

# Virginia Board of Education Agenda Item



**Agenda Item:** G

**Date:** April 28, 2016

<b>Title</b>	First Review of <i>Regulations Governing the Collection and Reporting of Truancy Related Data and Student Attendance Policies 8-VAC 20-730</i> (Final Stage)		
<b>Presenter</b>	John Eisenberg, Assistance Superintendent, Special Education and Student Service		
<b>E-mail</b>	John.Eisenberg@doe.virginia.gov	<b>Phone</b>	804-786-8079

**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:

Action: Approval of the Notice of Intended Regulatory Action (NOIRA)

Date: July 22, 2010

Action: Approval of Proposed Regulations Governing Unexcused Absences and Truancy (Proposed Stage)

Date: January 13, 2011

Action: Public Hearing on Proposed Stage

Date: March 22, 2012

Action: Approval of Proposed *Regulations Governing the Collection and Reporting of Truancy Related Data and Student Attendance Policies* (Re-proposed State)

Date: January 10, 2013

Action: Public Hearing on Re-Proposed Stage

Date: November 19, 2015

**Action Requested:**

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

May 26, 2016

**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 proposed *Regulations Governing the Collection and Reporting of Unexcused Absences and Truancy Data and Student Attendance Policies* set forth procedures for the collection of data to identify students at risk of academic failure due to missed days at school and for intervention to resolve school attendance problems. The proposed regulations provide consistency across school divisions in the collection and reporting of school attendance data that are required by the *Code of Virginia* at § 22.1-260.B, as well as guidance on student attendance policies. Due to the strong link between attendance and successful completion of school, consistent monitoring of truancy and intervening with supports for students and families are critical. School divisions can use documented attendance data to examine and evaluate attendance patterns, to address identified problems, to assess the effectiveness of interventions, and to develop policies and practices to promote daily student attendance.

**Background Information and Statutory Authority:**

Section 22.1-16 of the *Code* establishes the authority of the Board of Education to promulgate regulations as follows:

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.

On September 17, 2009, the Board of Education authorized a Notice of Intended Regulatory Action (NOIRA) to add new regulations governing reporting of student nonattendance and any concomitant policies and procedures. Ten public comments were received during a 21-day public comment period in support of establishing regulations. No comments were received in opposition to establishing regulations. Subsequently, staff worked with a statewide advisory committee of twenty-seven members to discuss attendance issues and to draft proposed regulations. The committee included a parent, attendance and school resource officers, alternative education program administrators, one elementary and one secondary school principal, student support administrators, school social workers, and representatives from the Department of Behavioral Health and Developmental Services, Department of Criminal Justice Services, Virginia Commission on Youth, Project Hope (VDOE's homeless student program), Virginia Association of School Social Workers, and Legal Aid Justice Center.

On June 29, 2010, Executive Order 14 was issued, requiring that proposed regulations go forward by 180 days from the posting of the NOIRA on the Regulatory Town Hall. The NOIRA was resubmitted and approved by the Board on July 22, 2010, in order to comply with the new timeline of the Executive Order. One public comment in favor of the proposed regulations was submitted through the Town Hall Web site during the new NOIRA period. On January 13, 2011, the Board of Education reviewed the proposed *Regulations Governing Unexcused Absences and Truancy* and authorized staff to proceed with the remaining steps required by the *Administrative Process Act* (APA).

During the 2012 General Assembly session, HB 886 (Alexander) was adopted by the General Assembly to require the Board of Education to promulgate regulations addressing truancy as follows:

*That the Board of Education shall promulgate regulations by July 1, 2013, to address truancy. In promulgating these regulations, the Board shall address the following: (i) provisions for early intervention at the school level for repeated unexcused absences; (ii) identification of and a plan to address a student's academic, social, familial, and other barriers that impede attendance in school;*

*and (iii) arrangement of conferences that may be necessary between school personnel, students, parents, and community services providers, as appropriate, to address plans and strategies to improve student attendance, including, but not limited to, referrals to family assessment and planning teams.*

The Governor vetoed the bill because the Board of Education was in the process of promulgating the proposed *Regulations Governing Unexcused Absences and Truancy*. His veto explanation follows:

