

Virginia Board of Education Agenda Item



Agenda Item: J

Date: February 28, 2013

Title	First Review of Proposed Amendments to the <i>Guidelines for Considering and Approving Requests for Pre-Labor Day Openings</i>		
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:

No previous review or action.

Action Requested:

Action will be requested at a future meeting. Specify anticipated date below:

Date: March 28, 2013

Action: Final review

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

	Goal 1: Accountability for Student Learning
	Goal 2: Rigorous Standards to Promote College and Career Readiness
	Goal 3: Expanded Opportunities to Learn
	Goal 4: Nurturing Young Learners
	Goal 5: Highly Qualified and Effective Educators
X	Goal 6: Sound Policies for Student Success
	Goal 7: Safe and Secure Schools
	Other Priority or Initiative. Specify:

Goal 6: The review of the request to waive the requirement that the school year would begin prior to Labor Day, pursuant to § 22.1-79.1 of the *Code of Virginia* relates to the goal that the Board will provide leadership in the development and implementation of state and federal laws and regulations in ways that provide sound policies for student success.

Background Information and Statutory Authority:

Section 22.1-79.1 of the *Code of Virginia* prohibits local school boards from adopting school calendars that require schools to open prior to Labor Day unless a waiver is granted by the Board for "good cause." The conditions under which the Board may grant such waivers are outlined in the *Code*. The provision that permits the Board to approve a waiver for an experimental or innovative program may be found in § 22.1-79.1 as follows:

§ 22.1-79.1. Opening of the school year; approvals for certain alternative schedules.

- A. Each local school board shall set the school calendar so that the first day students are required to attend school shall be after Labor Day. The Board of Education may waive this requirement based on a school board certifying that it meets one of the good cause requirements of subsection B.
- B. For purposes of this section, "good cause" means:
1. A school division has been closed an average of eight days per year during any five of the last 10 years because of severe weather conditions, energy shortages, power failures, or other emergency situations;
 2. A school division is providing, in the school year for which the waiver is sought, an instructional program or programs in one or more of its elementary or middle or high schools, excluding Virtual Virginia, which are dependent on and provided in one or more elementary or middle or high schools of another school division that qualifies for such waiver. However, any waiver granted by the Board of Education pursuant to this subdivision shall only apply to the opening date for those schools where such dependent programs are provided;
 3. A school division is providing its students, in the school year for which the waiver is sought, with an experimental or innovative program which requires an earlier opening date than that established in subsection A of this section and which has been approved by the Department of Education pursuant to the regulations of the Board of Education establishing standards for accrediting public schools. However, any waiver or extension of the school year granted by the Board of Education pursuant to this subdivision or its standards for accrediting public schools for such an experimental or innovative program shall only apply to the opening date for those schools where such experimental or innovative programs are offered generally to the student body of the school. For the purposes of this subdivision, experimental or innovative programs shall include instructional programs that are offered on a year-round basis by the school division in one or more of its elementary or middle or high schools; or
 4. A school division is entirely surrounded by a school division that has an opening date prior to Labor Day in the school year for which the waiver is sought. Such school division may open schools on the same opening date as the surrounding school division....

The *Regulations Establishing Standards for Accrediting Public Schools in Virginia*, at [8 VAC 20-131-290.D](#), permit local school boards to seek approval to implement experimental or innovative programs under the following conditions:

- D. With the approval of the local school board, local schools seeking to implement experimental or innovative programs, or both, that are not consistent with these standards shall submit a waiver request, on forms provided, to the board for evaluation and approval prior to implementation. The request must include the following:
1. Purpose and objectives of the experimental/innovative programs;
 2. Description and duration of the programs;
 3. Anticipated outcomes;

4. Number of students affected;
5. Evaluation procedures; and
6. Mechanisms for measuring goals, objectives, and student academic achievement....

In 1998, the Board adopted the following definitions for experimental and innovative programs in the *Guidance Document Governing Certain Provisions of the Regulations Establishing Standards of Accrediting Public Schools in Virginia (8 VAC 20-131)*:

"An experimental program shall be a program which is operated under controlled circumstances and which is designed to test and to establish, by objective measures, the positive cognitive effect of an educational theory."

