

Board of Education Agenda Item

Item: J.

Date: July 23, 2009

Topic: First Review of Proposed Amendments to the *Regulations Governing Local School Boards and School Divisions* (8 VAC 20-720) and Repeal of the *Regulations Governing Instructional Materials – Selection and Utilization by Local School Boards* (8 VAC 20-170), *Regulations Governing Textbook Adoption State Level* (8 VAC 20-220), *Regulations Governing Textbook Adoption Local Level* (8 VAC 20-230), and *Regulations Governing Textbook Fund Management and Handling on Local Level* (8 VAC 20-270)

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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 May 21, 2008 (textbooks) and April 24, 2008 (instructional materials)
action Approval of the Notices of Intended Regulatory Actions (NOIRA)

Background Information: The Board of Education currently has three sets of regulations governing textbooks and one set of regulations governing instructional materials. The regulations governing textbooks are: *Regulations Governing Textbook Adoption State Level* (8 VAC 20-220), *Regulations Governing Textbook Adoption Local Level*, (8 VAC 20-230), and *Regulations Governing Textbook Fund Management and Handling on Local Level*, (8 VAC 20-270). The regulations governing instructional materials are: *Regulations Governing Instructional Materials – Selection and Utilization by Local School Boards* (8 VAC 20-170). All of these regulations were adopted on or before September 1, 1980, have not been amended since that time, and are out-of-date.

During the 2008 General Assembly, three bills were passed that impact the purchasing and provision of textbooks for Virginia’s public school students. These bills were HB 137, patroned by Delegate Chris Peace, HB 354, patroned by Delegate Mark Cole and SB 356, patroned by Senator John Watkins. HB 137 and SB 356 are identical and were proposed by the Department of Education. HB 354 is identical, with the addition of a provision making it possible for any private school within a school division to purchase textbooks from the local school board’s contract. These bills took effect on July 1, 2008.

The purpose of this proposal is to repeal the four current regulations and amend the *Regulations Governing Local School Boards and School Divisions* by creating a section governing textbooks. The three current regulations will be repealed simultaneously with the adoption of the amendment. The amendment will also capture the requirements of the bills passed by the 2008 General Assembly.

Summary of Major Elements: The proposed regulations will capture the requirements of HB 137, HB 354 and HB 356, all passed by the 2008 General Assembly, relating to textbook purchasing. These provisions relate to the approval of textbooks, basal textbooks, contacts with textbook publishers, the distribution of textbooks and consumable materials, and the selection of instructional materials by local school divisions. In addition, a number of provisions that are unnecessary, outdated, or are no longer required by the *Code of Virginia* would be deleted.

In 8 VAC 20-720-10, the definitions section:

- The term “textbook” is defined, consistent with the definition of textbook in § 22.1-238 of the *Code of Virginia*.
- The term “instructional materials” is also defined.

In VAC 20-70-160, the instructional materials section:

- Language is added to provide parents with the right to inspect instructional materials used as a part of the educational curriculum, and the procedure for granting a request to parents for such access. This language is consistent with the federal *Protection of Pupil Rights Amendment*, 20 U. S. C. § 123h and its implementing regulation 34 CFR 98.

In 8 VAC 20-720-170, the textbooks section:

- The textbook selection process is streamlined, consistent with the 2008 legislation. School divisions purchasing textbooks approved by the Board of Education may either enter into a contract with the publisher or purchase on an as-needed basis. In accordance with § 22.1-241 of the *Code of Virginia*, the written contracts or purchase orders for textbooks approved by the Board are exempt from the *Virginia Public Procurement Act*, and the textbook price shall not exceed the lowest wholesale price at which the book or books involved in the contract are currently bid under contract anywhere in the United States.

- Local school boards may continue to use textbooks not approved by the Board of Education, provided that they adopt procedures governing the selection process. The selection process must include the appointment of an evaluation committee, notice to parents and opportunities for consideration of public comment, and the use of selection criteria approved by the local school board. Textbooks not approved by the Board of Education must be purchased in accordance with the *Virginia Public Procurement Act* or locally adopted procurement procedures or regulations that contain requirements for competitive purchasing.
- Local school divisions would be required to certify annually that the textbooks are selected and purchased in accordance with the *Code of Virginia* and these regulations.
- Language about the textbook fund that is no longer required by the *Code*, and other outdated and unnecessary provisions of the current regulations, would be repealed.

Upon passage of the new section governing textbooks, the current individual regulations would be simultaneously repealed.

