



THE WASHINGTON STATE BOARD OF EDUCATION

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Title:	<u>Interpretive Statement on Calculation of Instructional Hours for BEA Compliance</u>	
As Related To:	<input type="checkbox"/> Goal One: Develop and support policies to close the achievement and opportunity gaps. <input type="checkbox"/> Goal Two: Develop comprehensive accountability, recognition, and supports for students, schools, and districts.	<input type="checkbox"/> Goal Three: Ensure that every student has the opportunity to meet career and college ready standards. <input checked="" type="checkbox"/> Goal Four: Provide effective oversight of the K-12 system. <input type="checkbox"/> Other
Relevant To Board Roles:	<input type="checkbox"/> Policy Leadership <input checked="" type="checkbox"/> System Oversight <input type="checkbox"/> Advocacy	<input checked="" type="checkbox"/> Communication <input type="checkbox"/> Convening and Facilitating
Policy Considerations / Key Questions:	Is the proposed interpretive statement consistent with legislative intent? Does it provide clear advice to districts on calculation of district-wide average instructional hours for purposes of basic education compliance?	
Possible Board Action:	<input checked="" type="checkbox"/> Review <input type="checkbox"/> Approve	<input type="checkbox"/> Adopt <input type="checkbox"/> Other
Materials Included in Packet:	<input checked="" type="checkbox"/> Memo <input type="checkbox"/> Graphs / Graphics <input checked="" type="checkbox"/> Third-Party Materials <input type="checkbox"/> PowerPoint Draft Interpretive Statement	
Synopsis:	<p>RCW 28A.150.220 (Basic education – Minimum instructional requirements – Program accessibility) requires school districts to make available to students minimum instructional offerings each school year of certain numbers of instructional hours, expressed as a district-wide annual average. This provision was last amended by Chapter 217, Laws of 2014 (E2SSB 6552). The SBE implemented this legislative change as amended WAC 180-16-200. Both before and after this change, questions had arisen from districts as to how the calculation of district-wide annual average instructional hours should be made, as different calculations are possible for any district.</p> <p>As assistance to districts with this question, the SBE proposes to issue an interpretive statement under RCW 34.05.230 (Interpretive and policy statements). An interpretive statement is advisory only, and does not have the force of law. The draft interpretive statement prepared for the March meeting seeks to be responsive to the issues raised by school districts and others, and to provide for a reasonable flexibility in the calculation that takes into account local circumstances and organizational choices, while retaining consistency with the intent of basic education law.</p>	



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INTERPRETIVE STATEMENT DISTRICT-WIDE ANNUAL AVERAGE INSTRUCTIONAL HOURS

The state has made a series of changes to minimum instructional hours for basic education:

- ESHB 2261 (2009 Legislative Session) increased instructional hour requirements from a district-wide annual average 1,000 instructional hours in grades 1-12 to 1,080 instructional hours in each of grades 7-12 and 1,000 instructional hours in grades 1-6, on an implementation schedule adopted by the Legislature.
- The 2013-15 operating budget act (2013 Legislative Session) implemented the instructional hour requirements of ESHB 2261, effective with the 2014-15 school year.
- E2SSB 6552 (2014 Legislative Session) revised the instructional hour requirements of ESHB 2261, as implemented in 2013, to a district-wide annual average 1,080 hours in grades 9-12 and a district-wide annual average 1,000 hours in grades 1-8, while providing that the whole may be calculated as a district-wide average over grades 1-12, effective with the 2015-16 school year.

Incorporating the change made by the 2014 legislation, RCW 28A.150.220 (Basic education – Minimum instructional requirements) now provides, in relevant part:

(2) Each school district shall make available to students the following minimum instructional offering each school year:

(a) For students enrolled in grades one through twelve, at least a district-wide annual average of one thousand hours, which shall be increased beginning in the 2015-16 school year to at least one thousand eighty instructional hours for students enrolled in grades nine through twelve and at least one thousand instructional hours for students in grades one through eight, all of which may be calculated by a school district using a district-wide annual average of instructional hours over grades one through twelve;

The State Board of Education (SBE) implemented this provision as WAC 189-16-200, filed September 2014:

Total instructional hour requirement.

(1) Kindergarten total instructional hour requirement - Four hundred fifty hours annual minimum, increased to an annual minimum one thousand instructional hours according to an implementation schedule under RCW [28A.150.315](#).

