

FCC & Pre-K Policy Guides

Issue 1: State Pre-K Statutes: Including Family Child Care (FCC)

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Summary

This *Data Snapshot* identifies how a selected group of ten states' statutes describe the nonpublic school entities that are eligible to receive pre-K funds to operate preschool programs.¹ The state legislature creates each state's pre-K statute and typically defines the terms of the pre-K system, who is eligible to participate (both in terms of children and programs), and the policies the programs must follow. This information may be helpful to inform policymakers who are reviewing and possibly refining their pre-K legislation or developing a plan to implement universal pre-K that encompasses a variety of mixed-delivery pre-K settings (e.g., public schools, private child care centers, head classrooms, family child care (FCC) homes, etc.).

Introduction

State legislation or county ordinances of administrative codes legally define the parameters in which a pre-K system operates, including who is eligible to receive state/local dollars. Each state (or county) creates its statutes through a legislative process that typically includes or collects input from stakeholders, advocates, and other policymakers. Understanding other states' statutory language of how providers, including family child care educators, are described as eligible pre-K providers may be helpful as states revise or amend their regulatory language as they strive for a more mixed-delivery system.

In 2022-2023, 44 states and Washington, D.C. operated a total of 60 state-funded pre-K programs, however only 24 states *allowed* FCCs to participate in at least one of the state's pre-K programs.² For some states, the pre-K statutes are quite broad, and the policies of who is eligible to receive state pre-K dollars are described in pre-K regulations. Pre-K regulations are typically written by the state pre-K agency or department that administers the program and can be updated quickly and possibly more frequently than a state statute.

Formally Establishing Pre-K

Pre-K can be formally established through a variety of ways, including state statutes, regulations, ballot measures, ordinances, and code. Examples for each of these are described in this section.

State statutes are considered "laws" that are enacted by the state's legislature. The result of the state's legislature's actions (e.g., drafting a bill, debating it, refining it, voting to pass it, etc.) is legislation, or an act.³ In pre-K, legislation or acts typically: a) define pre-K terms; b) define who is eligible to operate a pre-K program; c) define who can attend the program; and d) define the policies that must be implemented in the program (e.g., educator qualifications, curriculum usage, class size, etc.). For example, the Maryland State Department of Education [describes](#) this process as "the Legislature enacts statutes. Administrative agencies adopt, amend, and repeal regulations under the authority granted to them by statutes. Unless the Legislature has created an exemption, agencies must follow the procedures in the Administrative Procedure Act when adopting, amending or repealing regulations."

City or County Councils

At the local level, city or county councils made up of elected local officials write and pass laws that apply to the people living within their jurisdictions. These councils act similarly to state legislatures, however, not all address pre-K, education, or children's issues. There are a few examples including:

- Denver, CO: The Denver Preschool Program was established in 1986 in Denver's [Code of Ordinances, Chapter 11, Article 3](#).
- Multnomah County, OR (this includes Portland): Preschool For All began as a [ballot measure \(26-214\)](#) in 2020, which passed and established a funding stream using income taxes. The [Preschool For All Personal Income Tax Administrative Code, Chapter 11](#) outlines the rules of the program.

Terminology for Including Nonpublic School Settings

All states that have a pre-K system operate at least one program in public schools. In 2022-2023, more than 60% of pre-K children were served in public school settings.⁴ In addition, most pre-K systems operate within or are administratively attached to their state's education department, and their enabling statutes fall under the same title that includes K-12 education (See Table 1). One strategy to help support pre-K systems is to clearly define what is meant by nonpublic school settings or who is eligible beyond public schools to receive state dollars.

Defining Nonpublic School Eligible Settings

About half (four out of ten) of the states' statutes we reviewed explicitly named FCCs as one type of eligible pre-K providers. Language used to describe FCCs includes family child care (Minnesota), family childcare homes (California), family child care homes (Massachusetts), and family day care homes (Florida).

