

Frequently Asked Questions Regarding Collective Bargaining Impacts of the “McCleary Fix” Bill



*Prepared for the Washington Association of School Administrators
by the attorneys of Porter Foster Rorick LLP and Stevens Clay PS*

Buzz Porter—Lance Andree—Paul Clay

THIS WAS IN COLLABORATION AND PARTNERSHIP WITH THE FOLLOWING:

Gary Kipp—AWSP; Warren Hopkins—ERNN; Brianne King—WASBO;
Curtis Leonard—WSPA; Tim Garchow & Jessica Vavrus—WSSDA;
Bill Keim, Helene Paroff, Dan Steele and Andy Wolf—WASA;
David Burgess—Independent Consultant; Chris Burton—Issaquah School District;
Shaun Carey—Franklin Pierce Schools; Jacob Kuper—Issaquah School District;
Charles Lind—Patterson Buchanan; and Sarah Thornton—Pasco School District

Frequently Asked Questions Regarding Collective Bargaining Impacts of the “McCleary Fix” Bill

*Prepared for the Washington Association of School Administrators
by the attorneys of Porter Foster Rorick LLP and Stevens Clay PS*

This summary addresses frequently asked questions related to changes in the law made by E2SSB 6362 (aka the “McCleary Fix” bill). Please keep in mind, this document is not a substitute for legal advice. A district’s legal obligations will depend on specific circumstances and CBA language. Bargaining strategies will vary based on the needs, goals, and resources of each district. Each district should work with their own legal counsel to determine how best to apply these principles locally.

Key Terms Used in this Document

Salary Allocation refers to the amount funded by the state for each salary under a state formula. The state formula is driven by the number of employees in a “prototypical school.” See RCW 28A.150.260 (the “prototypical school model”). That means the salary from the state does not necessarily fund everyone employed by a school district. Instead, the state only pays for those considered necessary for prototypical schools.

Minimum Allocation refers to the base salary funded by the state for a 1.0 full time equivalent employee: \$64,000 for certificated instructional staff; \$95,000 for certificated administrators, and \$45,912 for classified staff (all adjusted for inflation as described below). See RCW 28A.150.410(5), (6), and (7). This minimum amount is increased for some districts based on *regionalization factors* ranging from six to 24 percent. This minimum *allocation* from the state is different from the minimum *salaries* that must be paid by a district for certificated instructional staff.

Regionalization refers to an additional allocation to a school district based on the regional difference, as determined by the state, in the cost of hiring staff. Regionalization is stated as a factor (1.0, 1.06, 1.12, 1.18, or 1.24) that is then multiplied by the *minimum allocation*.

Certificated Administrative Staff (CAS) includes but isn’t limited to these certificated employees: principals, assistant principals, directors, assistant superintendents, and superintendents. The law refers to CAS separately for *salary allocations*, and for certain *salary limits* that apply only during 2018-19.

Certificated Instructional Staff (CIS) refers to teachers and other non-supervisory certificated employees such as educational staff associates. The law refers to CIS separately for *salary allocation*, and for certain *salary limits* under CBAs only during 2018-19.

Classified Staff (CLS) refers to employees who aren’t required to have a state-issued certificate either by law or by the District. The law refers to CLS separately for *salary allocation*, and for certain *salary limits* under CBAs only during 2018-19.

Time, Responsibility or Incentive (TRI) is a legal phrase within RCW 28A.400.200 that refers to any compensation provided to a non-supervisory certificated staff member beyond the staff member’s base contract. It includes compensation provided to all non-supervisory certificated staff members within a district (“universal TRI”) and compensation provided only to certain staff members in specific assignments (“non-universal TRI”).

Universal TRI describes TRI paid to all non-supervisory certificated employees in a bargaining unit. It commonly includes: (1) district-directed and teacher-directed extra days for all teachers; and (2) “deemed done” TRI. Universal TRI would not include:

- Extra responsibility stipends (department head stipends, leadership stipends, extra pay for committee work, etc.);
- Pay for extraordinary workload (class size overload pay, extra pay based on the number of IEPs assigned to a case manager, etc.).

Non-universal TRI refers to additional paid time or responsibility stipends unique to specific assignments (department head stipends, leadership stipends, extra pay for committee work, etc.), or pay to compensate for extraordinary workload (class size overload pay, extra pay based on the number of IEPs assigned to a special education case manager, etc.).

Implicit Price Deflator (IPD) is a figure used to measure inflation, calculated by the Bureau of Economic Analysis of the US Department of Commerce. It is an alternative measure of inflation to the *Consumer Price Index*. The IPD is generally a lower percentage than the CPI and was used to measure inflation for certain property tax limitations prior to passage of EHB 2242. In EHB 2242, the IPD was adopted for the measure of inflation for purposes of increasing the *salary allocations* for school employees, as well as for determining how much minimum actual starting and five-year salaries for CIS.

Consumer Price Index (CPI) is a figure used to measure inflation, calculated by the Bureau of Labor Statistics. It was historically used to establish the Cost of Living Adjustment (COLA) to be applied to funded *salary allocations* under the old funding model. The annual average CPI was also used by the legislature in EHB 2242 and E2SSB 6362 to set a limit on compensation increases during the 2018-19 school year. It has historically been a higher figure than the IPD.

