

CONCISE EXPLANATORY STATEMENT

Amendments to WAC 180-18-040 and WAC 180-18-050. New WAC 180-18-065.

This document has been prepared in compliance with RCW 34.05.325, the concise explanatory statement requirement of the Administrative Procedure Act. Included are: (1) The reasons for adopting the rules; (2) a description of any differences between the text of the proposed rules as published in the Register and the text of the final rules, and (3) a summary of all comments received, and responses to the comments by subject matter.

1. Reasons for Adopting the Rules

The Legislature has established basic education requirements in order to meet the paramount duty of the state under Article IX of the Washington Constitution to make ample provision for the education of all children . . . and “provide for a general and uniform system of public schools.” (RCW 28A.150.200-220.) 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 law sets a minimum instructional program of basic education that districts must offer, including but not limited to instructional hours, school days, and graduation credit requirements. The Washington State Board of Education oversees districts’ compliance with basic education program requirements.

RCW 28A.305.140 authorizes the SBE to grant waivers from the provisions of RCW 28A.150.200 through RCW 28A.150.220 on the basis that such waivers “are necessary to . . . implement successfully a local plan to provide for all students in the district an effective education system that is designed to enhance the educational program for each student.” RCW 28A.305.141 creates a temporary authority to grant waivers for the purposes of economy and efficiency to a limited number of small districts.

Both statutes require SBE to adopt criteria to evaluate waiver requests. By adopting rules to guide waiver decisions, SBE demonstrates that it is meeting its statutory obligation to ensure compliance by school districts with basic education requirements. The criteria are intended to be clear, rigorous and directly tied to state and district goals for improving student achievement.

RCW 28A.305.141, authorizing “economy and efficiency” waivers, presents a specific challenge to the SBE, as that statute, enacted in 2009, limits the waivers that may be granted at any time to a very small number, by district enrollment. Were SBE to receive more requests than may be granted, it has no basis in rule for approving one application over another.

Rule adoption is further intended to clarify issues related to basic education waivers that cause substantial confusion for both school districts and policy makers, simplify procedures that are overly complex and difficult of implementation, and repeal obsolete language.

For example, districts are required by law to provide both 180 school days and a district-wide average of 1,000 instructional hours. Whether full-day parent-teacher conferences are considered a “school day” under the definition in RCW 28A.150.203 has been a subject of analysis by SBE, with assistance from counsel, and ongoing communication with school districts and other interested parties. SBE has sought to clarify that full days devoted to conferences do not constitute a school day, because all pupils are not “engaged in academic and career and technical instruction planned by and under the direction of the school” on that day, and that districts seeking to use a day for this purpose must secure a waiver to ensure compliance with basic education requirements. Over the last four years both the number and share of waivers for the purpose of parent-teacher conferences have grown significantly. Of the 24 “Option One”

waivers under WAC 180-18-050 the Board has granted in 2012, ten (42 percent) have been solely for the purpose of parent-teacher conferences. Confusion nevertheless persists among some districts, resulting sometimes in difficulties for certification of basic education compliance. The rules seek to dispel remaining confusion, while affirming the value of parental involvement for student achievement, by creating a distinct category of waivers for parent-teacher conferences with distinct requirements.

In 2010 SBE established, as WAC 180-18-050(3), a pilot program in which districts meeting certain eligibility and other requirements may use up to three waived days for specified innovative strategies. The waivers could be obtained through a “fast-track” process requiring lengthy documentation by the district, but with approval in advance by the State Board. The “Option Three” waiver is excessively complex for both districts and SBE, and unintentionally difficult to renew. The rules eliminate this subsection and incorporate certain of its themes into criteria for Option One waivers.

Technical and clean-up changes include the striking of a subsection in WAC 18-18-040 that authorizes waivers from a basic education requirement that has been repealed by the Legislature, and making the reference to the 1,000 instructional hours requirement more closely mirror the language in statute.

2. Differences between Proposed and Final Rules

There are no differences between the proposed and final rules.

