

**IN THE SUPREME COURT OF PENNSYLVANIA**

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**NO. 148 EM 2016**

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**LORA JEAN WILLIAMS; GREGORY J. SMITH; CVP MANAGEMENT, INC. d/b/a or t/a CITY VIEW PIZZA; JOHN'S ROAST PORK, INC. f/k/a JOHN'S ROAST PORK; METRO BEVERAGE OF PHILADELPHIA, INC. d/b/a or t/a METRO BEVERAGE; DAY'S BEVERAGES, INC. d/b/a or t/a DAY'S BEVERAGES; AMERICAN BEVERAGE ASSOCIATION; PENNSYLVANIA BEVERAGE ASSOCIATION; PHILADELPHIA BEVERAGE ASSOCIATION; and PENNSYLVANIA FOOD MERCHANTS ASSOCIATION,**  
*Petitioners,*

**v.**

**CITY OF PHILADELPHIA and FRANK BRESLIN, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE PHILADELPHIA DEPARTMENT OF REVENUE,**  
*Respondents.*

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**ANSWER TO EMERGENCY APPLICATION FOR EXTRAORDINARY RELIEF OR THE EXERCISE OF KING'S BENCH POWERS**

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On petition from *Williams v. City of Philadelphia*, Court of Common Pleas of Philadelphia County, September Term, 2016, No. 01452

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TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF PENNSYLVANIA:

For the reasons stated in this Answer, the City<sup>1</sup> does not oppose Petitioners' request that this Court exercise King's Bench jurisdiction over this action, but given the record Petitioners seek to litigate, the City does oppose Petitioners' request for a schedule requiring completion of the entire litigation, including this Court's final ruling, by December 31, 2016. Instead, because of the expansive record proposed by Petitioners, the City requests that the Court set a schedule that includes a discovery period of at least four months and a subsequent period and procedures for fact-finding.

## **I. INTRODUCTION**

Petitioners' action is the resurrection of a lost political battle masquerading as a civil complaint. The Philadelphia City Council, well within its legislative prerogative to address dire local health, education and revenue needs, determined that a tax on distributions made by the sweetened beverage industry, which has amassed riches targeting low-income communities with sweetened

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<sup>1</sup> "City" refers collectively to Respondents City of Philadelphia and Frank Breslin, In His Official Capacity as Commissioner of the Philadelphia Department of Revenue.

"Petitioners" refers collectively to petitioners Lora Jean Williams; Gregory J. Smith; CVP Management, Inc. d/b/a or t/a City View Pizza; John's Roast Pork, Inc. f/k/a John's Roast Pork; Metro Beverage Of Philadelphia, Inc. d/b/a or t/a Metro Beverage; Day's Beverages, Inc. d/b/a or t/a Day's Beverages; American Beverage Association; Pennsylvania Beverage Association; Philadelphia Beverage Association; and Pennsylvania Food Merchants Association.

"Petitioners' Application" refers to Petitioners' Emergency Application for Extraordinary Relief or the Exercise of King's Bench Powers pursuant to 42 Pa.C.S. §§ 502, 726.

beverages, was a price worth paying to fund crucial services for thousands of the City's most vulnerable children, among other important public needs. This was a political issue, and the powerful beverage industry lost. It tried – indeed, having prevailed twice before, it reportedly spent over \$10 million to defeat the passage of the PBT<sup>2</sup> in Philadelphia – but the City Council weighed and debated the beverage industry's arguments, found them lacking, and chose to pass the PBT.

Now, Petitioners seek to re-wage that lost battle before this Court and the Court of Common Pleas. Underscoring that this case truly concerns a political issue, not a legal one, Petitioners in essence ask this Court to act as a super-legislature to weigh all of the economic consequences (or, at least those alleged consequences selectively picked by Petitioners) to decide if the PBT is a wise law or not. Respectfully, that is not the province of this Court.

Petitioners' Complaint rests upon a kitchen-sink of flawed preemption and uniformity arguments concerning the Sterling Act, the Pennsylvania Sales and Use Tax,<sup>3</sup> and Pennsylvania's implementation of the federal government's

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<sup>2</sup> "PBT" refers to Bill No. 160176, an Ordinance titled "Sugar-Sweetened Beverage Tax," amending Title 19 of The Philadelphia Code, entitled "Finance, Taxes and Collections." *See* 19 Phila. Code § 4100, *et seq.* (the "PBT" or "Ordinance"). This tax has been referred to in common parlance as the "Philadelphia Beverage Tax."

"SBs" refers to the beverages taxed by the PBT at sections 4101(3)(a), (b).

<sup>3</sup> "Pennsylvania Sales and Use Tax" refers to the sales and use tax imposed in the Commonwealth via Sections 7201 - 7206, as amended, of Article II (Tax for Education) of the Tax Reform Act of 1971, 72 P.S. § 7101, *et seq.*

Supplemental Nutrition Assistance Program (“SNAP”). As noted in this Answer and as will be fully briefed at an appropriate time, Petitioners’ arguments require ignoring – not following – the precedent of this Court and improperly go beyond an analysis of the incidence of the relevant taxes.

As to Petitioners’ instant Application, there is no doubt that this litigation concerns a matter of immediate public importance – but the profoundly important issue at stake is not the beverage industry’s profits or that distributors will pay taxes under the PBT.<sup>4</sup> The PBT will enable the City to fund thousands of seats for low-income children, fund community schools, and renovate parks and other public spaces. The futures for these children are the issues of public importance that matter in this litigation. For that reason alone, the City concurs with Petitioners that the efficiency of obtaining a final resolution from this Court now is preferable to waiting to reach this Court upon any later grant of allocatur through ordinary procedures.<sup>5</sup> However, these important public issues, and the extensive record Petitioners seek to create, also demand that this Court have the

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<sup>4</sup> Petitioners have not sought a preliminary injunction by this Court or the Court of Common Pleas. However, it must be noted that any taxpayer aggrieved by overpayment or the (unlikely) invalidation of the PBT will be able to utilize the City’s long-standing and routine procedures for refunding PBT payments. *See* 19 Phila. Code § 1703.

<sup>5</sup> However, both the Court of Common Pleas and Commonwealth Court certainly are more than capable of considering the issues presented in this action should this Court decline King’s Bench jurisdiction.



opportunity and ability to examine fully and fairly the claims made by Petitioners and the City's responses.

As to Petitioners' proposed schedule of litigating this entire dispute and having this Court enter a final ruling by December 31, 2016, it is not tenable given the record Petitioners seek to litigate, regardless of the strength of the PBT's legal foundation. Instead, to the extent this Court assumes King's Bench jurisdiction, the City respectfully requests that the Court set a schedule that provides: (i) a discovery period of at least four months; (ii) a subsequent period and procedures for fact-finding; and (iii) a proper briefing schedule. Petitioners took nearly three months after the passage of the PBT to amass their papers, which they have loaded with extensive extraneous and inaccurate allegations, declarations and a lengthy expert report. As irrelevant as Petitioners' allegations may be regarding how private actors will act in response to the PBT, the City is entitled to discovery of Petitioners' supposed evidence, to test that evidence and to rebut it.

## **II. COUNTERSTATEMENT OF JURISDICTION**

In rare cases, this Court may exercise extraordinary jurisdiction over certain controversies pursuant to 42 Pa.C.S. §§ 502 and 726. Section 726 states:

Notwithstanding any other provision of law, the Supreme Court may, on its own motion or upon petition of any party, in any matter pending before any court or magisterial district justice of this Commonwealth involving an issue of immediate public importance, assume plenary jurisdiction of such matter at any stage

thereof and enter a final order or otherwise cause right and justice to be done.

42 Pa.C.S. § 726. Section 502 further provides:

The Supreme Court shall have and exercise the powers vested in it by the Constitution of Pennsylvania, including the power generally to minister justice to all persons and to exercise the powers of the court, as fully and amply, to all intents and purposes, as the justices of the Court of King's Bench, Common Pleas and Exchequer, at Westminster, or any of them, could or might do on May 22, 1722. The Supreme Court shall also have and exercise the following powers: (1) All powers necessary or appropriate in aid of its original and appellate jurisdiction which are agreeable to the usages and principles of law. (2) The powers vested in it by statute, including the provisions of this title.

42 Pa.C.S. § 502.

This Court has stated that King's Bench jurisdiction "should be invoked sparingly, and only in cases involving an issue of immediate public importance." *Washington Cty. Comm'rs v. Pennsylvania Labor Relations Bd.*, 417 A.2d 164, 167 (Pa. 1980). A party bears a "heavy burden" to demonstrate entitlement to extraordinary relief. *Id.* (quoting *Philadelphia Newspapers, Inc. v. Jerome*, 387 A.2d 425, 430 (Pa. 1978)).

### **III. COUNTERSTATEMENT OF QUESTIONS PRESENTED**

1. Should this Court grant all of the specific relief requested in Petitioner's Application – *i.e.*, that this Court both (i) exercise its extraordinary powers of King's Bench jurisdiction and (ii) fast-track all proceedings such that a final resolution is entered by the Court by December 31, 2016?

*Suggested Answer: No.*

2. If the Court decides to exercise King's Bench jurisdiction, and given the record Petitioners seek to litigate, should the Court provide a fair and efficient process for discovery, fact-finding and briefing to this Court?

*Suggested Answer: Yes.*

#### **IV. COUNTERSTATEMENT OF THE CASE**

##### **A. Procedural History**

On June 16, 2016, the Philadelphia City Council passed the PBT by a 13-4 vote. On June 20, 2016, the Honorable Jim Kenney, Mayor of the City of Philadelphia, signed the PBT into law.

On September 14, 2016, approximately three months after the PBT's passage, Petitioners filed a 273-paragraph Complaint in the Court of Common Pleas of Philadelphia County seeking declaratory and injunctive relief to invalidate the PBT. Petitioners assert seven different claims: Count I (express Sterling Act preemption); Count II (conflict preemption with Pennsylvania Sales and Use Tax); Count III (conflict preemption with Pennsylvania SNAP exemption); Count IV (non-uniformity of tax on beverages at distributor and retail levels); Count V (non-uniformity of tax on beverages at distributor level); Count VI (non-uniformity of tax on beverages at retail level); Count VII (non-uniformity of tax on beverages at consumer level). The Complaint also includes ten fact declarations, among other exhibits.

Petitioners did not seek a preliminary injunction, and the City has long been in the process of implementing the PBT. *See infra*, section IV.B.

On the same day they commenced this action in the Court of Common Pleas, Petitioners filed the instant 56-page Application. Attached to the Application, among other exhibits, is a 50-page proposed expert report by Kevin S. Dietly.

On September 15, 2016, this Court directed the City to file any answer to the Application by no later than September 22, 2016.

On September 16, Petitioners served Respondents with interrogatories and requests for production of documents.

On September 20, the Court of Common Pleas transferred the action to the Honorable Gary S. Glazer for all further proceedings.

## **B. Statement of Facts**

### **1. The PBT**

Effective January 1, 2017, the PBT imposes a 1.5 cent per fluid ounce tax on transactions that supply SBs to Philadelphia retailers. 19 Phila. Code § 4103(1) (applying tax to “the supply of any sugar-sweetened beverage to a dealer; the acquisition of any sugar-sweetened beverage by a dealer; the delivery to a dealer in the City of any sugar-sweetened beverage; and the transport of any

sugar-sweetened beverage into the City by a dealer.”).<sup>6</sup> The first collection deadline under the PBT for distributors is February 20, 2017.

The PBT applies “only when the supply, acquisition, delivery or transport is for the purpose of the dealer’s holding out for retail sale within the City the sugar-sweetened beverage or any beverage produced therefrom.” *Id.*

§ 4103(1). Accordingly, the PBT *only* applies to distributions by distributors before any sale at retail. *Id.*

The PBT generally is paid by distributors, *id.* § 4105(1), defined by the Ordinance as “[a]ny person who supplies sugar-sweetened beverage to a dealer.” *Id.* § 4101(2). In turn, “dealer” includes “[a]ny person engaged in the business of selling sugar-sweetened beverage for retail sale within the City . . . .” *Id.* § 4101(1).

For SBs, the tax is assessed at \$.015 per fluid ounce. *Id.* § 4103(2)(a).

For syrups and other concentrates, the tax is assessed at a rate of \$.015 per fluid

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<sup>6</sup> Petitioners’ self-invented term “Philadelphia Soft Drink Tax” is very misleading. SBs include “[a]ny non-alcoholic beverage that lists as an ingredient [certain natural and artificial sweeteners]” or “[a]ny non-alcoholic syrup or other concentrate that is intended to be used in the preparation of a beverage and that lists as an ingredient [certain natural and artificial sweeteners]...” 19 Phila. Code § 4101(3)(a), (b). Examples of sugar-sweetened beverages include, *inter alia*, soda, sports drinks, and pre-sweetened coffee or tea. *Id.* § 4101(3)(d). The definition of SBs also contains several exemptions, including baby formula; any beverage that meets the statutory definition of “medical food” under the Orphan Drug Act, 21 U.S.C. § 360ee(b)(3); any product, more than fifty percent of which, by volume, is milk; any product, more than fifty percent of which, by volume, is fresh fruit, vegetables, or a combination of the two, added by someone other than the customer; or unsweetened drinks to which a purchaser can add, or can request that a seller add, sugar, at the point of sale; and any syrup or other concentrate that the customer himself or herself combines with other ingredients to create a beverage. *Id.* § 4101(3)(c)(.1)-(6).

ounce of the resulting beverage as prepared to the manufacturer's specifications.<sup>7</sup>

*Id.* § 4103(2)(b). Distributors' invoices to dealers must indicate (i) the total volume of beverages acquired which are subject to the PBT (including, separately, the volume of the resulting beverages that may be prepared from syrups or other concentrates), and (ii) the amount of tax owing on such transaction. *Id.*

§§ 4103(3), 4104(2).<sup>8</sup>

Registered distributors are liable to the City for payment of the PBT.

*Id.* § 4105(1). Every registered distributor shall file quarterly returns setting out the amount of sugar-sweetened beverage (separately for fluid and syrup) supplied by the registered distributor to any dealer and the amount of tax owing thereon. *Id.*

§ 19-4106(1)(a). The registered dealer shall pay the amount of tax owing. *Id.*

§ 4106(1)(b).

## **2. The City Is In the Process of Implementing the PBT**

In the months since the PBT's passage, the City has worked diligently to implement the PBT, and it will be prepared to commence collection from

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<sup>7</sup> The Philadelphia Department of Revenue is authorized to issue regulations modifying the rate – as to a particular product – on syrups and other concentrates, should there be a determination that the rate provided by Section 19-4103(2)(b) of the PBT is “unfair or unreasonable.”

<sup>8</sup> The Ordinance prohibits dealers from selling SBs acquired from distributors who have not registered with the Philadelphia Department of Revenue and requires the dealer and distributor to comply with certain notice and acknowledgment requirements prescribed by the Ordinance before engaging in the supply or acquisition of SBs. *Id.* § 4102. Specifically, dealers must notify distributors of their status as a dealer under the Ordinance. *Id.* §§19-4102(1)(b), 4104(1). Registered dealers must confirm this notification and also confirm that they are, in fact, registered dealers. *Id.*

distributors for the first collection deadline of February 20, 2017. The City has hired and continues to hire staff, has drafted comprehensive regulations with the assistance and input of the industry affected, formally published those regulations for review and comment, hired contractors to implement certain aspects of the PBT (*e.g.*, public outreach and education), designed information technology systems for reporting, tracking and collection of the tax, and completed or is close to completing all other infrastructure necessary to implement the PBT.

To the extent any taxpayer is aggrieved due to overpayment or the (unlikely) invalidation of the PBT, the City has long-standing and routine procedures for refunding PBT payments. *See* 19 Phila. Code § 1703.

## **V. ARGUMENT**

### **A. The City’s Ability to Fund Pre-K Education of the City’s Children and to Address Other Crucial Public Needs Through Its Rightful Legislative Powers Is the Matter of Public Importance In This Action.**

The City agrees with Petitioners that this litigation could impact “an issue of immediate public importance,” 42 Pa.C.S. § 726, but that issue is not the beverage industry’s profits. The issue of immediate public importance threatened by Petitioners’ lawsuit is the City’s ability to address crucial public needs, such as the future of approximately 6,500 children who stand to receive Pre-K education as a result of the PBT and the hundreds of additional children who would be served by the twenty-five community schools to receive PBT funding over the next five

years. In addition, the PBT will enable the City to renovate and improve existing parks, libraries and recreational centers.

The Pre-K children at the heart of this dispute are some of the City's most vulnerable children at the most formative moments of their lives. Irrefutable data demonstrates the benefits of Pre-K for both these children and the City. For example:

In the near term, children who participate in quality preschool programs have greater math and language abilities, enhanced cognition and social/emotional skills, and fewer behavioral health problems than their peers who do not participate. Long-term studies of the impact of quality early childhood education show participants are less likely to become involved with the juvenile justice system or rely on public benefits compared with others.<sup>9</sup>

Pre-K is particularly invaluable for low-income children as it “narrow[s] the achievement gap” between children from low-income families and those from moderate- and upper-income families.<sup>10</sup> Indeed, studies show the return on investment for communities for just \$1 invested in Pre-K funding is \$4 to \$16 “in

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<sup>9</sup> Philadelphia Commission on Universal Pre-Kindergarten, *Final Recommendations Report*, at 11, Apr. 15, 2016 (citing Brown, B., and Traill, S., National Economic Development and Law Center, “Quality Child Care, School Readiness and New Jersey’s Future Economic Success,” *Benefits for All: The Economic Impact of the New Jersey Child Care Industry (Infant/Toddler, Preschool and Out-of-School Time Programs)* 9 (2006)), attached hereto as Exhibit 1.

<sup>10</sup> *Id.* at 10 (citing Minervino, J., and R. Pianta, Bill & Melinda Gates Foundation, “Early Learning: The New Fact Base and Cost Sustainability,” *Lessons from Research and the Classroom* 8 (2014)).



the form of reduced need for social services, special education, remediation, and public safety activities as well as increased tax revenue.” Ex. 1, at 10.

Petitioners’ challenge to the City’s powers to implement the PBT – as faulty as Petitioners’ arguments are – thus may be fairly said to implicate a matter of immediate public importance because it threatens to impact, presumably irrevocably, the lives of thousands of low-income children in Philadelphia. Accordingly, the City does not oppose this Court assuming King’s Bench jurisdiction over these proceedings now, though, of course, the Court of Common Pleas and Commonwealth Court are more than capable of ruling upon the issues in this litigation should this Court decline jurisdiction.<sup>11</sup>

**B. Given The Record Petitioners Seek to Litigate, Their Proposed Schedule Is Untenable.**

For at least the reasons addressed in section V.C, *infra*, and as will be amplified in further briefing at an appropriate time, Petitioners’ Complaint is rife with irrelevant factual allegations regarding supposed post-tax economic ramifications of the PBT. As a matter of law, even if Petitioners have standing to assert all of their claims, these allegations actually have no bearing on the preemption and uniformity claims asserted by Petitioners. Accordingly,

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<sup>11</sup> Petitioners’ arguments of the alleged financial harm they will suffer by having to pay the PBT during the pendency of litigation is not a matter of “immediate public importance.” Routine refund procedures already exist for any Petitioner who pays the PBT, *see* 19 Phila. Code § 1703. The first deadline for the PBT’s quarterly collections from distributors is February 20, 2017.

Petitioners' claims can and should be dismissed without any discovery or fact-finding as there are no factual disputes actually relevant to Petitioners' claims.

However, until a Court has formally ruled that resolution of Petitioners' factual allegations is unnecessary to resolution of their claims, the City is entitled to ample time for discovery and to test, rebut and supplement Petitioners' allegations. Petitioners' proposed deadline for a final resolution from this Court by December 31, 2016, simply does not provide for a fair discovery and fact-finding process of Petitioners' allegations, nor does it allow for an appropriate amount of time for briefing regarding the legal issues at stake. In fact, Petitioners' own conduct demonstrates the infeasibility of their proposed schedule. Petitioners took three months since the passage of the PBT (let alone the amount of work they put into their challenge even before the PBT's passage) to assemble their legal briefing and expert report. The fact that Petitioners needed this substantial amount of time just to file their claims demonstrates the fundamental infeasibility of litigating this highly contested action before any court with the expansive record proposed by Petitioners in just three months.

