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

Submitted to:
Washington Quality Education Council
Early Learning Advisory Council

July 1, 2011

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Executive Summary

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

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

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

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

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

SSB 6759 directs that the recommendations include:
- Criteria for eligible children, including program standards, direct services to be provided, number of hours per school year, teacher qualifications, transportation requirements and performance measures.
- Criteria for eligible providers in terms of level of regulation (by DEL) and criteria specific to public, private, nonsectarian, or sectarian organizations.
- Governance responsibilities for OSPI and DEL.
- Timeline and funding necessary for implementation.
- Alignment with current programs, including the Early Childhood Education and Assistance Program (ECEAP), which is Washington’s state-funded preschool program.

The research must include the following analysis and discussion:
- A review of early learning programs in Washington, including ECEAP and Head Start.
- An analysis of key, evidence-based preschool programs around the nation.

The goal of the final recommendations is to establish a clear, actionable strategy in Washington that informs the implementation of voluntary, high-quality preschool opportunities for 3- and 4-year-old children in Washington.
Phase One
The Early Learning Technical Workgroup met five times during 2010. Much progress was made, despite the fact that funding included in the original legislation to support the work was redirected to help resolve the state revenue shortfall.¹

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

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

<table>
<thead>
<tr>
<th>Definition</th>
<th>Implementation</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Education</td>
<td>A collection of legal decisions and statutes that are protected under Section 1 of Article IX of Washington State’s Constitution - “It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.”</td>
<td>Legal decisions, Policy bill, Budget appropriation</td>
</tr>
<tr>
<td>Statutory Entitlement</td>
<td>An Entitlement is a guarantee of access to specific benefits by agreement through law.</td>
<td>Policy bill, Budget appropriation</td>
</tr>
<tr>
<td>Constitutional Entitlement</td>
<td>An Entitlement is a guarantee of access to benefits as defined in an amendment to the Washington State Constitution.</td>
<td>2/3rd vote in House and Senate, Governor signature, Vote of the people (50%+1)</td>
</tr>
<tr>
<td>Categorical Expenditure</td>
<td>A program or expenditure funded in the enacted budget.</td>
<td>Budget appropriation, Policy bill is not necessary</td>
</tr>
</tbody>
</table>

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

¹ SB 6759 included $234,221 for OSPI and $94,628 for DEL to support this work. All of this money was redirected.
<table>
<thead>
<tr>
<th>Program Component</th>
<th>Considerations for Basic Education</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governance</td>
<td>State Constitution grants OSPI supervisory authority over basic education.</td>
</tr>
</tbody>
</table>
| Eligibility               | Individual entitlement. Could be universal or at-risk; however, anything short of universal requires objectively defined and legally defensible criteria to define risk (as a proxy for educational need). Assessment tool could be used to determine risk. 
| Transportation            | Required to provide transportation for eligible students who would be unable to participate without transportation.                                                                                                                                 |
| Sectarian Influence       | Article 9, Section 4 of the Washington State’s Constitution has been interpreted in a manner that would prohibit basic education funds from being used to support an institution with sectarian influence. 
|                           | Article 1, Section 11 of Washington State’s Constitution prohibits public money from being applied to religious instruction, worship or exercise, but would likely allow a secular program to be delivered in a sectarian setting. |
| Where Services are Delivered | Under Article 9, Section 2 of Washington State’s Constitution, basic education must be delivered through a general and uniform system of public schools. This would allow School Districts or Educational Service Districts to oversee programs locally. |

All other program components could be determined by the Legislature.

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

**Phase Two**

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

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

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

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

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

(a) Criteria for eligible children;

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

(c) Performance measures;

(d) Criteria for eligible providers, specifying whether or not they may be:
   (i) Approved, certified, or licensed by DEL; and
   (ii) Public, private, nonsectarian, or sectarian organizations;

(e) Governance responsibilities for OSPI and DEL;

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

(g) A timeline for implementation; and

(h) The Early Childhood Education and Assistance Program's (ECEAP) role in the new program of early learning.

The legislation also directed the workgroup to review early learning programs in Washington, including ECEAP and the federal Head Start program, as well as programs in other states.
The workgroup is monitored and overseen by the QEC, and this progress report is to be submitted by July 1, 2011. A final report, with the group's recommendations, is to be submitted to the QEC and the Early Learning Advisory Council (ELAC) by November 1, 2011.

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

II. Membership of the Early Learning Technical Workgroup

SSB 6759 requires that the workgroup be composed of:
(a) At least one representative each from DEL, OSPI, Thrive by Five Washington, and the Office of the Attorney General;
(b) Two members of the Early Learning Advisory Council; and
(c) Additional stakeholders with expertise in early learning to be appointed by the Early Learning Advisory Council.

Consistent with these requirements, the membership includes:

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

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

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

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

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

ECEAP and Head Start have three interdependent components:

- **Early Learning.** Early learning experiences are designed to fit each child’s individual needs and developmental level. Children in ECEAP and Head Start receive developmental screenings to identify areas of concern, such as a possible delay or disability. Teachers regularly assess children’s progress in cognitive, language, early literacy, social-emotional and physical development. Classroom staff use the assessment results to adjust curriculum and instruction for individual children and whole classrooms.

- **Health.** Health is a critical aspect of children’s school readiness. Children cannot learn optimally if they are unhealthy, or have vision or hearing problems. Program staff work with families to attain medical and dental coverage. They help establish a medical and dental home for each child, a place where the child can receive regular and ongoing care. Children receive health screenings to check vision, hearing, height and weight. Each child also receives a medical well-child exam and dental screening, and any needed follow-up treatment. Families are referred to community health, mental health and nutrition services, as needed, for follow-up evaluation, preventive care or treatment. While children are enrolled, the staff and parents continue to monitor their health and progress. ECEAP and Head Start also promote children’s health and physical development by providing healthy meals and snacks, offering safe indoor and outdoor settings for play and movement, and providing health and nutrition education.
• **Family Engagement and Support.** ECEAP and Head Start recognize that parents are their child’s first and most important teachers. Children’s learning improves when the programs involve their parents and respect their language and culture. ECEAP and Head Start invite parents to get involved in a variety of ways. For example, parents can volunteer in the classroom or serve on a policy council. Many grantees/contractors offer workshops in parenting skills and leadership. All three programs also work with families to help them assess their own priorities and needs, set goals—such as for self sufficiency, education, housing or employment—and make progress toward those goals. For example, if parents want to get a better job, the staff might help them find and enroll in a general education diploma (GED) or job training program. Staff work with community partners to maximize and streamline health, education, and social services and plan transitions to kindergarten. Parents also learn about child development, parenting skills and advocating for their children’s education.

