

WAC 180-90-112 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Approved private school" means a nonpublic school or nonpublic school district conducting a program consisting of kindergarten and at least grade one, or a program consisting of any or all of grades one through twelve which has been approved by the state board of education in accordance with the minimum standards for approval as prescribed in this chapter.

(2) (a) "Reasonable health requirements" means those standards contained in chapter 246-366 WAC as adopted by the state board of health.

(b) "Reasonable fire safety requirements" means those standards adopted by the state fire marshal pursuant to chapter 43.44 RCW.

(3) (a) "Minor deviation" means a variance from the standards established by these regulations which represents little or no threat to the health or safety of students and school personnel, and which does not impact the ability of the school to provide an educational program which is in substantial compliance with the minimum standards set forth in WAC 180-90-160, and which, therefore, does not preclude the granting of full approval.

(b) "Major deviation" means a variance from the standards established by these regulations which represents little or no threat to the health or safety of students and school personnel but may impact the ability of the school to provide an educational program which substantially complies with the minimum standards set forth in WAC 180-90-160, but is not so serious as to constitute an unacceptable deviation.

(c) "Unacceptable deviation" means a variance from the standards established by these regulations which either:

(i) Constitutes a threat to the health or safety of students or school personnel; or

(ii) Demonstrates that the school is not capable of providing an educational program which substantially complies with the minimum standards set forth in WAC 180-90-160.

(4) "Total instructional hour offering" means those hours when students are provided the opportunity to engage in educational activity planned by and under the direction of school staff, as directed by the administration and board of directors, inclusive of intermissions for class changes, recess and teacher/parent-guardian conferences which are planned and scheduled by the approved private school for the purpose of discussing students' educational needs for progress, and exclusive of time actually spent for meals.

(5) (a) "Non-Washington state certificated teacher" means a person who does not have a Washington state certification consistent with WAC 181-79A-030(2), but who has:

(i) A K-12 teaching certificate from a nationally accredited preparation program, other than Washington state, recognized by the U.S. Department of Education; or

(ii) A minimum of a baccalaureate degree in the subject matter to be taught or in a field closely related to the subject matter to be taught; or

(iii) A minimum of one calendar year of experience in a specialized field. For purposes of this subsection the term "specialized field" means a specialized area of the curriculum where skill or talent is applied and where entry into an occupation in such field generally does not require a baccalaureate degree including, but not limited to, the fields of art, drama, dance, music, physical education, and career and technical or occupational education.

(b) "Exceptional case" means that a circumstance exists within a private school in which:

(i) The educational program offered by the private school will be significantly improved with the employment of a non-Washington state certificated teacher. Each teacher not holding a valid Washington state certificate shall have experience or academic preparation appropriate to K-12 instruction and consistent with the school's mission. Such experience or academic preparation shall be consistent with the provisions of (c) of this subsection; and

(ii) The school employs at least one Washington state certified teacher, administrator, or superintendent who provides general supervision to any non-Washington state certificated teacher. The school will annually report to the ~~((office of the superintendent of public instruction))~~ state board of education the academic preparations and experience of each non-Washington state certificated teacher providing k-12 instruction in an addendum to the certificate of compliance as provided in WAC 180-90-160; and

(iii) The non-Washington state certificated teacher of the private school, employed pursuant to this section, has been verified by the private school, as meeting the age, good moral character, and personal fitness requirements of WAC 181-79A-150 (1) and (2), and has not had his or her teacher's certificate revoked by any state or foreign country consistent with WAC 181-79A-155 (5) (a).

(c) "Unusual competence": As applied to an exceptional case wherein the educational program as specified in RCW 28A.195.010 and WAC 180-90-160(7) will be significantly improved with the employment of a non-Washington state certificated teacher as defined in (a) of this subsection.

(d) "General supervision" means that a Washington state certificated teacher, administrator, or superintendent shall be generally available at the school site to observe and advise the teacher employed under provision of (c) of this subsection and shall evaluate pursuant to policies of the private school.

AMENDATORY SECTION (Amending WSR 15-24-108, filed 12/1/15, effective 1/1/16)

WAC 180-90-130 Approval—Annual certification—Adverse findings.