(2) Grades 1-12 total instructional hour requirement - District-wide annual average of one thousand hours, increased beginning in the 2015-16 school year to:

(a) At least a district-wide average of one thousand eighty instructional hours for students enrolled in grades nine through twelve and a district-wide annual average of one thousand instructional hours in grades one through eight; or

(b) A district-wide annual average of one thousand twenty-seven instructional hours in grades one through twelve . . .

(3) For nonhigh school districts, a district-wide annual average of one thousand instructional hours in such grades as are offered by the district.

The change made by E2SSB 6552 in 2014 is significant not only for changing the number of instructional hours required by grade span, but for returning to a district-wide annual average in place of minimum required offerings in *each grade*.

This change, as made in the new law, has given rise to questions to the SBE from district personnel as to how to make the calculation of district-wide annual average instructional hours. Specifically, what does “district-wide annual average” mean in the context of an individual district?

“District-wide annual average” is not defined in current statute or rule. Nor was it defined in prior law. So the problem is not a new one; it has just gained more interest as the state has changed instructional hour requirements for basic education.

The SBE recognizes that there is more than one method for calculating a district-wide annual average of instructional hours offered by a district in any school year, and that different calculations, starting from the same data, may produce different results. For example, a district that operates one or more small alternative schools offering relatively fewer instructional hours may be unable to achieve a district-wide average of 1,027 hours in grades 1-12 in a straight calculation of average hours in the district by school. But that same district may be well able to show compliance if the calculation is made as the average of all the instructional hours offered by the district without regard to the schools that students attend.

To illustrate the variability of results by method of calculation, we offer the following example. Schools and enrollments are those of an actual Washington district. The instructional hours shown were chosen for illustrative purposes, but are well within the plausible.

Average by School		
	Student Count	Inst. Hours
School		
Alternative school	22	910
Jr.-Sr. High School	258	1,070
Elementary School	319	1,000
Total	599	2,980
District-Wide Annual Average		993

Weighted Average by Student Across Schools			
School	Student Count	Inst. Hours	Total Inst. Hrs.
Alternative school	22	910	20,020
Jr.-Sr. High School	258	1,070	276,060
Elementary School	319	1,000	319,000
Total	599	2,980	615,080
District-Wide Annual Average			1,027

In the first calculation the district falls short of meeting instructional hour requirements as established in RCW 28A.150.220 (2) and implemented by WAC 180-16-200. In the second, however, it achieves compliance.

The Board also recognizes that districts may differ in school organization and the choices they make in delivery of basic education services, based on local needs, circumstances, and educational philosophy, and that the choices they make should not be driven by a prescribed method of calculating instructional hours for basic education compliance, unless such method can be shown to reflect a specific legislative intent. The Board does not find in RCW 28A.150.200 a legislative intent prescribing or favoring a specific method of calculating district-wide annual instructional hours.

Given the many inquiries the Board has had on this subject, and the lack of a clear basis for rule adoption on it, the Board proposes issuing an interpretive statement under RCW 34.05.230 (Interpretive and policy statements) to offer guidance to districts in addressing this question.

An “interpretive statement” is a written expression of the opinion of an agency as to the meaning of a statute or other provision of law, of a court decision, or of an agency order. (RCW 28A.34.010 (8)) An interpretive statement is advisory only.

The Board advises that the following calculations of annual district-wide average are consistent with the intent of RCW 28A.150.220 and valid for assuring basic education program compliance under RCW 28A.150.250:

- A. **Average of schools.** Average of annual instructional hours offered by each school operated by the school district.
- B. **Weighted average by student across schools.** Average of all annual instructional hours offered to all students enrolled in the district, regardless of school attended.

The Board recognizes that there may be nuances to each of these methods, and that there may be other, mathematically valid methods consistent with the intent of basic education law. A school district may present other methods of calculating district-wide average instructional hours to the SBE before the beginning of the school year for its consideration in assuring basic education program compliance under RCW 28A.150.250.

Comments on this proposed interpretive statement may be addressed to:

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360-725-6035

RCW 28A.150.220

Basic education—Minimum instructional requirements—Program accessibility—Rules.

(1) In order for students to have the opportunity to develop the basic education knowledge and skills under RCW [28A.150.210](#), school districts must provide instruction of sufficient quantity and quality and give students the opportunity to complete graduation requirements that are intended to prepare them for postsecondary education, gainful employment, and citizenship. The program established under this section shall be the minimum instructional program of basic education offered by school districts.