Some of the general words used by the 10 states' statutes we reviewed to describe these nonpublic school entities include:

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|--------------------------------|------------------------------------|
| ▪ Childcare facilities | ▪ Preschool/preschool facility |
| ▪ Classroom | ▪ Private prekindergarten provider |
| ▪ Community-based organization | ▪ Program/program activities |
| ▪ Contractor | ▪ Provider |
| ▪ Early childhood programs | |

The literal definition of these words is inclusive of home-based settings. Language, especially when defining regulatory words, matters. For example, in California's statutes, the word "classroom" is not used, but rather a description of the environment: "(g) *The program promotes each child's physical development by providing sufficient time, indoor and outdoor space, equipment, materials, and guidelines for active play and movement*". Maryland issued a [memo](#) (July 25, 2023), which addressed some of the language in the state's statute that would have limited FCCs from participating in pre-K. Within the memo, adjustments to regulations were made, including those that prohibit Pre-K programs from operating in the living space of the residence and require an *Educational Program Administrator* (separate from the teacher) on site.

Cross-referencing Other Departments' Statutes

Pre-K settings may also need to meet statutes defined by other state departments, which are typically cross-referenced, aligned, and point to other statutes that cover child care licensing (health & safety, group size).

Florida’s statute includes accreditation or a [Gold Seal Quality Care program](#) as required options that only apply to nonpublic schools.

Inclusion in Universal Pre-K (UPK) Statutes

As more states are moving to a universal pre-K model, new state statutes are being written. This is another opportunity to be intentional when creating a mixed-delivery system that is inclusive of FCCs.

- In 2022, Colorado passed the [Department Early Childhood and Universal Preschool Program](#) legislation (HB 22-1295), which not only defined the new department but also defined the mixed-delivery model for the state UPK program. Within the [Act](#), Part 2, the Colorado Universal Preschool Program’s mixed delivery system is defined as “delivering preschool services through a combination of school- and community-based preschool providers, which include family child care homes, child care centers, and head start agencies, that are funded by a combination of public and private money.” (p. 172).
- In California, there are two separate state statutes that describe pre-K, one is specifically for the California State Preschool Program, and the other describes the more recently enacted California Early Education Act (See Table 1).

Conclusion

There is a formal structure that defines how pre-K systems operate. State legislation or county ordinances of administrative codes legally define the parameters in which a pre-K system operates. It is important not only for those elected officials who develop administrative codes to understand the process and the nuances of pre-K, including the role of FCCs, but also other stakeholders and advocates who can provide testimony or explain the complex early childhood system to those policy makers. Being aware of the language used to describe home-based educators in a pre-K system may help build a more equitable mixed-delivery system.

Selected Annotated Resources

Children’s Funding Project. (2024). [Denver Preschool Program: Governance, administration, and oversight flowchart](#). Included in this brief is a graphic illustrating the governance structure of the Denver Preschool Program.

Harmeyer, E., Weisenfeld, G., & Frede, E. (2023). [Including family child care \(FCC\) programs in publicly-funded pre-K: Conditions for success](#). National Institute for Early Education Research. After reviewing the limited research base, the authors developed a set of *conditions for success* as a starting point for policymakers seeking to guide quality in publicly-funded pre-K programs in home-based settings.

New York City. (2022). [A guide to legislative composition for the city of New York, 3rd edition](#). This guide provides an overview of the New York City’s Legislative Division which “seeks to capture the rules and guidelines that drafters follow when writing bills and resolutions for adoption by the New York City Council” (p. X).

Pic, A., Hustedt, J., Hallam, R., Bromer, J., Melvin, S.A., Morgan, J.A., Iruka, I.U. (2022). [Public PreK guidelines for family child care: A document review](#). Erikson Institute, University of Delaware, University of North Carolina at Chapel Hill. This brief summarizes 73 state or city pre-K programs’ implementation guideline documents on how to carry out public pre-K that are inclusive of FCC settings.

Weisenfeld, G., & Harmeyer, E. (2024). [Including family child care in pre-k systems: An update at the city level](#). National Institute for Early Education Research. This report presents a summary of FCC participation in city public pre-K programs accompanied by tables outlining the data, highlighting the strategies used in six cities/counties (Denver, Multnomah County (Portland), New York, Philadelphia, San Francisco, and Seattle) to support FCC integration into their pre-K systems.

