

Virginia Board of Education Agenda Item



Agenda Item: G

Date: July 25, 2013

Title	Report on Options Regarding Parental Notification Related to Controversial or Sensitive Materials		
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Purpose of Presentation:

For information only. No action required.

Previous Review or Action:

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

June 27, 2013 - Received a Report on Surveys Regarding Parental Notification Related to Controversial or Sensitive Materials

Action Requested:

No action requested.

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:

Background Information and Statutory Authority:

Goal 6: Based on concerns expressed by the public, the Board of Education is working to determine if and/or how to proceed in developing regulations to address use of controversial and/or sensitive instructional materials in the classroom.

At its meeting on February 28, 2013, the Virginia Board of Education approved proposed revisions to the [Regulations Governing Local School Boards and School Divisions \(8 VAC 20-720\)](#) that require local school boards that adopt *textbooks* other than those approved by the Board of Education to seek from the publishers of such books a certification of content accuracy and an agreement to correct, at the publishers' expense, any content or editorial errors. Another section within the same Regulations addresses the selection and utilization of *instructional materials* by local school boards:

[8VAC20-720-160](#). Instructional materials.

A. Local school boards shall be responsible for the selection and utilization of instructional materials.

B. Local school boards shall adopt policies and criteria for the selection of instructional materials that shall include, at a minimum:

1. The rights of parents to inspect, upon request, any instructional materials used as part of the educational curriculum for students, and the procedure for granting a request by a parent for such access, in accordance with the Protection of Pupil Rights Amendment, 20 USC § 1232H, and its implementing regulation, 34 CFR Part 9;
2. The basis upon which a person may seek reconsideration of the local school board's selection of instructional materials, including but not limited to materials that might be considered sensitive or controversial, and the procedures for doing so; and
3. Pursuant to § [22.1-253.13:7](#) of the Code of Virginia, clear procedures for handling challenged controversial materials.

During the February meeting, Board members discussed whether or not the section on instructional materials ([8VAC20-720-160](#)) should also include language related to parental notification, alternative materials, and/or opt-out provisions.

In order to assist in future decision making, the Department of Education, on behalf of the Board of Education, collected information from school divisions regarding their policies on selecting and utilizing instructional materials, with specific reference to:

- Advance parental notification of sensitive or controversial materials, and
- Opportunities for parents to request alternative materials for their children.

The Department also sought input from the membership of the Virginia School Boards Association (VSBA), the Virginia Education Association (VEA), the Virginia Parent-Teacher Association (PTA), the Virginia Association for Elementary School Principals (VAESP) and the Virginia Association for Secondary School Principals (VASSP) regarding policies within their school divisions on selecting and utilizing instructional materials, especially related to the same two items.

From August 1, 2012, to June 15, 2013, the Board of Education received comments delivered during public comment periods preceding Board meetings as well as 54 e-mails and 3 letters from 44 individuals, urging the Board to extend the parental notification and opt-out provisions of the existing Family Life Education regulations to other subject areas. The Board has continued to receive public comment and correspondence on this issue.

At its regular meeting on June 27, 2013, the Board of Education received a report on the results of the two surveys. One hundred eight (108) school divisions and all 5 professional organizations responded in time to have their responses included in the report.

School Division Survey Responses

Most school divisions (98%) reported that they have policies related to the selection and utilization of instructional materials. Of those responding:

1. About half (48%) indicated that their policies require parents to receive advance notice prior to the use of potentially sensitive or controversial materials in the classroom.
 - a. The time frame for the advance notification varied, with most divisions responding that it occurred either just prior to use of the materials (31%) or that there was no specified time frame (39%).
 - b. Most divisions that provide advance notification (62%) indicated they included with the notification a description of the topics, vocabulary, or content that was sensitive or controversial.
2. The definition of “sensitive or controversial materials” varied among school divisions. The most frequent references indicated that:
 - a. There was no formal definition in place (32%); or
 - b. The definition was based on descriptions related to Family Life Education (24%).
3. Most school divisions that had definitions responded that they arrived at the definition by using either:
 - a. Their school board policy development process (20%); or
 - b. Policy guidelines provided by the Virginia School Boards Association (15%).
4. Most responding school divisions (74%) reported they have policies in place that allow students to be excused from all or part of classroom instruction related to sensitive or controversial materials.
 - a. Most (82%) reported that a parent’s or guardian’s permission is required for a student to opt out of using certain materials or engaging in certain assignments.
 - b. Most (69%) reported that alternate materials or assignments were required if a student is permitted to opt out.
5. In terms of the need for statewide regulations requiring *advance notification to parents* about the intended use of sensitive or controversial materials,
 - a. Many school divisions (47%) responded that there would be no benefits or need for them.
 - b. Among the perceived *benefits* reported were:
 - i. Consistency across the Commonwealth (26%);
 - ii. Guidance for making local decisions (11%);
 - iii. While regulations are not necessary, a definition of “sensitive or controversial” would be helpful (8%);
 - iv. More awareness by parents (3%).
 - c. Seventeen school divisions (17%) indicated there would be no burdens associated with statewide regulations.
 - d. Among the perceived *burdens* reported were:
 - i. Difficulty of imposing a statewide definition on values determined at the local level (32%)
 - ii. More administrative work or fiscal burdens for school personnel (29%)
6. In terms of the need for statewide regulations requiring the development of *options for alternative materials* in cases where sensitive or controversial materials are used or topics are discussed,
 - a. Most school divisions (60%) responded that there would be no benefit to them or they did not think it was not the state’s role to make such decisions.
 - b. Among the perceived *benefits* reported were:
 - i. Consistency across the Commonwealth (18%); and

- ii. Guidance for making local decisions (11%).
 - c. Fifteen school divisions (16%) indicated there would be no burdens associated with statewide regulations.
 - d. Among the perceived *burdens* reported were:
 - i. More administrative work or fiscal burdens for school personnel (41%);
 - ii. Interference with local authority (13%);
 - iii. Creation of unintended consequences (12%);
 - iv. Interference with instruction (5%); and
 - v. Difficulty of interpreting or applying a statewide definition of values determined at the local level (4%).
7. Many school divisions (47%) had no summary comments. Responses from those that did provide a summary comment generally fell into these categories:
- a. There is no need for a statewide policy; these decisions should be made at the local level and local policies are adequate (21%).
 - b. Parental notification and/or opt-out provisions already exist in local policy (12%).
 - c. Such regulations would be an unfunded mandate that adds to the administrative burden in schools (7%).
 - d. There is no need for the state to regulate an area that is not of substantial concern across the entire Commonwealth (5%).

Professional Organization Responses

All organizations responded that their members were aware of their school division policies related to the selection and utilization of instructional materials. Responses to the remaining questions varied.

The Virginia PTA felt that parents should be notified in advance of the intended use of sensitive or controversial materials in the classroom, and that statewide regulations would be an acceptable way to require this.

The Virginia Association of Elementary School Principals responded that parents have the right to know and should be given an opportunity to preview sensitive material, but that determining what is sensitive or controversial would be burdensome as personal views on such matters vary. The organization felt that statewide regulations would have the benefits of creating open communication among stakeholders, but it would be burdensome to anticipate all the materials and lessons that might be deemed sensitive or controversial and to interact with parents on all these issues. Additional concerns expressed included the possibility that a parent might request to opt out of an entire required unit of study or object to a certain pedagogy, and ask for alternative materials or instruction.

The Virginia Association of Secondary School Principals responded that its members had not observed problems with the local processes that are already in place in many schools. They also felt that state definitions or regulations would not be appropriate or necessary, and if promulgated, would lead to additional time and expenses for school personnel. The organization recommended that local processes should be maintained, and the state should respect that localities have varying priorities.

The Virginia Education Association felt it was impractical for the State Board of Education to set meaningful guidelines on what are and are not sensitive or controversial materials because such guidelines would be viewed as either too restrictive or not restrictive enough.

The Virginia School Boards Association had no further comments.

Summary of Important Issues:

Following the report provided to the Board of Education on June 27, 2013, President Foster asked Superintendent of Public Instruction Patricia I. Wright and staff at the Department of Education to develop some options for the Board to consider in determining if there should be further action on the matter of statewide regulations on parental notification and opt-out provisions as they relate to the use of sensitive or controversial materials in the classroom. The following options are offered for consideration. All proposed options would require local school boards to develop policies related to parental notification. None of the proposed options provides a definition of “sensitive or controversial” materials, leaving that decision to local authorities.