(2) Each school district shall make available to students the following minimum instructional offering each school year:

(a) For students enrolled in grades one through twelve, at least a district-wide annual average of one thousand hours, which shall be increased beginning in the 2015-16 school year to at least one thousand eighty instructional hours for students enrolled in grades nine through twelve and at least one thousand instructional hours for students in grades one through eight, all of which may be calculated by a school district using a district-wide annual average of instructional hours over grades one through twelve; and

(b) For students enrolled in kindergarten, at least four hundred fifty instructional hours, which shall be increased to at least one thousand instructional hours according to the implementation schedule under RCW [28A.150.315](#).

(3) The instructional program of basic education provided by each school district shall include:

(a) Instruction in the essential academic learning requirements under RCW [28A.655.070](#);

(b) Instruction that provides students the opportunity to complete twenty-four credits for high school graduation, beginning with the graduating class of 2019 or as otherwise provided in RCW [28A.230.090](#). Course distribution requirements may be established by the state board of education under RCW [28A.230.090](#);

(c) If the essential academic learning requirements include a requirement of languages other than English, the requirement may be met by students receiving instruction in one or more American Indian languages;

(d) Supplemental instruction and services for underachieving students through the learning assistance program under RCW [28A.165.005](#) through [28A.165.065](#);

(e) Supplemental instruction and services for eligible and enrolled students and exited students whose primary language is other than English through the transitional bilingual instruction program under RCW [28A.180.010](#) through [28A.180.080](#);

(f) The opportunity for an appropriate education at public expense as defined by RCW [28A.155.020](#) for all eligible students with disabilities as defined in RCW [28A.155.020](#); and

(g) Programs for highly capable students under RCW [28A.185.010](#) through [28A.185.030](#).

(4) Nothing contained in this section shall be construed to require individual students to attend school for any particular number of hours per day or to take any particular courses.

(5)(a) Each school district's kindergarten through twelfth grade basic educational program shall be accessible to all students who are five years of age, as provided by RCW [28A.225.160](#), and less than twenty-one years of age and shall consist of a minimum of one hundred eighty school days per school year in such grades as are conducted by a school district, and one

hundred eighty half-days of instruction, or equivalent, in kindergarten, to be increased to a minimum of one hundred eighty school days per school year according to the implementation schedule under RCW [28A.150.315](#).

(b) Schools administering the Washington kindergarten inventory of developing skills may use up to three school days at the beginning of the school year to meet with parents and families as required in the parent involvement component of the inventory.

(c) In the case of students who are graduating from high school, a school district may schedule the last five school days of the one hundred eighty day school year for noninstructional purposes including, but not limited to, the observance of graduation and early release from school upon the request of a student. All such students may be claimed as a full-time equivalent student to the extent they could otherwise have been so claimed for the purposes of RCW [28A.150.250](#) and [28A.150.260](#). Any hours scheduled by a school district for noninstructional purposes during the last five school days for such students shall count toward the instructional hours requirement in subsection (2)(a) of this section.

(6) Nothing in this section precludes a school district from enriching the instructional program of basic education, such as offering additional instruction or providing additional services, programs, or activities that the school district determines to be appropriate for the education of the school district's students.

(7) The state board of education shall adopt rules to implement and ensure compliance with the program requirements imposed by this section, RCW [28A.150.250](#) and [28A.150.260](#), and such related supplemental program approval requirements as the state board may establish.

[2014 c 217 § 201; 2013 2nd sp.s. c 9 § 2; 2013 c 323 § 2; 2011 1st sp.s. c 27 § 1; 2009 c 548 § 104; 1993 c 371 § 2; (1995 c 77 § 1 and 1993 c 371 § 1 expired September 1, 2000); 1992 c 141 § 503; 1990 c 33 § 105; 1982 c 158 § 1; 1979 ex.s. c 250 § 1; 1977 ex.s. c 359 § 3. Formerly RCW [28A.58.754](#).]

WAC 180-16-200

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(b) A district-wide annual average of one thousand twenty-seven instructional hours in grades one through twelve.

(3) For nonhigh school districts, a district-wide annual average of one thousand instructional hours in such grades as are offered by the district.

