



4. Revision of components of the local plan for the education of the gifted;
5. Revision of the role and function of the local advisory committee for the education of the gifted to comply with section 22.1-18.1 of the *Code of Virginia*; and
6. Addition of annual report expectations to comply with section 22.1-18.1 of the *Code of Virginia*.

Public comments were received via the Virginia Regulatory Town Hall Web site and through communications provided directly to the Department. The table in Attachment A summarizes written comments received by March 8, 2007, regarding the current (1993) regulations.

**Timetable for Further Review/Action:**

Once the proposed revised regulations have been accepted for first review, the Department of Education will proceed with the Administrative Process Act (APA).

**Superintendent's Recommendation:**

The Superintendent of Public Instruction recommends that the Board of Education accept for first review the proposed changes to the *Regulations Governing Educational Services for Gifted Students*.

**Impact on Resources:**

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

**Virginia Department of Education**  
**Public Comment on *Regulations Governing Educational Service for Gifted Students***  
**May 30, 2007**

<b>Commenter</b>	<b>Affiliation</b>	<b>Comment</b>
Karen Lanning	Parent	Supports review; no specific request.
Elizabeth Boylan	Parent	Seeks increased funding especially for additional staff and faculty.
Lee Lorber	Teacher	Supports review; no specific request.
Lisa Dooley	Parent	Supports review; supports these programs.
Claire Goodwin	Parent	Seeks increased funding.
Liz Nelson	Executive Director, Virginia Association for the Gifted	<ol style="list-style-type: none"> <li>1. Requests that definition, identification, and enrollment shall include students, elementary through graduation, in General Intellectual Abilities (GIA) or Specific Academic Abilities (SAA), as defined by mathematics; sciences; English and language arts; or history and social studies.</li> <li>2. Requests that definition, identification, and programs serving visual and performing arts and practical and technical arts programs be optional areas of service.</li> <li>3. Requests that norm-referenced testing be used in the identification process when testing occurs.</li> <li>4. Seeks inclusion of divisionwide screening to widen pool of candidates.</li> <li>5. Requests that multiple criteria from multiple sources be used in the identification of each student.</li> <li>6. Requests that all students, including special education and English language learners be screened for inclusion in gifted education programs.</li> <li>7. Requests that the local school board and the Department of Education ensure that divisions are in compliance and both approve the school division's local plan for the education of the gifted.</li> <li>8. Requests that modifications to local plans be submitted for reporting and approval by the Department.</li> <li>9. Requests that local plans provide goals for specific identification, delivery of services, curriculum and instruction, teacher preparation, ongoing professional development, and parent and community involvement.</li> <li>10. Specify that service options include accelerative provisions at the classroom, school, and school division levels to enable students to learn at their own pace.</li> <li>11. Requests an add-on endorsement in gifted education including a minimum of 12 hours of graduate coursework in gifted education and shall include a practicum of at least 45 instructional hours. One year of successful full-time teaching experience in a public or accredited nonpublic school may be accepted in lieu of the practicum. A mentor with a valid license with an endorsement in gifted education must be assigned to the teacher. Seeks ongoing and comprehensive professional development in-service training that reflects research-based, best practices in the field of gifted</li> </ol>

<b>Commenter</b>	<b>Affiliation</b>	<b>Comment</b>
		education.
B. Black	Parent	Seeks sufficient funding for qualified staff to provide extra gifted services, especially as compared to remedial services.
Mike Warnalis	Parent	1. Supports the revision of the regulations and the opportunity to offer suggestions. 2. Requests policies to ensure that consistent educational styles and formats of services are offered at all grades, so that middle and high school programs are as strong as are elementary programs.
Kim Blair	Parent	Supports the revision of the regulations.
Cynthia Coleman	Parent	Supports increased middle and high school programs for gifted students.
Mike Mitchell	Parent	Requests the removal of the word “public” in the definition of applicability to public school students.
Dave Dubay	Teacher	1. Requests funding for gifted programs to be used only for gifted programs and not rolled into the general budget. 2. Requests sufficient funding for all qualified candidates for Governor’s Schools to attend.
Deborah Piper	Parent	1. Requests regulations be revised to address specific and detailed accountability procedures for the delivery of services, that differentiated instruction in heterogeneous classrooms, and that differentiation plans to be included in school divisions’ local plans for the education of the gifted. 2. Requests additional funding to ensure delivery of services.
Dr. Andreas Tolk		Seeks mandatory education for teachers of the gifted who provide differentiated services.
Margaret Turley	Gifted Education Coordinator	1. Requests specific definition of “humanities” as an area of identification. 2. Requests guidelines for local plans to include improved staffing, settings, instructional approaches, and evaluation options. 3. Requests guidelines for local plans to include standards and accountability for teaching and learning, pupil-teacher ratios, and per pupil funding. 4. Requests revision to language for selection, evaluation, and training of gifted education teachers.
Louise Epstein	President, Fairfax County Association for the Gifted	1. Requests establishment of the 90 <sup>th</sup> percentile and above as the boundary for eligibility. 2. Requests that divisions be required to describe and evaluate gifted education programs separately for different categories of gifted students. 3. Requests requirement that gifted students’ knowledge be measured yearly through above-grade level, standardized tests, as a measure of program effectiveness, instead of the use of the <i>Standards of Learning Assessments</i> . 4. Requests that school Web sites include information about specific grade services for each grade-level served. 5. Requests that divisions be required to provide requested data

Commenter	Affiliation	Comment
		<p>within 1-2 months of such requests; specifically that Advanced Placement (AP) test scores be reported by single scores, (e.g. 3, 4, 5), not by aggregate scores (e.g. 3-5).</p> <p>6. Requests that membership by current and past employees of the school division be limited to no more than 20 percent of the local advisory committee.</p>
David and Meghan Rainey	Parents	<ol style="list-style-type: none"> <li>1. Requests that “humanities” be specifically defined as language arts and English and history and social science to be consistent with other state documents.</li> <li>2. Requests the elimination of designation of “potentially gifted,” identifying children only as “gifted.”</li> <li>3. Requests language clarification that students must be served sequentially and continuously beginning in kindergarten through graduation.</li> <li>4. Requests clarification that divisions must offer either specific academic attitude (SAA) or general intellectual aptitude (GIA); with technical and practical arts (TPA) and visual and performing arts (VPA) as optional services.</li> <li>5. Requests that divisions be required to use at least four evaluation criteria for all students, including special populations.</li> </ol>
Marti Freidman		Seeks to establish grade standards for identified students in programs (“C” or above).
Bryan Byers		<ol style="list-style-type: none"> <li>1. Requests universal eligibility criteria across state.</li> <li>2. Requests that [Governor’s] schools for gifted students be centrally located for joint participation of smaller divisions; include elementary students.</li> <li>3. Requests increased services for elementary students, not just pull-out 25 minutes twice a week.</li> <li>4. Requests assurance that all children who qualify for Governor’s schools be allowed to attend (not just quota per school).</li> </ol>



## Proposed Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Education
<b>Virginia Administrative Code (VAC) citation</b>	<u>8VAC20-40-10</u> through <u>8VAC20-40-70</u>
<b>Regulation title</b>	Regulations Governing Educational Services for Gifted Students
<b>Action title</b>	Revision of regulations school divisions must meet in their gifted education programs, Kindergarten - Grade 12
<b>Date this document prepared</b>	May 30, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) 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.*

The *Regulations Governing Educational Services for Gifted Students* provide definitions; criteria for screening, referral, and identification of gifted students; delivery of services parameters; and elements of appropriately differentiated curriculum and instruction necessary to meet the learning needs of these students. The regulations also provide requirements for professional development of instructional personnel, the school division's local plan for the education of the gifted, the annual report, and the local advisory committee for the education of the gifted.

