



**MAKING PREKINDERGARTEN TRULY UNIVERSAL
IN NEW YORK STATE:
A RIGHTS-BASED PROPOSAL**

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INTRODUCTION

More than 15 years ago, in response to research that there is no better or more cost-effective investment to ensure educational equity and school success,¹ the New York State legislature proclaimed a bold new vision: the state would provide access to a quality prekindergarten program for all four year olds within five years.² In 2006, the Board of Regents expanded the state's vision for early childhood education, calling for a full continuum of early learning services and supports, from the prenatal period to third grade, with prekindergarten for three and four year olds as a key anchor and strategic next step. Substantial progress has been made toward attaining this vision of universal prekindergarten opportunities, with more than 100,000 four year olds now enrolled in preK, and two-thirds of the state's school districts participating in the effort. However, the program has never reached its anticipated enrollment

¹ The High/Scope Perry Preschool Study is one of the earliest and most authoritative studies of the long-lasting positive effects of quality preschool programs (see www.highscope.org/Content.asp?ContentId=219). Longitudinal studies of the Abecedarian Project (see, e.g., Campbell, F.A., Pungello, E.P., Burchinal, M., Kainz, K., Pan, Y., Wasik, B. H., Barbarin, O.A., Sparling, J. J. & Ramey, C.T., *Developmental Psychology*, 48 (4), Jul. 2012,1033-1043), and the Chicago Child-Parent Center Program (see www.waisman.wisc.edu/cls/cbaexecsum4.html) offer similarly strong evidence of the long-term effects of preschool programs on educational, economic, and other outcomes of participants. Closer to home, the on-going longitudinal study of New Jersey's public preK program shows that improved outcomes that persist through elementary school can also be achieved when programs are taken to scale. (see www.nieer.org/sites/nieer/files/APPLES_5th_Grade.pdf). Finally, studies of New York State's own preK programs also show important positive outcomes. A randomized study of New York's Experimental Pre-K program, the forerunner to UPK, showed that children in full-day preK programs were more likely to meet reading and math standards and less likely to repeat a grade or be referred to special education compared with (see New York State Education Department (February 1982). Evaluation of the New York State Experimental Prekindergarten Program. Albany, NY: State Education Department, Division of Elementary Secondary and Continuing Education Planning and Development). And, a recent study of prekindergarten effects on school readiness from Syracuse showed that twice as many children who attend full-day preK enter kindergarten at the appropriate academic level compared with peers with no preschool experience (see DeSiato, D. J. (2003), Does Prekindergarten Experience Influence Children's Subsequent Educational Development? A Study of Kindergarten Teachers' Perceptions and Students' Performance. Office of Curriculum and Instructional Services, Syracuse City School District).

² L. 1997, ch. 436, section 3602-e: N.Y.S. Bd. of Regents, Regents Policy on Early Education for Student Achievement in a Global Community (2006), available at www.p12nysed.gov/upk/policypaperjanuary2006.htm Even earlier, the New York State Board of Regents had recommended that "the State adopt a long-term plan leading to the establishment of free public education for all 3- and 4-year olds whose parents wish them to attend school." N.Y.S. Bd. of Regents' Statement of Policy and Proposed Action (December, 1967), quoted in Anne Mitchell, "The State with Two Prekindergarten Programs: A Look at Prekindergarten Education in New York State (1928-2003)", p. 6 (hereafter "Mitchell, Two Prekindergarten Programs"). This Regents' position led to the establishment of the "experimental program" discussed at n below. The Regents' position was reiterated and amplified in 2006.

and funding levels, many districts have never participated, and the program's focus has been on half-day programs, which research and family needs have now shown to be insufficient. Funding constraints since the 2008 recession have in recent years actually reduced the number of districts and the number of children participating in the program.³

Recognizing that “our nation has lagged in its commitment to ensuring the provision of high-quality public preschool in our children’s earliest years,”⁴ President Barack Obama recently proposed a dramatic new \$75 billion program that would, within ten years, provide all low- and moderate-income four-year-old children with high-quality preschool; the program, which puts a priority on full-day programs, would also seek eventually to reach additional children from middle-class families. In New York State, Governor Andrew Cuomo’s New NY Education Reform Commission earlier this year recommended that “New York provide high quality full-day pre-kindergarten for highest need students in order to close the achievement gap and ensure that New York’s children are ready for college and careers.”⁵ The governor and the legislature have taken an initial step toward implementing that recommendation by providing a \$25 million competitive grant for high-quality full-day prekindergarten services.⁶

These dramatic recommendations culminate a rising tide of understanding that the nation’s priority goal of overcoming achievement gaps and providing all children meaningful opportunities to achieve proficiency on challenging state standards cannot be met unless all

³ Despite its early leadership in establishing the UPK program, New York currently is ranked 9th in the country in regard to enrollment of four year olds, and 26th in enrollment of three year olds, and 21st in state spending. National Institute for Early Education Research, *The State of Preschool 2012* (2012) at pp.102-103. . (Hereafter: “NIEER 2012 Report”).

⁴ Fact Sheet: *President Obama’s Plan for Early Education for All Americans* (Feb. 2013), available at

⁵ New NY Education Reform Commission. *Putting Students First: Education Action Plan*, p. 37 (2013).

⁶ L. 2013, ch. 57.

unless all children are properly equipped for success when they first enter elementary school. Research in recent decades has confirmed the importance of full-day, universal prekindergarten for all three and four year olds for overcoming achievement gaps and attaining educational success;⁷ it has also demonstrated that the investment in universal, quality services will yield high economic dividends for the state and the nation.⁸

The growing understanding of the critical importance of prekindergarten to educational opportunity and school success has also led state courts in New Jersey⁹ and a number of other states explicitly to recognize a right to preschool education for children from low-income households.¹⁰ In *Campaign for Fiscal Equity (CFE) v. State of New York*, Justice Leland

⁷ The National Commission on Equity and Excellence summarized the literature in its recent report:

The research is dispositive: high-quality prekindergarten programs can make a tremendous difference in preparing children for success in school. Investment in early education for disadvantaged children during this critical period can benefit student achievement, reduce the need for special education, promote healthier lifestyles and lower overall social costs, including by decreasing the crime rate. Participation in high-quality preschool programs results in short-and long-term positive outcomes for children, including increased high school graduation and high rates for college attendance and completion.

Equity and Excellence Commission, *For Each and Every Child: A Strategy for Education Equity and Excellence*, p. 28 (2013). See also e.g. Arthur J. Reynolds, Judy A. Tempole, Suh-Ruu Ou, et al, "School-Based Early Childhood Education and Age 28 Well-Being: Effects by Timing, Dosage and Subgroups," 333 *Science* 360, (July 15, 2011); W. Steven Barnett, Kwanghee Jung, Min-Jong Youn, and Ellen C. Frede, *Abbott Preschool Program Longitudinal Effects Study: Fifth Grade Follow-Up* (NIEER, 2013). Kenneth B. Robin, Ellen C. Frede and W. Steven Barnett, *Is More Better? The Effects of Full-Day vs. Half-Day Preschool on Early School Achievement*. *NIEER Working Paper*, 2006.

⁸ See, e.g. James J. Heckman "The Economics of Inequality," *The American Educator* 31(Spring, 2011); Clive Belfield, "The Promise of Early Childhood Interventions" in *The Price We Pay: Economic and Social Consequences of Inadequate Education* (Clive R. Belfield and Henry M. Levin, eds., 2007).

⁹ *Abbott v. Burke*, 693 A.2d 417,436 (N.J. 1997). The court later directed the state's education commissioner to require the 31 "Abbott" districts to provide preschool programs for their three and four year olds and ordered the state to provide adequate funding to support these programs. *Abbott v. Burke*, 710 A.2d 450, 463-64,508 (N.J. 1998).

¹⁰ For example, South Carolina state circuit court Judge Thomas W. Cooper, Jr., held that poverty directly causes lower student achievement and that the state constitution imposes an obligation on the state "to create an educational system that overcomes . . . the effects of poverty." *Abbeville County Sch. Dist. v. State*, No. 31-0169 (S.C. Ct. Comm. Pl. Dec. 29, 2005) at 157. See also, *Hoke County Bd. of Educ. v. State*, 599 S.E. 2d 365, 392 (N.C. 2004) (holding that the state was ultimately responsible "to meet the needs of 'at-risk' students in order for such students to avail themselves of their right to the opportunity to obtain a sound basic education.")

DeGrasse also implicitly adopted this stance, holding that prekindergarten programs should be part of the “expanded platform of services” to which at-risk students are entitled.¹¹ He noted that “[t]he State has mandated that universal prekindergarten be made available to all eligible children by 2004,” but lamented the fact that funding for the UPK program “has lagged behind the amount necessary to ensure that New York City meets the deadline.”¹² A right of access to quality prekindergarten programs for low-income children is also implicit in the statutory scheme of the federal No Child Left Behind Act and in New York’s requirement that all students master the New York State Learning Standards in order to graduate from high school.¹³

In short, in order to implement the vision and the promise of universal preK fully and finally, and to provide all students a meaningful opportunity for a sound basic education, New York needs now to recognize explicitly the right of every three- and four-year-old child to a high-quality, full-day prekindergarten program. A definitive phase-in plan for implementing this right should be recommended by the governor’s education reform commission and enacted into law by the governor and the legislature during the 2014 legislative session.

To accomplish these ends, the existing UPK program should be revised by incorporating the following major changes:

1. All three and four year olds in New York State must be guaranteed access to high-quality full-day prekindergarten programs. All five year olds must be guaranteed access to full-day kindergarten programs.

¹¹ *CFE v. State of New York*, 187 Misc. 2d 1, 76 (Sup. Ct. N.Y. Co, 2001), *aff’d* 100 N.Y. 2d 893 (2003).

¹² *Id* at 79. By including prekindergarten programs among the priority areas to be funded by the increased state aid appropriations for New York City that were promised (but not yet delivered) as a result of the *CFE* litigation, the legislature sought to remedy this deficiency.

¹³ See, Michael A. Rebell, *The Right to Comprehensive Educational Opportunity*, 47 HARV. CIV. RTS-CIV. LIB L. REV. 47 (2012).

2. This reform should be phased in over an eight-year period, with the pace of the phase-in to be determined by program implementation factors.
3. In the first three years of the phase-in, guaranteed access should be made available to all four year olds in districts with high concentrations of low-income households and then the program should be extended universally to cover all four year olds in all districts in the state during the next two years. During years six and seven, all three year olds in districts with high concentrations of low-income households would be accommodated and then during the next and final year, the program should be extended to cover all three year olds in all districts. Until a district enters the phase-in process, it should continue to receive its current level of UPK state support.
4. State aid for prekindergarten programs should be incorporated into the K-12 state education finance system, with each district's foundation aid for prekindergarten services calculated in accordance with an actual cost-based percentage of per pupil allocations for students in K-12 program, and total costs divided between states and local school districts in accordance with each district's relative wealth. Initially, and until state aid for K-12 funding is brought up to constitutionally adequate levels, the state should pay the full cost of the preK program.
5. Full funding for prekindergarten programs should encompass all necessary costs for high-quality programs and should include transportation, social service, health, and family engagement services, as well as related services and support services for students with disabilities enrolled in inclusion programs. It should also encompass the costs of the systems supports and infrastructure investments necessary to build out high-quality programs.

PART ONE. THE FINANCING STRATEGY

The first part of this document will describe the shortcomings of New York’s current UPK system, review formula funding approaches in other states, and then explain in detail the reforms that are appropriate and necessary for a financing strategy for truly universal preK. The second part will set forth the framework for creating high-quality programs in all settings.

I. FORMULA FUNDING AND PREKINDERGARTEN PROGRAMS

A. Shortcomings of the Current UPK Funding System

UPK was originally enacted in 1997 as part of the State Assembly’s “LADDER” education reform initiative.¹⁴ The legislation authorizes the establishment and support of prekindergarten programs for four year olds, five days per week, on a 180-day per year schedule. (A separate “experimental program initiated in 1966 also provided funding for disadvantaged three and four year olds in a limited number of districts.¹⁵) State funding supports a partial day of two and a half hours, but districts can offer longer day by providing additional local funding.¹⁶ School districts must collaborate with community partners for no less than 10% of the funding allocation in order to leverage the capacity and expertise of existing programs.¹⁷ School districts

¹⁴ S.B. 5788, Ch. 436, 220th Leg., Reg. Sess. (N.Y. 1997). The LADDER program, which was a major reform initiative of Assembly Speaker Sheldon Silver, included funding for reduced class sizes in grades K-3, incentives for full-day kindergarten, and a five-year commitment to fund “universal” prekindergarten for four year olds. The phase-in began with the neediest districts. Mitchell, *The State with Two Prekindergarten Programs*, at p.10.

