

Board of Education Agenda Item

Item: B.

Date: October 28, 2004

Topic: Second Review of Emergency Regulations for Conducting Division-Level Academic Reviews

Presenter: Ms. Anne D. Wescott, Assistant Superintendent for Policy and Communications

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Origin:

Topic presented for information only (no board action required)

Board review required by

State or federal law or regulation

Board of Education regulation

Other: _____

Action requested at this meeting Action requested at future meeting: _____
(date)

Previous Review/Action:

No previous board review/action

Previous review/action

date September 22, 2004

action The Board of Education approved the proposed regulations for first review.

Background Information:

The *Regulations Establishing Standards for Accrediting Public Schools in Virginia* in 8 VAC 20-131-300.C.4. require a school to be "Accredited with Warning (in specified academic area or areas)" if its pass rate on any SOL test does not meet required benchmarks to qualify for any other accreditation rating. Any school rated Accredited with Warning must undergo an academic review in accordance with guidelines adopted by the Board of Education in accordance with 8 VAC 20-131-340.A of the regulations. It is the responsibility of the Department of Education to develop this academic review process for approval of the Board of Education.

On July 23, 2003, the Board of Education approved revisions to the school-level academic review process to be used during the 2003-2004 school year. As part of these revisions, the Board discussed the development of an academic review process to be used at the central office level for school divisions having a significant number or percentage of schools or types of schools rated accredited with warning.

On April 28, 2004 the Board of Education approved the process by which division-level academic reviews are to be conducted. On June 23, 2004 the Board of Education approved the criteria by which school divisions will be selected for division-level academic reviews. On September 22, 2004 the Board of Education approved the emergency regulations for first review. The Attorney General's Office subsequently made further suggestions and comments, and these proposed revisions reflect discussions with the Attorney General's Office.

Summary of Major Elements

House Bill 1294, passed by the General Assembly and signed into law on April 15, 2004, gave the Board of Education the authority to require division-level academic reviews in school divisions where findings of school-level Academic Reviews show that the failure of the schools to reach full accreditation is related to the local school board's failure to meet its responsibilities under the *Standards of Quality*. House Bill 1294 also requires, in part:

“That the Board of Education shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.”

Emergency regulations are needed to ensure that the conducting of Division-Level Academic Reviews begins as close to the beginning of the 2004-2005 school year as is practicable. Proposed emergency regulations to meet these requirements are attached.

Superintendent's Recommendation: The Superintendent of Public Instruction recommends that the Board waive first review and approve the attached emergency regulations for conducting division-level academic reviews and authorize staff of the Department of Education to proceed with the remaining steps required by the Administrative Process Act.

Impact on Resources: Funds for academic reviews have been approved for the 2004-2006 biennium to conduct these activities.

Timetable for Further Review/Action: The Department of Education will notify local school divisions of the changes in the regulations when final approval is granted through the Administrative Process Act.

Board of Education
8VAC20-700-10
EMERGENCY REGULATIONS GOVERNING DIVISION-LEVEL ACADEMIC
REVIEWS

8VAC20-700-10. Definitions.

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Board” means the Virginia Board of Education.

“Department” means the Virginia Department of Education.

“Division-level Academic Review” means the process used to analyze a school division’s systems and practices to determine the degree to which the local school board is meeting its responsibilities under the Standards of Quality.

“External review” means a school division-level academic review conducted by an organization or agency at the request of a local school board.

8VAC20-700-20. Criteria for Selection for Review.

The Board of Education shall consider the following criteria in selecting school divisions for division-level academic reviews.

1. The school division’s accountability determination (improvement status) for student achievement, as required in federal law.
2. The percentage of students attending schools accredited with warning in the division exceeds the statewide average.
3. School academic review findings in the division report the failure of the - division’s schools to reach full accreditation is related to the school board’s noncompliance with the Standards of Quality.

8VAC20-700-30. Structure of the Review.

A. All division-level academic reviews shall be conducted in accordance with procedures adopted by the Board. These procedures may include, but are not limited to:

1. Initial visits, onsite-reviews, and follow-up visits made by an academic review team selected by the Department.

Board of Education

8VAC20-700-10

EMERGENCY REGULATIONS GOVERNING DIVISION-LEVEL ACADEMIC REVIEWS

2. Academic review teams will hold introductory meetings with local school boards, conduct interviews, review documents and self-studies and observe operational practices.
 3. Teams will collect and analyze data related to compliance with the Standards of Quality, related Board regulations, and federal program requirements, and use these data to prepare reports to the Board.
 4. Reports of academic review findings shall be given to the division superintendent, chair of the local school board and to the Board of Education.
- B. The Board may authorize the Department of Education to contract for the provision of services to assist in performing division-level academic reviews.

8VAC20-700-40. Division Improvement Plans and Corrective Actions.