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

<table>
<thead>
<tr>
<th>Date Founded</th>
<th>ECEAP</th>
<th>Head Start</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Funding Source</strong></td>
<td>1985</td>
<td>1965</td>
</tr>
<tr>
<td>State</td>
<td>Federal</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Average Funds per Slot to Grantees/Contractors</th>
<th>$6,662 per slot</th>
<th>• Head Start: $9,175 per slot</th>
</tr>
</thead>
<tbody>
<tr>
<td>• American Indian/Alaska Native Head Start: $8,423 per slot</td>
<td>• Migrant and Seasonal Head Start: $8,409 per slot</td>
<td></td>
</tr>
<tr>
<td>These amounts include the dedicated staff training and development funds.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Administration | Washington State Department of Early Learning: Eight staff design, contract, provide oversight, monitor, and provide training and technical assistance. | U.S. Department of Health and Human Services/Administration for Children and Families. Larger staff than ECEAP in relation to program size, including federal staff for design and distribution of funds; regional staff for oversight and monitoring; and contracted staff for training and technical assistance. |

<table>
<thead>
<tr>
<th>Available Slots for Children in 2010-11</th>
<th>8,024 slots</th>
<th>• 9,887 in Head Start</th>
</tr>
</thead>
<tbody>
<tr>
<td>• 1,075 in American Indian/Alaska Native Head Start</td>
<td>• 3,570 in Migrant/Seasonal Head Start</td>
<td></td>
</tr>
</tbody>
</table>

| Ages of Children Served | 3 and 4 years old by August 31 of the school year, with a priority for 4-year-olds. | 3 to 5 years |

<table>
<thead>
<tr>
<th>Populations Served</th>
<th>• Families up to 110 percent of federal poverty level.</th>
<th>• Families up to 130 percent of federal poverty level (prioritizing those below 100 percent).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Families not income-eligible but impacted by development risk factors (e.g., delays) or environmental risk factors (e.g., child protective services involvement,) up to 10 percent statewide.</td>
<td>• Families not income-eligible but impacted by development risk factors (e.g., delays) or environmental risk factors (e.g., child protective services involvement) up to 10 percent per grantee.</td>
<td></td>
</tr>
<tr>
<td>• Children who qualify for the</td>
<td>• Children with special needs (required to be 10 percent of enrolled children).</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Children who are homeless, in foster care or child welfare, or receiving TANF, regardless of income.</td>
<td></td>
</tr>
<tr>
<td>ECEAP</td>
<td>Head Start</td>
<td></td>
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<tr>
<td>----------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>special education, regardless of income.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Children in foster care or receiving TANF qualify based on income.</td>
<td>• Foster Care: Head Start 4 percent; AI/AN Head Start 10%; Migrant Head Start 2 percent</td>
<td></td>
</tr>
<tr>
<td>• Children from families with the lowest incomes, homeless, in foster care or with multiple risk factors are prioritized for the limited slots.</td>
<td>• Homeless: Head Start 6 percent; AI/AN Head Start 3 percent; Migrant Head Start 2 percent</td>
<td></td>
</tr>
<tr>
<td>• Individualized Education Program (IEP) for children with disabilities: 9 percent</td>
<td>• Individual Education Program (IEP) for children with disabilities: Head Start 13 percent; AI/AN Head Start 16 percent; Migrant Head Start 2 percent</td>
<td></td>
</tr>
<tr>
<td><strong>Children with Specific Risk Factors – 2009-10</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Foster Care: 3 percent</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Homeless: 7 percent</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Individualized Education Program (IEP) for children with disabilities: 9 percent</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Minimum Classroom Hours</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Required: minimum of 320 preschool classroom hours per year.</td>
<td>Required: minimum of 448 preschool classroom hours per year.</td>
<td></td>
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<tr>
<td><strong>Family Partnership</strong></td>
<td></td>
<td></td>
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<tr>
<td>3 hours of family support and 3 hours of parent-teacher conferences per child per year.</td>
<td>At least 3 home visits per child per year.</td>
<td></td>
</tr>
<tr>
<td><strong>Health Screening and Exam</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Child receives a health and developmental screening, a well-child exam, and a dental screening within 90 days.</td>
<td>Child receives a health and developmental screening by the first 45 days of enrolling in the program, a well-child exam, and a dental screening within 90 days.</td>
<td></td>
</tr>
<tr>
<td><strong>Grantees/Contractors</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The state contracts with local organizations to operate ECEAP sites.</td>
<td>The federal Office of Head Start provides grants to operate local Head Start and Early Head Start sites. Grantees may be any local public or nonprofit agency, including community-based and faith-based organizations, government agencies, tribal governments or for-profit agencies, pursuant to the requirements of the Head Start Act.</td>
<td></td>
</tr>
<tr>
<td>Contractors may be public or private nonsectarian organizations, including school districts, educational service districts, community and technical colleges, local governments, or nonprofit organizations.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Teacher Qualifications</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lead teachers must have one of the following:</td>
<td>As of 10/1/2011, a teacher in each classroom must have one of the following:</td>
<td></td>
</tr>
<tr>
<td>• Associate degree or higher with 30 quarter credits in early childhood education; or</td>
<td>• Associate, bachelor’s or advanced degree in early childhood education; or</td>
<td></td>
</tr>
<tr>
<td>• A Washington state teaching certificate with an endorsement in Early Childhood Education (PreK-3) or in Early Childhood Special Education.</td>
<td>• Associate, bachelor’s or advanced degree in a related field and coursework equivalent to a major relating to early childhood education, with experience teaching preschool; or</td>
<td></td>
</tr>
<tr>
<td>Assistant teachers must have one of:</td>
<td>• Bachelor’s degree, admission to the Teach for America program, success in an early childhood content exam, and attendance at a Teach for America summer training institute that includes</td>
<td></td>
</tr>
<tr>
<td>• Associate, bachelor’s or advanced degree in early childhood education; or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Associate, bachelor’s or advanced degree in a related field and coursework equivalent to a major relating to early childhood education, with experience teaching preschool; or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Bachelor’s degree, admission to the Teach for America program, success in an early childhood content exam, and attendance at a Teach for America summer training institute that includes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Staff Training and Development</td>
<td>ECEAP lead teachers and family support specialists must attend at least 15 hours of professional development workshops or classes per year. All staff who work with children must have training in first aid and infant/child cardiopulmonary resuscitation; disease prevention; disaster planning; and preventing, identifying and reporting child abuse and neglect. DEL provides training and technical assistance to ECEAP and contractors support additional training with their regular per slot funds.</td>
<td>Teachers must attend at least 15 hours of professional development workshops or classes per year. All staff who work with children must have training in first aid and infant/child cardiopulmonary resuscitation; disease prevention; disaster planning; and preventing, identifying and reporting child abuse and neglect. Fifty percent of federal Head Start training and technical assistance funds are distributed directly to grantees for staff training and development.</td>
</tr>
<tr>
<td>Early Learning Framework (Outcomes)</td>
<td>ECEAP contractors must use an early learning framework to plan developmentally appropriate early childhood education. This framework informs the environment, daily routine, curriculum, adult-child interactions, guidance, screening and referral, assessment and individualization, and parent-teacher conferences. The curriculum must be aligned with the Washington State Early Learning and Development Benchmarks.</td>
<td>Head Start’s Child Development and Early Learning Framework guides staff and parents in selecting curricula and assessment tools to support each child in making progress. The framework uses 11 areas of knowledge and development, or “domains” that are comparable to the domains and sub-domains of the Washington State Early Learning and Development Benchmarks.</td>
</tr>
</tbody>
</table>
Available slots by program: There is funding for approximately 23,000 children in ECEAP and the three Head Start programs.