"An innovative program shall be a program shown to produce a positive educational effect but which does not meet standard operating or procedural requirements."

The Board's *Guidelines for Considering and Approving Requests for Pre-Labor Day Openings* were last revised on June 23, 2011.

Summary of Important Issues: Several changes are proposed to the guidelines to clarify and give more direction to local school boards that wish to request a waiver to open school prior to Labor Day. The major changes include the following:

- Language would be added to define, describe, and give examples of innovative and experimental programs. An *experimental program* is defined, for purposes of a waiver, as a program which is operated under controlled circumstances and which is designed to test and to establish, by objective measures, the positive cognitive effect of an educational theory. The experimental program must be offered generally to the student body of the school. An *innovative program* is defined, for purposes of a waiver, as an educational program that implements creative, original, or new ideas or methods and are likely to result in better outcomes for student participants. The innovative program must be offered generally to the student body of the school.
- In accordance with § 22.1-79.1, of the *Code of Virginia*, experimental or innovative programs also shall include instructional programs which are offered on a year-round basis by a school division in one or more of its elementary or middle or high schools.
- Experimental or innovative programs must ensure parental and community involvement.
- Examples of experimental or innovative programs are provided that *may* warrant consideration of a waiver if provided to the general student body. Examples include:
 - Year-round school programs which may operate on a single-track or a multiple-track or in some other manner designed by the school division. In a single-track year-round program, all students in the school use the same school calendar. In a multiple-track year-round program, groups of students attend the same school, but at different times.
 - Programs that provide early college or dual-enrollment opportunities that are dependent on the schedules of partnering colleges, universities, or other divisions that open prior to Labor Day

- Programs with colleges, community organizations, or informal educational institutions that enhance students' educational opportunities and are only available prior to Labor Day
 - Adding at least 10 instructional days to the school year and, without adjusting the opening date from the prior year, would result in the school closing after the last day in the spring testing window
 - College Partnership Laboratory School if the school is dependent on college personnel to operate or staff the school
 - Full-time virtual school in which a significant number of virtual courses are contracted from providers that begin course instruction prior to Labor Day
 - Programs implemented with other school divisions that open prior to Labor Day that are designed to enhance academic achievement and close achievement gaps, address fiscal issues or common support structures, such as a common curriculum or common staff development
- A provision would be added to require the waiver to be submitted at least 120 days prior to the expected implementation date to give the Board adequate time to consider the waiver and for the local school board to make any recommended changes that might be necessary. As most local school boards set their calendars well in advance of the beginning of the school year, this should not pose a hardship on school divisions.
 - Language would be added to give local school boards additional guidance in providing a comprehensive description of the program in the waiver request. It would require the local school boards to describe how the school meets the definition of experimental or innovative or year-round school and its goals and objectives, including the title of the program or activity, a program description, the rationale for the program, the number and names of all schools involved, the names of any other organizations, including colleges, universities, and other post-secondary organizations and community organizations that are involved in the program, the grades served, the names of any other school divisions involved in the program, and other relevant information.
 - The waiver request would need to include an explanation of the necessity for opening prior to Labor Day, including the proposed school year calendar's opening and closing dates as well as a general description of the school calendar and duration of the waiver. This explanation must show that this request meets the "good cause" requirements of §22.1-79.1. B.3, *Code of Virginia*.
 - The proposed amendments would require the local school board to include information about anticipated outcomes, including an explanation as to why it is believed the program will be a success. It would also need to include demographic information describing the students who will be attending and the community the school serves, as well as evaluation procedures and mechanisms for measuring goals, including an analysis of data to determine how this program will support an expected increase in proficiency in student academic achievement and how the program will reduce any achievement gap.

Impact on Fiscal and Human Resources:

The impact on state funds for this request is expected to be negligible.

Timetable for Further Review/Action:

The final review of this request will be presented to the Board of Education on March 28.

Superintendent's Recommendation:

The Superintendent of Public Instruction recommends that the Board of Education accept for first review the proposed revised *Guidelines for Considering and Approving Requests for Pre-Labor Day Openings*.

Guidelines for Considering and Approving Requests for Pre-Labor Day Openings

Section [22.1-79.1](#) of the *Code of Virginia* governs the conditions under which the Board of Education may grant a waiver to a local school board to open school before Labor Day.