Superintendent's Recommendation: The Superintendent of Public Instruction recommends that the Board of Education accept the proposed regulations for 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 of these regulations and passage of the section governing textbooks is expected to have a minimal fiscal or administrative impact on the Department of Education and 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 720
REGULATIONS GOVERNING
LOCAL SCHOOL BOARDS AND SCHOOL DIVISIONS

8VAC 20-720-10. Definitions

"Instructional materials" means all materials, other than textbooks, used to support instruction in the classroom, including, but not limited to, books, workbooks, and electronic media.

"Textbooks" means print or electronic media for student use that serve as the primary curriculum basis for a grade-level subject or course.

8 VAC 20-720-160. Instructional materials.

- A. Local school boards shall be responsible for the selection, approval, and utilization of instructional materials.
- B. Local school boards shall adopt policies and criteria for the selection of instructional materials that shall include, at a minimum:
 - 1. Instituting a policy regarding the rights of parents to inspect, upon request, any instructional materials used as part of the educational curriculum for students, and the procedure for granting a request by a parent for such access, in accordance with the *Protection of Pupil Rights Amendment*, 20 U. S. C. § 123h, and its implementing regulation, 34 CFR 98;
 - 2. Establishing procedures for the reconsideration of challenged materials;
 - 3. Placing special emphasis on the thorough evaluation of materials related to controversial or sensitive topics such as sex education, moral education, and religion; and
 - 4. Including in the curriculum and scheduling options for students whose parents choose to withdraw them from class for the duration of the treatment of a sensitive or controversial topic. Parents should be required to justify their requests.

8VAC20-720-170. Textbooks

- A. Textbook approval
 - 1. The Board of Education shall have the authority to approve textbooks for use in the public schools of Virginia.

2. In approving basal textbooks for reading in kindergarten and first grade, the Board shall report to local school boards those textbooks with a minimum decodability standard based on words that students can correctly read by properly attaching speech sounds to each letter to formulate the word at 70 percent or above for such textbooks, in accordance with § 22.1-239 of the *Code of Virginia*.
3. Any local school board may use textbooks not approved by the Board provided the school board selects such books in accordance with this chapter.

B. Selection of textbooks by local school boards

Local school boards shall adopt procedures for the selection of textbooks. These procedures shall include, at a minimum, the following:

1. Appointment of an evaluation committee by the local school board to review and evaluate textbooks in one or more of the subject areas.
2. Notice to parents that textbooks under consideration for approval will be listed on the school division's Web site and made available at designated locations for review by any interested citizens. Provisions shall be made for those reviewing such textbooks to present their comments and observations, if any, to the school board through locally approved procedures. Actions which are necessary to assure appropriate consideration of citizen comments and observations shall be taken and adequate time for such consideration shall be allowed.
3. Use of selection criteria that has been approved by the local school board.

C. Purchasing Board of Education approved textbooks

1. Local school divisions shall purchase textbooks approved by the Board of Education directly from the publishers of the textbooks by either entering into written term contracts or issuing purchase orders on an as-needed basis in accordance with § 22.1-241 of the *Code of Virginia*.
2. Such written contracts or purchase orders shall be exempt from the *Virginia Public Procurement Act* (§§ 2.2-4300 et seq. of the *Code of Virginia*) and from any locally adopted regulations or procedures.

D. Purchasing non-Board of Education approved textbooks

Local school divisions shall purchase non-Board of Education approved textbooks by either entering into written contracts or issuing purchase orders on an as-needed basis in accordance with locally adopted procurement procedures or regulations that contain requirements for competitive purchasing or the *Virginia Public Procurement Act*.

E. Certifications

The division superintendent and chairperson of the local school board shall annually certify to the Virginia Department of Education that:

1. All textbooks were selected and purchased in accordance with this chapter; and
2. The price paid for each textbook was not in excess of that charged elsewhere in the United States in accordance with § 22.1-241 of the *Code of Virginia*.

The certification shall include a list of all textbooks adopted by the local school board.