*While this Section I legislation has a worthy goal, it is not necessary since the Virginia Board of Education is currently in the process of promulgating Regulations Governing Unexcused Absences and Truancy [8 VAC 20 - 730]. These new regulations will govern the collection and reporting of truancy-related data and provide guidance on school attendance policy.*

*The proposed regulations were initiated in 2010, and are in the final stages of the Administrative Process Act (APA).*

*As the Board of Education completes the regulatory process, I will ask the Board via letter to address the criteria outlined in HB 886, and consider emphasizing the importance of working with the parents and the community organizations early in the process, before truancy becomes a serious problem for a student.*

*I am confident the laudable intent of HB 886 can easily be addressed in the truancy regulations currently being promulgated by the Virginia Board of Education. Hence, HB 886 is not necessary.*

On March 22, 2012, a public hearing was held to receive comments about the proposed regulations. There were three submittals of public comments received during the continued APA process. Based on comments received and on the proposed HB 886 and the Governor veto message, the proposed regulations were amended to provide clarity and to increase specificity prior to presentation to the Board of Education for second review.

On July 26, 2012, the amended proposed regulations were presented to the Board of Education for second review. The Board approved additional amendments to the proposed regulations during the July meeting and authorized an additional 30-day public comment period. The Board wished to receive the suggestions and concerns of educators, parents, students, civic and community leaders, and other interested citizens in addressing truancy issues prior to final approval of the regulations.

Public comment received by the Board subsequent to the July 26 meeting, included thirteen additional comments from the Virginia Education Association, individual principals and school social workers, individuals, and the Virginia Association of Secondary School Principals. In summary, the comments encompassed: the importance of accountability by parents and by students for unexcused less than full day attendance; the responsibility of the Board to enforce the *Code* statutes addressing attendance, to include partial day absences; the counting of suspended days as “excused;” the attendance by young children at meetings with school officials during attendance plan development and conferences to plan interventions; the importance of having a division policy for truancy; and the administrative impact of procedures to be followed to intervene and to address continued unexcused absences. Details of all public comments received and the agency responses to them were provided in the Town Hall document.

At the September 27, 2012, meeting of the Board of Education, the proposed regulations were considered and reviewed for final adoption. Amendments to the language associated with the definition of “excused absence” were adopted by the Board at that time. The sentence “*Absences resulting from suspensions shall be considered excused.*” was deleted. The words “*and suspended*” were added to the sentence “*Expelled and suspended students continue to remain under the provisions of compulsory school attendance, Code of Virginia, § 22.1-254.*” Language was added to state: “*An absence from school attendance resulting from a suspension or expulsion may be considered excused for the period of the suspension or expulsion unless the parent fails to otherwise adhere to the compulsory school attendance requirements.*” The proposed regulations were approved at the meeting.

After the Board meeting, questions were raised about the interpretation of the definition of “excused absence,” as amended at the September 27 meeting. Concerns were raised that there could be unintended consequences with the phrase “unless the parent fails to otherwise adhere to the compulsory school attendance requirements,” which could lead to interpretation by a school division that a suspension or an expulsion cannot be considered an excused absence if the parent fails to adhere to compulsory attendance requirements. This could result in undesirable referrals to juvenile court for truancy when the student is suspended or expelled from school. To provide school divisions with the flexibility to make determinations based on what is best for individual students, the phrase was stricken and the proposed regulations were adopted by the Board of Education at the November 29 meeting.

As a result of the executive review and in light of the amendments to the regulations the Superintendent of Instruction recommended that in accordance with section 2.2-4007.03 of the *Code*, that the Board of Education rescind the adopted regulations and re-propose the regulations and allow for an additional public comment period. The Board of Education adopted the re-proposed regulations and authorized VDOE staff to proceed with Virginia *Administrative Process Act* (APA) requirements on January 10, 2013.

