

Board of Education Agenda Item

Item: _____ E. _____

Date: October 25, 2006

Topic: First Review of the Notice of Intended Regulatory Action (NOIRA) to amend the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* (8 VAC 20-80-10 et seq.)

Presenter: Mr. H. Douglas Cox, Assistant Superintendent for Special Education and Student Services

Telephone Number: (804) 225-3252

E-Mail Address: Doug.Cox@doe.virginia.gov

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 _____

action _____

Background Information:

The *Code of Virginia*, at § 22.1-214, requires the Board of Education to “prepare and supervise the implementation by each school division of a program of special education designed to educate and train children with disabilities” between the ages of two and twenty-one, inclusive. The program developed by the Board of Education must “be designed to ensure that all children with disabilities have available to them a free and appropriate education.” The *Code of Virginia*, at § 22.1-16, authorizes the Board of Education to “promulgate such regulations as may be necessary to carry out its powers and duties....”

The current *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* (8 VAC 20-80-10 et seq.) were adopted by the Board of Education on October 19, 2000, and became effective in January 2001. Technical changes proposed by the U.S. Department of Education were approved by the Board of Education on February 5, 2002, and became effective March 27, 2002.

The revision of the state regulations governing special education is now required to ensure compliance with the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), and with its federal implementing regulations, at 34 C.F.R. Part 300, effective October 13, 2006. Alignment with these federal mandates is required to ensure Virginia's continued eligibility for federal special education funding, which will total \$268.7 million in 2006-2007.

Summary of Major Elements

As noted in the attached Notice of Intended Regulatory Action (NOIRA) Agency Background Document, it is anticipated that the Board of Education will conduct a comprehensive review of the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* (8 VAC 20-80-10 et seq.) to ensure compliance with federal mandates, and to clarify areas of ambiguity. This review is expected to include an examination of the regulations in their entirety, including the requirements for highly qualified personnel, child find, the evaluation and eligibility process, individualized education programs, private school placements, discipline procedures, secondary transition, dispute resolution, and procedural safeguards.

Superintendent's Recommendation:

The Superintendent of Public Instruction recommends that the Board waive first review and authorize the Department of Education staff to proceed with the requirements of the Administrative Process Act regarding the Notice of Intended Regulatory Action for promulgating regulations.

Impact on Resources:

The impact on resources for the review and revision of those regulations is not expected to be significant.

Timetable for Further Review/Action:

The timetable for further action will be governed by the requirements of the Administrative Process Act.



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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) citation	8 VAC 20-80
Regulation title	Regulations Governing Special Education Programs for Children with Disabilities in Virginia
Action title	Revisions to comply with the "Individuals with Disabilities Education Improvement Act of 2004" and its federal implementing regulations.
Date this document prepared	September 19, 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*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The revision of the state regulations governing special education is required to ensure compliance with the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), and with its federal implementing regulations, at 34 C.F.R. Part 300, effective October 13, 2006. Alignment with these federal requirements is required to ensure Virginia's continued eligibility for federal special education funding, which will total \$268.7 million in 2006-2007.

The revision process will incorporate requirements of the Code of Virginia and other regulations that apply to the provision of special education in Virginia, and strive to clarify areas of ambiguity in the previous 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., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The *Code of Virginia*, at § 22.1-214, requires the Board of Education to “prepare and supervise the implementation by each school division of a program of special education designed to educate and train children with disabilities” between the ages of two and twenty-one, inclusive. The program developed by the Board of Education must “be designed to ensure that all children with disabilities have available to them a free and appropriate education.” The *Code of Virginia*, at § 22.1-16, authorizes the Board of Education to “promulgate such regulations as may be necessary to carry out its powers and duties....”

When implementing a program of special education services, Virginia must comply with the federal requirements outlined in IDEA 2004, and its federal implementing regulations, at 34 C.F.R. Part 300, to continue to be eligible for federal special education funding. In 2006-2007, Virginia will receive \$268.7 million in federal special education funding. Of that amount, \$238 million will flow directly to the localities, with the remainder supporting training and technical assistance efforts to local school divisions, and funding compliance and monitoring activities.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The regulations are essential to protect the health, safety, and welfare of students with disabilities in Virginia. By ensuring that Virginia’s state special education regulations are aligned with federal requirements, the Department of Education will ensure that students with disabilities in the Commonwealth have available a free appropriate public education and are afforded the procedural safeguards guaranteed by federal law.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

A comprehensive review of the state special education regulations will be conducted, including the requirements for highly qualified personnel, child find, the evaluation and eligibility process, individualized education programs, private school placements, discipline procedures, secondary transition, dispute resolution, and procedural safeguards. The regulations in their entirety will be examined to ensure compliance with federal mandates, and to clarify areas of ambiguity.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

To continue to be eligible for federal special education funding, Virginia’s state regulations regarding special education must be amended to align with federal statutory and regulatory mandates. No other viable alternative exists.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so at the public hearing, by mail to Melissa C. P. Smith, Coordinator of Administrative Services, Office of Dispute Resolution and Administrative Services, Virginia Department of Education, P.O. Box 2120, Richmond, Virginia 23218-2120; by fax at 804-786-8520; or by email at revisespedregs@doe.virginia.gov. Staff may be contacted by telephone at 804-225-2013. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

Public hearings will be held during the 60-day public comment period, following the publication of the proposed regulations. Notice of those hearings may be found on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time. Written comments will be also received during the 30-day comment period, following the publication of the NOIRA.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Virginia Department of Education will use a participatory approach during the revisions of the “Regulations Governing Special Education Programs for Children with Disabilities in Virginia,” including by seeking comments and recommendations via public comment, from Virginia’s Special Education Advisory Committee, and from a group of stakeholders which represent a broad spectrum of educators, parents, and consumers.

Family impact

Assess the potential 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 amendments to the regulations are not anticipated to have an impact on the institution of the family or on family stability. However, it is anticipated that parental involvement will continue to be a fundamental component of the special education process.