

Board of Education Agenda Item

Item: G.

Date: September 21, 2005

Topic: First Review of Permanent Regulations for Conducting Division-Level Academic Reviews
(8 VAC 20-700-10 et seq.)

Presenter: Mrs. 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 October 28, 2004
action The Board of Education approved emergency regulations for this process.

Background Information:

House Bill 1294, passed by the General Assembly and signed into law on April 15, 2004, amended § 22.1-253.13:8 of the Code of Virginia to give 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 included a second enactment clause specifying:

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

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 October 28, 2004, the Board of Education approved the emergency regulations after receiving recommendations from the Attorney General's Office.

During the 2004-2005 school year, personnel from the Department of Education, along with individuals under contract to conduct school-level academic reviews, conducted division-level academic reviews at the request of four school divisions. In addition, one school division requested permission to substitute the results of an external review by a recognized private organization. All of these divisions are currently implementing divisionwide corrective action plans as required by § 22.1-253.13:3 of the Code of Virginia (Standard 3 of the Standards of Quality).

Summary of Major Elements

The proposed permanent regulations do not deviate substantially from the emergency regulations. However, as a result of the department's experience with reviews conducted during the 2004-2005 school year, some changes were necessary to provide more flexibility to tailor reviews to the perceived needs of school divisions chosen for reviews in the future. The proposed changes include the following:

- The proposed regulation would remove the requirement that the school division be "in improvement" status under federal law and instead would permit the Board to review the overall accountability status of school divisions instead of only those designated as "in improvement." Individual schools in the divisions may be underperforming but the division not designated as being "in improvement."
- The proposed revisions to the Board's accrediting standards for public schools include new ratings that may be awarded schools that are not fully accredited. The proposed language would not restrict the Board from considering school divisions that have low performing schools rated other than "accredited with warning"
- Some of the detailed structure of the review would be removed. The proposed regulation provides greater flexibility to the Board of Education and Department of Education to construct reviews to meet the perceived need of the school division being reviewed.
- The proposed regulation would require that the local school board hold a public hearing on the improvement plan prior to submitting it to the Board of Education and to make periodic reports on its actions to the public in addition to submitting reports to the Board of Education.

A summary of the proposed permanent regulations is found in the attached Regulatory Town Hall Document Form TH-02.

Superintendent's Recommendation: The Superintendent of Public Instruction recommends that the Board waive first review and approve the attached proposed regulations for conducting division-level academic reviews and authorize personnel 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 the division-level academic reviews.

Timetable for Further Review/Action: The Department of Education will notify local school divisions and the public of the provisions in the proposed regulations and submit final regulations to the Board of Education for approval following public comment and completion of appropriate stages required by the Administrative Process Act.

Board of Education

8VAC20-700-10

PERMANENT 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:

“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 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 for student achievement, as required in federal law; and
2. The percentage of students attending schools that are not fully accredited in the division exceeds the statewide average; and
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 of Education, which may include, but not be limited to: on-site reviews; interviews of school division personnel; review and observation of operational practices; and, the analysis of data related to compliance with state and federal laws and regulations.
- B. The Department of Education is authorized to contract with organizations or agencies to conduct division-level academic reviews.
- C. Reports of the academic review findings shall be given to the division superintendent, the chair of the local school board, and the Board of Education.

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PERMANENT REGULATIONS GOVERNING 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. The school board shall hold a public hearing on the improvement plan at least 15 days prior to the approval of the plan by the board. 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 of Education approval, the division improvement plan and corrective actions shall become part of the school division's divisionwide comprehensive, unified, long-range plan required by 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 of Education and the public. 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 and the public.
- 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 Schools in Virginia*. The Board of Education may take additional action to seek compliance with school laws pursuant to the relevant provisions of the Code of Virginia.

8VAC20-700-50. External Reviews.

- A. The Board of Education may accept a 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 of

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

Education 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.
- C. 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 within 60 days of receipt of the report, and comply with the required follow-up activities prescribed in 8VAC 20-700-40 including a review of the report in a public meeting of the school board prior to submission.



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Proposed Regulation Agency Background Document

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| Agency name | Virginia Board of Education |
| Virginia Administrative Code (VAC) citation | 8 VAC 20 - 700 |
| Regulation title | Proposed Regulations for Conducting Division-Level Academic Reviews |
| Action title | Division-Level Academic Reviews |
| Document preparation date | August 24, 2005 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

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 required, 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."

The Board of Education promulgated emergency regulations as a result of this requirement that will expire February 15, 2006.