### **Summary of Important Issues:**

The re-proposed regulations correlate with the procedures required in § 22.1-258 of the *Code of Virginia* by providing attendance definitions for implementing an intervention process and reporting data. The regulations will produce more consistent data and support effective practices that will assist school divisions’ continuous improvement of daily school attendance. This data collection is necessary to construct a valid representation of nonattendance issues. The data will be used to evaluate and analyze student attendance patterns and issues at the school division and state levels. The resulting information should be used to strengthen efforts to engage students in daily school attendance.

A summary of the re-proposed new regulations by section follows.

Part I, 8 VAC 20-730-10, defines terms, such as “attendance plan,” “excused absence,” “truancy,” and “unexcused absence,” used in these regulations.

Part II, 8 VAC 20-730-20, articulates the procedures and responsibilities for intervening with nonattendance behavior, in accordance with § 22.1-258 of the *Code of Virginia*.

Part III, 8 VAC 20-730-30, describes data collection and reporting requirements. Each school division shall provide student level attendance data for each student, that includes the number of unexcused absences, as prescribed by the Virginia Department of Education. The following data shall be collected

and reported to the Virginia Department of Education:

- All excused and unexcused absences as defined in these regulations for each individual student
- For each student with five unexcused absences, whether an attendance plan was developed, and if not, the reason
- For each student with six unexcused absences, whether an attendance conference was scheduled, and if not, the reason
- For each student with six unexcused absences, whether an attendance conference was actually held, and if not, the reason
- For each student with seven unexcused absences, whether a court referral or if proceedings against the parent or parents were initiated, and, if not, the reason

The Board of Education adopted the re-proposed regulations and authorized VDOE staff to proceed with *Virginia Administrative Process Act* (APA) requirements on January 10, 2013. Once approved by the executive review process in September 2015, a public hearing was held during the November 19, 2015, Board of Education meeting. There were no public comments made at the meeting. Five comments were received on the Regulatory Town Hall Web site. As a result of the public comments and staff review, amendments are proposed to the re-proposed regulations.

Part I of the regulations, 8VAC 20-730-10, which provides definitions of terms, and Part II, 8VAC 20-730-20, which provides process and responsibilities for addressing unexcused absences, have been amended to allow for flexibility through the use of technology when conducting conferences as follows:

- Part I. Attendance conference was amended to read...means a face-to-face meeting, “which may be conducted through the use of communication technology....”
- Part II. 2., ...The parent shall be contacted either in a face-to-face conference, by telephone “or through the use of other communication devices....”
- Part III. 3., ...schedule a face-to-face attendance conference, “which may be conducted through the use of communication technology....”

Changes made from the re-proposed stage to the final stage are noted in the attached text in brackets and yellow highlight.

**Impact on Fiscal and Human Resources:**

The final adoption of the regulations will not have a significant impact on school division fiscal and human resources.

**Timetable for Further Review/Action:**

Upon the Board’s approval the final state of the regulations will be submitted for executive review in accordance with the Administrative Process Act (APA).

**Superintendent's Recommendation:**

The Superintendent of Public Instruction recommends that the Board of Education receive for first review the *Regulations Governing the Collection and Reporting of Truancy Related Data and Student Attendance Policies*.

# STATE BOARD OF EDUCATION

## CHAPTER 730

### REGULATIONS GOVERNING THE COLLECTION AND REPORTING OF TRUANCY -RELATED DATA AND STUDENT ATTENDANCE POLICIES

#### **8VAC20-730-10. Definitions.**

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

"Attendance conference" means a face-to-face meeting, [which may be conducted through the use of communication technology,] at a minimum, after the sixth unexcused absence among school staff, parents, and student (if appropriate). The conference may include , if necessary, community representatives to discuss the current attendance plan and make modifications to support regular school attendance participate in resolving issues related to nonattendance and revisions to the current attendance plan if necessary.

"Attendance plan" means ~~action steps~~ a plan developed jointly by a school representative, such as a school principal or his designee or attendance officer; parent ; and student (if appropriate) to resolve the student's nonattendance and engage the student in regular school attendance. The plan shall identify reasons for nonattendance and academic, social, emotional, and familial barriers that impede daily attendance along with positive strategies to address such reasons and impedances and support regular attendance. This plan may include school-based activities or suggested referrals to community supports, or both.