CHAPTER 170

REGULATIONS GOVERNING INSTRUCTIONAL MATERIALS – SELECTION AND UTILIZATION BY LOCAL SCHOOL BOARDS

~~8VAC20-170-10. Responsibility – local school boards.~~

~~The Board of Education places with local school boards the responsibility for the selection, approval, and utilization of instructional materials.~~

~~In the selection of instructional materials, the local school board is responsible for the following:~~

- ~~1. Developing local criteria for selection (the Board of Education will assist by publishing guidelines for the development of criteria);~~
- ~~2. Approving materials which are consistent with instructional goals and objectives;~~
- ~~3. Appointing a division evaluation committee which should include, when appropriate, parents, students, teachers, supervisors, and nonparent patrons;~~
- ~~4. Providing for the examination of materials by appropriate committees and individuals (local boards may choose to exempt certain types of materials from the formal evaluation process – maps, charts, games, etc.);~~
- ~~5. Providing notice to parents that books and materials under consideration for approval will be available at designated locations for review by any interested citizens. Provisions should be made for those reviewing such materials to present their comments and observations, if any, to the school board through locally approved procedures. Those actions should be taken which are necessary to assure appropriate consideration of such citizen observations and adequate time for such consideration should be allowed. Such actions might include (i) opportunity to meet with the board, or (ii) opportunity to meet with board-appointed professional committees assigned responsibility for making recommendations to the board;~~
- ~~6. Requesting special assistance in the evaluation of proposed materials, if desired, from the Department of Education;~~
- ~~7. Establishing procedures for the reconsideration of challenged materials;~~
- ~~8. Placing special emphasis on the thorough evaluation of materials related to controversial or sensitive topics such as sex education, moral education, and religion;~~
- ~~9. Including in the curriculum and schedule options for students whose parents choose to withdraw them from class for the duration of the treatment of a sensitive or controversial topic. Parents should be required to justify their requests.~~

CHAPTER 220
REGULATIONS GOVERNING TEXTBOOK ADOPTION
STATE LEVEL

~~8VAC20-220-10. Adoption period established.~~

~~Textbooks shall be adopted for a six-year period, according to a schedule to be determined by the Department of Education and approved by the Board of Education in the following areas:~~

~~1. Elementary:~~

- ~~a. Language and grammar;~~
- ~~b. Social studies;~~
- ~~c. Mathematics;~~
- ~~d. Health;~~
- ~~e. Dictionaries;~~
- ~~f. Science;~~
- ~~g. Reading;~~
- ~~h. Spelling; and~~
- ~~i. Handwriting.~~

~~2. Secondary:~~

- ~~a. Literature;~~
- ~~b. Speech;~~
- ~~c. Drama;~~
- ~~d. Journalism;~~
- ~~e. English, grammar, and composition;~~
- ~~f. Physical science;~~
- ~~g. Earth-space science;~~
- ~~h. Biology;~~
- ~~i. Chemistry;~~
- ~~j. Physics;~~
- ~~k. World history;~~
- ~~l. United States history;~~
- ~~m. United States government;~~
- ~~n. Economics;~~
- ~~o. Mathematics;~~
- ~~p. Health;~~
- ~~q. Dictionaries;~~
- ~~r. Sociology;~~
- ~~s. Geography; and~~
- ~~t. Foreign Languages.~~

~~8VAC20-220-20. Deletion from approved lists within adoption period; extension of contracts for adopted books.~~

~~An adopted book may be deleted from the approved list within the six-year period in accordance with statutory provisions; and contracts for certain books currently adopted as well as those which may be adopted from such areas as writing, spelling, and literature (anthologies) may be extended up to four years in accordance with statutory provisions.~~

~~8VAC20-220-30. Types of materials adopted.~~

~~Only those materials which are designed to provide basic support for the instructional program of a particular content area at an appropriate level will be adopted.~~

~~8VAC20-220-40. Wholesale prices.~~

~~Contracts with the publishers shall be made for all textbooks at the wholesale prices free on board publishers' nearest shipping point.~~

~~8VAC20-220-50. Allowance for delivery costs.~~

~~A percentage determined by the Board of Education will be added to the wholesale prices of textbooks, free on board publishers' nearest shipping point, to cover the cost of delivering the books to division school boards in Virginia.~~

~~8VAC20-220-60. Maximum retail prices.~~

~~A percentage, in addition to that mentioned above, shall be added to establish the maximum retail prices of textbooks.~~

~~8VAC20-220-70. Price adjustment requests.~~

~~At the time of adoption (December of even years), the Board of Education also will consider requests from publishers for adjustments in contract prices for materials already under contract but not involved in the current adoption.~~

CHAPTER 230
REGULATIONS GOVERNING TEXTBOOK ADOPTION
LOCAL LEVEL

~~8VAC20-230-10. Authority.~~

~~The Constitution of Virginia gives the Board of Education authority to adopt textbooks for use in the public schools of Virginia. To fulfill its duty, the Board adopts a multiple list of textbooks in each grade and subject in which basal adoptions are made. In turn, local school boards select materials to meet local needs from this multiple listing. In addition, the Code of Virginia provides that any local school board may use textbooks not approved by the board, provided the school board selects such books in accordance with regulations promulgated by the Board of Education.~~

