

# Board of Education Agenda Item

Item: F

Date: September 22, 2004

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

Presenter: Mr. Charles W. Finley, Assistant Superintendent for Educational Accountability

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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 July 22, 2004  
action The Board of Education's Committee on the Lowest Performing School Divisions reviewed the proposed regulations.

## 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.

### **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.

At the July 21, 2004 meeting of the Board of Education's Lowest Performing School Divisions Committee, the proposed regulations were reviewed and it was recommended that the following provision be added in 8 VAC 20-700-30:

*F. The Department of Education may contract with an outside agency to conduct division-level academic reviews in which case, all of the procedures adopted by the Board shall be followed.*

**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.

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**8VAC20-700-10**

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**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 school divisions’ systems and practices to determine the degree to which local school boards are meeting their responsibilities under the *Standards of Quality*.

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

A. School divisions selected for division-level academic reviews will be divisions with consistently low performing schools as defined in procedures adopted by the Board. Such procedures shall not be construed as regulations as defined in § [2.2-4001](#) of the Code of Virginia.

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

A. All division-level academic reviews shall be conducted in accordance with procedures adopted by the Board. Such procedures shall not be construed as regulations as defined in § [2.2-4001](#) of the Code of Virginia.

B. The Board may approve the use of school division reviews conducted by independent agencies upon the request of local school boards provided the reviews meet or exceed the requirements for reviews conducted by the Department outlined in procedures adopted by the Board. Agencies that conduct these reviews must employ individuals whose qualifications must meet or exceed those of individuals who serve as Department representatives for the purpose of conducting academic reviews. The Board shall retain the authority to monitor and ensure the implementation of the corrective action plan developed by the school division as part of the division-level academic review process.

C. Requests for approval of external reviews submitted to the Board must include, at a minimum, the

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following documentation:

1. A description of the organization that will conduct the review;
2. The scope of the review;
3. Dates of the review; and
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.

D. Requests for approval of external reviews must be submitted to the Superintendent of Public Instruction, who, by authority of the Board of Education, shall review and approve or disapprove those requests.

E. Upon completion of the external review, the division superintendent shall submit a copy of the final report provided by the reviewer to the Department of Education, and comply with the remaining provisions for follow-up activities outlined in procedures adopted by the Board. Such procedures shall not be construed as regulations as defined in § [2.2-4001](#) of the Code of Virginia.

F. The Department of Education may contract with an outside agency to conduct division-level academic reviews in which case, all of the procedures adopted by the Board shall be followed.



Virginia  
Regulatory  
Town Hall

## Emergency Regulation Agency Background Document

<b>Agency Name:</b>	Board (Department) of Education
<b>VAC Chapter Number:</b>	8 VAC 20-700-10 et seq.
<b>Regulation Title:</b>	Emergency Regulations for Conducting Division-Level Academic Reviews
<b>Action Title:</b>	Division-Level Academic Reviews
<b>Date:</b>	September 22, 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.*

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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.*

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§ 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.*

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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. Procedures for conducting division-level academic reviews to accompany the regulation have been developed and approved by the Board of Education.

## 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.*

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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.