Answers to Frequently Asked Questions

1. What key provisions of EHB 2242 and E2SSB 6362 go into effect in 2018-19?

- a. Minimum allocations to districts are increased to the following amounts:
 - CIS: \$65,216 (\$64,000 adjusted by IPD)
 - CAS: \$96,805 (\$95,000 adjusted by IPD)
 - CLS: \$46,784 (\$45,912 adjusted by IPD)
- b. All of the above allocations are adjusted by regionalization factors on [LEAP Document 3](#).
- c. School districts are no longer required to pay salaries for CIS based on the state salary allocation. Instead, you are required to meet three pay requirements:

- minimum starting salary
- minimum five-year salary, and
- maximum salary

These salary “fenceposts” are discussed further below with specific amounts listed depending on your regionalization factor.

- d. “Local revenues” (includes levies, LEA, and certain other federal and state funds), can only be used for enrichment activities, not basic education activities.
- e. The State will fund one professional learning day per RCW 28A.150.415. The Governor vetoed a provision that would have delayed funding for one year.

2. How do we determine if a CBA needs to be reopened for 2018-19?

You should consult legal counsel if you have a contract that extends through 2018-19, but in general, whether a school district has a duty to reopen a closed CBA depends on (a) when it was ratified, and (b) any reopener language in the CBA. If the CBA was ratified before October 19, 2017, the contract may not need to be reopened.

In passing EHB 2242, the Legislature specifically stated that it did not intend to impair existing contracts. “Impairment of contracts” is a state and federal constitutional concept that prohibits the legislature from interfering with contracts that were executed prior to the legislature’s act. *See Pierce Cty. v. State*, 159 Wn.2d 16, 28 (2006).¹ There are two “cutoff dates” the legislature adopted to address this concern. First, RCW 41.59.937 states: “Nothing in [EHB 2242] is intended to alter or impair school district collective bargaining agreements that are in effect on October 19, 2017. Any school district collective bargaining agreement executed or modified after October 19, 2017, must comply with [EHB 2242].” Second, the salary limitations that are specific to the 2018-19 school year were specifically limited to CBAs “executed or modified” after July 6, 2017. When the Legislature passed the “McCleary fix” bill in 2018, it left both of these cutoff dates in the law.

Districts with negotiated agreements reached before these cutoffs should review their CBAs with legal counsel to determine whether they need to reopen contracts upon request due to reopener clauses in CBAs. For example, if you have a provision allowing a reopener for significant legislative changes, that could trigger a need to reopen. Depending on the language of the CBA, reopeners may be automatic, or triggered by the request of the district and/or union.

If you reopen and change your CBA, you’ll have to comply with certain provisions of EHB 2242, as modified by ESSB 6362. Those provisions are discussed more below. Of course, a district can also agree with a union to reopen at any time to address legislative changes.

¹ Washington courts use a three-part test to determine if there has been an impairment of a public contract: (1) does a contractual relationship exist; (2) does the legislation substantially impair the contractual relationship; and (3) if there is substantial impairment, is it reasonable and necessary to serve a legitimate public purpose. *Pierce Cty.*, 159 Wn.2d at 28.

3. What are the Consumer Price Index (CPI) and Implicit Price Deflator (IPD) amounts for 2018-19, and why do they matter?

$$IPD = 1.9\%^2$$

This number matters because it's the amount by which your district's salary allocations were increased in the appropriations bill. It's also the percentage you must apply to ensure the salaries you pay fall within the "fenceposts" discussed below.

$$CPI = 3.1\%.^3$$

Although the CPI isn't used as the basis to increase salary allocations, the CPI lives on in the law in two ways. First, compensation increases for the 2018-19 school year are *limited* to the CPI, with a few exceptions discussed further below, such as step increases and staffing changes. (Sections 204, 207, and 208 of E2SSB 6362). Despite popular misconceptions, the CPI is not a state-funded increase to any of the three employee salary allocations, nor is it a "COLA." Therefore, many CBAs will not require that this amount be automatically applied as "pass through" compensation for the 2018-19 school year. Second, beginning in calendar year 2020, the CPI will also be used to increase the \$2,500 per student cap for enrichment levies and LEA calculations (Sections 303 and 307 of E2SSB 6362). This increase does not apply to the levy cap and LEA calculation for calendar year 2019.

OSPI has also released *estimated* amounts for the CPI and IPD for 2019-21:

	2018-19	2019-20	2020-21
CPI (applies to 2018-19 salaries, \$2,500/FTE levy limit, and LEA)	3.1	3.1	2.1
IPD (applies to state salary allocations, minimum and maximum salaries, national board bonuses, small school NERC)	1.9	1.9	2.0

Source: OSPI Presentation "2018 Session Wrap Up 2.0", online at k12.wa.us/SAFS/Misc/BudPrep18/2018SessionWrap.pdf (last visited 4/1/18).

4. What happened to COLA?

Before EHB 2242 passed in 2017, RCW 28A.400.205 called for an annual "cost of living adjustment" (COLA). This was established by Initiative 732 in 2000. In EHB 2242, the legislature eliminated this term. The law now uses an annual "inflationary adjustment" beginning in the 2020-21 school year, based on the IPD.

² This figure is reflected in both the amounts applied to the state salary allocations in the state budget (See SB [6032](#), Sec. 503), as well as OSPI's Updated Multi-Year Comparison Tool published at <http://www.k12.wa.us/SAFS/18budprp.asp>.

