

Board of Education Agenda Item

Item: C.

Date: October 25, 2006

Topic: Final Review of Proposed Regulations Governing the Process for Submitting Proposals to Consolidate School Divisions (8 VAC 20-710-10 et seq.)

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: _____

Previous Review/Action:

No previous board review/action

Previous review/action
date October 28, 2004 and July 27, 2005
action Approved Notice of Intended Regulatory Action (NOIRA) (October 28, 2004) and accepted proposed regulations for first review (July 27, 2005)

Background Information: Chapter 917, 2004 Acts of Assembly, directs the Board of Education to promulgate regulations providing for a process by which school divisions may submit proposals for consolidation. A new regulation must be promulgated to comply with the terms of Chapter 917. HB 978 amended § 22.1-25 of the *Code of Virginia* to add the following language:

“...Consistent with its authority pursuant to Article VIII, Section 5 of the Constitution of Virginia to designate school divisions in the Commonwealth of such geographic size and school-age population as will best promote the realization of the standards of quality, the Board shall promulgate regulations consistent with the provisions of this section that provide for a process whereby school divisions may submit proposals for the consolidation of school divisions. Such regulations shall provide for, among other things, a public notice and hearing process to be conducted by the applicant school divisions.

School divisions submitting proposals for consolidation shall include such information and data as may be required by the Board, including (i) the criteria set forth in subsection C; (ii) evidence of the cost savings to be realized by such consolidation; (iii) a plan for the transfer of title to school board property to the resulting combined school board governing the consolidated division; (iv) procedures and a schedule for the proposed consolidation, including completion of current division superintendent and school board member terms; (v) a plan for proportional school board representation of the localities comprising the new school division, including details regarding the appointment or election processes currently ensuring such representation and other information as may be necessary to evidence compliance with federal and state laws governing voting rights; and (vi) evidence of local support for the proposed consolidation.

For five years following completion of such consolidation, the computation of the state and local share for an educational program meeting the standards of quality for school divisions resulting from consolidations approved pursuant to this subsection shall be the lower composite index of local ability-to-pay of the applicant school divisions, as provided in the appropriation act.”

Summary of Major Elements: The proposed regulations include the following provisions, as required by § 22.1-25:

- A public notice and hearing process to be conducted by the school divisions;
- Consideration of the following criteria specified in § 22.1-25 of the *Code of Virginia*:
 1. The school-age population of the school divisions;
 2. The potential of the proposed school division to offer a comprehensive program for kindergarten through grade 12 at the level of the established standards of quality;
 3. The potential of the proposed school division to promote efficiency in the use of school facilities, and school personnel, and economy in operation;
 4. Anticipated increase or decrease in the number of children of school age in the proposed school division;
 5. Geographical area and topographical features as they relate to transportation facilities to provide for reasonable access by students to school facilities; and
 6. The ability of each existing school division to meet the standards of quality with its own resources and facilities, or in cooperation with another school division or divisions if arrangements for such cooperation have been made.
- Components of proposals for consolidation as specified by § 22.1-25 of the *Code of Virginia*:
 1. Evidence of the cost savings to be realized by such consolidation;
 2. A plan for the transfer of title to school board property to the resulting combined school board governing the consolidated division;
 3. Procedures and a schedule for the proposed consolidation, including completion of current division superintendent and school board member terms;

4. A plan for proportional school board representation of the localities comprising the new school division, including details regarding the appointment or election processes currently ensuring such representation and other information as may be necessary to evidence compliance with federal and state laws governing voting rights; and
5. Evidence of local support for the proposed consolidation.

No comments were received during the public comment period and no one spoke at the public hearing held on September 27, 2006. No changes are recommended to the proposed regulations.

Superintendent's Recommendation: The Superintendent of Public Instruction recommends that the Board of Education adopt the proposed *Regulations Governing the Process for Submitting Proposals to Consolidate School Divisions* and authorize staff of the Department of Education to proceed with the remaining steps required by the Administrative Process Act.

Impact on Resources: The impact on resources of the development and implementation of these regulations is not expected to be significant. However, the regulations are required by § 22.1-25 to provide for an incentive for the consolidation of school divisions by providing for the adjustment of the composite index of local ability to pay, as provided in the appropriation act. If school divisions choose to take advantage of this provision, there would be an increase in general fund costs, and a corresponding decrease in local costs for the applicable school division.