§ [22.1-79.1](#). Opening of the school year; approvals for certain alternative schedules.

A. Each local school board shall set the school calendar so that the first day students are required to attend school shall be after Labor Day. The Board of Education may waive this requirement based on a school board certifying that it meets one of the good cause requirements of subsection B.

B. For purposes of this section, "good cause" means:

1. A school division has been closed an average of eight days per year during any five of the last 10 years because of severe weather conditions, energy shortages, power failures, or other emergency situations;

2. A school division is providing, in the school year for which the waiver is sought, an instructional program or programs in one or more of its elementary or middle or high schools, excluding Virtual Virginia, which are dependent on and provided in one or more elementary or middle or high schools of another school division that qualifies for such waiver. However, any waiver granted by the Board of Education pursuant to this subdivision shall only apply to the opening date for those schools where such dependent programs are provided;

3. A school division is providing its students, in the school year for which the waiver is sought, with an experimental or innovative program which requires an earlier opening date than that established in subsection A of this section and which has been approved by the Department of Education pursuant to the regulations of the Board of Education establishing standards for accrediting public schools. However, any waiver or extension of the school year granted by the Board of Education pursuant to this subdivision or its standards for accrediting public schools for such an experimental or innovative program shall only apply to the opening date for those schools where such experimental or innovative programs are offered generally to the student body of the school. For the purposes of this subdivision, experimental or innovative programs shall include instructional programs that are offered on a year-round basis by the school division in one or more of its elementary or middle or high schools; or

4. A school division is entirely surrounded by a school division that has an opening date prior to Labor Day in the school year for which the waiver is sought. Such school division may open schools on the same opening date as the surrounding school division....

The guidelines for waiving the requirement that local school divisions open after Labor Day are as follows:

- The initial request for a waiver to approve an experimental or innovative program, including a year-round school program, shall be submitted to the Board of Education for approval. Once the

initial approval is granted by the Board of Education, the Superintendent of Public Instruction is hereby delegated authority to continue to approve the waiver in subsequent years unless the Board places conditions or time limits on its approval, or unless the conditions under which the approval was granted to the local school board are changed.

- ~~The Superintendent of Public Instruction is hereby delegated the authority by the Board of Education to waive, on its behalf, all other requests from local school boards to begin school prior to Labor Day where “good cause” requirements have been certified by the school division to the satisfaction of the Superintendent.~~
- ~~The local school board shall submit annually to the Superintendent of Public Instruction certification of eligibility for a waiver of the “good cause” requirements of §[22.1-79.1](#), *Code of Virginia*. Such certification shall be made in a manner prescribed by the Superintendent of Public Instruction. School divisions must maintain evidence that such “good cause” conditions have been met.~~
- ~~To request approval of a waiver for weather related or other emergency conditions, the local school board shall submit information annually indicating that the school division has been closed for an average of eight days per year in any five of the past ten years because of severe weather conditions, energy shortages, power failures, or other emergency conditions.~~
- ~~To request approval of a waiver for a dependent program, the local school board shall submit information annually indicating that each school for which a waiver is requested provides an instructional program, excluding Virtual Virginia, which is dependent upon a school in another division that qualifies for a waiver.~~
- ~~To request initial approval of a waiver for a pre-Labor Day opening for an experimental or innovative program, the local school division shall submit such request to the Board of Education on a form prescribed by the Superintendent of Public Instruction. Such a request shall set forth a thorough explanation of the experimental or innovative program and the specific reasons that compel a pre-Labor Day opening. The following procedures apply to the applications for experimental or innovative programs:~~
 - a. ~~The experimental or innovative program must be approved by the Board pursuant to its *Regulations Establishing Standards for Accrediting Public Schools in Virginia* [8 VAC 20-131-290](#), which specifies that the request must include:~~
 - 1) ~~Purpose and objectives of the experimental/innovative/year round programs~~
 - 2) ~~Description and duration~~
 - 3) ~~Anticipated outcomes~~
 - 4) ~~Number of students affected~~
 - 5) ~~Evaluation procedures and mechanisms for measuring goals, objectives, and student academic achievement~~
 - 6) ~~Mechanisms for measuring goals, objectives, and student academic achievement.~~
 - b. ~~Any waiver or extension of the school year granted by the Board pursuant to the experimental or innovative program provisions contained in § [22.1-79.1](#) of the *Code*, or the Board’s *Regulations Establishing Standards for Accrediting Public Schools in Virginia* shall~~

