



## Maryland State Child Care Association

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***Caring For Maryland's Most  
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TO: Rachel Hise, Department of Legislative Services  
For distribution to all members, Commission on Innovation and Excellence in Education

FROM: Christina Peusch, Executive Director, MSCCA  
Isaac Meyer, Government Relations Consultant, Alexander and Cleaver

RE: Position and Comments on Final Working Group One Recommendations

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### **MSCCA Strongly Opposes the Community-Based Provider Phase-In**

The Maryland State Child Care Association has raised concerns regarding the unintentional, but significant impact of phasing in the minimum slots for community-based providers from 10-percent to 50-percent from Fiscal Year (FY) 2020 – FY 2024 in 10-point increments. This policy will drastically impact the commercial viability of our members.

#### **Maryland EXCELS**

MSCCA supports Working Group One's proposal to fund slots to programs that currently operate at EXCELS Level 3 – 5. Currently, there are 513 programs performing at Level 3, 70 programs performing at Level 4, and 325 programs performing at Level 5 for a total of 908 programs eligible to receive slots under universal pre-kindergarten. MSCCA conservatively estimates that each of these programs can serve 20 three or four-year-old slots for a total existing capacity of 18,160 slots.

Page 6 of Working Group One's Preliminary Recommendations provides a chart of the phase-in. Additionally, another chart shows there are 38,223 four-year-olds below 300-percent of the federal poverty level (FPL). The Working Group based its funding formula on an 80-percent adoption rate which means in FY 2020, there would be 30,578 four-year-olds requiring slots. The Working Group recommends the community-based providers receive a minimum of 10-percent of the slots. This means in the first year of universal pre-k for all four-year-olds below 300-percent FPL, the Working Group is recommending only 3,058 slots go to community-based settings versus 27,520 slots to public school programs. As stated, community-based providers will have an immediate capacity to serve 18,160 slots yet the Working Group is recommending only filling a minimum of 3,058.

<b>EXCELS</b>	<b>Participating Programs</b>	<b>Capacity</b>
Level 3	513	10,260
Level 4	70	1,400
Level 5	325	6,500
<b>Total</b>	<b>908</b>	<b>18,160</b>

Fiscal Year (FY)	Community-Based	Total Eligible Slots (80% uptake)	Community-Based Slots	Public School-Based Slots	Unfilled Capacity in Community-Based Program (Based on 18,160 slots)
FY 2020	10%	30,578	3,058	27,520	<b>15,102</b>
FY 2021	20%	30,578	6,116	24,462	<b>12,044</b>
FY 2022	30%	30,578	9,174	21,404	<b>8,986</b>
FY 2023	40%	30,578	12,232	18,346	<b>5,928</b>
FY 2024	50%	30,578	15,290	15,290	<b>2,870</b>

If a family has the choice between paying a community-based provider for services or sending their child to a public school-based program at no charge, the parent will choose the school-based program. The community-based phase-in will catastrophically impact community-based providers.

### **Further Implications**

Consumer behavior will change and those families eligible for fully-funded pre-k will choose to send their child to the free program. The Kirwan Commission has stated multiple times that it wants to see diverse delivery. More importantly, members have stated they want to see income and racial diversity in classrooms as that creates the greatest learning experience for all children. The community-based phase-in would undermine both objectives. The system recommended would provide 90-percent of slots to public school programs despite the private sector having existing capacity to serve more than 50-percent of existing eligible four-year-olds. Additionally, the phase-in proposed would only bring 3,058 children below 300-percent FPL into the community-based settings while more than 27,000 would be placed into public-school programs. The surest way to create diversity of delivery and population is to immediately phase-in a 50-percent community-based provider mandate.

Additionally, because of the increased childcare subsidy and increased benefit if a community-based provider is meets EXCELS Level 3, current providers operating at Level 1 and 2 will strive to reach Level 3. Incentivizing improved performance while reducing the number of slots available for community-based providers is a conflicting model.

The Maryland State Child Care Association strongly requests the Kirwan Commission accelerate the community-based phase-in to immediately require 50-percent of pre-k slots be allocated to community providers.

## Topics for Clarification

### Funding for Special Needs Students in Community-Based Settings

#### **See Working Group One Preliminary Recommendations with Fiscal Impact document**

Element 1.a →

Implementation Decisions →

Items 4 and 5

*4. Priority in expansion of high quality pre-K for four-year-olds and three-year-olds will be given to: (a) special education students, regardless of income; and (b) students who are English Learners, regardless of income. Public funding to support special education students and English Learners will follow the student and go to the provider that is serving the student.*

*5. Local education agencies will enter into agreements with community-based providers to provide publicly-funded pre-K programs to four-year-olds and three-year-olds, which must include the provision of services for students with special needs.*

#### **Disabilities Discrimination/Current Americans with Disabilities Act language**

Item 8 of the “Design Assumptions” states that “providers accepting public funds may not discriminate in student admissions on the basis of race, color, disability, national origin, or sexual orientation.” The provision as written is completely acceptable and should be included, but for the inclusion of “disability”. Being that most programs willingly accept special needs students with open arms and do their absolute best to accommodate them, the practical fact of the matter is that not all programs have the capacity to fully accommodate those needs to the best interest of the child. What the language is really doing is creating an all-encompassing state law requirement that programs need to be ADA and IDEA compliant, and thus compliant with an IEP or other services plans. However, nonpublic schools and programs currently have a “financial hardship” exception, or safety valve, under ADA and are not subject to the strict provisions of IDEA for the very reason that a school without the resources to accommodate would not present the best forum for the individual child’s needs.

