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TO: LHEC
FROM: Ostroff Associates
DATE: October 6, 2026
RE: State Education Department Proposed Amendments to the Universal Prekindergarten Regulations (8 NYCRR Subpart 151-1)

The State Education Department presented to the Board of Regents P-12 Education Committee on October 5 a proposed rewrite of Subpart 151-1 of the Commissioner's regulations, which governs the Universal Prekindergarten (UPK) program. The proposal implements the UPK changes enacted in the 2026-27 State Budget (Part A of Chapter 56 of the Laws of 2026), but it also includes a set of policy changes that the Department has chosen to add on its own initiative. This memo summarizes the proposal and discusses the operational consequences for LHEC districts.

A Notice of Proposed Rule Making is scheduled for publication in the State Register on October 21, 2026, which opens a 60-day public comment period running to on or about December 20th. The Department anticipates presenting the rule for permanent adoption at the February 2027 Regents meeting, with an effective date of February 24, 2027.

Background

The Enacted Budget restructured UPK in four ways that frame everything in the proposed rule. It consolidated the separate grant programs for four-year-olds into a single UPK aid stream and repealed the Statewide Universal Full-Day Prekindergarten program (Education Law §3602-ee). It set the per-pupil rate for a full-day four-year-old seat at the greater of $10,000 or the district's selected Foundation Aid per pupil. It removed the cap on the number of four-year-old seats a district may claim, so that aid is limited only by the number of children served. And it requires every district to offer full-day UPK to all eligible four-year-olds beginning with the 2028-29 school year. Under the Department's June 22 guidance, half-day seats are paid at half the full-day rate in the interim and become ineligible for UPK aid in 2028-29.

The 2028-29 Universal Mandate

The proposed rule carries the mandate in three places. Section 151-1.4(a) provides that, beginning in 2028-29, all State-funded four-year-old programs must operate on a full-day basis. Section 151-1.4(c) confines the random selection (lottery) process to the years before 2028-29, on the premise that no eligible child will be turned away after that point. Because the proposal also extends the definition of eligible child to three-year-olds, whose seats remain capped, that change would leave districts with three-year-old programs without express authority to select by lottery after 2028-29, and the reference to serving "all eligible children" in the plan definition could be read to reach three-year-olds as well. And the definition of the UPK program plan in section 151-1.2(d) now requires each board-approved plan to include specific goals, a description of how the district will expand to serve all eligible children, and a timetable for achieving those goals, all of which must be described in the district's annual application.

What the proposal leaves out is equally important. It does not define what it means to serve all eligible children, including whether seats at community partners or at agencies funded directly by the Department count toward the district's obligation, or how demand is to be measured. It also contains no hardship variance or safe harbor for a district that cannot reach universal capacity by September 2028 for reasons outside its control, such as a lack of classroom space, a shortage of certified early childhood teachers, or the absence of willing community partners.

At the same time, the proposal deletes two existing accommodations for districts that are building capacity. The summer-only program option, which has been available to districts that could document a lack of space, is repealed along with its variance. The provision allowing first-time programs and expansion classes to operate for as few as 90 days in their first year, with aid prorated, is also struck. The second deletion matters most in the near term, because a district that opens new classrooms mid-year in 2027-28 as space or staff becomes available would no longer have express regulatory authority to do so. The Regents item does not identify either deletion as required by the budget.

For LHEC districts, the exposure is concentrated among those that currently run half-day programs, limit enrollment through a lottery, or operate no program at all. Those districts have less than two years to secure space, staff, and partners. Converting a half-day program to full-day cuts in half the number of children each classroom can serve. In our region, where we expect the $10,000 floor to be the operative rate for many lower-need districts and where facility and personnel costs run well above the statewide average, the aid is unlikely to cover the full cost of a district-operated full-day seat, and nothing in the proposal addresses capital.

New Program Requirements and Costs

On nutrition, every program, regardless of length or location, would have to provide a snack at no cost to children, and districts would have to ensure that breakfast or lunch is provided at no cost to children "who would otherwise be unable to access such meals," including children experiencing homelessness or food insecurity. The current rule requires programs longer than three hours to provide appropriate meals and snacks but is silent on cost. In district buildings, the State's universal school meals program should absorb much of this. The harder question arises at community partner sites, many of which do not participate in the school meals programs. The obligation to ensure meals runs to the district, the standard for identifying which children qualify is undefined, and the proposal does not say whether these costs are an approved UPK expenditure.

On instruction, the required literacy components would expand to add writing, fluency, and comprehension, in alignment with the science of reading requirements in section 100.3(c). Classroom activities would have to be inquiry- and play-based and culturally and linguistically responsive. Assessment instruments would have to be valid and reliable "as determined by the Department," which opens the door to an approved list and could require some districts to replace the tools they use now. Programs would follow the statewide diapering and toileting protocols in section 136.10. Professional learning would have to be made available to community partner staff as well as district staff, and would have to support program quality, alignment with kindergarten through grade three learning goals, inclusive practices, and culturally and linguistically responsive instruction.