By way of example of the extensive (and extraneous) factual allegations Petitioners attempt to inject into the record, Petitioners allege that Petitioner Distributors will pass on the cost of the tax to Petitioner Retailers and Petitioner Retailers will pass on those costs to consumers at retail. (Pet'rs App. at 12-13, 15-17, 31-35, 41-42, 48.) Although irrelevant to a determination of

Petitioners' claims, the Court should not just accept those assertions, and the City is entitled to test them, discover the records of Petitioners (or, in the case of Petitioner Associations, those of the members upon whom they rely for standing), the components of their prices, their prices and profits on all products, and numerous other facts regarding Petitioners' economic pass-through argument.

The City also is entitled to supplement and make its own record, such as responding to Petitioners' expert witness testimony. Mr. Dietly's report not only is based on hearsay and flawed analyses, but also proposes an extremely incomplete record to this Court. For example, even accepting *arguendo* the calculations Mr. Dietly offers regarding the supposed "harms" various actors will "suffer" from the PBT, Mr. Dietly fails to address other factors that would be relevant to Petitioners' theories, such as: (i) the increased sales the beverage industry will experience from purchases of non-SBs in lieu of SBs (*e.g.*, bottled water instead of bottled soda), (ii) the increased revenue the City and the Commonwealth will experience from taxes on such purchases, (iii) the PBT's numerous health benefits for the City and the Commonwealth, such as reduced medical and public assistance spending, (iv) the social and economic benefits of pre-K education, and many other positive impacts of the PBT. If this Court is to consider a record of predicted economic consequences, then the Court should examine *all* of the actual or alleged impacts in the marketplace resulting from the PBT, not just those hand-picked and distorted by Petitioners.

Therefore, because of the breadth of the record Petitioners propose to litigate, the City respectfully submits that any grant of King’s Bench jurisdiction should include at least (i) a four-month period for discovery, (ii) a subsequent period and procedure for fact-finding, whether by this Court, Judge Glazer, or any other arbiter so designated by this Court, and (iii) a sufficient period for the parties to brief all relevant issues to this Court.

In sum, it is more important that the Court get this case right than that it do so quickly.<sup>12</sup>

**C. Petitioners’ Application Mischaracterizes the PBT and the Governing Law.**

Although the City will fully litigate and brief the merits of the claims in this litigation at a more appropriate juncture, the City is compelled to at least briefly address some of the core deficiencies in Petitioners’ 56-page Application. The PBT is “novel” (Pet’rs App. at 6) only insofar as it is a new tax in the City, but the legal authority supporting it is bedrock. The City will amplify the following discussion in further proceedings before this or the trial court.

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<sup>12</sup> In fact, it is the City, not Petitioners, that has a true, cognizable interest in this action moving without undue delay. Whereas any alleged harm to Petitioners from paying the PBT (and there is no such harm) would be easily reconciled through the City’s ordinary tax refund procedures, the City has moved forward and continues move forward with developing all manners of infrastructure to support the PBT, and is relying upon revenues from the tax to be able fund the crucial public programs noted in section V.A, *supra*.

**1. The Sterling Act Fully Authorizes the PBT.**

In response to the Great Depression, in 1932, the General Assembly conferred upon Philadelphia extremely broad tax authority through the Sterling Act, 53 P.S. § 15971. As is the case with the General Assembly's grant of Home Rule Powers to the City, rather than explicitly enumerating certain limited powers available to the City, the Sterling Act essentially provides that the City is empowered to tax whatever the General Assembly does not:

[T]he council of any city of the first class shall have the authority by ordinance, for general revenue purposes, to levy, assess and collect, or provide for the levying, assessment and collection of, such taxes on persons, transactions, occupations, privileges, subjects and personal property, within the limits of such city of the first class, as it shall determine, except that such council shall not have authority to levy, assess and collect, or provide for the levying, assessment and collection of, any tax on a privilege, transaction, subject or occupation, or on personal property, which is now or may hereafter become subject to a State tax or license fee.

53 P.S. § 15971. The Sterling Act's grant of authority thus is immensely broad, and the only limit that it places upon the City's taxing authority is that the City not tax the same "privilege, transaction, subject or occupation, or on personal property" that the State taxes. *Id.*

Accordingly, in the absence of a State tax or fee applying to the same transactions as those taxed by the PBT, the Sterling Act clearly authorized the City Council to enact the PBT.

**2. The PBT Does Not Tax the Same “Transactions” As Those Taxed By the Pennsylvania Sales and Use Tax.**

In an effort to manufacture a claim of duplicating a State tax in a manner prohibited by the Sterling Act, Petitioners torture the Pennsylvania Sales and Use Tax, doing everything from renaming it the “Pennsylvania Soft Drink Tax” (Pet’rs App. at 1)<sup>13</sup> to declaring that the Pennsylvania Sales and Use Tax essentially exempts distributors from all taxation of all kinds. A plain reading of the Pennsylvania Sales and Use Tax proves that neither is correct.

The Pennsylvania Sales and Use Tax levies a 6% tax on “sale[s] at retail of tangible personal property or services . . . within this Commonwealth.” 72 P.S. § 7202(a). A “sale at retail” is defined as: “Any transfer, for a consideration, of the ownership, custody or possession of tangible personal property, including the grant of a license to use or consume whether such transfer be absolute or conditional and by whatsoever means the same shall have been effected.” *Id.* § 7201(k)(1).<sup>14</sup> Plainly, “sales at retail” do not include “any such transfer of tangible personal property or rendition of services for the purpose of resale,” *id.*

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<sup>13</sup> Petitioners’ use of skewed, self-invented nomenclature is nothing new. Before the City Council, the soda industry renamed the proposed tax the “Grocery Tax.” Now, in this litigation, they rename the application of the Pennsylvania Sales and Use Tax to “soft drinks” to be a “Pennsylvania Soft Drink Tax” or the “Commonwealth Soft Drink Tax.” (Pet’rs App. at 1; *see also supra* at n. 6 (noting Petitioners’ additionally misleading term “Philadelphia Soft Drink Tax”).) To borrow Petitioners’ own phrase, such “subterfuge fails.” (Pet’rs App. at 35.)

<sup>14</sup> Although certain sales of food at retail are exempt from the Pennsylvania Sales and Use Tax, sales of “soft drinks” at retail are not. *Id.* § 7201(a); *id.* § 7204(29)(i).

§ 7201(k)(2), and thus, such non-retail transactions are not taxed by the Pennsylvania Sales and Use Tax.

The proper analysis to determine whether the PBT violates the Sterling Act is whether the PBT taxes the same “transactions” as those transactions taxed by the Pennsylvania Sales and Use Tax.<sup>15</sup> Quite clearly, it does not. Indeed, the PBT taxes only non-retail, distribution-level transactions of SBs, and the Pennsylvania Sales and Use Tax taxes only “sale[s] for retail,” 72 P.S.

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<sup>15</sup> Contrary to Petitioners’ argument that the distinction in the transactions taxed by the PBT and the Pennsylvania Sales and Use Tax is “irrelevant” (Pet’rs App. at 30), the fact that the two “transactions” are not the “same” means the taxes are not duplicative under the plain language of the Sterling Act. 53 P.S. § 15971. Petitioners’ cited cases do not support their argument of supposed irrelevancy. *United Tavern Owners of Phila. v. School Dist. of Phila.*, 272 A.2d 868 (Pa. 1971) (cited in Pet’rs App. at 25, 29-30) is distinguishable and non-binding. Local taxation concerning the alcohol beverage industry in the Commonwealth is preempted on field preemption grounds because of the pervasive regulatory monopoly the state has imposed on the alcohol beverage industry and not simply because of the Pennsylvania Sales and Use Tax’s 6% levy on tangible property generally (as Petitioners argue here). *See Commonwealth v. Wilsbach Distribs., Inc.*, 519 A.2d 397, 401-02 (Pa. 1986) (plurality op.). Regardless, the holdings and analysis of *United Tavern*, which was a “splintered” single-justice opinion with a plurality concurring only in the result, has long been supplanted by subsequent decisions of this Court. *See, e.g., id.* at 399-400 (“re-examin[ing]” the issue raised in *United Tavern* because it was “splintered” and “Mr. Justice O’Brien [was] speaking for himself”); *see also City of Phila. v. Clement & Muller, Inc.*, 715 A.2d 397, 398 (Pa. 1998) (clarifying that *Wilsbach*, a plurality decision, is the law of the Commonwealth). Quite the opposite of a basis for finding field preemption here, there is nothing close to a pervasive state regulatory monopoly over the non-alcoholic beverage industry, let alone over the non-retail transactions that the PBT taxes.

Petitioners’ other cited cases all concern two taxes that the courts determined were imposed on the same property at the same time, not two different taxes imposed on two different transactions as property was transferred among parties at different times. *See Murray v. City of Phila.*, 71 A.2d 280 (Pa. 1950) (invalidating city income tax that taxed the same property already taxed under state property tax laws); *Folcroft Borough v. Gen. Outdoor Adver.*, 72 Pa. D. & C. 539 (Pa. Ct. Cm. Pls. Del. Cty. 1950) (invalidating local property tax on billboards that was duplicative of a state tax on the billboard owners’ corporate net income that included the value of the billboards); *Pocono Downs, Inc. v. Catasauqua Area Sch. Dist.*, 669 A.2d 500, 502-03 (Pa. Commw. 1996) (invalidating a local tax on wagers placed at off-track betting facilities, where the same wagers were already being taxed under a state gross wager tax).

§ 7201(k)(1). As the PBT plainly applies only to distribution-level transactions of SBs, which are not taxed under the Pennsylvania Sales and Use Tax, the Sterling Act thus authorizes the PBT.<sup>16</sup> See 19 Phila. Code § 4103(1).

Accordingly, Petitioners' express preemption argument fails.

**3. Courts Review a Tax's Incidence, Not How Private Actors Will Operate in Response to a Tax.**

Petitioners' other preemption arguments – field and conflict preemption by the Pennsylvania Sales and Use Tax and by the state SNAP exemption (Pet'rs App. at 39-50) – and their uniformity arguments (Pet'rs App. at 50-56) are premised on a faulty misreading and overextension of precedent. Petitioners argue that because the Petitioner Distributors allege that they intend to raise their prices in response to the PBT, and because the Petitioner Retailers allege that they intend to raise their prices in response to increased prices if their distributors increase prices, then, *a fortiori*, the “incidence” of the PBT shifts such that consumers at retail become the down-the-line “taxpayer” and the consumer pays the “tax.” Petitioners are wrong for at least three reasons.

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<sup>16</sup> Contrary to Petitioners' argument, *Wetzel* does not stand for the proposition that the Pennsylvania Sales and Use Tax preempts local taxation of transactions not taxed by the Pennsylvania Sales and Use Tax. (Pet'rs App. at 33 (relying upon *Commonwealth v. Wetzel*, 257 A.2d 538 (Pa. 1969).) *Wetzel* determined that the Pennsylvania Sales and Use Tax should be levied on both the transaction of selling horse stud services and the transaction of selling the foal. *Wetzel* has nothing to do with whether a local tax may apply to a transaction that the Pennsylvania Sales and Use Tax does not tax. Here, there is no question that the transactions taxed by the PBT, *i.e.*, transactions for distribution of SBs, are transactions not taxed by the Pennsylvania Sales and Use Tax.



*First*, while the Court should not just accept Petitioners' self-serving allegations of such down-the-line offsetting of the cost of a tax, the allegations actually have no bearing on a preemption or uniformity claim. An analysis of the incidence of a tax is not an analysis of resulting, post-tax economic burdens such as whether private actors will independently raise their prices in response to a tax. Petitioners' overextension of *Commonwealth v. National Biscuit Co.*, 136 A.2d 821 (Pa. 1957), and its progeny to argue otherwise should be rejected.

*Second*, Petitioners' argument leads to the absurd result that the Pennsylvania Sales and Use Tax preempts all taxation of all kinds applied to any distributor or retailer of any tangible personal property.

*Third*, Petitioners' argument would impermissibly turn the courts into super-legislatures, infringing upon the province of the legislature while also assuming a responsibility for never-ending fact-finding inquiries of all actual and potential economic consequences of any given tax.

**a) The Incidence of the PBT.**

When determining whether a tax is a property tax, excise tax or any other type of tax, courts review the challenged tax's "operation or incidence" rather than its self-declared title. *National Biscuit Co.*, 136 A.2d at 826 ("The incidence of a tax embraces the subject matter thereof and, more important, the measure of the tax, *i.e.*, the base or yardstick by which the tax is applied. If these elements inherent in every tax are kept in mind, the incidence of the two taxes may or may

not be duplicative.”). But Petitioners take this proposition way too far, and their reliance upon their cited Pennsylvania and United States Supreme Court authority is misplaced. (Pet’rs App. at 25 (citing various cases from Pennsylvania and the United States Supreme Court).) A court’s analysis of a *tax*’s incidence means analyzing how the *tax* itself operates, not what private actors do in response to the tax or other post-tax economic transactions.

As a matter of law, whether a private actor raises its prices in response to a tax does not determine or shift the incidence of a tax. In *Gurley v. Rhoden*, 421 U.S. 200 (1975), the United States Supreme Court expressly rejected a distributor’s argument that the incidence of a federal excise tax on gasoline levied on the distributor, which then raised its gas prices in response to the tax, was effectively a tax levied on the consumer. *Id.* at 204. “[T]he decision as to where the legal incidence of either tax falls is not determined by the fact that petitioner, by increasing his pump prices in the amounts of the taxes, shifted the economic burden of the taxes from himself to the purchaser-consumer. The Court has laid to rest doubts on that score . . . .” *Id.* In addition, rejecting an argument remarkably similar to Petitioners’ reliance upon statements by Mayor Kenney (Pet’rs App. at 32), the Court found the fact that President Johnson intended and recognized that consumers would “bear the economic burden of the tax” had no bearing on “the legal incidence of the gasoline tax.” *Gurley*, 421 U.S. at 207.

Similarly, the United States Supreme Court has explained that merely because the economic burdens of a state tax on a contractor may be passed on to the federal government – just as Petitioners argue the economic burden of the PBT will be passed from distributors to retailers to consumers – does not mean that the state tax violates the United States’ immunity from state taxation. *United States v. New Mexico*, 455 U.S. 720, 734 (1982) (“[I]mmunity may not be conferred simply because the tax has an effect on the United States, or even because the Federal Government shoulders the entire economic burden of the levy. . . . [It is] constitutionally irrelevant that the United States reimbursed all the contractor’s expenditures, including those going to meet the tax: the Government’s right to be free from state taxation “does not spell immunity from paying the added costs, attributable to the taxation of those who furnish supplies to the Government and who have been granted no tax immunity.”) (quoting *Alabama v. King & Boozer*, 314 U.S. 1, 9 (1941)).<sup>17</sup>

This Court recently rejected a taxpayer’s plea to analyze the economic effects of the tax, as opposed to the actual operation of the tax, in analyzing a locality’s authority to tax. In *Fish v. Township of Lower Merion*, 128 A.3d 764

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<sup>17</sup> Petitioners’ SNAP preemption argument fails for the same reasons, among others. The SNAP statute prohibits state participation “if the Secretary determines that state or local sales taxes are collected within that state on purchases of food made with [SNAP] benefits,” 7 U.S.C. § 2013(a), and such purchases are restricted to purchases at retail stores. 7 U.S.C. § 2016(b). But, just like in *United States v. New Mexico*, a distributor’s inclusion of a cost of a tax in the distributor’s overhead and price does not mean the down-the-line customer actually uses federal monies to pay the “tax.”

(Pa. 2015), this Court held that the Local Tax Enabling Act's prohibition on taxing leases did not preclude Lower Merion from applying its business privilege tax to businesses whose sole income consisted of rent payments on leased real property. *Id.* at 765. Looking only to the substantive provisions of the tax to determine its incidence, this Court expressly rejected an argument that the local tax was prohibited because some private actors would experience the privilege tax exactly as they would have experienced an otherwise prohibited transaction tax.<sup>18</sup>

Here, whether and by how much any distributor raises prices on SBs or other products in response to the PBT, and whether any retailer subsequently does the same, does not mean that the end-consumer becomes the taxpayer or pays the tax. The incidence of the PBT plainly is to tax only non-retail transactions and to impose collection and taxpayer responsibilities for the PBT on the distributor (or, in certain circumstances, retailers that choose to be responsible). By its clear terms, it never taxes retail-level transactions and no consumer ever has tax liability for the PBT.<sup>19</sup> *See* 19 Phila. Code § 4103(1).

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<sup>18</sup> None of the cases cited by Petitioners determined any tax's incidence by reference to how a market or private actors might function in response to that tax. (Pet'rs App. at 25 (citing cases).)

<sup>19</sup> Petitioners' uniformity argument is built on the false premise that the PBT is a property tax, and from there, Petitioners offer scores of faulty calculations and unwarranted assumptions to manufacture a perceived lack of uniformity. However, Petitioners' own cited authority forecloses Petitioners' argument. *In re Lawrence Tp. Sch. Dist. 1947 Taxes*, 67 A.2d 372 (Pa. 1949) (cited in Pet'rs App. at 30, 35-36, 53-54) actually demonstrates that the PBT is not a property tax and that it need not be measured on an *ad valorem* basis. *Lawrence* rejected a school board's characterization in litigation of its tax as a levy on the "privilege" of mining coal because the tax ordinance never actually said it was upon the privilege of mining coal.

**b) The Pennsylvania Sales and Use Tax Does Not Immunize Businesses From Taxation.**

Petitioners' overextension of *National Biscuit* also fails because it would render the preemptive effect of the Pennsylvania Sales and Use Tax boundless. Manufacturers, distributors and retailers pay state and local taxes of numerous kinds – *e.g.*, real estate taxes, privilege taxes, fuel taxes, and sales and use taxes on purchases of items they do not resell, such as computers, office supplies and furniture to run their businesses. Rolling the costs of those taxes into their overhead and raising their prices upon their customers does not mean that any end-consumer is the “taxpayer” or pays the “tax” for which the businesses are liable. It merely means the consumer might pay a higher price that is influenced by the costs, including taxes, that businesses bear or anticipate bearing.

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*Lawrence*, 67 A.2d at 374. Importantly – and ignored by Petitioners – the Court specifically recognized that the tax and its measurement by the quantity of “coal mined” would have been entirely proper as a non-property tax had the school board merely stated, in the tax and not just in the litigation, its intentions to tax the privilege of mining: “If it was the purpose of the School Board to levy an occupation or excise tax, they might easily have removed the question from the field of controversy by simply stating in the Resolution that they were imposing a tax on the privilege, business or occupation of mining.” *Id.* Here, the City, just as *Lawrence* instructs, “removed the question from the field” by unequivocally stating in the Ordinance itself – and not just the litigation – that the tax is triggered by, and applied to, the transactions of distributing SBs.

In this regard, the PBT is just like fuel taxes, cigarette and tobacco taxes, and alcohol taxes, which are not assessed on an *ad valorem* basis. 75 Pa.C.S. § 9004 (fuel taxed by gallon), 74 Pa.C.S. § 6121 (fuel taxed by gallon); 72 P.S. § 9003 (alcohol taxed by ounces); 19 Phila. Code § 1807 (tobacco products taxed by quantity); 72 P.S. § 8206 (tobacco products taxed by quantity).

Yet, under Petitioners' theory, the Pennsylvania Sales and Use Tax prevents the assessment of all such taxes against businesses because an end-consumer at retail would pay a purchase price that in "practical effect" would include the cost of those other taxes. This is not what the General Assembly intended or stated in the Sterling Act, which plainly authorizes the City to tax anything that is not taxed by the state, 53 P.S. § 15971, or the Pennsylvania Sales and Use Tax, which plainly only taxes "sales at retail," 72 P.S. § 7202(a).