~~apply only to the opening date for those schools where such experimental or innovative programs are offered generally to the student body of the school.~~

- ~~e. In accordance with § 22.1-79.1, of the Code, experimental or innovative programs shall include instructional programs which are offered on a year-round basis by the school division in one or more of its elementary or middle or high schools.~~
- ~~d. To request approval of a waiver for a pre-Labor Day opening for an experimental or innovative program subsequent to the Board of Education's initial approval, unless the Board of Education has specified conditions under which the waiver request must go back to the Board for approval, the local school board shall submit information annually to the Superintendent of Public Instruction indicating that each school for which a waiver was granted is continuing to operate under the conditions for which the waiver was granted.~~
- ~~To request initial approval of a waiver to open before Labor Day by a school division that is completely surrounded by another school division that has been approved for a waiver, the school division shall submit the request to the Superintendent of Public Instruction by letter signed by the superintendent and the chairman of the local school board. The Superintendent of Public Instruction shall determine that the school division is completely surrounded by another school division, and that the other school division has been granted a waiver to open before Labor Day. Once the initial waiver is granted, the local school board shall submit information annually to the Superintendent of Public Instruction indicating that the conditions under which a waiver was granted have not changed.~~
- ~~The Board of Education may request the Superintendent of Public Instruction to provide a report to the Board regarding the status of certifications submitted and waivers granted under the above-stated policies. Such report shall be provided in a manner and at a time as agreed to by the Superintendent and the President of the Board and shall include information deemed pertinent by the Superintendent of Public Instruction.~~

Guidelines for Considering and Approving Requests for Pre-Labor Day Openings

Statutory Authority

Section [22.1-79.1](#) of the *Code of Virginia* governs the conditions under which the Board of Education may grant a waiver to a local school board to open school prior to Labor Day.

§ [22.1-79.1](#). Opening of the school year; approvals for certain alternative schedules.

A. Each local school board shall set the school calendar so that the first day students are required to attend school shall be after Labor Day. The Board of Education may waive this requirement based on a school board certifying that it meets one of the good cause requirements of subsection B.

B. For purposes of this section, "good cause" means:

1. A school division has been closed an average of eight days per year during any five of the last 10 years because of severe weather conditions, energy shortages, power failures, or other emergency situations;

2. A school division is providing, in the school year for which the waiver is sought, an instructional program or programs in one or more of its elementary or middle or high schools, excluding Virtual Virginia, which are dependent on and provided in one or more elementary or middle or high schools of another school division that qualifies for such waiver. However, any waiver granted by the Board of Education pursuant to this subdivision shall only apply to the opening date for those schools where such dependent programs are provided;

3. A school division is providing its students, in the school year for which the waiver is sought, with an experimental or innovative program which requires an earlier opening date than that established in subsection A of this section and which has been approved by the Department of Education pursuant to the regulations of the Board of Education establishing standards for accrediting public schools. However, any waiver or extension of the school year granted by the Board of Education pursuant to this subdivision or its standards for accrediting public schools for such an experimental or innovative program shall only apply to the opening date for those schools where such experimental or innovative programs are offered generally to the student body of the school. For the purposes of this subdivision, experimental or innovative programs shall include instructional programs that are offered on a year-round basis by the school division in one or more of its elementary or middle or high schools; or

4. A school division is entirely surrounded by a school division that has an opening date prior to Labor Day in the school year for which the waiver is sought. Such school division may open schools on the same opening date as the surrounding school division. . . .

The Board of Education will consider the following guidelines in approving requests of local school boards to open one or more schools prior to Labor Day.

Waiver by Certification

The Board of Education delegates to the Superintendent of Public Instruction the authority to approve, on its behalf, a local school board's request for a waiver to open all schools in the division prior to Labor Day if the school division meets one of the following good cause requirements of subsection § 22.1-79.1.B.