The existing regulations were approved by the Virginia Board of Education in 1993. The purpose of these proposed revisions is to integrate findings from relevant research regarding identification, curriculum and instruction, delivery of services, and professional preparation into the standards Virginia public schools use to establish and operate programs for which the General Assembly has allocated funds through the *Standards of Quality*.

## 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.*

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.

## 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, the environmental benefits, and the problems the proposal is intended to solve.*

This action is essential to ensure that students in the Commonwealth are provided with an education that is commensurate with their abilities. The state definitions and provisions found in the *Regulations Governing Educational Services for Gifted Students* establish the basic expectation for school divisions' services for gifted students. These regulations ensure that school divisions' programs respond appropriately to the learning needs of gifted students, especially those students with economically disadvantaged backgrounds, those with limited English language proficiency, or those with disabilities. The proposed regulations reflect the relevant findings from research regarding effective program options, appropriate curricular designs and instructional strategies, and the significance of teacher professional development in providing appropriate instruction for gifted students.

## 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 following changes are proposed to the *Regulations Governing Educational Services for Gifted Students*:

1. Additions to and revisions of critical terms;
2. Clarification of the screening, referral, identification, and placement components;
3. Addition of parental rights, notification, consent, and appeals information;
4. Revision of components of the local plan for the education of the gifted;
5. Revision of the role and function of the local advisory committee for the education of the gifted to comply with section 22.1-18.1 of the *Code of Virginia*; and
6. Addition and expansion of annual report expectations to comply with section 22.1-18.1 of the *Code of Virginia*.

## 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 primary advantages of the proposed regulations for the public or the Commonwealth:

1. The proposed regulations require alignment of services for gifted students with current standards and practices found in relevant research and practice;
2. The proposed regulations establish basic expectations for the annual screening of all students for gifted education services;
3. The proposed regulations reduce the number of instruments used to identify gifted students from four to three;
4. The proposed regulations establish basic expectations that programs for the gifted include monitoring and assessment of student outcomes;
5. The proposed regulations establish expectations that programs for the gifted will be provided within the school day and week to ensure these students have time to study with their age-level peers, their intellectual peers, and time to study independently; and
6. The proposed regulations establish expectations that school boards, and not the Department of Education, will approve local plans that are in compliance with the regulations.

There are no perceived disadvantages to the public, to the agency, or to the Commonwealth.

## Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

There are no applicable federal requirements.

## Localities particularly affected

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

There are no disproportionately significant negative or positive effects of the proposed regulations to any specific locality.

**Public participation**

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

In addition to any other comments, the Board of Education is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal.

Anyone wishing to submit written comments may do so to Dr. Barbara McGonagill, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, by phone at 804-225-2884, by facsimile at 804-786-1597, or by e-mail to [Barbara.McGonagill@doe.virginia.gov](mailto: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 date of the public comment period.

A public hearing will be held and notice of the public hearing will appear on the Virginia Regulatory Town Hall Web site ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Notice of the public hearing will be posted on the Commonwealth Calendar and will be posted as required at the Department of Education. Written notice of the public hearing will be sent to interested individuals and professional organizations. Both oral and written comments may be submitted at that time.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<p><b>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</b></p>	<p>There is minimal cost to the state to implement the proposed regulation revisions. Existing allocations should be sufficient to fund the state’s responsibilities.</p>
<p><b>Projected cost of the regulation on localities</b></p>	<p>It is anticipated that additional costs would not exceed those funds currently allocated by the General Assembly through the <i>Standards of Quality</i>.</p> <ol style="list-style-type: none"> <li>1. SOQ Basic Aid Funding – Gifted education funding supports the state share of one full-time equivalent instructional position per 1,000 students in adjusted average daily membership.</li> <li>2. Governor’s School Categorical Funding – Governor’s School funding supports gifted and talented high school students through a variety of Governor’s Schools that operate during the school year. These programs provide an opportunity for these students to study with fellow students of similar interest and abilities across the Commonwealth. The schools offer specialized curriculum offerings. State funds are provided to assist with the costs of operations for residential and regional programs held during the summer.</li> </ol>
<p><b>Description of the individuals, businesses or</b></p>	<p>Public elementary, middle, and secondary schools,</p>

<p><b>other entities likely to be affected by the regulation</b></p>	<p>local school boards, school administrators, and institutions of higher education will be affected by the revisions to the regulations.</p>
<p><b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Elementary, middle, and secondary schools in Virginia’s 132 school divisions will be affected by the revisions to the regulations. The proposed regulations do not affect small businesses.</p>
<p><b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b></p>	<p>Estimates of the cost of the regulations would vary based on the size and levels of service Virginia’s 132 school divisions choose to implement. However, the cost should be minimal since the proposed regulations do not impose major changes in requirements from previous regulations. The proposed regulations do not affect small businesses.</p>

**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. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

Neither the 1993 Regulations Governing Educational Services for Gifted Students nor these revisions increase the responsibilities of localities; small businesses will not be affected at all. There are no viable alternatives to updating these regulations.

**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 revised regulations are less stringent on school divisions since the expectation that the divisions would present their local plans for the education of the gifted to the Department of Education for approval is removed. Such approval now will become a matter for the local school board based on a process it establishes. School divisions will continue to report their implementation of the local plan through the annual report, programs for the gifted, authorized by §22.1-18.1. *Annual report on gifted education required; local advisory committee on gifted education, Code of Virginia.*

The current *Regulations Governing Educational Services for Gifted Students* do not affect small businesses; consequently, these revisions do not change the affect on small business.

**Public comment**

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

Three focus groups and public comment from 19 constituents provided the department with recommendations used in the development of these revisions to the current regulations. A special regulations advisory group, the Virginia Advisory Committee for the Education of the Gifted, and the Virginia Administrative Consortium for Gifted Education offered comments and reviews of the current regulations.

The proposed regulations are more explicit and reflect relevant research and practices. The recommendations of the focus groups and the public comment were considered during the review process and were incorporated when possible.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Karen Lanning, parent	Supports review; no specific request.	No specific change requested.
Elizabeth Boylan, parent	Seeks increased funding especially for additional staff and faculty.	Department does not have the authority to increase or designate additional funds.
Lee Lorber, teacher	Supports review; no specific request.	No specific change requested.
Lisa Dooley, parent	Supports review; supports these programs.	No specific change requested.
Claire Goodwin, parent	Seeks increased funding.	Department does not have the authority to increase or designate additional funds.
B. Black, parent	Seeks sufficient funding for qualified staff to provide extra gifted services, especially as compared to remedial services.	Department does not have the authority to increase or designate additional funds.
Mike Warnalis, parent	<p>1. Supports the revision of the regulations and the opportunity to offer suggestions.</p> <p>2. Requests policies to ensure that consistent educational styles and formats of services are offered at all grades, so that middle and high school programs are as strong as are elementary programs.</p>	<p>1. No specific change requested.</p> <p>2. Clarification in the revised regulations of service options and curriculum and instruction expectations for school division's services at all grades, kindergarten through grade twelve.</p>
Kim Blair, parent	Supports the revision of the regulations.	No specific change requested.
Cynthia Coleman, parent	Supports increased middle and high school programs for gifted students.	Clarification in the revised regulations of service options and curriculum and instruction expectations for all grades, kindergarten through grade twelve.
Mike Mitchell, parent	Requests the removal of the word "public" in the definition of applicability to public school students.	Current regulation does not prevent school divisions from providing such services as determined by the school board. No changes were made in the revised regulations.

