

# Board of Education Agenda Item

Item: B.

Date: September 17, 2009

Topic: First Review of a Notice of Intended Regulatory Action (NOIRA) for Proposed Regulations Governing Unexcused Absences and Truancy

Presenter: Dr. Cynthia A. Cave, Director, Office of Student Services

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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: \_\_\_\_\_ (date)

## Previous Review/Action:

No previous board review/action

Previous review/action

date \_\_\_\_\_

action \_\_\_\_\_

**Background Information:** Section 22.1-258 of the *Code of Virginia* addresses school attendance issues. It requires schools to make a reasonable effort to notify parents when a student fails to report to school. This section also requires each school division to create an attendance plan for any student with five unexcused absences and to schedule a conference with parents after the sixth unexcused absence. This section further addresses the procedure for enforcement of attendance requirements.

In 2008, the Virginia Department of Education (VDOE) began collecting the number of unexcused absences as part of the Student Record Collection to comply with the reporting requirements for performance indicators for Title IV of the *No Child Left Behind Act of 2001* (NCLB). An "unexcused absence" is defined by the federal *Uniform Data Set* of the Uniform Management Information and Reporting System (UMIRS) as a school division's definition for a student's unexcused absence for one day. No federal or state criteria are applied to the definition.

Following the receipt of a citizen petition for rulemaking, the Virginia Department of Education published the petition in the Register of Regulations in the Regulatory Town Hall as required by the Administrative Process Act. Public comments were received during a 21-day public comment period. Eleven comments were received from ten individuals in support of the proposed regulations. No comments were received in opposition to the proposed regulations.

Regulations are being proposed to establish a uniform definition for “unexcused absence” and any concomitant policies, procedures, or reporting requirements.

**Summary of Major Elements:** The attached Notice of Intended Regulatory Action (NOIRA) Background Document summarizes the major elements of this proposal to create regulations governing unexcused absences and truancy.

**Superintendent's Recommendation:** The Superintendent of Public Instruction recommends that the Board of Education waive first review and authorize the VDOE staff to proceed with the requirements of the Administrative Process Act.

**Impact on Resources:** There may be an administrative impact on some local school divisions, depending upon current practice.

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



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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Virginia Department of Education
<b>Virginia Administrative Code (VAC) citation</b>	8 VAC 20-720-10
<b>Regulation title</b>	Regulations Governing Unexcused Absences and Truancy
<b>Action title</b>	New regulations to govern the collection and reporting of truancy - related data and provide guidance on school attendance policy
<b>Date this document prepared</b>	September 1, 2009

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.*

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The proposed regulatory action will govern the collection and reporting of truancy-related data, while providing comprehensive guidance on school attendance policy, including a standard definition of "unexcused absence."

### 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.*

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#### **§ 22.1-16. Bylaws and regulations generally.**

"The Board of Education may adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title."

#### **§ 22.1-258. Appointment of attendance officers; notification when pupil fails to report to school.**

Section 22.1-258 of the *Code of Virginia* requires each school division to create an attendance plan for any student with five unexcused absences and to schedule a conference with parents after the sixth unexcused absence, as shown below.

"Every school board shall have power to appoint one or more attendance officers, who shall be charged with the enforcement of the provisions of this article. Where no attendance officer is appointed by the school board, the division superintendent shall act as attendance officer."

Whenever any pupil fails to report to school on a regularly scheduled school day and no indication has been received by school personnel that the pupil's parent is aware of and supports the pupil's absence, a reasonable effort to notify by telephone the parent to obtain an explanation for the pupil's absence shall be made by the attendance officer, other school personnel, or volunteers organized by the school administration for this purpose. Any such volunteers shall not be liable for any civil damages for any acts or omissions resulting from making such reasonable efforts to notify parents and obtain such explanation when such acts or omissions are taken in good faith, unless such acts or omissions were the result of gross negligence or willful misconduct. This subsection shall not be construed to limit, withdraw, or overturn any defense or immunity already existing in statutory or common law or to affect any claim occurring prior to the effective date of this law. School divisions are encouraged to use noninstructional personnel for this notice.