- Head Start, 9,943
- Migrant Seasonal Head Start, 3,570
- AI/AN Head Start, 1,074
- ECEAP, 8,024
Eligible Unserved Children: There are 19,000 eligible children who are not served by ECEAP or Head Start in Washington. This represents 54% of the eligible children.

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

B. Preschool Programs in Other States

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

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

Eligibility and Access

- Most states focus exclusively on 4-year-olds with very little, if any, participation by 3-year-old children. Only one of the 10 states reviewed (IL) has more than 10 percent of 3-year-olds enrolled in the state prekindergarten program – Washington’s ECEAP serves 7 percent of the state’s 4-year-olds and just 2 percent of 3-year-olds.
- Half of the programs are available to all age-eligible children, regardless of income. Five states limit eligibility by income level as determined by federal poverty level or percentage of state median
Eligibility in Washington is primarily determined by family income (110 percent of the federal poverty level).

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

**Services and Standards**

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

**Funding and Service Delivery Model**

- The majority of state programs are administered by or in collaboration with state departments of education – ECEAP in Washington is administered by DEL.
- Most programs are funded through a combination of sources: state general appropriations, lottery, federal, and local funds. However, the state contribution typically makes up the vast majority of the funds – In past, all funds for ECEAP in Washington have come from state sources but the 2011-13 budget allocated a small amount of federal funds for the program in the coming biennium.
Across the states, average spending runs a little over $6,000 per child (including state, federal and local). Five states spend close to or over $8,000 per child – Washington’s ECEAP per child spending is $6,812 per year (updated for 2010-11 spending).

IDEA part B and Title I are the most common federal funds tapped for the programs – Washington will be using a small amount of federal Child Care and Development Fund dollars for ECEAP in the 2011-13 biennium.

Half of the states restrict receipt of funds to public schools but all of those also allow the schools to subcontract the program to private and nonprofit providers. A significant number of students across all the states receive instruction in child care rather than a school setting – In Washington, the state contracts ECEAP with public or private nonsectarian organizations, including school districts, educational service districts, community and technical colleges, local governments, or nonprofit organizations and subcontracting is allowed. Currently 27.3 percent of ECEAP sites are child care centers.

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

C. Basic Education versus Entitlement Programs

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

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

Article IX

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

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

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

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

Entitlements, on the other hand, generally “entitle” eligible individuals to services offered in a program. For example, if you meet the eligibility requirements of the special education program, you are entitled to services identified in an Individualized Education Program (IEP). Other examples of entitlement programs include Social Security, Medicare, and English language instruction provided by the Transitional Bilingual Instruction Program.
Appendix D includes a table that illustrates the differences and similarities that would be required of a preschool program that was included within the definition of “basic education” versus a program that would be an “entitlement.”

D. Existing Preschool Expansion Plans and Recommendations

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

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

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

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

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

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

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

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

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

Phase One (by the 2014-15 school year):
• Phase in expansion of ECEAP slots, from 8,024 in the 2010-11 school year, to serve 75 percent of all children from families at or below 110 percent of the federal poverty level, or meeting 2010 ECEAP eligibility based on disability or risk factors, who are not served by Head Start.

• Increase the intensity of ECEAP to a minimum of 450 preschool classroom hours per school year.

• Increase teacher qualifications to require that 100 percent of ECEAP teachers have an associate or higher degree with the equivalent of 30 college quarter credits in early childhood education. These 30 credits may be included in the degree or in addition to the degree (up from the current 71 percent).

• Encourage/provide incentives for pre-kindergarten through third grade alignment.

• Implement a statewide child outcomes assessment process.

• Replace the ECEAP data management system to include capacity to collect outcomes data on individual children.

• Increase rate per ECEAP slot to address program intensity and quality improvements above.

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

• Phase in expansion of ECEAP slots to serve 75 percent of all children from families at or below 130 percent of the federal poverty level, or meeting 2010 ECEAP eligibility based on disability or risk factors, who are not served by Head Start. The 130 percent level is consistent with Head Start and the school free lunch program by the 2020-21 school year.

• Increase the intensity of ECEAP to a minimum of 600 preschool classroom hours per school year, consistent with emerging research showing that full-day, full-school-year programs achieve the best results for low-income and high-risk children.

• Increase teacher qualifications to require that 70 percent of ECEAP teachers have a bachelor’s or higher degree with the equivalent of 30 college quarter credits in early childhood education. These 30 credits may be included in the degree or in addition to the degree (up from the current 51 percent).

• Integrate ECEAP child data into the K-12 database.

• Increase rate per ECEAP slot to address program intensity and quality improvements above.

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

• Expand ECEAP eligibility to children from families at or below 185 percent of the federal poverty level, or meeting 2010 ECEAP eligibility based on disability or risk factors to children, consistent with the reduced-price lunch program in the schools.

• Increase teacher qualifications to require that 100 percent of ECEAP teachers have a bachelor’s or higher degree with the equivalent of 30 college quarter credits in early childhood education. These 30 credits may be included in the degree or in addition to the degree.

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

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

In the remaining meetings, the workgroup will finalize its recommendations based on the legal analysis that has been completed, the legislation that has already been adopted by the Legislature, and further review and discussion of best practices in Washington and other states. A final report will be submitted to the QEC and ELAC by November 1, 2011.
Appendix A
Attorney General Opinion 2009, No. 8
EDUCATION—PUBLIC SCHOOL SYSTEM—RELIGION—SUPERINTENDENT OF PUBLIC INSTRUCTION—Constitutional Implications Of Adding Early Learning To Statutory Definition Of Basic Education

1. The Legislature may create a basic education program of early learning that is limited to students who are at risk of educational failure. However, article IX, section 1 of the Washington Constitution would preclude limiting such a program to students from low-income households, absent a showing that low family income is an accurate proxy for the risk of educational failure. This would include showing that other students facing the risk of educational failure are not excluded based on family income.

2. Public funds may be used for the operation of early learning programs by sectarian organizations only if the programs remain free of sectarian control or influence, and if the funds are not used for a religious purpose.

3. An early learning program defined to constitute a component of “basic education” must be supervised by the Superintendent of Public Instruction.

