

Virginia Board of Education Agenda Item



Agenda Item: D

Date: June 27, 2013

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| Title | Final Review to Repeal <i>Regulations Governing Substitute Teachers</i> (8 VAC 20-640), <i>Regulations for Conducting Division-Level Academic Reviews</i> (8 VAC 20-700), and <i>Regulations Governing the Process for Submitting Proposals to Consolidate School Divisions</i> (8 VAC 20-710), Pursuant to SB 1201 (Fast Track) | | |
| Presenter | Ms. Anne D. Wescott, Assistant Superintendent for Policy and Communications | | |
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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 23, 2013

Action: First Review

Action Requested:

Final review: Action requested at this meeting.

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

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| | 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 |
| | Goal 6: Sound Policies for Student Success |
| | Goal 7: Safe and Secure Schools |
| X | Other Priority or Initiative. Specify: To comply with SB 1201 (2013) |

Background Information and Statutory Authority:

On October 22, 2012, Governor McDonnell announced a regulatory reform initiative to “repeal regulations that are unnecessary or no longer in use, reduce unnecessary regulatory burdens on individuals, businesses, and other regulated groups, and identify statutes that require unnecessary or overly burdensome regulations.”

Three Board of Education regulations were identified as meeting these criteria, as they duplicate requirements already set forth in the *Code of Virginia: Regulations Governing Substitute Teachers* (8 VAC 20-640), *Regulations for Conducting Division-Level Academic Reviews* (8 VAC 20-700), and *Regulations Governing the Process for Submitting Proposals to Consolidate School Divisions* (8 VAC 20-710). However, § 22.1-302 of the *Code* requires the Board to promulgate regulations governing temporarily employed teachers (substitute teachers); § 22.1-25 of the *Code* requires the Board to

promulgate regulations about the consolidation of school divisions; and the second enactment of Chapter 965 of the Acts of Assembly of 2004, related to division-level academic reviews, required the Board to promulgate emergency regulations for division-level academic reviews. The emergency regulations have since been replaced by permanent regulations.

The Governor proposed legislation to eliminate the statutory requirements for these regulations. SB 1201 (McDougle), which was passed unanimously by the 2013 General Assembly and signed by the Governor, includes the following language:

§ 22.1-25. How school divisions made.

~~...D. Consistent with its~~ *the authority of the Board* pursuant to Article VIII, Section 5 of the Constitution of Virginia to designate school divisions in the Commonwealth of such geographic size and school-age population as will best promote the realization of the standards of quality, ~~the Board shall promulgate regulations consistent with the provisions of this section that provide for a process whereby school divisions~~ *local school boards* may submit proposals for the consolidation of school divisions *to the Board of Education*. ~~Such regulations shall provide for, among other things, a public hearing process to be conducted by the applicant school divisions shall conduct one or more public hearings.~~ *Prior to the submission of a consolidation proposal, the submitting school board shall give notice to the public and hearing process to be conducted by the applicant school divisions shall conduct one or more public hearings.*

School divisions submitting proposals for consolidation shall include such information and data as may be ~~required by the Board~~ *necessary to support their proposal...*

§ 22.1-302. Written contracts required; execution of contracts; qualifications of temporarily employed teachers; rules and requirements.

~~...B. The Board of Education shall promulgate regulations regarding temporarily~~ *Temporarily* employed teachers, as defined in this section, ~~which shall provide that such teachers be at least eighteen~~ *18* years of age and ~~that they shall hold a high school diploma or a general educational development (GED) certificate.~~

However, local school boards shall establish employment qualifications for temporarily employed teachers ~~which that may exceed the Board's regulations~~ *these requirements* for the employment of such teachers. School boards shall also seek to ensure that temporarily employed teachers who are engaged as long-term substitutes ~~shall~~ exceed baseline employment qualifications...

2. That the second enactment of Chapter 965 of the Acts of Assembly of 2004 is repealed.

Chapter 965 of the 2004 Acts of Assembly includes the following language:

§ 22.1-253.13:3. Standard 3. Accreditation, other standards and evaluation.

~~...F. Each local school board shall maintain schools that meet~~ *are fully accredited pursuant to the* standards of accreditation as prescribed by the Board of Education. The accreditation status of all schools in each local school division shall be reviewed annually in public session.