Petitioners' attempt to create a back-door exemption from taxation for businesses engaging in non-"sales at retail" because these private actors might pass on the cost of their taxes to consumers who pay the state sales tax must be rejected.

**c) The Court Is Not a Super-Legislature.**

Finally, and respectfully, the Court should reject Petitioners' plea to assume super-legislative powers to determine the incidence of a tax. As an initial matter, whether a tax's economic consequences are light or harsh, wise or not, is a matter distinctly within the purview of the legislature. Moreover, Petitioners' proposal would lead to unmanageable, never-ending fact-finding inquiries into the nearly limitless economic consequences of any tax. For example, Petitioners allege that distributors will pass the cost of the tax to retailers, who will pass the cost of the tax to consumers. (Pet'rs App. at 31-32.) Petitioners ignore that distributors and retailers may also experience off-setting benefits such as higher volume of purchases of non-SBs in lieu of SBs. Even so, the revenues from the

PBT will fund Pre-K and community schooling, which will provide numerous economic and social benefits for the City. *See, e.g.*, Ex. 1 at 10 (every \$1 invested in Pre-K returns \$4 to \$16 in savings). In addition, healthier citizens are more productive citizens, have fewer health and medical costs, and need less public assistance, and such public benefits beget other public benefits, *ad infinitum*.<sup>20</sup>

At what point in this proposed fact-finding process does a court decide private actors' actions or other economic consequences resulting from a tax are relevant, and with what degree of certainty does a court need to expect those private actions or consequences to occur for them to be relevant? This Court and the United States Supreme Court have answered this question already – the courts do not go down this road and they look to the *tax's* operation in determining its incidence, not a market's reaction to the tax.

## **VI. CONCLUSION**

At base, this litigation is an effort to deprive local government of the right to raise revenues at a time when the state and federal governments are not fully funding local needs. That the City has chosen to tax transactions not taxed by the Commonwealth is a political choice of necessity. This Court is not a place to debate the wisdom of who wins and who loses when such political choices must be

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<sup>20</sup> Petitioners' doomsday scenario that the City or other localities may implement other local taxes (Pet'rs App. at 3) is just the long-standing status quo in the Commonwealth. The General Assembly, in its wisdom, empowered localities to enact taxes, and through the Sterling Act, specifically conferred broad taxing powers to the City. The popularity or unpopularity of a tax is a political issue, not a legal one.

made. The powerful beverage industry had ample voice in the City's deliberations on whether to enact such tax legislation. Taking the powers of local government away – especially in a case like this – is to hobble local government henceforth. Fortunately, the law offers the beverage industry no basis to do so.

Accordingly, the City does not oppose Petitioners' Application's request for the Court to exercise King's Bench jurisdiction now, but given the record Petitioners propose to litigate, the City opposes Petitioners' demand for a schedule requiring the entire litigation, including this Court's final ruling, to be completed by December 31, 2016. If the Court assumes King's Bench jurisdiction, the City requests that the Court provide for a fair and efficient period and procedures for discovery and fact-finding, as set forth above.



Dated: September 22, 2016

Respectfully submitted,

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# **EXHIBIT 1**

# Philadelphia Commission on Universal Pre-Kindergarten

*Final Recommendations Report*

*April 15<sup>th</sup>, 2016*



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## Executive Summary

Philadelphia is a more diverse, safe, educated, and thriving city than it has been in decades. But its potential for future progress will be held back until all children, regardless of race, ethnic or socioeconomic backgrounds are ready to succeed in school.

Quality Pre-Kindergarten programs can make it happen. In the long term, the programs result in fewer children in special education classes, higher graduation rates, increased earning potential, better health, and narrowing the achievement gap rooted in income and other environmental factors. Quality Pre-K programs also have been shown to support parents' efforts to enter into and thrive in the workforce. The benefits ripple through the workforce, economy, and community. Yet only one in three of Philadelphia's 42,500 three- and four-year-olds have access to affordable quality Pre-K.

On May 19, 2015, Philadelphians voted overwhelmingly (80 percent) to create the Philadelphia Commission on Universal Pre-Kindergarten. Its charge: propose a universal Pre-K program that provides quality, affordable, and accessible services to three- and four-year-olds throughout Philadelphia. The Commission was tasked with providing recommendations for sustainable funding for Pre-K *that does not reduce existing K–12 funding*.

Beginning work on June 30, 2015, the 17-member Commission reviewed the current state of early learning in Philadelphia. It found a sizable gap between the current situation and the basic requirements for quality Pre-K—in particular, a gap in funding and coordination. While the estimated cost of quality Pre-K is between \$14,000 and \$15,000 per child for full day, full year care, current funding is well below that. Insufficient resources limit the ability to provide the basic tenets of quality Pre-K: a stable workforce with appropriate credentials and compensation, quality facilities in convenient locations, and funding for families who cannot otherwise afford quality Pre-K.

The Commission reviewed scientific research, evidence-based practices, and current local and state efforts. It garnered input from experts in the field, and over 450 members of the public, through multiple hearings, community meetings, roundtable discussions, an online survey, and emailed feedback.

### **Recommendations**

The Commission recommends the following:

- I. Philadelphia's Pre-K program be delivered in settings that meet rigorous quality standards or are growing into quality, are monitored for quality by external observers, conduct regular child assessment, and report on outcomes. (*See 'Quality Expectations,' pg. 24*)
- II. The City's Pre-K program develop and oversee the management of expanded quality Pre-K using a mixed-delivery system that partners with community-based child care centers, group, family, and school-based programs that meet quality standards or are growing into quality programs. (*See 'Mixed Delivery System,' pg. 25*)

- III. The expanded Pre-K system is available to all three- and four-year-olds in Philadelphia, with priority given to children in neighborhoods with the highest concentrations of poverty, children at highest risk of poor academic and life outcomes, and areas with a shortage of quality Pre-K slots. *(See 'Populations Served,' pg. 25)*
- IV. A universal plan for Pre-K that begins with a targeted approach. *(See 'Universal System,' pg. 26)*
- V. The City oversee the creation of an expanded Pre-K program that would enable subsidy-eligible children to participate all day (eight hours or more per day) throughout the year (260 days per year). *(See 'Dosage,' pg. 28)*
- VI. Philadelphia Pre-K program include a variety of child care models, including center-based, group, family, and school-based settings that meet or are moving to embrace the standard for quality. *(See 'Child Care Settings,' pg. 28)*
- VII. The City leverage, streamline and organize resources to enable providers to layer funding from more than one public source (Head Start, Pre-K Counts, local Pre-K funding, CCIS). This will help ensure that children can be in care a minimum eight hours a day, 260 days a year and provide resources to cover the full cost of quality for those families that qualify. *(See 'Layered Funding,' pg. 29)*
- VIII. Philadelphia's Pre-K system use curricula that have been approved by the Office of Child Development and Early Learning (OCDEL) that meet the Pennsylvania Early Learning Standards. *(See 'Curriculum,' pg. 29)*
- IX. The Commission recommends the following strategies for 'Child Outcomes and Assessment', *(see pg. 30)*
  - a. Philadelphia's Pre-K plan tie child assessment and outcomes reporting to Pennsylvania's existing system and avoid duplication of efforts by providers or monitors.
  - b. The City work with OCDEL to streamline assessment and reporting requirements across all quality Pre-K programs regardless of funding source.
- X. Philadelphia's Pre-K program use the monitoring system that exists for Pre-K Counts. The City should explore with OCDEL whether it is possible to use Pre-K Counts program monitors for the locally-funded cohort. This should entail receiving regular monitoring reports from the state. *(See 'Program Monitoring,' pg. 31)*
- XI. The Commission recommends the following strategies for 'Quality Improvement' *(see pg. 31)*
  - a. The implementation plan direct significant City resources, leverage existing support programs, and work with philanthropy and higher education to make new investments

to expand quality improvement resources to increase the number of providers in STARS and for providers to move up the ladder.

- b. After changes are made to streamline Keystone STARS, the City work with state partners to look at requiring all programs that receive federal, state, and local investment to participate in Keystone STARS.

- XII. The City encourage the development and adoption of an equitable and comprehensive approach to kindergarten transition that delineates clear expectations for all Pre-K providers, K–3 schools, and other organizations to support children in making a successful transition to kindergarten. (*See 'Kindergarten Transition,' pg. 32*)
- XIII. The Commission recommends the following strategies for 'Workforce Development' (*see pg. 32*)
  - a. The Pre-K program maximize use of the existing early childhood workforce development system and resources to meet professional development requirements to adequately prepare Pre-K teachers. As part of this support, it should work to increase utilization of existing academic advisors by child care professionals.
  - b. Release of City Pre-K funding to providers should be contingent on compliance with salary scales that provide teachers with appropriate compensation.
  - c. The City of Philadelphia work with OCDEL to make accommodations to include teachers who are working to obtain required degrees and credentials to serve in quality child care programs while expanded Pre-K is being phased in order to promote equity and inclusion.
  - d. The City's Pre-K program work with stakeholders such as institutions of higher education, providers, and advocates to ensure that teacher preparation programs provide the necessary skills for practitioners to be effective teachers.
- XIV. The creation of a governance board to oversee the Pre-K program's receipt and distribution of funding to providers and oversee the implementation of Philadelphia's Pre-K program to ensure a fair and equitable system. (*See 'Governance and Organizational Structure,' see pg. 36*)
- XV. The City fund quality Pre-K slots for the traditional six-hour school day and 180-day school year at \$8,500 per slot. This proposed per child rate should match the state Pre-K Counts rate. (*See 'Local Pre-K Funding Model,' pg. 39*)
- XVI. The Commission recommends the following strategies for 'Revenue to Fund Pre-K' (*see pg. 43*)
  - a. City Council and the Mayor consider the following options as potential funding sources: Property Tax, Wage Tax, Sales Tax, Use & Occupancy Tax, Cigarette Tax, Liquor Tax, Parking Tax, and Sugary Drink Tax.
  - b. A majority of the Commission (13 of 17, with one abstention) recommend that the City (City Council and the Mayor) support the Sugar Drink Tax as a possible funding source to support Pre-K.



- c. The Commission unanimously recommends that the Mayor and the City Council work together to identify sufficient funding to support the Pre-K program recommended herein regardless of the funding source.

- XVII. The Commission recommends the following strategies for the ‘Process for Developing the Implementation Plan’ (*see pg. 47*)
- a. The Mayor’s Office of Education develop a detailed implementation plan guided by the Commission’s recommendations for expanded Pre-K, pending the concurrence of City Council.
  - b. The plan be developed transparently and in partnership with child care providers including directors, teachers and staff, and parents.
  - c. The implementation plan be presented to the wider community for public feedback; this includes parents, providers, businesses and community members.

The Commission presents these recommendations to Mayor Jim Kenney and City Council for review and discussion.

The recommendations represent nine months of research, policy development and robust public dialogue by the Philadelphia Commission on Universal Pre-K and its staff. The Commission presented a Draft Report on February 2, 2016 to the Mayor and City Council for review. In addition to public discussion prior to the release of the draft report, the Commission convened a public hearing and conducted more than ten neighborhood meetings with those who would be most impacted by this plan, including low-income parents, teachers, community members and child care providers. The Commission then revised the plan based on the feedback.

Pre-K is a smart investment in growing minds and preparing children to be skilled learners at the time when they are primed for it. If done right, expanding Pre-K will provide deep and lasting benefits for the families and residents of Philadelphia.

## Background

Investments in quality Pre-K provide long-term gains for all children and reduce the gaps in school readiness faced by many children. Studies illustrate significant benefits for children who participate in quality early education programs: increased performance in school, improved social and emotional skills, fewer behavioral problems, decreased need for special education, increased high school graduation rates, and increased earning potential. To put it simply, children benefit greatly from quality early learning opportunities, and those benefits ripple through our workforce, economy, and communities.

Today, Philadelphia is a more diverse, safe, educated, and prosperous city than it has been in decades, but its potential for future progress is threatened by unemployment, low wage jobs, and pockets of severe poverty. Without a system of expanded, quality Pre-K that is accessible to all young children, Philadelphia’s collective potential is being held back. While investments in quality early childhood education exist in Philadelphia through federal, state, and private sources, only one in every three of Philadelphia’s three- and four-year-olds has access to quality Pre-K. Tens of thousands of children are being left behind before they even get to school.

It was against this backdrop that on May 19, 2015, Philadelphia voters overwhelmingly approved a ballot initiative creating the Philadelphia Commission on Universal Pre-Kindergarten. With more than 80 percent voter approval, the 17-member Commission was charged with proposing a universal Pre-K program that provides quality, affordable, equitable, and accessible educational services to three- and four-year-olds throughout Philadelphia. In addition, the Commission was to provide funding recommendations that would not reduce existing K–12 education funding.

The Commission was formed on June 30, 2015, co-chaired by Sharon Easterling, Executive Director of the Delaware Valley Association for the Education of Young Children (DVAEYC), and Dr. Loretta Jemmott, Vice President for Health and Health Equity at Drexel University and Professor, College of Nursing and Health Professionals.

The Commission members are as follows:

<b>Name</b>	<b>Title, Organization</b>	<b>Appointing Authority</b>
<b>Sharon Easterling (Co-Chair)</b>	Delaware Valley Association for the Education of Young Children, Executive Director	Mayor
<b>Loretta Jemmott (Co-Chair)</b>	Drexel University, Vice President for Health and Health Equity, Professor, College of Nursing and Health Professionals	City Council
<b>Jannie Blackwell</b>	Philadelphia City Council, Council Member District 3	City Council
<b>Catherine Blunt</b>	Parkway Center City High School, Former Principal	City Council
<b>Miriam Calderon*</b>	The Commonwealth Foundation, Senior Advisor for Early Learning	Mayor

<b>Diane Castelbuono</b>	School District of Philadelphia, Deputy Chief for Early Learning	Ex Officio
<b>Donna Cooper</b>	Public Citizens for Children and Youth, Executive Director	City Council
<b>Marita Crawford</b>	IBEW Local 98, Political Director	Mayor
<b>Rob Dubow</b>	City of Philadelphia, Director of Finance	Ex Officio
<b>Jennifer Duffy</b>	Henry Lea Elementary School, Principal	City Council
<b>Michelle Figlar</b>	Pennsylvania Department of Education, Office of Child Development & Early Learning, Deputy Secretary	Ex Officio
<b>Vanessa Garrett Harley*</b>	City of Philadelphia Department of Human Services, Former Commissioner	Ex Officio
<b>Anne Gemmell</b>	Mayor's Office of Education, Pre-Kindergarten Director	Mayor
<b>Alan Greenberger*</b>	City of Philadelphia, Former Deputy Mayor for Economic Development and Director of Commerce	Ex Officio
<b>Margarita Hernandez</b>	Asociación Puertorriqueños en Marcha for Everyone, Director of Early Childhood Programs	Mayor
<b>Reuben Jones</b>	Frontline Dads, Inc., Executive Director	Mayor
<b>Sherilynn Kimble</b>	Retired Early Childhood Educator and Center Director	City Council
<b>Pheng Lim</b>	Folk Arts-Cultural Treasures (FACT) Charter School, Principal	Mayor
<b>Lisa Nutter*</b>	Philadelphia Academies Inc., President	Mayor
<b>Blondell Reynolds-Brown</b>	Philadelphia City Council, Council Member At-Large	City Council
<b>Rob Wonderling</b>	Greater Philadelphia Chamber of Commerce, President and CEO	Mayor

*\*As of January 4<sup>th</sup>, 2016, these members were substituted by appointments from the new Administration.*

### **Role of the Commission**

The legislation that created the Commission outlines its role as detailed below:

*“The Commission shall conduct a comprehensive analysis of early childhood education in Philadelphia and produce a feasible plan to move the City toward providing universal Pre-Kindergarten, including proposals for funding that would not reduce existing educational funding. The Commission’s ultimate goal shall be a universal Pre-Kindergarten program to provide high-quality, affordable, and accessible educational services to the City’s three- and four-year olds throughout the city.”*

*“The Commission shall . . . adopt a written final report proposing specific steps toward a universal Pre-Kindergarten program, including an administrative structure and a final funding proposal.”*

## **Vision**

The Commission’s work is guided by the following vision: “We envision a Philadelphia where all three- and four-year-olds have access to quality, affordable, and accessible Pre-K opportunities, which are sustainably funded and allow each student to become a lifelong learner and contributing citizen.”

## **Guiding Principles**

Below are the principles that guided the development of the Commission’s report and recommendations on the framework for expanded Pre-K in Philadelphia. These principles state that the program will:

- Incorporate elements required to eliminate racial and income gaps in school readiness, and build quality especially accessible to communities in need
- Be affordable to all families, if not free for those in poverty or near poverty
- Be funded with recurring and dedicated revenue sources
- Be accessible for families and providers and utilize Philadelphia’s diverse landscape of quality providers
- Expand the supply of quality early learning programs by making quality improvement resources available to community based programs that have a commitment to reach higher standards
- Stabilize child care staffing through adequate compensation, supports, and education
- Ensure quality learning experiences for children by employing and increasing the number of well-trained staff
- Ensure a cohesive transition to K–12 public education
- Provide opportunities for children to be educated in their communities
- Strive for equity and inclusion for children, families, and providers
- Ensure transparency in the creation and management of the expanded Pre-K program

## **Approach to Development and Public Input Process**

The Philadelphia Commission on Universal Pre-Kindergarten recommendations build from the parameters established in the Home Rule Charter, previous research and efforts at the city and state levels, evidence-based practices, and rigorous scientific research.

The Commission on Universal Pre-Kindergarten partnered with various public, private, and non-profit entities to support its work, including subject matter experts, and received input from over 450 members of the general public, including parents, child care providers, teachers and others through two public hearings, thirteen community meetings, an online survey, and emailed feedback. Key themes expressed by the community were:

- The need to improve access to and increase the supply of quality early learning programs, particularly in low-income neighborhoods
- The need to identify possible additional resources, especially for smaller providers to improve quality

- The need for equitable and sustainable programs
- The need for parent engagement
- The need for provider engagement
- The need for overall greater inclusion and engagement of the community
- The need for kindergarten transition programming, specifically on the part of the public school system
- Support for improving compensation and training for the early learning workforce
- The importance of quality standards, such as the Keystone STARS Quality Rating and Improvement System
- Concerns surrounding the unintended consequences of a quality City Pre-K program on family providers, providers of low or unknown quality, and low income neighborhoods
- The importance of including specific populations such as immigrants, refugees, children in poverty, and children with developmental delays and disabilities
- The need to strengthen connections to early intervention services

For more information about the public input process and details on comments, see Appendices A and B.

### **Defining Quality Pre-K**

Based on best practice research on quality Pre-K,<sup>1</sup> the Commission relied on the following characteristics to define quality Pre-K throughout this report:

- Occurs in a public school or licensed child care center, group or family child care program.
- Addresses all of a child’s learning and development needs – cognitive, social-emotional, behavioral, cultural, and physical – using evidence-based early learning standards.
- Supports families in improving their knowledge and skills about parenting.
- Addresses racial, ethnic, and socioeconomic disparities.
- Is taught by highly qualified teachers and staff.
- Supports children’s transition to Kindergarten.

Keystone STAR 3 and 4, Head Start, Pre-K Counts programs, or NAEYC accredited programs reflect these characteristics.

### **Quality Pre-Kindergarten Return on Investment**

When policymakers analyze the best uses of scarce taxpayer dollars, the case for investing in quality early childhood education is clear. The return on investment for funding quality preschool ranges from \$4 to \$16 saved for every \$1 invested in the form of reduced need for social services, special education, remediation, and public safety activities as well as increased tax revenue. In particular, quality early childhood education investments have been repeatedly shown to narrow the achievement gap, as children in low-income families benefit the most as compared with children from moderate- and upper income-families.<sup>2</sup> Few interventions provide better outcomes for individuals and the community per dollar than investments in Pre-K.