4. If the Legislature defines “basic education” to include a program of early learning, but the state lacks facilities to fully implement such a program immediately, the Legislature must establish a plan to overcome or correct such limitations within a reasonable period of time.

5. The Legislature may establish qualifications required for teachers in an early learning program that is incorporated within “basic education.”

6. The Washington Constitution does not require that transportation be provided for students in a basic education program of early learning, except perhaps where the absence of transportation would make basic education unavailable.

Cite As: AGO 2009 No. 8

December 11, 2009

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State Senator, 1st District          State Senator, 47th District
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Dear Senators:

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

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

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

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

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

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

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

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

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

BRIEF ANSWERS

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

2. Because the United States Supreme Court has not recognized a fundamental right to education, and the contemplated basic education early learning program does not implicate a suspect class, a challenge under the Equal Protection Clause should be reviewed under rational basis review. Because the Washington Supreme Court has not recognized a fundamental right to education, there is no cognizable “privilege” conferred that would trigger heightened review under article I, section 12 of the Washington Constitution, and a challenge under that section also should be reviewed under rational basis review. Accordingly, the primary constraint imposed by article I, section 12 and the Equal Protection Clause is that the criteria used to determine eligibility for the program must be rationally related to the program’s objective: providing an early learning program to children who otherwise are at risk of educational failure.

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1 The provisions of the state constitution that are discussed in this opinion are set forth in full as an appendix to this opinion.
3. Once an early learning program is included as part of “basic education” in Washington, it must comply with both article I, section 11 and article IX, section 4 of the Washington Constitution.

4. Read together, article I, section 11 and article IX, section 4 of the Washington Constitution prohibit the granting or appropriation of public funds to support religious instruction or any basic education program that is subject to sectarian control or influence. Public funds may be granted or appropriated for the operation of early learning programs by sectarian organizations only if the programs remain free of sectarian control or influence, and the funds are not used for a religious purpose. We conclude that the granting or appropriation of state funds to sectarian organizations for the purposes described in SB 5444 can be accomplished in compliance with article I, section 11. However, absent a fact-specific analysis of the structure and operation of each sectarian organization, the particular early learning program operated by that organization, and the conditions imposed on the organization and enforced by the state, we cannot conclude that the granting or appropriation of state funds to sectarian organizations for the purposes described in SB 5444 can be accomplished in compliance with article IX, section 4.

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

6. Whether the state could maintain currently-established waiting lists of eligible students for the new basic education early learning program ultimately would require a fact-specific analysis. However, the Legislature would be establishing a new program, and Washington courts have evidenced a willingness to give latitude and time to a new educational program established by the Legislature. If the program includes a reasonable plan to address waiting lists and building and staff shortages in a reasonable time, we would not expect those shortcomings to support a successful constitutional challenge to a basic education program of early learning.

7. The Washington Constitution does not require that teachers in the contemplated early learning program be certified or that they have completed an education degree program. Qualifications for teachers are determined by the Legislature.

8. The Washington Constitution does not require that transportation be provided for students in a basic education program of early learning except, perhaps, where a student would be deprived of basic education if transportation were not available. However, where transportation is provided for other components of basic education, it would be prudent also to provide transportation for children attending a basic education program of early learning.
FACTUAL BACKGROUND

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

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

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

ANALYSIS

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

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

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

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

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

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

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

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² You have not asked us to address what constitutes “ample” funding for an early education program, and we do not do so.
no decision of the Washington Supreme Court has defined “caste,” the dissenting opinion in
Northshore School District 417 v. Kinnear, 84 Wn.2d 685, 530 P.2d 178 (1974), overruled in
part by Seattle School District 1 v. State, 90 Wn.2d 476, 585 P.2d 71 (1978), excerpted from a
dictionary definition of “caste” to focus on “differences of wealth,” from which it can be inferred
that economic status is an important component of “caste.” See Northshore Sch. Dist. 417, 84
Wn.2d at 756 n.12.

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

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

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

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

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

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

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

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

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Under the Equal Protection Clause, the state may not “deny to any person within its jurisdiction the equal protection of the laws.” A statute that is challenged under the Equal Protection Clause ordinarily is upheld if it is rationally related to a legitimate government purpose. *See Kadrmas v. Dickinson Pub. Schs.*, 487 U.S. 450, 458 (1988). If the statute
interferes with a “fundamental right” or discriminates against a “suspect class,” an equal protection challenge triggers strict scrutiny, under which the statute must be supported by a compelling government interest and distinctions drawn in the statute must be necessary to further the statute’s purpose. See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 17 (1973).

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

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

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

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\(^4\) Although the Washington Supreme Court has noted the possibility that a classification based on wealth “may form a semi-suspect class,” it has held that more is required to justify even an intermediate level of scrutiny. *In re the PRP of Runyan*, 121 Wn.2d 432, 853 P.2d 424 (1993). The Court there explained that “intermediate scrutiny will be applied only if the statute implicates both an important right and a semi-suspect class not accountable for its status.” *Id.* at 448. Where, as in SB 5444, the target class (poor children) is given assistance (access to any early learning program), a person outside the target class would have difficulty demonstrating he or she is in a suspect class (or semi-suspect class) under the criteria identified in *City of Cleburne*, 473 U.S. at 440–41, and *American Legion Post 149*, 164 Wn.2d at 609 n.31 (history of discrimination; irrelevant defining trait; political powerlessness).
program in which eligibility criteria are rationally related to legitimate educational interests would be accorded a strong presumption of validity and likely would survive an equal protection challenge under the Fourteenth Amendment. See generally Heller v. Doe, 509 U.S. 312, 319–20 (1993) (a classification involving neither fundamental rights nor a suspect class is accorded a strong presumption of validity and cannot run afoul of the Equal Protection Clause if there is a rational relationship between any disparity of treatment and some legitimate governmental purpose). See also American Legion Post 149, 164 Wn.2d at 608–09; Andersen v. King Cy., 158 Wn.2d 1, 31, 138 P.3d 963 (2006) (plurality) (citing Heller, 509 U.S. at 319).5

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

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

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

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

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

Darrin v. Gould, 85 Wn.2d 859, 869–70, 540 P.2d 882 (1975). The quoted passage is dictum, however, because the Court ultimately decided the case based on article XXXI, Washington’s equal rights amendment. Id. at 870, 877.
Where no fundamental right of citizenship is at issue, Washington courts follow federal equal protection analysis to decide whether a violation of Article I, section 12 has occurred. Madison, 161 Wn.2d at 97–98 (plurality); Andersen, 158 Wn.2d at 9 (plurality). As explained above, rational basis review is appropriate here, under which a legislatively-established program in which eligibility criteria are rationally related to legitimate educational interests would be accorded a strong presumption of validity and likely would survive a challenge under article I, section 12.7

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

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

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

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7 In a due process analysis, the Washington Supreme Court stated that courts “should be reluctant to identify new fundamental rights because, in doing so, a matter is effectively placed ‘outside the arena of public debate and legislative action.’ ” American Legion Post 149, 164 Wn.2d at 600 (quoting Washington v. Glucksberg, 521 U.S. 702, 720 (1997)). If the Court nevertheless were to find that Washingtonians have a fundamental right to education by reason of their state citizenship, the early learning program described in SB 5444 might be considered a “privilege” under article I, section 12, because it would be part of basic education. If that program were subjected to strict scrutiny, the state presumably would have to show that eligibility based on family income is precisely tailored to serve the compelling educational interest served by the early education program.
All Washington state programs expending public funds are subject to the prohibition in article I, section 11 of the Washington Constitution, which provides that “[n]o public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment[.]” This provision is violated if public money or property is transferred or made available for a religious purpose. State ex rel. Gallwey v. Grimm, 146 Wn.2d 445, 455–66, 48 P.3d 274 (2002) (citing Malyon v. Pierce Cy., 131 Wn.2d 779, 799–800, 935 P.2d 1272 (1997)).