Weisenfeld, G., & Harmeyer, E. (2024). [Including family child care in state-funded pre-k systems: An update](#). National Institute for Early Education Research. This report is an update to the 2021 report, [Including Family Child Care in State and City-funded Pre-K Systems: Opportunities and Challenges](#). In both reports, 24 states allowed FCCs to participate in their pre-K systems, however, the enrollment of children in FCC/pre-K settings has increased but remains relatively low as compared to other settings.

Acknowledgments

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About NIEER

The National Institute for Early Education Research (NIEER) at the Graduate School of Education, Rutgers University, New Brunswick, NJ, conducts and disseminates independent research and analysis to inform early childhood education policy.

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Appendix A

Table 1. Ten State Pre-K Programs' State Statues Links and Description of Eligible Nonpublic School Settings.

State Pre-K Program	Eligible Nonpublic School Settings
<p>Arkansas Better Chance</p> <p>Title 6. Education Subtitle 3. Special Education Programs Chapter 45. Arkansas Better Chance Program</p>	<p>AR Code § 6-45-106 (2023). Application process-Allocation of funding.</p> <p>a.1. A. (i) Any early childhood program accredited and quality-approved by the Department of Human Services according to standards approved by the Division of Elementary and Secondary Education may apply for funding, regardless of the sponsorship of the program.</p>
<p>California State Preschool Program</p> <p>Title 5. Education Division 1. California Department of Education Chapter 18.5 California State Preschool Program</p> <p>Title 1. General Education Code Provisions Division 1. General Education Code Provisions Part 6. Education Programs-State Master Plans Chapter 2. Early Education Act</p>	<p>5 CCR § 17700 § 17700. Definitions.</p> <p>(av) "Private contractor" means an entity other than a public agency which is tax exempt or non-tax exempt and under contract with CDE for the provision of preschool services.</p> <p>Within Early Education Act: Article 1. General Provisions 8205 (a): (a) "Applicant or contracting agency" means a school district, community college district, college or university, county superintendent of schools, county, city, public agency, private nontax-exempt agency, private tax-exempt agency, or other entity that is authorized to establish, maintain, or operate services pursuant to this chapter. Private agencies and parent cooperatives, duly licensed by law, shall receive the same consideration as any other authorized entity with no loss of parental decision making prerogatives as consistent with the provisions of this chapter. e) "Preschool facility" means a residence or building or part thereof in which preschool services are provided. f) "Early childhood programs" means those programs that offer a full range of services for children from infancy to 13 years of age, for any part of a day, by a public, private, or proprietary agency, in centers and family childcare homes.</p> <p>(w) "California state preschool program" means those programs that offer part-day or full-day, or both, educational programs for eligible two-, three-, and four-year-old children. These programs may be offered by a public, private, or proprietary agency, and operated in childcare centers or family childcare homes operating through a family childcare home education network.</p> <p>Article 2: Program Administration 8207. (a) The Superintendent shall administer all California state preschool programs. Those programs shall include, but not be limited to, part-day and full-day age and developmentally appropriate programs, offered through childcare centers and family childcare home education networks, that are designed to facilitate the transition to kindergarten for two-, three-, and four-year-old children and that provide early learning and care, health services, social services, nutritional services, parent education and parent participation, evaluation, and staff development, and that comply with all applicable statutory and regulatory requirements. Preschool programs for which federal reimbursement is not available shall be funded as prescribed by the Legislature in the annual Budget Act, and unless otherwise specified by the Legislature, shall not use federal funds made available through Title XX of the federal Social Security Act (42 U.S.C. Sec. 1397).</p>
<p>Florida Voluntary Prekindergarten Education Program</p> <p>Title XLVIII. Early Learning-20 Education Code. Chapter 1002. Student and Parental Rights and Educational Choices Part V - Voluntary Prekindergarten Education Program.</p>	<p>FL Stat § 1002.55 (2024). School-year prekindergarten program delivered by private prekindergarten providers.</p> <p>(3) To be eligible to deliver the prekindergarten program, a private prekindergarten provider must meet each of the following requirements:</p> <p>(a) The private prekindergarten provider must be a child care facility licensed under s. 402.305, family day care home licensed under s. 402.313, large family child care home licensed under s. 402.3131, nonpublic school exempt from licensure under s. 402.3025(2), faith-based child care provider exempt from licensure under s. 402.316, child development program that is accredited by a national accrediting body and operates on a military installation that is certified by the United States Department of Defense, or private prekindergarten provider that has been issued a provisional license under s.</p>