¹⁵ *Id* at pp. 6-9.

¹⁶ 8 NYCRR § 151-1.4(a). Summer-only programs are permissible. 8 NYCRR § 151-1.4(b).

¹⁷ 8 NYCRR §§ 151-1.2(b), 151-1.4(c) Community organizations may be day care providers, early childhood education centers, Head Start, nursery schools, libraries or museums. This requirement is waivable, and about one-third of participating districts have obtained waivers because of a lack of qualified community providers in their area. Winning Beginning NY, *Strengthening the Pre-K Investment* (2012). In 2009, 54% of UPK in New York State was community based, Memorandum from Joanna Duncan-Poitier to Regents State Aid Committee, “2010-2011 Regents State Aid Proposal: Support for UPK and Benefits of High Performance School Buildings, (September 1, 2009), Attachment A, p. 4, available at www.regents.nysed.gov/meetings/2009Meetings/September2009/0909sad1.htm. The community participation

remain responsible for the curriculum, which must be aligned with their kindergarten through grade four Common Core curriculum.¹⁸ Children are eligible for UPK if they are residents of a district offering the program and are four years old by December 1st of the year enrolled.¹⁹

The original UPK statute was a grant program that anticipated, by the end of a five-year phase-in period, that each school district receiving a grant a minimum of \$2,000 and a maximum of \$4,000 per student, based on district-wealth factors, with the initial grants beginning at a minimum \$260 per student level, and ramping up each year over the five-year period.²⁰ Five years after the law's enactment, however, the state was far from reaching the full funding level that had originally been contemplated: for 2003-04, only \$204 million was appropriated for the program, less than half of the \$500 million originally projected for that year,²¹ and only about a third of the districts in the state were participating in the program.²²

requirement may be most challenging in rural areas due to structural and geographic issues. *See* LISA MCCABE & JOHN W. SIPPLE, N.Y.S. CTR. FOR RURAL SCH., UNIVERSAL PRE-KINDERGARTEN, EARLY CARE AND EDUCATION IN RURAL NEW YORK: RESEARCH FINDINGS AND POLICY IMPLICATIONS 4-5 (Mar. 2009). *Cf.* Winnie Hu, *A Promise Of Pre-K for All Is Still Far Off In New York*, N.Y. TIMES (Aug. 23, 2008) (noting the necessity of community-based programs given existing building overcrowding and facility constraints for some districts who have elected not to participate in UPK).

¹⁸ 8 NYCRR § 100.3. Current New York State standards and policies for curriculum alignment are set forth in New York State Department of Education, *New York State Prekindergarten Foundation for the Common Core* (2012), available at http://www.p12.nysed.gov/ciai/common_core_standards/pdfdocs/nyslsprek.pdf. All programs are to be based on an inclusion model, with programmatic design to meet the needs of children with disabilities and those with limited English proficiency. 8 NYCRR §§ 151-1.4(e)-(f).

¹⁹ 8 NYCRR § 151-1.2(c).

²⁰ L. 1997, ch. 436, § 58.

²¹ Mitchell, *The State with Two Prekindergarten Programs* p. 12.

²² *Winning Beginning NY, Strengthening the Pre-K Investment* (2012), p.6.

In 2007, as part of his program to provide all students the opportunity for a sound basic education in the wake of the *CFE* litigation,²³ Governor Eliot Spitzer proposed a new, more equitable state-aid approach to UPK financing. His program would allow all districts to be eligible for the program, and called for a doubling of expenditures for UPK over four years, leading to guaranteed access to full-day programs by 2010-11 for students in high-need, low-achieving school districts.²⁴ In response, the legislature increased funding by \$146 million and substantially revised the UPK statute. At that time, the state also folded the “experimental prekindergarten program that was providing about \$50 million per year into the UPK program.”²⁵ The new funding formula would provide school districts per-child allocations based on 50% of the district’s K-12 foundation funding amount or the amount it had received during the 2006-07 school year, whichever was larger. All districts, however, would continue to be guaranteed a minimum per-child allocation, which by 2007 had been increased to \$2,700.

After the new system had been implemented for the two years, state fiscal constraints from the 2008 recession, caused the state, starting in 2010, to freeze further increases and to reduce the total amount available for preK in line with reductions to the K-12 foundation formula to which it was tied.²⁶ The distinctions between pre- and post-2007 funding amounts, the freezing of the continued phase-in of the new formula-based approach, and various caps that

²³ Campaign for Fiscal Equity (“CFE”) v. State of New York, 100 N.Y. 2d 893 (2003); CFE v. State of New York, 8 N.Y. 3d 14 (2006).

²⁴ Governor’s Executive Budget Proposal, January 31, 2007.

²⁵ Only Syracuse and a few BOCES-sponsored UPK programs have retained three year olds.

²⁶ N.Y. EDUC. L § 3602(1)(h) (McKinney2012) (inherent in this structure is competition between prekindergarten and K-12 programs for limited funds).

have been imposed on aspects of the funding scheme in recent years have greatly complicated the actual methods for determining the specific amount to which a district is entitled.²⁷

School districts are required to maintain their commitment to the program from year to year by serving in the current year at least the number of students they had served in the previous year.²⁸ Failure to serve that number of students can result in a decrease in the allocated aid,²⁹ which, in recent years, has meant reducing the total amount of UPK aid that a district can receive in the future, even if enrollment and the cost of services grows in subsequent years. Conversely, a school district that has “fully implemented” UPK by serving the full number of students for whom funding had been authorized in its application maintains its total funding amount, but it is required to provide UPK services to any additional eligible children who wish to enroll, at any time during the school year, without receiving any additional state aid.³⁰

The maximum available for state funding today for UPK is \$385 million,³¹ less than it was in 2007-08 when the maximum allocated amount of UPK funding statewide was \$451 million and all 672 school districts were eligible to participate.³² In 2013-14, funding is \$385

²⁷ See, N.Y.S. Educ. Dep’t, State Formula Aids and Entitlements for Schools in New York State as Amended by Chapters of Laws 2012 (Sept. 2012), stateaid.nysed.gov/publications/handbooks/handbook_2012.pdf (explaining the formula).

²⁸ N.Y.S. EDUC. DEP’T, UNIV. PREKINDERGARTEN PROGRAM Q & A ON FULLY IMPLEMENTED PROGRAMS, www.p12.nysed.gov/upk/fullyimpprogramsqa.html.

²⁹ N.Y. EDUC. L § 3602-e (11) (McKinney 2012).

³⁰ N.Y.S. Educ. Dep’t, Univ. Prekindergarten Program Q & A on Fully Implemented Programs, www.p12.nysed.gov/upk/fullyimpprogramsqa.html.

³¹ See New York State Education Department, 2013-2014 Universal Prekindergarten Allocation Chart, available at www.p12.nysed.gov/upk/

³² Memorandum from Joanna Duncan-Poitier to Regents State Aid Committee, *2010-2011 Regents State Aid Proposal: Support for UPK and Benefits of High Performance School Buildings*, (September 1, 2009), attachment A, p. 15, available at www.regents.nysed.gov/meetings/2009Meetings/September2009/0909sad1.htm.

million because only districts that had enrolled by 2008-09 now receive funding, and no additional districts are allowed to join the program.³³ As of 2012-13, only 441 of the state's 697 districts were eligible to participate.³⁴ In 2013-14, the maximum number of children eligible for UPK state aid in New York State was about 99,000,³⁵ a decline from the 121,000 student maximum in 2008-09.³⁶ Overall, as of 2012-13, approximately 46% of four-year-old children (88,883) were not enrolled in UPK programs; of those not enrolled, 30,047 are in New York City and other "high needs" districts.³⁷

This brief overview demonstrates that, despite its original clear vision, at the present time, New York State's system of UPK funding is plagued with multiple shortcomings: it is, in essence, inadequate, inequitable, unstable, and inscrutable.

1. Inadequate

The current UPK funding system is plainly inadequate. The program can no longer truly be called universal because only 63% of the state's school districts are even eligible to apply, and

³³ Those districts that had elected not to participate did so because of, among other things, "insufficient per-pupil funding, a lack of developmentally appropriate transportation, and the caveat that the state does not provide funding to support full-day programs." Alliance for Quality Education, et al., *Early Childhood Education: Frozen Funding Leads to Cracks in the Foundation*, p. 4 (2012), available at <http://www.aqeny.org/ny/wp-content/uploads/2012/02/Frozen-Funding-Leads-to-Cracks-in-the-Foundation-2.8.12.pdf>

³⁴ *Id.*

³⁵ New York State Education Department, *2013-2014 Universal Prekindergarten Allocation Chart*, available at www.p12.nysed.gov/upk/. It should be noted that many of those not enrolled in UPK may be enrolled in other programs such as Head Start, day care centers, and nursery schools of varying quality. *Id.* See also Al Baker, *City to Add Pre-K Efforts in Poor Areas Next Year*, N.Y. TIMES (Sept. 24, 2012) (New York City will "convert 4,000 half-day prekindergarten seats into full-day seats, mostly in poor neighborhoods, next fall." The cost of the full-day seat conversion is \$20 million.)

³⁶ Memorandum from Joanna Duncan-Poitier to Regents State Aid Committee, *2010-2011 Regents State Aid Proposal: Support for UPK and Benefits of High Performance School Buildings*, (September 1, 2009), attachment A, p. 15, available at www.regents.nysed.gov/meetings/2009Meetings/September2009/0909sad1.htm

³⁷ Memorandum from Ken Slentz to P-12 Educ. Comm. 3 (Oct. 1, 2012), www.regents.nysed.gov/meetings/2012Meetings/October2012/1012p12d5.pdf

at least 30,000 high-need four-year-old children are not being served. Furthermore, of those who are being served, 75% are in half-day programs.³⁸ It has become clear at this time, as evidenced by the stands of President Obama, Governor Cuomo, the Regents, and the recommendations of the governor's education reform commission, as well as the decision of many school districts not to participate in a program based on part-time funding, that high-quality prekindergarten programs generally must operate on a full-day basis.³⁹ Recent research has confirmed that "students who are far behind at entry to preschool can develop vocabulary, math, and literacy skills that approach national norms if provided with extended duration preschool that maintains reasonable quality standards."⁴⁰

The current UPK formula was based on funding for half-day programs. And, even if it did not contain substantial hold-harmless elements and were not frozen, capped, and otherwise distorted,⁴¹ it would be inadequate for other reasons. First, limiting preK funding to a percentage of each district's foundation funding allocation omits major cost areas like transportation, building aid, and BOCES services. Second, the foundation aid amount provides only a portion of actual school-district expenditures for K-12 services; the K-12 formula assumes that local school

³⁸ NIEER 2012 Report at 102.

³⁹ In 2012, 67% of mothers with no spouse in the home and 59% of married mothers worked out of the home. U.S. Bureau of Labor Statistics, *Employment Characteristics of Families Summary* (April, 26, 2013), available at <http://www.bls.gov/news.release/famee.nr0.htm>. This is another reason that expansion of full-day programs is of critical importance.

⁴⁰ Kenneth B. Robin, Ellen C. Frede and W. Steven Barnett, *Is More Better? The Effects of Full-Day vs. Half-Day Preschool on Early School Achievement* (NIEER Working Paper, 2006) at p. 2. The NIEER study indicated that by the spring kindergarten assessment, children in the extended duration program had improved 11 to 12 standard points on vocabulary and math skills, in contrast to six to seven point gains for children in the half-day control group programs.

