislature further finds that children who participate***  
14 ***in high quality preschool programs have improved educational and life***  
15 ***outcomes and are more likely to graduate from high school and pursue***  
16 ***higher education, experience successful employment opportunities, and***  
17 ***have increased earnings. Therefore the legislature intends to create***  
18 ***a program of early learning that, when fully implemented, shall be an***  
19 ***entitlement program for eligible children.***

1        *The legislature also finds that the state early childhood education*  
2 *and assistance program was established to help children from low-income*  
3 *families be prepared for kindergarten, and that the program has been a*  
4 *successful model for achieving that goal. Therefore, the legislature*  
5 *intends that the first phase of implementing the entitlement program of*  
6 *early learning shall be accomplished by utilizing the program standards*  
7 *and eligibility criteria in the early childhood education and*  
8 *assistance program. The legislature also intends that the*  
9 *implementation of subsequent phases of the program established by the*  
10 *ready for school act of 2010 will be aligned with the implementation of*  
11 *the state's all-day kindergarten program in order to maximize the gains*  
12 *resulting from investments in the two programs.*

*\*Sec. 1 was vetoed. See message at end of chapter.*

13        NEW SECTION.    **Sec. 2.**    DEFINITIONS.    The definitions in this  
14 section apply throughout this chapter unless the context clearly  
15 requires otherwise.

16        (1) "Community-based early learning providers" includes for-profit  
17 and nonprofit licensed providers of child care and preschool programs.

18        (2) "Program" means the program of early learning established in  
19 section 3 of this act for eligible children who are three and four  
20 years of age.

21        NEW SECTION.    **Sec. 3.**    PROGRAM STANDARDS.    (1) Beginning September  
22 1, 2011, an early learning program to provide voluntary preschool  
23 opportunities for children three and four years of age shall be  
24 implemented according to the funding and implementation plan in section  
25 4 of this act. The program must be a comprehensive program providing  
26 early childhood education and family support, options for parental  
27 involvement, and health information, screening, and referral services,  
28 as family need is determined. Participation in the program is  
29 voluntary. On a space available basis, the program may allow  
30 enrollment of children who are not otherwise eligible by assessing a  
31 fee.

32        (2) The first phase of the program shall be implemented by  
33 utilizing the program standards and eligibility criteria in the early  
34 childhood education and assistance program.

35        (3) The director shall adopt rules for the following program

1 components, as appropriate and necessary during the phased  
2 implementation of the program:

3 (a) Minimum program standards, including lead teacher, assistant  
4 teacher, and staff qualifications;

5 (b) Approval of program providers; and

6 (c) Accountability and adherence to performance standards.

7 (4) The department has administrative responsibility for:

8 (a) Approving and contracting with providers according to rules  
9 developed by the director under this section;

10 (b) In partnership with school districts, monitoring program  
11 quality and assuring the program is responsive to the needs of eligible  
12 children;

13 (c) Assuring that program providers work cooperatively with school  
14 districts to coordinate the transition from preschool to kindergarten  
15 so that children and their families are well-prepared and supported;  
16 and

17 (d) Providing technical assistance to contracted providers.

18 NEW SECTION. **Sec. 4.** FUNDING AND STATEWIDE IMPLEMENTATION. (1)  
19 Funding for the program of early learning established under this  
20 chapter must be appropriated to the department. Allocations must be  
21 made on the basis of eligible children enrolled with eligible  
22 providers.

23 (2) The program shall be implemented in phases, so that full  
24 implementation is achieved in the 2018-19 school year.

25 (3) For the initial phase of the early learning program in school  
26 years 2011-12 and 2012-13, the legislature shall appropriate funding to  
27 the department for implementation of the program in an amount not less  
28 than the 2009-2011 enacted budget for the early childhood education and  
29 assistance program. The appropriation shall be sufficient to fund an  
30 equivalent number of slots as funded in the 2009-2011 enacted budget.

31 (4) Beginning in the 2013-14 school year, additional funding for  
32 the program must be phased in beginning in school districts providing  
33 all-day kindergarten programs under RCW 28A.150.315.

34 (5) Funding shall continue to be phased in incrementally each year  
35 until full statewide implementation of the early learning program is  
36 achieved in the 2018-19 school year, at which time any eligible child  
37 shall be entitled to be enrolled in the program.