## **Child Outcomes**

A large and growing body of evidence shows that investments in quality early education produce improved school-readiness and later life outcomes for children, particularly disadvantaged children. In the near term, children who participate in quality preschool programs have greater math and language abilities, enhanced cognition and social/emotional skills, and fewer behavioral health problems than their peers who do not participate.<sup>3</sup> Long-term studies of the impact of quality early childhood education show participants are less likely to become involved with the juvenile justice system or rely on public benefits compared with others.

According to James Heckman, Nobel Prize–winning University of Chicago economics professor, children who receive a quality early education have better academic outcomes, have improved health outcomes, make 25 percent more in earnings than their peers, are less likely to become teen parents, and are more likely to pursue a college degree and attain consistent employment.<sup>4,5</sup>

Here in Pennsylvania, the results of quality early education have been just as significant. Annual evaluations of Pre-K Counts, Pennsylvania’s quality early education system aimed at increasing access to quality Pre-K, have found that over 90 percent of participants show age-appropriate or emerging age-appropriate proficiency in literacy, math, and social skills after completion.<sup>6</sup> A separate study found that of the 21.5 percent of three-year-olds entering Pre-K Counts at risk for problematic social and self-control behavior, only 3.6 percent were at risk by the end of the program.<sup>7</sup>

Moreover, an expanded, quality Pre-K system has the potential to improve academic performance and save valuable resources by decreasing the need for special education services required once a child reaches kindergarten. According to unpublished data from the Pittsburgh Public School System, 42 percent children who received early intervention services through Pre-K did not need special education services when they reached kindergarten.<sup>8</sup>

The School District of Philadelphia currently spends an average of approximately \$23,000 per child on special education services per year, K–12.<sup>9</sup> Philadelphia could save approximately \$5.6 million per grade cohort, or over \$72 million over the length of a child’s K–12 school years if all children were given an opportunity to enroll in Pre-K. Additionally, all children would be able to dramatically enhance their academic and economic potential.

## **Adult Outcomes**

Investments in quality early childhood education programs have also been shown to have positive benefits for adults and society as a whole. The availability of affordable, quality early childhood education supports parents to enter the workforce and move toward self-sufficiency, reducing absenteeism and turnover while improving productivity.<sup>10</sup>

Quality preschool programs also drive education and employment in the early childhood workforce. Teachers and staff are required to obtain higher education degrees, training, and ongoing professional development. Research indicates that higher levels of education and specialized training in early childhood education help teachers promote young children’s cognitive, social, and emotional growth and have generally been found to be more effective than

teachers without these qualifications.<sup>11</sup> When these professionals are able to command higher pay—for better training and credentials—programs are able to attract and retain a better-quality workforce and reduce turnover, which directly affects outcomes for children in the classroom. According to 2012 Bureau of Labor Statistics data, Pre-K teachers nationally receive an average wage of \$27,130, compared with nearly \$50,000 for kindergarten teachers.<sup>12,13</sup> Raising standards and compensation for early childhood educators is a critical workforce development strategy for adults in addition to a school readiness strategy for young children.

In addition, economists estimate that higher earnings among teachers and staff, combined with the purchase of goods and services by Pre-K providers, results in more money circulating throughout the economy. The most recent estimate is that \$1 in spending on Pre-K has an immediate multiplier effect of \$1.79.<sup>14</sup>

To increase compensation for qualified Pre-K teaching staff, there must be more investment in the system and providers must receive a per-child revenue level that covers the full cost of quality – including appropriate salary and benefit costs. Currently, providers exist with slim financial margins, including low wages with little or no benefits for most employees.

## Current Landscape

To better understand how to expand access to quality Pre-K locally, the Commission looked carefully at the current state of early learning in Philadelphia. This includes understanding current supply and demand for quality child care, strategies to determine and support quality, expected changes to the early childhood system from the state level, current funding and delivery infrastructure, and how the expanded Pre-K work aligns with broader efforts to support children from birth to five.

### Supply of Quality Pre-K Programs

Currently, there is limited access to quality Pre-K for Philadelphia’s young children. Below, Table 1 shows that of the 42,514 3- and 4-year olds in Philadelphia, more than 32,000 (76%) are eligible for state or federally funded quality programs based on their family income of 300% of the federal poverty level or lower. More than 15,000 (15,185) are in quality, publicly funded Pre-K programs. This leaves a gap of more than 17,000 (17,296) children in need of affordable, quality Pre-K in 2015-2016.

To achieve expanded, quality Pre-K, several conditions must exist, including:

- A stable workforce that meets quality standards including credential requirements
- Quality facilities in convenient locations for families
- Recurring dedicated funding for families who cannot otherwise afford quality Pre-K

See Appendix I for a detailed list of essential components of quality Pre-K.

**Table 1: Need vs. Availability of Quality Pre-K for Low Income Families**

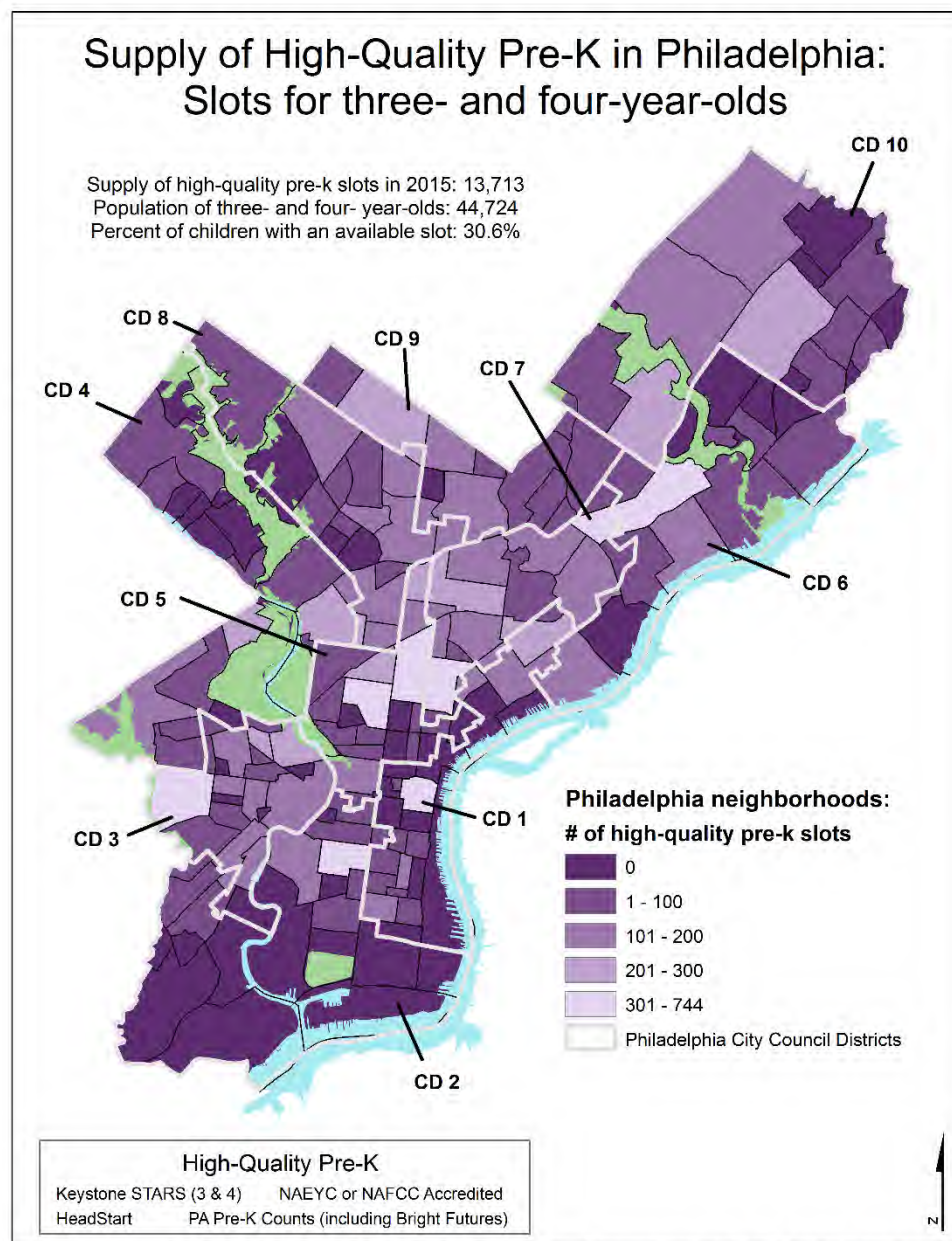
All Philadelphia 3 & 4 year-olds*	42,514
3 & 4 year-olds below 300% of poverty	32,481
3 & 4 year olds in quality, publicly-funded Pre-K	(15,185)
Low/moderate-income 3 & 4 year-olds not enrolled in publicly-funded Pre-K programs recognized as quality	17,296

*\* Numbers imputed from Income to Poverty Ratio of Children Under Six, American Community Survey (B17024), 1-year estimates) 2014-2015.*

In addition to the gap in the number of quality Pre-K slots and the gap in qualified staff to support those slots, there is also a gap between the amount of public subsidy provided per child to quality care providers and the cost of providing that care. For example, the Early Childhood Workforce Transformation Initiative’s cost modeling indicates that the average annual cost per child for quality, center-based care is estimated to be between \$14,000 and \$15,000 (full day, full year) based on data collected for this effort, whereas the maximum amount of public subsidy received per child for quality, center-based care over the same period is \$10,439<sup>15</sup>. Similar gaps exist for quality group and family programs.



**Figure 1: Map of Supply of Quality Pre-K in Philadelphia**



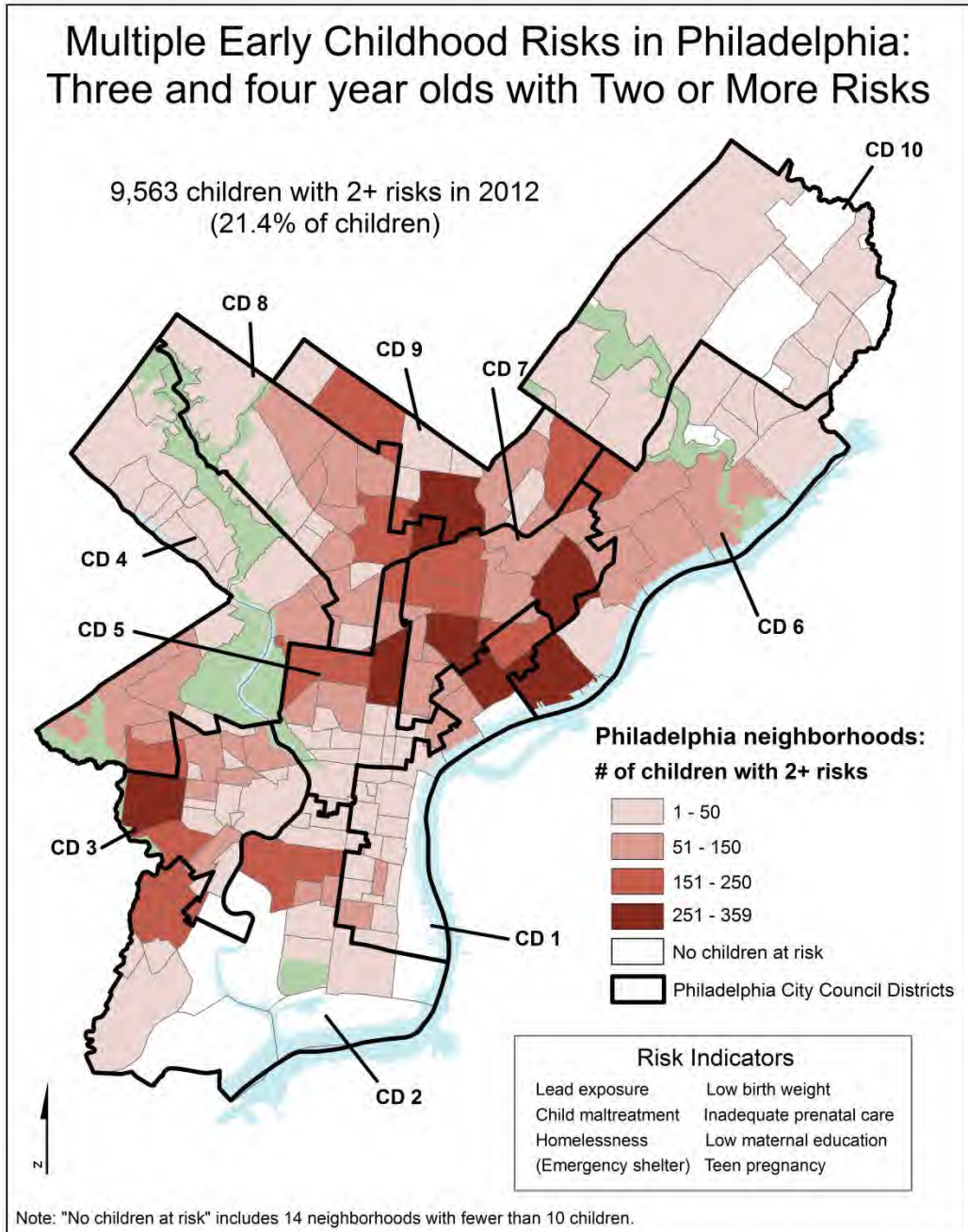
Prepared April 2016 by the Penn Child Research Center, University of Pennsylvania Graduate School of Education

*There are currently 15,185 quality slots in Philadelphia. The map above was created in February 2016 and do not include additional state funding provided in 2015-2016.*

There are also important geographic differences in terms of where quality Pre-K is available in Philadelphia. In Figure 1, the map illustrates the relative supply of quality Pre-K in Philadelphia, with darker areas showing where the shortage is greatest.

Importantly, many neighborhoods have a high prevalence of children with multiple early childhood risk factors, which research has shown to have negative effects on early school outcomes.<sup>16</sup>

**Figure 2: Map of Multiple Early Childhood Risks in Philadelphia**



Prepared April 2016 by the Penn Child Research Center, University of Pennsylvania Graduate School of Education and the Data Management Office, Philadelphia's Office of the Deputy Managing Director of Health and Human Services

Based on 2012 data, approximately 21 percent of preschool children (9,563) experienced two or more risk factors for school failure. A quality Pre-K reduces the impact that these risk factors Philadelphia Commission on Universal Pre-Kindergarten Final Recommendations Report 15

have on a child's ability to enter kindergarten prepared to learn. Figure 2 illustrates the location and density of children with two or more risk factors in Philadelphia, the darker shades represent where there is the greatest need for Pre-K resources.

Quality Pre-K experiences produce dramatic social, behavioral, and economic benefits for participating children, both in the near- and long-term.<sup>17</sup> Research shows that poor- and moderate-quality early childhood education programs make a minimal impact on improving school readiness.<sup>18</sup> Quality depends on a number of factors, including child-teacher interaction, small class size and low adult-child ratios, teacher training and credentials, and environmental conditions.

Quality programs are available in many different kinds of settings, including center-based, group, and family; school-based; and community-based Head Start programs. Certified child care centers provide care for 7 or more children unrelated to the provider. Certified group child care programs care for 7-12 children and may be located in a private residence or in another facility. Certified family child care providers care for between four and six unrelated children and are located in a private residence. In the child care sector, certification/licensing standards are designed to ensure that child care settings meet minimum health and safety requirements.

Until recently, regulation-exempt relatives, friends and neighbors have been able to accept child care subsidy funds to care for children in their own homes. In response to new federal requirements, friends and neighbors who care for children must become certified by November, 2017 if they intend to continue to receive subsidy. The City, State and other stakeholders are working to help these providers become licensed. This action does not directly impact Pre-K efforts but affects the early learning landscape. While providers report state inspection delays and irregular inspection schedules, Pennsylvania is expanding its inspection staff. Timely inspections are critical to protecting the health and safety of children while maintaining parent choice.

Child care quality is built on top of minimum health and safety requirements. In Pennsylvania quality is defined as Keystone STARS level 3 or 4, Pre-K Counts, Head Start, and/or nationally accredited programs. School-based settings are similar to center-based programs but run by the School District. Head Start programs meet federal program standards, and nationally accredited programs meet comprehensive, voluntary program standards and are operated in a diverse mix of child care settings, including center-based, family, and group.

### **Types of Quality Programs**

**Keystone STARS:** Pennsylvania's Pre-K quality is measured through the Quality Rating and Improvement System (QRIS), Keystone STARS. Keystone STARS is a continuous quality improvement program that also rates early childhood education programs for the benefit of consumers. In Philadelphia, Keystone STARS is operated on behalf of the Commonwealth of Pennsylvania by the Southeast Regional Key (SERK), which is run by Public Health Management Corporation (PHMC). SERK works with providers that collectively serve 47,000 children in Philadelphia, Delaware, and Montgomery counties.<sup>19</sup>

Keystone STARS currently rates child care programs on a scale of one to four STARS, with three and four STARS indicating quality. In terms of capacity (not funded slots), of nearly 68,000 licensed early care and education slots in Philadelphia, about 19,500 (about 29 percent) are rated STAR 3 or STAR 4.<sup>20</sup> Currently, only 52 percent of licensed child care programs in Philadelphia participate in Keystone STARS. The majority are at lower STAR levels.

Programs participating in Keystone STARS (at the level of STAR 3 or 4) use curricula based on Pennsylvania's Early Learning Standards, receive feedback from external evaluators and regular assessments, and report on child outcomes. They also receive publicly-funded training, technical assistance, grants and other financial incentives to improve quality. In 2014–2015, \$1,625,000 was distributed in grants to providers and \$780,000 was distributed to teachers and staff in tuition vouchers to pay for higher education in Philadelphia. SERK works closely with United Way's Success by Six programs, which provides intensive supports to STAR 2 providers to move to STAR 3. In addition, SERK subcontracts with a number of local organizations, such as the Delaware Valley Association for the Education of Young Children (DVAEYC) and Montgomery Early Learning Center, and with individuals to provide quality improvement to early learning programs in Philadelphia. Collectively these organizations invest nearly \$10 million annually in funding and services to improve the quality of the community-based child care sector.

Child care providers who are enrolled in Keystone STARS may request free technical assistance to address areas of the STARS standards that need improvement. Technical Assistance (TA) providers conduct on-site, customized coaching and support to program directors, classroom teachers and support staff to address areas of need. In addition to TA, providers are offered professional development services, merit awards (quality supplement grants), and Education and Retention Awards to supplement low wages.

Providers who are ready to move from STAR 2 to STAR 3 (the most significant level of program change) may apply to join a United Way Success by Six cohort. This initiative offers a more intensive level of technical assistance as well as small quality improvement grants to address quality gaps. More details about available supports to improve quality are available in Appendices E and F.

**NAEYC/NAFCC:** A small number of providers do not participate in Keystone STARS but are accredited through their professional associations, including the National Association for the Education of Young Children (NAEYC) and National Association for Family Child Care (NAFCC). NAEYC-accredited programs have a simplified route to STAR 4 certification.

**Pre-K Counts:** Pre-K Counts is Pennsylvania's quality Pre-K program that provides free early education to three- and four-year-olds whose families earn up to 300 percent of the federal poverty level. Pre-K Counts also gives priority to children who are at-risk of academic failure, including English language learners and children with special needs. Pre-K Counts is delivered in schools and community-based Keystone STAR 3 or 4 child care programs. Providers are required to adhere to a number of quality standards, including minimum teacher qualifications, the use of curricula based in Pennsylvania's Early Learning Standards, regular communication



with parents, and ongoing assessment. In 2015-2016, there are 3,956 funded Pre-K Counts slots in Philadelphia.

**Head Start:** Head Start is a federally funded early education program available for children ages three and four whose families make 100 percent or below of the federal poverty level (FPL). Like Pre-K Counts, Head Start is free for eligible children and grantees are held to rigorous quality standards. In 2015-16, there were nearly 6,600 federally funded Head Start slots in Philadelphia. Pennsylvania supported an additional 1,626 Philadelphia children in Head Start through its Head Start Supplemental Assistance program. Head Start is delivered in schools, community-based Keystone STARS programs and freestanding Head Start centers.

