

Virginia Board of Education Agenda Item



Agenda Item: D

Date: June 28, 2012

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| Title | Final Review of Emergency Amendments to Revise the <i>Regulations Governing Adult High School Programs</i> (8 VAC 20-30) and to Repeal the <i>Regulations Governing the General Achievement Diploma</i> (8 VAC 20-680) to Conform to HB 1061 and SB 489 (2012), and the Notice of Intended Regulatory Action (NOIRA) for Permanent Amendments to the Regulations | | |
| Presenter | Ms. Anne D. Wescott, Assistant Superintendent for Policy and Communications | | |
| E-mail | Anne.Wescott@doe.virginia.gov | Phone | (804) 225-2403 |

Purpose of Presentation:

Action required by state or federal law or regulation.

Previous Review or Action:

Previous review and action. Specify date and action taken below:

Date: May 24, 2012.

Action: First review.

Action Requested:

Final review: Action requested at this meeting.

Alignment with Board of Education Goals: Please indicate (X) all that apply:

| | |
|---|--|
| X | Goal 1: Expanded Opportunities to Learn |
| X | Goal 2: Accountability of Student Learning |
| | Goal 3: Nurturing Young Learners |
| | Goal 4: Strong Literacy and Mathematics Skills |
| | Goal 5: Highly Qualified and Effective Teachers and Administrators |
| X | Goal 6: Sound Policies for Student Success |
| | Goal 7: Safe and Secure Schools |
| | Other Priority or Initiative. Specify: |

Background Information and Statutory Authority:

Goal 1: The regulations as amended would expand opportunities to learn by setting forth the expectations for adults to be prepared for a career upon graduation by requiring students to earn a career credential.

Goal 2: In promulgating these regulations, the Board would establish the policies and standards necessary to ensure accountability for student learning in adult high school programs.

Goal 6: The regulations would provide the Board with the opportunity to develop and implement sound policies for student success by focusing on career readiness for adult students.

The 2012 General Assembly passed, and the Governor signed into law, HB 1061 and SB 489, which amend § 22.1-253.13:4 of the *Code of Virginia* to strengthen postsecondary education and workplace readiness opportunities for all students, and to consolidate the number of Board of Education-approved diplomas. The legislation says, in part:

F. The Board shall establish, by regulation, requirements for the award of a general achievement *adult high school* diploma for those persons who *are not subject to the compulsory school attendance requirements of § 22.1-254* and have (i) achieved a passing score on the GED examination; (ii) successfully completed an education and training program designated by the Board of Education; ~~and~~ (iii) *earned a Board of Education-approved career and technical education credential such as the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia workplace readiness skills assessment; and* (iv) satisfied other requirements as may be established by the Board for the award of such diploma.

The legislation would eliminate the General Achievement Diploma by folding it into the Adult High School Diploma, which would be re-named the General Achievement Adult High School Diploma. It would add a requirement that adult students would need to earn a Board of Education-approved career and technical education credential, such as the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia workplace readiness skills assessment in order to be awarded the diploma.

The legislation also contains a second enactment clause to require the Board of Education to adopt emergency regulations to implement these changes.

2. That the Board of Education shall eliminate technical diplomas that have not been implemented and shall promulgate regulations to implement the other provisions of this act to be effective within 280 days of its enactment.

The Administrative Process Act, in § 2.2-4011 of the *Code*, sets forth the provisions that apply to the promulgation of emergency regulations. It says, in part:

B. Agencies may also adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § [2.2-4006](#). In such cases, the agency shall state in writing the nature of the emergency and of the necessity for such action and may adopt the regulations. Pursuant to § [2.2-4012](#), such regulations shall become effective upon approval by the Governor and filing with the Registrar of Regulations.