⁴¹ For example, currently, once a district has served all of the children covered by its original allocation, it is required to also serve unlimited numbers of additional eligible children who may seek service, even though no additional state aid will be forthcoming. This means, in essence, that its average per-capita state UPK allocation will be reduced to levels substantially below the stated formula amount.

districts will expend substantial additional sums -- on average equaling or exceeding the amount of state aid -- on their local schools. Although some local school districts do supplement their UPK state aid allocations, they are not required or expected to do so, and many districts limit the amounts that they spend on prekindergarten to the amounts provided by the state. Finally, there is no guaranteed funding level for community programs; local school districts negotiate funding amounts for these programs, which in some cases are below the state aid levels that the district itself receives. These community programs then operate on minimal budgets, impeding their ability to hire qualified teachers and other staff.

The net effect of inadequate funding of UPK services is in many cases to compromise program quality, because excellent programs with certified teachers and reasonable class sizes cannot operate within the current state funding parameters,⁴² and/or to limit access to full-day or even half-day programs because many school districts have no interest in mounting or expanding programs if they do not receive adequate state support for doing so.

2. *Inequitable*

Under the UPK funding reforms adopted in 2007, in theory, each district's per-student allocation would, over time, be primarily based on 50% of its K-12 foundation aid amount. If that were, in fact, how the system actually operated, UPK allocations would largely be related to need, since the foundation-funding formula is based to a great extent on district wealth, percentage of low-income children, and cost-of-living factors.⁴³ However, actual allocations under the current system vary significantly from the theoretical model because (1) allocations for

⁴² Many school districts and community agencies do currently operate high-quality programs, but to do so they generally must supplement state aid allocations with local tax levy funds or private contributions.

⁴³ The K-12 foundation formula itself is not fully equitable, however, since it contains a number of distorting factors such as a minimum funding factor of approximately \$800 per student, but that is much lower than the \$2,700 minimum built into the UPK formula.

the numbers of students the district served in 2006-07 continue to be funded at the rates in effect for that year; (2) the phase-in of the new, more equitable funding system has been frozen for the past several years, meaning that most students continue to be funded at the more inequitable, pre-2006-07 rates; (3) the current \$2,700 per-student minimum funding amount, in the absence of adequate funding for all districts, substantially exacerbates the inequities of the current system; and (4) a maintenance-of-effort factor and enrollment-growth caps further limit total district allocations and reduce per-capita funding under certain circumstances. In short, the current UPK methodology falls far short of the legal requirement to “align funding with need.”⁴⁴

The following chart sets forth relevant current UPK funding information for six illustrative districts and demonstrates the inequities in the way the current UPK funding system operates:

School District	Average UPK per-pupil allocations 2013-14 ⁴⁵	Number of eligible preK students	Foundation aid per-pupil K-12, 2013-14 ⁴⁶
Great Neck	\$3,390	193	\$605
Amherst	\$2,719	139	\$ 1,760
East Ramapo	\$2,925	1,621	\$ 3,084
Roosevelt	\$6,844	143	\$ 10,312
Rochester	\$5,675	1,905	\$ 10,998
New York City	\$3,881	57, 969	\$ 5,661

⁴⁴ CFE v. State of New York, *supra*, 100 N.Y. 2d at 929. (2003).

⁴⁵ Figures are calculated from data in the New York State Education Department, *2013-2014 Universal Prekindergarten Allocation Chart*, available at www.p12.nysed.gov/upk/.

⁴⁶ Calculations are based on total foundation aid less gap elimination adjustment for each district as set forth in the State of New York 2013-14 state aid runs, March 22, 2013, divided by the district’s total K-12 enrollment as set forth in the state report card for each district. The state report cards, except for New York City, are available at <https://reportcards.nysed.gov/counties.php?year=2012>; total public school population for 2011-12 was obtained from <http://schools.nyc.gov/AboutUs/data/stats/default.htm>.

Great Neck, an affluent district in Nassau County with a 10% low-income student population⁴⁷ and a minimal \$605 per-pupil foundation amount, receives an average of \$3,390 per pupil in UPK funding. Amherst, an affluent suburb of Buffalo, which has a 28% low-income student population and a \$1,760 per-pupil foundation allocation, receives an average \$2,719 per-pupil payment. By way of contrast, East Ramapo, a high-poverty area in Rockland County with a 78% low-income population, and a \$3,084 per-pupil foundation-funding level, receives \$2,925, slightly more than Amherst, but substantially less than Great Neck. New York City, where over 72% of the students are from low-income households,⁴⁸ receives \$3,881 on average per child only \$281 more per child than the affluent Great Neck district.

Although per-capita funding for the small Roosevelt district in Nassau County, with a 56% low-income population, and Rochester, where 88% of the students are low income, are substantially higher than the affluent districts because of their relatively high foundation amounts, those high foundation figures reflect extremely low local taxing ability; this means that neither district is well positioned to add any significant local funding to the state-aid allocation, even if high-quality programming would call for higher total expenditures. Moreover, from an equity perspective, there is no reason that Rochester, which has a higher poverty rate and a higher foundation rate, receives a lower average per-capita funding level than Roosevelt.

⁴⁷ Low-income calculations for Great Neck and the other districts (except New York City) discussed in this paragraph are based on total percentage of students eligible for free and reduced priced lunches, as reported on the state report cards for 2011-2012, available at <https://reportcards.nysed.gov/counties.php?year=2012>.

⁴⁸ See, New York City Independent Budget Office, *New York City Public School Indicators: Demographics, Resources, Outcomes*, p.8, available at <http://www.ibo.nyc.ny.us/iboreports/2011edindicatorsreport.pdf>

3. *Unstable*

While state aid for UPK programs is to a great extent calculated in relation to K-12 foundation-funding amounts, UPK is still technically a grant program. As such, its funding requires a separate appropriation, and unlike grant programs in many other states, this appropriation is not supported by a dedicated funding stream like a lottery or a tobacco tax.⁴⁹ Even before the current cap on participation by new school districts was put into place, districts seeking state funds needed to apply to the commissioner of education, and the numbers of eligible children that the commissioner could approve was limited by the UPK appropriation that the legislature chose to approve each year.

Under the original LADDER statute enacted in 1997, funding for UPK was supposed to be phased in over a five-year period and reach a funding level of \$500 million per year by 2002.⁵⁰ The state has never reached that \$500 million figure: funding in 2012, a decade after the full phase-in amount was supposed to be reached, was only \$384 million, and the highest level ever reached, was \$451 million in 2008-09⁵¹; in inflation-adjusted terms, both of these amounts are substantially below the promised \$500 million figure. Even before the 2008 recession, UPK

⁴⁹ Diana Stone, *Funding the Future: States' Approaches to Pre-K Financing* (2006), available at <http://www.pewtrusts.org/uploadedFiles/Fundingthefuture.pdf> (setting forth pros and cons on different ways to raise state revenues for preschool grant programs).

⁵⁰ Mitchell, *The State with Two Prekindergarten Programs*, at p.10.

⁵¹ Memorandum from Joanna Duncan-Poitier to Regents State Aid Committee, *2010-2011 Regents State Aid Proposal: Support for UPK and Benefits of High Performance School Buildings*, (September 1, 2009), attachment A, p. 15, available at www.regents.nysed.gov/meetings/2009Meetings/September2009/0909sad1.htm. The \$451 million figure was the maximum total amount for which districts could apply. Since, in light of the fiscal constraints on overall school operations imposed by the 2008 recession, some districts did not apply or use their full allocation, the actual amount expended in 2008-09 was less than this figure.

funding fluctuated widely from year to year. In 2003-04, for example, UPK was funded at only \$204 million.⁵²

This funding instability has major consequences for preK. The reason that many school districts chose not to participate in the program during the brief period when all districts in the state were eligible was that the uncertainty of the state-aid level from year to year undermined sound program planning. When state aid fell short of expectations, school districts would have to cut back or eliminate programs that had been initiated, or they would need to burden local taxpayers with unanticipated tax increases. In the post-recession years, some districts that were eligible for continued state funding withdrew from the program because, with limited education dollars, they considered maintenance of K-12 programming levels a higher priority for their available local funds than maintenance or expansion of prekindergarten programs.

4. Inscrutable

The inequity, inadequacy, and instability of the current UPK funding system are heightened by the fact that the methodology for calculating UPK state aid is largely inscrutable. At the present time, each district essentially has two separate UPK funding rates, one that was in effect in 2006-07 before the 2007 reforms were enacted and one that is based on the new funding method. The former rate applies to the number of students funded in 2006 and the other rate to the number of students added since that time. Both of these rates are, however, sometimes adjusted because of maintenance of effort (MOE) or full enrollment factors (If a district fails to meet its MOE number in one year, its total allocation is capped, meaning that if it increases its enrollment in a subsequent year, the effective per-capita rate will be lower; a district that reaches

⁵² *Id.* at p.12.

its full UPK enrollment target figure is then obligated to accept all additional children who seek to enter the program, without any additional state funding, again lowering their effective per-capita rate.) The post-2007 rate is further complicated by the effect of the \$2,700 minimum allocation. Finally, the actual amount that any community program receives is subject to a contractual relationship with its local school district, and the amount that it will have available for its programs may be more or less than the state-aid rate the district receives for each child.

This system clearly is not transparent as far as the public is concerned. The methodology for calculating UPK aid takes up over three dense pages in the statute books, and one seeking to understand its meaning must navigate layer upon layer of complex calculations that have been built up over the years.⁵³ No layperson, and very few fiscal policy experts, can make any sense of this highly complex, multifaceted verbiage. In practice, school districts and knowledgeable members of the public must rely on “data on file for the school aid computer listing produced by the commissioner,” which lists two sets of rates for each district, without really understanding how the amounts listed in that file were actually calculated. Thus, one may know from that data file that the average rate in Great Neck is \$3,390 and the average rate in New York City is \$3,881, without having any real idea of how these rates were calculated, why

⁵³ For example, one of the 12 paragraphs that constitute this methodology reads as follows:

Each school district shall be eligible to receive a grant amount equal to the sum of (i) its prekindergarten aid base plus (ii) the product of its selected aid per prekindergarten pupil multiplied by the positive difference, if any of the number of aidable prekindergarten pupils served in the current year, as determined pursuant to regulations of the commissioner, less the base aidable prekindergarten pupils calculated pursuant to this subdivision for the two thousand seven--two thousand eight school year, based on data on file for the school aid computer listing produced by the commissioner in support of the enacted budget for the two thousand seven--two thousand eight school year and entitled “SA070-8”. Provided, however, that in computing an apportionment pursuant to this paragraph, for districts where the number of aidable prekindergarten pupils served is less than the number of unserved prekindergarten pupils, such grant amount shall be the lesser of such sum computed pursuant to this paragraph or the maximum allocation computed pursuant to subdivision nine of this section.

the rates differ, or why they don't differ by larger amount, given the relative equities between these districts.

B. Funding Methodologies in Other States

Forty states and the District of Columbia now support prekindergarten programs for three and four year olds.⁵⁴ State funding generally takes one of three forms: grant funding that is subject to annual legislative appropriations, supplements to the federal Head Start programs and child care programs, and formula funding tied to the overall public education budget.⁵⁵ The inequities, inadequacies, and instability of grant funding, which is subject to annual legislative appropriations and does not guarantee universal access, were discussed in regard to New York State's current UPK grant program in the previous section. The federal Head Start program, serves broader purposes, operates separately from the public education system, and has strict eligibility requirements. While many districts collaborate with Head Start in their preK programs, supplementing the federal Head Start program also does not provide an appropriate direction for building a viable universal prekindergarten program. For these reasons, both the Pew Center on the States and the National Institute for Early Education Research (NIEER), the organizations that have researched this question more extensively, strongly recommend a formula-based approach.

According to the PEW researchers, "Tying pre-k and K-12 funding together in a single formula more firmly embeds early learning in the larger education system, which generally enjoys strong fiscal, political and public support and is less vulnerable to budget cuts than

⁵⁴ NIEER 2012 report at p. 13.