	<p>402.309. A private prekindergarten provider may not deliver the program while holding a probation-status license under s. 402.310.</p> <p>(b) The private prekindergarten provider must:</p> <ol style="list-style-type: none"> 1. Be accredited by an accrediting association that is a member of the National Council for Private School Accreditation, or the Florida Association of Academic Nonpublic Schools, or be accredited by the Southern Association of Colleges and Schools, or Western Association of Colleges and Schools, or North Central Association of Colleges and Schools, or Middle States Association of Colleges and Schools, or New England Association of Colleges and Schools; and have written accreditation standards that meet or exceed the state's licensing requirements under s. 402.305, s. 402.313, or s. 402.3131 and require at least one onsite visit to the provider or school before accreditation is granted; 2. Hold a current Gold Seal Quality Care designation under s. 1002.945; or 3. Be licensed under s. 402.305, s. 402.313, or s. 402.3131 and demonstrate, before delivering the Voluntary Prekindergarten Education Program, as verified by the early learning coalition, that the provider meets each of the requirements of the program under this part, including, but not limited to, the requirements for credentials and background screenings of prekindergarten instructors under paragraphs (c) and (d), minimum and maximum class sizes under paragraph (f), prekindergarten director credentials under paragraph (g), and a developmentally appropriate curriculum under s. 1002.67(2)(b).
<p>Maryland Prekindergarten Program</p> <p>Division II. Elementary and Secondary Education</p> <p>Title 7. Public Schools.</p> <p>Subtitle 1A. Publicly Funded Full-Day Prekindergarten Programs.</p>	<p>MD Education Code § 7-1A-01 (2023). Terms Defined.</p> <p>(e) (1) Eligible private provider" means a community-based early learning program that:</p> <ol style="list-style-type: none"> (i) Is licensed in the State; (ii) Does not charge more tuition for full-day prekindergarten than the cost of quality; and (iii) Meets the requirements under § 7-1A-04 of this subtitle.
<p>Massachusetts Universal Pre-Kindergarten Program</p> <p>Part I. Administration of the Government</p> <p>Title II. Executive and Administrative Officers of the Commonwealth</p> <p>Chapter 15D. Department of Early Education and Care.</p>	<p>MA Gen L Ch 15d § 1a (2023). Sec 1a. Definitions.</p> <p>"Early education and care program", a public or privately sponsored non-residential program, which provides for the care and education of school-aged children when not attending school, or infants, toddlers, or preschool children by someone other than members of the child's family, and which involves and supports the child's parents or guardians and is appropriate to the development of the child, including: in-home care, homemaker services, family child care homes, group child care homes, large family child care homes, full-day child care centers, part-day preschool programs and nursery schools, private kindergartens, mental health consultation and intervention programs, or temporary shelter care programs and programs which offer night care.</p> <p>"Mixed system", any person providing early education and care including, but not limited to, public, private, non-profit and for-profit preschools, child care centers, nursery schools, preschools operating within public and private schools, Head Start programs and independent and system affiliated family child care homes.</p>
<p>Minnesota Voluntary Prekindergarten Program</p> <p>Chapters 141-142G. Proprietary Schools.</p> <p>142D.08 Voluntary Prekindergarten Program For Eligible Four-Year-Old Children.</p>	<p>MN Stat § 142D.08 (2024). MN Stat § 142D.08 (2024).</p> <p>Subd. 3. Mixed delivery program plan. A district or charter school may contract with a charter school, Head Start program, licensed center and licensed family child care, or a community-based organization to provide eligible children with developmentally appropriate services that meet the program requirements in subdivision 2.</p>
<p>New York State Administered Prekindergarten Program</p> <p>Chapter 16. Education.</p> <p>Title 5. Taxation and Financial Administration.</p> <p>Article 73. Apportionment of Public Moneys.</p> <p>Part 1. General Provisions.</p> <p>Section 3602-E. Universal Prekindergarten Program.</p> <p>Section 3602-EE. Statewide Universal Full-Day Pre-Kindergarten Program.</p>	<p>NY Educ L § 3602-E (2023). Learn more Universal Prekindergarten Program.</p> <p>b. "Eligible agencies" shall mean a provider of child care and early education, a day care provider, early childhood program or center, or community-based organization, including but not limited to approved pre-school special education programs, head start, and nursery schools so long as the standards and qualifications set forth pursuant to subdivision twelve of this section have been met.</p> <p>NY Educ L § 3602-EE (2023). Statewide Universal Full-Day Pre-Kindergarten Program.</p> <p>11. Facilities providing universal full-day pre-kindergarten under this section shall meet all applicable fire safety and building codes and any applicable facility requirements of a state or local licensing or registering agency and at all times shall maintain building and classroom space in a manner that ensures and protects the health and safety of students in all programs statewide, notwithstanding any changes in such applicable codes or requirements.</p>