In the last 18 months, quality early learning capacity grew by 4,500 slots. These providers already have staffing infrastructure and facilities, reducing the start-up costs and implementation time required for Pre-K. There are currently approximately 19,500 slots in licensed child care providers with at least a STAR 3 rating.

### **Changes to the State Level Early Learning Landscape**

Keystone STARS was established in 2004 and the Office of Child Development and Early Learning (OCDEL) was created three years later to align policy and funding from the Departments of Education and Human Services to support young children.

Several changes underway at the state level shape the Commission's recommendations for expanded Pre-K. The goals of these efforts are to streamline requirements of providers and reduce barriers to participation in STARS. OCDEL is looking at the following possible strategies: adjustments to Keystone STARS in response to a recent evaluation conducted by the University of Pennsylvania at the request of the State and the William Penn Foundation; significant expansion of Pre-K Counts funding; and an initiative to make greater use of child care subsidy for children who are enrolled in quality Pre-K through layered funding and an integrated provider payment model.

A recent study of Keystone STARS found that while programs with high STARS ratings are associated with better child outcomes, the system needs some streamlining in order to prioritize requirements that demonstrate the greatest value for improving child outcomes while removing barriers to participation by more providers. In response to this report, changes to Keystone STARS will be developed with extensive stakeholder input over the next year. Scheduled to take effect in 2017–2018, such changes are expected to expand the capacity and willingness of local programs to participate in the program.

*Funding Challenges.* Current per-child funding does not adequately cover the cost of quality Pre-K. This acts as a disincentive to providers to invest in improving program quality and keeps staff salaries well below family sustaining wages. As part of his commitment to expand funding for quality Pre-K, Governor Wolf increased Pre-K Counts funding by \$650 per child (8.2 percent) in his first budget. Proposed language in Pennsylvania's draft Child Care and Development Block Grant (CCDBG) Plan for 2016–2018 indicates that the State is exploring increases to child care subsidy reimbursement rates as well.

In addition to inadequate compensation, the Commission noted that providers often feel burdened by the compliance requirements of multiple funding sources. This situation results in multiple monitoring visits, assessments and reporting, which contributes to a high level of burnout among teachers and staff. This issue surfaced in the Commission’s public hearings and community meetings, and is explored in greater detail in Appendices A and B.

### Types of Funding

There are three main public funding sources for Pre-K in Philadelphia: Head Start (federal and state), Pre-K Counts, and child care subsidy. The Commission estimates that in 2014–2015 Philadelphia received approximately \$122.6 million in combined state and federal funding dedicated to quality Pre-K programs. Table 2 breaks down sources and value of the available funding from existing state and federal resources used that year for both quality programs (\$122.4 million) and low and unknown quality providers (\$115 million) to illustrate the existing pools of funding available. Many quality Pre-K providers make ends meet by layering these revenue streams with other sources as no single source covers all operating costs.

State and federal funds are allocated directly to multiple providers, as well as intermediaries such as CCIS and the School District, who subcontract to multiple providers. The School District of Philadelphia is the largest single recipient of federal Head Start and state Pre-K Counts funds in the city, receiving approximately 80 percent of those revenues, and supplements these funds with \$10 million of district funding (not reflected in Table 2). The District subcontracts approximately 65 percent of its slots to quality community-based providers.

**Table 2: Available Funding for Quality Pre-K from Federal and State Sources**

Funding Type <sup>^</sup>	Source	Per Child	FY14-15 Amount (\$)
<b>Head Start</b>	Federal and State	\$8,001*	\$65,682,451
<b>Pre-K Counts</b>	State	\$7,850**	\$21,604,570
<b>Child Care Subsidy (est. for STARS 3 &amp; 4)</b>	Federal-State Partnership	\$9,217-\$9,789***	\$35,140,749
<b>Total for Quality Pre-K from Major Sources</b>			<b>\$122,427,770</b>
<b>Child Care Subsidy of Unknown and STAR 1 and 2 Quality</b>	Federal-State Partnership	\$8,489	\$115 million

<sup>^</sup>All funding is for FY15. Federal and state Head Start and Pre-K Counts grants are made to intermediaries that charge subcontracted programs (community-based child care providers) a percentage to cover grant management, compliance expenses, and supplemental direct services (e.g., child health screenings). Amounts that appear under “per child” are higher than payment received by subcontracted providers.

\*Head Start negotiates lump sum payments with each grantee. This figure is an average.

\*\* Per child amount increased to \$8,500 in 2015–2016.

\*\*\* Per child amount shown is maximum possible for preschool age, STAR 3 and 4 centers, for the full-day, full-year care (260 days). Rates vary by child age, program type, and quality. Providers are reimbursed based on child attendance and typically receive far less than maximum per child amounts shown here.

**Head Start (federal and state):** Head Start provides grants to four intermediaries in Philadelphia, including the School District of Philadelphia. Federal grantees negotiate a lump sum amount based on the number of children in care. For instance, in FY15-16, the District received approximately \$7,900 per child under this program. State Head Start Supplemental Assistance (HSSA) follows the federal program eligibility guidelines. At least 90 percent of enrolled families must be up to 100 percent of FPL and 10 percent can be up to 130 percent of FPL.

**Pre-K Counts (state):** Pennsylvania Pre-K Counts provides per child grant funding to eligible quality Pre-K providers. Pre-K Counts requires children to be between the ages of three and four with family incomes at or below 300 percent of FPL. Funding for full school day/school year slots was increased from \$7,850 to \$8,500 per child in 2015–2016.

**Child Care Subsidy (federal-state partnership):** Child Care Subsidy helps make child care more affordable to low-income families. Funded by the state and federal governments, the program is managed by Child Care Information Services (CCIS). Families are free to choose among providers of known and unknown quality, and therefore only a portion of this child care subsidy is used for quality care each year. Due to family choices and the limited availability of accessible, quality programs, a fraction of subsidized preschool children attend Keystone STAR 3 and 4 programs. The Commission estimates that 20 percent of this subsidy used in Philadelphia—approximately \$35.1 million—went to STAR 3 and 4 providers for full day, full year care in 2014–2015.<sup>21</sup> This means approximately \$115 million in subsidy is being used at low quality or unrated programs. Unlike Head Start or Pre-K Counts, these funds support full-day, full-year care. In Philadelphia, four non-profits receive contracts to administer the subsidy. They are Caring People Alliance, Federation Early Learning Services, Philadelphia Parent Child Center Inc., and the Urban League.

To incentivize providers to invest in quality, the State also provides tiered reimbursement for programs in the STARS system. In 2015-16, STAR 1 centers receive \$0.35 per day above the base rate for every eligible child in full-time care, while STAR 4 centers receive \$7.50 more per day. Based on 260 days of service, the maximum amount a STAR 4 center would receive is \$10,439 per child total. Table 3 shows the highest levels of subsidy funding that Keystone STARS centers may receive, depending on STAR level. These rates are far below the actual cost of quality care for a full day and full year. As a result, wages in the field are often below the family-sustaining level.

<b>Table 3: Reimbursement Rates Available to Keystone STARS Providers FY 2015-16 CCIS Rates</b>	<b>STAR 1</b>	<b>STAR 2</b>	<b>STAR 3</b>	<b>STAR 4</b>
<b>CCIS Base Reimbursement for Centers (per day)</b>	\$32.65	\$32.65	\$32.65	\$32.65
<b>STARS Tiered Reimbursement for Centers (per day)</b>	\$0.35	\$0.95	\$4.80	\$7.50
<b>Maximum per Child for Centers (260 days)</b>	<b>\$8,580</b>	<b>\$8,736</b>	<b>\$9,737</b>	<b>\$10,439</b>

Since child care subsidy represents the largest funding stream from the State to Philadelphia, new emphases in the Child Care and Development Block Grant (CCDBG) may result in opportunities to expand access to quality Pre-K in Philadelphia. These include contracts with quality Pre-K providers to provide subsidized before/after and summer care, which is better for working families and acts as a stabilizing force for quality providers. Also, the City, School District of Philadelphia, the State, and other stakeholders are working to simplify the application process across multiple early childhood funding streams. These initiatives support Philadelphia’s effort to ensure expanded Pre-K is accessible to families throughout the city.

**Family contributions:** Families receiving child care subsidy are also required to make weekly copayments. In Pennsylvania, a family’s copay for child care is based on the family’s total gross income (before taxes and any deductions are taken out) and the number of people in the family. Changes in income can impact the copayment amount. For families with incomes up to 100 percent of FPL, copays may not exceed 8 percent of family income. For those with incomes above 100 percent of the FPL, the copays can be as high as 11 percent. Families make one copayment, regardless of how many of their children are in child care. The provider bears the burden of collecting family co-pays and is sometimes challenged to do so. Low-quality centers sometimes waive co-pays in order to attract families to enroll.

**Tuition:** The largest source of revenue for early childhood programs comes from parent tuition paid by those not eligible for public supports. In addition, providers are permitted to charge tuition fees above the family co-pay to help cover their costs. Providers are not always able to set tuition rates based on the cost to provide quality due to price sensitivity. Tuition fee data is not accurately tracked locally or at the state level, and therefore it is difficult to provide an estimate for Philadelphia.

**Other sources:** In addition to tuition and subsidies, providers rely on other targeted sources of funding, such as the Child and Adult Care Food Program (federal) and Keystone STARS Merit Awards (federal-state) to cover food, occupancy, supplies, and other operating costs.

### **Pre-K Enrollment**

With passage of Pennsylvania’s 2015-2016 budget in December, Philadelphia agencies have dedicated public funding for 12,032 quality Pre-K slots, or 29 percent of quality slots needed by all three- and four-year-olds. Table 4 breaks these slots down by funding source, including federal Head Start, Pennsylvania’s Head Start Supplemental Assistance, and Pre-K Counts



programs to show how these slots are allocated currently. These funds are allocated through competitive grant programs open to school districts, intermediaries, and community-based organizations. A fourth source of public funding, Child Care Subsidy (subsidy from CCIS known as Child Care Works) supports an estimated 3,153 additional three- and four-year-olds enrolled in quality community-based programs who are not funded by the sources above.

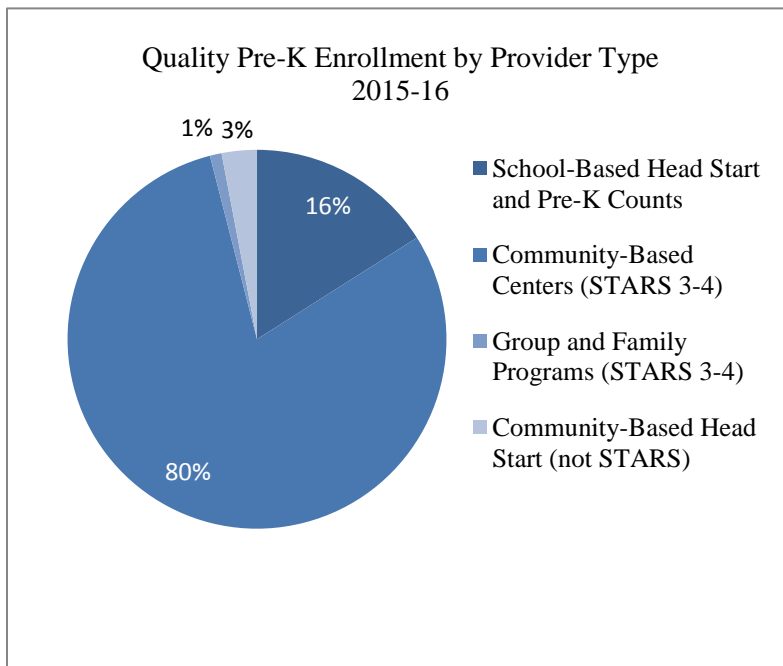
**Table 4: Publicly Funded Quality Pre-K in Philadelphia, 2015-2016**

<b>Publicly Funded Quality Pre-K Philadelphia 2015–2016<sup>22</sup></b>	
Federal Head Start	6,583
PA Head Start Supplemental Assistance	1,626
PA Pre-K Counts	3,823
<b>Subtotal</b>	<b>12,032</b>
Child Care Works (estimated 3& 4 year-olds in STAR 3 and 4, unduplicated)	3,153
<b>TOTAL</b>	<b>15,185</b>

**Delivery System**

As discussed, Philadelphia has a mixed delivery system for quality Pre-K. Services are provided by traditional public schools,

**Figure 3: Quality Pre-K Enrollment by Provider Type - 2015**



quality community-based child care centers, group and family programs, and independent Head Start programs.<sup>23</sup> This system has evolved over the past half century in response to the varied needs of parents, schools, and communities. Figure 3 shows the proportion of Pre-K enrollment that occurs in each type of provider setting. Layering funding from multiple sources to pay for each classroom is considered best educational and fiscal practice. This supports mixed-income classrooms, where research shows children learn best. In addition, it provides more

predictable and slightly higher overall revenue than relying on a single source. However, few programs have the administrative infrastructure to manage this approach.

### **Alignment of Systems for Infants to Third Graders**

Although expanded Pre-K is the focus of this report, it is critical that Philadelphia's expanded Pre-K system be created in alignment with the rest of a child's learning process. Eighty-five percent of brain development occurs by age three. In fact, studies have shown that when schools link a quality Pre-K education with learning from birth through third grade, the advances that children make in quality Pre-K are more immediately apparent.<sup>24</sup>

The City of Philadelphia and its partners are working to address this critical question of alignment through multiple systems, including the *A Running Start Philadelphia* initiative and reforms being made through the School District.<sup>25</sup>

The School District is in the midst of pursuing a comprehensive early learning approach<sup>26</sup> that aligns with local school readiness efforts including United Way's work, and Pennsylvania's Race to the Top Early Learning Challenge Grant.<sup>27</sup> The work focuses on improving program quality and instructional outcomes for children, encouraging meaningful family engagement, enhancing and stabilizing revenue sources, and strengthening the Pre-K to kindergarten transition. When implementing expanded Pre-K, it will be critical to ensure mutual alignment between Pre-K and K-3 systems, inclusive of public and parochial schools. This alignment should consist of a minimum of: data sharing, shared workforce development strategies, consistent curricula, instructional methods and parent engagement. Alignment ensures more persistent benefits to children and a better use of scarce public dollars.

As part of these efforts to support expanded Pre-K and access to quality early learning opportunities, the City of Philadelphia, the Pennsylvania Office of Child Development and Early Learning, and other stakeholders are currently developing a one-stop system to screen and enroll children in programs to provide free or reduced-cost child care. This initiative should determine families' eligibility for publicly funded early learning services across multiple local, state, and federal funding sources. Parents and caregivers should be able to apply for Head Start, Pre-K Counts, Child Care Subsidy, and Philadelphia's Pre-K program simultaneously (including support with documentation and follow-up steps), get information about all programs for which they qualify, and obtain advice on how to make child care choices that meet the unique needs of their families.

## Recommendations

The Commission sought to develop a clear understanding of the local early learning landscape; review evidence about how best to create Pre-K programs that help narrow the achievement gap; and identify best practices from other cities and states in implementing expanded Pre-K. From there, the Commission developed recommendations designed to create a framework for implementing expanded Pre-K in Philadelphia. The recommendations below address how to deliver quality Pre-K; what populations to target; the approach to determine priority service areas; standards for quality; length of time in Pre-K (or dosage); professional development; curriculum; governance structure; and implementation.

This section references two entities: Philadelphia's Pre-K program (or the City's Pre-K program) and the City of Philadelphia (or the City.) Recommendations to the 'City' or to 'Philadelphia' are recommendations the Commission is making to both the Mayoral Administration and City Council.

### I. Quality Expectations

**Recommendation:** The Commission recommends that Philadelphia's Pre-K program be delivered in settings that meet rigorous quality standards or are growing into quality, are monitored for quality by external observers, conduct regular child assessment, and report on outcomes. This should include Keystone STAR 3 and 4 programs and STAR 2 programs that are identified as "STAR 3 Ready." Programs with Pre-K slots receiving additional supports from the City to improve quality will have 24 months to reach STAR 3 or 4. To promote this process, implementing the City's Pre-K plan must incorporate efforts by the Southeast Regional Key to attract and engage new Keystone STARS participants and United Way's Success by Six program, which provides intensive support to enable child care programs to improve quality. In communities with no or insufficient supply of quality slots, STAR 2 programs that meet readiness criteria may participate in Philadelphia's Pre-K program and supported through a process for reaching at least a STAR 3 designation.<sup>28</sup>

It is critical that the City and its partners provide supports for programs that do not currently participate in STARS or are STAR 1. Over a three-to-five-year period, these programs should be assisted in attaining quality standards that will make them eligible to participate in the City's Pre-K program. Greater investment in outreach and engagement of these programs to enter STARS and move up in quality will be essential to the long-term sustainability of Pre-K in Philadelphia.

**Rationale:** Fifty-two percent of the approximately 1,900 child care providers in Philadelphia participate in Keystone STARS.<sup>29</sup> The system offers an objective means to assess providers' staff qualifications and ongoing professional development, learning programs, family and community partnerships, and management. Participants access training, technical assistance, higher education, grants, and other forms of monetary support. The STARS standards have been aligned with quality standards used by Head Start, the National Association for the Education of Young Children (NAEYC) and the National Association of Family Child Care (NAFCC) (see Appendix K). New federal and state policies encourage Head Start and school-based Pre-K programs to

affiliate with Keystone STARS. Programs in the top tiers of Keystone STARS are associated with strong gains in child development and early learning. A statewide study of four-year-olds enrolled in STAR 3 and 4 programs found that children with proficient language and literacy skills increased from 37 percent to 82 percent; children with proficient mathematical thinking skills increased from 31 to 81 percent; and those with proficient social and emotional skills increased from 44 percent to 84 percent between Fall 2012 to Spring 2013.<sup>30,31</sup> The City has a unique and timely opportunity to align the state’s redesign of the STARS system with a focused outreach strategy in order to encourage more providers of all types, including group and family providers, to participate in Keystone STARS to improve quality in all neighborhoods. For more information on Keystone STARS, see page 16.

## II. Mixed-Delivery System

**Recommendation:** The Commission recommends that the City’s Pre-K program develop and oversee the management of expanded quality Pre-K using a mixed-delivery system that partners with community-based child care centers, group, family, and school-based programs that meet quality standards or are growing into quality programs, as defined in Appendix I. This will utilize and bolster the great work of existing small businesses and organizations that strive to provide quality Pre-K and become quality providers as well as promote equity and inclusion.

**Rationale:** A mixed-delivery model is a system where Pre-K is supported by public resources and delivered through public and private child care providers in a variety of settings (including center-based, group and family) to meet the diverse needs of the city’s parents and children. This model should enable Philadelphia to leverage the resources and talent of the city’s non-profit and private provider communities as well as ensure the capacity for further expansion of Pre-K. Philadelphia is fortunate to have a robust non-profit and for-profit delivery system that provides quality early learning experiences to thousands of three- and four-year-olds. In addition, thanks to the collective efforts of many local partners, the number of organizations providing quality education continues to grow.

## III. Populations Served

**Recommendation:** The Commission recommends that the expanded Pre-K system is available to all three- and four-year-olds in Philadelphia, with priority given to children in neighborhoods with the highest concentrations of poverty, children at highest risk of poor academic and life outcomes, and areas with a shortage of quality Pre-K slots.

While it is in the City’s best interest to move towards a universal system, the City’s limited resources should be used initially in areas with the highest concentrations of poverty and the lowest number of quality Pre-K slots.

This strategy should be implemented in the selection of neighborhoods and providers. Using the latest available data on child poverty, neighborhoods should be targeted based on the following:

- Level of concentrated poverty;
- Shortage of quality Pre-K slots in relation to the size of the kindergarten cohort (including all kindergarten students attending public and charter schools); and

- Proportion of children at highest risk of poor academic and life outcomes through lead exposure, involvement with DHS, homelessness, low birth weight, inadequate prenatal care, teen parents, and low maternal education (see Figure 2 on page 15).

Once these neighborhoods are identified, providers should be selected through a widely-publicized Request for Proposals (RFP) process.