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

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

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

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

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8 See School Dist. 20, Spokane Cy., 51 Wash. at 504 (“common school,” within meaning of article IX, section 2 is one that is common to all children of proper age and capacity, and which is free and subject to, and under control of, qualified voters of the school district); Litchman v. Shannon, 90 Wash. 186, 191, 155 P. 783 (1916) (“public schools” are schools established under the laws of the state, maintained at public expense by taxation, and open without charge to all children in the district); see also McGowan, 148 Wn.2d at 293 (holding implicitly that basic education is to be defined by reference to types of “educational services” or “instruction”).
appropriated for the operation of early learning programs by sectarian organizations only if the programs remain free of sectarian control or influence and the funds are not used for a religious purpose. Factors useful in identifying sectarian control or influence are presented in the cases discussed below.

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

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

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

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9 In Gallwey, the Court stated “[n]oting in today’s decision is intended to disturb this court’s holding in Weiss as it relates to common schools.” Gallwey, 146 Wn.2d at 466.
religion or sect; (4) The content of the program and its curriculum may not be determined by a religious institution or its representatives or leaders. *Weiss*, 82 Wn.2d at 209–11. *Weiss* does not state or imply that these are exclusive or comprehensive factors in determining whether a school or program is under sectarian influence or control; they merely reflect the facts in the record considered in that particular case. Under other facts and circumstances, additional factors or different factors could be relevant.

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

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

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

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

\(^{10}\) The term “facial challenge” is used to describe a lawsuit in which a plaintiff contends that a particular law is unconstitutional in all possible applications. *Washington State Grange v. Washington State Republican Party*, 128 S. Ct. 1184, 1190 (2008). In such a case, a plaintiff can succeed only if there are no circumstances under which the law could be constitutionally applied, and the Court will not speculate about hypothetical or imaginary cases in which unconstitutional results may be possible. *Id.* A statute that is constitutional on its face might still be challenged as unconstitutional in specific applications. *Id.* at 1191. A constitutional challenge to a specific application of a law is called an “as-applied challenge.”
A new basic education program of early learning must be supervised by the Superintendent of Public Instruction; however, the Legislature may create an agency or institution to administer the program under the Superintendent’s supervision.

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

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

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

Since the Legislature would be establishing a new program, Washington courts would be likely to recognize some need for time to establish the program and its resources, but the answer to both questions ultimately would depend on the facts. In Seattle School District 1, 90 Wn.2d at 537–38, the Court evidenced a willingness to give latitude and time to a new educational program established by the Legislature. This willingness is consistent with the Court’s recognition that the Legislature establishes the means for discharging its statutory duty
Article IX, section 1 requires that the Legislature define “basic education” and support it with ample funding from dependable and regular tax sources. 

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

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

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

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11 It may be that the use of private facilities, including those owned or operated by sectarian organizations, and the operation of early learning programs by sectarian organizations are means of responding to inadequate building and staff capacity. However, inadequate capacity cannot justify or excuse noncompliance with article I, section 11 and article IX, section 4, as we explained in response to your fourth question. See *Weiss*, 82 Wn.2d at
7. If the Legislature were to create a new basic education program of early learning, do the constitutional requirements for basic education require that teachers in the early learning program be certified and have completed an education degree program?

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

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

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

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

206–07 (article IX, section 4 does not permit even a “de minimis” violation). See also Perry v. Sch. Dist. 81, Spokane, 54 Wn.2d 886, 896, 344 P.2d 1036 (1959) (public school teachers’ mere distribution of registration cards for voluntary, off-campus religious instruction held to be use of school facilities supported by public funds to promote a religious program in violation of article IX, section 4).
students. Presumably, the Legislature has exercised that discretion based upon an assessment of student need for transportation services; applying the Lane principle, transportation for children attending a basic education program of early learning should be provided if their need for transportation is comparable to that of K-12 students.

We trust the foregoing will be useful to you.

ROBERT M. MCKENNA
Attorney General

Alan D. Copsey
Deputy Solicitor General
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Appendix B
Substitute Senate Bill 6759
CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6759

Chapter 234, Laws of 2010

61st Legislature
2010 Regular Session

VOLUNTARY PROGRAM OF EARLY LEARNING--PLAN

EFFECTIVE DATE: 06/10/10

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

BRAD OWEN
President of the Senate

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

FRANK CHOPP
Speaker of the House of Representatives

CERTIFICATE

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

THOMAS HOEMANN
Secretary

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

FILED
March 30, 2010

CHRISTINE GREGOIRE
Governor of the State of Washington

SECRETARY OF STATE
State of Washington
AN ACT Relating to a plan for a voluntary program of early learning; amending RCW 43.215.090 and 28A.290.010; and creating new sections.

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

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

NEW SECTION. Sec. 2. (1) Beginning April 1, 2010, the office of the superintendent of public instruction, with assistance and support from the department of early learning, shall convene a technical working group to develop a comprehensive plan for a voluntary program
of early learning. The plan shall examine the opportunities and
barriers of at least two options:

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

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

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

(a) Criteria for eligible children;

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

(c) Performance measures;

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

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

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

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

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

(g) A timeline for implementation; and

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

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

(4) The working group shall be composed of:

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

(b) Two members of the early learning advisory council established
in RCW 43.215.090 to be appointed by the council; and
(c) Additional stakeholders with expertise in early learning to be appointed by the early learning advisory council.

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

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

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

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

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

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

(4) Council members shall serve two-year terms. However, to stagger the terms of the council, the initial appointments for twelve of the members shall be for one year. Once the initial one-year to two-year terms expire, all subsequent terms shall be for two years, with the terms expiring on June 30th of the applicable year. The terms shall be staggered in such a way that, where possible, the terms of members representing a specific group do not expire simultaneously.
(5) The council shall consist of not more than twenty-three members, as follows:

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

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

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

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

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

(f) One representative of the private-public partnership created in RCW 43.215.070, to be appointed by the partnership board;

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

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

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

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

(8) Each member of the board shall be compensated in accordance with RCW 43.03.240 and reimbursed for travel expenses incurred in
carrying out the duties of the board in accordance with RCW 43.03.050 and 43.03.060.

