

# Board of Education Agenda Item

Item: \_\_\_\_\_ C. \_\_\_\_\_

Date: October 28, 2010

**Topic:** First Review of a Notice of Intended Regulatory Action (NORIA) to Repeal the *Regulations Governing the Approval of Correspondence Courses for Home Instruction* (8 VAC 20-601) and Revise the *Regulations Governing Driver Education* (8 VAC 20-340)

**Presenter:** Ms. Anne 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 1984 General Assembly adopted legislation amending the state's compulsory attendance laws (§ [22.1-254](#) of the *Code of Virginia*) to allow parents to teach their children at home in lieu of sending them to a public or private school. One of the provisions qualifying parents to instruct their children at home permitted them to enroll a child in a correspondence course approved by the Board of Education. (§ [22.1-254.1](#) of the *Code*) On July 20, 1984, the Board of Education adopted criteria for approval of correspondence courses which became effective August 1, 1984. Section [22.1-254.1](#) of the *Code* was later amended to allow academic courses to be approved by the Superintendent of Public Instruction.

The 2008 General Assembly adopted [HB 767](#) which removed the correspondence course approval requirements in § [22.1-254.1](#) so that parents could use any correspondence course of their choosing to meet this option rendering the previous approval requirement moot. As a result of this action, the

*Regulations Governing the Approval of Correspondence Courses for Home Instruction* are being repealed. However, the requirement for the approval of correspondence courses for driver education remains in § 22.1-205 of the *Code*, which reads:

F. The Board of Education shall approve correspondence courses for the classroom training component of driver education. These correspondence courses shall be consistent in quality with instructional programs developed by the Board for classroom training in the public schools....
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In order to ensure compliance with this requirement, a new section governing the approval of correspondence courses for driver education by this department will be added to the *Regulations Governing Driver Education*. By adding a new section to the *Regulations Governing Driver Education*, the process for approval of correspondence courses for driver education will be consolidated in one set of regulations.

**Summary of Major Elements:** The proposed regulatory actions repeal the *Regulations Governing the Approval of Correspondence Courses for Home Instruction* as they are obsolete and no longer required and amend the *Regulations Governing Driver Education*.

**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 impact on resources is not expected to be significant.

**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

<b>Agency name</b>	Board (Department) of Education
<b>Virginia Administrative Code (VAC) citation</b>	<u>8 VAC 20 - 340</u> <u>8 VAC 20 - 10</u>
<b>Regulation title</b>	<i>Regulations Governing Driver Education and Regulations Governing the Approval of Correspondence Courses for Home Instruction</i>
<b>Action title</b>	This action adds a new section, 8VAC 20-340-40 governing the regulation of correspondence courses to satisfy the classroom portion of driver education programs primarily used by students who are home-schooled and repeals 8 VAC 20-10.
<b>Date this document prepared</b>	October 13, 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 14 (2010) 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 1984 General Assembly adopted legislation amending the state's compulsory attendance laws (§ [22.1-254](#) of the *Code of Virginia*) to allow parents to teach their children at home in lieu of sending them to a public or private school. One of the provisions qualifying parents to home instruct their children permitted them to enroll a child in a correspondence course approved by the Board of Education. (§ [22.1-254.1](#) of the *Code*) On July 20, 1984, the Board of Education adopted criteria for approval of correspondence courses which became effective August 1, 1984. Section [22.1-254.1](#) of the *Code* was later amended to allow academic courses to be approved by the Superintendent of Public Instruction to relieve the Board of some of its administrative responsibilities.

The 2008 General Assembly adopted [HB 767](#) which removed the correspondence course approval requirements in § [22.1-254.1](#) so that parents could use any correspondence course of their choosing to meet this option rendering the previous approval requirement moot. As a result of this action, the [Regulations Governing the Approval of Correspondence Courses for Home Instruction](#) (8 VAC 20-60-10 et seq.) are now obsolete and in need of repeal.

The requirement for the approval of correspondence courses for driver education remains in § [22.1-205](#) of the *Code*. In order to ensure compliance with this requirement, a new section governing the approval of

correspondence courses for driver education by this department will be added to the [Regulations Governing Driver Education](#) (8 VAC 20-340-10 et seq.).

Consequently, the purpose of this action is to repeal one outdated set of regulations and amend another set of regulations by adding a new section.

## 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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The *Code of Virginia* in [§ 46.2-334](#) stipulates that minors at least 16 years and three months old may be issued driver's licenses if they have successfully completed a driver education course approved by the Virginia Department of Education or a course offered by a driver training school licensed under Chapter 17 ([§ 46.2-1700](#) et seq.) of this title, by the Department of Motor Vehicles. In addition, this *Code* provision requires the Board of Education to approve correspondence courses for the classroom training component of driver education that are required to be consistent in quality with instructional programs developed by the Board for classroom training in the public schools.

Section [22.1-205](#) of the *Code* requires the Board of Education to establish for the public school system a standardized program of driver education in the safe operation of motor vehicles. Such program shall consist of classroom training and behind-the-wheel driver training.

Section [22.1-16](#) of the *Code of Virginia* authorizes the Virginia Board of Education 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 the 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.*

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The proposed regulatory action is essential to protect the health, safety, or welfare of citizens in that it will ensure that courses established by the Board of Education and offered by correspondence schools in driver education will meet or exceed requirements for such programs offered in public schools. It will also help ensure that young aspiring drivers receive adequate instruction prior to seeking a driver's license.

By adding a new section to the [Regulations Governing Driver Education](#), the process for approval of correspondence courses for driver education will be consolidated in one set of regulations, which streamlines the current process.

## 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 change will repeal an outdated regulation and add a new regulation directed specifically at approving driver education courses offered by correspondence or over the Internet. These programs are currently being regulated under an obsolete set of regulations originally adopted by the Board of Education in 1985 and never updated. The need for those regulations was eliminated by an amendment to [§ 22.1-254.1](#) of the Code by the 2008 General Assembly.

## 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 considered was to continue to approve these courses under obsolete regulations intended for another purpose and earlier time. The agency believes this is the most efficient and cost-effective manner to approve these courses.

## Public participation

*Please indicate whether the agency is seeking comments on the intended regulatory action, including 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 impact of the regulations.

The agency believes there will be no change to the current reporting, recordkeeping and other administrative costs, and no impact on small businesses as defined in [§ 2.2-4007.1](#) of the Code of Virginia.

Anyone wishing to submit comments may do so via the Regulatory Townhall Web site, [www.townhall.virginia.gov](http://www.townhall.virginia.gov), or by mail, e-mail, or fax to Michelle Vucci, Director of Policy, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, fax: (804) 786-5389, [michelle.vucci@doe.virginia.gov](mailto:michelle.vucci@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, regulatory advisory panels) 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 not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach.

### 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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There is no potential impact on the family as this option has been available to parents and students since the General Assembly amended [§ 46.2-334](#) of the Code. If anything, the regulation provides parents and students with additional options to meet the requirements to obtain a driver's license and consolidates all processes related to driver education in one regulation.