- Providers in these neighborhoods who already meet the quality standards identified in this document should be selected first to deliver services.
- Providers who are STAR 2, but want to become STAR 3, may be eligible to receive intensive technical assistance and slots with the proviso that the Pre-K classrooms are staffed with qualified lead teachers and reach STAR 3 or higher standards in 24 months.
- Other providers who respond to the RFP but are not yet eligible to receive slots will be connected to technical assistance resources through the Mayor’s Office of Education.
- Individual outreach will be undertaken to recruit providers not yet in the STARS system to encourage them to utilize technical assistance and financial incentives to improve quality with the expectation that they may be able to offer Pre-K.
- Providers in nearby neighborhoods who meet quality standards should be approached to offer services in targeted neighborhoods if sufficient capacity cannot be identified among existing neighborhood providers.

The RFP process should ensure that selected providers meet parents’ needs around convenience, cost, and cultural competence.

Although poverty itself is a risk factor and will define the first locations for expansion, the City should partner with the State and providers within these communities to design policies and practices that will ensure providers are prepared to address the special barriers to learning faced by dual language learners including children from immigrant and/or refugee families, children with developmental delays and disabilities, homeless children, children who have experienced trauma, or other risk factors.

**Rationale:** Research shows children living in poverty make the greatest gains in quality Pre-K. By targeting resources initially, the City would begin the process of disrupting the cycle of poverty and lay a foundation for the equitable distribution of quality Pre-K in all neighborhoods. Furthermore, parents in poverty are most likely to prioritize cost, convenience, and culture – rather than quality - when selecting child care, making equitable distribution by neighborhood shortage crucial to create access to quality care.

#### IV. Universal System

**Recommendation: The Commission recommends a universal plan for Pre-K that begins with a targeted approach.** The Commission recognizes there is some concern about providing universal care (without an income cap) when so many Philadelphia families live at or below the poverty level and are in need. Building toward a universal system is good for the city because it ensures the broadest level of public support and creates more diverse learning environments that benefit all children. However, to ensure that low income children are given access to Pre-K first,

careful selection of the communities in which new Pre-K slots will be located must be driven by data on the density of poverty, least access to quality slots and risk factors known to decrease a child’s lifetime chances of success (see page 15). With that in mind, a universal system will permit families in these targeted communities who are struggling to make ends meet to have access to quality early learning for their children. To better understand how this would impact the children of Philadelphia, Table 5 shows the number of children in households at different levels of poverty in Philadelphia, including the number of children in deep poverty (at or below 50% of the federal poverty line). For more information about the cost of child care for families at different income levels, see Appendix N.

**Table 5: Number of Children at Levels of Federal Poverty Line**

<b>Percent of Federal Poverty Line</b>	<b>Annual Income-Family of Four</b>	<b>Number of 3 &amp; 4 Year-Olds in Philadelphia</b>	<b>Percent of 3 &amp; 4 Year-Olds in Philadelphia</b>
50% or below	\$ 12,150	7,865*	18.5%*
100% or below	\$ 24,300	13,690*	35.2%*
200% or below	\$ 48,600	26,571*	62.5%*
300% or below	\$ 72,900	32,481*	76.4%*
Above 300%	Above \$72,900	10,019	23.6%

\*Cumulative. Note: Number of 3 and 4 year olds imputed from data on children below age six<sup>32</sup>.

**Rationale:** The following hypothetical example illustrates the need for a universal system that wisely ensures access to all families and does not employ an income cap. It shows that a family earning just over 300% of the Federal Poverty Level (FPL) with two small children between the ages of three and five would not be able to afford quality Pre-K for both children because it would cost \$28,000. If that family had to pay 100% of Pre-K costs, their household income would be \$52,813, causing them to drop to a level just over 200% of the FPL.

Jacob Lou and Jessie Campbell have two children (daughters aged two and three). They both hold steady jobs with Jacob earning a gross salary of \$42,000 as a paralegal, and Jessie earning a gross salary of \$38,813 as a school administrator. Jacob and Jessie spend one-third of their income on rent. Their youngest daughter was born with a health condition that leads to multiple doctor visits and daily prescription medicine. Both parents are paying off school debt from their associate degrees. Jacob and Jessie are currently earning approximately 330% of the federal poverty level (FPL), too much to qualify for child care subsidies or the State’s Pre-K program. They currently pay \$14,000 out of pocket for Pre-K for their oldest daughter. Their second daughter is turning three soon, but with the cost of rent, food, transportation, and utilities, Jessie and Jacob cannot afford to pay for both daughters to go to Pre-K, which would cost them a total of \$28,000 annually (36% of their income) for both children, so they are unable to send their second child to Pre-K.

The Commission’s recommendation looks to move towards a universal system that uses public and family resources wisely. The aim of the system is to make sure those populations at highest risk and in poverty have access to quality Pre-K first. At the same time, the City should ensure that families living just above the poverty level don’t need to pay for full cost of care, forcing them to leave the workforce or place their children in low quality care. Moving forward, the City should work with the State to consider a sliding scale for families who have the ability to contribute some pay towards their child’s education.

## V. Dosage

**Recommendation:** The Commission recommends that the City oversee the creation of an expanded Pre-K program that would enable subsidy-eligible children to participate all day (eight hours or more per day) throughout the year (260 days per year). Children who are not eligible for subsidy should be supported by the City to participate for the school day and school year (6 hours, 180 days). Those families may opt to pay tuition for before and after care and summer care.

**Rationale:** Studies show that children who receive a higher dosage of quality Pre-K perform better on standardized tests in literacy and math years later. Higher dosage can include longer days and longer years. A 2006 study by the National Institute for Early Education Research, for instance, found that students who are far behind when they enter Pre-K can develop vocabulary, math and literacy skills that approach national norms if provided with a full day preschool program that maintains quality standards. The study reported that extended hours and days have a “dramatic effect” for quality programs.<sup>33</sup> Research shows that children who participate in full-day kindergarten learn more than their half-day peers. One study demonstrated that children in full-day programs experienced double the literacy gains compared to children in half-day programs.<sup>34</sup>

## VI. Child Care Settings

**Recommendation:** The Commission recommends that Philadelphia Pre-K include a variety of child care models, including center-based, group, family, and school-based settings that meet or are moving to embrace the standard for quality.

**Rationale:** There are several types of child care settings that currently deliver quality early learning programs. They include center-based, group, family, and school-based programs. In terms of child outcomes, differences based on provider type within the same quality band have not proven to be significant. However, different provider types appeal to parents and caregivers with differing needs and cultural preferences. Center-based, group, family, and school-based programs will all be critical to meeting the needs of all Philadelphia children, especially those at greatest risk of school failure.

As mentioned above, center-based child care facilities provide care for seven or more children and often have multiple classrooms. Group child care programs may care for seven to 12 children and may be located in a private residence or in another facility. Family child care providers care for between four and six unrelated children and are located in a private residence.



School-based settings are similar to center-based programs run by the School District. All center, group, and family providers have the opportunity to participate in Keystone STARS.

## VII. Layered Funding

**Recommendation:** The Commission recommends that the City leverage, streamline and organize resources to enable providers to layer funding from more than one public source (Head Start, Pre-K Counts, local Pre-K funding, CCIS). This will help ensure that children can be in care a minimum eight hours a day, 260 days a year and provide resources to cover the full cost of quality for those families that qualify. This can be accomplished through policy coordination, strengthening providers' fiscal management systems, training by early learning specialist and business professionals or contracting with a service that provides specialized expertise in this area. As is discussed in the Funding section below, combining child care subsidy with City Pre-K funds through a special set aside in state funds is a critical step in advancing this goal.

**Rationale:** Most quality Pre-K providers receive funding from more than one source. Utilizing funding from multiple sources provides more predictable and somewhat higher overall revenue than relying on a single source. However, layering funding within the same classroom (and particularly for the same child) can create challenges for providers' fiscal management systems, especially small, independent providers.

Research on Pre-K is clear that year-round programs prevent summer learning loss. There is strong anecdotal evidence that Philadelphia parents favor full day Pre-K (eight hours or more) to accommodate work schedules. In 2016, Pennsylvania moved to 12-month subsidy eligibility to improve the continuity of care for children with family incomes up to 200 percent of FPL. Pennsylvania's Office of Child Development and Early Learning (OCDEL) is exploring how to contract with STAR 3 and 4 Pre-K providers to help ensure that eligible children requiring subsidized summer and before/after care receive it without interruption. Both changes are expected to improve the predictability of revenue for providers and support these recommendations. In addition, combining funding from multiple sources ensures that children who qualify for various income-based programs are enrolled in the same classrooms, rather than segregated based on family income. The research is clear that children learn best in mixed-income classrooms<sup>35</sup>. The City's Pre-K program should encourage mixed-income classrooms whenever there is an opportunity.

It is important to note that subsidies for Relative/Neighbor care and for providers who choose not to participate in STARS will not be affected by the City Pre-K plan. These providers will still be able to utilize child care subsidy from the State.

For more information on layering funds, see pages 38-39.

## VIII. Curriculum

**Recommendation:** The Commission recommends that Philadelphia's Pre-K system use curricula that have been approved by the Office of Child Development and Early Learning



**(OCDEL) that meet the Pennsylvania Early Learning Standards.** Pennsylvania’s Early Learning Standards for Pre-K emphasize learning across the following domains<sup>36</sup>:

- Approaches to learning
- Language and literacy
- Mathematical thinking
- Scientific thinking
- Social studies
- The arts
- Health, wellness, and physical development
- Social and emotional development
- Interpersonal skills
- Family and community partnerships

More than 250 local community-based providers and public schools offer Pre-K that meets Pennsylvania’s Pre-K quality standards. Most use commercially available, research-based curricula that have been approved by Pennsylvania’s Office of Child Development and Early Learning (OCDEL), based on their alignment with state standards. With OCDEL’s consultation and support, providers may want to streamline their curricular choices to facilitate professional development and classroom coaching.

**Rationale:** Building on state-approved curricula is efficient and supports layered funding and program models within classrooms. Recommended curricula are developmentally appropriate and align with all learning domains in Pennsylvania’s Early Learning Standards. Pennsylvania providers pay rates negotiated by the State for the curricula. Recommending several curricula enables providers’ discretion to determine which option best meets the needs of the children they serve while simplifying supports around professional development and classroom coaching.

## **IX. Child Outcomes and Assessment**

- A) Recommendation: The Commission recommends that Philadelphia’s Pre-K plan tie child assessment and outcomes reporting to Pennsylvania’s existing system and avoid duplication of efforts by providers or monitors.** This system uses regular assessment based on teacher observation.<sup>37</sup> Pennsylvania has approved several developmentally appropriate, observation-based assessment tools that track the skills of Pre-K students and are aligned with the State’s Early Learning Standards for Pre-K. Quality Pre-K programs are already required to conduct regular child assessments using one of these tools and to report outcomes to the State. Teachers should be supported in their skill development to conduct quality assessment. Free training is currently available through early learning technical assistance programs.
- B) The Commission recommends that the City work with OCDEL to streamline assessment and reporting requirements across all quality Pre-K programs regardless of funding source.** This should be done with an eye towards ensuring there is not an increase in monitoring or reporting requirements by providers.

These recommendations mean that the City’s Pre-K initiative use aggregate local data from Pennsylvania’s Kindergarten Entry Inventory (KEI) to measure the impact of the initiative on

Kindergarten readiness citywide. The KEI is an observation-based tool that is aligned with the assessment tools and Early Learning Standards described above. It is administered to every student at the School District of Philadelphia during the first 45 days of Kindergarten.

**Rationale:** Assessing individual child outcomes helps teachers understand how they can partner with parents to support each child. Use of state-approved Pre-K assessment tools builds on teachers' existing skills as well as efficiencies within the larger quality Pre-K system. Data from the KEI will enable the City to understand how much students retain from their final year of Pre-K to the beginning of Kindergarten and enable comparison between children who have attended the City's Pre-K program and other groups, such as those who do not attend quality Pre-K. Systems-level data will help administrators make improvements to the overall model and expanded Pre-K program.

For more information about assessment tools, see Appendix L.

## **X. Program Monitoring**

**Recommendation:** The Commission recommends that Philadelphia's Pre-K program use the monitoring system that exists for Pre-K Counts. The City should explore with OCDEL whether it is possible to use Pre-K Counts program monitors for the locally-funded cohort. This should entail receiving regular monitoring reports from the State.

**Rationale:** Monitoring programs to ensure they meet quality standards is essential to guaranteeing accountability in dispersing and utilizing taxpayer funding. Philadelphia's initiative should be aligned with Pre-K Counts, and it follows that program monitoring be tied to the existing system as well. This not only reduces costs to the City, but also ensures that providers do not have to spend additional time preparing for visits from program monitors who may be using different standards.

## **XI. Quality Improvement**

- A) Recommendation:** The Commission recommends that the implementation plan direct significant City resources, leverage existing support programs, and work with philanthropy and higher education to make new investments to expand quality improvement resources to increase the number of providers in STARS and for providers to move up the ladder. Increasing participation in Keystone STARS and movement to higher quality levels is critical to the success of Philadelphia's expanded Pre-K plan. Three barriers to improving quality are the lack of facilities, insufficient reimbursement for subsidized care, and lack of adequately trained teachers. There are many existing supports to address these key challenges, but they are not always easy to access. Improving access to these resources should include focusing significant resources and outreach to providers that are not currently in STARS and those in STAR 1 and 2 to improve quality (see page 38 for funding resources).

**B) The Commission recommends that, after changes are made to streamline Keystone STARS, the City work with state partners to look at requiring all programs that receive federal, state, and local investment to participate in Keystone STARS.**

**Rationale:** With additional resources (including City funds), quality can be improved by investing in the following programs:

- Keystone STARS professional development, technical assistance, and grants (operated by OCDEL and PHMC)
- Success by Six, which supports child care centers advancing in the STARS system (operated by United Way)
- Tuition Assistance Programs (Rising STARS) which covers tuition costs for college coursework for early learning professionals (operated by OCDEL and PHMC)
- The City of Philadelphia and Fund for Quality facilities funds, which fund capital and facility improvements and the expansion of high-quality child care providers

More details on each of these programs are available in Appendices E and F. These are a critical resource to expand quality in Philadelphia.

## **XII. Kindergarten Transition**

**Recommendation:** The Commission recommends that the City encourage the development and adoption of an equitable and comprehensive approach to kindergarten transition that delineates clear expectations for all Pre-K providers, K–3 schools, and other organizations to support children in making a successful transition to kindergarten. This should emphasize that transition is a process, not a one-time event, and should involve children, families, and communities. The focus should be on aligning curriculum and instruction, supportive services, and operations to help children and families make a successful transition. That alignment must include preparing Kindergarten teachers to receive Pre-K children whose play-based learning environments are more social and less constricted. The Commission believes citywide kindergarten transition activities should engage every child who will enter kindergarten in the next year, not just those who are funded through Philadelphia’s expanded Pre-K plan.

**Rationale:** The transition from Pre-K to kindergarten can be challenging for young children and families, who experience changes in academic demands, less individualized time and interaction with teachers, and a more complex social environment that includes additional peers and adults. An effective kindergarten transition process not only facilitates children’s familiarity with a new classroom setting, but also encourages family collaboration and involvement with the school and provides children with increased consistency from Pre-K to kindergarten, maximizing taxpayer investments in expanded Pre-K.

Kindergarten transition involves not only how children adjust to kindergarten, but also how families and schools cooperate to set the tone and direction of a child’s entire educational experience. Children, families, schools, and the larger community all benefit from effective transition: children are more socially ready; families are more connected to schools; teachers are more prepared to support the children and families they serve; and the community realizes better outcomes for a relatively straightforward and inexpensive investment of time and energy.

### XIII. Workforce Development

- A) **Recommendation: The Commission recommends that the Pre-K program maximize use of the existing early childhood workforce development system and resources to meet professional development requirements to adequately prepare Pre-K teachers. As part of this support, it should work to increase utilization of existing academic advisors by child care professionals.**
- B) **The Commission recommends the release of City Pre-K funding to providers should be contingent on compliance with salary scales that provide teachers with appropriate compensation.** This is a critical strategy for attracting and retaining quality teachers as well as making it economically feasible for teachers to afford the schooling needed to be certified. Table 6 illustrates a proposed wage scale for teachers at different levels.

**Table 6: Proposed Wages for Early Childhood Workforce**

Current Wages		Proposed Wages	
Aide	\$16,000	Aide	\$28,000
Asst. Teacher	\$20,000	Asst. Teacher	\$32,000
Lead Teacher (with certification)	\$27,000	Lead Teacher	\$50,000

The salary scale in Table 6 represents an average for appropriate compensation for teachers. The City Pre-K Program should use this as a basis to create a closely aligned minimum salary scale.

- C) **The Commission recommends that the City of Philadelphia work with OCDEL to make accommodations to include teachers who are working to obtain required degrees and credentials to serve in quality child care programs while expanded Pre-K is being phased in order to promote equity and inclusion.**

The City should also advocate for the State to use an existing method of alternative credentialing to grant degree equivalence to highly experienced teachers who demonstrate excellence in their fields based on an objective process, but are unlikely to obtain their degrees. This should include immigrant and refugee teachers who are trained but may not be credentialed in the United States.

The City should supplement existing resources with policies, programs, and private philanthropic support needed to achieve quality standards adopted by this program. These include:

- A variety of supports for early childhood teachers to obtain teacher certification;
- Targeted advocacy and support to enable bilingual educators to obtain required teaching credentials; and
- Higher education coursework and in-service training that is relevant to the needs of Philadelphia’s preschool population.

Key partners in this work include Philadelphia Works Inc., the Community College of Philadelphia and local institutions of higher education. Table 7 shows the career pathways for

early learning teachers, education requirements, and what existing and needed resources there are to advance in their education and career. This illustrates the need to layer existing supports with new resources to advance this work. More information about existing and proposed resources can be found below, on pages 16-18, 31-32, and in Appendices E and F.

**Table 7: Early Childhood Certification**

<b>Career Lattice Level</b>	<b>Requirement</b>	<b>Current Supports to Help Teachers Obtain</b>	<b>Anticipated Supports to Help Teachers Obtain</b>
Level III <b>Assistant Teacher</b>	CDA <sup>+</sup> Credential, diploma, certificate or 6 ECE <sup>*</sup> credits	CDA courses in higher education and a number of neighborhood settings	CDA courses in additional languages
Level IV <b>Assistant Teacher</b>	30 credits including 12 in ECE - or - Associate degree in ECE		Bilingual Spanish-English CDA to AA program
Level V <b>Director or Lead Teacher</b>	AA/AAS <sup>±</sup> in ECE/equivalent or related field including 18 ECE credits -or- elementary education and 12 ECE credits -or- unrelated degree including 30 ECE credits -or- ASB/AST <sup>§</sup> in ECE with articulation agreement	CDA Assessment Voucher	Negotiation with State to accept alternative certification
Level VI <b>Director or Lead Teacher</b>	BS/BA in ECE/equivalent degree -or- related field including 30 ECE credits - or- elementary education and 18 ECE credits -or- any field with ECE certification	Higher education tuition assistance up to \$6,000 annually for coursework through accredited Higher Education Institutions	Dual ESL/ECE certification program
Level VII <b>Director or Lead Teacher</b>	Masters in ECE/equivalent degree -or- related field including 30 ECE credits - or- elementary education and 18 ECE credits -or- any field with ECE certification	Limited number of program to program articulation agreements	Additional program to program articulation agreements
		Some career advising	Intensive academic advising and financial support to cover ancillary costs related to degree attainment (e.g. transcripts, cost of certification exams, etc.)
		Funded credit bearing coursework through the Regional Key for renewal of credentials and or attainment of Level II teacher certification.	Financial support for local cohort-based praxis preparation courses for ECE teachers
			Coursework and student teaching opportunities that are relevant to needs of Pre-K workforce

+CDA: Child Development Associate

Note: Revisions to requirements are underway.

