

Virginia Board of Education Agenda Item



Agenda Item: H

Date: September 26, 2013

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| Title | First Review of Notice of Intended Regulatory Action (NOIRA) for Amendments to the <i>Regulations Governing Local School Boards and School Divisions (8 VAC 20-720)</i> Regarding Use of Controversial or Sensitive Instructional Materials | | |
| Presenter | Dr. Linda Wallinger, Assistant Superintendent for Instruction | | |
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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: October 24, 2013

Action: Final review (NOIRA)

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

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

Goal 6: The *Regulations Governing Local School Boards and School Divisions* set forth the responsibilities of local school boards in the selection of instructional materials and textbooks. These regulations will be strengthened by the addition of language that requires local school boards to provide reasonable advance notice to parents and students of the intended use of controversial materials.

Background Information and Statutory Authority:

In February 2013, the Virginia Board of Education amended the *Regulations Governing Local School Boards and School Divisions (8 VAC 20-720)* to address local school division approval of textbooks not included on the Board of Education’s list of approved textbooks. During and following this action, the Board received public comment expressing concern about content and language used in some instructional materials other than textbooks that were in use in some school divisions in the Commonwealth. The Board then discussed whether or not the section of the same

regulations that addresses local school board selection and approval of instructional materials should be amended to require parental notification, alternative materials, and/or opt-out provisions.

[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.

Following this discussion, the Board of Education requested the Department of Education to collection 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.

The results of the survey were reported to the Board on June 27, 2013 revealed that while many school divisions have policies in place to address the use of sensitive or controversial instructional materials, not all do. Following the report, President Foster asked 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, opt-out provisions, and provisions for use of alternate materials as they relate to the use of sensitive or controversial materials in the classroom.

Proposed options discussed at the Board meeting in July 2013 included amendments to the *Regulations Establishing Standards for Accrediting Public Schools in Virginia* (8VAC 20-131 et seq.) (Standards of Accreditation or SOA) as well as to the *Regulations Governing Local School Boards and School Divisions* (8 VAC 20-720). The SOA are currently under review, and the following language has been proposed for consideration in the SOA in Section [8 VAC 20-131-270](#). School and community communications, Item B.1:

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 sexually 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.

Summary of Important Issues:

The Board of Education requested that a Notice of Intended Regulatory Action (NOIRA) be issued to add language to the *Regulations Governing Local School Boards and School Divisions (8 VAC 20-720)* regarding procedures school divisions must have in place to address the use of sensitive or controversial instructional materials in the classroom.

Impact on Fiscal and Human Resources:

The administrative impact required in promulgating these regulations will be absorbed within existing resources at the Department of Education. Local school boards would need to adhere to the provisions of the *Regulations Governing Local School Boards and School Divisions (8 VAC 20-720)*.

Timetable for Further Review/Action:

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

Superintendent's Recommendation:

The Superintendent of Public Instruction recommends that the Board of Education approve for first review the Notice of Intended Regulatory Action (NOIRA) for the *Regulations Governing Local School Boards and School Divisions (8 VAC 20-720)*.



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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

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| Agency name | Virginia Board of Education |
| Virginia Administrative Code (VAC) citation | 8 VAC 20-720 |
| Regulation title | Regulations Governing Local School Boards and School Divisions |
| Action title | Amendments to 8 VAC 20-720-160 . Instructional materials. |
| Date this document prepared | September 11, 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*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The Virginia Board of Education plans to propose amendments to the [Regulations Governing Local School Boards and School Divisions \(8 VAC 20-720\)](#) to address procedures school divisions must have in place to address the use of sensitive or controversial instructional materials in the classroom.

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.

The Board of Education’s authority for promulgating regulations governing standards for accrediting public schools may be found in § 22.1-253.13:3 of the *Code of Virginia*:

“The Board of Education shall promulgate regulations establishing standards for accreditation pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), which shall include, but not be limited to, student outcome measures, requirements and guidelines for instructional programs and for the integration of educational technology into such instructional programs, administrative and instructional staffing levels and positions, including staff positions for supporting educational technology, student services, auxiliary education programs such as library and media services, course and credit requirements for graduation

from high school, community relations, and the philosophy, goals, and objectives of public education in Virginia.”

The Board of Education’s overall regulatory authority may be found in § 22.1-16 of the *Code of Virginia*:

“The Board of Education may adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title.”

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

Parents have raised concerns about the use of controversial instructional materials without parental notification in some school divisions. At the request of the Virginia Board of Education, the Virginia Department of Education conducted a survey of school divisions regarding their local policies related to advance parental notification on the use of sensitive or controversial materials and on opportunities for parents to request alternative materials for their children or to opt out of classes where the materials are being discussed. The survey revealed that while many school divisions have such policies in place, not all do. The Board of Education would like to ensure that all school divisions have procedures in place to address the use of sensitive or controversial materials.

Substance

Please detail any changes that will be proposed. Be sure to define all acronyms. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The Board of Education proposes to add language to the *Regulations Governing Local School Boards and School Divisions (8 VAC 20-720)* regarding procedures school divisions must have in place to address the use of sensitive or controversial instructional materials in the classroom.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The Board of Education has also proposed to amend the *Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC 20-131 et seq.)*, specifically [8 VAC 20-131-270](#). School and community communications, Item B.1, to include the following language:

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 sexually 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;

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The Board of Education has received public comment on this issue, and will continue to do so during the Administrative Process Act procedures.

Anyone wishing to submit comments may do so via the Regulatory Town Hall Web site (<http://www.townhall.virginia.gov>), or by mail, e-mail, or fax to Dr. Linda Wallinger, Assistant Superintendent for Instruction, Virginia Department of Education, P. O. Box 2120, Richmond, VA 23218-2120, (804) 371-2350, Linda.Wallinger@doe.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall Web site (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar Web site (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulatory action is expected to support the family by informing parents that there are plans for classroom use of instructional materials that the school division deems of educational value, but that contain controversial or sensitive content.