Timetable for Further Review/Action: The Department of Education **will** take the necessary actions, as prescribed by the Administrative Process Act, to finalize the regulatory process, and will notify local school divisions when the new regulations become effective.

**PROPOSED REGULATIONS GOVERNING THE PROCESS FOR
SUBMITTING PROPOSALS TO CONSOLIDATE SCHOOL DIVISIONS
(8 VAC 20-710-10 et seq.)**

8 VAC 20-710-10 Statutory authority.

- A. The *Constitution of Virginia*, Article VIII, Section 5, authorizes the Board of Education to designate school divisions in the Commonwealth of such geographic size and school-age population as will best promote the realization of the standards of quality.
- B. The *Code of Virginia*, § 22.1-25, requires the Board of Education to promulgate regulations consistent with that section that provide for a process whereby school divisions may submit proposals for the consolidation of school divisions.

8 VAC 20-710-20 Definitions.

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

“Board” or “State Board” means the Board of Education.

“Governing body” or “local governing body” means the board of supervisors of a county, council of a city, or council of a town, responsible for appropriating funds for such locality, as the context may require.

“School board” means the school board that governs a school division.

8 VAC 20-710-30 Administration.

- A. The school divisions as they existed on July 1, 1978, shall be and remain the school divisions of the Commonwealth until further action of the Board of Education taken in accordance with the provisions of these regulations and § 22.1-25 of the *Code of Virginia*.
- B. No school division shall be consolidated without the consent of the school board and the governing body of the county or city affected or, if a town comprises the school division, of the town council.
- C. Notice of any change in the composition of a school division proposed by the Board of Education shall be given by the Superintendent of Public Instruction, on or before January 1 of the year in which the composition of such school division is to be changed, to the clerks of the school board and of the governing body involved and to each member of the General Assembly.

- D. The Board of Education shall consider the following criteria in determining appropriate school divisions:
1. The school-age population of the school division proposed to be divided or consolidated;
 2. The potential of the proposed school division to facilitate the offering of a comprehensive program for kindergarten through grade 12 at the level of the established standards of quality;
 3. The potential of the proposed school division to promote efficiency in the use of school facilities and school personnel and economy in operation;
 4. Anticipated increase or decrease in the number of children of school age in the proposed school division;
 5. Geographical area and topographical features as they relate to existing or available transportation facilities designed to render reasonable access by pupils to existing or contemplated school facilities; and
 6. The ability of each existing school division to meet the standards of quality with its own resources and facilities or in cooperation with another school division or divisions if arrangements for such cooperation have been made.

8 VAC 20-710-40 Consolidation process.

- A. Local school divisions requesting to be consolidated shall submit a proposal to the Board of Education by September 1 of the year prior to the year they wish to consolidate.
- B. Each proposal for consolidation shall include the following information and data:
1. The criteria set forth in 8 VAC 20-710-30 D;
 2. Evidence of the cost savings to be realized by the consolidation;
 3. A plan for the transfer of title to school board property to the resulting combined school board governing the consolidated division;
 4. Procedures and a schedule for the proposed consolidation, including completion of current division superintendent and school board member terms;
 5. A plan for proportional school board representation of the localities comprising the new school division, including details regarding the appointment or election processes currently ensuring such representation and other information as may be necessary to evidence compliance with federal and state laws governing voting rights;
 6. Evidence of local support for the proposed consolidation;
 7. A plan for maintaining and/or combining schools;
 8. A plan to continue meeting the standards of accreditation; and
 9. Documentation that both governing bodies and both school boards consent to the proposed consolidation.
- C. Prior to the adoption of any plan to consolidate school divisions, each school division involved in the consolidation shall:

1. Post such plan on the division's Internet Web site;
2. Make a hard copy of the plan available for public inspection and copying; and
3. Conduct at least one public hearing to solicit public comment on the consolidation plan.



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Final Regulation Agency Background Document

Agency name	Department of Education
Virginia Administrative Code (VAC) citation	8 VAC 20-710
Regulation title	Regulations Governing the Process for Submitting Proposals to Consolidate School Divisions
Action title	Submission of final regulations that will govern the proposals for the consolidation of school divisions.
Date this document prepared	October 11, 2006

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

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

This is a new regulation that is required by the amendment of § 22.1-25 of the *Code of Virginia* by the 2004 General Assembly. The amendment directs the Board of Education to promulgate regulations providing for a process by which school divisions may submit proposals for consolidation. The new regulation must be promulgated to comply with the terms of the amendment. Section 22.1-25, as amended, stipulates the information and data to be submitted by school divisions in their proposals for consolidation, the criteria that must be considered by the Board of Education in reviewing the proposals and a process for public participation in the process. The proposed regulations also include a section detailing the statutory authority, a definitions section, and additional administration and consolidation process requirements.