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

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

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

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

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

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

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

   (a) Four members of the house of representatives, with two members
representing each of the major caucuses and appointed by the speaker of
the house of representatives;

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

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

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

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

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

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

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

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

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

(6) The council shall submit a report to the legislature by January
1, 2012, detailing its recommendations for a comprehensive plan for a
voluntary program of early learning. Before submitting the report, the
council shall seek input from the early learning advisory council
created in RCW 43.215.090.
The council shall be staffed by the office of the superintendent of public instruction and the office of financial management. Additional staff support shall be provided by the state entities with representatives on the council. Senate committee services and the house of representatives office of program research may provide additional staff support.

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

Passed by the Senate March 11, 2010.
Passed by the House March 10, 2010.
Approved by the Governor March 29, 2010.
Filed in Office of Secretary of State March 30, 2010.
Appendix C
Second Substitute House Bill 2731
CERTIFICATION OF ENROLLMENT

SECOND SUBSTITUTE HOUSE BILL 2731

Chapter 231, Laws of 2010

(partial veto)

61st Legislature
2010 Regular Session

VOLUNTARY PRESCHOOL OPPORTUNITIES--AT-RISK CHILDREN

EFFECTIVE DATE: 06/10/10

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

FRANK CHOPP
Speaker of the House of Representatives

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

BRAD OWEN
President of the Senate

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

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

BARBARA BAKER
Chief Clerk

CERTIFICATE

FILED

March 30, 2010

Secretary of State
State of Washington

CHRISTINE GREGOIRE
Governor of the State of Washington
AN ACT Relating to implementing a program of early learning for educationally at-risk children; amending RCW 43.215.020 and 43.215.405; adding new sections to chapter 43.215 RCW; adding a new section to chapter 28A.320 RCW; and creating a new section.

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

*NEW SECTION. Sec. 1. The legislature finds that a critical factor in the eventual successful outcome of a K-12 education is for students to begin school ready, both intellectually and socially, to learn. The legislature also finds that, due to a variety of factors, some young children need supplemental instruction in preschool to assure that they have the opportunity to participate meaningfully and reach the necessary levels of achievement in the regular program of basic education. The legislature further finds that children who participate in high quality preschool programs have improved educational and life outcomes and are more likely to graduate from high school and pursue higher education, experience successful employment opportunities, and have increased earnings. Therefore the legislature intends to create a program of early learning that, when fully implemented, shall be an entitlement program for eligible children.
The legislature also finds that the state early childhood education and assistance program was established to help children from low-income families be prepared for kindergarten, and that the program has been a successful model for achieving that goal. Therefore, the legislature intends that the first phase of implementing the entitlement program of early learning shall be accomplished by utilizing the program standards and eligibility criteria in the early childhood education and assistance program. The legislature also intends that the implementation of subsequent phases of the program established by the ready for school act of 2010 will be aligned with the implementation of the state's all-day kindergarten program in order to maximize the gains resulting from investments in the two programs.

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

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

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

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

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

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

(3) The director shall adopt rules for the following program
components, as appropriate and necessary during the phased implementation of the program:

(a) Minimum program standards, including lead teacher, assistant teacher, and staff qualifications;
(b) Approval of program providers; and
(c) Accountability and adherence to performance standards.
(4) The department has administrative responsibility for:
(a) Approving and contracting with providers according to rules developed by the director under this section;
(b) In partnership with school districts, monitoring program quality and assuring the program is responsive to the needs of eligible children;
(c) Assuring that program providers work cooperatively with school districts to coordinate the transition from preschool to kindergarten so that children and their families are well-prepared and supported; and
(d) Providing technical assistance to contracted providers.

NEW SECTION. Sec. 4. FUNDING AND STATEWIDE IMPLEMENTATION. (1) Funding for the program of early learning established under this chapter must be appropriated to the department. Allocations must be made on the basis of eligible children enrolled with eligible providers.
(2) The program shall be implemented in phases, so that full implementation is achieved in the 2018-19 school year.
(3) For the initial phase of the early learning program in school years 2011-12 and 2012-13, the legislature shall appropriate funding to the department for implementation of the program in an amount not less than the 2009-2011 enacted budget for the early childhood education and assistance program. The appropriation shall be sufficient to fund an equivalent number of slots as funded in the 2009-2011 enacted budget.
(4) Beginning in the 2013-14 school year, additional funding for the program must be phased in beginning in school districts providing all-day kindergarten programs under RCW 28A.150.315.
(5) Funding shall continue to be phased in incrementally each year until full statewide implementation of the early learning program is achieved in the 2018-19 school year, at which time any eligible child shall be entitled to be enrolled in the program.
The department and the office of financial management shall annually review the caseload forecasts for the program and, beginning December 1, 2012, and annually thereafter, report to the governor and the appropriate committees of the legislature with recommendations for phasing in additional funding necessary to achieve statewide implementation in the 2018-19 school year.

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

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

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

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

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

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

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

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

(a) To support both public and private sectors toward a comprehensive and collaborative system of early learning that serves parents, children, and providers and to encourage best practices in child care and early learning programs;
(b) To make early learning resources available to parents and caregivers;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) "Family support services" means providing opportunities for parents to:
(a) Actively participate in their child's early childhood program;
(b) Increase their knowledge of child development and parenting skills;
(c) Further their education and training;
(d) Increase their ability to use needed services in the community;
(e) Increase their self-reliance.

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

NEW SECTION. Sec. 9. This act may be known as the ready for school act of 2010.
Passed by the House March 11, 2010.
Passed by the Senate March 10, 2010.
Approved by the Governor March 29, 2010, with the exception of certain items that were vetoed.
Filed in Office of Secretary of State March 30, 2010.
Note: Governor's explanation of partial veto is as follows:

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

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

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

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

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

Differences and similarities between preschool programs that are included as a part of “basic education” versus programs that are an “entitlement”

(As of June 22, 2011)
<table>
<thead>
<tr>
<th>Influence</th>
<th>Sectarian...</th>
<th>article 9, section 4 of the state constitution provides, &quot;...religious establishment clauses:...&quot;</th>
</tr>
</thead>
</table>

The Washington constitution has two articles addressing public education. Article 9, Section 3 establishes the policy that "public schools shall be free from sectarian influence." Article 9, Section 4 provides, "...religious establishment clauses:..." which limit the establishment of religious schools and the teaching of religious doctrine in public schools.