⁵⁵ Ellen Boylan and Shad White, Formula for Success: Adding High-Quality Pre-K to State School Funding Formulas p. 10 (PEW Center on the States, 2010). In most states, early childhood funding is treated as a distinct budget category. New York is one of a few states that include preK in its education budget, thus acknowledging its close tie to the K-12 system.

programs supported by grants.”⁵⁶ A recent NIEER report also noted other advantages of formula funding:

Including pre-K initiatives in the statewide school funding formula for public schooling is a particularly effective way of providing consistently adequate funding. This approach places no limits on enrollment of the eligible population, and is particularly useful for preschool programs that are open to all children regardless of income.⁵⁷

At the present time, about one-third of the states that support prekindergarten programs do so through a formula approach.⁵⁸ The specifics of these formula approaches vary widely, however. Some of these funding systems have unrestricted eligibility, while others limit eligibility in a variety of ways; the proportion of per-pupil K-12 funding allocated for each prekindergarten child differs substantially; some systems cap total the number of prekindergarten students they will fund, while others do not; some serve only four year olds, while others also include three year olds.⁵⁹ The following examples of these differing formula funding approaches will illustrate this wide range of difference.

Oklahoma allows school districts simply to include all four year olds attending prekindergarten programs in its weighted membership count for the school-aid formula; prekindergarten students attending half-day programs receive a 0.7 weighting, while those attending full-day programs get a 1.3 weight.⁶⁰ All four year olds are entitled (but not required) to attend either half-day or full-day programs in their district of residence free of charge -- “so

⁵⁶ *Id* at p. 6.

⁵⁷ W. Steven Barnett and Jason T. Hustedt, *Improving Public Financing for Early Learning Programs*, p.14 (NIEER, 2011).

⁵⁸ Boylan and Shade, above, n. at p.3.

⁵⁹ *Id* at p.4.

⁶⁰ Okla. Stat. Anno, Title 70, §18-201.1

long as the district has the physical facilities and teaching personnel to accommodate the child.”⁶¹ In other words, districts are entitled to substantial state aid for all students they enroll in prekindergarten programs they chose to establish, but students do not have guaranteed access to such programs. Nevertheless, 93% of school districts in Oklahoma participate in the program, and its enrollment, 70% of all four year olds, is the highest in the nation.⁶²

Maryland, by way of contrast, provides an absolute right of every four year old from an “economically disadvantaged background” to attend a publicly funded preschool program free of charge.⁶³ Each county board of education was required to establish sufficient prekindergarten programs operating for a minimum of 2.5 hours a day, five days per week by 2007-08 as part of the comprehensive plans called for by the state’s Bridge to Excellence Act of 2002,⁶⁴ but no dedicated budget line or extra per pupil funding was provided for these programs. The state took the position that the Act’s \$1.3 billion increase in annual funding for schools took into account costs for prekindergarten programs for disadvantaged students.

In Colorado, “at-risk” three- and four-year-old children attending half-day prekindergarten programs generate a 0.5 weighting in the school finance formula. The number of children that school districts may accommodate is, however, limited by an annual number of “slots” that are approved by the legislature. The statute also permits full (1.00) FTE funding for

⁶¹ Okla. Stat. Anno, Title 70, § 1-114.

⁶² Diana Stone, *Funding the Future: States’ Approaches to Pre-K Financing* (2008), available at <http://www.ncsl.org/print/educ/Pre-ConStone.pdf>

⁶³ Md. Anno Code § 7-1001.1. Kansas similarly entitles all at-risk students to prekindergarten services, but funds them at 0.5 FTE weighting. KSA 72-6407. Although the statute provides a right to funding for all at-risk students enrolled in approved at-risk programs, budget cuts in recent years have apparently led the state to limit the number of children it will actually allow to enroll in approved programs. NIEER 2012 Report at p. 62.

⁶⁴ Code of Md. Regulations 13A.06.02.05

full-day programs up to 5% of the total allocated prekindergarten population.⁶⁵ Vermont similarly used to cap the number of prekindergarten children that a school district could claim as part of its average daily membership for the state’s education fund appropriations, but in 2011 the cap was lifted. School districts in Vermont are now permitted, but not required, to operate state-funded programs.⁶⁶ About 80% of the state’s school districts currently operate such programs.⁶⁷

State funding for prekindergarten programs in Wisconsin originated in the mid-19th century, as the state’s constitution of 1848 included four year olds in the category of students entitled to attend the tuition-free common schools.⁶⁸ Under the current laws, school districts that choose to establish prekindergarten programs for four year olds are entitled to 0.5 FTE weighting for each such child. The state funding scheme has two additional interesting features. Districts can obtain a 0.6 FTE weighting if the prekindergarten program annually provides at least 87.5 additional hours of outreach activities,⁶⁹ and a district’s right to funding doesn’t kick in until the third year the program is operation. (The law does, however, also offer “start-up grants” of up to \$1,500 per student for districts establishing new programs.⁷⁰)

⁶⁵ Colorado Preschool Program Handbook, at p.12 (2011-2012), available at http://www.cde.state.co.us/cpp/download/CPDDocs/PPP_Handbook.pdf.

⁶⁶ 16 Vt. Stat. Anno §829.

⁶⁷ NIEER 2012 Report, p. 134.

⁶⁸ Wisconsin Council on Children and Families, The Unique History of Four-Year-Old Kindergarten in Wisconsin, p.4 (2010).

⁶⁹ W.S.A. 121.004

⁷⁰ Wisconsin Department of Public Instruction, Four Year-Old Kindergarten Grants, available at http://ec.dpi.wi.gov/ec_ec4yr-old-kind-grants.

The strongest and most successful formula-based funding program is that operated by the State of New Jersey. The program originated as part of a court-ordered remedy in the *Abbott* litigation. The initial court order required the state to implement universal half-day prekindergarten programs for all three- and four-year-old children in the 32 low-income urban school districts covered by the case within 18 months.⁷¹ When the state did not meet the deadline, the court, after considering a large body of expert testimony, issued a further ruling that articulated specific high-quality standards that included early-childhood certification for all prekindergarten teachers, a maximum class size of 15, use of a developmentally appropriate preschool curriculum, and comprehensive services.⁷²

Based on an explicit legislative finding that the *Abbott* prekindergarten programs were effective, in 2008, the state's School Funding Reform Act (SFRA) called for expansion of *Abbott* prekindergarten programs to districts throughout the state by the 2013-14 school year.⁷³ The law requires full-day programming, and each school district must plan to enroll at least 90% of the eligible children in the district. Under SFRA, districts with a concentration of more than 40% of

⁷¹ *Abbott v. Burke*, 710 A.2d 450, 464 (NJ 1998) (“*Abbott V*”). The court stated that the half-day program would be an “initial reform.” In response, “Governor Whitman decided to move to full day, under pressure from providers, districts and advocates, who argued successfully that parents and families in poor communities needed full day -- both for kids and to support families. Full day then became an accepted and established program component, both by the court in *Abbott VI* and *VIII*, in the SFRA formula and in DOE regulations.” Statement of David Sciarra, counsel for *Abbott* plaintiffs, e-mail correspondence with Michael A. Rebell, May 6, 2013.

⁷² *Abbott v. Burke* 748 A.2d 82 (NJ 2000) (“*Abbott VI*”). As Sara Mead recounts in *Education Reform Starts Early: Lessons from New Jersey's PreK-3d Reform Efforts* (2009), the Whitman administration pressed for maximum use of existing private and nonprofit child care centers to provide *Abbott* prekindergarten services both because the public schools lacked sufficient space to accommodate the large numbers of children who would now need to be served and because they saw the use of community- based providers as a “way to lower the bill for new pre-k programs.” *Id.* at p. 5. “The court’s decision upheld the use of community-based providers to deliver pre-K, but required that all pre-K providers -- whether in community-based programs or public schools -- meet the same high standards required by *Abbott VI*.” *Id.* at 6. Ironically, based on actual program costs, the legislature eventually approved rates for community-based programs that were about 10% higher than for public school programs. N.J.S.A. 18A:7F-54.d.

⁷³ N.J. STAT. ANN. § 18A: 7F-54 (West 2008).

students eligible for the federal free-and-reduced-price lunch program must provide free, full-day preK for all three and four year olds.⁷⁴ Districts with less than a 40% concentration of students eligible for free-and-reduced-price lunch must provide preK for all three and four year olds who are characterized as “at-risk” because their families qualify for the free-and-reduced-price lunch program.⁷⁵ This expansion beyond the *Abbott* districts essentially has not yet been effectuated, however, because of state budget fiscal constraints.⁷⁶

State aid for all three and four year olds in the *Abbott* districts (and under SFRA, if and when it is fully implemented, for all eligible students in all other districts) covers 100% of the actual costs of providing high-quality full-day programs in these districts. No other state guarantees 100% full state funding in this manner. In all other states that utilize a formula funding approach, prekindergarten funding is tied to some proportion of K-12 per-pupil funding based on some rough understanding of the costs of running a prekindergarten program or on a politically determined amount based on how much legislators are willing expend on prekindergarten services.

New Jersey took advantage of the history of the court-ordered full-funding requirement in the *Abbott* districts to undertake detailed cost analyses of what high-quality full-day programs for at risk students actually cost in the State of New Jersey and used the resulting figures as the statutory basis for determining the amount of approved per pupil preschool education aid.⁷⁷ For

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ NIEER 2012 Report at p. 95.

⁷⁷ David Sciarra, Executive Director, Education Law Center, telephone conference with Michael A. Rebell, May 3, 2013. *See also*, Clive Belfield and Heather Schwartz, *The Cost of High-Quality Pre-School Education in New Jersey* (2007) (illustrating a methodology for determining the actual costs of pre-school programs in New Jersey).

the 2013-14 school year, the state-aid amounts in the governor's proposed budget are \$12,788 for in-district programs, \$14,375 for community-based programs, and \$7,934 as a supplement to federal funding for Head Start programs.⁷⁸ The statute requires these amounts to be updated annually in accordance with a cost-of-living index, and, every three years, the governor, after consulting with the commissioner of education, must issue an educational adequacy report that, among other things, reconsiders the per-pupil amounts for full-day preschool.⁷⁹

II. A COST-BASED FORMULA MODEL FOR NEW YORK STATE

Of the various state formula funding models, New Jersey's *Abbott* preschool experience plainly provides the most relevant prototype for building a rights-based prekindergarten funding model for New York State. Because of the constitutional context from which it emerged, preschool funding in New Jersey was rights based from the start, and its operating premise was that all three and four year old children in the *Abbott* districts must be fully funded. The New Jersey program also required the state to adopt and enforce high-quality standards, to provide full-day programs for all four year olds, and later for all three year olds, and to provide supplementary after-school social service, and health services as necessary.⁸⁰ In addition, in order to ensure maximum enrollment, school districts were responsible for affirmative outreach efforts, with an expectation that 90% of eligible children would ultimately enroll. All of these elements are critical components of an effective, high-quality rights-based universal prekindergarten program.

⁷⁸ 2013 Governor's Education Adequacy Report, submitted pursuant to N.J.S.A. 18A:7F-54. These numbers will be adjusted up or down based on each school district's geographic cost factors.

⁷⁹ N.J.S.A. 18A:7F-46

⁸⁰ *Abbott V*, 710 A.2d at 512-13.

Accordingly, like the New Jersey program, a rights-based approach to New York's UPK program should include (a) guaranteed full funding; (b) full-day programming for all three and four year olds; (c) comprehensive services for at-risk students; (d) vigorous outreach to promote maximum enrollment; (e) adoption and enforcement of high quality standards and requirements; and (f) systems supports and infrastructure investments.

Of course, New York is not New Jersey. The differing constitutional context, UPK implementation history, and political and statutory setting in New York mean that even though the main elements of the New Jersey approach need to be incorporated in a revised rights-based UPK program in New York, the manner in which this can be done necessarily will differ. Among other things, rights-based UPK in New York must cover all children in all districts, and not just at-risk children in 32 urban districts, and, in the absence of a judicial mandate, full state funding is not a plausible approach to financing an extensive universal program in New York.

The reform proposals set forth in this paper are, therefore, heavily influenced by New Jersey's experience, but molded to reflect New York's particular needs and circumstances. This section will discuss how the first four elements of a rights-based UPK program, guaranteed full funding, full-day programming for all three and four year olds, comprehensive services, and affirmative outreach to eligible children can practically be implemented in the State of New York. The second part of this paper will consider the adoption, phase-in, and enforcement of high-quality standards and requirements and systems supports and infrastructure investments.