C. All emergency regulations shall be limited to no more than twelve months in duration. During the twelve-month period, an agency may issue additional emergency regulations as needed addressing the subject matter of the initial emergency regulation, but any such additional emergency regulations shall not be effective beyond the twelve-month period from the effective date of the initial emergency regulation. If the agency wishes to continue regulating the subject matter governed by the emergency regulation beyond the twelve-month limitation, a regulation to replace the emergency regulation shall be promulgated in accordance with this article. The Notice of Intended Regulatory Action to promulgate a replacement

regulation shall be filed with the Registrar within sixty days of the effective date of the emergency regulation and published as soon as practicable, and the proposed replacement regulation shall be filed with the Registrar within 180 days after the effective date of the emergency regulation and published as soon as practicable.

Summary of Important Issues:

The following changes would be made to the *Regulations Governing Adult High School Programs* to comport with the legislation:

- The proposed regulations would specify that only students not subject to compulsory attendance could be enrolled in adult high school programs, consistent with language in the legislation. Language permitting younger students to enroll in adult high school programs under exceptional conditions would be eliminated. It should be noted that this is consistent with federal funding constraints for adult education programs.
- The regulations would set forth the requirements for a student to earn a General Achievement Adult High School Diploma by:
 1. Successfully completing the requirements to earn a General Education Development (GED) certificate,
 2. Successfully completing an education and training program designated by the Board of Education that would include successfully completing 20 standard units of credit in the following subjects, as specified in the current *Regulations Governing the General Achievement Diploma*:
 - ✓ English (4 credits),
 - ✓ Mathematics (3 credits),
 - ✓ Science (2 credits),
 - ✓ History and social science (2 credits), and
 - ✓ Electives (9 credits);
 3. Earning a Board of Education-approved career and technical education credential such as the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia workplace readiness skills assessment.
- The *Regulations Governing the General Achievement Diploma* would be repealed.

The Virginia Regulatory Town Hall document discusses the provisions of the proposed emergency regulations and the Notice of Intended Regulatory Action for permanent changes to the *Regulations Governing Adult High School Programs* and for the repeal of *Regulations Governing the General Achievement Diploma*.

Impact on Fiscal and Human Resources:

The administrative impact required in promulgating these regulations and will be absorbed within existing resources.

Timetable for Further Review/Action:

The timetable for further action will be governed by the requirements of the Administrative Process Act.

Superintendent's Recommendation:

The Superintendent of Public Instruction recommends that the Board of Education approve the proposed emergency regulations to revise the *Regulations Governing Adult High School Programs* (8 VAC 20-30) and to repeal the *Regulations Governing the General Achievement Diploma* (8 VAC 20-680); and the Notice of Intended Regulatory Action (NOIRA) for the permanent amendments to these regulations.

Regulations Governing Adult High School Programs

8 VAC 20-30-10. Responsibility.

Local school officials are responsible for evaluating and awarding credit for educational achievement, other than that earned in the high school program.

8 VAC 20-30-20. Minimum requirements for adult high school programs.

Adult high school programs are not part of the 9 through 12 high school program and shall meet the following minimum requirements:

1. Age. ~~Only those students not subject to the compulsory attendance requirements of § 22.1-254 of the Code of Virginia shall be enrolled in an adult high school program. An adult student shall be at least 18 years of age. Under circumstances which local school authorities consider justifiable, students of school age may enroll in courses offered by the adult high school. Only in exceptional circumstances should school officials permit a school-aged individual enrolled in grades 9 through 12 to earn credits toward high school graduation in adult classes. All educational alternatives must have been considered prior to placing an enrolled student in an adult class. Such students would be able to earn a diploma, as provided in 8 VAC 20-131-50, but would not be eligible to earn an adult high school diploma.~~
2. Credit.
 - a. Satisfactory completion of 108 hours of classroom instruction in a subject shall constitute sufficient evidence for one unit of credit toward a high school diploma.
 - b. When, in the judgment of the principal or the superintendent, an adult not regularly enrolled in the grades 9 through 12 high school program is able to demonstrate by examination or other objective evidence, satisfactory completion of the work, he may receive credit in accordance with policies adopted by the local school board. It is the responsibility of the school issuing the credit to document the types of examinations employed or other objective evidence used, the testing or assessment procedures, and the extent of progress in each case.
 - c. Credits earned in adult high school programs shall be transferable as prescribed in the *Regulations Establishing Standards for Accrediting Public Schools in Virginia* within the sponsoring school division and shall be transferable to public secondary schools outside of the sponsoring school division.
3. Diplomas.
 - a. A diploma, as provided in 8 VAC 20-131-50, shall be awarded to an adult student who completes all requirements of the diploma regulated by the Board of Education, with the exception of health and physical education requirements, in effect at the time he will graduate.