~~8VAC20-230-20. Local adoptions of state-adopted texts.~~

~~Following the announcement of adoptions, the Board of Education authorizes a period of five to seven months in which localities may examine and select materials from the list chosen by the board. Such local adoptions are reported to the Department of Education on forms provided by the department.~~

~~8VAC20-230-30. Local adoptions of nonstate-adopted material.~~

~~The Board of Education has set forth the following regulations for the selection of textbooks not on the state-adopted list:~~

- ~~1. An evaluation committee shall be appointed by the school board to review and evaluate textbooks in one or more of the subject areas for which adoptions are effective beginning July 1 of odd-numbered years.~~
- ~~2. The evaluation committee shall be representative of the supervisory staff of the central office, elementary or secondary school administrators or both, and classroom teachers of the subject fields in which adoptions are to be made, and shall be nondiscriminatory with respect to sex and race.~~
- ~~3. Before recommending a textbook not on the state-adopted list, the committee shall first have examined and evaluated the appropriate textbooks on the state-adopted list.~~
- ~~4. The evaluation committee shall submit in writing its recommendations and supporting data via the division superintendent to the school board for action in sufficient time for the adoptions by the local school boards to be effective July 1 of odd-numbered years.~~

5. ~~Criteria to be used by the evaluation committee in the review and assessment of textbooks must have the official approval of the local school board. The criteria, as approved, shall be on file in the office of the local school board.~~
6. ~~The division superintendent shall certify to the Superintendent of Public Instruction or his representative, on forms prescribed by the Department of Education, a list of all books adopted by the local school board and state that such books have been adopted in full compliance with this chapter and that information as to prices paid for such books is available upon request.~~
7. ~~Evidence shall be on file in the office of the local school board that the price charged for any textbook adopted under this chapter is not in excess of that charged elsewhere in the United States.~~

~~8VAC20-230-40. Local adoptions for materials for subject areas not included in basal adoptions.~~

~~For use in vocational classes and for other subject areas in which no material is adopted, localities may select textbooks from lists of recommended texts furnished by the Department of Education.~~

CHAPTER 270

REGULATIONS GOVERNING TEXTBOOK FUND MANAGEMENT AND HANDLING ON LOCAL LEVEL

~~8VAC20-270-10. General.~~

~~Although most school systems distribute textbooks to students on a free or rental basis, some systems still use retail sales to students. In the following sections, references to "retail sales" or "unsold textbooks on hand" refer to this type of distribution. Books are secured from publishers on a consignment basis and payment is made quarterly as the books are sold. Books not sold may be held until the end of an adoption period and returned to the publisher for credit.~~

~~Only those textbooks selected by school divisions from the list of state-adopted texts are subject to the prices and regulations set forth in contracts between the publishers having books on the adopted list and the Virginia Board of Education.~~

~~8VAC20-270-20. Establishment and designation of special fund; establishment of special bank account.~~

~~A separate fund shall be established by the school board and the chief fiscal officer of the county, city, or town (of which the school board is a part), to which shall be credited all proceeds received from the sale of textbooks in the local school system. This special fund shall be designated:~~

~~County, City, or Town of.....~~

~~School Textbook Fund~~

~~The chief fiscal officer is requested to establish a special bank account titled as follows:~~

~~County, City, or Town of.....~~

~~School Textbook Fund~~

~~By.....~~

~~(Treasurer/Director of Finance or such title as he may have.)~~

~~8VAC20-270-30. Textbook sales, receipts, and disbursements; bonds for clerk and other personnel handling funds.~~

~~The school board shall designate the clerk of the school board, who shall be bonded as provided by law, to handle the sale of textbooks. Additional personnel employed to assist the clerk in handling textbook funds shall be covered by a fidelity and faithful performance bond, a copy of which shall be filed in the school board office.~~

~~The local school board shall require the clerk to deposit intact, with the treasurer or the director of finance or in any bank designated by the chief fiscal officer, all moneys received from the sale of textbooks; and the treasurer or the director of finance, in turn, will deposit these sums to the credit of the special bank account aforementioned. When ordering payments to publishers, or the payment of any expense from the proceeds of the sale of textbooks, the county, city, or town~~

school board shall issue its warrant made payable to the publisher, agency, or individual to whom the payment is being made; this warrant shall be signed by the chairman of the school board and countersigned by the clerk of that board.