Committer	Comment	Agency response
<p>Liz Nelson, executive director, Virginia Association for the Gifted</p>	<ol style="list-style-type: none"> <li>1. Requests that definition, identification, and enrollment shall include students, elementary through graduation, in General Intellectual Abilities (GIA) or Specific Academic Abilities (SAA), as defined by mathematics, sciences, English and language arts, or history and social studies.</li> <li>2. Requests that definition, identification, and programs serving visual and performing arts and practical and technical arts programs be optional areas of service.</li> <li>3. Requests that norm-referenced testing be used in the identification process when testing occurs.</li> <li>4. Seeks inclusion of divisionwide screening to widen pool of candidates.</li> <li>5. Requests that multiple criteria from multiple sources be used in the identification of each student.</li> <li>6. Requests that all students, including special education and English language learners be screened for inclusion in gifted education programs.</li> <li>7. Requests that the local school board and the Department of Education ensure that divisions are in compliance and both approve the school division's local plan for the education of the gifted.</li> <li>8. Requests that modifications to local plans be submitted for reporting and approval by the Department.</li> <li>9. Requests that local plans provide goals for specific identification, delivery of services, curriculum and instruction, teacher preparation, ongoing professional development, and parent and community involvement.</li> </ol>	<ol style="list-style-type: none"> <li>1. Definition for specific academic aptitude has been changed to include the core subjects of English, history and social science, mathematics, and sciences.</li> <li>2. Clarification that visual and performing arts and career and technical programs are optional areas of service that school divisions may elect to serve.</li> <li>3. Clarification of the areas of appropriate assessment, including norm-referenced assessment, for the identification of gifted students.</li> <li>4. Current regulations and revisions continue to require divisionwide screening of all students, kindergarten through grade twelve.</li> <li>5. Clarification has been incorporated to require no fewer than three sources of information or data on each referred student.</li> <li>6. Clarification of language regarding responsibility to screen students whose identification may be affected because they are economically disadvantaged, have limited English proficiency, or have a disability.</li> <li>7. Approval of local plan now rests with the local school board.</li> <li>8. See note 7.</li> <li>9. Clarifications have been added to the revised regulations for school divisions to develop goals in the prescribed areas.</li> </ol>

Commenter	Comment	Agency response
	<p>10. Specify that service options include accelerative provisions at the classroom, school, and school division levels to enable students to learn at their own pace.</p> <p>11. Requests an add-on endorsement in gifted education including a minimum of 12 hours of graduate coursework in gifted education and shall include a practicum of at least 45 instructional hours. One year of successful full-time teaching experience in a public or accredited nonpublic school may be accepted in lieu of the practicum. A mentor with a valid license with an endorsement in gifted education must be assigned to the teacher. Seeks ongoing and comprehensive professional development in-service training that reflects research-based, best practices in the field of gifted education.</p>	<p>10. Clarification of language requiring programs for the gifted to meet the learning needs of gifted students through acceleration options. Clarification of language that requires students to be provided time to study and learn with their age-level peers, their intellectual peers, and time to study and learn independently.</p> <p>11. <i>Licensure Regulations for School Personnel</i> 8VAC20-21-270 include competencies for the add-on endorsement in gifted education, requiring 12 hours of graduate studies, and a 45-instructional hour practicum. Language has been added to the revised regulations indicating that professional development for teachers of the gifted must be based on those same competencies.</p>
<p>Dave Dubay, teacher</p>	<p>1. Requests funding for gifted programs to be used only for gifted programs and not rolled into the general budget.</p> <p>2. Requests sufficient funding for all qualified candidates for Governor's Schools to attend.</p>	<p>1. Department does not have the authority to increase or designate additional funds.</p> <p>2. Department does not have the authority to increase or designate additional funds.</p>
<p>Deborah Piper, parent</p>	<p>1. Requests that regulations be revised to address specific and detailed accountability procedures for the delivery of services, that differentiated instruction in heterogeneous classrooms, and that differentiation plans to be included in school divisions' local plans for the education of the gifted.</p> <p>2. Requests additional funding to ensure delivery of services.</p>	<p>1. Changes were made in the reporting of services through the annual report, programs for the gifted, concerning the school division's responsibility to determine its delivery of services, curriculum, instruction, and documentation of student outcomes.</p> <p>2. Department does not have the authority to increase or designate additional funds.</p>
<p>Dr. Andreas Tolk</p>	<p>Seeks mandatory education for teachers of the gifted who provide differentiated services.</p>	<p>Revised regulations continue to require divisions to indicate what training teachers of the gifted are required to have and how that training will be provided. Clarification of the language related to professional development requires that professional development be based on the competencies for the add-on endorsement in gifted education found in 8</p>

Commenter	Comment	Agency response
Margaret Turley, gifted education coordinator	<p>1. Requests specific definition of “humanities” as an area of identification.</p> <p>2. Requests guidelines for local plans to include improved staffing, settings, instructional approaches, and evaluation options.</p> <p>3. Requests guidelines for local plans to include standards and accountability for teaching and learning, pupil-teacher ratios, and per pupil funding.</p> <p>4. Requests revision to language for selection, evaluation, and training of gifted education teachers.</p>	<p>VAC20-21-270.</p> <p>1. Definition for specific academic aptitude has been changed to include the core subjects of English, history and social science, mathematics, and science.</p> <p>2. Limited changes were made since staffing, settings, instructional approaches, and evaluation options are determined at the local level. Revisions require programs for the gifted to meet the assessed learning needs of gifted students and include acceleration options. Clarification of language requires students to be provided time to study and learn with their age-level peers, their intellectual peers, and time to study and learn independently.</p> <p>3. Limited changes were made since standards, accountability for teaching and learning, pupil-teacher ratios, and per pupil funding are determined at the local level. Revisions continue to require divisions to indicate required training for teachers of the gifted.</p> <p>4. Clarification of the regulatory language related to professional development requiring that such training be based on the competencies that form the basis of the add-on endorsement in gifted education found in 8VAC20-21-270.</p>
Louise Epstein, president, Fairfax County Association for the Gifted	<p>1. Requests establishment of the 90<sup>th</sup> percentile and above as the boundary for eligibility.</p> <p>2. Requests that divisions be required to describe and evaluate gifted education programs separately for different categories of gifted students.</p> <p>3. Requests requirement that gifted students’ knowledge be measured yearly through above-grade level, standardized tests, as a measure of program effectiveness, instead of the use of the <i>Standards of Learning Assessments</i>.</p>	<p>1. Limited changes were made since identification and placement decisions are made by the school division based on their specific needs.</p> <p>2. Revisions specify that a summary of the school division’s evaluation for program effectiveness be provided as part of the annual report. Limited changes were made since gifted education program evaluation decisions are made at the local level based on the needs of local school divisions.</p> <p>3. Revised regulations include a requirement that one of the measures for identification in general intellectual aptitude or specific academic aptitude be a norm-referenced instrument, which allows divisions the opportunity to use out-of-level testing. Limited changes were made since gifted education program evaluation decisions are made at the local level based on the needs of local school divisions. Clarification has been made to require divisions to monitor and assess student</p>

Commenter	Comment	Agency response
	<p>4. Requests that school Web sites include information about specific grade services for each grade-level served.</p> <p>5. Requests that divisions be required to provide requested data within 1-2 months of such requests; specifically that Advanced Placement (AP) test scores be reported by single scores, (e.g. 3, 4, 5), not by aggregate scores (e.g. 3-5).</p> <p>6. Requests that membership by current and past employees of the school division be limited to no more than 20 percent of the local advisory committee.</p>	<p>outcomes and to include a summary of the division’s evaluation of program effectiveness to be provided as part of the division’s annual report.</p> <p>4. Limited changes were made since school divisions may use a variety of methods to make information available to the public.</p> <p>5. Limited changes were made since access to public information may be sought through requirements of the <i>Virginia Freedom of Information Act</i>.</p> <p>6. Limited revisions were made to bring the description of the role and function of the local advisory committee into agreement with §22.1-18.1. <i>Annual report on gifted education required; local advisory committee on gifted education.</i></p>
<p>David and Meghan Rainey, parents</p>	<p>1. Requests that “humanities” be specifically defined as language arts and English and history and social science to be consistent with other state documents.</p> <p>2. Requests the elimination of designation of “potentially gifted,” identifying children only as “gifted.”</p> <p>3. Requests language clarification that students must be served sequentially and continuously beginning in kindergarten through graduation.</p> <p>4. Requests clarification that divisions must offer either specific academic aptitude (SAA) or general intellectual aptitude (GIA); with technical and practical arts (TPA) and visual and performing arts (VPA) as optional services.</p> <p>5. Requests that divisions be required to use at least four</p>	<p>1. Definition for specific academic aptitude has been changed to include the core subjects of English, history and social science, mathematics, and sciences.</p> <p>2. Existing definition does not include “potentially gifted” category; no change to that language has been made.</p> <p>3. Revisions include clarification of delivery of services models and curriculum and instruction components of the local plan for the education of the gifted to include monitoring to ensure that students’ learning needs in their strength areas are supported continuously and sequentially, from kindergarten through graduation.</p> <p>4. Revisions include clarification of language to ensure that school divisions offer services in general intellectual aptitude or specific academic aptitude from kindergarten through graduation. Further clarification that services for technical and practical arts (TPA) and visual and performing arts (VPA) may be offered at the school division’s discretion.</p> <p>5. Revisions require school divisions to use a minimum of three sources of data or</p>