- b. An adult high school diploma shall be awarded to an adult student who completes the course credit requirements in effect for any Board of Education diploma, with the exception of health and physical education course requirements, at the time he first entered the ninth grade. The requirement for specific assessments may be waived if the assessments are no longer administered to students in Virginia public schools.
- c. An adult high school diploma shall be awarded to an adult student who demonstrates through applied performance assessment full mastery of the National External Diploma Program **Generalized** Competencies **Correlated with CASAS Competencies, 1996**, as promulgated by the American Council on Education and validated and endorsed by the United States Department of Education.
- d. **A General Achievement Adult High School Diploma shall be awarded to a student who is not subject to the compulsory attendance requirements of § 22.1-254 of the Code of Virginia and who:**
 - 1) **Successfully completes the General Educational Development (GED) program that meets the requirements of the Board of Education’s *Regulations Governing General Education Development Certificates* (8 VAC 20-360) and earns a GED certificate;**
 - 2) **Earns a Board of Education-approved career and technical education credential, such as the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia Workplace Readiness Skills Assessment; and**
 - 3) **Successfully completes the following courses that incorporate or exceed the applicable Standards of Learning:**

| Discipline Area | Standard Units of Credit Required |
|------------------------------------|--|
| English | 4 |
| Mathematics | 3 |
| Science | 2 |
| History and Social Sciences | 2 |
| Electives | 9 |
| TOTAL | 20 |

Courses completed to satisfy the requirements in mathematics and science shall include content in courses that incorporate or exceed the content of courses approved by the Board of Education (board) to satisfy any other board-recognized diploma.

Courses completed to satisfy the history/social science requirements shall include one unit of credit in Virginia and U.S. History and one unit of credit in Virginia and U.S. Government in courses that incorporate or exceed the content of courses approved by the board to satisfy any other board-recognized diploma.

Courses completed to satisfy the electives requirement shall include at least two sequential electives in an area of concentration or specialization, which may include career and technical education and training.

~~d. A General Achievement Diploma, as provided in 8 VAC 20-680, shall be awarded to an adult student who completes all requirements of the diploma.~~

8 VAC 20-30-30. Minimum qualifications of teachers.

Teachers teaching in the adult high school program shall be licensed and endorsed in the subject areas they teach.

8 VAC 20-30-40. Library facilities.

The adult high school program shall have library media services, science laboratories, and computer technology accessible to instructional staff and adult learners.

8 VAC 20-30-50. [Repealed]

8 VAC 20-30-60. Administration and supervision.

The adult high school program shall be under the supervision of the high school principal, assistant principal, or a qualified staff member approved by the division superintendent.

8 VAC 20-30-70. Guidance services.

The adult high school program shall have appropriate guidance services available.

DOCUMENTS INCORPORATED BY REFERENCE ([8VAC20-30](#))

~~National External Diploma Program Competencies as promulgated by the American Council on Education and validated and endorsed by the United States Department of Education
National External Diploma Program Generalized Competencies Correlated with CASAS
Competencies, Comprehensive Adult Student Assessment System EDP/CASAS, 1996.~~

Regulations Governing the General Achievement Diploma

8 VAC 20-680-10. Eligibility requirements for the General Achievement Diploma.

The General Achievement Diploma is intended to provide a diploma option for individuals who exit high school without a diploma. It should not be a first option for high school students. Individuals who meet one of the following criteria shall be eligible to earn the General Achievement Diploma:

1. Individuals who are at least 18 years of age and not enrolled in public school; or
2. Individuals who are not otherwise subject to the compulsory school attendance requirements set forth in § 22.1-254 of the Code of Virginia.