(1) At least ninety days prior to the commencement of the annual school term or period, the chief administrator of each private school shall file with the ~~((superintendent of public instruction, in accordance with procedures established by the superintendent of public instruction,))~~ state board of education a certificate of compliance in the form and substance set forth in WAC 180-90-160.

(2) The ~~((superintendent of public instruction))~~ state board of education shall review each certificate. The review shall be completed within thirty days after receipt of a completed application.

(3) ~~((If the superintendent of public instruction finds no minor, major, or unacceptable deviations, the superintendent of public instruction shall recommend full approval of the private school to the state board of education.~~

~~(4))~~ If the ~~((superintendent of public instruction))~~ state board of education finds deviation, the private school shall be notified through written or electronic communication of any minor, major, or unacceptable deviations which must be corrected.

~~((5))~~ (4) If the ~~((superintendent of public instruction))~~ state board of education finds major or unacceptable deviations, ~~((the superintendent of public instruction shall not transmit the recommendation regarding approval status to the state board of education until))~~ the private school shall submit ~~((s))~~ a narrative report indicating agreement or not with the findings of the ~~((superintendent of public instruction))~~ state board of education and any proposed remedial action to address the reported deviations. ~~((Upon receipt of the narrative report, the superintendent of public instruction shall transmit the recommendation and the narrative report to the state board of education.))~~ Minor deviations will be resolved with the ~~((office of the superintendent of public instruction staff))~~ state board of education prior to ~~((submission for))~~ approval. In the case of major deviations, the private school may request that the state board of education grant provisional status for up to one year so the private school may take action to meet the requirements.

AMENDATORY SECTION (Amending WSR 15-24-108, filed 12/1/15, effective 1/1/16)

WAC 180-90-141 Loss of private school approval. ~~((1) The superintendent of public instruction is authorized to))~~ The state board of education may rescind approval of a private school for one or more of the following reasons:

~~((a))~~ (1) Failure to have students enrolled for any six consecutive calendar months in the school's physical facilities or failure to provide evidence of student enrollment upon request of the ~~((superintendent of public instruction))~~ state board of education for the said period of time.

~~((b))~~ (2) Failure to provide verification that the approved private school teaching staff have a valid Washington state teaching certificate or meet the provisions of WAC 180-90-112(5).

~~((c))~~ (3) Failure to provide verification that the physical facilities of the school meet the health and fire safety standards.

~~((2) The superintendent of public instruction shall notify the state board of education of decisions to rescind approval.))~~

AMENDATORY SECTION (Amending WSR 15-24-108, filed 12/1/15, effective 1/1/16)

WAC 180-90-145 Approval—Initial application—Exception. Any potential private school which is unable to file its application for approval at least ninety days prior to the commencement of the annual school term or period may request the ~~((superintendent of public instruction))~~ state board of education review the application ~~((and the superintendent's findings and recommendations be submitted to the state board of education))~~. This request shall be granted if the ~~((superintendent of public instruction))~~ state board of education finds the private school was not sufficiently developed prior to the ~~((90))~~ ninety-day time period to enable it to comply with that requirement. The ~~((superintendent of public instruction))~~ state board of education shall have the discretion to grant the request in other exceptional circumstances. If the ~~((superintendent of public instruction))~~ state board of education grants the request, the review shall be completed within thirty days and the findings and ~~((recommendations presented to the state board of education))~~ approval shall be considered at the next regularly scheduled state board of education meeting.

AMENDATORY SECTION (Amending WSR 90-17-009, filed 8/6/90, effective 9/6/90)

WAC 180-90-150 Appeals. Pursuant to RCW 28A.195.030 any private school may appeal the actions of the ~~((superintendent of public instruction or))~~ state board of education as provided in chapter 34.05 RCW and chapter 180-08 WAC.