³ This figure is an annual average derived from the Bureau of Labor Statistics end of year report for 2017, and has been confirmed by the Governor's Office in an email dated March 16, 2018, in OSPI's Multi-Year Comparison Tool linked in the previous footnote, as well as in the OSPI presentation published at <http://k12.wa.us/SAFS/Misc/BudPrep18/2018SessionWrap.pdf>.

5. What are the restrictions on Certificated Administrative Staff (CAS) salary increases for 2018-19?

A school district may not increase “average total school district expenditures” for CAS for the 2018-19 school year, in excess of the following:

- a. The 3.1% CPI;
- b. “Annual experience and education salary step increases according to what was the prior year’s practice within the school district;” or
- c. School districts with an “average total certificated administrative staff salary” less than the “statewide average” *CAS salary allocation* used to distribute funds for basic education “as estimated by” OSPI, may provide salary increases “up to” the statewide average allocation.

RCW 28A.400.006 (as amended by Section 204 of E2SSB 6362). Non-represented employees are subject to the same limitations as represented employees.

The limitation for CAS applies to “expenditures” for salary, not just individual salary increases—akin to a “salary cap” on overall spending increases. Unlike the language discussed below for CIS and CLS, the limitation for CAS has no exceptions for staffing increases. This means districts needing to increase overall expenditures for administrative staffing should develop a plan to do so in a year other than 2018-19, and may need to consider creative ideas to meet District needs in the interim. Examples include:

- Temporary use of non-supervisory certificated staff (e.g. deans) to perform functions that may have otherwise been performed by administrators;
- Increasing the use of outside evaluators to assist principals with evaluation; or
- Implementing staffing changes in 2017-18 to avoid the 2018-19 cap.

Again, these are just a few options and districts should consult with legal counsel to discuss specific concerns related to this one-year limitation on increased CAS expenditures.

6. What are the restrictions on Certificated Instructional Staff (CIS) salary increases for 2018-19, and how do they differ from the limits on increases for CAS?

The law places a similar limitation on salary increases for CIS, but with some significant exceptions. *See* RCW 41.59.800 (as amended by Section 208 of E2SSB 6362). First, instead of being phrased as a limitation on “expenditures,” this provision is articulated as a limitation on collective bargaining:

A school district *collective bargaining agreement* for certificated instructional staff that is executed or modified after July 6, 2017, and that is in effect for the 2018-19 school year may not increase *average total salary* for the 2018-19 school year, including supplemental contracts, in excess of the following[.]

(Emphasis added). This provision goes on to specify the following specific increases allowed during 2018-19:

- a. The 3.1% CPI;
- b. “*Annual* experience and education salary step increases according to the salary schedule *specified in the agreement*”; Note: See additional discussion of this provision below.
- c. Salary changes for staffing increases due to enrollment growth or state-funded increases under RCW 28A.150.260;
- d. Salary changes to provide professional learning under RCW 28A.415.430. Note: RCW 28A.415.430 defines professional learning broadly enough to allow such increases for a number of activities, including collaboration, job-embedded coaching, analysis of data for school and district improvement goals, and other activities by teachers linked to the professional learning goals and definitions contained in this section.
- e. National board teacher bonuses;
- f. Districts with an “average total certificated instructional staff salary less than the statewide average certificated instructional staff salary allocation used to distribute funds for basic education *as estimated by the office of the superintendent of public instruction* for the 2018-19 school year may provide salary increases up to the statewide average allocation; and
- g. Salaries for new certificated instructional staff hired in the 2018-19 school year.

(Emphases added). These same limitations and exceptions are also applied to any terms of an employment contract for nonrepresented employees.

In lay terms, what this means is that the legislature imposed a rule that CBAs must not increase average total salary above 3.1%, except for the salary items in sections b through g.

7. What are the restrictions on Classified Staff (CLS) salary increases for 2018-19, and how do they differ from the increases provided for CAS and CIS?

The limits for CLS are very similar to the limitations for CIS. First, they are similarly phrased as limitations on a “collective bargaining agreement” executed or modified after July 6, 2017, and in effect for 2018-19. Second, they prohibit increase in “average total salary” in excess of:

- a. CPI (3.1%);
- b. Step increases (same language as (b) in the CIS explanation above);
- c. Salary changes for staffing increases due to enrollment/prototypical school funding (same language as (c) in the CIS explanation above); and
- d. Bringing average salaries up to the statewide average (same language as (f) above, except it uses the terms “average total classified staff salary” and “statewide average classified salary allocation”).

Note there is no specific exception for any new hires for 2018-19. This is not as worrisome for classified employees as it is for CAS, however, for two reasons. First, based on the legislative history (discussed below) the term “average total salary” appears to have been intended to avoid any need for a “hiring freeze.” After all, the *average* salary paid by a district will not necessarily go up as a result of new hires. Second, most if not all staffing

increases that are necessary for classified employees will have a significant enough link to increased enrollment or the prototypical school funding model to ensure compliance.

8. Does the authority to give step increases mean we can get around the 3.1% limitation by adopting a new step schedule?

No. The plain language and legislative history of Sections 207 and 208 do not provide authority to use newly negotiated step increases to avoid the 3.1% limitation. To read this intent into the statute would make the CPI limitation in subsection (a) above meaningless. *See Doe v. Washington State Patrol*, 185 Wn.2d 363, 374 P.3d 63 (2016) (“When interpreting a statute, we strive to avoid a construction that would render a portion of the statute meaningless.”)