In each instance, each warrant shall indicate that it is payable from the school textbook fund as set forth above. All expenditures shall be approved and a warrant in payment thereof authorized by the school board in accordance with the procedure for the expenditure of regular school funds. The procedure to be followed for the disbursement of funds credited to the school textbook fund in cities shall conform to the procedure in effect for the disbursements of school funds; the only distinction being that the school board and the chief fiscal officer shall maintain a separate fund and separate bank account for the receipts and disbursements incident to the handling of textbooks.

~~8VAC20-270-40. Accounting and records; verification of book shipments received.~~

The school board shall require the clerk of the board to maintain a record of receipts and disbursements of the textbook fund and to reconcile the balance in this fund each month with the chief fiscal officer of the county, city or town. It shall also require the maintenance of a ledger account with each publisher to which will be credited the value of books received for sale and to which will be charged all payments made to the publisher on account and all transactions for exchanged and returned books. This account shall be reconciled with the reports of unsold books on hand. The invoices received from the publishers for books shipped to the school board shall be filed in separate folders by the names of publishers. Each shipment of books received shall be verified by actual count and the date and quantity of books received should be written on the invoice opposite each title and signed by the person making the count.

~~8VAC20-270-50. School systems having free or rental textbook systems and also selling textbooks.~~

In counties, cities, and towns where free or rental textbook systems are in operation in some schools and textbooks are sold to pupils in other school systems, all textbooks purchased from the publishers should be handled through the textbook fund. Books which are used for that portion of the school system from which rental or free textbooks are furnished should be purchased from the textbook fund and be paid for with a warrant drawn on the regular school operating fund or the school textbook rental fund.

~~8VAC20-270-60. Transfers between school operating fund and textbook fund.~~

If the school board makes an appropriation for the operation of the school textbook fund, a warrant should be drawn on the regular school operating fund and deposited to the credit of the school textbook fund. If the school board authorizes the use of surplus school textbook funds for general school operation, a warrant should be drawn on the textbook fund and credited to the regular school operating fund.

~~8VAC20-270-70. Reports and payments to publishers; unsold textbooks on hand as of June 30.~~

~~Copies of reports to publishers listing all new unsold textbooks on hand and showing balances due for all books sold as of October 15, January 15, March 31, and June 30 shall be kept by the school board. The school board shall forward the original of each periodic report, together with its remittance, directly to the publishers on the dates designated. Each report to the publisher certifying unsold textbooks on hand as of the date of the report shall be certified by the persons responsible for the handling of the textbooks and the superintendent, or some person designated by the superintendent, who shall verify the accuracy of the report by an actual count of the books on hand. Unsold textbooks on hand as of June 30 of each year shall be listed on the Virginia textbook requisition (elementary and high) for the current year.~~

~~8VAC20-270-80. Books for resale to be segregated from those owned by the school board.~~

~~Books received from the publishers for resale shall be segregated and maintained under a separate inventory control from books which are owned outright by the school board and used in a rental or a free textbook system.~~

~~8VAC20-270-90. Responsibility for books placed in specific schools.~~

~~Where the school board finds it necessary to place books in a school for resale to pupils, the principal of the school (or other person approved by the school board) shall be required to sign a receipt listing the titles and retail sale prices of all books placed in his or her custody; the individual shall be responsible for the total value of books received and be required to account to the school board not less than quarterly in money and value of books returned equal to the total value of books receipted for by him.~~

~~8VAC20-270-100. Audits; preservation of records.~~

~~The school textbook fund shall be audited annually on order of the school board or by the governing board as a part of the overall county, city, or town audit. A copy of the audit report shall be furnished to the Board of Education. The records required by this chapter shall be preserved in the same manner as other public records.~~

~~8VAC20-270-110. Fire insurance on textbooks in stock.~~

~~The entire stock of textbooks shall be adequately covered by fire insurance and any loss shall be payable to the school board. A copy of the policy shall be filed with the school board and satisfactory proof of coverage submitted to the Board of Education.~~

~~8VAC20-270-120. Retail sales of textbooks to be for cash.~~

~~Textbooks shall be sold at retail for cash only.~~

~~8VAC20-270-130. Issuance of warrants between board meetings.~~

~~The school board may provide, by resolution, for the issuance of warrants drawn on the textbook fund in payment of amounts due publishers and for freight, or drayage falling due between meeting of the board. All such warrants shall be signed by the chairman and countersigned by the clerk of the school board and presented to the school board for approval at the next meeting following the issuance of such warrants.~~