AMENDATORY SECTION (Amending WSR 15-24-108, filed 12/1/15, effective 1/1/16)

WAC 180-90-160 Minimum standards and certificate form. (1) The annual certificate required by WAC 180-90-130 shall be in substantial compliance with the form and substance of the following:

CERTIFICATE OF COMPLIANCE
WITH STATE STANDARDS
ESD/County/Public
School District
Private School/
District Address

I,, do hereby certify that I am the principal or chief administrator of the above named school; that said school is located at the address listed above, and conducts grades through with a projected enrollment of; and that said school is scheduled to meet throughout the school year, the following standards with the exception only of such deviations, if any, as are set forth in an attachment to this certificate of compliance

or

I,, do hereby certify that I am the superintendent of the above named private school district; and that the private schools under my jurisdiction are scheduled to meet throughout the school year, the following standards with the exception only of such deviations as are set forth in an attachment to this certificate of compliance; and that a list of such schools, including the grades conducted and the projected enrollment for each school, accompanies this certificate:

(a) The minimum school year for instructional purposes consists of no less than one hundred eighty school days or the equivalent in annual minimum instructional hour offerings as prescribed in RCW ((28A.150.220)) 28A.195.010.

(b) On each school day, pupils enrolled and in attendance at the school are engaged in educational activity planned by and under the direction of the school; and that pupils are provided ((a)) an annual total instructional hour offering, as prescribed in RCW ((28A.150.220 except that the percentages for basic skills, work skills, and optional subjects and activities prescribed in RCW 28A.150.220 do not apply to private schools and that the total instructional hour offering, except as otherwise specifically provided in RCW 28A.150.220, made available is)) 28A.195.010, of at least:

(i) 450 Hours for students in kindergarten.

(ii) 1000 Hours for students in grades one through twelve.

(c) All classroom teachers hold appropriate Washington State certification except for:

(i) Teachers for religious courses or courses for which no counterpart exists in the public schools: Provided, That a religious course is a course of study separate from the courses of study defined in RCW 28A.195.010 including occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of the appreciation of art and music all in sufficient units for meeting state board of education graduation requirements; and/or

(ii) A person of unusual competence who is not certified but who will teach students in an exceptional case under the general supervision of a Washington state certificated teacher, administrator, or superintendent pursuant to WAC 180-90-112. The non-Washington state certificated teacher, the Washington state certificated person who will supervise, and the exceptional circumstances are listed on the addendum to this certificate.

(d) If the school operates an extension program for parents, guardians, or persons having legal custody of a child to teach children in their custody, the extension program meets the following requirements:

(i) The parent, guardian, or custodian is supervised by a person certified under chapter 28A.410 RCW and who is employed by the school;

(ii) The planning by the certified person and the parent, guardian, or person having legal custody includes objectives consistent with (a), (b), (e) through (g) of this subsection;

(iii) The certified person spends a minimum average each month of one contact hour per week with each student under his or her supervision who is enrolled in the extension program;

(iv) Each student's progress is evaluated by the certified person; and

(v) The certified person does not supervise more than thirty students enrolled in the approved private school's extension program.

(e) Measures have been taken to safeguard all permanent records against loss or damage through either the storage of such records in fire-resistant containers or facilities, or the retention of duplicates in a separate and distinct area;

(f) The physical facilities of the school are adequate to meet the program offered, and all school facilities and practices are in substantial compliance with reasonable health and fire safety standards, as substantiated by current inspection reports of appropriate health and fire safety officials which are on file in the chief administrator's office;

(g) The school's curriculum includes instruction in the basic skills of occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of appreciation of art and music in sufficient units for meeting state board of education graduation requirements, as set forth in chapter 180-51 WAC. A school may substitute courses specific to the mission or focus of the school to satisfy the career and technical education requirement of chapter 180-51 WAC ((180-51-068(7)));

(h) The school or its organized district maintains up-to-date policy statements related to the administration and operation of the school or district;

(i) The school does not engage in a policy of racial segregation or discrimination;

(j) The governing authority of this private school or private school district has been apprised of the requirements of chapter 180-90 WAC relating to the minimum requirements for approval of private schools and such governing authority has further been apprised of all deviations from the rules and regulations of the state board of education and the standards contained in chapter 180-90 WAC. I have reported all such deviations herewith.

