

# Board of Education Agenda Item

Item: D.

Date: October 25, 2006

Topic: Final Review of Permanent Regulations for Conducting Division-Level Academic Reviews

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 and September 21, 2005  
action Approved emergency regulations on October 28, 2004 and accepted permanent regulations for first review on September 21, 2005.

## Background Information:

The *Regulations Establishing Standards for Accrediting Public Schools in Virginia*, in 8 VAC 20-131-300.C.2, 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 and in accordance with 8 VAC 20-131-315 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.

Chapter 965, 2004 Acts of Assembly, 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. HB 1294 amended § 22.1-253.13:3 of the *Code of Virginia* to say, in part:

“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 division-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](#).”

A second enactment clause required the Boar adopt emergency regulations to implement the statute. The emergency regulations were adopted on October 28, 2004 and became effective on February 15, 2005.

### **Summary of Major Elements**

The regulation outlines the process and procedures for conducting the division-level academic review and submitting the corrective action plan to the Board of Education. It specifically addresses:

- The criteria for selection for the division-level academic review,
- The structure of the division-level academic review, and
- The requirements for the division improvement plans and corrective actions.

In addition, it includes provision for reviews to be conducted by agencies or organizations other than the Department of Education when appropriate.

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 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 2006-2008 biennium to conduct these activities.

**Timetable for Further Review/Action:** The Department of Education 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 PERMANENT REGULATIONS GOVERNING  
DIVISION-LEVEL ACADEMIC REVIEWS  
(8 VAC 20-700-10 et seq.)**

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

**8 VAC 20-700-20. 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.

**8 VAC 20-700-30. 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 Board of Education may authorize the Department of Education to contract for the provision of services to assist in performing division-level academic reviews.
- C. Reports of the academic review findings shall be given to the division superintendent,

chair of the local school board and to the Board of Education.

**8 VAC 20-700-40. 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*.

**8 VAC 20-700-50. External Reviews.**

- A. The Board of Education 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 8 VAC 20-700-30. 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 Education shall monitor the implementation of any required corrective actions developed by the

school division as prescribed in 8 VAC 20-700-40.

- 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 8 VAC 20-700-40 including a review of the report in a public meeting of the school board prior to submission.



## Final Regulation Agency Background Document

<b>Agency name</b>	Department of Education
<b>Virginia Administrative Code (VAC) citation</b>	8 VAC 20-700
<b>Regulation title</b>	Regulations for Conducting Division-Level Academic Reviews
<b>Action title</b>	Submission of final regulations governing division-level academic reviews
<b>Date this document prepared</b>	October 13, 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.*

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 a division-level academic review in school divisions where findings of a school-level academic review showed that the failure of the schools to reach full accreditation was related to the local school board's failure to meet its responsibilities under the Standards of Quality, Code of Virginia, §§ 22.1-253.13:1 through 8. 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. These emergency regulations expired on February 15, 2006. In September 2005, the Board of Education submitted proposed regulations to replace the emergency regulations. The proposed

regulations deviated somewhat from the provisions of the emergency regulations. A public comment period was held from July 10, 2006 through September 11, 2006 and no comments were received and no one spoke at the public hearing held on September 27, 2006.

### 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 for Conducting Division-Level Academic Review*, 8VAC 20-700, 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, § 22.1-16, 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 22.1-153.13:3 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.”

### 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.*

This 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 to conduct 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 provides options for reviews to be conducted by agencies or organizations other than the Department of Education when appropriate.

**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.*

The final regulation is identical to the regulation that was proposed in September 2005 as no comments were received during the public comment period or at the public hearing.

**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 final regulation does not pose any disadvantages to the public or the Commonwealth. 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 (Code of Virginia, §§ 22.1-253.13:1 through 8), set the minimum requirements for local school boards to maintain a quality educational program in the various school divisions in the state. The proposed final regulations provide the Board of Education a mechanism to review the program provided in the school division where 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.

**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 were made 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.*

These are new regulations. No changes have been made the proposed regulation. The sections detailed below are the same as those in the proposed regulations.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
8 VAC 20-700-10	None	Provides definitions of terms used throughout the regulation.	No changes have been made from the proposed regulations. The rationale for this section is to ensure that the terms are clear and easy to understand in the context of the regulation.
8 VAC 20-700-20	None	Provides the criteria to be considered by the Board in selecting school divisions for division-level academic reviews.	No changes have been made from the proposed regulations. The rationale for this section is to set out the criteria the Board will use in selecting school divisions for division-level academic reviews for use by the Board and to ensure that the public and local school boards are aware the criteria the Board is using.
8 VAC	None	Sets out the structure that	No changes have been made from the

20-700-30		will be used for the division level academic reviews.	proposed regulations. The rationale is to set a structure for the reviews and let local school boards and the public know how the reviews will be conducted.
8 VAC 20-700-40	None	Requires local school divisions to develop division improvement plans, including corrective action plans, with applicable due dates, for increasing student achievement and correcting any areas of noncompliance determined through the division-level academic review. This section also provides for a mechanism for requesting an extension of the timelines, for Board of Education monitoring of the implementation of the plan and corrective actions, and for the reporting of areas of noncompliance that remain uncorrected.	No changes have been made from the proposed regulations. The rationale for this section is to provide for a mechanism that requires local school boards to correct deficiencies noted during the division-level academic review process to improve educational programs for students. It also provides the Board of Education the authority to require these actions and to monitor local school boards for compliance.
8 VAC 20-700-50	None	Permits the Board of Education to accept school division-level reviews that have been conducted by an outside organization or agency at the request of a local school board. The review must still meet or exceed the requirements for reviews conducted by the Department of Education. This section also provides for the monitoring of corrective actions that result from the review and sets how	No changes have been made from the proposed regulations. The rationale for this section was to permit local school boards who had voluntarily secured division-level reviews to submit those in place of the review that would be conducted by the Virginia Department of Education so long as the review met or exceeded the requirements for the reviews conducted by the Department of Education.

		the process for a request for approval of an external review.	
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**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.*

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.