When the Board of Education has obtained evidence through the school academic review process that the failure of schools within a division to achieve full accreditation status is related to division level failure to implement the Standards of Quality, the Board may require a division level academic review. After the conduct of such review and within the time specified by the Board of Education, each school board shall submit for approval by the Board a corrective action ~~plans for any plan,~~ consistent with criteria established by the Board and setting forth specific actions and a schedule designed to ensure that schools within its school division ~~that have been designated as not meeting the criteria for determining effectiveness as approved by the Board~~ achieve full accreditation status. Such corrective action plans shall be part of the relevant school division's six-year improvement plan pursuant to § [22.1-253.13:6](#)....

§ [22.1-253.13:8](#). These standards to be the only standards of quality; provision of services; Board of Education to seek compliance.

...The Board of Education shall have authority to seek school division compliance with the foregoing standards of quality. When the Board of Education determines that a school division has failed or refused, and continues to fail or refuse, to comply with any such standard, the Board shall notify the Attorney General. ~~It shall be the duty of the Attorney General to file, in the name of the Board of Education in may petition~~ the circuit court having jurisdiction in the school division, ~~a petition for a writ of mandamus directing and requiring compliance with such standards by the appropriate party or parties defendant to mandate or otherwise enforce compliance with such standard, including the development or implementation of any required corrective action plan that a local school board has failed or refused to develop or implement in a timely manner.~~

2. That the Board of Education shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

Summary of Important Issues:

SB 1201, passed by the 2013 General Assembly, eliminates the statutory requirements for the Board to promulgate three sets of regulations. The three sets of regulations are no longer necessary, as the major provisions of the regulations simply reiterate what is in statute. Repealing these three sets of regulations comports with the Governor's regulatory reform initiative and is in keeping with the Board's ongoing work to update, consolidate, or eliminate regulations whenever possible.

Impact on Fiscal and Human Resources:

The impact on fiscal and human resources of repealing these regulations would be negligible, as the regulations essentially just restate what is in the law.

Timetable for Further Review/Action:

Upon action by the Board of Education, staff will post this on the Virginia Regulatory Town Hall for executive review by the Attorney General's Office, the Department of Planning and Budget, the Secretary of Education, and the Governor. Upon completion of the executive review process, this will be posted in the *Virginia Register* and after a 30-day public comment period, the repeal of these regulations will become final.

Superintendent's Recommendation:

The Superintendent of Public Instruction recommends that the Board approve the repeal of the *Regulations Governing Substitute Teachers* (8 VAC 20-640), *Regulations for Conducting Division-*

Level Academic Reviews (8 VAC 20-700), and Regulations Governing the Process for Submitting Proposals to Consolidate School Divisions (8 VAC 20-710)

**Regulations Governing Substitute Teachers
(8 VAC 20-640)**

~~8 VAC 20-640-10. Minimum requirements for substitute teachers.~~

~~Substitute teachers must:~~

- ~~1. Be a minimum of 18 years of age (21 years of age preferred);~~
- ~~2. Possess good moral character;~~
- ~~3. Have earned a high school diploma or GED; and~~
- ~~4. Attend orientation to school policies and procedures conducted by the local school division.~~

Regulations for Conducting Division-Level Academic Reviews (8 VAC 20-700)

~~8 VAC 20-700-10. Definitions.~~

~~The following words and terms when used in this regulation shall have the following meanings unless the context clearly indicates otherwise:~~

~~"Department" means the Virginia Department of Education.~~

~~"Division level academic review" means the process used to analyze a school division's systems and practices to determine the degree to which the local school board is meeting its responsibilities under the Standards of Quality.~~

~~"External review" means a division level academic review conducted by an organization or agency at the request of a local school board.~~

~~8 VAC 20-700-20. Criteria for selection for review.~~

~~The Board of Education shall consider the following criteria in selecting school divisions for division-level academic reviews:~~

- ~~1. The school division's accountability determination for student achievement as required in federal law;~~
- ~~2. The percentage of students attending schools that are not fully accredited in the division exceeds the statewide average; and~~
- ~~3. School academic review findings in the division report the failure of the division's schools to reach full accreditation is related to the school board's noncompliance with the Standards of Quality.~~

~~8 VAC 20-700-30. Structure of the review.~~

~~A. All division level academic reviews shall be conducted in accordance with procedures adopted by the Board of Education, which may include, but are not limited to, on-site reviews, interviews of school division personnel, review and observation of operational practices, and the analysis of data related to compliance with state and federal laws and regulations.~~