Dated this day of, 20...
.....
(signed)
.....
(title)
.....
(phone number)

(2) Approval by the state board of education is contingent upon on-going compliance with the standards certified herein. The (~~superintendent of public instruction shall be notified~~) school shall notify the state board of education of any deviation from these standards which occurs after the action taken by the state board of education. Such notification shall be filed within thirty days of occurrence of the deviation.

(3) Failure to comply with the requirements of this chapter may result in the revocation of the approval of the private school and shall be considered in subsequent application for approval as a private school.

(4) Following initial approval as a private school by the state board of education, evidence of current accreditation by a state board of education approved accrediting body may be submitted annually in lieu of approval documents described in subsection (1)(a) through (j) of this section.

AMENDATORY SECTION (Amending WSR 15-24-108, filed 12/1/15, effective 1/1/16)

WAC 180-90-170 Complaints against private schools. (1) Complaints about an approved private school may be made in writing to ~~((the office of public instruction))~~ state board of education.

(2) If a complaint against a private school is received, the ~~((office of the superintendent of public instruction))~~ state board of education will:

(a) Notify the complainant that the communication was received;

(b) Notify the school of the complaint, provide a copy of the complaint if requested, and provide an opportunity for the school to respond. All correspondence will conform to state and federal student privacy laws; and

(c) Review the complaint and the school's response and may take appropriate action it deems necessary. Any action taken by the ~~((office of the superintendent of public instruction))~~ state board of education will be limited to authority pursuant to chapter 28A.195 RCW and the rules promulgated thereunder.

(3) The record of the complaint, the response and any action taken will be retained according to the record retention schedule established by the office of the secretary of state for the ~~((office of the superintendent of public instruction))~~ state board of education.

WAC 180-16-225 Waiver—Substantial lack of classroom space—Grounds and procedure. (1) **Grounds.** The ~~((state board of education))~~ superintendent of public instruction may waive one or more of the basic education allocation entitlement requirements set forth in WAC 180-16-200 through 180-16-220(1) only if a school district's failure to comply with such requirement(s) is found by the ~~((state board))~~ superintendent of public instruction to be caused by substantial lack of classroom space.

As a condition to a waiver based on substantial lack of classroom space the state board will consider and a school district must demonstrate, at least, that the facilities of the school district do not contain enough classroom space or other space that can reasonably be converted into classroom space, and that necessary classroom space may not reasonably be acquired by lease or rental to enable the district to comply with the referenced entitlement requirements.

(2) **Waiver procedure.** In order to secure a waiver pursuant to subsection (1) of this section a school district must submit a petition together with a detailed explanation and documentation in support of its request not later than ~~((thirty days prior to either:~~

~~(a) The state board of education meeting immediately preceding commencement of the school year; or~~

~~(b) The March (or such other meeting as the state board shall have established) meeting of the board at which the board will consider certifications of compliance and noncompliance with these entitlement requirements.~~

~~A school district that can reasonably foresee an inability to comply with entitlement requirements by reason of substantial lack of classroom space should petition for a waiver as early as the state board meeting immediately preceding commencement of the school year in order to allow for the possibility that the request may be denied)~~ the deadline in a schedule issued by the superintendent of public instruction and the commencement of the school year.

AMENDATORY SECTION (Amending WSR 07-20-030, filed 9/24/07, effective 10/25/07)

WAC 180-18-030 Waiver from total instructional hour requirements.

A district desiring to improve student achievement by enhancing the educational program for all students may apply to the (~~state board of education~~) superintendent of public instruction for a waiver from the total instructional hour requirements. The (~~state board of education~~) superintendent of public instruction may grant said waiver requests that demonstrate the waiver is necessary to support improving student achievement pursuant to RCW 28A.305.140 and WAC 180-18-050 for up to three school years.

AMENDATORY SECTION (Amending WSR 12-24-049, filed 11/30/12, effective 12/31/12)

WAC 180-18-040 Waivers from minimum one hundred eighty-day school year requirement.