### 1. Basic Education Program
- Required to provide transportation for eligible students who would be unable to participate without transportation.
- Eligible students are prioritized for limited slots: 4
  - Income: 110% FPL
  - Age: 3- to 5-year-olds (by August 31 of school year)
- Participants without transportation

### 2. Entitlement Program
- Up to 10% can be over income limit.
- Priority to families most in need:
  - Priority in order of: foster care, homeless, special education, income, age
  - Eligible children are prioritized on their need.
- Income: 130% FPL
- Age: 3- to 5-year-olds (by August 31 of school year)
- Participants without transportation

### 3. Universal Program
- Available statewide
- In the program for eligible students. Thus, the program would likely be required to be available to all students of a certain age or a program making only "limited" incremental age requirements.
- Income: 130% of poverty
- Participants without transportation
- Eligible children are prioritized on their need.
- Income: 100% FPL
- Age: 3- to 5-year-olds (by August 31 of school year)
- Participants without transportation

### 4. Child Education Assistance Program
- Available statewide
- In the program for eligible students. Thus, the program would likely be required to be available to all students of a certain age or a program making only "limited" incremental age requirements.
- Income: 150% of poverty
- Participants without transportation
- Eligible children are prioritized on their need.
- Income: 100% FPL
- Age: 3- to 5-year-olds (by August 31 of school year)
- Participants without transportation

Note: This table is a summary of the distribution and eligibility criteria for various programs under the Basic Education Program and the Entitlement Program. The table highlights the key differences in eligibility, distribution, and transportation requirements.
A Program under "Basic Education"

An "Entitlement" Program

Current Guidelines

ECEAP

Current Guidelines

Head Start

supported wholly or in part by the public funds shall be forever free from sectarian control or influence." This has been construed to prohibit basic education funds going to sectarian institutions.

Article 1, Section 11 of the State Constitution prohibits public money from being applied to religious instruction, worship or exercise, but would likely allow a secular program to be delivered in a sectarian setting.

This strongly suggests that the program must be delivered through a secular and non-secular system of public schools.

Unlike Article 9, Section 2 of Basic Education, the program would not be required to serve otherwise eligible children in all geographic regions across the state.

This strongly suggests that the program would allow school districts or Educational Service Districts to oversee programs locally.

Programs locally. Education Service Districts are to oversee programs or in entitlement program.

No constitutional restrictions. Legislature may allow services to be provided at any location that can meet the requirements.

- Program Standards

- School Year

- Hours: 2.5 hours per day, minimum 320 classroom hours per year.

- Days/Weeks: No less than 30 calendar weeks.

- Adult-Child Ratio/Class Size: 1:9, class max 20.

- Curricula: Must be aligned with the state Early Learning & Development Benchmarks.

- Program Standards

- School Year

- Hours: 3.5 hours per day, 448 hours per year.

- Days/Weeks: 128 days over 32 weeks (=448 hours) per year.

- Adult-Child Ratio/Class Size: Ratio and class size (15-20) vary by child age and for double sessions.

- Curricula: Must be based on scientifically valid research; age and developmentally appropriate.

- Program Standards

- School Year

- Hours: Minimum 2.5 hours per day, minimum 20 classroom hours per day.

- Days/Weeks: Minimum 20 classroom weeks.

- Adult-Child Ratio/Class Size: 1:9, class max 20.

- Curricula: Must be aligned with the state Early Learning & Development Benchmarks.

- Program Guidelines

- Curriculum

- Hours: 12 weeks per year.

- Days/Weeks: 520 hours per year.

- Adult-Child Ratio/Class Size: 1:9, class max 20.

- Curricula: Must be aligned with the state Early Learning & Development Benchmarks.

- Program Guidelines

- Curriculum

- Hours: 12 weeks per year.

- Days/Weeks: 520 hours per year.

- Adult-Child Ratio/Class Size: 1:9, class max 20.

- Curricula: Must be aligned with the state Early Learning & Development Benchmarks.
<table>
<thead>
<tr>
<th>Program Standards - Other</th>
<th>Program Standards - Health and Safety</th>
<th>Program Standards - Family Partnership</th>
<th>Program Standards - Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>ECEAP Performance Standards</td>
<td>ECEAP Performance Standards</td>
<td>ECEAP Performance Standards</td>
<td>ECEAP Performance Standards</td>
</tr>
<tr>
<td>[A Program under “Basic Education”] An “Entitlement” Program. Current Guidelines Head Start. | | | |</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### A Program under "Basic Education"

**An "Entitlement" Program**

**Current Guidelines**

<table>
<thead>
<tr>
<th>Requirement</th>
<th>ECEAP</th>
<th>Head Start</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Basic Education</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Entitlement</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- [ ] **Staff Qualifications**
  - Staff qualifications are not dependent on whether the program is a "Basic Education" program or an "Entitlement" program. However, there may be a desire to have lead teachers certified under a "Basic Education" program.
  - Lead teacher: AA or higher with 30 credits ECE, or teacher certification with early childhood endorsement. 15 hours inservice training per year.
  - Assistant teacher: 12 ECE quarter credits or Child Development Associate (CDA) 5 years to complete PD plan, if not qualified at time of hire.
  - Also, qualifications for family support staff, health and mental health consultants, and dietitians.

- [ ] **Program is a "Basic Education" program or an "Entitlement" program.**
  - Under basic education, the per child allocation would likely be more closely tied to costs of providing the program. However, it is possible that some of the costs would not be defined as within the definition of basic education, such as family support efforts.

- [ ] **Outcome Measures**
  - Outcome measures (e.g., common child assessment/inventory aligned with Benchmarks and WaKIDS, health outcomes, family outcomes) would not be dependent on whether the program is a "Basic Education" program or an "Entitlement" program.
  - Report to DEL: Demographic, health, family, and PD plan, if not qualified at time of hire. DECA assessment a minimum of twice a year. Assessment of physical and cognitive development a minimum of twice a year. Optional in 2010-11, family outcomes interviews.
  - Must use Child Outcomes Framework, analyze data from 8 developmental domains three times per year, and use it for program planning.
  - Required to use CLASS tool to assess teachers and instruction.

- [ ] **Allocation (per child)**
  - Basic Education, the per child allocation would likely be more closely tied to costs of providing the program. However, it is possible that some of the costs would not be defined as within the definition of basic education, such as family support efforts.
  - $6,629 per child
  - 8,024 slots
  - $8,905
  - Region X slots

- [ ] **Phase-in Timeline**
  - In both cases, determined by the Legislature.
  - HB 2731 expands, starting with ECEAP standards and current funding so that all eligible children are entitled to services.
A Program under "Basic Education"

An "Entitlement Program"

Current Guidelines

ECEAP

Current Guidelines

Head Start

by 2018-19.

Special Education

- Students would be eligible for the same Special Education services that are available to K-12.

- Students would be eligible for the same Special Education services that are available to K-12.

Children with disabilities must be considered for special education by 2018-19.

- About 9% of ECEAP children have an IEP.
- 10% of children enrolled must have an IEP.

- All eligible children with an IEP are eligible.

- Enrollment is based on local prioritization.