3. Summary of All Comments and Responses

The State Board of Education received 24 written comments on the proposed amendments to WACs 180-18-040 and 180-18-050 and the proposed new WAC 180-18-065. In addition, four persons submitted testimony at the public hearing held on the rules, in accordance with RCW 34.05.325, at the State Board’s meeting in Walla Walla on September 26. Most asserted that the proposed rules reduce the length of the school year or otherwise would result in students attending school fewer days. The comments are categorized as follows, with SBE response:

Comment	Response
Don't shorten the school year when we should be increasing time in school.	<p>The proposed rules do not shorten the school year. The basic education requirement of a minimum 180-day school year is established in RCW 28A.150.220, and cannot be amended by rule.</p> <p>The State Board of Education has a responsibility to ensure compliance with state basic education requirements. Since 1995, it has had authority delegated to it by the Legislature to grant waivers from basic education requirements “on the basis that such waivers are necessary to implement successfully a local plan to enhance the educational program for each student.” (RCW 28A.150.305.) By adopting specific criteria in rule for evaluation of waiver requests, the State Board provides for greater accountability in the exercise of this authority and increases the assurance that waivers, when granted, will satisfy the intent of the Legislature in enacting this law.</p>
The proposed rules will increase districts' use of waivers, and so reduce the number of days that children are in school. Fewer days in school mean less learning. Students are better served by a robust calendar.	<p>Ultimately the impact of the rules on the number of waivers granted in any year depends on the behavior of school districts and the rigor with which SBE implements the rules. (It will also be affected by the policies of the Legislature for funding basic education, as waivers are frequently sought for professional development activities that previously were supported by funding for teacher days outside of the 180-day calendar.)</p> <p>Establishing criteria for evaluation of waiver requests gives the SBE a legally accountable basis for disapproval of waiver</p>

	<p>requests that it has previously not had. The criteria for Option One waivers, while starting from elements of the application process currently in place, are also written to increase the rigor and discipline of the review process.</p> <p>SBE strongly sympathizes with the concern expressed about the importance of time in school. It respectfully disagrees, however, that the proposed rules will result in a decrease in the number of days that children are in school. The rules do not expand the opportunity for waivers; rather, they clarify the criteria that must be met for approval.</p>
<p>Don't reduce the number of hours that teachers teach. Don't shorten the time students spend in class. Don't shorten school days.</p>	<p>RCW 28A.220(2) requires that school districts make available to students a minimum instructional offering consisting of at least a district-wide annual average of 1,000 instructional hours for students in grades 1-12, and of at least 450 instructional hours for students enrolled in kindergarten. Chapter 548, Laws of 2009 (ESHB 2261) required that these requirements be increased according to an implementation plan to be established by the Legislature, with full implementation by 2018. The proposed rules make no change to instructional hours requirements. Nor do they address waivers from those requirements. Moreover, the rules require that the board of directors of a district requesting a 180-day waiver attest, through a signed resolution, that if the waiver is approved the district will meet the required annual instructional offerings under RCW 28A.150.220(2) for each of the school years for which the waiver is requested. (Waivers of the minimum 180-day requirement may result in more or fewer instructional hours above the minimum 1,000, depending on the local plan.) While this statement by the local board has been part of the informal application process, it has not to now been established in rule.</p>
<p>The proposed new category of waivers for parent-teacher conferences will result in many more districts applying for them. The proposed rules lower scrutiny of waiver requests. We should be making waivers harder to obtain, not easier.</p>	<p>The decision by the SBE to create a separate procedure for waivers for the purpose of parent-teacher conferences, not requiring formal action by the State Board for approval, stems from the following considerations:</p> <ul style="list-style-type: none"> (1) The inconsistency between the statutory definitions of "school day" in RCW 28A.150.203 and "instructional hours" in RCW 28A.150.205, in which parent-teacher conferences are within the definition of "hours" but not of "days"; (2) The Board's conviction of the value of face-to-face communication between parents and teachers for improving student achievement; (3) The repeated testimony of educators that the scheduling of multiple partial days for parent-teacher conferences is both disruptive to instruction, particularly in the earlier grades, and an obstacle to parental participation, particularly in rural districts, (4) The increasing number of waivers the Board has already been granting for this purpose under the regular Option One procedure, and (5) The recent legislative enactment that school districts receiving state support for all-day kindergarten administer the Washington Inventory of Developing Skills (WaKIDS) program, a required component of which is a specific model of parent-teacher conference most practically conducted through full rather than partial days. <p>It is unclear whether the new proposed WAC 180-18-050(3) will increase the number of waiver requests. The current procedures in WAC 180-18-050(1) and (2) have not appeared to be a hindrance to district requests. It is therefore not self-</p>