1 (6) The department and the office of financial management shall  
2 annually review the caseload forecasts for the program and, beginning  
3 December 1, 2012, and annually thereafter, report to the governor and  
4 the appropriate committees of the legislature with recommendations for  
5 phasing in additional funding necessary to achieve statewide  
6 implementation in the 2018-19 school year.

7 (7) School districts and approved community-based early learning  
8 providers may contract with the department to provide services under  
9 the program. The department shall collaborate with school districts,  
10 community-based providers, and educational service districts to promote  
11 an adequate supply of approved providers.

12 NEW SECTION. **Sec. 5.** A new section is added to chapter 28A.320  
13 RCW to read as follows:

14 For the program of early learning established in section 3 of this  
15 act, school districts:

16 (1) Shall work cooperatively with program providers to coordinate  
17 the transition from preschool to kindergarten so that children and  
18 their families are well-prepared and supported; and

19 (2) May contract with the department of early learning to deliver  
20 services under the program.

21 **Sec. 6.** RCW 43.215.020 and 2007 c 394 s 5 are each amended to read  
22 as follows:

23 (1) The department of early learning is created as an executive  
24 branch agency. The department is vested with all powers and duties  
25 transferred to it under this chapter and such other powers and duties  
26 as may be authorized by law.

27 (2) The primary duties of the department are to implement state  
28 early learning policy and to coordinate, consolidate, and integrate  
29 child care and early learning programs in order to administer programs  
30 and funding as efficiently as possible. The department's duties  
31 include, but are not limited to, the following:

32 (a) To support both public and private sectors toward a  
33 comprehensive and collaborative system of early learning that serves  
34 parents, children, and providers and to encourage best practices in  
35 child care and early learning programs;

1 (b) To make early learning resources available to parents and  
2 caregivers;

3 (c) To carry out activities, including providing clear and easily  
4 accessible information about quality and improving the quality of early  
5 learning opportunities for young children, in cooperation with the  
6 nongovernmental private-public partnership;

7 (d) To administer child care and early learning programs;

8 (e) To standardize internal financial audits, oversight visits,  
9 performance benchmarks, and licensing criteria, so that programs can  
10 function in an integrated fashion;

11 (f) To support the implementation of the nongovernmental private-  
12 public partnership and cooperate with that partnership in pursuing its  
13 goals including providing data and support necessary for the successful  
14 work of the partnership;

15 (g) To work cooperatively and in coordination with the early  
16 learning council;

17 (h) To collaborate with the K-12 school system at the state and  
18 local levels to ensure appropriate connections and smooth transitions  
19 between early learning and K-12 programs; (~~and~~)

20 (i) To develop and adopt rules for administration of the program of  
21 early learning established in section 3 of this act; and

22 (j) Upon the development of an early learning information system,  
23 to make available to parents timely inspection and licensing action  
24 information through the internet and other means.

25 (3) The department's programs shall be designed in a way that  
26 respects and preserves the ability of parents and legal guardians to  
27 direct the education, development, and upbringing of their children.  
28 The department shall include parents and legal guardians in the  
29 development of policies and program decisions affecting their children.

30 **Sec. 7.** RCW 43.215.405 and 2006 c 265 s 210 are each amended to  
31 read as follows:

32 Unless the context clearly requires otherwise, the definitions in  
33 this section apply throughout RCW 43.215.400 through 43.215.450 and  
34 43.215.900 through 43.215.903.

35 (1) "Advisory committee" means the advisory committee under RCW  
36 43.215.420.

37 (2) "Department" means the department of early learning.

1 (3) "Eligible child" means a child not eligible for kindergarten  
2 whose family income is at or below one hundred ten percent of the  
3 federal poverty level, as published annually by the federal department  
4 of health and human services, and includes a child whose family is  
5 eligible for public assistance, and who is not a participant in a  
6 federal or state program providing comprehensive services; a child  
7 eligible for special education due to disability under RCW 28A.155.020;  
8 and may include children who are eligible under rules adopted by the  
9 department if the number of such children equals not more than ten  
10 percent of the total enrollment in the early childhood program.  
11 Priority for enrollment shall be given to children from families with  
12 the lowest income, children in foster care, or to eligible children  
13 from families with multiple needs.

14 (4) "Approved programs" means those state-supported education and  
15 special assistance programs which are recognized by the department as  
16 meeting the minimum program rules adopted by the department to qualify  
17 under RCW 43.215.400 through 43.215.450 and 43.215.900 through  
18 43.215.903 and are designated as eligible for funding by the department  
19 under RCW 43.215.430 and 43.215.440.