Whenever any pupil fails to report to school for a total of five scheduled school days for the school year and no indication has been received by school personnel that the pupil's parent is aware of and supports the pupil's absence, and a reasonable effort to notify the parent has failed, the school principal or his designee shall make a reasonable effort to ensure that direct contact is made with the parent, either in person or through telephone conversation, by the attendance officer to obtain an explanation for the pupil's absence and to explain to the parent the consequences of continued nonattendance. The attendance officer, the pupil, and the pupil's parent shall jointly develop a plan to resolve the pupil's nonattendance. Such plan shall include documentation of the reasons for the pupil's nonattendance.

If the pupil is absent an additional day after direct contact with the pupil's parent and the attendance officer has received no indication that the pupil's parent is aware of and supports the pupil's absence, the attendance officer shall schedule a conference within ten school days with the pupil, his parent, and school personnel, which conference may include other community service providers, to resolve issues related to the pupil's nonattendance. The conference shall be held no later than fifteen school days after the sixth absence. Upon the next absence by such pupil without indication to the attendance officer that the pupil's parent is aware of and supports the pupil's absence, the school principal or his designee shall notify the attendance officer or the division superintendent, as the case may be, who shall enforce the provisions of this article by either or both of the following: (i) filing a complaint with the juvenile and domestic relations court alleging the pupil is a child in need of supervision as defined in § [16.1-228](#) or (ii) instituting proceedings against the parent pursuant to § [18.2-371](#) or § [22.1-262](#). In filing a complaint against the student, the attendance officer shall provide written documentation of the efforts to comply with the provisions of this section. In the event that both parents have been awarded joint physical custody pursuant to § [20-124.2](#) and the school has received notice of such order, both parents shall be notified at the last known addresses of the parents.

Nothing in this section shall be construed to limit in any way the authority of any attendance officer or division superintendent to seek immediate compliance with the compulsory school attendance law as set forth in this article.

Attendance officers, other school personnel or volunteers organized by the school administration for this purpose shall be immune from any civil or criminal liability in connection with the notice to parents of a pupil's absence or failure to give such notice as required by this section."

## 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.*

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Unexcused absences are linked to numerous harmful personal and social consequences, such as academic failure, school dropout, crime and violence, unemployment, substance abuse, adult criminality and incarceration, unwanted pregnancy, and social isolation (Office of Juvenile Justice and Delinquency Prevention, 2007). Due to the strong link between truancy and these negative consequences, the Virginia Department of Education has recognized that truancy "is a critical issue to address as early and effectively as possible." (*Improving School Attendance: A Resource for Virginia Schools*, Virginia Department of Education, 2005) The scope of truancy is difficult to measure. School division policies vary on how to categorize legitimate absences and unexcused

absences. In some school divisions, decisions on how to categorize absences differ at the school building level. The Department's current data collection includes the raw number of unexcused absences for each student and an indicator whether a truancy conference has been scheduled for a student after six unexcused absences. The regulations proposed will establish a uniform definition of "unexcused absence" and concomitant reporting requirements.

## 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.*

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The proposed regulations will include specific provisions regarding standard definitions of terminology and any concomitant policies, procedures, or reporting requirements.

## 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.*

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The alternative is to continue with the current practice with the Virginia Department of Education providing technical assistance.

## 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.*

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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 regulations.

Anyone wishing to submit comments may do so via the Regulatory Town Hall Web site, [www.townhall.virginia.gov](http://www.townhall.virginia.gov), or by mail, e-mail or fax to Dr. Susan FitzPatrick, Grants & Reports Manager, Safe & Drug-Free Schools Program, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804)225-2897, fax (804)786-9769, e-mail [Susan.Fitzpatrick@doe.virginia.gov](mailto:Susan.Fitzpatrick@doe.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

A public hearing will not be held to receive comments on this notice.

Following the receipt of a citizen petition for rulemaking, the Virginia Department of Education published the petition in the Register of Regulations in the Regulatory Town Hall as required by the Administrative Process Act. Public comments were received during a 21-day public comment period. Eleven comments were received from ten individuals in support of the proposed regulations. No comments were received in opposition to the proposed regulations.

## 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.*

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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.*

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The proposed regulatory action is expected to have a positive impact on the institution of the family and family stability. School attendance has been identified as a key issue in understanding and addressing the dropout rate (*Grad Nation: A Guidebook to Help Communities Tackle the Dropout Crisis*, America's Promise Alliance, 2009).