"Court referral" means ~~referral~~ filing a complaint to the Juvenile and Domestic Relations Court ~~intake worker~~ after the student's seventh unexcused absence. ~~Copies~~ Documentation of interventions regarding the student's unexcused absences, such as copies of the attendance plan and documentation of conference meetings , and compliance with § 22.1-258 of the *Code of Virginia* will be provided to the intake worker.

"Excused absence" means an absence of an entire assigned instructional school day with an excuse a reason acceptable to the school administration that is provided by the parent. If circumstances permit, the parent should provide the school authority administration with the reason for the nonattendance prior to the absence. Examples of an excused absence may include, but are not limited to, the following reasons: funeral, illness (including mental health and substance abuse illnesses), injury, legal obligations, medical procedures, suspensions, religious observances, and military obligation. Expelled and suspended students continue to remain under the provisions of compulsory school attendance as described in § 22.1-254 of the Code of Virginia. An absence from school attendance resulting from a suspension or expulsion may be considered excused for the period of the suspension or expulsion.

"Instructional school day" means the length of a regularly scheduled school day for an individual student.

"Multi-disciplinary team" means a school-based team that convenes on a regular basis may be convened to review student records and to identify an integrated system of care for the student in need, including (i) participate in prevention, early intervention, and provision of support services and (ii) to address unexcused absences, including school-based case management. These services should address academic, social, emotional, and familial issues in order to improve regular school attendance. Members of the team meet confidentially with the parent and the student (if appropriate) to develop, evaluate, and update action steps and supports. Team members may include, but are not limited to, the following: an administrator, school counselor, social worker or psychologist, student assistance specialist, special education and regular education teacher, and attendance officer.

"Parent" means the parent or parents, guardian or guardians, legal custodian or legal custodians, or other person or persons having legal control or charge of the student.

"Truancy" means the act of accruing one or more unexcused absences.

"Unexcused absence" means an absence where (i) either the student misses his scheduled instructional school day in its entirety or misses part of the scheduled instructional school day without

permission from an administrator and (ii) no indication has been received by school personnel within three days of the absence that the student's parent is aware and supports the absence, or the parent provides an excuse a reason for the absence that is unacceptable to the school administration. An administrator The school administration may change an unexcused absence to an excused absence when it determines that the parent has provided an acceptable excuse reason meeting criteria for the student's absence or there are extenuating circumstances. Absences resulting from suspensions shall not be considered unexcused.

**8VAC20-730-20. Unexcused absences intervention process and responsibilities.**

A. Each local school board shall provide guidance regarding what would constitute an excused absence in order to address when the explanation provided by the parent will be determined to be reasonable and acceptable.

B. Each local school board shall develop procedures to ensure that appropriate interventions will be implemented when a student engages in a pattern of absences less than a full day, the explanation for which, if it were a full-day absence, would not be deemed an excused absence.

C. The following intervention steps shall be implemented to respond to unexcused absences from school and to engage students in regular school attendance.

1. Whenever a student fails to report to school on a regularly scheduled school day and no information has been received by school personnel that the student's parent is aware of and supports the absence, the school principal or designee, attendance officer, or other school personnel or volunteer will notify the parent by phone or email or any other electronic means to obtain an explanation. The school staff shall record the student's absence for each day as "excused" or "unexcused." Early intervention with the student and parent or parents shall take place for repeated unexcused absences.

2. When a student has received five unexcused absences, the school principal or designee or the attendance officer shall make a reasonable effort to ensure that direct contact is made with

the parent. The parent shall be contacted either in a face-to-face conference, ~~or~~ by telephone ~~or through the use of other communication devices~~. During the direct contact with the parent and the student (if appropriate), reasons for nonattendance shall be documented and the consequences of nonattendance explained. An attendance plan shall be made with the student and parent or parents to resolve the nonattendance issues. The student and parent may be referred to a school-based multi-disciplinary team for assistance implementing the attendance plan and case management.