~~B. The Department of Education is authorized to contract with organizations or agencies to conduct division level academic reviews.~~

~~C. Reports of the academic review findings shall be given to the division superintendent, the chair of the local school board, and the Board of Education.~~

~~8 VAC 20-700-40. Division improvement plans and corrective actions.~~

~~A. School divisions shall develop division improvement plans, including corrective actions for increasing student achievement and correcting any areas of noncompliance determined through the~~

~~division-level academic review. The school board shall hold a public hearing on the improvement plan at least 15 days prior to the approval of the plan by the board. These plans shall be approved by the local school board and submitted to the Board of Education for approval within 60 business days of the issuance of the division-level academic review report. Upon Board of Education approval, the division improvement plan and corrective actions shall become part of the school division's divisionwide comprehensive, unified, long-range plan required by the Standards of Quality.~~

~~B. The division superintendent and chair of the local school board may request an extension of the due date for the division improvement plan and corrective actions for good cause shown by appearing before the Board of Education to explain the rationale for the request and provide evidence that a delay will not have an adverse impact upon student achievement.~~

~~C. The Board of Education shall monitor the implementation of the division improvement plan and corrective actions developed by a school division as part of the division-level academic review process. This plan must include a schedule for reporting the school division's progress toward completion of the corrective actions to the Board of Education and the public. Any school division not implementing corrective actions, not correcting areas of noncompliance, or failing to develop, submit, and implement required plans and status reports shall be required to report its lack of action directly to the Board of Education and the public.~~

~~D. Areas of noncompliance that remain uncorrected shall be reported in the Board of Education's Annual Report to the Governor and General Assembly on the Condition and Needs of Public Schools in Virginia. The Board of Education may take additional action to seek compliance with school laws pursuant to the relevant provisions of the Code of Virginia.~~

~~8 VAC 20-700-50. External reviews.~~

~~A. The Board of Education may accept a division-level review conducted by an organization or agency upon the request of a local school board if the review meets or exceeds the requirements for reviews conducted by the department as prescribed in 8VAC20-700-30. Agencies that conduct these reviews must employ individuals whose qualifications meet or exceed those of individuals who serve as department representatives for the purpose of conducting academic reviews. The Board of Education shall monitor the implementation of any required corrective actions developed by the school division as prescribed in 8VAC20-700-40.~~

~~B. Requests for approval of an external review process submitted to the board must include, at a minimum, the following documentation:~~

- ~~1. A description of the organization or agency that will conduct the review;~~
- ~~2. The scope and dates of the review;~~
- ~~3. Qualifications of the individuals who will conduct the review; and~~
- ~~4. Certification from the chairman of the local school board and division superintendent that the review will meet or exceed the requirements for academic reviews adopted by the board.~~

~~C. Upon completion of the external review process, the division superintendent shall submit a copy of the final report provided by the reviewer to the Department of Education within 60 days of receipt of the report and comply with the required follow-up activities prescribed in 8VAC20-700-40, including a review of the report in a public meeting of the school board prior to submission.~~

Regulations Governing the Process for Submitting Proposals to Consolidate School Divisions (8 VAC 20-710)

~~8 VAC 20-710-10. Definitions.~~

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

~~"Governing body" or "local governing body" means the board of supervisors of a county, council of a city, or council of a town, responsible for appropriating funds for such locality, as the context may require.~~

~~"School board" means the school board that governs a school division.~~

~~8 VAC 20-710-20. Administration.~~

~~A. The school divisions as they existed on July 1, 1978, shall be and remain the school divisions of the Commonwealth until further action of the Board of Education taken in accordance with the provisions of these regulations and § 22.1-25 of the Code of Virginia.~~

~~B. No school division shall be consolidated without the consent of the school board and the governing body of the county or city affected or, if a town comprises the school division, of the town council.~~

~~C. Notice of any change in the composition of a school division proposed by the Board of Education shall be given by the Superintendent of Public Instruction, on or before January 1 of the year in which the composition of such school division is to be changed, to the clerks of the school board and of the governing body involved and to each member of the General Assembly.~~

~~D. The Board of Education shall consider the following criteria in determining appropriate school divisions:~~