	<p>evident that the new procedure in (3), which requires applicants to provide information specifically related to the goals and activities of the planned parent-teacher conferences, would result in an increase in the number of requests. As with other rule amendments, the determination of results will come through experience.</p>
<p>Days are being shortened and the school year should be increased to 365 days to get the services the taxpayers are paying for.</p>	<p>SBE does not have authority to set the length of the school day or the school year. Legislation enacted in 2009 requires, by 2018, that school districts increase the instructional offerings they make available to students in grades 1-12 from a district-wide average of 1,000 instructional hours to 1,080 hours in each grade, and in kindergarten from 450 hours to 1,000. SBE is on record in support of this legislation.</p> <p>State law (RCW 28A.150.220) requires school districts to provide access to a minimum of 180 days per school year. Arguments are made for a longer school year and a shorter break between school years. According to one state, each additional school day the state might require costs about \$25 million in state funds. Estimates vary, however, depending on how costs are calculated.</p>
<p>In years past teachers contracted for more than 180 days, there were no conference days, and teachers held conferences with parents in the evenings and on weekends.</p>	<p>The comment is noted. There appears to be a strong commitment on the part of certificated and administrative staff to meeting with parents to inform them of students' progress and work together on improvement. At present it is a common practice to schedule parent-teacher conferences through early releases. We would note the potential for additional costs to districts for keeping school buildings open in the evening for the purpose of conferences, at a time when resources are stretched thin.</p>
<p>There should be a cap on the number of waiver days that may be requested by districts and granted by SBE. Limit the rule to a low number of days. Limit waivers to three days. Limit waivers to three years per decade for specified transitions.</p>	<p>The State Board gave long and careful consideration to imposing a cap on the number of days that may be waived from the 180-day school year requirement. In approving rules for public hearing, the Board chose not to include this provision for Option One waivers. In making this decision the Board considered both the need for local flexibility and the practical limit that the 1,000 instructional hours requirement – soon to be increased to 1,080 hours for all grades -- imposes on the number of days that may be waived. As a result of concerns heard in public comment, however, the rules as approved for publication in the State Register (CR 102) placed a limit of five on the number of days that may be waived for the purpose of parent-teacher conferences under the amended rules.</p>
<p>The proposed criteria for evaluation of waiver requests are vague and tied to intentions rather than results. Elements of the rules are softer than they should be.</p>	<p>The purpose of the criteria is to evaluate requests for waivers submitted to SBE "on the basis that such waiver or waivers are necessary to . . . implement successfully a <i>local plan</i> to provide for all students in the district an effective education system that is designed to enhance the education program for each student." (RCW 28A.150.305(1). Emphasis added.) They are therefore by definition tied to a district's intentions. We would further note that that new WAC 180-18-040(3) sets criteria for evaluation of requests that would represent the continuation of an existing waiver for a term of years additional to that originally granted, and that criteria (a) and (b) relate specifically to the results of the initial waiver.</p> <p>We respectfully disagree that the criteria are vague or soft. In drafting WAC 180-18-040 (2) and (3), SBE sought to make the criteria for evaluation of waiver requests specific enough to provide strong accountability for the use of waivers to improve student learning, but not so specific or technical that they would be difficult for school districts to address SBE to use. Experience will show how well we succeeded. We would note that the criteria have much in common with questions districts have been asked for some time to address through the SBE application process, as refined over the years.</p>