(1) A district desiring to improve student achievement by enhancing the educational program for all students in the district or for individual schools in the district may apply to the (~~state board of education~~) superintendent of public instruction for a waiver from the provisions of the minimum one hundred eighty-day school year requirement pursuant to RCW 28A.305.140 and WAC 180-16-215 while offering the equivalent in annual minimum instructional hours as prescribed in RCW 28A.150.220 in such grades as are conducted by such school district. The (~~state board of education~~) superintendent of public instruction may grant said waiver requests for up to three school years.

(2) The (~~state board of education~~) superintendent of public instruction, pursuant to RCW 28A.305.140(2), shall evaluate the need for a waiver based on whether:

(a) The resolution by the board of directors of the requesting district attests that if the waiver is approved, the district will meet the required annual instructional hour offerings under RCW 28A.150.220(2) in each of the school years for which the waiver is requested;

(b) The purpose and goals of the district's waiver plan are closely aligned with school improvement plans under WAC 180-16-220 and any district improvement plan;

(c) The plan explains goals of the waiver related to student achievement that are specific, measurable, and attainable;

(d) The plan states clear and specific activities to be undertaken that are based in evidence and likely to lead to attainment of the stated goals;

(e) The plan specifies at least one state or locally determined assessment or metric that will be used to collect evidence to show the degree to which the goals were attained;

(f) The plan describes in detail the participation of administrators, teachers, other district staff, parents, and the community in the development of the plan.

(3) In addition to the requirements of subsection (2) of this section, the (~~state board of education~~) superintendent of public instruction shall evaluate requests for a waiver that would represent

the continuation of an existing waiver for additional years based on the following:

- (a) The degree to which the prior waiver plan's goals were met, based on the assessments or metrics specified in the prior plan;
- (b) The effectiveness of the implemented activities in achieving the goals of the plan for student achievement;
- (c) Any proposed changes in the plan to achieve the stated goals;
- (d) The likelihood that approval of the request would result in advancement of the goals;
- (e) Support by administrators, teachers, other district staff, parents, and the community for continuation of the waiver.

AMENDATORY SECTION (Amending WSR 12-24-049, filed 11/30/12, effective 12/31/12)

WAC 180-18-050 Procedure to obtain waiver. (1) (~~(State board of education)~~) Superintendent of public instruction approval of district waiver requests pursuant to WAC 180-18-030 and 180-18-040 shall occur ((at a state board meeting)) prior to implementation. A district's waiver application shall include, at a minimum, a resolution adopted by the district board of directors, an application form, a proposed school calendar, and a summary of the collective bargaining agreement with the local education association stating the number of professional development days, full instruction days, late-start and early-release days, and the amount of other noninstruction time. The resolution shall identify the basic education requirement for which the waiver is requested and include information on how the waiver will support improving student achievement. The resolution must include a statement attesting that the district will meet the minimum instructional hours requirement of RCW 28A.150.220(2) under the waiver plan. The resolution shall be accompanied by information detailed in the guidelines and application form available on the ((state board of education's)) office of superintendent of public instruction's web site.

(2) The application for a waiver and all supporting documentation must be received by the ((state board of education at least forty days prior to the state board of education meeting where consideration of the waiver shall occur. The state board of education)) superintendent of public instruction based on a schedule issued by the superintendent of public instruction and prior to implementation of the waiver days. The superintendent of public instruction shall review all applications and supporting documentation to insure the accuracy of the information. In the event that deficiencies are noted in the application or documentation, districts will have the opportunity to make corrections and to seek ((state board approval at a subsequent meeting)) superintendent of public instruction approval upon resubmittal.

(3) Under this section, a district seeking to obtain a waiver of no more than five days from the provisions of the minimum one hundred eighty-day school year requirement pursuant to RCW 28A.305.140 solely for the purpose of conducting parent-teacher conferences shall provide notification of the district request to the ((state board of education)) superintendent of public instruction at least thirty days prior to implementation of the plan. A request for more than five days must be presented to the ((state board)) superintendent of public instruction under subsection (1) of this section for approval. The notice

shall provide information and documentation as directed by the (~~state board~~) superintendent of public instruction. The information and documentation shall include, at a minimum:

(a) An adopted resolution by the school district board of directors which shall state, at a minimum, the number of school days and school years for which the waiver is requested, and attest that the district will meet the minimum instructional hours requirement of RCW 28A.150.220(2) under the waiver plan(~~(-)~~);

(b) A detailed explanation of how the parent-teacher conferences to be conducted under the waiver plan will be used to improve student achievement;

(c) The district's reasons for electing to conduct parent-teacher conferences through full days rather than partial days;

(d) The number of partial days that will be reduced as a result of implementing the waiver plan;

(e) A description of participation by administrators, teachers, other staff and parents in the development of the waiver request;

(f) An electronic link to the collective bargaining agreement with the local education association.