20 (5) "Comprehensive" means an assistance program that focuses on the  
21 needs of the child and includes education, health, and family support  
22 services.

23 (6) "Family support services" means providing opportunities for  
24 parents to:

- 25 (a) Actively participate in their child's early childhood program;  
26 (b) Increase their knowledge of child development and parenting  
27 skills;  
28 (c) Further their education and training;  
29 (d) Increase their ability to use needed services in the community;  
30 (e) Increase their self-reliance.

31 NEW SECTION. Sec. 8. Sections 2 through 4 and 9 of this act are  
32 each added to chapter 43.215 RCW.

33 NEW SECTION. Sec. 9. This act may be known as the ready for  
34 school act of 2010.

Passed by the House March 11, 2010.

Passed by the Senate March 10, 2010.

Approved by the Governor March 29, 2010, with the exception of  
certain items that were vetoed.

Filed in Office of Secretary of State March 30, 2010.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Section 1, Second Substitute House Bill 2731 entitled:

"AN ACT Relating to implementing a program of early learning for educationally at-risk children."

Section 1 indicates the Legislature's intent regarding the future of early learning in our state. The Legislature is undertaking a study of the optimal approach for implementing a voluntary program for early learning in Senate Bill 6759 which I am signing today. I look forward to future legislation implementing the results of that study. Because the language in this section presupposes the outcome of the study called for in Senate Bill 6759, I am vetoing this section.

For this reason, I have vetoed Section 1 of Second Substitute House Bill 2731.

With the exception of Section 1, Second Substitute House Bill 2731 is approved."

## Appendix D

Differences and similarities between preschool programs that are included as a part of “basic education” versus programs that are an “entitlement”  
(As of June 22, 2011)

A Program under "Basic Education"		An "Entitlement" Program		Current Guidelines		Current Guidelines Head Start		
				ECEAP				
<b>Eligibility</b>	<p>- In both a Basic Education program and an Entitlement program, the program could be a "universal program" available to all students of a certain age or a program making only "at-risk" students eligible for these educational services.</p> <p>- However, anything short of a universal program requires objectively-defined and legally-defensible criteria to define <i>risk (as a proxy for educational need)</i>. Assessment tool could be used to determine risk.</p> <p>- Income could be one risk factor. Current income eligibility based on the % above the poverty level are:</p> <ul style="list-style-type: none"> <li>• 110% (ECEAP)</li> <li>• 130% (Head Start)</li> <li>• 185% (Free/Reduced price lunch eligibility)</li> </ul> <p>- Additional risk factors would need to be incorporated into child eligibility criteria.</p> <p>- Under both Basic Education and Entitlement, there would be an "entitlement" to participate in the program for eligible students. Thus, the program would likely be required to be available statewide.</p>	<p>- Discretionary. One option would be to provide for children who would otherwise be unable to attend or programs could use a portion of a per-child allocation for transportation.</p>	<p><b>Targeted – at risk</b></p> <p>Age : 3- and 4-year-olds (by August 31 of school year)</p> <p>Income: 110% FPL</p> <p>Up to 10% of enrolled children can be over the income limit, with developmental or env. risk factors</p> <p>Eligible children are prioritized for limited slots: 4-year-olds, lowest incomes, multiple risk factors, foster care, homeless, special education.</p> <p>RCW 43.215.405(5), WAC 170-100-080, ECEAP Performance Standard B-13, B-15</p>	<p><b>Targeted – at risk</b></p> <p>Age : 3- to 5-year-olds (by August 31 of school year)</p> <p>Income: 130% FPL</p> <p>Maximum 35% of slots can go to families between 100-130% of FPG. Allows enrollment based on child care subsidy (up to 175% FPL in WA.) Categorical eligibility of children who are homeless or in foster care. Priority to families most in need.</p> <p>Up to 10% can be over income limits.</p>	<p><b>Governance</b></p> <p>- Supervised by OSPI. The State Constitution grants OSPI supervisory authority over basic education.</p> <p>- Possible administration scenarios:</p> <ol style="list-style-type: none"> <li>1) OSPI could administer program</li> <li>2) OSPI contract with DEL to administer program</li> <li>3) Administration could be legislatively determined subject to OSPI retaining ultimate supervisory authority</li> </ol>	<p>- No restrictions</p> <p>- Possible administration scenarios</p> <ol style="list-style-type: none"> <li>1) Supervised by DEL or OSPI</li> <li>2) Regulated by DEL or OSPI</li> <li>3) Administered by DEL or OSPI</li> </ol>	<p>DEL contracts with 40 contractors who provide services at 267 sites.</p> <p>Regulated by DEL.</p> <p>RCW, WAC, contractual performance standards.</p> <p>DEL monitors deliverables, electronic data reports, monthly calls, and on-site program reviews.</p> <p>Child care licensing not required when preschool component is in a school or four hours a day or less.</p>	<p>Federal govt. provides grants directly to individual providers within the state.</p> <p>Regulated by federal govt.</p> <p>Federal law, program performance standards, policy memos.</p> <p>Electronic data entry, risk management calls, on site program reviews.</p> <p>Child care licensing not required when preschool component is in a school or four hours a day or less.</p>
<b>Transportation</b>	<p>- Required to provide transportation for eligible students who would be unable to participate without transportation.</p>							
<b>Sectarian Influence</b>	<p>- The Washington constitution has two religious establishment clauses: .Article 9, Section 4 of the State Constitution provides, "[a]ll schools maintained or</p>	<p>- Article 9, Section 4 does not apply.</p> <p>- Under Article 1, Section 11, program must only have secular objective and be free of</p>	<p>RCW 43.215.415 Providers must be nonsectarian.</p> <p>ECEAP Performance Standards</p>					