- A. School divisions shall develop division improvement plans, including corrective actions for increasing student achievement and correcting any areas of noncompliance determined through the division-level academic review. These plans shall be approved by the local school board and submitted to the Board of Education for approval within 60 business days of the issuance of the division-level academic review report. Upon Board approval, the division improvement plan and corrective actions shall become part of the division's plan required in the Standards of Quality.
- B. The division superintendent and chair of the local school board may request an extension of the due date for the division improvement plan and corrective actions for good cause shown by appearing before the Board of Education to explain the rationale for the request and provide evidence that a delay will not have an adverse impact upon student achievement.
- C. The Board of Education shall monitor the implementation of the division improvement plan and corrective actions developed by a school division as part of the division-level academic review process. This plan must include a schedule for reporting the school division's progress toward completion of the corrective actions to the Board. Any school division not implementing corrective actions, not correcting areas of noncompliance, or failing to develop, submit, and implement required plans and status reports shall be required to report its lack of action directly to the Board of Education.
- D. Areas of noncompliance that remain uncorrected shall be reported in the Board of Education's Annual Report to the Governor and General Assembly on the Condition and Needs of Public

Board of Education

8VAC20-700-10

**EMERGENCY REGULATIONS GOVERNING DIVISION-LEVEL ACADEMIC
REVIEWS**

Schools in Virginia. The Board may take additional action as permitted by the Standards of Quality.

8VAC20-700-50. External Reviews.

- A. The Board may accept a school division-level review conducted by an organization or agency upon the request of a local school board if the review meets or exceeds the requirements for reviews conducted by the Department as prescribed in 8VAC20-700-30. Agencies that conduct these reviews must employ individuals whose qualifications meet or exceed those of individuals who serve as Department representatives for the purpose of conducting academic reviews. The Board shall monitor the implementation of any required corrective actions developed by the school division as prescribed in 8VAC20-700-40.
- B. Requests for approval of an external review process submitted to the Board must include, at a minimum, the following documentation:
1. A description of the organization or agency that will conduct the review;
 2. The scope and dates of the review;
 3. Qualifications of the individuals who will conduct the review;
 4. Certification from the chairman of the local school board and division superintendent that the review will meet or exceed the requirements for academic reviews adopted by the Board.

Upon completion of the external review process, the division superintendent shall submit a copy of the final report provided by the reviewer to the Department of Education, and comply with the required follow-up activities in accordance with 8VAC20-700-40.



Virginia
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Emergency Regulation Agency Background Document

Agency Name:	Board (Department) of Education
VAC Chapter Number:	8 VAC 20-700-10 et seq.
Regulation Title:	Emergency Regulations for Conducting Division-Level Academic Reviews
Action Title:	Division-Level Academic Reviews
Date:	October 28, 2004

Section 9-6.14:4.1(C)(5) of the Administrative Process Act allows for the adoption of emergency regulations. Please refer to the APA, Executive Order Twenty-Four (98), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the emergency regulation submission package.

Emergency Preamble

Please provide a statement that the emergency regulation is necessary and provide detail of the nature of the emergency. Section 9-6.14:4.1(C)(5) of the Administrative Process Act states that an "emergency situation" means: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. The statement should also identify that the regulation is not otherwise exempt under the provisions of § 9-6.14:4.1(C)(4).

Please include a brief summary of the emergency action. There is no need to state each provision or amendment.

House Bill 1294, passed by the General Assembly and signed into law on April 15, 2004, gave the Board of Education the authority to require division-level academic reviews in school divisions where findings of school-level Academic Reviews show that the failure of the schools to reach full accreditation is related to the local school board's failure to meet its responsibilities under the *Standards of Quality*. House Bill 1294 also requires, in part:

“That the Board of Education shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.”

Emergency regulations are needed to ensure that the conducting of Division-Level Academic Reviews begins as close to the beginning of the 2004-2005 school year as is practicable. Proposed emergency regulations to meet these requirements are attached.

Basis

Please identify the state and/or federal source of legal authority to promulgate the emergency regulation. The discussion of this emergency statutory authority should: 1) describe its scope; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. Full citations of legal authority and web site addresses, if available for locating the text of the cited authority, should be provided.

Please provide a statement that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.

§ 22.1-16 of the *Code of Virginia* states, “The Board of Education may adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title.”

HB1294 enacted by the 2004 General Assembly amended ' 22.1-253.13:3 of the Code to include the following provision: “When the Board of Education has obtained evidence through the school academic review process that the failure of schools within a division to achieve full accreditation status is related to division level failure to implement the Standards of Quality, the Board may require a division level academic review. After the conduct of such review and within the time specified by the Board of Education, each school board shall submit for approval by the Board a corrective action plan, consistent with criteria established by the Board and setting forth specific actions and a schedule designed to ensure that schools within its school achieve full accreditation status. Such corrective action plans shall be part of the relevant school division's six-year improvement plan pursuant to § [22.1-253.13:6](#). The legislation also required the Board to promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.”

Substance

Please detail any changes, other than strictly editorial changes, that would be implemented. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Please provide a cross-walk which includes citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of Virginians. The statement should also delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

The emergency regulation is new. It is essential to protect the welfare of Virginians because provides the structure for the Board of Education and staff of the Department of Education for the orderly conduct of division-level academic reviews in selected school divisions. In addition, it defines some flexibility for options to reviews to be conducted by agencies or organizations other than the Department of Education when appropriate. At the present time, no potential issues to be addressed as a permanent final regulation have been identified.

Alternatives

Please describe the specific alternatives that were considered and the rationale used by the agency to select the least burdensome or intrusive method to meet the essential purpose of the action.

The agency considered more extensive regulations but elected to develop the minimum requirements necessary for the Board of Education and Department of Education to carry out the responsibilities mandated by the General Assembly.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the emergency action on the institution of the family and family stability including to what extent the action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The emergency action will serve to improve the quality of educational opportunities of the children in the commonwealth in school divisions where academic reviews are conducted but it will not: 1) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 2) strengthen or erode the marital commitment; or 3) increase or decrease disposable family income.