(~~Within thirty days of receipt of the notification, the state board~~) Based on a schedule issued by the superintendent of public instruction, the superintendent of public instruction will, on a determination that the required information and documentation have been submitted, notify the requesting district that the requirements of this section have been met and a waiver has been granted.

AMENDATORY SECTION (Amending WSR 04-23-006, filed 11/4/04, effective 12/5/04)

WAC 180-18-055 Alternative high school graduation requirements.

(1) The shift from a time and credit based system of education to a standards and performance based education system will be a multiyear transition. In order to facilitate the transition and encourage local innovation, the state board of education finds that current credit-based graduation requirements may be a limitation upon the ability of high schools and districts to make the transition with the least amount of difficulty. Therefore, the state board will provide districts and high schools the opportunity to create and implement alternative graduation requirements.

(2) A school district, or high school with permission of the district board of directors, or approved private high school, desiring to implement a local restructuring plan to provide an effective educational system to enhance the educational program for high school students, may apply to the state board of education for a waiver from one or more of the requirements of chapter 180-51 WAC.

(3) The state board of education may grant the waiver for a period up to four school years.

(4) The waiver application shall be in the form of a resolution adopted by the district or private school board of directors which includes a request for the waiver and a plan for restructuring the educational program of one or more high schools which consists of at least the following information:

(a) Identification of the requirements of chapter 180-51 WAC to be waived;

(b) Specific standards for increased student learning that the district or school expects to achieve;

(c) How the district or school plans to achieve the higher standards, including timelines for implementation;

(d) How the district or school plans to determine if the higher standards are met;

(e) Evidence that the board of directors, teachers, administrators, and classified employees are committed to working cooperatively in implementing the plan;

(f) Evidence that students, families, parents, and citizens were involved in developing the plan; and

(g) Identification of the school years subject to the waiver.

(5) The plan for restructuring the educational program of one or more high schools may consist of the school improvement plans required under WAC 180-16-220, along with the requirements of subsection (4)(a) through (d) of this section.

(6) The application also shall include documentation that the school is successful as demonstrated by indicators such as, but not limited to, the following:

(a) The school has clear expectations for student learning;

(b) The graduation rate of the high school for the last three school years;

(c) Any follow-up employment data for the high school's graduate for the last three years;

(d) The college admission rate of the school's graduates the last three school years;

(e) Use of student portfolios to document student learning;

(f) Student scores on the high school Washington assessments of student learning;

(g) The level and types of family and parent involvement at the school;

(h) The school's annual performance report the last three school years; and

(i) The level of student, family, parent, and public satisfaction and confidence in the school as reflected in any survey done by the school the last three school years.

(7) A waiver of WAC 180-51-060 may be granted only if the district or school provides documentation and rationale that any noncredit based graduation requirements that will replace in whole or in part WAC 180-51-060, will support the state's performance-based education system being implemented pursuant to RCW 28A.630.885, and the noncredit based requirements meet the minimum college core admissions standards as accepted by the higher education coordinating board for students planning to attend a baccalaureate institution.

(8) A waiver granted under this section may be renewed upon the state board of education receiving a renewal request from the school district board of directors. Before filing the request, the school district shall conduct at least one public meeting to evaluate the educational requirements that were implemented as a result of the waiver. The request to the state board shall include information regarding the activities and programs implemented as a result of the waiver, whether higher standards for students are being achieved, assurances that students in advanced placement or other postsecondary options programs, such as but not limited to: College in the high school, running start, and tech-prep, shall not be disadvantaged, and a summary of the comments received at the public meeting or meetings.