We propose that the Commission remove “disability” from the discrimination clause and insert a separate clause to the effect of the following: *“Participating providers shall comply with all federal and state laws with regard to students with disabilities, including ADA and IDEA.”*

Additionally, we’re a bit concerned about the dynamic of a separate MOU with LEAs and are not confident that the full funding needed will actually make it to our programs in order to provide them the ability to accommodate fully. If a third party check-and-balance, such as MSDE, can be put in place for this proposal, it would serve us well. Regardless, the key is to have a separate disability provision outside of the nondiscrimination clause notating compliance with federal law.

Public school districts must provide a free education, in an integrated setting where possible, to students with disabilities and make accommodations for their individual educational needs. Services provided depending on the student’s disability can include special education or physical therapy. In addition, schools may need to adjust test-taking rules or absence policies to accommodate the needs of a student with a disability. Title II of the ADA also gives students the right not to be harassed or discriminated against because of their disability.

New buildings must be accessible for people with disabilities, such as people with wheelchairs or crutches. The ADA does not require that school districts make building modifications that would create an undue financial burden on the school district or alter programs in a way that would change the fundamental nature of the

program to accommodate disabilities. However, if a school district cannot make a building accessible to the disabled, they still must meet their obligation to provide program access to disabled students. School districts in this situation often opt to provide services in a location that is accessible. They may also choose to provide disabled students with direct assistance. For example, if a library is inaccessible, a library worker may bring the books to the student.

### **Clarifying Questions**

We are all required to follow the federal ADA laws. The flat per pupil rate for quality does not include additional funding for children with special needs/disabilities. Public funding to support special education students and English Learners will follow the student and go to the provider that is serving the student. Will the community-based program receive additional funding for special needs students from local school systems via some type of agreement? How will this work to assist non-public settings with financial burden? Is the funding dependent upon the specific need of the child? Is there a plan to add funding and resources for both public and community-based settings to accommodate and meet obligations?

MSCCA is concerned that community-based programs may not be as accessible as public school buildings and without resources, funding, appropriations, there may be issues related to undue financial burden. We are all bound by federal ADA law, but Working Group One is specifically referencing special needs and disabilities in community settings.

### **Certified Teacher Requirement for Community-Based Settings**

Working Group One recommends that to receive public funding, all participating programs, whether based at public schools or in community settings, will follow the Maryland public pre-K standards set forth in the Code of Maryland Regulations (COMAR). Community providers must publish at least at an EXCELS Level 3 ranking with a plan approved by MSDE to achieve Level 5 within five years. Public school-based pre-K programs must publish in EXCELS at least at a Level 4 with a plan approved by MSDE to achieve Level 5 within five years.

### **Clarifying Questions**

State public pre-K standards in COMAR require a certified teacher for teacher qualifications. No degree requirements for assistant teacher or aides. Is Working Group One recommending the teacher qualifications must be a certified teacher for pre-K in community-based settings AND Level 3 - 5 EXCELS? MSCCA is not clear on this distinction and it is a very important point as to the lead teacher requirement. Will the recommendation be all programs providing public pre-K in community-based settings achieve at least a Level 3 with 5 years to attain Level 5 AND require community based diverse delivery settings to hire a certified teacher or the teacher required in the QRIS system?

### **Capital Funding for Public School-Based Expansion**

#### **See Working Group One Preliminary Recommendations with Fiscal Impact document**

Element 1.a →

Implementation Decisions →

Items 10 and 11

*10. The State will prioritize public school construction funding, if available, for additional pre-K classrooms.*

*11. Local jurisdictions will be encouraged to develop innovative ways to meet physical space constraints during the phase-in period, such as utilizing available space at senior or community centers for early education programs.*

### **Clarifying Questions**

The current pre-K expansion grant does not allow for infrastructure and building construction expenditures to allow for full diverse delivery without a complete crowd out of child care/preschool programs. Will the local public schools be given money in year one and each year forward for public school construction? Why would the Commission recommend partnering with Senior Centers and not increase the percentages of partnership with Child Care-Early Learning businesses already providing developmentally appropriate environments, preparing children for school at a higher rate than the public schools with at least half of our EXCELS programs (many more as Maryland has finally invested funds into the child care subsidy system) enrollment is child care subsidy children? This will allow more funding to create public school space with only 10-percent minimum requirement of partnership with community businesses with no funding for construction for community-based programs. Again, this model creates obstacles for a true partnership of a diverse delivery system of preschool in Maryland.

**Additional Concern related to current EXCELS rating system:**

MSCCA supports and has partnered with Maryland EXCELS, as well as with MSDE often to promote all of our state quality initiatives related to quality early childhood experiences.

The concern with the Kirwan recommendations and the future related to UPK relates to obstacles including more programs moving expediently into EXCELS and publishing at their goal of a Level 5 EXCELS stems from the unequal fact that public Pre-K programs EXCELS rating is only on the classroom/s providing Pre-K. Community-based programs must have their full program, even all non -related Pre-K classrooms, Infant and Toddler classrooms, School age programs, even though the other staff and classrooms are not receiving any public funds. This current system doesn't allow the Pre-K in community -based settings to be viewed as a stand alone program in participation as the public Pre-K is rated. EXCELS is not checking all other age groups and classrooms before rendering a QRIS EXCELS rating in public school settings. This is concerning and is an obstacle to diverse delivery, partnership and success.