

Board of Education Agenda Item

Item: _____ E. _____

Date: September 27, 2006

Topic: First Review of the Notice of Intended Regulatory Action (NOIRA) to Amend the Regulations Governing Educational Services for Gifted Students (8VAC20-40-10 et seq.)

Presenter: Dr. Linda Wallinger, Assistant Superintendent for Instruction

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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 _____
action _____

Background Information: Section 22.1-16 of the *Code of Virginia* permits the Board of Education to promulgate regulations as necessary to carry out its powers and duties.

Section 22.1-16. Bylaws and regulations generally.

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.

The current *Regulations Governing Educational Services for Gifted Students* were adopted by the Board of Education in 1993, and became effective in 1995. The proposed revisions will allow the Board to consider contemporary research and best practices that have occurred in the field of gifted education since the last revisions.

At its meeting in November 2005, the Board of Education approved the Department's request for a Notice of Intended Regulatory Action (NOIRA) to Amend the *Regulations Governing Educational Services for Gifted Students* (8VAC20-40-10 et seq.) The NOIRA expired in early September, while research on the regulations was still in progress. Therefore, the Board of Education is being asked at this time to reissue the NOIRA.

Summary of Major Elements: The attached Notice of Intended Regulatory Action (NOIRA) background document summarizes the major elements. The review is expected to include an examination of the regulations in their entirety, including the definition of gifted students and other relevant definitions; service options; differentiated instruction; expectations for professional development; and program evaluation.

Superintendent's Recommendation: The Superintendent of Public Instruction recommends that the Board of Education 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 these 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.



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) citation	<u>8 VAC20-40-10</u> et seq.
Regulation title	Regulations Governing Educational Services for Gifted Students
Action title	Revision of regulations to which school divisions must adhere in their gifted education programs, K - 12
Date this document prepared	September 27, 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 *Regulations Governing Educational Services for Gifted Students* were last approved in 1993, with an effective date of February 1995. Those regulations specify which gifted education services school divisions in the Commonwealth of Virginia shall provide students from kindergarten through high school graduation. The regulations speak to the area(s) of giftedness to be served, the identification of students in the selected area(s) of service, the criteria for screening and identification, the components of local plan that each division must have approved by the Department of Education, the assurances the school division must provide to the Department regarding elements within the local plan, and provisions of use of state funds designated for divisionwide gifted education services. The proposed revisions will allow the Virginia Board of Education to consider contemporary research and best practices in the field that have occurred in the last decade and to ensure that Virginia's regulations are consistent with that information.

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.

Section 22.1-16 of the Code of Virginia vests the Board of Education with the authority to 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 Title 22.1.

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.

Identification and programs for gifted students are required within the *Standards of Quality*. School divisions are provided general funds based on a student membership formula to identify and service students whom the divisions recognize as gifted based on guidance provided through the *Regulations Governing Educational Services for Gifted Students*. Revisions of the regulations allow the Department of Education to provide school divisions with expectations for identification and program services based on current research and best practices in the field.

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 preliminary list of issues that will be addressed concerning changes to the *Regulations Governing Educational Services for Gifted Students* include the following items:

1. Revisions to definitions to assist school divisions in program design and evaluation.
2. Language related to 8VAC20-40-60. Local Plan. To assist divisions in developing and evaluating their service options, instructional approaches, settings, and staffing.
3. Language related to the selection, evaluation, and training of gifted education teachers.
4. Language regarding local program evaluation.

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.

The proposed action is to amend existing regulations. The current regulations should be revised for clarity and to ensure that there are no conflicts with existing Board of Education regulations and state law. There are no viable alternatives.

The regulations have served well for more than ten years and have been supplemented through information presented in the *Virginia Plan for the Gifted* and the *Reference Guide for the Development and Evaluation of Local Plans for the Education of the Gifted*. Both documents demonstrate that the regulations need to be revised.

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 by mail to Dr. Barbara McGonagill, Office of Middle/High School Instruction, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23218-2120; by phone to 804-225-2884; by fax to 804-786-1597; or by e-mail to Barbara.McGonagill@doe.virginia.gov. 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.

A public hearing will be held and notice of the hearing may be found on the Virginia Regulatory Town Hall Web site (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.

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 revisions to the *Regulations Governing Educational Services for Gifted Students* will be guided by comments and recommendations received from the Virginia Advisory Committee for the Education of the Gifted; by an advisory group representing a broad spectrum of educators and parents selected to represent the geographic regions of the Commonwealth; and through public comment.

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.

There will be minimal impact on the institution of the family or family stability.