- ~~1. The school age population of the school division proposed to be divided or consolidated;~~
- ~~2. The potential of the proposed school division to facilitate the offering of a comprehensive program for kindergarten through grade 12 at the level of the established standards of quality;~~
- ~~3. The potential of the proposed school division to promote efficiency in the use of school facilities and school personnel and economy in operation;~~
- ~~4. Anticipated increase or decrease in the number of children of school age in the proposed school division;~~
- ~~5. Geographical area and topographical features as they relate to existing or available transportation facilities designed to render reasonable access by pupils to existing or contemplated school facilities; and~~

~~6. The ability of each existing school division to meet the standards of quality with its own resources and facilities or in cooperation with another school division or divisions if arrangements for such cooperation have been made.~~

~~**8 VAC 20-710-30. Consolidation process.**~~

~~A. Local school divisions requesting to be consolidated shall submit a proposal to the Board of Education by September 1 of the year prior to the year they wish to consolidate.~~

~~B. Each proposal for consolidation shall include the following information and data:~~

- ~~1. The criteria set forth in 8VAC20-710-20 D;~~
- ~~2. Evidence of the cost savings to be realized by the consolidation;~~
- ~~3. A plan for the transfer of title to school board property to the resulting combined school board governing the consolidated division;~~
- ~~4. Procedures and a schedule for the proposed consolidation, including completion of current division superintendent and school board member terms;~~
- ~~5. A plan for proportional school board representation of the localities comprising the new school division, including details regarding the appointment or election processes currently ensuring such representation and other information as may be necessary to evidence compliance with federal and state laws governing voting rights;~~
- ~~6. Evidence of local support for the proposed consolidation;~~
- ~~7. A plan for maintaining and/or combining schools;~~
- ~~8. A plan to continue meeting the standards of accreditation; and~~
- ~~9. Documentation that both governing bodies and both school boards consent to the proposed consolidation.~~

~~C. Prior to the adoption of any plan to consolidate school divisions, each school division involved in the consolidation shall:~~

- ~~1. Post such plan on the division's Internet website if practicable;~~
- ~~2. Make a hard copy of the plan available for public inspection and copying; and~~
- ~~3. Conduct at least one public hearing to solicit public comment on the consolidation plan.~~



Fast Track Proposed Regulation Agency Background Document

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| Agency name | Board of Education |
| Virginia Administrative Code (VAC) citation | <u>8VAC20-640</u> |
| Regulation title | <i>Regulations Governing Substitute Teachers</i> |
| Action title | In response to SB 1201, passed by the 2013 General Assembly, the Board of Education proposes to repeal this regulation. |
| Date this document prepared | June 14, 2013 |

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*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The Governor's 2012 Regulatory Reform Initiative was established to "repeal regulations that are unnecessary or no longer in use, reduce unnecessary regulatory burdens on individuals, businesses, and other regulated groups, and identify statutes that require unnecessary or overly burdensome regulations." Three Board of Education regulations were identified as meeting these criteria, as they duplicate requirements already set forth in the *Code of Virginia*, including *Regulations Governing Substitute Teachers* (8 VAC 20-640). However, the language in § 22.1-302 of the *Code* requires the Board to promulgate regulations governing temporarily employed teachers (substitute teachers).

The Governor proposed legislation to eliminate the statutory requirements for the Board of Education to promulgate these regulations. The legislation, SB 1201 (McDougle), which was passed unanimously by the 2013 General Assembly and signed by the Governor, eliminated references to the Board of Education in § 22.1-302 of the *Code*.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

None

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The Virginia Board of Education is taking final action to repeal *Regulations Governing Substitute Teachers*, 8VAC20-640, on June 27, 2013.

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.

SB 1201, which was passed unanimously by the 2013 General Assembly and signed by the Governor, eliminates language in § 22.1-302(B) that requires the Board of Education to promulgate regulations about substitute teachers. The bill says, in part:

~~"B. The Board of Education shall promulgate regulations regarding temporarily~~ *Temporarily* employed teachers, as defined in this section, ~~which shall provide that such teachers be at least eighteen~~ 18 years of age and ~~that they shall~~ hold a high school diploma or a general educational development (GED) certificate.

However, local school boards shall establish employment qualifications for temporarily employed teachers ~~which that~~ may exceed the Board's regulations *these requirements* for the employment of such teachers. School boards shall also seek to ensure that temporarily employed teachers who are engaged as long-term substitutes ~~shall~~ exceed baseline employment qualifications..."