Commenter	Comment	Agency response
	evaluation criteria for all students, including special populations.	assessment measures to determine eligibility for each referred student. School divisions were duplicating information in the administration of both aptitude and achievement measures. Statistics indicate that the correlation between aptitude and achievement is .7, with the aptitude measure being more predictive of potential.
Marti Freidman	Seeks to establish grade standards for identified students in programs ("C" or above).	Limited changes were made since gifted education program evaluation decisions are based on the needs of local school divisions. Clarification has been made to require divisions to monitor and assess student outcomes and to provide summaries of those assessments through the annual report.
Bryan Byers	<p>1. Requests universal eligibility criteria across state.</p> <p>2. Requests that [Governor's] schools for gifted students be centrally located for joint participation of smaller divisions; include elementary students.</p> <p>3. Requests increased services for elementary students, not just pull-out 25 minutes twice a week.</p> <p>4. Requests assurance that all children who qualify for Governor's schools be allowed to attend (not just quota per school).</p>	<p>1. Limited changes were made to acknowledge that determination of area of giftedness, identification, and placement decisions are local decisions.</p> <p>2. No changes were made in regulations since participation in Governor's schools is voluntary. Department does not have the authority to increase or designate additional funds.</p> <p>3. Clarification of language for delivery of services and curriculum and instruction indicate that programs shall be continuous and sequential in nature and that student outcomes be monitored and assessed.</p> <p>4. Department does not have the authority to increase or designate additional funds.</p>

**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 revision of these regulations will not affect the institution of the family or family stability.

**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:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
8VAC20-40-10. Applicability.	No change	This chapter shall apply to all local school divisions in the Commonwealth.	The proposed language clarifies the existing language and moves applicability language from 8VAC20-40-30, regarding the applicability of these services for gifted students from kindergarten through high school graduation, to this section to eliminate redundancy.
8VAC20-40-20. Definitions.	No change	The words and terms, when used in this chapter, shall have the following meanings, unless the content clearly indicates otherwise:	The proposed language indicates that the definitions apply to the given term, unless the context clearly indicates otherwise.
8VAC20-40-20. Definitions.	No change	“Appropriately differentiated curricula” for gifted students refer to curricula designed in response to their cognitive and effective needs. Such curricula emphasis on both accelerative and enrichment opportunities for (i) advanced content and pacing of instruction, (ii) original research or production, (iii) problem finding and solving, (iv) higher level thinking that leads to the generation of products, and (v) a focus on issues, themes, and ideas within and across areas of study.	The proposed language clarifies that appropriately differentiated curriculum and instruction for gifted students focuses on (1) content and strategies in the student’s area of strength, (2) that recognize the student’s need for advanced content and pacing, and (3) that are presented continuously and sequentially in response to established student outcomes and expectations.
8VAC20-40-20.	No change	No previous definition	The proposed revision adds a definition for “Eligible Student” to establish that

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
Definitions.			"identification" and "eligibility" are interchangeable terms.
8VAC20-40-20. Definitions.	No change	"Gifted students" means those students in public elementary and secondary schools beginning with kindergarten through graduation whose abilities and potential for accomplishment are so outstanding that they require special programs to meet their educational needs. These students will be identified by professionally qualified persons through the use of multiple criteria as having potential or demonstrated abilities and who have evidence of high performance capabilities, which may include leadership, in one or more of the following areas:	The proposed revision clarifies that "Gifted Students" are those who demonstrate high levels of accomplishment or who show the potential in one or more specific areas for higher levels of accomplishment when compared to others of their same age, experience, and environment.
8VAC20-40-20. Definitions.	No change	1. Intellectual aptitude or aptitudes. Students with advanced aptitude or conceptualization whose development is accelerated beyond their age peers as demonstrated by advanced skills, concepts, and creative expression in multiple general intellectual ability or in specific intellectual abilities.	The proposed revision clarifies that general intellectual aptitude is demonstrated by a student's superior reasoning; persistent intellectual curiosity; advanced use of language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; and creative and imaginative expression across a broad range of intellectual disciplines beyond that of their age-level peers.
8VAC20-40-20. Definitions.	No change	2. Specific academic aptitude. Students with specific aptitudes in selected academic areas: mathematics; the sciences; or the humanities as demonstrated by advanced skills, concepts, and creative expression in those areas.	The proposed revision clarifies that specific academic aptitude is demonstrated by a student's superior reasoning; persistent intellectual curiosity; advanced use of language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; and creative and imaginative expression in English, history and social studies, mathematics, or science.
8VAC20-40-	No change	3. Technical and practical arts aptitude. Students with	The proposed revision clarifies that career

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
20. Definitions.		specific aptitudes in selected technical or practical arts as demonstrated by advanced skills and creative expression in those areas to the extent they need and can benefit from specifically planned educational services differentiated from those provided by the general program experience.	and technical aptitude is demonstrated by a student's superior reasoning; persistent technical curiosity; advanced use of language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; and creative and imaginative expression in career and technology fields.
8VAC20-40-20. Definitions.	No change	4. Visual or performing arts aptitude. Students with specific aptitudes in selected visual or performing arts as demonstrated by advanced skills and creative expression who excel consistently in the development of a product or performance in any of the visual and performing arts to the extent that they need and can benefit from specifically planned educational services differentiated from those generally provided by the general program experience.	The proposed revision clarifies that visual and performing arts aptitude is demonstrated by a student's superior reasoning; persistent artistic curiosity; advanced use of language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; and creative and imaginative expression in visual and performing arts.
8VAC20-40-20. Definitions.	No change	"Identification" is the process of reviewing student data collected at the screening level and conducting further evaluation of student potential to determine the most qualified students for the specific gifted program available.	The proposed revision clarifies that identification of students is a multi-staged process. The proposed language indicates the identification process starts with divisionwide screening, followed by the assessment of students' aptitudes using multiple criteria, and ending with the determination of eligibility by the identification and placement committee.
8VAC20-40-20. Definitions.	No change	"Identification/Placement Committee" means a standing committee which is composed of a professional who knows the child, classroom teacher or	The proposed revision clarifies that the building- or division-level committee determines eligibility based on the student's assessed aptitude and learning needs; and it expands the definition to clarify that the identification and