Some WEA representatives have taken the position that there is no limit on new step schedules for 2018-19, making the CPI cap ineffective. This argument is apparently based upon the difference between the CAS language in Section 204 of E2SSB 6362, and the CIS/CLS language in Sections 207 and 208. The CAS language requires any step increases to be based on the “prior year’s practice,” whereas the CIS and CLS limitations simply reference step increases “specified in the agreement.” WEA representatives are arguing that because this language does not specify the “*prior* year’s agreement,” it allows a new step schedule negotiated for 2018-19 to provide increases beyond the previous year’s steps or the 3.1% CPI.

This “sky’s the limit” interpretation is not supported by the plain language of the statute. In order to give meaning to both the CPI cap and the exception for step movement, the language in Sections 207 and 208 authorizing “annual” step increases “specified in the agreement,” must be interpreted to refer to agreements in effect before 2018-19. For teachers, this means they can receive 3.1% plus any step movement they would have received under the state salary schedule by virtue of experience, clock hours, or earning a degree.

The legislative history further supports this conclusion.⁴ The bill analyses and reports in the legislative record indicate that salary increases for 2018-19 will be limited to the CPI, subject to several “exceptions” including step increases.⁵ Again, the CPI is the rule, and the subsections that follow are the exceptions. During public hearing on the amendments, staff presented the bill as not allowing salary increases above CPI, and characterized step increases as being based on the prior year.⁶ In fact, the WEA’s own lobbyist acknowledged, “Compensation increases are limited to inflation at three percent in this bill for school year 18-19.”⁷ The bill was not amended to remove the CPI cap after this testimony. The

⁴ If a court finds that a statutory provision is ambiguous as to its intent, courts may consider evidence of legislative intent from the legislative record to inform the court’s interpretation of a statute. Courts will also sometimes discuss legislative history to support an interpretation even when a statute is found to be unambiguous. *See, e.g., Soter v. Cowles Pub. Co.*, 162 Wn.2d 716, 753-755, 174 P.3d 60 (2007).

⁵ *See Bill Analysis*, House Appropriations Committee (Feb. 24, 2018) (referring to “exceptions” having been added to the “temporary limits on salary increases” in EHB 2242); Final [House Bill Report](#) (March 8, 2018) (same).

⁶ *See TVW*, Video of 2/24/18, 10 a.m. House Appropriations Committee, online at <https://www.tvw.org/watch/?eventID=2018021320>, at 3:44:20 (visited 4/1/18).

⁷ *Id.*, at 3:58:15.

legislative record does not support any interpretation that would allow districts to disregard the CPI cap.

9. How should we respond to pressure to ignore the CPI cap?

We understand that school districts may face significant pressure at the bargaining table to exceed the CPI cap. In working through these issues at the bargaining table, districts may wish to keep in mind the following:

- School districts have a duty to comply in good faith with limitations imposed by the legislature on salary increases in 2018-19, and in the absence of formal guidance from the state supporting WEA's interpretation, a district would leave itself open to a potential audit finding or other potential legal remedies for failing to follow the law.
- The CPI cap is only a one-year limitation on compensation increases, and so there is still an opportunity to address increases in later years of multi-year agreements.
- Interest-based bargaining may come in handy. The path to agreement may require finding a way to address concerns that districts will spend increases on items other than salaries during the 2018-19 transition year. Even if you can't agree on what the schedule will look like in 2019-20, an agreement to set aside enough to fund meaningful increases may help build trust and momentum toward agreement.
- If your district has the budget capacity to provide more compensation to teachers or classified staff earlier than 2019-20, you do have options. For example, you can pay extra to teachers for activities related to professional learning. That could be a win-win opportunity to further district and school improvement goals while providing an opportunity for further compensation gains. In addition, increases applied in any contract year other than 2018-19 are not subject to the 3.1% limit.
- If your district does not have budget capacity for significant increases in compensation regardless of the change in funding model, providing information to employee associations in a transparent and intentional manner will be important. This will demonstrate the district's financial situation is different from other districts that may have significant increased capacity due to E2SSB 6362.
- As discussed further below, districts may have additional authority to provide salary increases based on whether the district's annual average salary is lower than the statewide average funding allocation for CIS or CLS staff.

10. How do I determine if my district has the authority to provide additional increases to bring salaries up to the "statewide average salary allocation?"

Answering this question requires you to identify two numbers for each employee group: (a) the "statewide average" salary allocation for the employee group (CAS, CIS or CLS), and (b) an individual district's "average total salary."

a. Determining the “statewide average”

OSPI has identified in its latest “Post-Session FAQ” the following statewide average funding allocations for 2018-19:

Certificated Instructional Staff	\$71,711
Certificated Administrative Staff	\$106,473
Classified Staff	\$51,437

See question 18 at www.k12.wa.us/SAFS/Misc/BudPrep18/2018FAQs-v.1.pdf (last visited April 5, 2018). These numbers are weighted average salary allocations (not the state minimums).

b. Determining your district’s “average total salary” for CIS, CAS, or CLS

Once you know the “state average allocation” to which you compare your salaries, the next task is to determine your district’s “average total salary” for each group. Unlike the statewide average figure, for which OSPI is specifically indicated as the source, neither EHB 2242 nor E2SSB 6362 require OSPI to provide guidance on this calculation. In the absence of such guidance from OSPI, the most defensible source for this information is state-reported total salary figures from State Report 1801 (online at www.k12.wa.us/safs/reports1801.asp), or Table 34B of the School District Personnel Summary Profiles on OSPI’s website at www.k12.wa.us/safs/PUB/PER/1718/tbl34B.pdf.