- The school division has been closed an average of eight days per year during any five of the last 10 years because of severe weather conditions, energy shortages, power failures, or other emergency situations.
- The school division is entirely surrounded by a school division that has an opening date prior to Labor Day in the school year for which the waiver is sought. Such school division may open schools on the same opening date as the surrounding school division.

Waiver by Board of Education Action

The Board of Education will consider a local school board's request for a waiver to open one or more schools in its division prior to Labor Day if one of the following good cause requirements of subsection § 22.1-79.1.B. are met. The Board will not provide advisory opinions or hypothetical waivers. The local school board must certify that if granted a waiver, the division intends to provide the program in the school year for which the waiver is being sought.

- The school division is providing an instructional program or programs in the schools for which the waiver is requested, excluding *Virtual Virginia*, which are dependent on and provided in one or more schools of another school division that qualifies for a waiver to open prior to Labor Day. Any waiver granted by the Board of Education pursuant to this provision shall *only* apply to the opening date for those schools where such dependent programs are provided.
- The school division is providing its students with an experimental or innovative program, which *requires* the school to open prior to Labor Day. Any waiver or extension of the school year granted by the Board of Education pursuant to this provision shall only apply to the opening date for those schools where such experimental or innovative programs are offered generally to the student body of the school.
- The school division is offering experimental or innovative programs that are offered on a year-round basis in the schools for which a waiver is being requested. Any waiver granted by the Board of Education pursuant to this provision shall only apply to those schools where the year-round experimental or innovative programs are offered generally to the student body of the school.

Experimental and Innovative Program Considerations

- An *experimental program* is defined, for purposes of a waiver, as a program which is operated under controlled circumstances and which is designed to test and to establish, by objective measures, the positive cognitive effect of an educational theory. The experimental program must be offered generally to the student body of the school.

- An *innovative program* is defined, for purposes of a waiver, as an educational program that implements creative, original, or new ideas or methods and are likely to result in better outcomes for student participants. The innovative program must be offered generally to the student body of the school.
- In accordance with § 22.1-79.1, of the *Code of Virginia*, experimental or innovative programs also shall include instructional programs which are offered on a year-round basis by a school division in one or more of its elementary or middle or high schools.
- Experimental or innovative programs must ensure parental and community involvement.
- Examples of experimental or innovative programs offered generally to the student body of the school that *may* warrant consideration of a waiver include:
 - Year-round school programs which may operate on a single-track or a multiple-track or in some other manner designed by the school division. In a single-track year-round program, all students in the school use the same school calendar. In a multiple-track year-round program, groups of students attend the same school, but at different times.
 - Programs that provide early college or dual-enrollment opportunities that are dependent on the schedules of partnering colleges, universities, or other divisions that open prior to Labor Day
 - Programs with colleges, community organizations, or informal educational institutions that enhance students' educational opportunities and are only available prior to Labor Day
 - Adding at least 10 instructional days to the school year and, without adjusting the opening date from the prior year, would result in the school closing after the last day in the spring testing window
 - College Partnership Laboratory School if the school is dependent on college personnel to operate or staff the school
 - Full-time virtual school in which a significant number of virtual courses are contracted from providers that begin course instruction prior to Labor Day
 - Programs implemented with other school divisions that open prior to Labor Day that are designed to enhance academic achievement and close achievement gaps, address fiscal issues or common support structures, such as a common curriculum or common staff development

Application for Waiver

- The initial request for a waiver to approve an experimental or innovative program, including a year-round school program, shall be submitted to the Board of Education for approval. Once the initial approval is granted by the Board of Education, the Superintendent of Public Instruction is hereby delegated authority to continue to approve the waiver in subsequent years unless the Board places conditions or time limits on its approval, or unless the conditions under which the approval was granted to the local school board are changed.
- The local school board shall submit annually to the Superintendent of Public Instruction certification of eligibility for a waiver of the “good cause” requirements of §[22.1-79.1](#), *Code of Virginia*. Such certification shall be made in a manner prescribed by the Superintendent of Public Instruction. School divisions must maintain evidence that such “good cause” conditions

have been met.