[Statutory Authority: 2014 c 217 and RCW [28A.230.090](#). WSR 14-19-032, § 180-16-200, filed 9/8/14, effective 10/9/14. Statutory Authority: Chapter [28A.630](#) RCW. WSR 01-24-092, § 180-16-200, filed 12/4/01, effective 1/4/02. Statutory Authority: Chapter [28A.630](#) RCW and 1995 c 208. WSR 95-20-086, § 180-16-200, filed 10/4/95, effective 11/4/95. Statutory Authority: RCW [28A.410.010](#). WSR 94-03-104 (Order 5-94), § 180-16-200, filed 1/19/94, effective 2/19/94. Statutory Authority: RCW [28A.150.220](#), [28A.320.200](#), [28A.150.260](#) and 1992 c 141. WSR 92-17-053, § 180-16-200, filed 8/17/92, effective 9/17/92. Statutory Authority: RCW [28A.150.220](#) and [28A.150.]260. WSR 92-05-047, § 180-16-200, filed 2/13/92, effective 3/15/92. Statutory Authority: RCW [28A.04.127](#) and [28A.41.140](#). WSR 86-21-020 (Order 15-86), § 180-16-200, filed 10/7/86. Statutory Authority: RCW [28A.58.754](#)(6). WSR 84-11-043 (Order 2-84), § 180-16-200, filed 5/17/84. Statutory Authority: RCW [28A.01.010](#), [28A.04.120](#), [28A.41.130](#), [28A.41.140](#), [28A.58.754](#), [28A.58.758](#), and 1979 ex.s. c 250. WSR 79-10-033 (Order 10-79), § 180-16-200, filed 9/12/79. Statutory Authority: RCW [28A.41.130](#) and [28A.58.754](#). WSR 78-06-097 (Order 3-78), § 180-16-200, filed 6/5/78.]

RCW 34.05.010

Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adjudicative proceeding" means a proceeding before an agency in which an opportunity for hearing before that agency is required by statute or constitutional right before or after the entry of an order by the agency. Adjudicative proceedings also include all cases of licensing and rate making in which an application for a license or rate change is denied except as limited by RCW [66.08.150](#), or a license is revoked, suspended, or modified, or in which the granting of an application is contested by a person having standing to contest under the law.

(2) "Agency" means any state board, commission, department, institution of higher education, or officer, authorized by law to make rules or to conduct adjudicative proceedings, except those in the legislative or judicial branches, the governor, or the attorney general except to the extent otherwise required by law and any local governmental entity that may request the appointment of an administrative law judge under chapter [42.41](#) RCW.

(3) "Agency action" means licensing, the implementation or enforcement of a statute, the adoption or application of an agency rule or order, the imposition of sanctions, or the granting or withholding of benefits.

Agency action does not include an agency decision regarding (a) contracting or procurement of goods, services, public works, and the purchase, lease, or acquisition by any other means, including eminent domain, of real estate, as well as all activities necessarily related to those functions, or (b) determinations as to the sufficiency of a showing of interest filed in support of a representation petition, or mediation or conciliation of labor disputes or arbitration of labor disputes under a collective bargaining law or similar statute, or (c) any sale, lease, contract, or other proprietary decision in the management of public lands or real property interests, or (d) the granting of a license, franchise, or permission for the use of trademarks, symbols, and similar property owned or controlled by the agency.

(4) "Agency head" means the individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law. If the agency head is a body of individuals, a majority of those individuals constitutes the agency head.

(5) "Entry" of an order means the signing of the order by all persons who are to sign the order, as an official act indicating that the order is to be effective.

(6) "Filing" of a document that is required to be filed with an agency means delivery of the document to a place designated by the agency by rule for receipt of official documents, or in the absence of such designation, at the office of the agency head.

(7) "Institutions of higher education" are the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, the various community colleges, and the governing boards of each of the above, and the various colleges, divisions, departments, or offices authorized by the governing board of the institution involved to act for the institution, all of which are sometimes referred to in this chapter as "institutions."

(8) "Interpretive statement" means a written expression of the opinion of an agency, entitled an interpretive statement by the agency head or its designee, as to the meaning of a statute or other provision of law, of a court decision, or of an agency order.

(9)(a) "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law, but does not include (i) a license required solely

for revenue purposes, or (ii) a certification of an exclusive bargaining representative, or similar status, under a collective bargaining law or similar statute, or (iii) a license, franchise, or permission for use of trademarks, symbols, and similar property owned or controlled by the agency.

(b) "Licensing" includes the agency process respecting the issuance, denial, revocation, suspension, or modification of a license.

(10) "Mail" or "send," for purposes of any notice relating to rule making or policy or interpretive statements, means regular mail or electronic distribution, as provided in RCW [34.05.260](#). "Electronic distribution" or "electronically" means distribution by electronic mail or facsimile mail.

(11)(a) "Order," without further qualification, means a written statement of particular applicability that finally determines the legal rights, duties, privileges, immunities, or other legal interests of a specific person or persons.