A Program under "Basic Education"		An "Entitlement" Program		Current Guidelines ECEAP		Current Guidelines Head Start	
	supported wholly or in part by the public funds shall be forever free from sectarian control or influence." This has been construed to prohibit basic education funds going to sectarian institutions.  .. Article 1, Section 11 of the State Constitution prohibits public money from being applied to religious instruction, worship or exercise, but would likely allow a secular program to be delivered in a sectarian setting	religious instruction, worship or exercise. Under the Establishment Clause of the First Amendment to the U.S. Constitution, program must avoid excessive entanglement between church and state, suggesting environment be free of religious representations and activities.	E-2, E Materials and equipment must be free from religious representations. Contractors must not plan religious activities in the curriculum. This does not preclude children or families from sharing their traditions.				
<b>Where services are delivered</b>	- Under Article 9, Section 2, Basic Education must be delivered through a general and uniform system of public schools.  - This strongly suggests that the program would be required to serve otherwise eligible children in all geographic regions across the state.  - This would allow school districts or Educational Service Districts to oversee programs locally.	- No constitutional restrictions. Legislature may allow services to be provided at any location that can meet the requirements.  - Entitlement suggests program must serve children in all geographic locations across the state.	Services can be provided in any location that can meet the performance standards. Current classrooms are in public schools, colleges, community organizations, Head Start buildings, child care centers and faith-based facilities.				
<b>Program Standards - Education</b>	- Except as noted above, the length of the school year, the hours of instruction, the adult-child ratio, and the curriculum are not dependent on whether the program is a "Basic Education" program or an "Entitlement" program.						
<ol style="list-style-type: none"> <li>1. Hours</li> <li>2. Adult-child ratio, class size</li> <li>3. Curricula</li> </ol>			<b>School year</b> <b>Hours:</b> <ul style="list-style-type: none"> <li>• Minimum 2.5 hours per day, minimum 320 classroom hours per year.</li> </ul> <b>Days/Weeks</b> <ul style="list-style-type: none"> <li>• No less than 30 calendar weeks.</li> </ul>	<b>School year</b> <b>Hours:</b> <ul style="list-style-type: none"> <li>• Minimum 3.5 hours per day, 448 hours per year.</li> </ul> <b>Days/Weeks</b> <ul style="list-style-type: none"> <li>• 128 days over 32 weeks (=448 hours) per year.</li> </ul>	<b>Adult-Child Ratio/Class Size:</b> <ul style="list-style-type: none"> <li>• 1:9, class max 20</li> </ul> <b>Curricula:</b> <ul style="list-style-type: none"> <li>• Must be aligned with the state <i>Early Learning &amp; Development Benchmarks</i>, develop-mentally &amp;</li> </ul>	<b>Adult-Child Ratio/Class Size:</b> <ul style="list-style-type: none"> <li>• Ratio and class size (15-20) vary by child age and for double-sessions. In similar range with ECEAP.</li> </ul> <b>Curricula:</b> <ul style="list-style-type: none"> <li>• Must be based on scientifically valid research; age and developmentally</li> </ul>	