On Report 1801, combining the “Base Salary Average” with the “Other Salary Average” is most consistent with the language in EHB 2242 and E2SSB 6362 referencing supplemental contracts. Here is an example from Report 1801:

Program	FTE	Base Salary Total	Base Salary Average	Other Salary Total	Other Salary Average	Insurance Benefits Total	Insurance Benefits Average	Mandatory Benefits Avg Rate	Mix Factor LEAP 1	Derived Base
K-12 Program 21 Contracted	4.600	433,568	94,254						1.06919	88,155
Certificated Total	251.032	15,418,470	61,420	1,992,842	7,939	2,797,260	11,143	22.41	1.56915	39,142
Instructional for Funding Purposes	232.232	13,506,593	58,160	1,949,647	8,395	2,542,215	10,947	22.30	1.54724	37,590
Instructional for Compliance Purposes	222.232	12,674,227	57,032	1,949,647	8,773	2,542,215	11,439	23.57	1.56202	36,511

Likewise, on Table 34B, there are columns for reported average additional salary, base salary, and “total salary” that could be used by districts in a good faith effort to determine an objectively verifiable source for this calculation:

Washington State Superintendent of Public Instruction
School Apportionment and Financial Services
School District Personnel Summary Profiles - 2017-18 - Preliminary

Table 34B: Certificated Instructional Staff in All Programs

District Name	Individuals	Avg Add'l Salary per Individ.	Total FTE	Average LEAP 1 Mix Factor	Base Salary	Average per 1.0 FTE			
						Total Salary	Insur. Ben.	Mand. Ben.	Days in 1.0 FTE
01109 Washtucna	12	3,467	11.50	1.63517	59,712	64,069	10,268	15,599	180.0
01122 Benge	2	1,079	2.00	1.77304	64,754	74,400	10,956	17,266	180.0
01147 Othello	274	10,127	267.15	1.41908	51,913	62,293	10,479	15,007	180.2
01158 Lind	17	3,625	16.64	1.38420	50,552	54,389	10,017	12,639	181.0
01160 Ritzville	26	1,944	25.00	1.57329	57,456	59,990	10,405	14,486	180.0
02250 Clarkston	169	7,593	165.17	1.57303	57,451	65,359	1,171	15,328	180.0

These are just two data sources available for this information, and neither source is likely to be perfect. It is possible you may have other means of demonstrating a more reliable average total salary for your employees. But these resources have the benefit of being publicly available.

11. What are the statutory minimum starting and five-year step certificated salaries (“fenceposts”) for my district for 2018-19?

RCW 28A.400.200(2)(c), as amended by E2SSB 6362, requires as follows:

Beginning with the 2019-20 school year:

- (i) Salaries for full-time certificated instructional staff must not be less than forty thousand dollars, to be adjusted for regional differences in the cost of hiring staff as specified in RCW 28A.150.410, and to be adjusted annually by the same inflationary measure as provided in RCW 28A.400.205;
- (ii) Salaries for full-time certificated instructional staff with at least five years of experience must exceed by at least ten percent *the value specified in (c)(i)* of this subsection;

(Emphasis added). Note: Some interpretations suggest that the five-year salary must be ten percent higher than your individual district minimum. However, the statute refers to the “value specified” in the above subsection (i), which means that a district’s five-year salary must be 10% higher than the *statutory minimum*, not 10% higher than the district’s actual starting salary. OSPI confirms this in a recent FAQ. See question 4 at www.k12.wa.us/SAFS/Misc/BudPrep18/2018FAQs-v.1.pdf (last visited April 5, 2018).

The minimums for your district depend on your regionalization factor listed on [LEAP Document 3](#). After determining your regionalization factor, the following are the statutory minimum CIS salaries for each regionalization factor recognized in EHB 2242/E2SSB 6362:

Regionalization Factor	1.0	1.06	1.12	1.18	1.24
Minimum Cert. Salary	\$40,760.00	\$43,205.60	\$45,651.20	\$48,096.80	\$50,542.40
Minimum 5 Years	\$44,836.00	\$47,526.16	\$50,216.32	\$52,906.48	\$55,596.64

Note that the above amounts, unlike the *salary allocations*, are not specified in the appropriations bill. They are calculated by adding the 1.9% IPD to the base and applying the

appropriate regionalization factor, which is the same methodology used by the Legislature to set the allocation amounts in the appropriations bill. Also note that the fenceposts include the 6% “additional grandfathering” identified on LEAP Document 3 for 24 districts that was provided by the legislature above and beyond the regionalization based on median residential housing costs.