(b) "Order of adoption" means the official written statement by which an agency adopts, amends, or repeals a rule.

(12) "Party to agency proceedings," or "party" in a context so indicating, means:

(a) A person to whom the agency action is specifically directed; or

(b) A person named as a party to the agency proceeding or allowed to intervene or participate as a party in the agency proceeding.

(13) "Party to judicial review or civil enforcement proceedings," or "party" in a context so indicating, means:

(a) A person who files a petition for a judicial review or civil enforcement proceeding; or

(b) A person named as a party in a judicial review or civil enforcement proceeding, or allowed to participate as a party in a judicial review or civil enforcement proceeding.

(14) "Person" means any individual, partnership, corporation, association, governmental subdivision or unit thereof, or public or private organization or entity of any character, and includes another agency.

(15) "Policy statement" means a written description of the current approach of an agency, entitled a policy statement by the agency head or its designee, to implementation of a statute or other provision of law, of a court decision, or of an agency order, including where appropriate the agency's current practice, procedure, or method of action based upon that approach.

(16) "Rule" means any agency order, directive, or regulation of general applicability (a) the violation of which subjects a person to a penalty or administrative sanction; (b) which establishes, alters, or revokes any procedure, practice, or requirement relating to agency hearings; (c) which establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law; (d) which establishes, alters, or revokes any qualifications or standards for the issuance, suspension, or revocation of licenses to pursue any commercial activity, trade, or profession; or (e) which establishes, alters, or revokes any mandatory standards for any product or material which must be met before distribution or sale. The term includes the amendment or repeal of a prior rule, but does not include (i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, (ii) declaratory rulings issued pursuant to RCW [34.05.240](#), (iii) traffic restrictions for motor vehicles, bicyclists, and pedestrians established by the secretary of transportation or his or her designee where notice of such restrictions is given by official traffic control devices, (iv) rules of institutions of higher education involving standards of admission, academic advancement, academic credit, graduation and the granting of degrees,

employment relationships, or fiscal processes, or (v) the determination and publication of updated nexus thresholds by the department of revenue in accordance with RCW [82.04.067](#).

(17) "Rules review committee" or "committee" means the joint administrative rules review committee created pursuant to RCW [34.05.610](#) for the purpose of selectively reviewing existing and proposed rules of state agencies.

(18) "Rule making" means the process for formulation and adoption of a rule.

(19) "Service," except as otherwise provided in this chapter, means posting in the United States mail, properly addressed, postage prepaid, or personal or electronic service. Service by mail is complete upon deposit in the United States mail. Agencies may, by rule, authorize service by electronic transmission, or by commercial parcel delivery company.

[2014 c 97 § 101; 2013 c 110 § 3; 2011 c 336 § 762; 1997 c 126 § 2; 1992 c 44 § 10; 1989 c 175 § 1; 1988 c 288 § 101; 1982 c 10 § 5. Prior: 1981 c 324 § 2; 1981 c 183 § 1; 1967 c 237 § 1; 1959 c 234 § 1. Formerly RCW [34.04.010](#).]

RCW 34.05.230

Interpretive and policy statements.

(1) An agency is encouraged to advise the public of its current opinions, approaches, and likely courses of action by means of interpretive or policy statements. Current interpretive and policy statements are advisory only. To better inform and involve the public, an agency is encouraged to convert long-standing interpretive and policy statements into rules.

(2) A person may petition an agency requesting the conversion of interpretive and policy statements into rules. Upon submission, the agency shall notify the joint administrative rules review committee of the petition. Within sixty days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for the denial, or initiate rule-making proceedings in accordance with this chapter.

(3) Each agency shall maintain a roster of interested persons, consisting of persons who have requested in writing to be notified of all interpretive and policy statements issued by that agency. Each agency shall update the roster periodically and eliminate persons who do not indicate a desire to continue on the roster. Whenever an agency issues an interpretive or policy statement, it shall send a copy of the statement to each person listed on the roster. The agency may charge a nominal fee to the interested person for this service.

(4) Whenever an agency issues an interpretive or policy statement, it shall submit to the code reviser for publication in the Washington State Register a statement describing the subject matter of the interpretive or policy statement, and listing the person at the agency from whom a copy of the interpretive or policy statement may be obtained.

[2004 c 31 § 3; 2001 c 25 § 1; 1997 c 409 § 202; 1996 c 206 § 12; 1995 c 403 § 702; 1988 c 288 § 203.]