In order to correct the shortcomings of the current UPK system and provide funding for prekindergarten services in New York State that is equitable, adequate, stable, and transparent, the UPK system should be revised to contain the following major components:

1. All three and four year olds in New York State must be guaranteed access to high-quality full-day prekindergarten programs. All five year olds must be guaranteed access to full-day kindergarten programs.
2. This reform should be phased in over an eight- year period, with the pace of the phase-in to be determined by program implementation factors.
3. In the first three years of the phase-in, guaranteed access should be made available to all four year olds in districts with high concentrations of low-income households. In years four and five, the program should be extended universally to cover all four year olds in all districts in the state. During years six and seven, all three year olds in districts with high concentrations of low-income households would be accommodated. In the next and final year, the program should be extended to cover all three year olds in all districts. Until a district enters the phase-in process, it should continue to receive its current level of UPK state support.
4. State aid for prekindergarten programs should be incorporated into the K-12 state education finance system, with each district's foundation aid for prekindergarten services calculated in accordance with an actual cost-based percentage of per pupil allocations for students in K-12 program, and total costs divided between states and local school districts in accordance with each district's relative wealth. Initially, and until state aid for K-12 funding is brought up to constitutionally adequate levels, the state should pay the full cost of the preK program.
5. Full funding for prekindergarten programs should encompass all necessary costs for high-quality programs and should include transportation, social service, health, and family engagement services, as well as related services and support services for students with disabilities enrolled in inclusion programs. It should also encompass the costs of the systems supports and infrastructure investments necessary to build out high-quality programs.

Each of these components will be discussed in turn.

- 1. All three and four year olds in New York State must be guaranteed access to high-quality full-day prekindergarten programs. All five year olds must be guaranteed access to full-day kindergarten programs.*

As discussed above, fidelity to the original vision of New York's UPK program, the overwhelming weight of the research, the positions of a growing chorus of policymakers, and developing legal trends indicate that New York should at this time acknowledge and affirmatively act on the right of all three and four year olds to attend a publicly funded, high-

quality prekindergarten program. Although access to such programs should be guaranteed, and information about the availability and advantages of the program should be affirmatively disseminated and promoted, parents would still retain the discretion to decide whether their children should actually take advantage of these programs.

Although parents should also be free to choose a half-day option if that better meets their family's particular needs, the basic right should be defined in terms of access to full-day programs, and attendance in full-day programs should be generally assumed and encouraged. Recent research, including data on changing parental work patterns, strongly demonstrates that most children, and especially those from low-income households, need full-day programming.⁸¹ Although, as the New Jersey Supreme Court put it, half-day programs provide a suitable "initial reform," the full long-term benefits of early education can only be achieved by providing universal access to full-day services. That is why the governor's New NY Education Reform Commission strongly endorsed "high-quality full-day programs for highest needs students" as the next strategic step in building a "seamless pipeline" of high-quality educational services, starting in the early years.⁸²

Although access to full-day programs should be provided first to districts with high concentrations of children with the highest needs, at full phase-in the benefits of full-day programs should be made available to all children in the state. Obviously, increased state expenditures (which may be substantially reduced if President Obama's program is adopted by Congress) will be required to support this right of access, but this investment will be more than repaid over time by the increased lifetime income beneficiaries of these programs will earn and

⁸¹ See research cited in n above. *See also*, Karen Schulman and W. Steven Barnett, *The Benefits of Prekindergarten for Middle-Income Children* (NIEER Policy Report, 2005.)

⁸² New NY Education Reform Commission, *Putting Students First*, p.37 (2013).

the increased taxes they will pay, as well the reduced expenditures that schools and society at large will need to pay for special education, remedial academic, and social and health costs.⁸³

A necessary corollary of guaranteed full-day prekindergarten programs is guaranteed access to full-day kindergarten for the graduates of these programs. The Regents have called for reducing the compulsory schooling age to five to ensure that all children attend full-day kindergartens because “In a standards-based environment, it is important that students receive purposeful and explicit instruction, beginning in the early years.”⁸⁴

The argument for universal access to full-day kindergarten programs for five year olds becomes even more compelling if the right of all three and four year olds to attend full day preK programs is recognized and implemented. Clearly, it makes no sense for young children to gain the advantages of full-day programming as three and four year olds, but then be placed in half-day kindergarten and thereby regress in their academic and social development. Half-day kindergarten programs will ill prepare them for elementary education and beyond. The superintendent of one western New York school district that in the past offered only half-day kindergarten programs described these consequences:

[W]e administer [five subtests] to kindergarten students three times a year. The fall test shows our students scoring at and above the national norm. By the spring administration of the test, our students are below the national norm in each of our seven elementary schools. We know that students who fall behind in kindergarten have to work twice as hard to accelerate to grade level expectations in first grade. This is particularly tough on at risk students and in essence makes their entry into school very difficult.⁸⁵

⁸³ See research on economic and social dividends cited at notes above.

⁸⁴ Regents Policy Statement on Early Education for Student Achievement in a Global Community (2006) at p. 6.

⁸⁵ Correspondence from Adele Bovard, Superintendent of Schools, Webster Central School District, to Michael A. Rebell, August 16, 2012. Despite continuing financial constraints, the Webster Board of Education has voted to adopt a full-day kindergarten program beginning in 2013-14.

New Jersey recognized this reality and included in its early childhood regulations a specific requirement that “Each district board of education with a high concentration of low-income students shall, in addition to implementing preschool, maintain full-day kindergarten for all five-year-olds....”⁸⁶ As of 2010-11, 652 of the state’s 697 school districts operated full-day kindergarten programs, and three districts now mandate it. The substantial budget cuts of recent years have caused a few districts with large numbers of students to cut back from full-day to half-day kindergarten programs. Further erosion of full-day kindergarten programming should be deemed unacceptable. The state should prohibit any school districts currently operating full-day kindergarten programs from cutting back their hours, and, as part of the UPK funding reforms discussed below, and consistent with the Regents’ policy position, should require those few districts currently operating half-day programs to convert them to full-day programs within a year of their full phase-in of the preK program for four year olds.

2. *This reform should be phased in over an eight-year period, with the pace of the phase-in to be determined by program implementation factors.*

As the history of the *Abbott* reforms in New Jersey has demonstrated, implementation of a large scale, high-quality full-day prekindergarten program is a complex undertaking that requires careful planning, and extensive oversight. Sara Mead has documented the extensive seven-year process involved in providing high-quality prekindergarten programs for all children in the 32 *Abbott* districts.⁸⁷ This entailed, among other things, phasing in rigorous certification requirements for teachers and other personnel both in district public schools and community programs, working with higher education institutions to create new certification programs,

⁸⁶ NJ ADC 6A:13A-3.1(c) 11.

⁸⁷ Sara Mead, *Education Reform Starts Early: Lessons from New Jersey’s PreK-3d Reform Efforts* (2009).

developing new regulatory codes and uniform curriculum requirements, and building district capacity in the following ways:

[T]he Department of Education provided extensive professional development for district personnel responsible for implementing *Abbott* pre-K: district early childhood directors and specialists, who oversaw all early childhood programs in a district; fiscal specialists, charged with implementing pre-K provider contracts and monitoring their expenditures of public funding; and Master Teachers, experienced educators who worked with teachers in *Abbott* pre-K classrooms to help them improve the quality of instruction.⁸⁸

From one perspective, implementation may be somewhat easier to accomplish in New York because, despite its shortcomings, the current UPK program has already raised certification and regulatory standards, and many districts have become experienced in contracting with community providers. On the other hand, although legislation is on the books, New Jersey has not yet actually expanded its program beyond the 32 urban districts covered by the *Abbott* decree, and the program we envision for New York State must be statewide and truly universal.

Furthermore, implementation of universal preK in the *Abbott* districts took place under court auspices at a time when the court had ordered the state to increase its general funding to the *Abbott* districts substantially to ensure that all of their students would be provided the opportunity for a “thorough and efficient” education. The New York Court of Appeals in the *CFE* litigation similarly ordered the State of New York to ensure that schools in New York City were provided sufficient funds to cover the “actual costs” of providing all of their students the opportunity for a “sound basic education,” and legislation was enacted in 2007 to guarantee sound basic education funding to all school districts in the state. However, state aid to education in New York has been significantly reduced in recent years, and many schools and schools

⁸⁸ Id at 9.

districts currently lack sufficient funding to meet sound basic education requirements for their K-12 students.⁸⁹

Implementation of an effective, truly universal preK program in New York State must necessarily be premised on an understanding that the current freeze on foundation aid, the failure to provide aid for increased enrollment,⁹⁰ the “gap elimination adjustment” and the overall cap on state aid -- all of which are, in fact, unconstitutional -- must be phased out and eliminated. Obviously, in order for graduates of high-quality prekindergarten programs to maintain and improve their academic gains, the elementary and secondary schools they eventually attend must also have adequate resources.

Although current levels of state aid are still well below requisite sound basic education levels, for the past two years, the state has begun to increase its aid to school districts, and for 2013-14 the legislature even set aside -- at least temporarily -- the arbitrary cap on state aid it had written into the state education law. Substantial increases in general K-12 funding that will ensure that the system meets full sound basic education requirements over the next few years must be included in the UPK implementation benchmarks.

Thus, in order to promote effective statewide implementation and to allow a reasonable time period to develop the necessary funding capacity, we believe that an eight-year phase-in

⁸⁹ A description of the current system for funding K-12 public education in New York State, a discussion of the recent budget cuts and proposals for how constitutional requirements for full funding of a sound basic education can be achieved under current economic conditions in a cost-effective manner are set forth in Michael A. Rebell, *Safeguarding the Right to a Sound Basic Education in Times of Fiscal Constraint*, 75 Alb. L. Rev. 1855 (2012)

⁹⁰ Current state fiscal constraints have discouraged some school districts from expanding to full-day kindergarten programs. Students in half-day programs count as 0.5 FTE in the pupil count for foundation funding, while those in full-day kindergarten earn a full 1.00 FTE. Educ. Law §3602.2. However, because current foundation aid levels are largely frozen, districts are not given credit for additional enrollment and in most cases this means that a district moving from half-day to full-day kindergarten will not receive the extra resources they need to operate a viable program. Conversely, several school districts have reduced their kindergarten services from full day to half day because in weighing their options for responding to the extensive budget cuts of recent years, they determined that full day kindergarten, being a “nonmandated” service was, despite its obvious benefits, more expendable for cost-saving purposes than other options.

period -- approximately the same implementation period as proved necessary in New Jersey -- should be provided for this major program expansion.

- 3. In the first three years of the phase-in, guaranteed access should be made available to all four year olds in districts with high concentrations of low-income households and then the program should be extended universally to cover all four year olds in all districts in the state during the next two years. During years six and seven, all three year olds in districts with high concentrations of low-income households would be accommodated and then during the next and final year, the program should be extended to cover all three year olds in all districts. Until a district enters the phase-in process, it should continue to receive its current level of UPK state support.*

Full-day prekindergarten is important for all children, but it is absolutely essential for socioeconomically disadvantaged children if they are to overcome achievement gaps and become ready for school success. This is why both the president's program and the governor's commission's recommendations prioritize access to full-day services for at-risk children. Since the categories of "at risk" and low-income children substantially overlap, President Obama's plan defines those who should first be served as children from families with incomes at or below 200% of the federal poverty level (FPL). This category roughly corresponds with the free-and-reduced-price lunch (FRPL) classification (185% of FPL) presently used in New York and many others states for defining low-income and high-need students.

Although the precise timing for the phase-in of the program will depend on a host of planning and funding issues, we would propose as a goal for discussion purposes that guaranteed access to full-day preK services be provided to all children in school districts in which 40% of the children are from families with incomes at or below 185% of FPL. Although districts would become eligible for first funding because of their high concentration of children from low-income households, once a school district enters the program, all of their children should be eligible to participate. Such universal access will encourage economic and ethnic integration and

will facilitate sound planning. The first phase-in stage, which should be completed within the first three years, should provide guaranteed access to all four year olds in the 318 school districts with a high concentration of low-income households (40% or more); during the next two years, the program should expand to include four year olds in all school districts. The second stage, which should be completed within no more than three years, since the basic program models would have been established and now would be expanded to include three year olds. This stage should proceed like the first, with funding provided during years six and seven to cover all three year olds in school districts in which 40% or more of the students are FRPL eligible and then extending the program during year eight to cover all three year olds in all districts.

