

Board of Education Agenda Item

Item: C.

Date: July 22, 2010

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 NOIRA submitted

date September 17, 2009

action Approved

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.

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. On June 29, 2010, Executive Order 14 was issued, requiring that proposed regulations go forward by 180 days from the posting of the NOIRA on the Regulatory Town Hall. The NOIRA is being resubmitted in compliance with the new timeline of the Executive Order.

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 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.



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) citation	8 VAC 20-720-10
Regulation title	Regulations Governing Unexcused Absences and Truancy
Action title	New regulations to govern the collection and reporting of truancy - related data and provide guidance on school attendance policy
Date this document prepared	July 7, 2010

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 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.

§ 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.”

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.

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.

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.

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.

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, or by mail, e-mail or fax to Jo Ann Burkholder, Safe and Drug-Free Schools Program, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 371-7586, fax (804)786-9769, e-mail Joann.Burkholder@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.

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. 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).