

WSR 21-11-106

PROPOSED RULES

STATE BOARD OF EDUCATION

[Filed May 19, 2021, 10:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-07-151.

Title of Rule and Other Identifying Information: The state board of education (SBE) has proposed amendments to chapter 180-16 WAC regarding state support of public schools. The board adopted rules on chapter 180-16 WAC that required the board to revisit rules on instructional hours by its regularly scheduled July 2021 board meeting and these proposed permanent rules are that review.

Hearing Location(s): On June 22, 2021, at 1:00 p.m., online using Zoom at <https://us02web.zoom.us/j/83966922389> or telephone by dialing US +1-253-215-8782 with Webinar ID 839 6692 2389. Members of the public are encouraged to participate online due to COVID-19 health precautions.

Date of Intended Adoption: July 15, 2021.

Submit Written Comments to: Parker Teed, 600 Washington Street S.E., Olympia, WA 98504, email rulescoordinatorSBE@k12.wa.us, fax 360-586-2357, by June 22, 2021.

Assistance for Persons with Disabilities: Contact Parker Teed, phone 360-742-4037, fax 360-586-2357, TTY 360-664-3631, email rulescoordinatorSBE@k12.wa.us, by June 22, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SBE is revisiting the definition of instructional hours by clarifying the definition of instructional hours to address modalities for delivery of instruction including in-person method of delivery and other methods of delivery. SBE also proposes changes to chapter 180-16 WAC to align rule to current policy or practice, improve readability of the rule, or make other changes identified during the review of the WAC chapter and through public feedback.

- School districts shall establish a continuity of operations plan to ensure districts can continue operations while being responsive to disruptions caused by an emergency. Requirements of the continuity of operations plan are defined in the proposed rule.
- The proposed rules for WAC 180-16-200 clarify that "in-person" instruction, as defined in RCW 28A.232.010, is the default method of delivery and that other modalities are allowable under these exceptions:
 - The first exception is for modalities other than in-person as allowable under funding allocation models (chapters 392-121 WAC, 28A.232, and 28A.250 RCW).
 - The second exception allows a district to offer the opportunity for individual students, under district and student agreement, to engage in instructional hours delivered through modalities other than in-person instruction due to health or safety needs of the student.
 - The third exception allows a district to count modalities other than in-person to allow for continued operation and delivery of basic education services during an emergency.
- Other policy changes as identified during this review.

Reasons Supporting Proposal: Due to the dynamic and uncertain nature of the COVID-19 pandemic, local education agencies need to be responsive to state and local public health measures such as social dis-

tancing, school closures, limiting capacity of buildings, and other suggested ways of limiting community spread of COVID-19. Safe continued operations and delivery of services during the pandemic and future emergencies is vital to ensuring each student continuous access to the program of basic education during disruption to normal operations. Due to this pandemic and the need to prepare for continuity of delivery of services during future emergencies, the SBE is proposing these rules including the continuity of operations plan and any other policy changes identified during this review.

Statutory Authority for Adoption: RCW 28A.150.220(7).

Statute Being Implemented: RCW 28A.150.220, 28A.150.250, and 28A.150.260.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: SBE, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Randy Spaulding, 600 Washington Street S.E., Olympia, WA 98504, 360-725-6024.

A school district fiscal impact statement has been prepared RCW 28A.305.135.

SCHOOL DISTRICT FISCAL IMPACT STATEMENT

WSR 21-07-151.

Title of Rule: Instructional hours and school reopening plans.

Agency: SDF - school district fiscal impact - SPI.

Part I: Estimates: No fiscal impact. These rules do not have a fiscal impact. The office of superintendent of public instruction (OSPI) solicited feedback from approximately twenty-seven of a combination of district business managers and ESD fiscal officers and provided approximately seven days for response. No expected costs due to this rule change were received.

For that reason, OSPI's conclusion is that these rules will not create a fiscal impact to local districts.

Estimated Cash Receipts to: No estimated cash receipts.

Estimated Expenditures From: No estimated expenditures.

