



THE WASHINGTON STATE BOARD OF EDUCATION

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October 31, 2016

Hon. Bob Ferguson
Attorney General
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100

Dear Attorney General Ferguson:

The State Board of Education requests an Attorney General Opinion on the following question:

Is a waiver from basic education requirements by the State Board of Education, acting under the authority granted by RCW 28A.305.140, needed in order for a school district to use a full scheduled day on the school calendar for the purpose of teacher-parent-guardian conferences as defined in RCW 28A.150.205?

The opinion is needed because of varying legal interpretations on this question over the years, continued confusion on the parts of school districts as to the need for the waiver, and uncertainty on the part of the Board as to policies and procedures for implementation of RCW 28A.305.140.

The question arises because of conflicting statutes. RCW 28A.150.203 defines "school day" for the purposes of Chapter 28A.150 RCW as follows:

(10) "School day" means each day of the school year on which pupils enrolled in the common schools of a school district are engaged in academic and career and technical instruction planned by and under the direction of the school.

The definition of "Instructional hours" in RCW 28A.150.205, applying throughout RCW 28A.150.200 (Program of basic education) through RCW 28A.150.295 (General public school system – Maintained), is as follows:

"Instructional hours" means those hours students are provided the opportunity to engage in educational activity planned by and under the direction of school district staff, as directed by the administration and board of directors of the district, inclusive of intermissions for class changes, recess, and **teacher/parent-guardian conferences that are planned and scheduled by the district for the purpose of discussing students' educational needs or progress, and exclusive of time actually spent for meals.** [Emphasis added.]

Isabel Muñoz-Colón, *Chair* • Ben Rarick, *Executive Director*

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Kevin Laverty • Peter Maier • Dr. Daniel Plung • Lindsey Salinas • Randy Dorn, *Superintendent of Public Instruction*

While teacher-parent/guardian conferences are explicitly within the definition of instructional hours for application to the state's program of basic education, "school day" is defined without relation to instructional hours or any other unit of time making up such "day." This has left to interpretation whether a waiver of the requirement of a minimum 180 school days is needed when a school day is used in full for the purpose of parent-teacher conferences.

There is not a clear history of legal interpretation on the intersection of teacher/parent conferences, basic education requirements, and basic education waivers. Correspondence has been found in SPI files, dated 2008, in which staff informed a school district that a basic education waiver was not needed for a day spent for "student-led" conferences with parents, and it does not appear to have been the practice of the agency, for some period of years, to require districts to obtain a waiver to schedule in such a way. In a letter in 2011 to legislative staff, however, the Executive Director of the State Board of Education stated:

The SBE consults with the Office of the Attorney General to determine what activities proposed by school districts constitute the need for waivers from the basic education requirements. The Office of the Attorney General has recommended to the SBE that districts wishing to provide full-day parent-teacher conferences must request and receive waivers from the SBE in order to remain in compliance with basic education requirements. (Letter, Edith Harding to Barbara McLain. February 25, 2011.)

There is no document in the possession of the Board, however, in which the recommendation referenced in the letter is articulated. So no record to which the Board can point in response to inquiries.

The treatment of parent-teacher conferences for basic education purposes was an object of extended discussion during the Board's examination of waiver rules and practices in 2011-12. In a memo prepared for the Board's May 2012 meeting, staff to the Board wrote:

The task is further complicated by conflicting statutes. Districts are required by law to provide *both* 180 school days and an average [at that time] of 1,000 instructional hours. Whether full-day parent-teacher conferences should be considered a school day has been the subject of ongoing analysis and debate. WaKIDS [Washington Kindergarten Inventory of Developing Skills] has further highlighted this issue.

For the past several years, SBE has been clear that full-day parent teacher conferences do not constitute a school day. RCW 28A.150.203 states: "School Day" means each day of the school year in which pupils enrolled in the common schools of a school district are engaged in academic and career and technical instruction planned by and under the direction of the school. Full-day parent-teacher conferences do not count toward the required 180 days because all students are not present on these days. While the definition does not specifically say all pupils, "all" is implicit. If the language is read to mean "some" pupils, that would permit school schedules where some students are scheduled for fewer than 180 days and on any given day only some students are present. . .

The definitions of instructional hours and school days are related in that instructional hours comprise a school day [Statutorily, they do *not*], but distinct, in that a school day must be available to all students.

SBE has operated on the necessary assumption that the distinction between instructional hours (parent-teacher conferences count for these) and school days (parent-teacher conferences do not count for these) was intentional on the part of the Legislature. A review of the legislative history of WaKIDS, however, suggests the Legislature may not have intended this distinction.

The Board established, in WAC 180-18-050 (3), an expedited procedure for requests by districts for 180-day waivers for the sole purpose of conducting full-day parent-teacher conferences. Under this procedure (described in some contemporary references as “pre-approved waivers”), district requests do not come before the Board for votes to approve or deny. Applications are reviewed at staff level only, and districts are notified whether they have met the requirements for the waiver.

The Board, school districts, and the public would benefit greatly from legal clarity on this issue through a formal opinion by the Attorney General. For the Board, an Attorney General opinion would provide guidance for any potential amendment to WAC 180-19-040 and WAC 180-18-050, and a basis on which to consider advocating for any legislation on the subject. For school district directors and superintendents, many of whom long operated under the assumption that waivers were not needed for full-day parent-teacher conferences, it would provide legal clarity, and inform district policies. The public would be afforded a better understanding of state requirements affecting parent-teacher conferences.

I thank you for your consideration of this request, and make available to you the resources of the Board as may be needed.

Very truly yours,

A handwritten signature in cursive script that reads "Isabel Muñoz-Colón". The signature is written in black ink and is positioned above the printed name.

Isabel Muñoz-Colón
Chair

cc: Susan Mielke, Sr. Staff Coordinator & Counsel
Senate Committee on Early Learning & K-12 Education

Ethan Moreno, Senior Research Analyst
House of Representatives