- To request approval of a waiver for weather-related or other emergency conditions, the local school board shall submit information annually indicating that the school division has been closed for an average of eight days per year in any five of the past ten years because of severe weather conditions, energy shortages, power failures, or other emergency conditions.
- To request initial approval of a waiver to open before Labor Day by a school division that is completely surrounded by another school division that has been approved for a waiver, the school division shall submit the request to the Superintendent of Public Instruction by letter signed by the superintendent and the chairman of the local school board. The Superintendent of Public Instruction shall determine that the school division is completely surrounded by another school division, and that the other school division has been granted a waiver to open before Labor Day. Once the initial waiver is granted, the local school board shall submit information annually to the Superintendent of Public Instruction indicating that the conditions under which a waiver was granted have not changed.
- To request approval of a waiver for a dependent program, the local school board shall submit information annually indicating that each school for which a waiver is requested provides an instructional program, excluding Virtual Virginia, which is dependent upon a school in another division that qualifies for a waiver.
- To request initial approval of a waiver for a pre-Labor Day opening for an experimental or innovative program, the local school division shall submit such request to the Board of Education on a form prescribed by the Superintendent of Public Instruction at least 120 calendar days prior to the expected implemented date. Such a request shall set forth a thorough explanation of the experimental or innovative program and the specific reasons that compel a pre-Labor Day opening. The following procedures apply to the initial application for experimental or innovative programs:
 - a. The experimental or innovative program must be approved by the Board pursuant to its *Regulations Establishing Standards for Accrediting Public Schools in Virginia* [8 VAC 20-131-290](#). The request must include:
 - 1) The names of the participating schools and the school division requesting the waiver.
 - 2) The purpose and objectives of the experimental/innovative/year-round program: Describe how the school meets the definition of experimental or innovative or year-round school and its goals and objectives. Include the title of the program or activity, a program description, the rationale for the program, the number and names of all schools involved, the names of any other organizations, including colleges, universities, and other postsecondary organizations and community organizations that are involved in the program, the grades served, the names of any other school divisions involved in the program, and other relevant information.
 - 3) An explanation of the necessity for opening prior to Labor Day, including the proposed school year calendar's opening and closing dates as well as a general description of the school calendar and duration of the waiver. This explanation must show that this request meets the "good cause" requirements of §22.1-79.1. B.3, *Code of Virginia*.

- 4) Anticipated outcomes, including an explanation as to why it is believed the program will be a success.
- 5) Number of students affected, including demographic information describing the students who will be attending and the community the school serves.
- 6) Evaluation procedures including mechanisms for measuring goals and objectives, and analysis of data, to determine how this program will support an expected increase in proficiency in student academic achievement and any achievement gap.
- 7) Other anticipated outcomes.
- 8) Any other information that will support the request for a Pre-Labor Day waiver.

Each pre-Labor Day waiver request must be approved by the local school board and signed and dated by the chairman of the school board and the school superintendent and forwarded to Superintendent of Public Instruction.

- b. Any waiver or extension of the school year granted by the Board pursuant to the experimental or innovative program provisions contained in § [22.1-79.1](#) of the *Code of Virginia*, or the Board's *Regulations Establishing Standards for Accrediting Public Schools in Virginia* shall apply only to the opening date for those schools where such experimental or innovative programs are offered generally to the student body of the school.
- c. To request approval of a waiver for a pre-Labor Day opening for an experimental or innovative program subsequent to the Board of Education's initial approval, unless the Board of Education has specified conditions under which the waiver request must go back to the Board for approval, the local school board shall submit information annually to the Superintendent of Public Instruction as part of the Pre-Labor Day waiver self-certification process for public schools with pre-Labor Day waivers.

Reports to the Board of Education

- The Board of Education may request the Superintendent of Public Instruction to provide a report to the Board regarding the status of certifications submitted and waivers granted under the above-stated policies. Such report shall be provided in a manner and at a time as agreed to by the Superintendent and the President of the Board and shall include information deemed pertinent by the Superintendent of Public Instruction.
- Any information required to be submitted to the Superintendent of Public Instruction for a pre-Labor Day waiver shall be submitted to the:

Office of Policy
Virginia Department of Education
P.O. Box 2120
Richmond, VA 23218-2120
Policy@doe.virginia.gov
804-225-2092