8 VAC 20-680-20. Course, credit, and assessment requirements.

A. Credit and assessment requirements for graduation with a General Achievement Diploma are as follows:

| Discipline Area | Standard Units of Credit Required |
|-----------------------------|-----------------------------------|
| English | 4 |
| Mathematics | 3 |
| Science | 2 |
| History and Social Sciences | 2 |
| Electives | 9 |
| TOTAL | 20 |

Assessment required: Achieve a passing score on the GED examination

- B. Courses completed to satisfy the requirements in mathematics and science shall include content in courses that incorporate or exceed the content of courses approved by the Board of Education (board) to satisfy any other board recognized diploma.
- C. Courses completed to satisfy the history/social science requirements shall include one unit of credit in Virginia and U.S. History and one unit of credit in Virginia and U.S. Government in courses that incorporate or exceed the content of courses approved by the board to satisfy any other board recognized diploma.
- D. Courses completed to satisfy the electives requirement shall include at least two sequential electives in an area of concentration or specialization, which may include career and technical education and training.
- E. The required number of standard units of credit may be earned by enrolling in:
1. A public school if the individual meets the age requirements;
 2. A community college or other institution of higher education;

3. An adult high school program; or

4. Correspondence, distance learning, and online courses.

F. Diploma candidates shall participate in GED preparation.



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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

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|--|--|
| Agency name | Virginia Board of Education |
| Virginia Administrative Code (VAC) citation | 8 VAC 20-30 and 8 VAC 20-680 |
| Regulation title | <i>Regulations Governing Adult High School Programs and Regulations Governing the General Achievement Diploma</i> |
| Action title | Update to comport with legislative changes made by HB 1061 and SB 489 (2012) to amend the <i>Regulations Governing Adult High School Programs</i> and to repeal <i>Regulations Governing the General Achievement Diploma</i> |
| Date this document prepared | June 19, 2012 |

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

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*.

Preamble

The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006.

- 1) Please explain why this is an emergency situation as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

The 2012 General Assembly passed, and the Governor signed into law, HB 1061 and SB 489, which amend § 22.1-253.13:4 of the *Code of Virginia* to strengthen postsecondary education and workplace readiness opportunities for all students, and to consolidate the number of Board of Education-approved diplomas. The

legislation includes a second enactment clause that requires the Board to promulgate emergency regulations to implement the provisions of this legislation.

The legislation would eliminate the General Achievement Diploma by folding it into the Adult High School Diploma, which would be re-named the General Achievement Adult High School Diploma. The legislation would add a requirement that adult students would need to earn a Board of Education-approved career and technical education credential, such as the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia workplace readiness skills assessment in order to be awarded the diploma. The legislation further provides that the General Achievement Adult High School Diploma would include the following requirements:

- Achievement of a passing score on the GED examination;
- Successful completion of an education and training program designated by the Board of Education;
- Achievement of a Board of Education-approved career and technical education credential such as the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia workplace readiness skills assessment; and
- Completion of other requirements as may be established by the Board.

This document discusses the provisions of the proposed emergency regulations and the Notice of Intended Regulatory Action for permanent changes to the *Regulations Governing Adult High School Programs*, as well as the proposed emergency regulatory action to repeal the *Regulations Governing the General Achievement Diploma*.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

Section [22.1-16](#) of the *Code of Virginia* states that 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 Title 22.1.

HB 1061 and SB 489, passed by the 2012 General Assembly and signed by the Governor, amend § 22.1-253.13:4 of the *Code of Virginia* to require the Board of Education to promulgate these changes to the regulations to implement the provisions of the legislation.

In addition, Section 2.2-4011 of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006.

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.