A. Amend the *Regulations Establishing Standards for Accrediting Public Schools in Virginia* (8 VAC 20-131 et seq.) (Standards of Accreditation or SOA)

Section 8 VAC 20-131-270 of the SOA addresses school and community communications. Item B of this section states:

[8 VAC 20-131-270](#). School and community communications.

....

B. At the beginning of each school year, each school shall provide to its students' parents or guardians information on the availability of and source for receiving:

1. The learning objectives developed in accordance with the provisions of [8 VAC 20-131-70](#) to be achieved at their child's grade level or, in high school, a copy of the syllabus for each of their child's courses, and a copy of the school division promotion, retention, and remediation policies;
2. The Standards of Learning applicable to the child's grade or course requirements and the approximate date and potential impact of the child's next SOL testing; and
3. An annual notice to students in all grade levels of all requirements for Standard, Standard Technical, Advanced Studies, Advanced Technical and Modified Standard Diplomas, and the board's policies on promotion and retention as outlined in [8 VAC 20-131-30](#).

The division superintendent shall report to the department compliance with this subsection through the pre-accreditation eligibility procedures in [8 VAC 20-131-290](#).

One option for consideration would be to add language to Section B, Item #1, requiring schools to provide to parents at the beginning of the school year notice about any sensitive or explicit materials to be used in courses. Possible language includes the following:

1. The learning objectives developed in accordance with the provisions of [8 VAC 20-131-70](#) to be achieved at their child's grade level; or, in high school, a copy of the syllabus for each of their child's courses, including a notice to parents about any sensitive or explicit materials that may be included in the course, the textbook, or any supplemental instructional materials; and a copy of the school division promotion, retention, and remediation policies;

B. Amend the *Regulations Governing Local School Boards and School Divisions* (8 VAC 20-720)

Section 8 VAC 20-720-160 of the *Regulations Governing Local School Boards and School Districts* addresses instructional materials. The section states:

[8 VAC 20-720-160](#). Instructional materials.

A. Local school boards shall be responsible for the selection and utilization of instructional materials.

B. Local school boards shall adopt policies and criteria for the selection of instructional materials that shall include, at a minimum:

1. The rights of parents to inspect, upon request, any instructional materials used as part of the educational curriculum for students, and the procedure for granting a request by a parent for such access, in accordance with the Protection of Pupil Rights Amendment, 20 USC § 1232H, and its implementing regulation, 34 CFR Part 9;

2. The basis upon which a person may seek reconsideration of the local school board's selection of instructional materials, including but not limited to materials that might be considered sensitive or controversial, and the procedures for doing so; and

3. Pursuant to § [22.1-253.13:7](#) of the Code of Virginia, clear procedures for handling challenged controversial materials.

A second option would be to add language to Section B, Item #3, requiring reasonable advance notice of the intended use of controversial materials. Possible language includes the following:

3. Pursuant to § [22.1-253.13:7](#) of the Code of Virginia, clear procedures for handling challenged controversial materials. *Such procedures should include reasonable advance notice to parents and students of the intended use of controversial materials*

Consideration may be given to adding further “. . . *and the provision of alternative materials upon request.*”

C. Both Options A and B

A third option may be to amend both sets of regulations.

Impact on Fiscal and Human Resources:

Department staff would lead the regulatory process required for amending regulations of the Board of Education. If such amendments to the regulations were adopted by the Board of Education, local school boards would be required to develop policies related to the notification of parents of the intended use of controversial or sensitive materials in classroom instruction.

Timetable for Further Review/Action:

On June 27, 2013, the Board of Education approved the Notice of Intended Regulatory Action (NOIRA) for the *Regulations Establishing Standards for Accrediting Public Schools in Virginia*. As such, action related to Option A above could be included as part of ongoing revisions to the Standards of Accreditation.

In order to implement Option B, amending the *Regulations Governing Local School Boards and School Districts*, the Board would need to initiate a NOIRA announcing its intention to revise the regulations.

Superintendent's Recommendation:

The Superintendent of Public Instruction recommends that the Virginia Board of Education accept the Report on Options Regarding Parental Notification Related to Controversial or Sensitive Materials.