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
		<p>teachers, others representing assessment specialists, gifted program staff and school administration, and others deemed appropriate. This committee may operate at the school or division level. In either case, consistent criteria must be established for the division.</p>	<p>placement committee is responsible for the determination of service options considered appropriate for the student based on the student’s assessed learning needs.</p>
<p>8VAC20-40-20. Definitions.</p>	<p>No change</p>	<p>None</p>	<p>The proposed revision adds a definition of “Learning needs of gifted students” to clarify that eligible students shall be provided instruction that responds to their needs for advanced and complex content, that is paced and sequenced to respond to their persistent intellectual, artistic, or technical curiosity; exceptional problem solving abilities; rapid acquisition and mastery of information; conceptual thinking processes; and imaginative expression across a broad range of disciplines.</p>
<p>8VAC20-40-20. Definitions.</p>	<p>No change</p>	<p>"Placement" means the determination of the appropriate educational option for each eligible student.</p>	<p>The proposed revision clarifies the existing language that multiple options may need to be provided to the identified or eligible student.</p>
<p>8VAC20-40-20. Definitions.</p>	<p>No change</p>	<p>None</p>	<p>The proposed revision adds a definition of “Referral” to define the formal and direct process that parents, teachers, professionals, or students use to request that a kindergarten through twelfth-grade student be assessed for gifted education services.</p>
<p>8VAC20-40-20. Definitions.</p>	<p>No change</p>	<p>"Screening" is the process of creating the pool of potential candidates using multiple criteria through the referral process, review of test data, or from other sources. Screening is the active search for students who should be evaluated for identification.</p>	<p>The proposed revision clarifies the existing language regarding the division-wide search conducted across all students at least once annually to determine which students should be referred for identification and service in the gifted education program. The proposed revision also indicates that, at a minimum, the annual screening shall consist of a review of current assessment data for all kindergarten through twelfth-grade students, with students selected through</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			the school division's screening process then referred for formal identification.
8VAC20-40-20. Definitions.	No change	"Service options" include the instructional approach or approaches, setting or settings, and staffing selected for the delivery of appropriate service or services that are based on student needs.	The proposed revision clarifies that service options include the instructional approaches, settings, and staffing selected for the delivery of appropriate programs based on the students' assessed needs in their areas of strength.
8VAC20-40-20. Definitions.	No change	"Student outcomes" are specified expectations based on the assessment of student cognitive and affective needs. Such outcomes should articulate expectations for advanced levels of performance for gifted learners.	The proposed revision clarifies that student outcomes for advanced achievement and performance are based on a review of the student's assessed learning needs and the goals for the program of study, and those outcomes are reviewed and reported to parents or legal guardians.
9VAC20-40-30. Applicability	Deleted		The proposed revision moves some of this language to 8VAC20-40-10 and deletes the remainder to avoid redundancy.
8VAC20-40-40. Identification	8VAC20-40-30. Screening, referral, identification, and placement.	A. Each school division shall establish a uniform procedure with common criteria for screening and identification of gifted students. If the school division elects to identify students with specific academic aptitudes, they shall include procedures for identification and service in mathematics, science, and humanities...	The proposed revision merges and realigns the screening, referral, identification, and placement processes into one section. The proposed language requires that each school division shall establish uniform procedures with common criteria for screening, referral, and identification of general intellectual or specific academic aptitude gifted students; clarification that specific academic aptitudes include procedures for identification and service in, at a minimum, English, history and social science, mathematics, and science; and an option for school divisions to identify and serve gifted students in career and technical aptitude or visual and performing arts aptitude, or both, at their discretion.
8VAC20-40-40. Identification.	8VAC20-40-30. Screening, referral, identification, and placement.	B. Each school division shall maintain a division review procedure for students whose cases are appealed. This procedure shall involve individuals, the majority of whom did not	The existing language in this section has been moved to a new section, 8VAC20-40-50. Parental rights for notification, consent, and appeal.  The proposed revision clarifies that the screening process shall include, at

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
		serve on the Identification/Placement Committee.	minimum, an annual review of current assessment data.
8VAC20-40-40. Identification	8VAC20-40-30. Screening, referral, identification, and placement.	C. These procedures will permit referrals from school personnel, parents or legal guardians, other persons of related expertise, peer referral and self-referral of those students believed to be gifted...	The proposed revision clarifies that school divisions shall permit referrals from school personnel, parents or legal guardians, other persons of related expertise, as well as peer- or self-referral; and that such referrals shall be accepted for kindergarten through twelfth-grade students.
8VAC20-40-40. Identification	8VAC20-40-30. Screening, referral, identification, and placement.	D. Pertinent information, records, and other performance evidence of referred students will be examined by a building level or division level identification committee. Further, the committee or committees will determine the eligibility of the referred students for differentiated programs. Students who are found to be eligible by the Identification/Placement Committee shall be offered a differentiated program by the school division.	<p>The proposed revision clarifies that the identification and placement committee shall review pertinent information; determine a student's eligibility for the division's services; and determine which service options match the learning needs of the eligible student. Additional proposed language clarifies the use of screening data in subsequent stages of the identification process.</p> <p>The proposed revision adds new language encouraging school divisions to accept valid and reliable data for transfer students from identification processes conducted previously by other school divisions.</p>
8VAC20-40-50. Criteria for screening and identification.	8VAC20-40-30. Screening, referral, identification, and placement.	<p>Eligibility of students for programs for the gifted shall be based on multiple criteria for screening and identification established by the school division, and designed to seek out high aptitude in all populations. Multiple criteria shall include four or more of the following categories:</p> <ol style="list-style-type: none"> <li>1. Assessment of appropriate student products, performance, or portfolio;</li> <li>2. Record of observation of in-classroom behavior;</li> </ol>	<p>The proposed revision clarifies that the identification of gifted students shall be based on multiple criteria designed to seek out those students with superior aptitudes, including students in underserved populations, and that identification include data from multiple sources. This section also reduces the number of categories that school divisions are required to use in the identification process from four to three:</p> <ol style="list-style-type: none"> <li>1. Assessment of appropriate student products, performance, or portfolio;</li> <li>2. Record of observation of in-classroom behavior;</li> <li>3. Appropriate rating scales, checklists, or questionnaires;</li> </ol>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
		<ol style="list-style-type: none"> <li>3. Appropriate rating scales, checklists, or questionnaires;</li> <li>4. Individual interview;</li> <li>5. Individual or group aptitude tests;</li> <li>6. Individual or group achievement tests;</li> <li>7. Record of previous accomplishments (such as awards, honors, grades, etc.);</li> <li>8. Additional valid and reliable measures or procedures.</li> </ol>	<ol style="list-style-type: none"> <li>4. Individual interview;</li> <li>5. Individual individually-administered or group-administered, norm-referenced aptitude tests;</li> <li>6. Record of previous accomplishments (such as awards, honors, grades, etc.);</li> <li>7. Additional valid and reliable measures or procedures.</li> </ol>
<p>8VAC20-40-50. Criteria for screening and identification.</p>	<p>8VAC20-40-30. Screening, referral, identification, and placement.</p>	<p>If a program is designed to address general intellectual aptitude, aptitude measures must be included as one of the categories in the division identification plan. If a program is designed to address specific academic aptitude, an achievement or an aptitude measure in the specific academic area must be included as one of the categories in the division identification plan. If a program is designed to address either the visual/performing arts or technical/practical arts aptitude, a performance measure in the specific aptitude area must be used. Inclusion of a test score in a division identification plan does not indicate that an individual student must score at a prescribed level on the test or tests to be admitted to the program. No single criterion shall be used in determining students who</p>	<p>The proposed revision clarifies that the identification process for a general intellectual aptitude or a specific academic aptitude program shall include an individually administered or group-administered, norm-referenced aptitude test as one of the three measures used in the school division's identification procedure; and that visual and performing arts or career and technical aptitude identification includes a portfolio or other performance assessment measure.</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
		qualify for, or are denied access to, programs for the gifted.	
8VAC20-40-50. Criteria for screening and identification.	8VAC20-40-30. Screening, referral, identification, and placement.	None	The proposed language establishes an expectation that parents or legal guardians shall receive a determination of a referred student's eligibility within 60 business days of the receipt of a referral. Additional new language indicates that identified gifted students shall be offered placement in a classroom or program setting that provides appropriately differentiated curriculum and instruction provided by professional instructional personnel trained to work with gifted students and who monitor and report student outcomes to the parents or legal guardians.
	8VAC20-40-50. Parental rights for notification, consent, and appeal.	None	The proposed language clarifies the rights of parents or legal guardians by specifying that school divisions shall provide written notification to and seek written consent from parents or legal guardians for identification of and services for eligible students.
	8VAC20-40-50. Parental rights for notification, consent, and appeal.	None	The proposed language realigns information from 8VAC20-40-40, clarifying the rights of parents or legal guardians for due process, including the right to appeal within ten days of receipt of the school division's determination of eligibility, change in placement, or exit from the school division's gifted education program.
	8VAC20-40-50. Parental rights for notification, consent, and appeal.	None	The proposed language clarifies that administrators in the student's school have access to the results of the identification and placement committee's eligibility decisions.
8VAC20-40-60. Local plan.	8VAC20-40-60. Local plan, local advisory committee, and annual	A. Each school division shall submit to the Department of Education for approval a plan for the education of gifted students. Modifications to	The proposed revision requires that each school board review and approve annually a comprehensive local plan for the education of gifted students that includes components of these regulations, and that opportunities for public review are