Districts will be eligible to be enrolled during each stage in the program as soon as they have developed satisfactory implementation plans that provide assurances that, as the program is implemented, sufficient numbers of qualified teachers, adequate facilities, and other components of a quality program will be in place. Until they are phased into the first stage of the implementation process, all school districts currently participating in the UPK program should be guaranteed their current level of state UPK funding.

4. *State aid for prekindergarten programs should be incorporated into the K-12 state education finance system, with each district's foundation aid for prekindergarten services calculated in accordance with an actual cost-based percentage of per-pupil allocations for students in K-12 program, and total costs divided between states and local school districts in accordance with each district's relative wealth. Initially, and until state aid for K-12 funding is brought up to constitutionally adequate levels, the state should pay the full cost of the preK program.*

Including funding for prekindergarten programs as an integral part of the state's K-12 system is the most equitable, most cost-effective, and most stable way to implement a truly universal, high-quality prekindergarten program. Since 2007, New York State's UPK funding has been loosely related to K-12 foundation funding, but UPK funding has not been fully

anchored and preK programs have not received any of the increases provided for K-12 programs in last two years. A revised system that fully integrates UPK into the existing K-12 foundation funding will correct these shortcomings. Such a system will promote more equitable funding and allow guaranteed access to high-quality publicly funded programs to all children, since funding levels for each school district will be largely correlated with district wealth, and all districts will be expected to contribute a local share, based on their local property and tax wealth. This approach will foster efficient planning for high-quality programming, because school districts will be able to plan programs on the basis of known, stable and adequate funding levels.

The core of New York State's K-12 state-aid system is a foundation-funding appropriation that, combined with an expected local contribution, is intended to provide all students the opportunity for a sound basic education. Under New York's foundation system and that of most other states, the amount that each school district receives for its K-12 students is based on the number of full-time equivalent (FTE) students enrolled in schools in the district. Each child in a full-time program counts as one FTE, but, in New York, as in most states, extra weighting is provided for certain categories of students such as students who are at risk, students with disabilities, and English language learners. Most of the states that use formula funding approaches for preK funding assign an FTE weight to each preK student. Generally, these FTE weightings are based on undocumented assumptions that prekindergarten should cost less, the same, or more than K-12 services.

New Jersey is the only state that has based its preschool funding on an in-depth analysis of the actual costs of operating high-quality full-day programs for at-risk students. Because the court had ordered the state to pay the full costs of the *Abbott* programs and had specified the quality that these programs must achieve, the state education department gathered detailed

information from all of the *Abbott* districts on their actual expenditures over a number of years. This historical data then became the basis for determining an actual cost-based figure that was then used as the per-pupil preschool aid amount in the state funding formula.⁹¹

In order to ensure that adequate resources are provided on a stable basis to support high-quality programs, New York should also base its funding system for prekindergarten students on a valid cost analysis -- as it did with the original foundation formula -- rather than abstract assumptions about what these programs might or should cost. Unlike New Jersey, though, New York does not have an historical database of actual cost experiences statewide of preK programs operating in accordance with consistent high-quality standards and requirements. For that reason, the state should conduct a professional-judgment study of the full costs of operating a cost-effective, high-quality prekindergarten program.⁹² The panels of geographically diverse educators and business administrators who undertake these analyses should consider, among other things, whatever relevant evidence is available of the actual costs of various public school, community, and Head Start programs in different parts of New York State, and also comparative cost-study data from New Jersey.

In the initial rate-setting round, costs should be determined for operating a public-school program for students in general, as well as extra weights for students from low-income households, English language learners, and students with disabilities. The panel should also

⁹¹ School districts in New Jersey are required to maintain their preschool education aid in a special revenue fund. In the event that the district has fully implemented an approved full-day preschool program for three and four year olds and funds remain in the special revenue fund, those funds may then be used, with the approval of the commissioner of education, to support the district's general K-12 budget or to provide preschool services to students who are not in the at risk category covered by the law. NJSA 18A 7f-54. e and f.

⁹² "Professional judgment" is one of several methodologies that are used to estimate the actual cost of an educational program. (See National Education Access Network, Costing Out Primer, available at http://www.schoolfunding.info/resource_center/costingoutprimer.php3.) The "successful schools" methodology is the costing out approach favored by current New York State law, Educ. Law § 3602.4 (a) (1). It would not be appropriate to use this methodology for determining initial prekindergarten rates, however, because there is no established data base for determining which specific existing programs have been "successful."

determine whether or not the extra weightings for these categories of students in the current K-12 foundation formula are appropriate, whether there should be an extra weighting for rural-sparsity factors and whether community programs should be compensated at the same level as school district programs or whether, as in New Jersey, there is a justification for providing them at a different rate. A separate supplemental aid figure should be developed to reflect the extra costs these federally funded programs would incur to meet all of the state's quality standards for universal preK. These initial rates should be used, with appropriate regional cost-of-living adjustments, for a three-year period, with annual inflation adjustments after each year. After three years, a further cost study to refine the cost analysis should be undertaken, based on the cost experience of actual operations during this period.

Currently, state aid provides approximately 40% of total K-12 education costs in New York State, federal aid 8%, and local school districts contribute 52%.⁹³ This means that the state-aid system is premised on the assumption that local school districts, in accordance with their relative wealth means, will contribute additional funding, on top of state aid, to support their schools. Specifically, the current foundation funding allocations are calculated on an expectation that each school district will supplement its state-aid appropriation with sufficient local revenues to provide the total level of resources that is necessary to provide all of their students an opportunity for a sound basic education.⁹⁴ To make a high quality, truly universal preK system viable, a similar local share should be contributed by each local school district according to its district's relative wealth. All local districts would contribute some amount of local revenues to support high-quality preK programs, and more affluent districts would need to provide a high

⁹³ New York State Education Department, 2012-2013 State Aid Handbook, p. 4, available at https://stateaid.nysed.gov/publications/handbooks/handbook_2012.pdf

⁹⁴ Educ. Law §3602.4(a).

proportion of total foundation costs for their preK students from local revenues, as they do now for all of their K-12 students. (The expected local shares under the K-12 foundation formula range from 10% to 92%, depending on the district's means.)

The state currently imposes a cap on the amounts by which local school districts can raise local tax rates each year.⁹⁵ (This provision does not apply to New York City and the other fiscally dependent Big Five school districts.) Since this cap would preclude many school districts from having sufficient resources to fund the new full-day prekindergarten programs properly, the state must make the costs of expanding preK services an explicit exemption from the property tax cap or provide additional state aid to ensure constitutionally compliant levels of funding for school districts that cannot provide their expected local share for preK funding without reducing funding for K-12 services.⁹⁶

As discussed above, the schedule that the state had established in 2007 for providing full sound basic education funding statewide has been set back in recent years by a number of freezes, cost reductions, and funding caps imposed to deal with state fiscal constraints resulting from the recent recession. The state is, however, still committed to achieving the full level of sound basic funding. In order to ensure that the expansion of preK programming does not undermine or compete with funding for K-12 services, the state should pay 100% of the costs of the new preK program during the first three years of the phase-in and/or until such time as the state has fully met constitutional requirements for K-12 funding.

5. *Full funding for prekindergarten programs should encompass all necessary costs for high-quality programs and should include transportation, social service, health, and family engagement services, as well as related services and support services for students with*

⁹⁵ Educ. Law §2023-a

⁹⁶ See, Rebell, *Safeguarding the Right to a Sound Basic Education in Times of Fiscal Constraint*, n. above at pp. 1902-1905

disabilities enrolled in inclusion programs. It should also encompass the costs of the systems supports and infrastructure investments necessary to build out high-quality programs.

In addition to their foundation allocations, K-12 programs also receive substantial state-funding based on formulas for reimbursement of actual costs for particular cost categories such as transportation, building aid, and textbooks and computers. Currently, UPK programs do not receive any financial support for transportation from the state. As the Regents have noted, lack of funding for transportation has substantially hampered enrollment in UPK programs and/or imposed substantial additional costs on local school districts:

Districts which do provide transportation typically absorb the costs at the local level. Those which do not provide transportation can only serve students whose parents or guardians are able to provide transportation. This means that children in districts with fewer local resources available to support the cost of transportation, or those with parents or guardians who are unable to transport them, will be less likely to attend UPK programs. These may be the same children expected to benefit the most.⁹⁷

Consistent with the premise that quality prekindergarten programs should receive a cost-based FTE allocation correlated with the per-pupil funding provided for K-12 students, these formula-based aids for transportation, building aid, textbooks and computers, and other needs should also be extended to cover preK students as an integral part of the revised state-aid system.⁹⁸

The actual cost calculations for determining the FTE amount for prekindergarten programs should include access to necessary social service, and basic health (including mental health) services, for programs having large number of at-risk students. Because many children

⁹⁷ Memorandum from Joanna Duncan-Poitier to Regents State Aid Committee, *2010-2011 Regents State Aid Proposal: Support for UPK and Benefits of High Performance School Buildings*, (September 1, 2009), attachment A, p.10, available at <http://www.regents.nysed.gov/meetings/2009Meetings/September2009/0909sad1.htm>.

⁹⁸ A shift to full-day programming will lessen the additional costs of state aid for preK transportation, since in many cases, school districts will be able to accommodate preK students on existing buses and existing runs. Transportation services for three-year-old children may, however, incur additional costs for car seats and extra bus matrons, and some extra transportation expenditures will be incurred in some cases for providing buses to child-care centers and after-school providers for children requiring extended-day programming.

from low-income households need extra social-service and health supports in order to be able to take advantage of educational opportunities, both federal Head Start regulations and the *Abbott* court require that such services be provided to all students who need them.⁹⁹ Although cooperative arrangements with governmental and community agencies providing these services should be sought in order to optimize services and minimize costs, additional funding reasonably necessary to provide these services and/or to ensure proper coordination between community providers and the educational programs must be part of the basic foundation funding.¹⁰⁰

New York State has a growing number of preschool students with disabilities attending publicly funded prekindergarten programs, and costs are rapidly escalating in this area. Total expenditures for special education preschool services rose from about \$818 million to almost \$2 billion between 2005 and 2011.¹⁰¹ Almost 90% of these funded preschool special education students attend not-for-profit or profit-making nonpublic schools;¹⁰² this vast nonpublic sector is largely unmonitored. Many of these schools operate self-contained special education programs that for many students may violate the least restrictive environment requirements of state and federal law.¹⁰³ Currently, only approximately 5% of the students in UPK programs have

⁹⁹ 45 C.F.R. §§1304, 1306, *Abbott v. Burke* 748 A.2d 82 (NJ 2000)

¹⁰⁰ Many of these children and their families also need extended-day programs; these services should also be provided as necessary, and their costs should continue to be paid through Head Start and child-care funding.

¹⁰¹ New York Association of Counties, *A Roadmap to Mandate Relief: Improving Pre-School Special Education in NYS* (Nov. 2012).

¹⁰² In 2007, 87% of such services were provided through private contractors, 5% through BOCES, and only 8% local education agencies (LEAs). GOVERNOR'S COMM'N ON PRESCHOOL SPECIAL EDUC, *Improving Preschool Special Education in New York State: Conclusions and Recommendations from the Temporary Task Force on Preschool Special Education*, at 15 (Nov. 2007).

¹⁰³ N.Y. Educ. Law § 4402(2)(a); 20 U.S.C. § 1412(a); 34 C.F.R. § 300.550-556. The very provision in New York's Education Law which allows for private special education providers also requires that such approved programs be provided in the least restrictive environment.. Educ. Law § 4410(9).

identified disabilities,¹⁰⁴ compared with a statewide incidence of approximately 17% in K-12 programs.¹⁰⁵

By ensuring access to full-day programs to all three- and four-year-old children, and including in the weighted FTE calculation the projected costs of providing related services and support services for children with disabilities, New York's rights-based universal prekindergarten program will encourage greater enrollment of children with disabilities in inclusion programs in regular public school and community programs. This should result both in more appropriate services to students and in substantial savings to state and local governments, as an appropriately weighted, transparent foundation funding system replaces the complex and costly reimbursement system currently used to pay for these services in the nonpublic schools.

¹⁰⁴ Regents Subcommittee on State Aid Memorandum, n above at p. 11.