3. The school principal or designee or the attendance officer shall schedule a face-to-face attendance conference ~~], which may be conducted through the use of communication technology,~~ within 10 school days from the date of the student's sixth unexcused absence for the school year. The attendance conference must be held within 15 school days from the date of the sixth unexcused absence. The conference shall include the parent, student ~~(when applicable)~~, and school personnel (which may be a representative or representatives from the multi-disciplinary team) and may include community service providers.

4. The school principal or designee shall notify the attendance officer or division superintendent of the student's seventh unexcused absence for the school year. The division superintendent or designee shall contact the Juvenile and Domestic Relations Court intake to file a ~~Child In Need of Supervision (CHINSup) petition or begin~~ complaint alleging the student is a child in need of supervision (CHINSup) or to institute proceedings against the parent. In addition to documentation of compliance with the notice provisions of § 22.1-258 of the *Code of Virginia*, all records of intervention regarding the student's unexcused absences, such as copies of the conference meeting notes, attendance plan, and supports ~~provided prior to filing the petition shall be presented to the intake worker. The decision shall be made by the intake worker either to divert the case or to file the petition for presentation before the court.~~

~~B. D.~~ A record shall be maintained of each meeting that includes the attendance plan, the name of individuals in attendance at each conference meeting (including via telephone or electronic devices),

the location and date of the conference, a summary of what occurred, and follow-up steps. This record does not become a part of the student's permanent scholastic record.

### **8VAC20-730-30. Data collection and reporting.**

Data collection shall begin on the first day students attend for the school year. Each school division shall provide student level attendance data for each student that includes the number of unexcused absences as in a manner prescribed by the Virginia Department of Education. A student's attendance is cumulative and begins on the first official day of the school year or the first day the student is officially enrolled. All nonattendance days are cumulative and begin with the first absence. For purposes of this data collection, truancy shall start with the first unexcused absence and will be cumulative.

Excused and unexcused absences shall be counted for each individual student and shall be reported to the Virginia Department of Education as follows:

1. All excused and unexcused absences as defined in this chapter for each individual student shall be collected.
2. For each student with five unexcused absences, whether an attendance plan was developed, and if not, the reason.
3. For each student with six unexcused absences, whether an attendance conference was scheduled, and if not, the reason.
4. For each student with six unexcused absences, whether an attendance conference was actually held, and if not, the reason.
5. For each student with seven unexcused absences, whether a court referral [was made or a petition was filed] or if proceedings against the parent or parents were initiated and, if not, the reason.



## Final Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Education
<b>Virginia Administrative Code (VAC) citation(s)</b>	<u>8 VAC 20 - 730</u>
<b>Regulation title(s)</b>	<i>Regulations Governing The Collection and Reporting of Truancy Related Data and Student Attendance Policies</i>
<b>Action title</b>	Procedures for the collection of truancy data and unexcused/nonverified absence intervention process and responsibilities.
<b>Date this document prepared</b>	April 14, 2016

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary 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. If applicable, generally describe the existing regulation.*

The proposed regulations are new. The regulations set criteria for truancy data collection and a procedure for intervening with a student who has unexcused absences. The regulations provide definitions to promote consistency in data collection and reporting among school divisions and to the Virginia Department of Education (VDOE). Attendance data can be used to establish and revise attendance policies and best practices to engage students in daily attendance and to promote early intervention for repeated unexcused absences. Procedures and responsibilities are defined for providing intervention and support services to increase school attendance and attachment. Finally, the regulations direct a complaint to be filed with court services when a student is noncompliant with compulsory attendance law. In response to review and public comment, the regulations as initially proposed have been edited and amended.

### 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.

---

There are no acronyms or technical terms that are not also defined in the definitions section of the regulations.

## 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 Board of Education is anticipated to approve the 8VA20-730 Regulations Governing the Collection and Reporting of Truancy Related Data and Student Attendance Policies on May 26, 2016.

## Legal basis

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

---

### **§ 22.1-16. Bylaws and regulations generally.**

"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."

### **§ 22.1-254. Compulsory attendance required; excuses and waivers; alternative education program attendance; exemptions from article.**

A summation of the compulsory attendance code relevant to this regulation is as follows: "Any child five years old on or before September 30 of each school year and who has not reached eighteen years of age shall be enrolled and attend a public, private, denominational, or parochial school, or be home schooled in accordance with state regulations. A local school board may excuse a youth from attendance under certain circumstances as described in subsection B and C of § 22.1-254."