<p>The proposed rules do not require a district requesting continuation of an existing waiver to enhance the educational program or to convince the SBE of improved achievement from the waiver.</p>	<p>Proposed WAC 180-18-040(3) provide that in addition to the criteria for evaluation of requests for an initial waiver, requests for continuation of an existing waiver will be evaluated based on:</p> <ul style="list-style-type: none"> • The degree to which the prior waiver plans goals were met, based on the metrics specified in that plan; • The effectiveness of the implemented activities in achieving the goals of the plan for student achievement; • Any proposed changes in the plan to meet the stated goals. <p>These rule provisions meet the purposes stated in this comment.</p>
<p>The number of school days should not be reduced for any student without a clear increase in student services in one or more of the following:</p> <ul style="list-style-type: none"> • Total instructional hours for all increased; • Total instructional hours for at-risk students increased in supplemental learning time, such as summer school, after school and all-day kindergarten; • Each school day lost for students offset by two days' enhancement in employee time spent on professional development, data management, collaboration, conferences or community outreach. 	<p>The comment is noted. To require that the granting of a waiver of the minimum school year requirement result in an increase in instructional hours may require amendment to RCW 28A.305.140; that is, it probably is beyond the scope of SBE rule-making authority. As policy, there would be equity concerns, as some districts already offer district-wide average instructional hours well in excess of the minimum requirement of 1,000 hours. Such districts would be penalized by a policy that required more hours in exchange for fewer days, potentially creating a disincentive for districts to increase instructional hours. Chapter 548, Laws of 2009, moreover, increases minimum instructional hours to 1,080 instructional hours in each grade by 2018. The same legislation requires state funding of full-day kindergarten by 2018, seeming to make this suggested condition for waivers moot.</p> <p>The vast majority of waivers are requested for the purpose of staff professional development and parent-teacher conferences. It therefore seems a redundancy to require that waivers not be granted without an increase in such activities as staff professional development and parent-teacher conferences. In this proposal it appears that a district requesting two waiver days for staff professional development would have to schedule an additional two days for staff professional development (or other listed activity, such as "collaboration") in order to receive the waiver, in effect nullifying the waiver. That seems an odd result that would create management and scheduling challenges for districts. There is also no indication of such legislative intent in RCW 28A.305.140.</p>
<p>Limit the rule to those cases which increase services. Waivers should be used for programmatic additions such as summer school and full-day kindergarten.</p>	<p>Districts frequently report in applications for waivers that their proposed calendars will result in an increase in instructional hours, whether in individual schools or district-wide, as fewer days are exchanged for longer ones. The statewide data that would be needed to more closely examine the relationship between 180-day waivers and instructional hours are not at this time available.</p> <p>Some of the response to this comment depends on whether the most frequent uses of waiver days – professional development of staff and parent-teacher conferences – should be regarded as increasing services to children. In individual cases, they may be seen as increasing the quantity of services received. Used well, they surely improve the quality of services, which most in the field would judge to be as of at least equal importance.</p>
<p>The rules remove the prohibition on waivers for schools that are persistently underachieving.</p>	<p>The prohibition applied only to waivers granted through the pilot program authorized in WAC 180-18-050(3), which are eliminated in these rules. It has never applied to "regular" 180-day waivers granted through WAC 180-18-050(1) and (2). The State Board did not consider adding this condition to the waivers granted under that authority. Should that change be considered there are likely to be concerns articulated that persistently underachieving schools may be among those most in need of flexibility in the school calendar to implement innovative strategies to improve student performance.</p>