¹⁰⁵ Jane Scull and Amber M. Winkler, *Shifting Trends in Special Education* 7 (2011).

PART TWO. THE QUALITY FRAMEWORK

New York State has recognized the need for an effective, coherent, and integrated system of services for our youngest learners and their families. The state has taken some important steps in this direction, including establishing the Early Childhood Advisory Council. A truly universal high-quality preK program is a cornerstone component of such a system.

To realize a truly universal vision of prekindergarten in New York State, in addition to adequate funding and a sound financing strategy, requires a strong regulatory framework and a solid implementation plan that includes the infrastructure investment necessary to build out and support a high-quality program in all settings.¹⁰⁶ The financing strategy developed in the first part of this paper, therefore, calls for preK funding rates that will cover the essential elements of, and infrastructure investment for, high-quality preK programs that we lay out in the following sections. We view these as essential to providing the raw materials and the supports necessary to create effective classroom practice that fosters children's learning and development. They align with and support QUALITYstarsNY, New York's quality rating and improvement system for early childhood programs from birth to kindergarten.

Having studied successful preK programs in a number of states around the country and consulted with national experts, we have drawn primarily from three sources for our recommendations: (1) the National Institute for Early Education Research (NIEER), (2) New York's former experimental/targeted preK program and current UPK regulations, and (3) regulations and implementation mechanisms that were adopted in New Jersey and have been

¹⁰⁶ Sara Mead, *Education Reform Starts Early: Lessons from New Jersey's PreK-3rd Reform Efforts*, New America Foundation, 2009. See also, W. S. Barnett, *The State of Preschool Yearbook 2012* at www.NIEER.org and Barnett et al., *Abbott Preschool Program Longitudinal Effects Study: Fifth Grade Follow-Up*, March, 2013 for detailed analysis of factors that make a difference in child outcomes in state preK efforts. *Strengthening the Pre-K Investment* at www.winningbeginningny.org takes a look at New York State's universal prekindergarten effort and includes 11 recommendations, including investment in infrastructure to improve quality and strengthen the state's mixed delivery system.

vital to achieving quality programs in that state. We also made use of the framework for the essential resources of a sound basic education from the *Campaign for Fiscal Equity* decision to provide alignment with K-12 constitutional requirements.

I. ESSENTIAL ELEMENTS OF HIGH-QUALITY PREKINDERGARTEN PROGRAMS

To ensure that all children have access to high-quality prekindergarten as part of the opportunity for a sound basic education, the state must strengthen its current prekindergarten regulations to provide the following essential elements of high-quality prekindergarten programs in all settings, including both programs housed in public school buildings and community programs. The cost-based FTE funding level for prekindergarten services in the recommended foundation formula must provide each school district with sufficient funding to ensure all of these elements in all preK settings. In the following section, we lay out what is currently required by state regulations and the changes we believe are necessary to ensure high-quality preK programming for all children.

A. Sufficient Classroom Hours

The state currently allows school districts to provide either half-day (2.5 hours) or full-day (6 hour and 20 minutes) preK and kindergarten.

Recommendation: State regulations should be revised to ensure that all districts provide access for all children to full-day preK and kindergarten programs, operating five days a week, on a 180-day schedule. Where needed this should be coupled with extended hours to meet the needs of students and of working families by leveraging other funding sources.

B. Small Class Sizes

The state currently allows a maximum class size of 18 students with one teacher and one teaching assistant, with an option of up to 20 with one teacher and two teaching assistants.

Recommendation: State regulations should be revised to cap classes at 18 students with one teacher and one teaching assistant. In addition, the regulations should cap classes with large numbers of students needing more intensive support, English language learners, and students with disabilities at 15 students with one teacher and one teaching assistant.

C. Sufficient, Well-Qualified Teachers, Administrators, and Other Personnel

Instructional Staff

New York currently requires all prekindergarten teachers working in public schools to meet the same qualifications as teachers in K-12, with certification for birth - grade 2 (B-2) or certification for students with disabilities valid for service in early childhood grades. PreK teachers in community settings are not required to be certified; they are required to meet the licensing standards and have an education plan that will lead to obtaining New York State teacher certification for B-2 within five years after commencing employment or by June 30, 2017, whichever is later. (This deadline has, however, repeatedly been extended in the past.)

Recommendation: The state should revise its regulations to require that all preK teachers in all settings have a B-2 instructional certificate or certification for teaching students with disabilities or English language learners valid for service in the early childhood grades within five years. The state should provide ample financial support, including scholarships and loan forgiveness, to help uncertified teachers to become certified, but there should be no further extension of the deadline for certification for all teachers.

Teaching Assistants

The state currently requires preK teaching assistants in community-based settings to have a high school diploma. In public school settings, assistants must also have nine credits of coursework in early childhood education and Level 1 teaching assistant certification.

Recommendation: The state should revise its regulations to require that, within five years, all teaching assistants have at least Level 1 teaching assistant certification. New York should move toward requiring a child development associate (CDA) degree or the equivalent for teaching assistants, which is the level of preparation recommended by NIEER. This certification requires 12 college credits in early childhood, as well as classroom experience.

Master Teachers

Currently New York has no requirement that preK programs have master teachers to coaching and professional development support for classroom teachers and administrators.

Recommendation: To create and maintain program quality by supporting classroom teachers and administrators, the state should require that school districts provide programs in all settings a sufficient number of certified, experienced, and appropriately compensated master teachers, including, as appropriate, bilingual and inclusion specialists. The maximum ratio should be one master teacher for every 15 preK classrooms.

The state should require that master teachers have the following qualifications:

- A bachelor's degree and teacher certification;
- Three to five years' experience teaching in general education preK programs;
- Experience providing professional development to classroom teachers;
- Experience in implementing developmentally appropriate curricula;

- Experience with performance-based assessments; and
- B-2 or equivalent certification.
- Master teachers with a specialization in bilingual education should possess bilingual or English as a second language certification and either possess or pursue early childhood certification.
- Master teachers with a specialization in inclusion should possess special education certification and either possess or pursue early childhood certification.

Administrative Staff

Though a New York State licensed principal must supervise preK programs in public schools, there is no requirement that the principal have any experience or expertise in early childhood education. For community programs, the only supervisory requirement is that, until all teachers at a site possess a teaching license or certificate valid for services in the early childhood grades, such programs shall employ an on-site education director with an early childhood teaching certificate during the hours that the prekindergarten program is in operation, and that this individual will be responsible for program implementation.

Further, New York has no requirement that there be qualified district-level supervision of prekindergarten or that preK programs have sufficient administrative support personnel, such as secretaries and data clerks, though these are essential to the daily operations of any program and to ensure that other staff members can devote themselves to their core administrative or instructional duties.

Recommendation: The state should revise its regulations to ensure a sufficient number of well-qualified district-level supervisors and administrators, school and center administrators,

and administrative support personnel to ensure the coordination of all elements of a high-quality preK program in all settings.

Professional Development

New York State certified teachers are required to complete 175 hours of professional development every five years to maintain their teaching certificates; some licensed teaching assistants also have a requirement of 75 hours/five years. There is no requirement that administrators or other preK teachers and staff receive regular or sufficient professional development.

Recommendation: The state should revise its regulations to ensure sufficient professional development and training specific to prekindergarten education for all early childhood education administrators, school principals, master teachers, classroom teachers, and teaching assistants in all settings. The professional development should be provided through multiple pathways and designed in accordance with a staff development plan built on the identified needs of program staff and the developmental needs of children and to align practice with the K-12 education system. Such development should focus on topics such as the implementation of high-quality curricula, effective use of child observation and assessment, culturally competent classroom practices, recognition of developmental milestones, identification of possible developmental delays, and effective practices for English language learners and children with disabilities. There should be a sufficient number of substitute teachers to allow full participation of classroom teachers with the goal of ensuring that each staff member can receive a minimum of 40 hours of professional development each year.

D. A Suitable Developmentally Appropriate, Evidence-Based Curriculum

New York State currently requires that each school and school district operating a prekindergarten program adopt curricula aligned with the state preK standards, including Common Core standards in English language arts and math. In addition, each program must provide an early literacy and emergent reading program based on effective, evidence-based instructional practices. The state has other requirements to ensure that activities are learner-centered and developmentally appropriate and that the instructional program is based on the ages, interests, strengths, and needs of the children. The curriculum must include standards-based teaching and learning in English language arts, math, science, social studies and the arts; have inquiry-based activities and projects; use a wide variety of information in print and electronic mediums; fine and gross motor activities; and instruction in health and nutrition.

Recommendation: The state should provide a set of state-recommended curricula that meet all state curriculum requirements and are aligned with the New York State Prekindergarten Foundation for the Common Core to ensure consistency of curriculum and assessment across all settings. These recommended curricula should be reviewed every two years, and professional development should be designed to support effective use of the approved curricula.

E. An Expanded Platform of Services to Meet the Needs of “At-Risk” Students

Currently New York State has a handful of requirements but no comprehensive platform of services or funding designed to combat potential barriers to participation and learning in preK. The state has regulations to ensure that students are appropriately immunized and disease free; to screen for giftedness, disability, and/or ELL status; to ensure that children’s nutritional needs are met; and to require school districts to provide, either directly or through referral, services to

children and their families necessary to support participation in preK. In addition, the state requires each school operating a prekindergarten program to develop procedures to ensure the active engagement of parents and/or guardians in the education of their children. Such procedures must include support to children and their families for a successful transition into prekindergarten or kindergarten and into the early elementary grades.

Recommendation: The state should strengthen these regulations and provide sufficient funding to ensure access for all at-risk students in all settings to comprehensive services, including but not limited to social services, health, mental health, early intervention and response to intervention (RTI) services, nutritional support, and family engagement and support. These services should be tailored to individual child and family needs, with recognition that preK programs that serve high-needs communities will need to provide a richer mix of services to meet family and children needs than other districts.

F. Appropriate Services for Students with Special Needs

Students with Disabilities

Though the state now requires the environment and learning activities of the prekindergarten program to be “designed to promote and increase inclusion and integration of children with disabilities.” Far too many are being served in segregated settings and not enough are participating in inclusion programs with general education students.

Recommendation: The state must ensure that sufficient and appropriate personnel, materials, and equipment, including specialized master teacher support and access to high quality

related and support services, are in place to meet the needs of children with disabilities and to promote enrollment in inclusion programs in regular public school and community programs.

English Language Learners

The state currently requires that preK programs be designed to ensure that participating English language learners are provided equal access to the program and opportunities to achieve the same program goals and standards as other participating children.

Recommendation: The state should strengthen this requirement to ensure that preK programs in all settings have sufficient and appropriate personnel and materials to meet the needs of English language learner children by providing bilingual or English as a second language opportunities as appropriate, including certified bilingual teachers, master teachers, and teacher assistants, appropriate curriculum and assessments, and coordination with all other relevant school district programs.

G. Appropriate Instrumentalities of Learning

The state currently requires that preK programs have materials and equipment that allow for active and quiet play in indoor and outdoor environments; opportunities to use a wide variety of information in print and electronic mediums. The regulations also specify that instructional materials and equipment must be arranged in learning centers that promote a balance of individual and small group activities.

Recommendation. These state requirements should be appropriately funded so that they can be fully implemented in all settings. This includes ensuring that all programs have sufficient quality and variety of instructional materials and play equipment appropriate to the age of the

children and their developmental levels and interests, arranged in learning centers that promote a balance of individual and small group activities, allow for active and quiet play in indoor and outdoor environments, and afford opportunities to use print and electronic mediums for language development.

H. A Safe and Supportive Environment for Teaching and Learning

The state currently has no requirements to ensure that preK programs in all settings have access to the student support personnel and expertise necessary to provide all children with a safe and supportive learning environment.

Recommendation: Regulations should be revised to ensure sufficient and appropriate personnel to provide all children a safe and supportive learning environment, including a sufficient number of social workers, family workers, and master teachers to support teachers in addressing the needs of children with challenging behaviors or learning difficulties, engage families in support of teaching and learning, and create an environment that is free from discrimination and bullying and supportive of all children.

I. Adequate and Accessible Facilities

New York State currently requires that all buildings, premises, equipment and furnishings used for UPK be safe and suitable for the comfort and care of the children, comply with all applicable requirements of the Americans with Disabilities Act, and be maintained in a state of good repair and sanitation. It also requires that facilities meet the appropriate fire safety and building codes.