A Program under "Basic Education"		An "Entitlement" Program		Current Guidelines ECEAP	Current Guidelines Head Start
				individually appropriate and culturally relevant.  The education standards also have requirements about the physical environment indoors & out, activities that must be included in the daily routine, adult-child interactions, child guidance, no expulsion policy, parent-teacher conferences and kindergarten transition activities.	appropriate.  Other education standards on same topics as ECEAP.
<b>Program Standards –Family Partnership</b>	-The program standards for partnering with families are not dependent on whether the program is a "Basic Education" program or an "Entitlement" program.			Family partnership standards include: <ul style="list-style-type: none"> <li>Caseload limits</li> <li>Requirements for strength-based family support.</li> <li>Requirements for parent involvement, education and leadership development.</li> </ul>	Similar to ECEAP. Requires that some family support contact is via home visits.
<b>Program Standards -Health and Safety</b>	- The program standards for health and safety are not dependent on whether the program is a "Basic Education" program or an "Entitlement" program.			Includes standards on: <ul style="list-style-type: none"> <li>health coordination services, policies and procedures, parent consent, recordkeeping, parent notifications, health screening, dental screening, medical exams, immunizations, medication management, first aid, infectious disease prevention, food sanitation, meals &amp; snacks (nutrition), facility &amp; equipment safety &amp; transportation safety.</li> </ul>	Similar to ECEAP. Transportation safety requirements are more extensive and expensive than ECEAP (seat belts & aides on buses).
<b>Program Standards - Other</b>	- Except as noted above, other standards are not dependent on whether the program is a "Basic Education" program or an "Entitlement" program.			ECEAP Performance Standards also include: <ul style="list-style-type: none"> <li>continuous improvement systems, community partnerships, health advisory groups, Parent Policy Council,</li> </ul>	Similar range of topics to ECEAP.

A Program under "Basic Education"		An "Entitlement" Program		Current Guidelines		Current Guidelines Head Start	
				ECEAP			
<b>Staff Qualifications</b>	- Staff qualifications are not dependent on whether the program is a "Basic Education" program or an "Entitlement" program. However, there may be a desire to have lead teachers "certificated" under a "Basic Education" program.	Lead teacher = AA or higher with 30 credits ECE, or teacher certification with early childhood endorsement. 15 hours inservice training per year. Assistant teacher= 12 ECE quarter credits or Child Development Associate credential (CDA)	5 years to complete PD plan, if not qualified at time of hire. Also, qualifications for family support staff, health and mental health consultants, and dietitians.	Lead teacher= must have AA by 2011. By 2013, 50% must have a BA in ECE or related. Programs can obtain a 180 day waiver of qualifications for teachers. 15 hours inservice training per year.	Assistant teachers = no current requirements. Must have CDA by 2013. No requirements for family support staff. By 2013, all education coordinators have a BA degree in ECE or related.		
<b>Outcome Measures</b>	- Outcome measures (e.g., common child assessment/inventory aligned with Benchmarks and WAKIDS, health outcomes, family outcomes) would not be dependent of whether the program is a "Basic Education" program or an "Entitlement" program.	Reported to DEL: Demographic, income, family and health data reported at enrollment, and (for some measures) at end-of-year. DECA assessment a minimum of twice a year. Assessment of physical and cognitive development a minimum of twice a year. Optional in 2010-11, family outcomes interviews.	Must use Child Outcomes Framework, analyze data from 8 developmental domains three times per year, and use it for program planning. Required to use CLASS tool to assess teachers and instruction.				
<b>Allocation (per-child average)</b>	- Under Basic Education, the per child allocation would likely be more closely tied? to costs of providing the program. However, it is possible that some of the costs would not be defined as being within the definition of Basic Education, such as family support efforts.	\$6662 per-child 8,024 slots	\$8,905 9,904 Region X slots Includes line item developmental and training funds.				
<b>Phase-in Timeline</b>	- In both cases, determined by the Legislature.	HB 2731 expands, starting with ECEAP standards and current funding, so that all eligible children are entitled to services	N/A				

A Program under "Basic Education"		An "Entitlement" Program		Current Guidelines		Current Guidelines Head Start	
				ECEAP			
<b>Special Education</b>	- Students would be eligible for the same Special Education services that are available to K-12 students	- Same as ECEAP and Head Start (see right)	Child Screenings (developmental, vision, hearing, growth) required within 90 days, followed by referrals for further evaluation as indicated.	Child Screenings (developmental, vision, hearing, growth) required within 45 days, followed by referrals for further evaluation as indicated.	Child Screenings (developmental, vision, hearing, growth) required within 90 days, followed by referrals for further evaluation as indicated.	Child Screenings (developmental, vision, hearing, growth) required within 45 days, followed by referrals for further evaluation as indicated.	10% of children enrolled must be children with disabilities, by first day of service.