- Child Screenings (developmental, vision, hearing, growth) required within 90 days, followed by referrals for further evaluation as indicated.

- Child Screenings (developmental, vision, hearing) required within 45 days, followed by referrals for further evaluation as indicated.

- Enrollment is based on local prioritization.

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- 10% of children enrolled must have an IEP.

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- Child Screenings (developmental, vision, hearing) required within 45 days, followed by referrals for further evaluation as indicated.

- Enrollment is based on local prioritization.
Appendix E
Summary of high-quality preschool programs in Washington, other states
<p>| Program                                      | Minimum age for eligibility | Days of operation per week | Hours of operation per day | Minimum age of eligible children | Washington Pre-K Program | North Carolina Pre-K Program | Louisiana Pre-K Program | West Virginia Pre-K Program | Iowa Pre-K Program | Arkansas Pre-K Program | Georgia Pre-K Program | Louisiana Pre-K Program | Maryland Pre-K Program | Illinois Pre-K Program | Kentucky Pre-K Program | Oklahoma Pre-K Program | Iowa SVPP | Louisiana LA4 | Washington Pre-K Program |
|---------------------------------------------|----------------------------|-----------------------------|-----------------------------|---------------------------------|---------------------------|--------------------------|---------------------------|-----------------------------|-------------------|------------------------|----------------------|------------------------|------------------------|------------------------|-------------------------|-------------------|------------------|------------------------|</p>
<table>
<thead>
<tr>
<th>Programs</th>
<th>States</th>
<th>Teachers on site</th>
<th>Program requirement</th>
<th>Minimum teacher education</th>
<th>Requirements for all programs</th>
<th>Support services required for all programs</th>
<th>Sliding payment allowed?</th>
<th>Maximum class size varies by state</th>
<th>Teachers to 3-year-olds</th>
<th>Teachers to 4-year-olds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Washington Pre-K Program</td>
<td>Yes</td>
<td>Yes (full-time)</td>
<td>Kindergarten and 3-year-olds</td>
<td>AA (blended programs)</td>
<td>Transition to K activities, Child health services, Parent involvement activities, Child health services</td>
<td>Transition to K activities, Child health services, Parent involvement activities, Child health services</td>
<td>Yes</td>
<td>1:10</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>West Virginia Pre-K Program</td>
<td>Yes</td>
<td>Yes (full-time)</td>
<td>Kindergarten and 3-year-olds</td>
<td>AA (blended programs)</td>
<td>Transition to K activities, Child health services, Parent involvement activities, Child health services</td>
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<td>Yes</td>
<td>1:10</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Louisiana LA4</td>
<td>Yes</td>
<td>Yes (full-time)</td>
<td>Kindergarten and 3-year-olds</td>
<td>AA (blended programs)</td>
<td>Transition to K activities, Child health services, Parent involvement activities, Child health services</td>
<td>Transition to K activities, Child health services, Parent involvement activities, Child health services</td>
<td>Yes</td>
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<td>3</td>
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<tr>
<td>Kentucky Pre-K Program</td>
<td>Yes</td>
<td>Yes (full-time)</td>
<td>Kindergarten and 3-year-olds</td>
<td>AA (blended programs)</td>
<td>Transition to K activities, Child health services, Parent involvement activities, Child health services</td>
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<td>Alabama Pre-K Program</td>
<td>Yes</td>
<td>Yes (full-time)</td>
<td>Kindergarten and 3-year-olds</td>
<td>AA (blended programs)</td>
<td>Transition to K activities, Child health services, Parent involvement activities, Child health services</td>
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<tr>
<td>Georgia Pre-K Program</td>
<td>Yes</td>
<td>Yes (full-time)</td>
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<td>AA (blended programs)</td>
<td>Transition to K activities, Child health services, Parent involvement activities, Child health services</td>
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<td>Oklahoma Pre-K Program</td>
<td>Yes</td>
<td>Yes (full-time)</td>
<td>Kindergarten and 3-year-olds</td>
<td>AA (blended programs)</td>
<td>Transition to K activities, Child health services, Parent involvement activities, Child health services</td>
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<td>Yes</td>
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</tbody>
</table>

**Eligibility Requirements:**

- Child disability or developmental delay
- Low parental education level
- History of abuse, neglect, or family violence
- Homelessness or unstable housing
-teen pregnancy
- Low birth weight or other child health risk
- Child history of foster care
- Parental substance abuse
- Risk that child will not be ready for kindergarten
- Risk factors besides income that can be used to determine eligibility

**Support Services Required for All Programs:**

- Child health services
- Parent involvement activities
- Other support services determined locally
- Transition to K activities
- Social services

**Minimum Teacher Requirements:**

- BA in ECE or pre-BA in ECE and ECE certification
- Must meet NCLB teacher degree requirement
- Must meet NCLB teacher salary scale requirement
- CDA (public and nonpublic)
- AA (blended programs)

**Support Services Required for All Programs:**

- Parent involvement activities
- Transition to K activities
- Other support services determined locally
- Social services

**Program Requirements:**

- Child disability or developmental delay
- Low parental education level
- History of abuse, neglect, or family violence
- Homelessness or unstable housing
- Teen pregnancy
- Low birth weight or other child health risk
- Child history of foster care
- Parental substance abuse
- Risk that child will not be ready for kindergarten
- Risk factors besides income that can be used to determine eligibility

**Sliding Payment Allowed:**

- Yes
- No
<table>
<thead>
<tr>
<th>No</th>
<th>Support Services</th>
<th>Health</th>
<th>Vision, Hearing, Dental, Developmental, Mental Health</th>
<th>Washington Pre-K Program</th>
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<tbody>
<tr>
<td>Yes</td>
<td>GED or literacy training, Social Services, Transition to K activities, Other Support Services, Information, Referral to social services, Nutrition Information, Referral to health services, Parenting Support or Training, Parent Support or Training, Child Health Services, Vision, Hearing, Dental, Developmental, Mental Health</td>
<td>Yes</td>
<td>Vision, Hearing, Dental, Developmental, Mental Health</td>
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<td>State Pre-K Program</td>
<td>Total 2008-2009 Spending</td>
<td>School Funding or State Aid Formula?</td>
<td>State/All Spending per Child</td>
<td>Agencies Eligible to Receive Funding</td>
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<td>Oklahoma Pre-K Program</td>
<td>$283,048,740</td>
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<td>West Virginia Pre-K Program</td>
<td>$114,835,307</td>
<td>Yes</td>
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<td>Arkansas Pre-K Program</td>
<td>$171,973,151</td>
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<td>Maryland Pre-K Program</td>
<td>$222,730,841</td>
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<td>Illinois Pre-K Program</td>
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<td>Kentucky Pre-K Program</td>
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<td>Yes</td>
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<td>Louisiana LA4</td>
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<td>North Carolina Pre-K Program</td>
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<td>No</td>
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