Estimated Capital Impact: No estimated capital impact.

Agency Preparation: T.J. Kelly, phone 360-725-6301, May 18, 2021.

Agency Approval: T.J. Kelly, phone 360-725-6301, May 18, 2021.

Part II: Narrative Explanation:

II. A - Brief Description Of What the Measure Does That Has Fiscal Impact:

II. B - Cash Receipts Impact: None.

II. C - Expenditures:

Part III: Expenditure Detail:

III. A - Expenditures by Object or Purpose: None.

Part IV: Capital Budget Impact: None.

A copy of the statement may be obtained by contacting Mr. Thomas Kelly, 600 Washington Street S.E., Olympia, WA 98504, phone 360-725-6301, fax 360-586-2357, TTY 360-664-3631, email Thomas.Kelly@k12.wa.us.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs

other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

May 18, 2021
Randy Spaulding
Executive Director

OTS-3075.1

AMENDATORY SECTION (Amending WSR 21-05-015, filed 2/5/21, effective 3/8/21)

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 distributed by the state board of education. 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. (~~For the 2020-21 school year, local education agencies shall submit a copy of the reopening schools plan to the state board of education and superintendent of public instruction two weeks before school begins and no later than September 15, 2020.~~) 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 visits of 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.

(b) School districts may use the personnel and services of the educational service district to assist the school 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 non-compliance 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.

(d) 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 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.

(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, the state board of education may recommend (~~(withholding of)~~) the superintendent of public instruction withhold 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).

(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 may result, at the state board of education's or its designee's discretion, in the recommendation to the superintendent of public instruction of withholding of the school 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 school district's board of directors, and the chair of the state board of education, or his/her designee.

nee, 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.

(g) In the event a school district fails to sign a compliance agreement within five school business days from the date of issuance or does not satisfy all of the terms of the signed compliance agreement within the designated amount of time, the state board of education may recommend to the superintendent of public instruction withholding state funds for the basic education allocation until program compliance is assured.

(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 or completion of the compliance agreement.

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

(5) Each school district shall develop, maintain and, if necessary, implement a continuity of operations plan under WAC 180-16-200 and 180-16-212 for delivering the program of basic education during disruptions to basic education delivery resulting from an "emergency or disaster" as defined in RCW 38.52.010. "Emergency" may also include a national declaration of emergency by an authorized federal official.

[Statutory Authority: RCW 28A.150.220(7). WSR 21-05-015, § 180-16-195, filed 2/5/21, effective 3/8/21. Statutory Authority: RCW 28A.150.220 and 28A.150.250. WSR 18-24-090, § 180-16-195, filed 12/3/18, effective 1/3/19. Statutory Authority: RCW 28A.150.220, 28A.150.250, and 28A.150.260. WSR 11-17-044, § 180-16-195, filed 8/11/11, effective 9/11/11. Statutory Authority: RCW 28A.150.220(4), 28A.305.140, 28A.305.130(6). WSR 02-18-056, § 180-16-195, filed 8/28/02, effective 9/28/02. Statutory Authority: RCW 28A.150.250, 28A.150.260 and 28A.15.220 [28A.150.220]. WSR 99-10-091, § 180-16-195, filed 5/4/99, effective 6/4/99. Statutory Authority: RCW 28A.58.754(6). WSR 84-11-043 (Order 2-84), § 180-16-195, filed 5/17/84. Statutory Authority: RCW 28A.04.120. WSR 83-13-002 (Order 3-83), § 180-16-195, filed 6/2/83. 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), § 180-16-195, filed 9/12/79. Statutory Authority: RCW 28A.41.130 and 28A.58.754. WSR 78-06-097 (Order 3-78), § 180-16-195, filed 6/5/78.]

AMENDATORY SECTION (Amending WSR 21-05-015, filed 2/5/21, effective 3/8/21)

WAC 180-16-200 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))~~ at least:

(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.