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	report.	the plan shall be reported to the Department of Education on dates specified by the Department.	included in the plan development, review, and approval process. It also clarifies details of each of the required components of the plan.
8VAC20-40-60. Local plan	8VAC20-40-60. Local plan, local advisory committee, and annual report.	B. Each school division shall establish a local advisory committee composed of parents, school personnel, and other community members. This committee shall reflect the ethnic and geographical composition of the school division. The purpose of this committee shall be to advise the school board through the division superintendent of the educational needs of all gifted students in the division. As a part of this goal, the committee shall review annually the local plan for the education of gifted students, including revisions, and determine the extent to which the plan for the previous year was implemented. The recommendations of the advisory committee shall be submitted in writing through the division superintendent to the school board.	The proposed language revises the regulations to comply with § 22.1-18.1. <i>Code of Virginia</i> , which establishes a local advisory committee, appointed by the school board, composed of parents, school personnel, and other community members, that reviews the local plan for the education of gifted students annually, determines the extent to which the plan for the previous year was implemented, and reports its findings annually in writing to the division superintendent and the school board.
8VAC20-40-60. Local plan	8VAC20-40-60. Local plan, local advisory committee, and annual report.		The proposed language revises the regulations to comply with § 22.1-18.1. <i>Code of Virginia</i> , which establishes that each school division shall submit an annual report to the Department of Education in a format prescribed by the Department.

These revisions to the *Regulations Governing Educational Services for Gifted Students* do not replace an emergency regulation.



1 **Virginia Administrative Code**

2 **Database updated through 21:24 V.A.R. August 8, 2005**

3 8VAC20-40-10. Applicability.

4 This chapter shall apply to all local school divisions in the Commonwealth, regarding their  
5 services for students from kindergarten through high school graduation.

6 8VAC20-40-20. Definitions.

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

9 "Appropriately differentiated ~~curricula~~ curriculum and instruction" means ~~curricula~~ curriculum  
10 and instruction ~~designed in response to their cognitive and effective needs; adapted or modified~~  
11 to accommodate the accelerated learning aptitudes of eligible or identified students in their areas  
12 of strength. Such ~~curricula~~ curriculum and instructional strategies provide ~~emphasis on both~~  
13 ~~accelerative~~ accelerated and enrichment opportunities that recognize gifted students' needs for  
14 (i) advanced content and pacing of instruction; (ii) original research or production; (iii) problem  
15 finding and solving; (iv) higher level thinking that leads to the generation of products; and (v) a  
16 focus on issues, themes, and ideas within and across areas of study. Such curriculum and  
17 instruction are offered continuously and sequentially to support the achievement of student  
18 outcomes, and provide support necessary for these students to work at increasing levels of  
19 complexity that differ significantly from those of their age-level peers.

20 “Eligible student” means a student who has been identified as gifted by the identification and  
21 placement committee for the school division’s gifted education program.

22 "Gifted students" means those students in public elementary, middle and secondary schools  
23 beginning with kindergarten through graduation who demonstrate high levels of accomplishment  
24 or who show the potential for higher levels of accomplishment when compared to others of the  
25 same age, experience, or environment. Their ~~whose~~ abilities aptitudes and potential for  
26 accomplishment are so outstanding that they require special programs to meet their educational  
27 needs. These students will be identified by professionally qualified persons through the use of  
28 multiple criteria as having potential or demonstrated abilities aptitudes ~~and who have evidence of~~  
29 ~~high performance capabilities, which may include leadership,~~ in one or more of the following  
30 areas:

31 1. General ~~Intellectual~~ intellectual aptitude. ~~Students~~ Such students demonstrate or have the  
32 potential to demonstrate superior reasoning; persistent intellectual curiosity; advanced use of  
33 language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and  
34 principles; and creative and imaginative expression across a broad range of intellectual  
35 disciplines ~~with advanced aptitude or conceptualization whose development is accelerated~~  
36 beyond their age-level peers. ~~as demonstrated by advanced skills, concepts, and creative~~  
37 expression in multiple general intellectual ability or in specific intellectual abilities.

38 2. Specific academic aptitude. ~~Students~~ Such students demonstrate or have the potential to  
39 demonstrate superior reasoning; persistent intellectual curiosity; advanced use of language;  
40 exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles;  
41 and creative and imaginative expression beyond their age-level peers ~~with specific aptitude in~~  
42 selected academic areas; that include English, history and social science, mathematics, ~~the~~ and

43 sciences; ~~or the humanities as demonstrated by advanced skills, concepts, and creative~~  
44 ~~expression in those areas.~~

45 3. Career and Technical technical and practical arts aptitude. Students Such students demonstrate  
46 or have the potential to demonstrate superior reasoning; persistent technical curiosity; advanced  
47 use of language; exceptional problem solving; rapid acquisition and mastery of facts, concepts,  
48 and principles; and creative and imaginative expression beyond their age-level peers with  
49 ~~specific aptitudes in selected~~ career and technical or practical arts fields. ~~as demonstrated by~~  
50 ~~advanced skills and creative expression in those areas to the extent they need and can benefit~~  
51 ~~from specifically planned educational services differentiated from those provided by the general~~  
52 ~~program experience.~~

53 4. Visual or performing arts aptitude. ~~Students~~ Such students demonstrate or have the potential  
54 to demonstrate superior creative reasoning and imaginative expression; persistent artistic  
55 curiosity; and advanced acquisition and mastery of techniques, perspectives, concepts, and  
56 principles beyond their age-level peers ~~specific aptitude in selected visual or performing arts, as~~  
57 ~~demonstrated by advanced skills and creative expression who excel consistently in the~~  
58 ~~development of a product or performance in any of the visual and performing arts to the extent~~  
59 ~~that they need and can benefit from specifically planned educational services differentiated from~~  
60 ~~those generally provided by the general program experience.~~

61 "Identification" is means the multi-staged process of finding students who are eligible for the  
62 division's gifted education program. The identification process begins with a divisionwide  
63 screening component, that is followed by a referral component, and that concludes with the  
64 determination of eligibility by the school division's identification and placement committee. The  
65 identification process includes the ~~of reviewing~~ review of valid and reliable student data based

66 on criteria established and applied consistently by the school division. collected at the screening  
67 level and conducting further evaluation of student potential to determine the most qualified  
68 students for the specific gifted program available. The process shall include the review of  
69 information or data from multiple sources to determine whether a student's aptitudes and  
70 learning needs are most appropriately served through the school division's gifted education  
71 program.

72 "Identification/Placement and placement Committee committee" means a the building-level or  
73 division-level standing committee that shall determine a student's eligibility for the division's  
74 gifted education program, based on the student's assessed aptitude and learning needs. which is  
75 composed of a professional who knows the child, classroom teacher or teachers, others  
76 representing assessment specialists, gifted program staff, and school administrator, and others  
77 deemed appropriate. The identification and placement committee shall determine which of the  
78 school division's service options are appropriate for meeting the learning needs of the eligible  
79 student. This committee may operate at the school or division level. In either case, consistent  
80 criteria must be established for the division.