\* ECE: Early Childhood Education

±AA/AAS: Associate of Science / Associate of Applied Science

§ASB/AST: Associate of Science in Business / Associate of Science in Teaching

Efforts to strengthen the workforce should be prioritized in the following order to ensure:

1. There are enough qualified teachers to support Pre-K expansion;
2. Individuals working in the early childhood field are able to get the credentials they need to work in quality programs;
3. Quality providers are able to attract qualified staff people from other fields.

- D) **The Commission recommends that the City’s Pre-K program work with stakeholders such as institutions of higher education, providers, and advocates to ensure that teacher preparation programs provide the necessary skills for practitioners to be effective teachers.** The Commission suggests the City consider recommendations contained within *Early Childhood Education Teachers 2.0: Strategies to Transform the Profession*, which describes recommendations for teacher recruitment, teacher preparation, and teacher retention and advancement.<sup>38</sup> For more information on the report, see Appendix M.

**Rationale:** Research indicates that the most direct way to improve early childhood outcomes is by improving teacher preparation. Quality early childhood education requires effective pre-service training (to obtain degrees and credentials), in-service training, technical assistance, and classroom coaching.

*Pre-Service Training:* Although degree requirements vary by funder, Head Start, Pre-K Counts and Keystone STAR 3 and 4 early learning programs require lead teachers to have a minimum of a bachelor’s degree and certification in early childhood education or a related field, and assistant teachers to have at least an associate degree.<sup>39</sup> Table 8 illustrates the number of new certified teachers needed each year, and highlights the importance of increased support for growing the number of credentialed teachers. As Table 8 highlights, Philadelphia would need approximately 325 new bachelor’s-level teachers with certification and 325 new assistant teachers with associate degrees to serve an additional 6,500 children in Pre-K.<sup>40</sup> Most degree candidates currently in the early childhood workforce are non-traditional adult students. If they earn \$35,000 or less, they can access state tuition vouchers to pay for higher education coursework. The most effective way to ensure that this group meets credentialing requirements is by assigning them academic advisors who are knowledgeable about Pennsylvania’s early childhood career lattice and local higher education programs to assist them in navigating course offerings, articulation, degree requirements and preparation for certification exams.

**Table 8: Minimum Number of New Teachers Needed to Support City Pre-K Proposal**

Minimum Number of New Teachers Needed to Support City Pre-K Proposal				
	2016-2017	2017-2018	2018-2019	Total
Teachers (Bachelors, Certification)	100	112	113	325
Assistant Teachers (Associate)	100	112	113	325

*In-Service Training:* Teachers in high-quality early childhood programs are required to meet annual in-service requirements that vary depending on funding source. The Commission recommends that the City work with professional development organizations funded by the State (the Southeast Regional Key, its subcontractors and United Way’s Success by Six program), the School District of Philadelphia, and Pre-K providers to identify specific areas of focus each year. After the start-up phase, child outcomes and assessment data should be used to inform these decisions.

High-quality early childhood programs receive program-specific technical assistance as a matter of course from their funders (Head Start and Pre-K Counts, for example), intermediaries, Keystone STARS, and private agencies. The Commission recommends that these agencies share information with each other, integrate their approaches as much as possible, and assign one technical assistance provider to be the primary liaison with each program.

*Coaching:* In-classroom coaching by experienced teachers is increasingly seen as the most efficacious way to improve instructional methods from Pre-K through secondary school. The Commission recommends that the City leverage funds to provide coaching assistance to Pre-K classrooms to maximize their ability to use required curricula and assessment tools, and to provide additional support to teachers as needed. Coaching would build on pre-service and in-service training described above, and should be financed through private sources.

#### **XIV. Governance and Organizational Structure**

**Recommendation: The Commission recommends the creation of a governance board to oversee the Pre-K program's receipt and distribution of funding to providers and oversee the implementation of Philadelphia's Pre-K program to ensure a fair and equitable system.**

This board should:

- Establish an equitable system to select Pre-K providers, contract and pay them;
- Ensure quality and accountability; and
- Improve coordination with other public sector agencies that provide Pre-K funding and supports.

As mentioned earlier, a critical piece of this work will also involve continuing efforts that are underway to provide a streamlined system for parents to apply for publicly-funded early childhood programs for which they qualify.

The work of the governance board should be guided by:

- Fiduciary accountability. The governance board should provide regular financial reports and an annual audit, and should share the audit with the Administration and City Council.
- Program accountability. Staff and governance board members should regularly review and analyze citywide data on child and program outcomes, using data to drive revisions as needed. An independent evaluation should also be conducted no later than the end of the third year of the program. Additional evaluation prior to three years should be conducted as deemed needed by the governing board. The Pre-K program should issue public reports annually.
- Transparency. In addition to reports detailed above, meetings of the board and major decisions will be announced to the public.
- Accessibility. The Pre-K program should actively seek opportunities to solicit input from members of the public through its web site and public meetings.
- Equity. A commitment to ensuring equity and opportunity for Philadelphia's children.

A governance board should be appointed by the Mayor and City Council to guide the Pre-K program. Governance board members would reflect the city's racial and ethnic diversity and include representatives of local government, early childhood education including center-based, group, and family providers, business, parents, healthcare, labor, higher education and the School District of Philadelphia. All members of the governance board should have term limits. This body should have a formal designation as negotiated by the Mayor and City Council. (For more information on the structure of the governance board, see Appendix H.)

**Rationale:** Establishing a governance board would enable the City to ensure that it can quickly identify adequate capacity to support a growing system, oversee critical administrative functions, contract with capacity-building entities to augment their existing efforts, commission independent reviews of the program as a whole, and ensure that community voices are part of the conversation. In addition, employing qualified staff and unpaid governance board members to review educational standards and child outcomes ensures that the standards set for providers align with current research around early childhood education and that those standards can be continually reviewed and updated. These individuals should also ensure that policies and practices meet rigorous research-based standards.



## Funding

This section looks carefully at the cost to provide quality Pre-K, how to leverage existing funding, and how to maximize new local funding to expand quality Pre-K. In order to create more quality slots, funding must be directed towards not only increasing the number of slots but towards increasing quality for programs that might need additional support.

### Cost of Quality

The cost of providing quality care for children is highly dependent on salary and benefit offerings and varies somewhat by business model. Quality programs incur additional costs to meet high standards. The biggest cost driver is paying for credentialed teachers and staff, although they also have higher facilities, program, and administrative costs.

While there is no single representative estimate for the cost of quality in Philadelphia, the Commission sought to understand the financial picture for providers given industry requirements. A quality center-based business model has an average cost of \$14,000-\$15,000 per preschool child to provide quality care for a minimum of eight hours a day and 260 days per year, reflecting requirements that no more than 20 children be cared for by at least two adults per classroom. These estimates assume teachers and staff are paid salaries commensurate with their experience and qualifications.

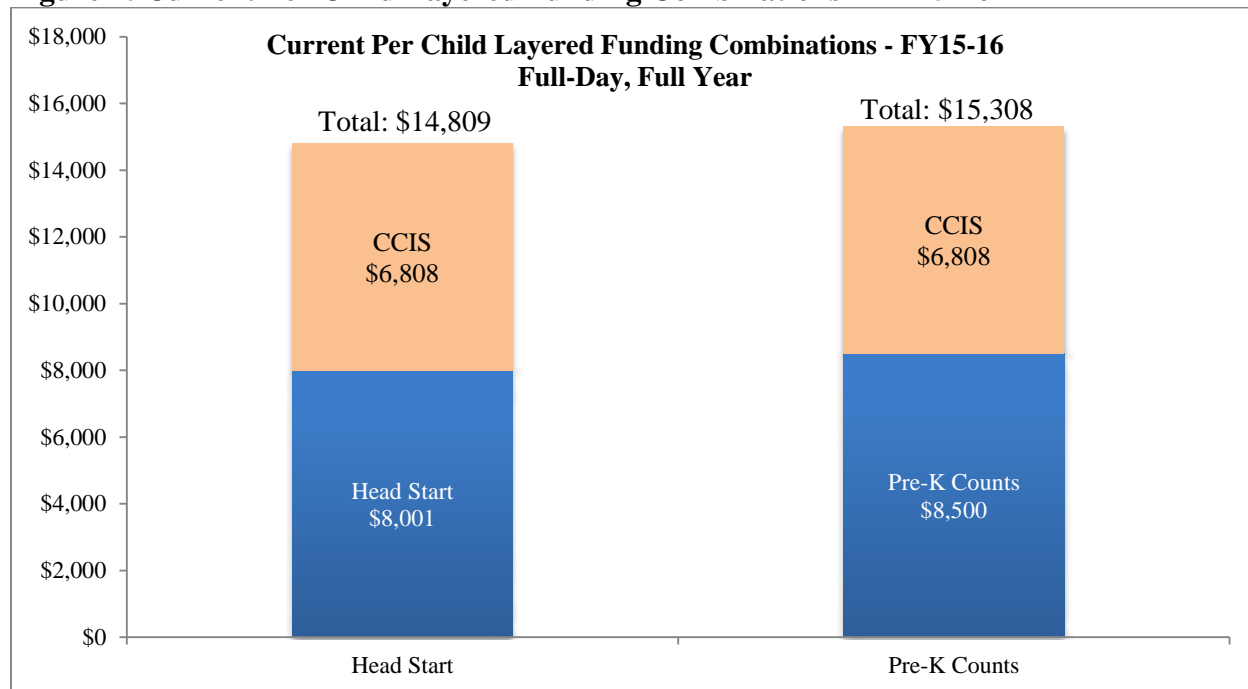
### Layering Existing Funding

Only a small portion of Philadelphia providers are able to layer more than one source of public funding to provide full-day, full-year care. Coordinating two or more funding sources to support the cost of services to individual children requires careful tracking, cost allocation, and billing. Many providers have limited administrative capacity or are unable to hire additional support. Some families find it difficult to consistently maintain eligibility for child care subsidy, which results in revenue uncertainty for their providers. Additionally, not every child is eligible for child care subsidy and limited subsidy dollars are distributed on a first-come, first-served basis.

Figure 4 illustrates that providers who successfully layer existing revenue from Head Start and Pre-K Counts with Child Care Subsidy (CCIS for summer and before/after care) for the same child can receive funding above \$14,500 per child under optimal circumstances, achieving a funding level to adequately cover the cost of quality care.<sup>41</sup> Maximizing revenues for each child in care is a proven component of successful financing for early childhood providers. Like with subsidy dollars, not every child is eligible for Head Start or Pre-K Counts and available slots are limited.

The totals presented do not account for intermediary fees to cover service and administrative expenses (from Head Start, Pre-K Counts intermediaries); CCIS totals reflect STAR 3 rates assuming providers are enrolled to 85 percent capacity.

**Figure 4: Current Per Child Layered Funding Combinations – FY15-16**



*Note: Head Start rate reflects the average amount of per-pupil funding for Head Start slots in Philadelphia in FY 2015.*

#### **XV. Local Pre-K Funding Model**

**Recommendation:** The Commission recommends that the City fund quality Pre-K slots for the traditional six-hour school day and 180-day school year at \$8,500 per slot. This proposed per child rate should match the state Pre-K Counts rate. For those needing full day, full year programming, child care subsidy or private tuition should be layered on top of this to support the full cost of quality for full day, full year programming (which also includes the cost of improved compensation for staff). The City’s per child rate should match the state Pre-K Counts rate. Total recurring funding from the City would be capped at \$60 million annually.

Salaries for early childhood teachers and staff are typically very low, resulting in high staff turnover that undermines the quality of services. The Commission’s proposal is based on wage scales that have been benchmarked to salary data for comparable work. For example, lead teacher salaries are pegged to nearly \$50,000 a year for those with at least a bachelor’s degree. As discussed in the Workforce Development section, providers should be monitored to ensure that staff salaries reach this level. Table 6 (on page 33) shows recommended average teachers’ salaries at different levels of experience to ensure a stable workforce.

Providers and families would combine this City revenue with existing child care subsidy to fully fund these new quality Pre-K slots. OCDEL is currently streamlining access to subsidized summer and wrap-around care for eligible children who participate in Pre-K Counts and Head Start during the traditional school day. This option should be available for children who

participate in Philadelphia’s quality Pre-K program. Eligible families would be guaranteed subsidy for 12 months from the time children start preschool, with the option to renew for a second year. Families who are not eligible for child care subsidy are still eligible for school day, school year funding.

Table 9 summarizes the possible combinations of local, state and federal funding under the Commission’s proposal. The totals presented do not account for intermediary fees to cover service and administrative expenses (from Head Start, Pre-K Counts intermediaries); CCIS totals reflect STAR 3 rates assuming providers receive 85 percent of the total subsidy funding.

**Table 9: Proposed Funding Combinations with Philadelphia Pre-K**

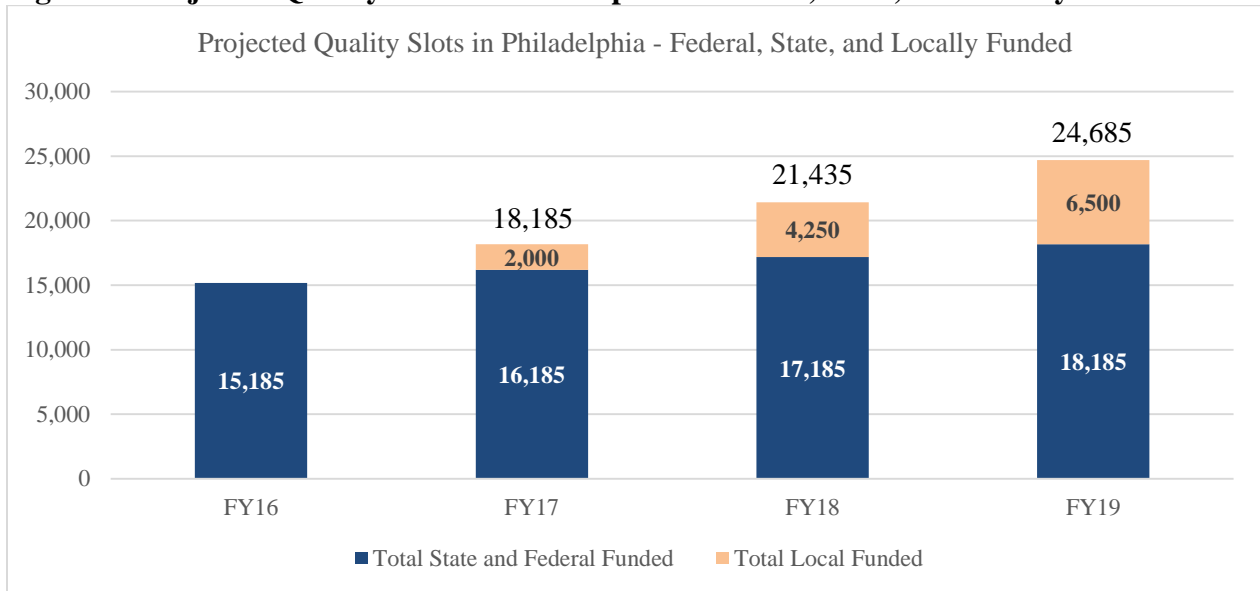
<b>Proposed Funding Combinations with Philadelphia Pre-K</b>	<b>State/ Federal Program</b>	<b>City</b>	<b>CCIS (Wrap-Around &amp; Summer @ STAR 3)</b>	<b>Tuition</b>	<b>Total-Full Day, Full Year</b>
Head Start + CCIS	\$8,001	--	\$6,808		<b>\$14,809</b>
Pre-K Counts Provider + CCIS	\$8,500	--	\$6,808		<b>\$15,308</b>
City + CCIS	--	\$8,500	\$6,808		<b>\$15,308</b>
City Only (+ private tuition optional)	--	\$8,500	--	<b>\$6,000*</b>	<b>\$14,500</b>

*Note: Head Start amount varies by grant recipient. Amount shown reflects average per child funding for providers in Philadelphia.*

*\*This is a recommended minimum tuition fee to ensure centers can cover the cost of quality care.*

Working within a local funding cap of \$60 million per year, the Commission estimates that the City could create an additional 6,500 quality slots through a three year ramp up strategy: 2,000 in FY17, 2,250 in FY18, and an additional 2,250 in FY19. As shown in Figure 5, assuming continued expansion of Pre-K Counts by the State, modest expansion of quality Keystone STARS providers, and the City’s investment, the total number of quality slots in Philadelphia should increase to approximately 25,000 by FY19 – almost 10,000 more quality slots than exist now in FY16.

**Figure 5: Projected Quality Slots in Philadelphia – Federal, State, and Locally Funded**



As illustrated in Table 10, combined with projected state and federal funding, the number of quality slots in Philadelphia would increase by nearly 10,000 over 3 years while the number of children in need decreases from 17,296 to 7,796.<sup>42</sup> Based on other cities’ experiences with Pre-K, 65 percent of eligible families can be expected to participate in the initial years of the program. Thus, although more than 17,000 low- and moderate-income children are currently without access to quality Pre-K in Philadelphia, over 12,000 families would seek it. This proposal would extend services to three quarters of those families by 2019.

The Commission recognizes that this means that by FY19, there will still be over 7,700 children in need who will not be able to afford quality child care. The Commission urges the City to work with federal and state partners to continue to expand those resources.

**Table 10: Projected Quality Slots in Philadelphia**

<b>Low- and Moderate Income Children Without Access to Quality Pre-K</b>		<b>17,296**</b>			
<b>Slot Summary</b>	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>FY19</b>	
Total Quality Slots	15,185	18,185	21,435	24,685	
Total Local Funded		2,000	4,250	6,500	
Total State and Federal Funded	15,185	16,185	17,185	18,185	
<b>Total Estimated New Slots</b>		<b>3,000</b>	<b>6,250</b>	<b>9,500</b>	
Estimated New State and Federal	--	1,000	2,000	3,000	
New Local Slots	--	2,000	4,250	6,500	
<b>Remaining Need</b>	<b>17,296</b>	<b>14,296</b>	<b>11,046</b>	<b>7,796</b>	

The primary cost for the City is Pre-K slots. As the number of slots increases over time, the City has fewer resources for other related costs such as workforce development or fiscal administration. As shown in Table 11, the recommended budget shows the City allocating funding in the initial years of the program to provide Pre-K slots, quality improvement, and the fiscal and administrative support needed to support the roll out. It would also leverage new and existing investments to provide academic advising for an early childhood workforce comprised of non-traditional adult students, provide in-classroom coaching to strengthen Pre-K instructional practices, and support intensive technical assistance to improve providers' quality. While some of these expenses are for start-up costs, others such as workforce development can be supported by private or philanthropic support in later years.

**Estimated Program Budget:**

**Table 11: Estimated Costs of Pre-K Expansion to the City**

<b>Estimated Costs to City</b>	<b>FY17</b>	<b>FY18</b>	<b>FY19</b>
Local Slot Costs*	\$17,000,000	\$36,125,000	\$55,250,000
Quality Improvement	\$5,200,000	\$5,200,000	--
Instructional Coaching			
Support for non-STAR/1 & 2 STAR			
Workforce Credentialing			
Fiscal Support and Administration	\$3,800,000	\$6,812,500	\$4,750,000
One-Stop Eligibility/Enrollment System			
(start-up costs)			
Provider selection and fiscal management			
Fiscal and Administrative Support for			
Providers			
<b>Total Estimated Costs</b>	<b>\$26,000,000</b>	<b>\$48,137,500</b>	<b>\$60,000,000</b>

\*Based on a payment of \$8,500 per slot and 2,000 slots in FY17, 4,250 in FY18, and 6,500 in FY19.

**Quality Improvement:** The budget includes costs associated with technical assistance to help providers improve and maintain quality through in-classroom coaching, workforce supports, and other technical assistance.

**Fiscal Support and Administration:** Costs for fiscal support and administration would be low, likely around 10% of the total slot costs. If the City is able to partner with OCDEL, the State can continue to perform certain monitoring duties to avoid duplicating efforts. The one-stop system is a web-based portal that will reduce the burden of enrollment paperwork on families and providers.

**Benefits:** The Pre-K Counts program and the Keystone STARS system are familiar to both providers and families. Providers who only receive child care subsidy benefit from the City funding, and families would have additional, more affordable quality options.