## Appendix E

Summary of high-quality preschool programs in Washington, other states

Programs	Quality Standards Checklist Total	% of 4-year-old population enrolled	% of 3-year-old population enrolled	State agency with administrative authority over state pre-K	Total program enrollment, Fall 2008
Oklahoma Pre-K Program	9	71%	0%	Oklahoma State Department of Education	36,042
Georgia Pre-K Program	8	53%	0%	Bright from the Start; Georgia Department of Early Care and Learning	78,310
West Virginia Pre-K Program	7	51%	9%	West Virginia Department of Education; West Virginia Head Start State Collaboration Office; West Virginia Department of Health and Human Resources	13,135
Arkansas Pre-K Program	9	44%	6%	Arkansas Department of Education; Arkansas Department of Human Services, Division of Child Care and Early Childhood Education	20,476
Maryland Pre-K Program	9	35%	1%	Maryland State Department of Education	26,821
Illinois Pre-K Program	9	29%	21%	Illinois State Board of Education	95,123
Kentucky Pre-K Program	8	28%	10%	Kentucky Department of Education	21,485
Iowa SVPP	8	25%	0%	Iowa Department of Education	9,676
Louisiana LA4	9	25%	0%	Louisiana Department of Education	15,205
North Carolina Pre-K Program	10	25%	0%	North Carolina Department of Public Instruction; Office of School Readiness	31,485
Washington Pre-K Program	9	7%	2%	Washington Department of Early Learning	8,120

Programs	Hours of operation per day	Days of operation per week	Minimum age for eligibility	Besides age, how is eligibility determined for individual children?	Income requirement
Oklahoma Pre-K Program	Part day, 2.5 instructional hours/day; Full day, 6 instructional hours/day	5 days/week	4 by Sept. 1	All children in districts offering the program, or in the entire state, may enroll	None
Georgia Pre-K Program	Full day, 6.5 hours/day	5 days/week	4 by Sept. 1	All children in districts offering the program, or in the entire state, may enroll	None
West Virginia Pre-K Program	Determined locally	Determined locally	4 by Sept. 1	Eligibility is determined by individual child or family characteristics	None
Arkansas Pre-K Program	Full day, 7 hours/day	5 days/week	3 by Sept. 15	Eligibility is determined by individual child or family characteristics	200% FPL
Maryland Pre-K Program	Part day, 2.5 hours/day; Full day, 6.5 hours/day	5 days/week	4 by Sept. 1	Eligibility is determined by individual child or family characteristics	Eligibility for free or reduced-price lunch (185% FPL)
Illinois Pre-K Program	Determined locally, at least 2.5 hours/day	5 days/week	3 by Sept. 1	Eligibility is determined by individual child or family characteristics	None
Kentucky Pre-K Program	Part day, 2.5 hours/day plus one meal	4 or 5 days/week	3 by Oct. 1	Eligibility is determined by individual child or family characteristics	150% FPL
Iowa SVPP	Part day, 10 hours/week	Determined locally	4 by Sept. 15	All children in the state may enroll	None
Louisiana LA4	Full day, 6 hours/day	5 days/week	4 by Sept. 30	All children in districts offering the program, or in the entire state, may enroll	Eligibility for free or reduced-price lunch (185% FPL)
North Carolina Pre-K Program	School day, 6-6.5 hours/day	5 days/week	4 by Aug. 31	Eligibility is determined by individual child or family characteristics	75% SMI or below
Washington Pre-K Program	Determined locally	Determined locally	3 by Aug. 31	Eligibility is determined by individual child or family characteristics	110% FPL