12. What are the statutory maximum salary “fenceposts” for certificated employees for my district for 2018-19?

RCW 28A.400.200(2)(c)(iii), as amended by E2SSB 6362, requires as follows:

A district may not pay full-time certificated instructional staff a salary that exceeds ninety thousand dollars, subject to adjustment for regional differences in the cost of hiring staff as specified in RCW 28A.150.410. This maximum salary is adjusted annually by the inflationary measure in RCW 28A.400.205[.]

The following are the maximum certificated salary for each regionalization factor, including the additional 10% allowed for certain employees:

Regionalization Factor	1.0	1.06	1.12	1.18	1.24
Maximum Salary	\$91,710.00	\$97,212.60	\$102,715.20	\$108,217.80	\$113,720.40
Max+10% (STEM, SPED, ESA, TBIP)	\$100,881.00	\$106,933.86	\$112,986.72	\$119,039.58	\$125,092.44

Note that the above amounts, unlike the salary allocations, are not specified in the appropriations bill. They are calculated by adding the 1.9% IPD to the base and applying the appropriate regionalization factor, which is the same methodology used by the Legislature to set the allocation amounts in the appropriations bill. Also note that the fenceposts include the 6% “additional grandfathering” identified on LEAP Document 3 for 24 districts that was provided by the legislature above and beyond the regionalization based on median residential housing costs.

In addition, the above maximum amounts do not include supplemental contracts. Your district may exceed these maximums with supplemental contract TRI payments provided those payments meet the statutory definitions and are for enrichment activities (see below).

13. How do we incorporate the new state-funded Professional Learning Day into our CBA?

As mentioned above, one professional learning day will be funded for 2018-19 as result of the Governor’s partial veto of E2SSB 6362. *See* RCW 28A.400.415. Many districts currently fund extra days for professional learning through supplemental contracts paid at the per diem rate of pay. However, the law prohibits paying the new state-funded professional learning days in a supplemental contract beginning with the 2019-20 school year. *See* RCW 28A.150.276(2)(a)(iv) (authorizing payment of “enrichment” funds for additional professional learning “beyond that allocated pursuant to RCW 28A.150.415.”); RCW 28A.400.200(4)(b) (“Beginning September 1, 2019...school districts may enter into supplemental contracts only for enrichment activities.”). This means that beginning in 2019-20, districts must include the two days funded for that year within their “base” contracts for

teachers, and teachers must be compensated for these professional learning days with salaries that fall within the “fenceposts” described in response to Questions 11 and 12 above.

For 2018-19, districts may negotiate several ways of incorporating the professional learning day into their CBAs. A district could agree to add the paid day to salary or to pay it as a supplemental contract for 2018-19 only. Under either scenario, this day can be paid above the 3.1% “cap.” Alternatively, districts could use the funding for this additional day to fund a professional learning day contained in an existing CBA. In any case, the activities funded must meet the definition of “professional learning” discussed under Question 6, above.

14. Can we still retain the current salary structure for CIS, meet statutory minimums, and still stay within CPI limitations?

For many districts, yes. For some districts, this can be accomplished by adding amounts paid for *universal TRI* into the salary schedule, as explained further below. Please note that any salary schedule adopted using the methodology below will need to be negotiated, and this is offered as only one means of reaching compliance. Please also note that this is just one potential solution. Each district will need to address whether it fits their individual circumstances.

Step-by-Step Approach

Step 1: Below is a copy of the current Salary Allocation Model (Leap 1) salary factors for 2017-18. The factor in each cell is multiplied by the base salary of \$36,521 to determine the salary at each step. Note that Step 5 uses a factor of 1.06585 applied to the base, which generates the salary of \$38,926 currently listed on the state schedule. From this document it can be seen that there are three cells on the current schedule that would not be compliant if a district simply changed BA-0 to the statutory minimum. As mentioned above, however, Step 5 will be compliant if it is 10% above the *statutory* minimum—a district does not need to obtain a 10% separation between that district’s starting salary and the BA+0 / 5-Year Step.

*** Education Experience ***

Years of Service									MA+90 OR Ph.D.
	BA	BA+15	BA+30	BA+45	BA+90	BA+135	MA	MA+45	Ph.D.
0	1.00000	1.02701	1.05499	1.08304	1.17303	1.23099	1.19891	1.28891	1.34693
1	1.01346	1.04084	1.06918	1.09846	1.18939	1.24704	1.21224	1.30317	1.36079
2	1.02628	1.05393	1.08257	1.11411	1.20478	1.26303	1.22566	1.31632	1.37458
3	1.03950	1.06741	1.09636	1.12890	1.21940	1.27905	1.23838	1.32881	1.38850
4	1.05246	1.08160	1.11072	1.14439	1.23542	1.29551	1.25171	1.34274	1.40286
5	1.06585	1.09513	1.12454	1.16008	1.25077	1.31206	1.26526	1.35599	1.41728
6	1.07961	1.10825	1.13866	1.17597	1.26623	1.32785	1.27915	1.36942	1.43100
7	1.10379	1.13286	1.16367	1.20301	1.29461	1.35793	1.30517	1.39673	1.46008
8	1.13919	1.16984	1.20138	1.24398	1.33681	1.40246	1.34610	1.43896	1.50458
9		1.20814	1.24125	1.28538	1.38038	1.44826	1.38747	1.48253	1.55041
10			1.28158	1.32891	1.42517	1.49532	1.43104	1.52733	1.59744
11				1.37371	1.47207	1.54362	1.47584	1.57423	1.64574
12				1.41708	1.52023	1.59391	1.52240	1.62236	1.69607
13					1.56956	1.64544	1.57060	1.67169	1.74756
14					1.61913	1.69890	1.62022	1.72451	1.80105
15					1.66126	1.74310	1.66233	1.76934	1.84788
16 or more					1.69447	1.77794	1.69557	1.80472	1.88482

