

Board of Education Agenda Item

Item: E.

Date: July 17, 2008

Topic: First Review of a Notice of Intended Regulatory Action (NOIRA) to Repeal the *Rules Governing Fees and Charges*, 8 VAC 20-370-10 and Add New *Regulations Governing Fees and Charges* as a Section to the Proposed *Regulations Governing Local School Boards and School Divisions*, 8 VAC 20-720-10 et seq.

Presenter: Ms. Anne D. Wescott, Assistant Superintendent for Policy and Communications

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Origin:

Topic presented for information only (no board action required)

Board review required by
 State or federal law or regulation
 Board of Education regulation
 Other: _____

Action requested at this meeting Action requested at future meeting: _____

Previous Review/Action:

No previous board review/action
 Previous review/action
date _____
action _____

Background Information: The Board of Education's *Rules Governing Fees and Charges*, 8 VAC 20-370-10, were adopted on or before September 1, 1980, and have not been amended since that time. The purpose of this proposal is to repeal the current regulations governing fees charged by local school divisions and create a new regulation that will be added as a section to the proposed *Regulations Governing Local School Boards and School Divisions*, 8 VAC 20-720-10 et seq.

Summary of Major Elements: The attached Notice of Intended Regulatory Action (NOIRA) Background Document summarizes the major elements of this project. As noted above, this proposal is to repeal the current regulations and to create a new regulation that will be added as a section to the proposed *Regulations Governing Local School Boards and School Divisions*. The regulation will include specific provisions regarding permissible and impermissible fees, policies for families that cannot afford the fees and permissible and impermissible actions for the failure to pay the fees.

The current regulation will be repealed simultaneously with the promulgation of the new regulation.

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.

Impact on Resources: The administrative impact for the review and revision of these regulations is not expected to be unduly burdensome on the Department of Education. There may be a fiscal impact on local school divisions.

Timetable for Further Review/Action: The timetable for further action will be governed by the requirements of the Administrative Process Act.

CHAPTER 370
RULES GOVERNING FEES AND CHARGES

8VAC20-370-10. Fees and charges.

No fees or charges as noted below may be levied on any pupil by any school board unless authorized by the Board of Education; further, no pupils' scholastic report card or diploma shall be withheld because of nonpayment of any such fee or charge.

Fees may be charged for:

1. Class dues;
2. Voluntary student activities;
3. Night school classes;
4. Postgraduate classes;
5. Summer school;
6. Rental textbooks;
7. Musical instruments used in regularly scheduled instructional classes; and
8. Library fees.

Nothing in this chapter shall be construed to prohibit the school board of any county, city, or town from making supplies, services, or materials available to pupils at cost. Nor is it a violation to make a charge for a field trip or an educational related program that is not a required activity.

Deposits may be required when return of the item used results in a return of the fees deposited.

This chapter is not intended to cover operations of school stores or other fund raising activities. These activities are covered by opinions of the Attorney General and certain practices which may be approved by auditors.



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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Education
Virginia Administrative Code (VAC) citation	8 VAC 20-720-10 et seq.
Regulation title	Regulations Governing Fees and Charges
Action title	Addition of regulation section to proposed consolidated regulations
Date this document prepared	July 10, 2008

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*.

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 Board of Education's *Rules Governing Fees and Charges*, 8 VAC 20-370-10, were adopted on or before September 1, 1980, and have never been amended. These regulations are out-of-date and in need of revision. The purpose of this proposal is to repeal the current regulations governing fees and charges and create a new regulation that will be added as a section to the new consolidated *Regulations Governing Local School Boards and School Divisions*, 8 VAC 20-720-10 et seq., that are being proposed. The current regulations governing fees and charges would be repealed simultaneously with the adoption of the new consolidated regulation.

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 provides that "The Board of Education may adopt bylaws for its own governance and promulgate such regulations as may be necessary to carry out its powers and

duties and the provisions of this title.” Additionally, § 22.1-6 of the Code of Virginia, limits the fees that may be charged to those that are permitted by state law or Board of Education regulations.

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.

While the Code of Virginia does not specifically require these regulations, it does limit the fees that may be charged to those that are permitted by state law or Board of Education regulations. Therefore, the Board of Education must adopt regulations in order to properly address the issue of what fees may or may not be charged by local school divisions.

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.

As noted above, this proposal is to promulgate a new regulation governing fees and charges to be added to consolidated regulations governing local school boards and school divisions and to simultaneously repeal the existing *Rules Governing Fees and Charges*, 8 VAC 20-370-10. The regulations will contain specific provisions regarding permissible fees, impermissible fees, policies for families that cannot afford the fees, and permissible and impermissible actions for the failure to pay the fees.

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 Code of Virginia limits the fees that may be charged to those that are permitted by state law or Board of Education regulations. Therefore, the Board of Education must have regulations governing the fees charged by Virginia’s public schools. Additionally, these regulations are necessary to ensure that fees are charged and collected appropriately.

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, e-mail or fax to Anne Wescott, Assistant Superintendent for Policy and Communications, Virginia Department of Education, P. O. Box 2120, Richmond VA 23218-2120, (804) 225-2403, fax (804) 786-5389, e-mail policy@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 on the NOIRA will not be held.

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 agency is using the participatory approach in the development of the proposal.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed regulatory action is expected to have a positive impact on the institution of the family and family stability. The regulation will ensure that only appropriate fees are charged to families of students and that school divisions will have hardship policies for those families that cannot afford the fees.