No comments were received during the public comment period and no one spoke at the public hearing held on September 27, 2006. No changes are recommended to the proposed regulations.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

During the October 25, 2006 meeting of the Board of Education, the board adopted the proposed language of the *Regulations Governing the Process for Submitting Proposals to Consolidate School Divisions* 8 VAC 20-710, and directed the Department of Education to proceed with the final stages of the administrative process.

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 numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The *Code of Virginia*, § 22.1-25, requires the Board of Education to promulgate regulations that provide for a process whereby school divisions may submit proposals for the consolidation of such school divisions. This mandate is the result of actions taken by the 2004 General Assembly, Chapter 917, 2004 Acts of Assembly.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this proposed regulation is to provide a process whereby school divisions may submit proposals for the consolidation of school divisions. The regulatory action is essential because it is required by action taken by the 2004 General Assembly that amended § 22.1-25 of the *Code of Virginia* to require these regulations. It is intended to address situations where school divisions wish to consolidate.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

This is a new regulation required by § 22.1-25 of the *Code of Virginia*, as amended by the 2004 General Assembly. The substantive provisions include the required components of school

division consolidation proposals, the criteria that the Board of Education must consider in determining appropriate school divisions for consolidation, timelines for required submission of the request for consolidation and notification by the Superintendent of Public Instruction and an opportunity for public comment on the proposed consolidation.

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 there are no disadvantages to the public or the Commonwealth, please indicate.*

The proposed regulation action does not pose any disadvantages to the public or the Commonwealth. It is intended to facilitate the consolidation of school divisions at their request. The public is afforded the opportunity to participate in the process and officials of each locality must consent to the consolidation.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

No changes are recommended to the proposed regulations.

Section number	Requirement at proposed stage	What has changed	Rationale for change

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

No comments were received during the public comment period and no one spoke at the public hearing held on September 27, 2006.

Commenter	Comment	Agency response

All changes made in this regulatory action

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

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	8 VAC 20-710-10		Provides the statutory authority for the promulgation of these regulations.
	8 VAC 20-710-20		Provides a definitions section defining terminology used in the regulations.
	8 VAC 20-710-30		<p>Provides for the administration of the regulations. This section details consent and notice requirements and the following criteria that the Board of Education is required to consider in determining appropriate school divisions:</p> <ul style="list-style-type: none"> • The school-age population of the school division proposed to be divided or consolidated; • The potential of the proposed school division to facilitate the offering of a comprehensive program for kindergarten through grade 12 at the level of the established standards of quality; • The potential of the proposed school division to promote efficiency in the use of school facilities and school personnel and economy of operation; • Anticipated increase or decrease in the number of children of school age in the proposed school division; • Geographical area and topographical features as they relate to existing or available transportation facilities designed to render reasonable access by pupils to existing or contemplated school facilities; and • The ability of each existing school division to meet the standards of quality with its own resources and

			<p>facilities or in cooperation with another school division or divisions if arrangements for such cooperation have been made.</p>
	<p>8 VAC 20-710-40</p>		<p>Prescribes the consolidation process, including the date by which the proposal must be submitted to the Board of Education, a list of information and data that must be included in each proposal and an opportunity for public comment on the proposed consolidation. The list includes:</p> <ul style="list-style-type: none"> • The criteria set forth above; • Evidence of the cost savings to be realized by the consolidation; • A plan for the transfer of title to school board property to the resulting combined school board governing the consolidated division; • Procedures and a schedule for the proposed consolidation, including completion of current division superintendent and school board member terms; • A plan for proportional school board representation of the localities comprising the new school division, including details regarding the appointment or election processes currently ensuring such representation and other information as may be necessary to evidence compliance with federal and state laws governing voting rights; • Evidence of local support for the proposed consolidation; • A plan for maintaining and/or combining schools; • A plan to continue meeting the standards of accreditation; and • Documentation that both governing bodies and both school boards consent to the proposed consolidation.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The Department of Education has determined that there are no other regulatory methods. The *Code of Virginia* requires these regulations.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory 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.

There does not appear to be an impact on the institution of the family and family stability.