Recommendation: The state should strengthen its regulations to ensure that preK programs in all settings have adequate and accessible facilities, equipment, and furnishings that meet all current requirements and are safe and well maintained. PreK facilities in all settings should have sufficient space to provide suitable developmentally appropriate learning environments for all children, including adequate barrier-free indoor and outdoor play space to accommodate a variety of gross motor activities that encourage the physical and social development of children.

J. Appropriate Assessment of Student Progress

New York State currently requires school districts to establish a process for assessing, with valid and reliable instruments, the developmental baseline and progress of all children participating in preK programs that at minimum assesses the development of language, cognitive and social skills and uses valid and reliable instruments. The state currently requires this information to be used to inform classroom instruction and professional development. In addition, school districts are to use the results of such assessments to monitor and track program effectiveness and must report annually on the percentage of preK children making significant gains in language, cognitive, and social skills. School districts are also required by the state to monitor the compliance of all community-based preK programs with all fiscal and program requirements, to assess student progress in the preK program, and to correct any identified deficiencies.

Recommendation: These state requirements should be appropriately funded so that they can be fully implemented in all settings. The state must ensure sufficient and appropriate personnel and technology to provide and sustain the data systems, the ongoing training, and the technical support necessary to use valid and reliable instruments to assess the progress of

students and to use this information for continuous improvement of program quality in all settings.

II. SYSTEMS SUPPORT AND INFRASTRUCTURE INVESTMENTS

To build and sustain a truly universal preK system, New York State will also need to invest in the infrastructure necessary to support such a system.¹⁰⁷ This will require the state to make primary investments in the areas of (a) teacher preparation and support, (b) facilities expansion and improvement, (c) transportation expansion, (d) data systems expansion, (e) technical assistance to promote effective school district collaboration with community-based programs, (f) quality assurance, and (g) ongoing program evaluation, as we set forth below.

In addition, the state and school districts must develop coherent strategies to maximize existing resources and public investments to assure that extended-day options are available for working families. That effort should include support for programs to effectively leverage discrete funding resources including child care, Head Start, preschool special education and early intervention funds as appropriate.

A. Teacher Preparation and Support

In its 15 years of implementation, UPK has already created the need for at least 3,000 teachers certified in early childhood education.¹⁰⁸ The truly universal preK described in this proposal will require many more. In 2004, the state took an initial, important step to support teacher preparation with the creation of a birth to second grade (B-2) certification annotation.

¹⁰⁷ See Sara Mead, *Education Reform Starts Early*, for a review of infrastructure supports in New Jersey as part of a larger reform effort.

¹⁰⁸ This figure is based on an assumption that currently about half the community-based classrooms already have qualified teachers, with about 500 in study plans. The estimate is based on current enrollment of about 100,000 four year olds and assumes that these students are spread evenly across classes and that half the enrollment is in community settings.

This certification puts a strong emphasis on the specific skills needed by preK teachers, including child development, child-centered learning, and developmentally appropriate practice. Some of the state's colleges and universities added the courses necessary for a B-2 certification, but most teacher education programs have yet to make these courses a priority.¹⁰⁹

The UPK program requires teachers be certified. When the program began, the state allowed community-based preK programs five years during which they could have uncertified teachers provided those teachers had an education plan for attaining certification in place. However, because many teachers in community programs lack the support to complete the academic requirements to be certified and because of the challenge in hiring and retaining certified teachers in these programs, the state has extended the deadline ending this exception numerous times. As a result, many teachers in classrooms outside public-school settings continue to work without certification. In order to enforce properly this requirement and preclude future extensions of the deadline, the state will need to make additional investments in teacher preparation and support.

To expand and strengthen its early childhood workforce, New Jersey not only created a new certification for early childhood teachers, but it also offered scholarships, professional development opportunities, and improved compensation to those in community-based settings. The requirement for comparable pay for comparably credentialed teachers, regardless of setting, helped stabilize the workforce in community settings and create equal access to well-qualified teachers in community based settings as well as public schools. New York State would be well advised to follow the precedents established in New Jersey.

¹⁰⁹ The public school system still prefers teachers with elementary school certification, rather than B-2. While teachers with elementary school certification often lack expertise in child development, they can be used more flexibly between the primary school grades as needed.

Recommendation: The state should undertake an analysis to identify the number of teachers that will need to be supported in becoming certified, and it should then develop and implement a five-year plan to prepare an early childhood workforce with appropriate credentials and field experience. The plan should include:

- Funding levels that will support equitable compensation for equally credentialed professionals, regardless of the setting.
- Incentives, such as scholarships and loan forgiveness, to help current teachers to upgrade their credentials and to attract new teachers to the field.
- To enable people from diverse backgrounds to obtain appropriate credentials, there must be multiple pathways to certification, as with K-12 certification, including intensive summer and weekend classes, articulation between two-year and four-year academic programs, and providing credit for work experience in early childhood classrooms.
- Financial support to higher education institutions to motivate them to establish new credentialing, as well as coaching and mentoring, programs.
- Investment to support, launch, and scale-up of a network of master teachers to provide professional development to classroom teachers, including supporting currently credentialed teachers to improve the classroom environment and respond to the individual developmental needs of children.

In addition, New York State must ensure that teachers have appropriate training to work with students with special needs, including English language learners and students with disabilities. For English language learners, this requires recruiting administrative and instructional staff who are linguistically and culturally competent and providing training in

bilingual and English-as-a-second-language methodologies.¹¹⁰ For students with disabilities, this requires recruiting and training more administrative and instructional staff who have expertise and experience with inclusion settings.

B. Facilities Improvement and Expansion

To date, the state has relied on communities to cobble together preK slots in local public schools and community programs, which has meant unequal access to quality early childhood environments. Many classrooms, in both public schools and community settings, need renovation and repair. Some are not age-appropriate or conducive to high-quality instruction.

Recommendation: The truly universal preK described in this proposal requires that the state expand the number of classrooms designed appropriately to serve three and four year old children. In some communities, this will require new facilities as well as renovation of existing ones. New York State must require school districts to undertake or work with partners to undertake a facilities needs analysis to implement truly universal preK. Planning should take into account the availability of current capacity in both schools and community based settings, and incorporate plans for building preK capacity both in public school and community settings as a core part of its facilities planning and maintenance.

C. Transportation Expansion

To implement truly universal preK, New York must expand its system of pupil transportation to provide three- and four-year-old children regular access to preK programs and to extended-day programs, comparable to that provided to K-12 students. Lack of funding for transportation has substantially hampered enrollment across the state.

¹¹⁰ Latino Coalition for Early Care and Education Report, *Building on Latino Children's Language and Culture*. Prepared by Luis Reyes, Krystal Reyes, Vanessa Ramos and Ursulina Ramirez. Committee for Hispanic Children and Families, 2008 at <http://www.chcfinc.org/policy/BuildingOnLatinoChildrensLanguageAndCultureReport.pdf>

Recommendation: Transportation should be provided to all eligible students and must meet the current federal safety standards for three and four year olds. This will require amendments to the education law to establish appropriate rules, standards, and specifications, as well as funding to ensure appropriate number of monitors, safety seats, and other child restraints.

D. Data Systems Expansion

A basic data infrastructure capturing information on children’s progress, access to services, response to teaching strategies and interventions, and so on, is essential to producing better outcomes for children. The data can be used to inform instruction, address delays and problems, and keep individual children on track for success. Data can also guide effective policy, providing evidence to support best practices. New York State is in the process of developing a statewide longitudinal data system to track and monitor student progress from entry into preK through entry into the workforce. However, early learning data has not yet been fully incorporated into this system.

Recommendation: The state must complete a data infrastructure to support instruction, track children’s progress and identify effective strategies for promoting better learning outcomes. The Early Childhood Advisory Council (ECAC) has completed a detailed analysis of data currently available and needed in the early years, which can inform the process and be aligned with the K-12 data system.¹¹¹

E. Technical Assistance to Promote Effective School District Collaboration with Community-Based Programs

The original UPK legislation required local school districts to convene advisory boards to plan and launch preK services in their communities as part of a larger early education strategy.

¹¹¹ Early Childhood Advisory Council, *Building an Early Childhood Education Data System*. A Proposal by the Data Development Work Group, May 2013.

These partnerships offered important opportunities to identify local assets and needs and to add preK services in a way that enhanced local early-learning opportunities and leveraged resources including federal and state funds for child care, Head Start, and other essential supportive services. This was a step in the right direction. However, unlike other states, New York provided no special funding for planning or start-up costs, leaving this to local leaders in the public school and early childhood community. Nonprofit groups, child-care resource and referral agencies, and advocacy coalitions worked to fill the funding and planning gap. With money from local and state foundations, they created handbooks, offered technical assistance, hosted forums, and produced reports and policy briefs to support UPK implementation.

In 2007, state lawmakers eliminated the requirement that districts convene UPK advisory boards. The disappearance of these boards was a setback, leaving districts new to the preK effort with fewer opportunities for community engagement. Two recent reports have cited the lack of funding and technical assistance during the planning stage as barriers to further UPK expansion.¹¹²

Recommendation: The state must create, and provide sufficient funding to implement, a technical assistance strategy to promote effective partnerships and local collaborations between school districts and the broader early-education community. The strategy should include resources for assisting districts in providing community programs with fiscal and management support, including how to maximize educational opportunities through the appropriate and effective integration of child care, Head Start, and preschool special education funding. It should also include training, professional development, and technical assistance for district personnel on

¹¹²See McCabe et al, *Universal Pre-Kindergarten, Early Care and Education in Rural New York* at <http://www.nyruralschools.org/downloads/REAC%20Policy%20Brief.pdf> and Early Years Institute report, *Windows of Opportunity* available at www.evi.org/data/prekreport2009.pdf See also WBNY, *Strengthening the Pre-K Investment*, p. 21.

funding and contractual requirements and on promoting collaborative relationships and activities to build alignment between preschool and the K-12 system for a smooth transition for children and their families. The new effort could work through a variety of mechanisms, including BOCES. It might also

- Create a team of coordinators to assist districts in promoting effective partnerships, professional development, and best practices.
- Sponsor annual statewide meetings on collaboration across systems.
- Establish incentives to spur more effective collaborations between public schools and community programs.

F. Quality Assurance

Effective education practice calls for a continuous quality improvement and assurance strategy that links standards and classroom practice. New York State has taken a number of steps in this direction. It has adopted preK standards linked to the Common Core and Early Learning Guidelines and worked with experts across the state to develop a research-based quality rating and improvement system that sets statewide standards for program quality in all early childhood settings for programs serving children from birth to kindergarten. In addition, UPK programs are expected to assess individual children's progress throughout the year.

Recommendation: The state must fully implement and fund an intentional, uniform approach to quality assurance for all early education settings. Specifically, the state should take the next steps in implementing a quality rating and improvement system statewide.¹¹³ For preK program, the master teacher system should be a part of this continuous improvement effort.

¹¹³ For more information, see www.qualitystarsny.org

F. Ongoing Program Evaluation

Though some local districts, including New York City, have undertaken local program assessments, there have been no formal, statewide evaluations of the nearly 16-year-old UPK program. New York State can benefit from research strategies developed to determine the effectiveness of preK programs in New Jersey, Oklahoma, Maryland, and other states.

Recommendation: The state should develop and implement a multi-dimensional strategy for ongoing evaluation of the effectiveness of its preK program. Along with ongoing program review that can assess best practices and provide recommendations for continuous quality improvement, the evaluation strategy should include longitudinal studies of child outcomes.

CONCLUSION

Providing a high-quality early childhood education is vital if we are to reach our state and national goals of educational equity and excellence and guarantee our nation's continued economic competitiveness and the viability of our democratic system. The federal government, states throughout the country, and policy leaders are increasingly recognizing this reality. New York State is poised to be a national leader in implementing a truly universal preK system for all of our state's three and four year olds, the longstanding vision of Regents and the legislature. To make the vision a reality, however, will require a rights-based approach that integrates prekindergarten into the system for financing K-12 education and provides sufficient investment in the infrastructure needed to ensure a high-quality programs in all preK settings.



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