This model adds quality slots without creating an additional agency or system for providers. Quality improvement will utilize existing structures listed in the Quality Improvement and Workforce sections, pages 31 and 33. City funds must be used to increase quality through technical assistance because these existing structures are underfunded to support rapid expansion. The City can work with the State to coordinate the equitable distribution of slots and target priority areas for locally funded programs to avoid gaps in geographic coverage. Additionally, the City should partner with OCDEL to reduce overhead costs related to monitoring and compliance.

**Challenges:** In order to both expand access to quality and fully fund the cost of care, this model must address the existing challenges to layering funding. Without layering funding streams, this model does not address families' need for full-day/full-year care and providers' need to fill the slot full-day/full-year. Working with OCDEL is a key component to overcoming this current challenge.

The City should also work to prevent unintended consequences. The City does not want providers to discontinue or reduce slots for infants and toddlers as local funding is not available for these children. Similarly, the federal per child amounts for Head Start are estimated to be on average around \$600 lower per child than Pre-K Counts at this time. The City does not want to inadvertently discourage providers from seeking federal funding for such slots and should explore ways to increase per-child rates for Head Start as well as subsidy for preschool children, and other strategies to eliminate conversions from federally funded quality seats to City-funded.

## **XVI. Revenue to Fund Pre-K**

- A) Recommendation: The Commission recommends that City Council and the Mayor consider the following options as potential funding sources: Property Tax, Wage Tax, Sales Tax, Use & Occupancy Tax, Cigarette Tax, Liquor Tax, Parking Tax, and Sugary Drink Tax.**

The Commission evaluated several revenue sources to determine the potential to generate funding for Pre-K. Table 12 shows the sources of revenue, the increase required to generate the funds for Pre-K, the value of a 1% increase, whether or not state action would be required, and whether the tax is a current source of revenue for the School District.

**Table 12: Considered Revenue Sources for Expanded Pre-K**

Source of Revenue	Increase to Generate \$60M Annually	1% Increase Generates	Requires State Action	School District Source of Revenue
Property Tax	5.1% (rate: 1.3998% to 1.4704%)	\$11.9M		X
Wage Tax	N/A*	0.5% = \$14M		
Sales Tax	20% (local rate: 2% to 2.4%) (total rate: 8% to 8.4%)	\$3M	X	X
Use & Occupancy Tax	46% (rate: \$1.21 to \$1.77 per \$100 of assessed value)	\$1.3M		X
Cigarette Tax	Increase in tax likely to reduce school district revenue from current levels		X	X
Liquor Tax	108% (rate: 10% to 20.8%)	\$5.6M	X	X
Parking Tax	63% (rate: 22.5% to 37%)	\$4.2M		
Sugary Drink Tax	New proposed tax 1 cent per oz.	1 cent per oz. = \$57.8M		

\*City cannot increase wage tax rates for residents above 3.93% and non-residents above 3.5% (approximately 0.5% increase from current rates) without forgoing \$86 million in state wage tax relief. In FY16, the resident rate is 3.9102% and the non-resident rate is 3.4828%.

**Property Tax:** This tax would need to increase by 5% to generate \$60 million annually. Unlike other cities and counties that rely more heavily on the property tax as a proportion of their budget, Philadelphia’s property tax is split between the City and the School District of Philadelphia (currently at 45% City: 55% District). By increasing the City portion, the current split between the School District and City would change to 52% District/48% City. The City has increased the property tax four times in the last six years. The Commission also has concerns that this could be seen as impacting funding for Philadelphia Public Schools. In Commission discussions, the impact that selected revenue sources would have on public school funding was a key concern.

**Wage Tax:** The largest portion of City tax revenue comes from the Wage and Earnings Tax. This tax is collected from all employees that work within the city limits but live elsewhere, as well as all residents regardless of work location. Despite the wage tax’s revenue generation capacity, the tax has weakened the economic health of the city and region. Commissions on tax competitiveness and job creation urged continued reductions in the wage tax to help spur economic growth. The City has been gradually reducing these rates since 1996, and the Mayor’s proposed budget proposes additional reductions. The maximum rate increase the City can enact

without losing \$86 million in state tax relief funds is 0.5% which generates \$14 million. This would return the rates to 2009 levels and mark the first wage tax increase since 1983.

**Sales Tax:** The City has a local 2% sales tax, which supports both the City and the School District. The total sales tax rate in Philadelphia is 8%. The rate in surrounding Pennsylvania counties is 6%. The rate was last increased in 2009. Any change to the local sales tax rate requires state authorization.

**Use and Occupancy (U&O):** This tax would need to increase by 46% to generate \$60 million annually. The School District of Philadelphia currently receives 100% of U&O proceeds. For FY16, the City increased the U&O tax by 7% to generate \$10 million for the District. The rate was also increased for FY13. Similar to a property tax increase, the creation of a “local” U&O rate may be seen as competing for a District revenue source.

**Cigarette Tax:** With state authorization, Philadelphia passed a local \$2 per pack tax on cigarettes in 2014 to provide additional revenue for the School District. This tax is added on top of an existing state tax. Cigarette tax proceeds are expected to decline over time as the tax provides incentive for smokers to quit or reduce the number of cigarettes they smoke. Raising the rate, which would require state authorization, would generate some funds for Pre-K, but it would also lead to a decrease in consumption that would decrease revenues for the School District. The local portion of this tax is set to expire in June 2019 unless it is reauthorized by the State.

**Liquor by the Drink Tax:** The School District currently receives \$60 million annually from the 10% liquor by the drink sales tax (the City does not receive any liquor revenue). Amendments to this tax would require state enabling legislation.

**Parking Tax:** The Parking Tax is levied on the gross receipts from all transactions involving parking or storing of automobiles in parking lots and garages. The current rates are 22.5%, increased from 20% in 2015 as a part of the effort to increase the City’s General Fund contribution to the School District. The tax was also increased from 15% to 20% for FY09. The tax would need to increase to 37% (+63%) to generate an additional \$60 million annually.

**Sugary Drink Tax:** The Sugary Drink Tax is a proposed new revenue source included in the Mayor’s proposed FY17 budget. This is a tax on beverages with added sugar. The tax would be levied on licensed beverage distributors, rather than at the point of sale (such as with the Liquor by the Drink Tax). Licensed beverage distributors are distributors that are certified through Philadelphia’s Licenses and Inspections and act as an intermediary between the beverage producer and retailer. The Commission carefully considered feedback from the community that the potential exists for the Sugary Drink Tax to be passed on to the consumer by beverage distributors. Legitimate concerns were also raised about the disproportionate effects this tax may have on low-income populations.

The Commission studied a report written by City Council staff that outlines alternative funding methods used by other municipalities and states to fund Pre-K programs. The study found that most states use ‘sin taxes’ to raise money for Pre-K. Sin taxes include taxes on beer, cigarette,



gambling, and gaming. Some states allocate money from their state lotteries to fund Pre-K. For example, Georgia became the first state to offer a Pre-K initiative supported by lottery funds in 1993. Since 1999, gambling proceeds have supported the Early Childhood Development Education and Care Fund, which finances Pre-K in Missouri. Most states use general funds, as well state and federal funds to pay for Pre-K. In Maryland, \$4.3 million in state funds and \$15 million in new federal grant funds will provide free Pre-K to an additional 3,000 low-income students in fiscal year 2016. In 2015-16, only five states (Idaho, Montana, New Hampshire, South Dakota and Wyoming) did not provide state funding for Pre-K. State general revenue is being used to fund Pre-K in the following states - *Delaware, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kansas, Massachusetts, Michigan, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, Oregon, Rhode Island, South Carolina, Washington, West Virginia, Wisconsin*. To read the report, see Appendix J.

**B) A majority of the Commission (13 of 17, with one abstention) recommend that the City (City Council and the Mayor) support the Sugary Drink Tax as a possible funding source to support Pre-K.**

The proposed tax of three cents (\$.03) per ounce on sugar sweetened beverages would be effective January 1, 2017 if passed. Revenue created from the Sugary Drink Tax is expected to yield approximately \$95 million annually. The tax would allow the City to invest \$256 million into expanding quality Pre-K over the next five years. When combined with state funding, this will result in expanding quality Pre-K for 10,000 students per year for three years (FY19). The City has made conservative revenue projections and research from other jurisdictions that have instituted similar taxes have shown a steady and reliable revenue stream.<sup>43</sup>

**C) The Commission unanimously recommends that the Mayor and City Council work together to identify and provide sufficient funding to support the Pre-K program recommended herein regardless of the funding source.**

Quality Pre-K is too important to our children and our future to not provide the adequate resources to fund this work.

## Moving Forward

### XVII. Process for Developing the Implementation Plan

- A) **Recommendation: The Commission recommends that the Mayor’s Office of Education develop a detailed implementation plan guided by the Commission’s recommendations for expanded Pre-K, pending the concurrence of City Council.** The implementation plan should provide additional information about the programmatic elements, provider contracting process, professional development supports, and preschool eligibility and selection process. It should also address how to balance the needs of existing and new providers, including those who need a variety of supports to improve quality.
- B) **The Commission also recommends that the plan be developed transparently and in partnership with child care providers (including directors, teachers and staff) and parents.**
- C) **The Commission also recommends that the implementation plan be presented to the wider community for public feedback; this includes parents, providers, businesses and community members.** It should then be revised based on the feedback.

**Rationale:** The research and public comment that informed this report and recommendations are intended to develop a clear path for expanded Pre-K to be implemented in Philadelphia. The public should continue to play a vital role in this phase, which is why the Commission encourages and invites public comment.

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- <sup>1</sup> Based on standards identified by the National Institute for Early Education Research.
- <sup>2</sup> Minervino, J., and R. Pianta. “Early learning: The new fact base and cost sustainability.” *Lessons from Research and the Classroom*. (Washington: Bill & Melinda Gates Foundation, 2014), 8.
- <sup>3</sup> Brown, B., and Traill, S. “Quality Child Care, School Readiness and New Jersey’s Future Economic Success.” *Benefits for All: The Economic Impact of the New Jersey Child Care Industry (Infant/Toddler, Preschool and Out-of-School Time Programs)*. (Trenton, NJ: National Economic Development and Law Center, 2006), 9.
- <sup>4</sup> Heckman, James. *Four Big Benefits of Investing in Early Childhood Development*. (Chicago: The Heckman Equation), 1.
- <sup>5</sup> *Don’t Confuse Access with Excellence: Why Quality Matters in Pre-K Investments*. (Cleveland: Advocacy and Communication Solutions, LLC, 2015).
- <sup>6</sup> *The Impact of Quality Pre-K on K–12 Education*. (Philadelphia: Pre-K for PA).
- <sup>7</sup> Bagnato, S.J. et al., “Did Children Benefit from Participation in Pre-K Counts.” *Pre-K Counts in Pennsylvania for Youngsters’ Early School Success: Authentic outcomes for an innovative prevention and promotion*. (Pittsburgh: University of Pittsburgh, 2009)
- <sup>8</sup> Carpluk, William. *Investments in Pennsylvania’s Early Childhood Programs Pay Off Now and Later*. (Washington: The Pew Center on the States, 2011).
- <sup>9</sup> Pennsylvania Department of Education, “Charter School Funding, 2014-2015.” (Pennsylvania, 2015). [http://www.education.pa.gov/K-12/Charter%20Schools/Pages/Charter-School-Funding.aspx#\\_Vq-o\\_tlrKUK](http://www.education.pa.gov/K-12/Charter%20Schools/Pages/Charter-School-Funding.aspx#_Vq-o_tlrKUK)
- <sup>10</sup> Brown, B., and Traill, S. “Quality Child Care, School Readiness and New Jersey’s Future Economic Success.” *Benefits for All: The Economic Impact of the New Jersey Child Care Industry (Infant/Toddler, Preschool and Out-of-School Time Programs)*. (Trenton, NJ: National Economic Development and Law Center, 2006), 22.
- <sup>11</sup> Bueno, M., Darling-Hammond, L. and Danielle Gonzales. *A Matter of Degrees: Preparing Teachers for the Pre-K Classroom*. (Washington: pre[k] now, a campaign of the Pew Center on the States, 2010), 2.
- <sup>12</sup> Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook, 2016-17 Edition*, Preschool Teachers, on the Internet at <http://www.bls.gov/ooh/education-training-and-library/preschool-teachers.htm> (visited December 18, 2015).
- <sup>13</sup> Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook, 2016-17 Edition*, Kindergarten and Elementary School Teachers, on the Internet at <http://www.bls.gov/ooh/education-training-and-library/kindergarten-and-elementary-school-teachers.htm> (visited December 18, 2015).
- <sup>14</sup> Bishop-Josef, S, Schaefer, S., Watson, S., “How Early Learning Investments Can Help Expand Pennsylvania’s Economy.” *Strengthening Pennsylvania Businesses through Investments in Pre-Kindergarten: How Investments in Early Learning Increase Sales from Local Businesses, Create Jobs, and Grow the Economy*. (Harrisburg: Ready Nation/America’s Edge, 2014), 3.
- <sup>15</sup> Estimate for the cost of providing quality care is based in unpublished research conducted for this effort that utilized surveys with local early childhood employers and employees and benchmarked compensation to local wage and benefits standards for similar occupations. The cost model is based on one that was recently introduced by the federal Agency for Children and Families Child care Bureau to help states establish reimbursement rates. \$10,439 is based on full-time enrollment 260 days a year in a STAR 4 center in 2016. Reimbursement at this level is not the norm.
- <sup>16</sup> *Examining Multiple Early Childhood Risks in Philadelphia*. (Philadelphia: Penn Child Research Center, University of Pennsylvania’s Graduate School of Education, City of Philadelphia Data Management Office, Deputy Mayor’s Office for Health and Opportunity, 2015).
- <sup>17</sup> Minervino, J., and R. Pianta. “Early learning: The new fact base and cost sustainability.” *Lessons from research and the classroom*. (Washington: Bill & Melinda Gates Foundation, 2014), 6-7.
- <sup>18</sup> Minervino, J., and R. Pianta. “Early learning: The new fact base and cost sustainability.” *Lessons from research and the classroom*. (Washington: Bill & Melinda Gates Foundation, 2014), 6-7.
- <sup>19</sup> “Public Health Management Corporation to Administer Head Start Program in Southwest Philadelphia,” <http://www.phmc.org/site/96-press-releases/2014/1009-public-health-management-corporation-to-administer-head-start-program-in-southwest-philadelphia>
- <sup>20</sup> Effective December, 2015
- <sup>21</sup> Estimate based on discussion with OCDEL staff about expenditures by age group in Philadelphia during 2014–2015.
- <sup>22</sup> Federal Head Start from self-reports by Federal Head Start grantees in 2015-16. Head Start Supplemental Assistance and Pre-K Counts from OCDEL, 2016. Child Care Works. See footnote to p. 15.
- <sup>23</sup> Data provided by School District of Philadelphia, PHMC, Norris Square Civic Alliance, Accelerato and Association Puertoriquenos en Marcha in Fall, 2015. The majority of Head Start slots are in community-based Keystone STAR 3 and 4 programs. Thirteen centers provide Head Start services exclusive of STARS. These programs are considered quality because they meet rigorous Head Start quality standards that have been crosswalked with Keystone STARS.
- <sup>24</sup> Foundation for Child Development, The Case for Investing in Pre-K to 3<sup>rd</sup> Education, p. 6
- <sup>25</sup> Please visit <http://sharedprosperityphila.org/a-running-start-philadelphia/> for more information
- <sup>26</sup> *A Running Start Philadelphia: For Every Child Birth to Five, Appendices A-E*. (Philadelphia: Mayor’s Office of Community Empowerment and Opportunity, June 2015).
- <sup>27</sup> Granted by the US Department of Education. Visit <http://www2.ed.gov/programs/racetothetop-earlylearningchallenge/awards.html> for more details.
- <sup>28</sup> At this writing (December, 2015) proposed changes to Keystone STARS may result in five quality levels. In this event Philadelphia would follow new quality designations equivalent to the current STAR 3 and above. The Southeast Regional Key (SERK) and United Way maintain a list of “STAR 2-ready” programs that meet STAR 3 standards but have not had an independent ERS (Environmental Rating Scale) by the state, which can take a number of months.
- <sup>29</sup> Number/percentage of providers are NAEYC accredited but not affiliated with Keystone STARS. (OCDEL has a streamlined process to designate NAEYC-accredited programs STAR 4a.) Number/percentage are affiliated with NAFCC, exclusive of STARS.
- <sup>30</sup> *Children’s Progress Update: Keystone STAR 3 and 4 programs*. (Pennsylvania: Office of Child Development and Early Learning, 2012–2013).
- <sup>31</sup> This data was compiled from child outcomes data collected with an observational assessment tool aligned with Pennsylvania’s early learning standards.

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<sup>32</sup> Sources: American Community Survey – Age by Income to Poverty Ratio, 1-year estimates, 2014, B17024. Federal Poverty Income Guidelines, 2016.

<sup>33</sup> Barnett, W. S., Frede, E. C., Robin, K. B. “Is More Better? The Effects of Full-Day vs. Half-Day Preschool on Early School Achievement.” *NIEER Working Paper*. (New Brunswick, NJ: Rutgers University, 2006), 18.

<sup>34</sup> Ramey, C. T., Ramey, S. L., and Stokes, B. R. (2009). “Research evidence about program dosage and student achievement: Effective public prekindergarten programs in Maryland and Louisiana.” *The Promise of Pre-K*. (Baltimore, MD: Brookes Publishing, 2009), 79-105

<sup>35</sup> Citation needed

<sup>36</sup> Pennsylvania Learning Standards for Early Childhood: Pre-Kindergarten. OCDEL, Rev. 2014.

<http://www.education.pa.gov/Documents/Early%20Learning/Early%20Learning%20Standards/Early%20Learning%20Standards%20-%20Prekindergarten%202014.pdf>

<sup>37</sup> Authentic assessment is developmentally appropriate and based on teachers’ trained observation.

<sup>38</sup> This report by three local stakeholder groups, the Delaware Valley Association for the Education of Young Children (DVAEYC), the Southeast Regional Key (SERK), and Montgomery Early Learning Center (MELC), was released just as the Commission’s final recommendations were going to press.

<sup>39</sup> Head Start requires at least 50 percent of lead teachers nationwide to hold bachelor’s degrees, although the School District of Philadelphia requires Head Start teachers to hold bachelor’s degrees. Head Start programs offered by STAR 3 to 4 programs are also required to hold bachelor’s degrees.

<sup>40</sup> Assumes new enrollments require classroom expansion, rather than filling out enrollment in existing classrooms.

<sup>41</sup> Assumes full enrollment at least 8 hours per day, 260 days a year with 85% percent CCIS funding and full collections by a STAR 3 center. While 85% collection of CCIS funding is desired, many providers would still be challenged to meet this percentage.

<sup>42</sup> Based on other cities’ experiences with Pre-K, 70 percent of eligible families can be expected to participate in the initial years of the program. Thus, although more than 19,000 low- and moderate-income children are currently without access to quality Pre-K in Philadelphia, 13,330 families would seek it. This proposal would extend services to three quarters of those families by 2019.

<sup>43</sup> When the Mexico soda tax went into effect, sales of sugary drinks fell 6% (12 mL per capita per day) but sales of non-taxed beverages (diet beverages and bottled water) rose 4% (36 mL per capita per day – or more than the sugary drinks fell). When Berkeley raised their tax on sugary drinks, less than half the tax passed on to the customer. For the past 15 years, the Arkansas Department of Finance has collected a steady stream of revenue averaging around \$42 million per fiscal year. The reported revenue has well exceeded the original projections of \$23 million/year.

**CERTIFICATE OF SERVICE**

I, John S. Stapleton, certify that on September 22, 2016, I caused a true and correct copy of the foregoing Answer to Emergency Application for Extraordinary Relief or the Exercise of King's Bench Powers on behalf of Respondents City of Philadelphia and Frank Breslin, in his official capacity as Commissioner of the Philadelphia Department of Revenue, to be served on the following counsel for Petitioners by First Class Mail, which satisfies the requirements of Pa.R.A.P. 121:

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