Step 2: Assume District A is a 1.0 regionalized district (no regionalization) and has universal TRI that provides the equivalent of 15% of the amount in each cell on the salary schedule as additional compensation. If the district were to eliminate the 15% universal TRI and instead add the 15% universal TRI to salary, this would bring the first cell of the salary schedule to about \$42,000. Without changing the factors in the current Salary Allocation Model, this would bring BA+0, Step 5, to \$44,764. If a 3.1% increase is then added to the base, the starting salary becomes \$43,302, and the step 5 salary is \$46,153. Both Step 1 and Step 5 are compliant, without increasing total compensation by more than 3.1%.⁸

Step 3: If the universal “deemed done” TRI in your district plus the 3.1% CPI does not get you to your “fenceposts,” you may also legally comply by adding any extra work days funded in the current CBA to the salary schedule. If additional work days are added to the salary schedule, the CBA should specify that the salary is for that specified number of days. In other words, if you add 5 extra days to the salary schedule to obtain compliance, your CBA should specify that the salary on Schedule A is for a 185-day contract.

Step 4: If you cannot reach compliance after adding all universal TRI to the salary schedule (including extra days) and increasing it by 3.1%, the following additional options may be

⁸ The example used here is based on the SAM schedule and TRI that is the same percentage in each cell. An individual analysis of a district’s base + TRI may yield a greater variety in the number of cells out of compliance.

available to reach compliance without a fundamental alteration in the structure of the schedule:

- Adding additional paid time for professional learning and including it in the salary schedule and work year (not as a supplemental contract);
- Adding additional pay increases to bring average teacher pay up to the statewide average; and/or;
- Increasing the salaries in the out-of-compliance cells to the Minimum Step 5 salary for your district and deducting the cost of doing so from the remaining cells to keep the entire schedule within a 3.1% overall average increase.

Depending on your district's goals and the goals of the local association, this may yield a "transition schedule" that is a short-term solution. That would allow an opportunity to negotiate more fundamental changes to the salary schedule for 2019-20. Or the resulting schedule may form a more permanent framework to which any increases in 2019-20 will be added.

15. What other changes should we consider if we adopt the above transition schedule?

Because the 3.1% cap on compensation increases applies to all compensation, including supplemental contracts, it will be necessary to address any provisions of the CBA that provide pay at the per diem rate, or any other rates of pay (stipends, etc.) that are tied to base salary simultaneously with the adoption of a schedule incorporating the above components. This is because per diem compensation will increase by much more than 3.1% if current TRI packages are rolled into salary and the usual definition of per diem is used (e.g. salary divided by 180). One option to address this issue for per diem pay would be to adopt a separate per diem schedule that bases per diem for 2018-19 on the 2017-18 SAM + 3.1%, rather than the new salary schedule with TRI rolled in.

16. What types of supplemental contracts for enrichment are allowed now?

Beginning September 1, 2019, supplemental contracts may only be offered for activities that meet the statutory definition of "enrichment." This implementation date was not accelerated to 2018 in E2SSB 6362. However, statutory restrictions on the use of local funds for enrichment go into effect in 2018-19. Therefore, as a practical matter, districts may need to consider the characterization of many types of TRI pay in order to ensure that the limited amount of funds available for enrichment activities go far enough. This could be a very challenging discussion at the bargaining table, as we understand that WEA has a strong interest in preserving locally-negotiated TRI. It will be important for districts to share information about these limitations to demonstrate why characterizing these payments as TRI is no longer feasible.

Enrichment activities are defined by RCW 28A.150.276. Some aspects of this section were changed by Section 301 of E2SSB 6362, but no change was made to the definition of permitted activities. Further, OSPI has been tasked with providing rules to implement this section, and those rules have not yet been adopted.

There are two components to the statutory definition of enrichment in this statutory section. First, RCW 28A.150.276(2)(a) requires that such activities provide “supplementation beyond the state:”

- (i) Minimum instructional offerings of RCW 28A.150.220 or 28A.150.260;
- (ii) Staffing ratios or program components established in the [prototypical schools model], including hiring extra teachers to reduce class sizes below state-funded ratios;
- (iii) Program components of [various statutes defining basic ed programs];
- (iv) Program of professional learning (beyond the professional learning days to be funded by the state starting in 2018-19).

Second, RCW 28A.150.276(b) defines the types of *activities* that may be funded with enrichment dollars:

- (i) Extracurricular activities, extended school days, or an extended school year;
- (ii) Additional course offerings beyond the minimum instructional program established in the state's statutory program of basic education;
- (iii) Activities associated with early learning programs;
- (iv) Any additional salary costs attributable to the provision or administration of the enrichment activities; and
- (v) Additional activities or enhancements that OSPI approves during the preballot approval process required for enrichment levies.