	(b) "community-based organization" shall mean a provider of child care and early education, a day care provider, early childhood program or center, approved preschool special education program, Head Start or other such community-based organization.
Ohio Early Childhood Education Title 33. Education-Libraries. Chapter 3301. Department of Education and Workforce.	OH Rev Code § 3301.52 (2023) . Section 3301.52. Preschool, School Child Program Definitions. (A) "Preschool program" means either of the following: (1) A child care program for preschool children that is operated by a school district board of education or an eligible nonpublic school.
Texas Prekindergarten Program Title 2. Public Education Subtitle F. Curriculum, Programs, and Services. Chapter 29. Educational Programs Subchapter E. Kindergarten and Prekindergarten Programs. Section 29.1532. Prekindergarten Program Requirements.	TX Educ Code § 29.1532 (2023). Prekindergarten Program Requirements (b) If a school district contracts with a private entity for the operation of the district's prekindergarten program, the program must at a minimum comply with: (1) the applicable child-care licensing standards adopted by the Department of Family and Protective Services under Section 42.042, Human Resources Code; and (2) the class size requirement for prekindergarten classes imposed under Section 25.112(a).
Virginia Preschool Initiative Title 22.1. Education Chapter 14.1 Early childhood Care and Education Article 2. Virginia Preschool Initiative	VA Code § 22.1-289.09 (2023). Programs designed to promote educational opportunities. A. The General Assembly finds that effective prevention programs designed to assist children at risk of school failure and dropout are practical mechanisms for reducing violent and criminal activity and for ensuring that Virginia's children will reach adulthood with the skills necessary to succeed; to this end, the following program is hereby established. With such funds as are appropriated for this purpose, the General Assembly hereby establishes the Virginia Preschool Initiative as a grant program to be disbursed by the Department of Education to schools and community-based organizations to provide quality preschool programs for at-risk three-year-olds and four-year-olds who are unserved by Head Start programs and for at-risk five-year-olds who are not eligible to attend kindergarten.

End Notes

- ¹ A sample of 10 states was selected that operated a mixed-delivery pre-K system in multiple settings that were inclusive of FCCs.
- ² Friedman-Krauss, A. H., Barnett, W. S., Hodges, K. S., Garver, K. A., Jost, T. M., Weisenfeld, G., Duer J. (2024). [The State of Preschool 2023: State Preschool Yearbook](#). National Institute for Early Education Research; Weisenfeld, G., & Harmeyer, E. (2024). [Including family child care in state-funded pre-k systems: An update](#). National Institute for Early Education Research.
- ³ For more information and resources about state legislatures, see the National Conference of State Legislatures at <https://www.ncsl.org>.
- ⁴ Friedman-Krauss et al., 2024.