The proposal adds an entirely new subdivision on the transition to kindergarten. Districts would have to adopt a comprehensive transition plan; offer families opportunities to visit kindergarten classrooms and meet staff; establish procedures to identify, notify, and enroll all age-eligible children; provide collaboration time for prekindergarten and kindergarten personnel, including community partner staff; and transfer

assessment, screening, and support records into the student's cumulative file. Most districts do some version of this today. The rule would convert that practice into an auditable requirement and extend it to partner staff whose time the district does not control. It also raises a funding question. The Department's 2026-27 fiscal guidance states that UPK funds may not be used to support kindergarten programming, yet the transition work necessarily involves kindergarten staff time.

Districts and direct contract agencies would each have to adopt two new policies. One must promote the participation, inclusion, and integration of prekindergarten students with disabilities and provide the modifications and supports necessary for access to the general curriculum. The other must do the same for Emergent Multilingual Learners (EMLs), including supports that afford opportunities to develop bilingual or multilingual proficiency, language that could be read as a programmatic obligation rather than a policy statement. EMLs would be identified through a home language screening process to be prescribed by the Commissioner, which has not yet been issued, and communications with their families would have to be provided in the preferred language to the greatest extent practicable.

Taken one at a time, these are manageable. The concern is the accumulation and the timing. The rule would take effect on February 24, 2027, in the middle of the school year, with no phase-in, at the same moment districts are planning the largest expansion of prekindergarten the State has required.

Oversight of Community Partners and the Competitive Process

The fiscal and programmatic oversight provision is rewritten in a way that changes the district's role. The current rule directs districts to monitor compliance by collaborating agencies. The proposal would make the district "responsible for ensuring" fiscal and programmatic compliance, and would require procedures to monitor statutory, regulatory, and contractual compliance, to assess and monitor children's health, safety, and progress, to review program quality, and to require timely corrective action. That language moves the district from overseer toward guarantor. Health and safety at most community sites is already regulated by the agency's licensing authority, so the new duty is partly duplicative, and it carries audit and liability exposure that will grow as districts rely more heavily on partners to reach universal capacity.

The competitive process is also formalized. Districts would have to issue a publicly posted request for proposals, apply "established scoring criteria" (the proposal does not say who establishes them), and maintain documentation of evaluations, scores, and selection decisions. The pre-contract site visit and the announcement of results at a board meeting are existing requirements and are unchanged. The proposal is silent on how often the process must be run, whether multi-year awards are permitted, and whether existing contracts may continue to the end of their terms. A district with a single long-standing partner, or with only one eligible provider in its community, would face a formal procurement that serves little purpose.

The collaboration set-aside would be calculated as 10 percent of total UPK funding accessed in the school year rather than 10 percent of the grant award. With higher per-pupil rates and no cap on seats, the dollar amount that must flow to community partners will rise substantially for expanding districts. The variance for districts that cannot find willing eligible agencies is retained.

Finally, the definitions change who participates. The definition of eligible agency would now name non-profit organizations and charter schools. A new category, the direct contract agency, covers non-district entities that receive UPK funding directly from the Department, which we read as carrying forward providers previously funded under the repealed §3602-ee. The proposal does not say whether direct contract seats count toward a district's universal obligation or whether the district bears any responsibility for those programs, and it directs those agencies to facilitate enrollment in the district's kindergarten program without

any coordination mechanism. Given LHEC's long-standing concerns about charter expansion, the Department should be asked to identify the statutory basis for naming charter schools as eligible agencies.

Flexibility Provisions

The proposal does include some relief. A district could seek a waiver of the 20-child maximum class size for programs with unique characteristics, or to promote the inclusion of preschool students with disabilities or children in temporary housing. A new waiver would relieve the paraprofessional requirement where a class has 10 or fewer children, which should help small districts and low-enrollment sections. The qualification for community partner teachers is broadened to include a bachelor's degree in a field related to early childhood education. The existing waiver for partner staff licensed by another agency and the five-year certification plan for on-site education directors are retained.

None of this responds to the request LHEC has already made. On March 19, 2026, LHEC wrote to Commissioner Rosa, with copies to Majority Leader Stewart-Cousins, Speaker Heastie, Senator Mayer, and Assemblymember Benedetto, asking the Department to amend the class size and staffing standards in section 151-1.3(d) in anticipation of the universal mandate. The letter proposed a three-tier structure with a hard cap of 24 students and a waiver requirement above 22, a co-teaching option allowing two certified teachers in place of one teacher and two paraprofessionals, and a 90-day compliance grace period to absorb early-year enrollment swings. The Department did not respond directly, and the proposed rule adopts none of the three. Section 151-1.3(d)(1) is carried forward unchanged, with a maximum of 20 children and a second paraprofessional required at 19 or 20.

The class size waiver that the Department does propose is not a substitute. It is available only for programs with unique characteristics or to promote the inclusion of students with disabilities or children in temporary housing. A district's need for capacity to meet the 2028-29 mandate is not a ground for relief, and no upper limit is stated. It is also not really new, because the existing rule already permits a class size variance on the same grounds through the application process in section 151-1.5(b)(7)(ii). The paraprofessional waiver points in the opposite direction from LHEC's request, since it helps a district with very small sections and does nothing for a district trying to serve more children in the rooms it has.

The waivers are also narrower than they appear in practice. Each is discretionary, requires an application on a Department form, and carries no timeline for a decision. None is tied to the 2028-29 mandate. Nothing in the proposal expands the pipeline of certified early childhood teachers, which is likely to be the binding constraint for most districts.