81 "Learning needs of gifted students" means gifted students' needs for advanced and complex  
82 content that is paced and sequenced to respond to their persistent intellectual, artistic, or  
83 technical curiosity; exceptional problem solving abilities; rapid acquisition and mastery of  
84 information; conceptual thinking processes; and imaginative expression across a broad range of  
85 disciplines.

86 "Placement" means the determination of the appropriate educational ~~option~~ options for each  
87 eligible student.

88 “Referral” means the formal and direct process that parents, teachers, professionals, or students  
89 use to request that a kindergarten through twelfth-grade student be assessed for gifted education  
90 program services.

91 "Screening" ~~is~~ means the divisionwide search each school division conducts at least once  
92 annually across all its students to determine which students should be referred for identification  
93 and service in the gifted education program. The annual screening shall, at a minimum, consist  
94 of a process of creating the pool of potential candidates using multiple criteria through the  
95 referral process; review of current test assessment data, or from other sources for all kindergarten  
96 through twelfth-grade students. Students selected through the school division’s screening process  
97 are then referred for formal identification. Screening is the active search for students who should  
98 be evaluated for identification.

99 "Service options" ~~include~~ means the instructional approach or approaches, setting or settings, and  
100 staffing selected for the delivery of appropriate service or services programs, provided to eligible  
101 students that are based on their assessed student needs in their areas of strength.

102 "Student outcomes" ~~are~~ means the advanced achievement and performance expectations  
103 established for each gifted student, specified expectations through the review of the student’s  
104 based on the assessment of student assessed cognitive and affective learning needs and the goals  
105 of the program of study, that are reviewed and reported to parents or legal guardians. Such  
106 outcomes should articulate expectations for advanced levels of performance for gifted learners.

107 **Responsibilities of the Local School Divisions**

108 ~~8VAC20-40-30. Applicability.~~

109 ~~The requirements set forth in this part are applicable to local school divisions providing~~  
110 ~~educational services for gifted students in elementary and secondary schools from kindergarten~~  
111 ~~through graduation.~~

112 ~~8VAC20-40-40.~~ 8VAC20-40-30. Screening, referral, identification, and placement.

113 A. Each school division shall establish a uniform ~~procedure~~ procedures with common criteria for  
114 screening, referral, and identification of general intellectual or specific academic aptitude gifted  
115 students. If the school division elects to identify students with specific academic aptitudes, ~~they~~ it  
116 shall include procedures for identification and service in, at a minimum, English, history and  
117 social science, mathematics, and science, and humanities. School divisions may identify and  
118 serve gifted students in career and technical aptitude or visual and performing arts aptitude, or  
119 both, at their discretion.

120 ~~B. Each school division shall maintain a division review procedure for students whose cases are~~  
121 ~~appealed. This procedure shall involve individuals, the majority of whom did not serve on the~~  
122 ~~Identification/Placement Committee.~~

123 B. These uniform procedures shall include a screening process that requires instructional  
124 personnel to review, at a minimum, current assessment data on each kindergarten through  
125 twelfth-grade student annually. Some data used in the screening process may be incorporated  
126 into multiple criteria reviewed by the identification and placement committee to determine  
127 eligibility, but those data shall not replace norm-referenced aptitude test data.

128 C. These uniform procedures will shall permit referrals from school personnel, parents or legal  
129 guardians, other persons of related expertise, as well as peer referral and or self referral, of those

130 ~~students believed to be gifted.~~ Such referrals shall be accepted for kindergarten through twelfth-  
131 grade students.

132 D. An identification and placement committee shall review ~~Pertinent~~ pertinent information,  
133 records, and other performance evidence of referred students. The committee shall include a  
134 professional who knows the child, as well as classroom teachers, assessment specialists, gifted  
135 program staff, school administrators, or others with credentials or experience in gifted education.  
136 The committee shall (1) review data from multiple sources selected and used consistently within  
137 the division to assess students' aptitudes in the areas of giftedness the school division serves, (2)  
138 determine whether a student is eligible for the division's services, and (3) determine which of the  
139 school division's service options match the learning needs of the eligible student. The  
140 committee may review valid and reliable data administered by another division for a transfer  
141 student who has been identified previously.

142 1. Identification of students for the gifted education program shall be based on multiple criteria  
143 established by the school division and designed to seek out those students with superior  
144 aptitudes, including students for whom accurate identification may be affected because they are  
145 economically disadvantaged, have limited English proficiency, or have a disability. Data shall  
146 include scores from valid and reliable instruments that assess students' potential for advanced  
147 achievement, as well as instruments that assess demonstrated advanced skills, conceptual  
148 knowledge, and problem solving aptitudes.

149 2. Valid and reliable data for each referred student shall be examined by a the building-level or  
150 division-level identification/ and placement committee. ~~Further, the~~ The committee of  
151 committees will shall determine the eligibility of the each referred students student for  
152 differentiated the school division's gifted education programs program. Students who are found

153 ~~to be~~ eligible by the ~~Identification~~identification/Placement and placement Committee committee  
154 shall be offered a ~~differentiated program~~ programs or courses with appropriately differentiated  
155 curriculum and instruction by the school division.

156 3. The identification process used by each school division must ensure that no single criterion is  
157 used to determine a student's eligibility. The identification process shall include at least three  
158 measures from the following categories:

159 ~~8VAC20-40-50. Criteria for screening and identification.~~

160 ~~Eligibility of students for programs for the gifted shall be based on multiple criteria for screening~~  
161 ~~and identification established by the school division, and designed to seek out high aptitude in all~~  
162 ~~populations. Multiple criteria shall include four or more of the following categories:~~

163 ~~1.a.~~ Assessment of appropriate student products, performance, or portfolio;

164 ~~2.b.~~ Record of observation of in-classroom behavior;

165 ~~3.c.~~ Appropriate rating scales, checklists, or questionnaires;

166 ~~4.d.~~ Individual interview;

167 ~~5.e. Individual~~ Individually-administered or group-administered, norm-referenced aptitude tests;

168 ~~6. Individual or group~~ achievement tests;

169 ~~7.f.~~ Record of previous accomplishments (such as awards, honors, grades, etc.);

170 ~~8.g.~~ Additional valid and reliable measures or procedures.

171 4. If a program is designed to address general intellectual aptitude or specific academic aptitude,  
172 an individually administered or group-administered, norm-referenced aptitude measures test  
173 ~~must~~ shall be included as one of the three measures categories used in the ~~division~~ school  
174 division's identification plan-procedure. ~~If a program is designed to address specific academic~~  
175 ~~aptitude, an achievement or an aptitude measure in the specific academic area must be included~~  
176 ~~as one of the categories in the division identification plan.~~

177 5. If a program is designed to address either the visual/and performing arts or career and  
178 technical/practical arts aptitude, a portfolio or other performance assessment measure in the  
179 specific aptitude area ~~must be used~~ shall be included as part of the data reviewed by the  
180 identification and placement committee. ~~Inclusion of a test score in a division identification plan~~  
181 ~~does not indicate that an individual student must score at a prescribed level on the test or tests to~~  
182 ~~be admitted to the program. No single criterion shall be used in determining students who qualify~~  
183 ~~for, or are denied access to, programs for the gifted.~~

184 E. Within 60 business days of the receipt of a referral, the identification and placement  
185 committee shall determine the eligibility status of each student referred for the division's gifted  
186 education program and notify the parent or guardian of its decision. If a student is identified as  
187 gifted and eligible for services, the identification and placement committee shall determine  
188 which service options most effectively meet the assessed learning needs of the student.  
189 Identified gifted students shall be offered placement in a classroom or program setting that  
190 provides:

191 1. Appropriately differentiated curriculum and instruction provided by professional instructional  
192 personnel trained to work with gifted students; and

193 2. Monitored and assessed student outcomes that are reported to the parents and legal guardians.