Programs	Risk factors besides income that can be used to determine eligibility	Sliding payment scale based on income?	Maximum class size	Staff-child ratio requirement	
Oklahoma Pre-K Program	NA	No	4-year-olds, 20	4-year-olds, 1:10	
Georgia Pre-K Program	NA	No	4-year-olds, 20	4-year-olds, 1:10	
West Virginia Pre-K Program	Child disability or developmental delay	No	3-and 4-year-olds, 20	3-and 4-year-olds, 1:10	
Arkansas Pre-K Program	Child disability or developmental delay, Low parental education level, History of abuse, neglect, or family violence, Non-English speaking family members, Parental substance abuse, Teen parent, Low birth weight or other child health risk, Child history of foster care	Yes, for children whose gross family income is 200-250% FPL	3-and 4-year-olds, 20	3-and 4-year-olds, 1:10	
Maryland Pre-K Program	Homelessness or unstable housing, Other state-specified risk factors	No	4-year-olds, 20	4-year-olds, 1:10	
Illinois Pre-K Program	Child disability or developmental delay, Low parental education level, History of abuse, neglect, or family violence, Homelessness or unstable housing, Non-English speaking family members, Parental substance abuse, Risk that child will not be ready for kindergarten, Teen parent, Low birth weight or other child health risk, Child history of foster care, Parental active military duty, Locally determined risk factors such as social isolation in very rural communities	No	3-and 4-year-olds, 20	3-and 4-year-olds, 1:10	
Kentucky Pre-K Program	Child disability or developmental delay, Locally determined risk factors	Determined locally	3-and 4-year-olds, 20	3-and 4-year-olds, 1:10	
Iowa SVPP	NA	Determined locally	4-year-olds, 20	4-year-olds, 1:10	
Louisiana LA4	None	Yes, for children who do not meet the income requirement	4-year-olds, 20	4-year-olds, 1:10	
North Carolina Pre-K Program	Child disability or developmental delay, Non-English speaking family members, Parental active military duty, Other state-specified risk factors such as a chronic health condition or educational/developmental delays	No	4-year-olds, 18	4-year-olds, 1:9	
Washington Pre-K Program	Child disability or developmental delay, Low parental education level, History of abuse, neglect, or family violence, Homelessness or unstable housing, Non-English speaking family members, Parental substance abuse, Risk that child will not be ready for kindergarten, Teen parent, Low birth weight or other child health risk, Child history of foster care	No	3-and 4-year-olds, 20	3-and 4-year-olds, 1:9	
<b>Programs</b>					
<b>Screening and referral requirements</b>		<b>Support services required for all programs</b>		<b>Minimum teacher degree requirement</b>	
<b>Minimum teacher degree requirement</b>		<b>Minimum assistant teacher degree requirement</b>		<b>Teachers on public school salary scale?</b>	
Oklahoma Pre-K Program	Vision, Hearing, Health, Developmental, Dental-determined locally	Parent involvement activities, Child health services, Nutrition information, Referral for social services, Transition to K activities, Other support services	BA/BS and ECE certification (public and nonpublic)	Must meet NCLB requirements (public and nonpublic)	Yes
Georgia Pre-K Program	Vision, Hearing, Dental	Parent involvement activities, Transition to K activities, Other support services determined locally	AA (public and nonpublic)	CDA (public and nonpublic)	No
West Virginia Pre-K Program	Vision, Hearing, Health, Developmental, Dental	Transition to K activities, Other support services determined locally	BA in ECE or pre-K special education (pre-K only programs); AA (blended programs)	HSD (public and nonpublic)	Yes (public), No (nonpublic)
Arkansas Pre-K Program	Vision, Hearing, Health, Developmental, Dental	Parenting support or training, Parent involvement activities, Child health services,	BA/BS in ECE or CD (public); BA/BS in ECE or CD (one for every	CDA (public and nonpublic)	Yes