(9) The state board of education shall notify the state board for community and technical colleges, the ~~((higher education coordinating board))~~ Washington student achievement council and the council of presidents of any waiver granted under this section.

(10) Any waiver requested under this section will be granted with the understanding that the state board of education will affirm that students who graduate under alternative graduation requirements have in fact completed state requirements for high school graduation in a nontraditional program.

(11) Any school or district granted a waiver under this chapter shall report annually to the state board of education, in a form and manner to be determined by the board, on the progress and effects of implementing the waiver.

AMENDATORY SECTION (Amending WSR 12-24-049, filed 11/30/12, effective 12/31/12)

WAC 180-18-065 Waiver from one hundred eighty-day school year requirement for purposes of economy and efficiency—Criteria for evaluation of waiver requests. (1) In order to be granted a waiver by the ~~((state board of education))~~ superintendent of public instruction under RCW 28A.305.141 to operate one or more schools on a flexible calendar for purposes of economy and efficiency, a school district eligible for such waiver must meet each of the requirements of RCW 28A.305.141(2).

(2) In the event that a greater number of requests for waivers are received that meet the requirement of subsection (1) of this section than may be granted by the ~~((state board of education))~~ superintendent of public instruction under RCW 28A.305.141(3), ~~((priority shall be given to))~~ if the superintendent of public instruction determines that the applying districts are otherwise eligible, their applications will be prioritized in the following order:

(a) Districts that are already operating on a flexible calendar under this waiver program; and

(b) Those plans that best redirect monetary savings from the proposed flexible calendar to support student learning.

WAC 180-16-195 Annual reporting and review process. (1) **Annual school district reports.** A review of each school district's kindergarten through twelfth grade program shall be conducted annually for the purpose of determining compliance or noncompliance with basic education program approval requirements. On or before September 15th of each school year, each school district superintendent shall complete and return the program assurance form (~~((OSPI Form 1497))~~) distributed by the state board of education (~~((as a part of an electronic submission to OSPI))~~). The form shall be designed to elicit data necessary to make a determination of a school district's compliance or noncompliance with basic education program approval requirements. The form shall be submitted electronically and signed by:

- (a) The school board president or chairperson, and
- (b) The superintendent of the school district.

(2) State board staff review.

(a) State board of education staff shall review each school district's program assurance form, may conduct on-site (~~((monitoring))~~) visits of (~~((randomly))~~) selected school districts, as needed and subject to funding support, and shall prepare recommendations and reports for presentation to the state board of education: Provided, that, if a school district's initial program assurance form does not establish compliance with the basic education program approval requirements, the district shall be provided the opportunity to explain the deficiency or deficiencies. (~~((School districts which foresee that they will not be able to comply with the program approval requirements, or that are deemed by the state board to be in noncompliance, may petition for a waiver on the basis of substantial lack of classroom space as set forth in WAC 180-16-225 and instructional hours offering requirements under WAC 180-18-030.))~~)

(b) School districts may use the personnel and services of the educational service district to assist the district and schools in the district that are out of compliance with basic education program approval requirements.

(3) Annual certification of compliance or noncompliance—Withholding of funds for noncompliance.

(a) At the November meeting of the state board of education, or at such other meeting as the board shall designate, the board shall certify by motion each school district as being in compliance or noncompliance with the basic education program approval requirements.

(b) A certification of compliance shall be effective for the then current school year subject to any subsequent ad hoc review and determination of noncompliance as may be deemed necessary by the state board of education or advisable by the superintendent of public instruction. In addition, a certification of compliance shall be effective tentatively for the succeeding school year until such time as the state board takes its annual action certifying compliance or noncompliance with the program approval requirements.

(c) A certification of noncompliance shall be effective until program compliance is assured by the school district to the satisfaction of state board of education staff, subject to review by the state board. (~~((Basic education allocation funds shall be deducted from the basic education allocation of a school district that has been certi-~~

~~fied as being in noncompliance unless such district has received a waiver from the state board for such noncompliance, pursuant to WAC 180-16-225 or 180-18-030, or assurance of program compliance is subsequently provided for the school year previously certified as in non-compliance and is accepted by the state board.)~~

(d) ~~((The))~~ Upon the certification of noncompliance of a school district, state board of education staff shall notify the superintendent of public instruction and the school district of a certification of noncompliance immediately after the board meeting at which certification occurred.