(4) ~~((For the 2020-21 school year, "instructional hours" as defined in RCW 28A.150.205 are not limited to in-person educational services. Local education agencies may count as instructional hours towards the minimum district-wide annual average those hours students are provided the opportunity to engage in educational activity planned by and under the direction of school district staff that are delivered through learning modalities which may include, but are not limited to, distance learning, hybrid classrooms, rotating schedules, or other methods that allow for delivery of basic education services during the COVID-19 epidemic. The following are applicable to the 2020-21 school year:~~

~~(a) Nothing in this section supersedes applicable statutory or office of superintendent of public instruction funding allocation requirements;~~

~~(b) Days in which instructional hours are offered shall count as school days for the purpose of meeting the minimum one hundred eighty-day school year requirement;~~

~~(c) Local education agencies must implement a system consistent with OSPI attendance rules; and~~

~~(d) The state board of education will revisit this rule no later than its regularly scheduled July 2021 board meeting.)~~ Instructional hours are defined in RCW 28A.150.205.

(a) Instructional hours are delivered "in-person," as defined in RCW 28A.232.010 (1)(b), except as provided in RCW 28A.232.010 (4)(b).

(b) School districts may deliver instructional hours through learning modalities other than in-person instruction which may include, but are not limited to, distance learning, hybrid classrooms, rotating schedules, or other methods that allow for delivery of basic education services under the following:

(i) Funding allocation models established by the legislature or the superintendent of public instruction in chapter 392-121 WAC, chapters 28A.232 and 28A.250 RCW that allow for modalities other than in-person instruction;

(ii) Districts may provide the opportunity for individual students to engage in the program of basic education through modalities other than in-person instruction if so agreed upon by the district and the student due to health or safety needs of the student;

(iii) During implementation of the school district's continuity of operations plan under WAC 180-16-212; and

(iv) Under any other applicable law that would allow for modalities other than in-person instruction to be delivered.

(5) Nothing in this section supersedes other applicable law.

[Statutory Authority: RCW 28A.150.220(7). WSR 21-05-015, § 180-16-200, filed 2/5/21, effective 3/8/21. 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.]

NEW SECTION

WAC 180-16-212 Continuity of operations plan. By the beginning of the 2021-22 school year, each school district shall develop, maintain and, if necessary, implement a continuity of operations plan that ensures delivery of basic education services during disruptions to basic education delivery resulting from an "emergency or disaster" as defined in RCW 38.52.010. "Emergency" may also include a national declaration of emergency by an authorized federal official.

(1) The continuity of operations plan shall describe the following:

(a) The process for the school district to decide how to transition to modalities other than in-person instruction if needed in the event of an emergency or disaster in order to ensure equitable delivery of the program of basic education to all students;

(b) The roles of school district staff responsible for executing the continuity of operations plan during an emergency;

(c) The process for the school district to decide how to transition to offering each student in-person instruction when the disruptions to basic education delivery due to the emergency have ended; and

(d) The schedule for routine review of the continuity of operations plan by the district.

(2) The following apply during implementation of the continuity of operations plan:

(a) Days in which instructional hours are offered shall count as school days for the purpose of meeting the requirements of RCW 28A.150.220; and

(b) Nothing in this section supersedes other applicable law.

(3) Each school district that implements its continuity of operations plan shall notify the state board of education and the office of superintendent of public instruction within five days of the decision to implement the continuity of operations plan by email and postal mail of the following:

(a) Date that the disruptions to basic education delivery began or will begin if there is an impending emergency situation and the estimated duration of the emergency or disaster;

(b) Documentation of the emergency or disaster, such as a declaration of emergency, and information that describes the disruption to basic education delivery due to the emergency;

(c) Contact information for school district staff who are responsible for executing the continuity of operations plan; and

(d) Further information or assurances upon request, at the discretion of the state board of education or the office of superintendent of public instruction staff.

(4) At the discretion of state board of education staff, each school district's compliance with the requirements of the program of basic education is subject to review under WAC 180-16-195.

(5) This continuity of operations plan may be used as a component of the comprehensive emergency management plan under RCW 38.52.030.

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