		Nutrition information, Referral for social services, Transition to K activities	three classrooms) & AA in ECE or CD (other classrooms) (nonpublic)		
Maryland Pre-K Program	Vision, Hearing, Health, Lead screenings, Immunizations; Developmental, Dental - determined locally	Parenting support or training, Parent involvement activities, Child health services, Transition to K activities, Other support services	BA (public and nonpublic)	HSD (public and nonpublic)	Yes
Illinois Pre-K Program	Vision, Hearing, Health, Developmental	Parent education or job training, Parenting support or training, Parent involvement activities, Referral for social services, Transition to K activities	BA (public and nonpublic)	AA (public and nonpublic)	Yes
Kentucky Pre-K Program	Vision, Hearing, Health, Developmental	Parent education or job training, Parenting support or training, Parent involvement activities, Parent health services, Child health services, Nutrition information, Referral for social services, Transition to K activities	BA (public and nonpublic)	HSD (public); No minimum degree (nonpublic)	Yes (public); No (nonpublic)
Iowa SVPP	Vision, Hearing, Health, Developmental, Dental	Parenting support or training, Parent involvement activities, Child health services, Referral for social services	BA (public and nonpublic)	CDA or Iowa Paraeducator certificate (public and nonpublic)	Yes (public); No (nonpublic)
Louisiana LA4	Vision, Hearing, Health, Developmental; Dental, Mental Health -determined locally	Parent education or job training, Parenting support or training, Parent involvement activities, Child health services, Nutrition information, Referral for social services, Transition to K activities, GED and literacy training for parents	BA (public and nonpublic)	HSD (public and nonpublic)	Yes
North Carolina Pre-K Program	Vision, Hearing, Health, Developmental, Dental, Immunizations	Parent involvement activities, Transition to pre-K and K activities, Other support services	BA (public); AA and working toward BA and birth-K license within four years (nonpublic)	CDA or NCLB requirements (public), CDA (nonpublic)	Yes
Washington Pre-K Program	Vision, Hearing, Health, Developmental, Dental, Height, Weight	Parenting support or training, Parent involvement activities, Child health services, Nutrition information, Referral for social services, Transition to K activities, Other support services	AA or BA (public and nonpublic)	CDA or 12 quarter credits ECE (public and nonpublic)	No

Programs	Total 2008-2009 spending	School funding or state aid formula?	State/All spending per child	Agencies eligible to receive funding directly	How much of total spending came from...	State funding sources and amounts
Oklahoma Pre-K Program	\$283,048,740	Yes	\$4,084/ \$7,853	Public schools	State, \$147,185,345; Federal, \$33,965,849; Non-required local, \$101,897,546	State aid formula, \$147,185,345
Georgia Pre-K Program	\$331,955,553	No	\$4,234/ \$4,239	Public schools, Head Start, Private CC, Faith-based centers, Technical schools, Universities, Military bases, Charter schools	State, \$331,542,255; Federal, \$413,298	Lottery, \$331,542,255
West Virginia Pre-K Program	\$114,835,307	Yes	\$5,264/ \$8,743	Public schools	State, \$69,147,853; Federal, \$43,241,948; Non-required local, \$2,445,506	State aid funding formula, \$69,147,853
Arkansas Pre-K Program	\$171,973,151	No	\$5,421/ \$8,399	Public schools, Head Start, Private CC, Faith-based centers, Family CC	State, \$103,500,000; TANF, \$7,500,000; Required local, \$60,973,151	General revenue funds, \$103,500,000
Maryland Pre-K Program	\$222,730,841	Yes	\$3,765/ \$8,304	Public schools	State, \$100,974,791; Federal, \$9,323,645; Required local, \$112,432,405	General revenue, \$100,974,791
Illinois Pre-K Program	\$327,024,460	No	\$3,438	Public schools, Head Start, Private CC, Faith-based centers, Family CC, University-based and community college-based higher education programs	State, \$327,024,460	General revenue funds, \$327,024,460
Kentucky Pre-K Program	\$106,158,791	Yes	\$3,497/ \$4,941	Public schools	State, \$75,127,700; Federal, \$16,439,280; Non-required local, \$14,591,811	State-funded preschool allocations from legislature, \$75,127,700
Iowa SVPP	\$28,491,374	Yes	\$2,945	Public schools	State, \$28,491,374	General revenue funds, \$11,687,936; Preschool funding formula, \$16,803,438
Louisiana LA4	\$85,500,000	No	\$5,492/ \$5,623	Public schools, Approved charter schools	State, \$83,500,000; Non-required local, \$2,000,000	State general funds, \$83,500,000
North Carolina Pre-K Program	\$242,831,570	No	\$5,414/ \$7,713	Public schools, Head Start, Public-private agencies (local Smart Start partnerships), Other non-profit organizations	State, \$170,471,908; Federal, \$46,898,616; Non-required local, \$25,461,046	Lottery, \$84,635,709; General fund, \$85,836,199
Washington Pre-K Program	\$55,942,961	No	\$6,890	Public schools, Head Start, Private CC, Local governments, Colleges/ universities, Educational Service Districts	State, \$55,942,961	State general fund, \$55,942,961

**Source:** Barnett, W. S., Epstein, D. J., Friedman, A. H., Sansanelli, R. A., & Husted, J. T. (2009). *The State of Preschool 2009: State Preschool Yearbook*. New Brunswick, NJ: National Institute for Early Education Research, Rutgers University.



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