As indicated above, the emergency regulations are necessary to implement the provisions of HB 1061 and SB 489. The legislation would eliminate the General Achievement Diploma by folding it into the Adult High School Diploma, which would be re-named the General Achievement Adult High School Diploma. The legislation would add a requirement that adult students would need to earn a Board of Education-approved career and technical education credential, such as the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia workplace readiness skills assessment in order to be awarded the diploma. The legislation further provides that the General Achievement Adult High School Diploma would include the following requirements:

- Achievement of a passing score on the GED examination;
- Successful completion of an education and training program designated by the Board of Education ;
- Achievement of a Board of Education-approved career and technical education credential such as the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia workplace readiness skills assessment; and
- Completion of other requirements as may be established by the Board.

The emergency regulations are designed to enhance preparedness for the workplace and for postsecondary education, and strengthen educational and career opportunities for adult students. They also support expanded learning opportunities for adult students by enhancing workplace skills through the attainment of a career and technical education credential for adult students earning the General Achievement Adult High School Diploma.

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.

The second enactment clause in HB 1061 and SB 489 requires the promulgation of emergency regulations. The emergency regulations provide for a foundation for a quality education for adult students receiving a General Achievement Adult High School Diploma so that they will be successful and productive citizens and are prepared for postsecondary education and for the workplace.

Substance

Please detail any changes that will be proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.

For changes to existing regulation(s), use this chart:

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change, intent, and likely impact of proposed requirements |
|--------------------------------|---|---|--|
| 8 VAC 20-30-20 | | Minimum requirements for adult high school diplomas | Consistent with the legislation, the proposed regulations would specify that only students not subject to compulsory |

| | | | |
|-----------------|--|---|--|
| | | | <p>attendance could be enrolled in adult high school programs, consistent with language in the legislation. Language permitting younger students to enroll in adult high school programs under exceptional conditions would be eliminated.</p> <p>The regulations would set forth the requirements for a student to earn a General Achievement Adult High School Diploma by:</p> <ol style="list-style-type: none"> 1. Successfully completing the requirements to earn a General Education Development (GED) certificate; 2. Successfully completing an education and training program designated by the Board of Education by completing 20 standard units of credit in the following subjects: English (4 credits), mathematics (3 credits), science (2 credits), history and social science (2 credits), and electives (9 credits), as specified in the current <i>Regulations Governing the General Achievement Diploma</i>; and 3. Earning a Board of Education-approved career and technical education credential such as the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia workplace readiness skills assessment. |
| 8 VAC 20-680-10 | | Eligibility for the General Achievement diploma | The legislation would eliminate the General Achievement Diploma; therefore, the associated regulations would need to be repealed. |
| 8 VAC 20-680-20 | | Course, credit, and assessment requirements | The legislation would eliminate the General Achievement Diploma; therefore, the associated regulations would need to be repealed. |

Other amendments to the regulations will be considered in response to public comment and any additional direction from the Board of Education as the permanent regulations move through the regulatory process.

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 describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

HB 1061 and SB 489 include a second enactment clause that states: "That the Board of Education shall eliminate technical diplomas that have not been implemented and shall promulgate regulations to implement the other provisions of this act to be effective within 280 days of its enactment." Therefore, there are no alternatives to this regulatory action.

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 meeting is to be held to receive comments on this notice.

Please also indicate, pursuant to your Public Participation Guidelines, whether a Regulatory Advisory Panel or a Negotiated Rulemaking Panel has been used in the development of the emergency regulation and whether it will also be used in the development of the permanent regulation.

The agency is seeking comments on the regulation that will permanently replace this emergency regulation, including but not limited to 1) ideas to be considered in the development of the permanent replacement regulation, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) the 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) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to Michelle Vucci; P.O. Box 2120; Richmond, Va. 23218; (p) 804-225-2092; (f) 804-530-4502; or SOACOMMENTS@doe.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time. The Board of Education did not convene a Regulatory Advisory Panel or a Negotiated Rulemaking Panel in the development of the emergency regulation, nor is either panel expected to be used in the development of the permanent regulation.

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.

These amendments support the family by strengthening postsecondary and workplace preparedness for adult students. The amendments promote economic self-sufficiency by ensuring that adult students are well-prepared for postsecondary opportunities in the workplace.