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

Repealing this regulation is necessary to comport with the Governor's Regulatory Reform Initiative.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Repeal of the regulation is not expected to be controversial because SB 1201 passed the General Assembly unanimously, and there was no opposition from any of the education organizations or other entities during the General Assembly. The regulations simply duplicate the provisions already in the Code.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.) Please be sure to define any acronyms.

None. This would simply repeal regulations that duplicate provisions of the Code.

Issues

Please identify the issues associated with the proposed regulatory action, including:
 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
 3) *other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

The regulations duplicate language in the Code and are unnecessary.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

N/A

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

N/A

Regulatory flexibility analysis

Pursuant to §2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Repealing unnecessary and duplicative regulations is the most flexible alternative that was considered.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

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| Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures | None |
| Projected cost of the <i>new regulations or changes to existing regulations</i> on localities. | None |
| Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>. | N/A |
| Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million. | N/A |
| All projected costs of the <i>new regulations or</i> | None |

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| <p>changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p> | |
| <p>Beneficial impact the regulation is designed to produce.</p> | <p>Elimination of a duplicative and unnecessary regulation.</p> |

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The alternative would be to maintain the regulation.

Family impact

Please assess the 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.

None

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the **pre-emergency** regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

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

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change, intent, rationale, and likely impact of proposed requirements |
|------------------------|--|--|--|
| 8VAC20-640-10 | | Minimum requirements for substitute teachers | Repeal the section because it duplicates what is in the <i>Code</i> . |



Fast Track Proposed Regulation Agency Background Document

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|--|---|
| Agency name | Board of Education |
| Virginia Administrative Code (VAC) citation | 8 VAC 20-700 |
| Regulation title | <i>Regulations for Conducting Division-Level Academic Reviews</i> |
| Action title | In response to SB 1201, passed by the 2013 General Assembly, the Board of Education proposes to repeal this regulation. |
| Date this document prepared | June 14, 2013 |

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*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The Governor's 2012 Regulatory Reform Initiative was established to "repeal regulations that are unnecessary or no longer in use, reduce unnecessary regulatory burdens on individuals, businesses, and other regulated groups, and identify statutes that require unnecessary or overly burdensome regulations." Three Board of Education regulations were identified as meeting these criteria. The *Regulations for Conducting Division-Level Academic Reviews* simply outline the process and procedures by which the Board of Education conducts the review and does not prescribe requirements on the division that is being regulated. However, there was a second enactment clause in Chapter 965 of the 2004 Acts of Assembly that required the Board to promulgate emergency regulations, which the Board did, and subsequently replaced with permanent regulations.

The Governor proposed legislation to eliminate the statutory requirements for the Board of Education to promulgate these regulations. The legislation, SB 1201 (McDougle), which was passed unanimously by the 2013 General Assembly and signed by the Governor, eliminated references to the Board of Education's responsibility for promulgating the emergency regulations (and subsequently the permanent regulations).

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

None

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The Virginia Board of Education is taking final action to repeal *Regulations for Conducting Division-Level Academic Reviews*, 8VAC20-700, on June 27, 2013.

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.

SB 1201, which was passed unanimously by the 2013 General Assembly and signed by the Governor, eliminates language in § 22.1-25(D) that requires the Board of Education to promulgate regulations about division-level academic reviews. The bill says, in part:

"2. That the second enactment of Chapter 965 of the Acts of Assembly of 2004 is repealed."

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

Repealing this regulation is necessary to comport with the Governor's Regulatory Reform Initiative.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Repeal of the regulation is not expected to be controversial because SB 1201 passed the General Assembly unanimously, and there was no opposition from any of the education organizations or other entities during the General Assembly. The regulations simply duplicate the provisions already in the Code.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.) Please be sure to define any acronyms.

None. The regulations are unnecessary.

Issues

Please identify the issues associated with the proposed regulatory action, including:
1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
3) *other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

The regulations are unnecessary.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

N/A

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

N/A

Regulatory flexibility analysis

Pursuant to §2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Repealing unnecessary and duplicative regulations is the most flexible alternative that was considered.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

| | |
|---|------|
| Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures | None |
| Projected cost of the new regulations or changes to existing regulations on localities. | None |
| Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations. | N/A |
| Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million. | N/A |
| All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. | None |

| | |
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| Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations. | |
| Beneficial impact the regulation is designed to produce. | Elimination of a duplicative and unnecessary regulation. |

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The alternative would be to maintain the unnecessary regulation.