(e) A withholding of basic education allocation funding from a school district shall not occur for ((a)) noncompliance if the school district has remediated the noncompliance situation within sixty school business days from the time the district receives notice of the noncompliance from the state board of education. The state board of education may extend the sixty days timeline only if the district demonstrates by clear and convincing evidence to the satisfaction of the state board of education that sixty days is not reasonable to make the necessary corrections. For the purposes of this section, a school business day shall mean any calendar day, exclusive of Saturdays, Sundays, and any federal and school holidays upon which the office of the superintendent of the school district is open to the public for the conduct of business. A school business day shall be concluded or terminated upon the closure of said office for the calendar day.

~~((e) The superintendent of public instruction, or his/her designee,))~~ (f) At the discretion of the state board of education, after notification by the state board of education to a school district regarding an existing noncompliance, ((shall)) may recommend withholding of funds or may enter into a compliance agreement with the school district that shall include, but not be limited to, the following criteria:

(i) A deadline for school district remediation of the noncompliance (s) ((, not to exceed sixty school business days per noncompliance as specified in (d) of this subsection)).

(ii) A listing of all the noncompliance areas and the necessary terms that must be satisfied in each area in order for the school district to gain compliance status. This listing also shall specify additional deadlines for the accomplishment of the stated terms if different from the final deadline as specified in subsection (1) of this section.

(iii) A closing statement specifying that a school district's failure to remediate a noncompliance by the determined deadline ((shall)) may result, at the state board of education's or its designee's discretion, in the ((immediate)) recommendation to the superintendent of public instruction of withholding of the district's basic education allocation funding by the superintendent of public instruction.

(iv) The date and the signatures of the superintendent of the school district, the chair of the district's board of directors, and the ((superintendent of public instruction)) chair of the state board of education, or his/her designee, to the agreement. A copy of the completed compliance agreement shall be sent to the chairperson of the school district's board of directors and the school district superintendent.

~~((f))~~ (g) In the event a school district fails to sign ((the)) a compliance agreement within five school business days from the date of issuance or does not satisfy all of the terms of the signed compli-

ance agreement within the designated amount of time, the state board of education may recommend to the superintendent of public instruction ~~((shall withhold))~~ withholding state funds for the basic education allocation until program compliance is assured ~~((based on the following procedure:~~

~~(i) For the first month that a noncompliance exists following the conditions as specified in (f) of this subsection, the superintendent of public instruction shall withhold twenty-five percent of the state funds for the basic education allocation to a school district.~~

~~(ii) For the second month that a noncompliance exists following the conditions as specified in (f) of this subsection, the superintendent of public instruction shall withhold fifty percent of the state funds for the basic education allocation to a school district.~~

~~(iii) For the third month that a noncompliance exists following the conditions as specified in (f) of this subsection, the superintendent of public instruction shall withhold seventy-five percent of the state funds for the basic education allocation to a school district.~~

~~(iv) For the fourth month, and every month thereafter, that a noncompliance exists following the conditions as specified in (f) of this subsection, the superintendent of public instruction shall withhold one hundred percent of the state funds for the basic education allocation to a school district until compliance is assured).~~

~~((g))~~ (h) Any school district may appeal to the state board of education the decision of noncompliance by the state board of education. Such appeal shall be limited to the interpretation and application of these rules by the state board of education. Such appeal shall not stay the withholding of any state funds pursuant to this section. ~~(The state board of education may not waive any of the basic education entitlement requirements as set forth in this chapter, except as provided in WAC 180-16-225 or 180-18-030))~~ or completion of the compliance agreement.

(4) The provisions of subsection (3) ~~((f))~~ (g) of this section shall not apply if the noncompliance is related to the district's fiscal condition and results in the implementation of a financial plan under RCW 28A.505.140(3).