194 8VAC20-40-50. Parental rights for notification, consent, and appeal.

195 A. School divisions shall provide written notification to and seek written consent from parents  
196 and legal guardians

197 1. To conduct any required assessment to determine a referred student's eligibility for the school  
198 division's gifted education program;

199 2. To announce the decision of the identification and placement committee regarding a referred  
200 student's eligibility for and placement in the school division's gifted education program;

201 and

202 3. To provide services for an identified gifted student in the school division's gifted education  
203 program.

204 B. Each school division shall adopt a review procedure for students whose cases are appealed.

205 This procedure shall involve a committee, the majority of whose members did not serve on the

206 initial identification and placement committee and shall inform parents or legal guardians, in

207 writing, of the appeal process. Requests filed by parents or legal guardians to appeal any action

208 of the identification and placement committee shall be filed within ten business days of receipt of

209 notification of the action by the division. The process shall include an opportunity to meet with

210 an administrator to discuss the decision.

211 1. A parent or legal guardian of a student who was referred but not identified by the

212 identification and placement committee as eligible for services in the school division's gifted

213 education program shall be informed, in writing within ten business days, of the school division's  
214 process to appeal the committee's decision.

215 2. A parent or legal guardian of an identified gifted student may appeal any action taken by the  
216 school division to change the student's identification for, placement in, or exit from the school  
217 division's gifted education program.

218 C. Following the notification and consent of a parent or legal guardian, the identification and  
219 placement committee shall apprise school administrators of each student's eligibility status.

220 8VAC20-40-60. Local plan, local advisory committee, and annual report.

221 A. Each school ~~division~~ board shall ~~submit to the Department of Education for approval~~ review  
222 and approve annually a comprehensive plan for the education of gifted students; that includes the  
223 components identified in these regulations. ~~Modifications to the plan shall be reported to the~~  
224 ~~Department of Education on dates specified by the department.~~ The development process for the  
225 school division's local plan for the education of the gifted shall include opportunities for public  
226 review of the school division's plan. The approved local plan shall be accessible through the  
227 school division's Web site and the school division shall ensure that printed copies of the  
228 comprehensive plan are available to citizens who do not have online access.

229 The plan shall include the following components: ~~as follow:~~

230 1. A statement of philosophy for the gifted education program;

- 231 2. A statement of the school division's gifted education program goals and objectives for  
232 identification, delivery of services, curriculum and instruction, personnel preparation, and parent  
233 and community involvement;
- 234 3. Procedures for the early and ongoing screening, referral, identification, and placement of  
235 gifted students; beginning with kindergarten through ~~secondary graduation~~ twelfth-grade in at  
236 least a general intellectual or a specific academic aptitude program; and, if provided in the school  
237 division, procedures for the screening, referral, identification, and placement of gifted students in  
238 visual and performing arts or career and technical aptitude programs;~~one of the four defined~~  
239 ~~areas of giftedness;~~
- 240 4. A procedure for written notifying notification of parents or legal guardians when additional  
241 testing or additional information is required during the identification process, and for obtaining  
242 permission of parents or legal guardians prior to placement of a gifted students student in the  
243 appropriate ~~program~~ service options;
- 244 5. A policy for written notifying notification to parents or legal guardians of identification and  
245 placement decisions, including initial or changes in placement, gifted students' change of  
246 placement within, and or exit from the program., which includes an opportunity for parents who  
247 disagree with the committee's decision to meet and discuss their concern or concerns with an  
248 appropriate administrator; appeal such decisions. Such notice shall include an opportunity for  
249 parents or guardians to meet and discuss their concerns with an appropriate administrator and to  
250 file an appeal;

251 6. Assurances that student records will be maintained according to 8VAC20-150-10 et. seq.,  
252 Management of Student's Scholastic Record in Public Schools of Virginia in compliance with  
253 applicable state and federal privacy laws and regulations;

254 7. Assurances that (i) testing and ~~evaluation~~ assessment materials selected and administered are  
255 ~~sensitive to~~ free of cultural, racial, and linguistic ~~differences~~ biases, (ii) identification procedures  
256 are constructed so that ~~they~~ those procedures may identify high potential/~~ability~~ or aptitude in ~~all~~  
257 any student, including underserved culturally diverse, low socio-economic, and disabled  
258 populations, the student whose accurate identification may be affected by economic  
259 disadvantages, by limited English proficiency, or by a disability, (iii) standardized tests and other  
260 measures have been validated for the specific purpose of identifying gifted students, and for  
261 which they are used, (iv) instruments are administered and interpreted by a trained personnel in  
262 conformity with the developer's instructions: ~~of their producer;~~

263 8. A procedure to ~~identify and evaluate student outcomes based on the initial and ongoing~~  
264 ~~assessment of their cognitive and affective needs;~~

265 8. Assurances that accommodations or modifications determined by the school division's special  
266 education Individual Education Plan (IEP) team as required for the student to receive a free  
267 appropriate public education, shall be incorporated into the student's gifted education services.

268 9. Assurances that a written copy of the school division's approved local plan for the education  
269 of the gifted is available to parents or legal guardians of each referred student, and to others upon  
270 request;

271 10. A framework for appropriately

272 10. A procedure to match Evidence that gifted education service options from kindergarten  
273 through twelfth grade are offered continuously and sequentially, with instructional time during  
274 the school day and week (i) to work with their age-level peers, (ii) to work with their intellectual  
275 and academic peers, (iii) to work independently; and (iv) to foster intellectual and academic  
276 growth of gifted students. Parents and legal guardians shall receive assessment of each gifted  
277 student's intellectual and academic growth. including instructional approaches, settings, and  
278 staffing, to designated student needs;

279 ~~11. Procedures for the selection/evaluation of teachers and for the training of personnel to~~  
280 ~~include administrators/supervisors, teachers, and support staff;~~

281 11. A description of the school division's program of differentiated curricula curriculum and  
282 instruction demonstrating ~~accelerative~~ accelerated and advanced and enrichment opportunities  
283 in content within programs or courses;

284 12. Policies and procedures that allow access to programs of study and advanced courses at a  
285 pace and sequence commensurate with their learning needs;

286 13. Evidence that school divisions provide professional development based on the competencies  
287 specified in 8VAC 20-21-270, Gifted education (add-on endorsement), for instructional  
288 personnel who deliver services within the gifted education program; and

289 ~~12.~~ 14. Procedures for the annual evaluation of the effectiveness of the school division's gifted  
290 education program, including review of student outcomes and the intellectual and academic  
291 growth of gifted students. Such evaluations shall be based on multiple criteria and shall include  
292 multiple sources of information. for gifted students; and

293 ~~13. Other information as required by the Department of Education.~~

294 B. Each school division shall establish a local advisory committee composed of parents, school  
295 personnel, and other community members, who are appointed by the school board. This  
296 committee shall reflect the ethnic and geographical composition of the school division. This  
297 committee shall have two responsibilities: ~~be to advise the school board through the division~~  
298 ~~superintendent of the educational needs of all gifted students in the division. As a part of this~~  
299 ~~goal, the committee shall~~ (1) to review annually the local plan for the education of gifted  
300 students, including revisions; and (2) to determine the extent to which the plan for the previous  
301 year was implemented. The findings of the annual evaluation of program effectiveness and the  
302 recommendations of the advisory committee shall be submitted annually in writing to ~~through~~  
303 the division superintendent and the school board.

304 C. Each school division shall submit an annual report to the Department of Education in a  
305 format prescribed by the Department.

306 ~~8VAC20-40-70. Funding.~~

307 ~~State funds administered by the Department of Education for the education of gifted students~~  
308 ~~shall be used to support only those activities identified in the school division's plan as approved~~  
309 ~~by the Board of Education.~~