Family impact

Please assess the 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.

None

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the **pre-emergency** regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

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

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change, intent, rationale, and likely impact of proposed requirements |
|------------------------|--|---------------------|--|
| 8VAC20-700-10 | | Definitions | Repeal the section because it is unnecessary. |

| | | | |
|---------------|--|-----------------------------------|---|
| 8VAC20-700-20 | | Criteria for selection for review | Repeal the section because it is unnecessary. |
| 8VAC20-700-30 | | Structure of the review | Repeal the section because it is unnecessary. |
| 8VAC20-700-40 | | External reviews | Repeal the section because it is unnecessary. |



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Fast Track Proposed Regulation Agency Background Document

| | |
|--|---|
| Agency name | Board of Education |
| Virginia Administrative Code (VAC) citation | <u>8VAC20-710</u> |
| Regulation title | <i>Regulations Governing the Process for Submitting Proposals to Consolidate School Divisions</i> |
| Action title | In response to SB 1201, passed by the 2013 General Assembly, the Board of Education proposes to repeal this regulation. |
| Date this document prepared | June 14, 2013 |

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*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The Governor's 2012 Regulatory Reform Initiative was established to "repeal regulations that are unnecessary or no longer in use, reduce unnecessary regulatory burdens on individuals, businesses, and other regulated groups, and identify statutes that require unnecessary or overly burdensome regulations." Three Board of Education regulations were identified as meeting these criteria, as they duplicate requirements already set forth in the *Code of Virginia*, including *Regulations Governing the Process for Submitting Proposals to Consolidate School Divisions* (8 VAC 20-710). However, the language in § 22.1-25 of the *Code* requires the Board to promulgate regulations about the consolidation of school divisions.

The Governor proposed legislation to eliminate the statutory requirements for the Board of Education to promulgate these regulations. The legislation, SB 1201 (McDougle), which was passed unanimously by the 2013 General Assembly and signed by the Governor, eliminated references to the Board of Education's responsibility for promulgating these regulations in § 22.1-25 of the *Code*.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

None

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The Virginia Board of Education is taking final action to repeal *Regulations Governing the Process for Submitting Proposals to Consolidate School Divisions*, 8VAC20-710, on June 27, 2013.

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.

SB 1201, which was passed unanimously by the 2013 General Assembly and signed by the Governor, eliminates language in § 22.1-25(D) that requires the Board of Education to promulgate regulations about the consolidation of school divisions. The bill says, in part:

"D.. Consistent with ~~its~~ the authority of the Board pursuant to Article VIII, Section 5 of the Constitution of Virginia to designate school divisions in the Commonwealth of such geographic size and school-age population as will best promote the realization of the standards of quality, ~~the Board shall promulgate regulations consistent with the provisions of this section that provide for a process whereby school divisions~~ local school boards may submit proposals for the consolidation of school divisions to the Board of Education. Such regulations shall provide for, among other things, a public ~~Prior to the submission of a consolidation proposal, the submitting school board shall give notice to the public and hearing process to be conducted by the applicant school divisions shall conduct one or more public hearings.~~

School divisions submitting proposals for consolidation shall include such information and data as may be required by the Board necessary to support their proposal..."

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

Repealing this regulation is necessary to comport with the Governor's Regulatory Reform Initiative.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Repeal of the regulation is not expected to be controversial because SB 1201 passed the General Assembly unanimously, and there was no opposition from any of the education organizations or other entities during the General Assembly. The regulations simply duplicate the provisions already in the Code.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.) Please be sure to define any acronyms.

None. This would simply repeal regulations that duplicate provisions of the Code.

Issues

Please identify the issues associated with the proposed regulatory action, including:
 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
 3) *other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

The regulations duplicate language in the Code and are unnecessary.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

N/A

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

N/A

Regulatory flexibility analysis

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| 500 full-time employees or has gross annual sales of less than \$6 million. | |
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| Beneficial impact the regulation is designed to produce. | Elimination of a duplicative and unnecessary regulation. |

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|-------------------------------|---|----------------------------|---|
| 8VAC20-710-10 | | Definitions | Repeal the section because it is unnecessary. |
| 8VAC20-710-20 | | Administration | Repeal the section because it is unnecessary. |
| 8VAC20-710-30 | | Consolidation process | Repeal the section because it is unnecessary. |