The 2018 amendments clarified that supplemental contracts for enrichment do not necessarily need to be “time-based” and may instead be paid as a flat stipend, as long as the contract documents “the additional duties, responsibilities, or incentives that are being funded by the contract.” RCW 28A.400.200(4)(c) (as amended by Section 205 of E2SSB 6362). This will ensure many responsibility stipends offered by districts may continue, such as flat-rate stipends offered for summer programs. For other types of stipends such as overload pay, it is still not clear how such pay can be provided as either an “enrichment” stipend, or as “salary.” For the 2018-19 school year, the best strategy may be to maintain the “status quo” for many of these stipends, with the plan to address this issue after OSPI conducts the rule-making required under this section.

Notably, in a recent FAQ document, OSPI stated as follows in response to three separate questions related to use of enrichment funds for food service, transportation, special education, and excess staffing: “Costs that are not funded by the state are allowable uses of enrichment levy funds.” See questions 28, 36, and 37 at www.k12.wa.us/SAFS/Misc/BudPrep18/2018FAQs-v.1.pdf (last visited April 5, 2018).

This would seem to signal that use of enrichment for items such as overload pay will continue to be allowed, subject to financial limitations based upon the amount available under reduced levy authority.

17. Do we need to have a subfund to track supplemental contracts and other enrichment expenses starting in 2018-19?

Yes, Section 302(1)(b) of E2SSB 6362 requires school districts to have a local revenue subfund by the 2018-19 school year. The challenge is that OSPI is not required to develop accounting rules for the subfund until 2019-20. This is because the Governor vetoed Section 408 of E2SSB 6362. Section 408 would have required OSPI to develop accounting rules in 2018-19 to address separate expenditures from state and local revenue sources.

Despite the veto, Section 302(1)(b) still applies. Thus, you may want to consider creating an internal accounting code for documenting local levy expenditures, such as supplemental contract payments for enrichment activities. Having an internal accounting method will help you explain during bargaining exact expenditures from local revenue. It will also help in the event of audit questions.

18. Do we have to pay teachers enrichment funds for every minute worked after 5.7 hours in a day?

No. This argument is based upon a strained reading of the definition of “enrichment” found in RCW 28A.150.276, which allows districts to pay enrichment dollars for “supplementation beyond the state...minimum instructional offerings of RCW 28A.150.220 or 28A.150.260.” Because these statutes set the minimum instructional hours at 1000 for grades K-8 and 1080 hours for grades 9-12, the apparent argument is that pay for any time spent teaching beyond these minimum instructional hours should be paid from enrichment funds.

Even if it were assumed that sufficient funds would be available to do so, it would not be appropriate, advisable, nor consistent with the enrichment provisions set forth above, to use enrichment funds to pay for that portion of a teacher’s work day beyond 5.7 hours. In context the above language was clearly intended to allow use of enrichment funds to supplement the District’s basic education *programs*, which include the full school day worked by teachers, not to supplement the salaries of all teachers who work more than 5.7 hours per day. Although audit standards and rules from OSPI have not yet been developed for enrichment program review, a district may be at risk for an audit finding if it used enrichment funds in this manner, and should consult legal counsel before agreeing to do so.

More importantly, as a practical matter, this argument misses the point that with the reduction in levy authority, the amount of funds available for enrichment will likely be a far more meaningful restriction on the use of those funds for teacher pay than the definition of enrichment set forth in the statutes. Further, attempting to define the work day in this manner for the sole purpose of tapping into enrichment funds to supplement teacher pay would be unworkable and unsustainable. At the bargaining table, sharing information about these limitations may be more persuasive than protracted arguments about a 5.7 hour basic ed day.

19. What other changes to CBAs should we consider?

Other provisions that may need to be addressed and bargained include:

Individual Contract Addendum: If you add days to the salary schedule, you’ll need to ensure that your actual individual contract reflects the added days.

Employee Work Year Provisions: If your CBA has a specific provision discussing a 180-day work year and you add days to your salary schedule, you'll need to address this provision.

Salary Schedule Provisions/Language: If your CBA refers to the statewide salary schedule, you will need to address the fact that it no longer exists.

COLA: You may have a separate COLA provision in your CBA, or COLA may be referenced in another provision. Either way, the lack of COLA in state law will need to be addressed.

Supplemental Pay/TRI Provisions: Given the effect that the new law will have on supplemental contracts and TRI effectively starting September 1, 2018, you will need to address these provisions (especially for any CBA of a duration of more than one year). Districts may wish to consider language that indicates what will happen if any supplemental contract paid for items such as overload pay are found to be contrary to law, or if enrichment funds become unavailable as a result of a levy loss.

Professional Learning Days: If you add professional learning days outside of the state-funded days to increase enrichment compensation, you will need to address the use of those days as enrichment activities, or as salaried days adding to the work year calendar.

Substitute Employee Provisions: You may have language in substitute employee provisions pertaining to compensation that may need to be addressed.

School Calendar Provisions or Addendums: If you are adding days to your contract, you may need to address these provisions.

Compliance with Law: You may want to address your compliance with law provision. For example, consider a provision that specifies what will happen if any supplemental contract is determined to be inappropriate under the "enrichment" definition discussed above.

Term of Contract/Reopener: You may want to consider whether it makes sense to agree to a multi-year contract with reopener language versus a single year contract.

Summary

The above discussion was intended to provide a broad summary of issues related to E2SSB 6362 and how it will impact collective bargaining. Again, we encourage you to reach out to your legal counsel for questions regarding application to your own situation.