The proposed regulations, which will replace the emergency regulations, do not deviate substantially from the provisions of the emergency regulations.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The Code of Virginia, § 22.1-16, vests the Board of Education with the authority to promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1. Section 22.1-253.13:3 of the Code of Virginia includes 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 of Education an improvement plan, setting forth specific actions and a schedule designed to ensure that schools within its division achieve full accreditation status. Such plans shall be part of the relevant school division's six-year improvement plan pursuant to § [22.1-253.13:6](#).” The legislation effecting this provision also required the Board to promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The regulation is necessary to protect the health, safety, and welfare of citizens, particularly those of school age. It is essential to provide 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 that have underperforming schools or fail to meet the requirements of the Standards of Quality. It outlines the process and procedures for conducting the division-level academic review and for local school boards to submit a corrective action plan to the Board of Education. In addition, it defines some flexibility for options for reviews to be conducted by agencies or organizations other than the Department of Education when appropriate.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the “Detail of changes” section.)

The proposed permanent regulations do not deviate substantially from the emergency regulations. However, as a result of the department’s experience with reviews conducted during the 2004-2005 school year, some changes were necessary to the structure of the review section to provide more flexibility to tailor reviews to the perceived needs of school divisions chosen for reviews in the future. In addition, the section detailing division improvement plans and corrective actions has been strengthened to provide more guidance to local school boards in the development of those plans and actions.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The Constitution of Virginia requires the Board of Education to provide for the general supervision of the system of free public education in the Commonwealth. The Standards of Quality for public schools (§ 22.1-253.13:1 et seq. of the *Code of Virginia*) set the minimum requirements for local school boards to maintain a quality educational program in the various school divisions in the state. The proposed regulations provide the Board of Education a mechanism to review the program provided in the school division when there is a probability that a local school board is failing to comply with the Standards of Quality and children are attending underperforming schools. Performance standards for schools are set by the Board of Education in 8 VAC 20-131-10 et seq., *Regulations Establishing Standards for Accrediting Public Schools in Virginia*. These standards and the provision that school boards maintain schools that are fully accredited are also required by the Standards of Quality.

These regulations will provide the Board of Education with the structure to monitor low-performing school divisions as needed and, thus, ensure that children in the Commonwealth are receiving a high-quality education. The Commonwealth as a whole benefits from a better-educated citizenry.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

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| Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures | The cost to the state to implement the regulation will vary from year-to-year depending on the number of school divisions identified for review and the size and scope of the review. Funds have been appropriated by the General Assembly for conducting reviews during the 2004-2006 biennium. |
| Projected cost of the regulation on localities | The cost of the regulation to affected entities will vary depending on the need for corrective action on the part of the local school division. |
| Description of the individuals, businesses or other entities likely to be affected by the regulation | The affected entities are local school divisions (boards) and the schools within the divisions selected for review. |
| Agency’s best estimate of the number of such entities that will be affected | The number of affected entities will vary from year to year depending on the performance of schools within the various school divisions. |
| Projected cost of the regulation for affected individuals, businesses, or other entities | The cost of the regulation to affected entities will vary depending on the need for corrective action on the part of the local school division. |

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

No alternatives were considered, as the agency believes this is the least burdensome or intrusive means of assisting local school divisions to improve the services provided to students and the community at large.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

There were no comments during the Emergency/NOIRA stage.

| Commenter | Comment | Agency response |
|-----------|---------|-----------------|
| | | |

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The proposed regulatory action will impact the institution of the family and family stability in that the reviews conducted as a result of the implementation of the regulation will result in an improved educational program in the division(s) reviewed. This program improvement will benefit the children who attend public schools and provide for a better-educated citizenry that, in turn, will improve the economic status of the family.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change and rationale |
|------------------------|--|--|--|
| 8 VAC 20-700-20 | | <p>The emergency regulation requires that a school division be identified as “in improvement” under federal law to be targeted for review.</p> <p>The emergency regulation also requires a designation of “accredited with warning” under state regulations as a condition of consideration for a division-level review.</p> | <p>The proposed regulation removes this requirement and permits the Board to review the overall status of school divisions instead of only those designated as “in improvement.” Individual schools in the divisions may be underperforming but the division not designated as “in improvement.”</p> <p>The proposed revisions to the Board’s accrediting standards for public schools include new ratings that may be awarded schools that are not fully accredited. The proposed language would not restrict the Board from considering school divisions that have low performing schools rated other than “accredited with warning”</p> |
| 8 VAC 20-700-30 | | <p>The emergency regulation spells out all facets of the structure of the academic review.</p> | <p>Some of the detailed structure of the review has been removed. The proposed regulation provides greater flexibility to the Board of Education and Department of Education to construct reviews to meet the perceived need of the school division being reviewed.</p> |
| 8 VAC 20-700-40 | | <p>The emergency regulation requires that the local school board approve the improvement plan before submitting it to the Board of Education and periodically report its actions to the Board of Education.</p> | <p>The proposed regulation will require that the local school board hold a public hearing on the improvement plan prior to submitting it to the Board of Education and to make periodic reports on its actions to the public in addition to submitting reports to the Board of Education.</p> |