<p>The proposed rules expand the time in which a waiver application may be submitted from 50 days prior to the SBE meeting at which it will be considered to 40 days. This makes waivers easier to obtain.</p>	<p>The State Board has made a determination that a deadline of 40 days prior to the meeting, rather than 50, provides sufficient time for review of waiver applications while allowing school districts more flexibility to work around their own schedules of school board meetings. The additional workload for staff and members is small, and can be supported within current resources.</p>
<p>The rules should specify an exact month for submission of waiver applications that is far enough out for appropriate scrutiny, public comment and thoughtful planning on the part of the district.</p>	<p>The comment is noted. The State Board has not considered a change that would establish just one date per year by which waiver requests must be considered. For reasons of district planning, most waiver requests are submitted to the SBE well in advance of the school year. (There are special circumstances in which some requests are received later.) It is the responsibility of districts to provide appropriate opportunity for public comment. Indeed, proposed WAC 180-18-040(2) provides that the SBE shall evaluate the need for a waiver based in part on whether "The plan describes in detail the participation of administrators, teachers, other district staff, parents and the community in the development of the plan." Similar provisions are included in proposed WAC 180-18-040(3) and proposed WAC 180-18-065.</p>
<p>There is no evidence that waivers, whether for professional development or other purposes, increase student learning.</p>	<p>This appears to be a comment on RCW 28A.305.140 and RCW 28A.655.180, rather than on the rule amendments. SBE's authority to grant waivers from minimum basic education requirements is not at issue in the rules. That authority was established by the Legislature more than 20 years ago, and has been amended several times since. It would not have been consistent with legislative intent for the SBE, once delegated that authority by the Legislature for express purposes, to then decline to exercise it. The purpose of the rules on which SBE has solicited comment is to implement that law, in a way that fully meets legislative intent, by adopting criteria to evaluate requests for waivers, in accordance with RCW 28A.305.140(2) and RCW 28A.305.141(3).</p> <p>Whether there is evidence that the purposes for which waivers are most commonly granted increase student learning is more a policy question for the Legislature than a rules question for SBE. The Concise Explanatory Statement on these rule amendments is not the place for that policy debate. We would note briefly only that:</p> <ol style="list-style-type: none"> (1) The importance of parental involvement for student achievement is well-established in the research literature, and reflected in state policy and district practice. "A convincing body of evidence confirms what common sense suggests: The higher the expectations of parents, the steadier their guidance and support, and the greater sense their partnership with teachers and other staff, the better their child's chances of academic success." (Taylor and Dounay, "Strengthening Parents' Ability to Provide the Guidance and Support That Matter Most in High School," Education Commission of the States, August 2008.) In waiver applications, districts frequently emphasize the importance of face-to-face communication with parents in setting academic expectations for individual students and monitoring their progress against them, particularly for students most at risk. (2) The Legislature and study committees it has created have made repeated findings on the importance of staff professional development for student learning. In the Education Reform Act of 1993, the Legislature declared its finding "that improving student achievement will require . . . time and resources for educators to collaboratively develop and implement strategies for improved student learning." (ESHB

1209, C 336, L 93). The Washington Learns Commission found that, "Professionals in every field must continue to learn about the latest issues, research and practices in order to maintain and improve their skills and abilities. This is especially critical for teachers and other educators as we discover more about how students learn, what supports different students need, and how to be the most effective facilitators in various learning environments." (Final Report, November 2006, p. 41.) The Basic Education Finance Task Force created by the 2007 Legislature recommended that the state increase the number of Learning Improvement Days for professional development of educators from two to ten as part of the state-funded salary allocation model. (Final Report, January 2009, p. 17.) In ESHB 2261, redefining basic education and creating a new funding structure, the Legislature declared its recognition that "the key to providing all students the opportunity to achieve the basic education goal is effective teaching and leadership. Teacher, principals and administrators must be provided with access to the opportunities they need to gain the knowledge and skills that will enable them to be increasingly successful in their classroom and schools." (C 548 L 09, Sec. 401.) Most recently, the Compensation Technical Working Group for the Quality Education Council, created by ESHB 2261 to inform the Legislature on implementation of the new funding structure, recommended that the state allocate funding for ten paid days of professional development time for certificated instructional staff and instructional aides. While implementation has varied over time, mostly for reasons of funding availability, the Legislature has been consistent in its recognition of the importance of instructional quality for student learning, and of the importance of professional development for instructional quality.

Because the Legislature, in response to budget pressures, reduced and then eliminated state funding for educator professional development outside the 180 days, the SBE has seen fit to support district requests for waivers for this essential activity. The amended rules, however, reflect the recognition that for professional development to be effective, it must be directed to achievement of state standards, aligned with local school improvement plans, based on valid research evidence, clear about the activities to be undertaken and their application to student learning, and accountable for results. The criteria for evaluation of waiver requests in (2)(a) through (f) in amended WAC 180-18-040 provide the means through which to test these and other requirements.