### **§ 22.1-269. Board to enforce.**

The *Code of Virginia* authorizes and requires the Board of Education to enforce Virginia's compulsory school attendance statutes as follows:

"The Board of Education shall have the authority and it shall be its duty to see that provisions of this article are properly enforced throughout the Commonwealth."

### **§ 22.1-258. Appointment of attendance officers; notification when pupil fails to report to school.**

In summary, the *Code of Virginia* requires each school division to create an attendance plan for any student with five unexcused absences and to schedule a conference with parents after the sixth unexcused absence ... upon the next unexcused absence by such pupil, the school attendance officer shall enforce compulsory attendance by "(i) filing a complaint with the juvenile and domestic relations court alleging the pupil is a child in need of supervision as defined in § 16.1-288 or (ii) instituting proceedings against the parent pursuant to § 18.2-371 or § 22.1-262...."

### **§ 22.1-261. Attendance officer to make list of children not enrolled; duties of attendance officer.**

“...It shall be the duty of the attendance officer, on behalf of the local school board, to investigate all cases on nonenrollment and, when no valid reason is found therefore, to notify the parent, guardian or other person having control of the child to require the attendance of such child at the school within three days from the date of such notice.”

**§ 22.1-267. Proceedings against habitually absent child.**

“Any child permitted by any parent, guardian, or other person having control thereof to be habitually absent from school contrary to the provisions of this article may be proceeded against as a child in need of supervision as provided in Chapter 11 (§ 16.1-226 et seq.) of Title 16.1.”

**§ 22.1-262. Complaint to court when parent fails to comply with law.**

“...If the parent (i) fails to comply with the provisions of § 22.1-261 within the time specified in the notice; or (ii) fails to comply with the provisions of § 22.1-254; or (iii) refuses to participate in the development of the plan to resolve the student’s nonattendance or in the conference provided for in § 22.1-258, the attendance officer is to provide documentation to the court regarding the school division’s compliance with § 22.1-258. In addition thereto, such child may be proceeded against as a child in need of services or a child in need of supervision as provided in Chapter 11 (§ 16.1-226 et seq.) of Title 16.1.”

**§ 22.1-265. Inducing children to absent themselves.**

“Any person who induces or attempts to induce any child to be absent unlawfully from school or who knowingly employs or harbors, while school is in session, any child absent unlawfully shall be guilty of a Class 3 misdemeanor .... and willfully violated the provisions of this section ... having been convicted previously of a violation of this section, ... shall be guilty of a Class 2 misdemeanor.”

**§ 22.1-263. Violation constitutes misdemeanor.**

“Any person violating the provisions of either § 22.1-254, except for clause (ii) of subsection A, §§ 22.1-255,22.1-258,22.1-267, or the parental responsibility provisions relating to compulsory school attendance included in § 22.1-279.3, shall be guilty of a Class 3 misdemeanor.... that such person has been convicted previously of a violation of any provision of § 22.1-254, except for clause (ii) of subsection A, or any provision of §§ 22.1-255, 22.1-258 or § 22.1-267, such person shall be guilty of a Class 2 misdemeanor.”

**§ 22.1-266. Law-enforcement officers and truant children.**

“A. Notwithstanding the provisions of § 16.1-246, any law-enforcement officer ... or any attendance officer may pick up any child who (i) is reported to be truant from public school by a school principal or division superintendent or (ii) the law-enforcement officer or attendance officer reasonably determines to be a public school student and by reason of the child’s age and circumstances is either truant from public school or has been expelled from school and has been required to attend an alternative education program... and may deliver such child to the appropriate public school, alternative education program, or truancy center and personnel thereof without charging the parent or guardian of such child with a violation of any provision of law....”

**§ 22.1-260.B – Reports of children enrolled and not enrolled; nonattendance; social security numbers required.**

“At the end of each school year, each public school principal shall report to the division superintendent the number of students by grade level for whom a conference was scheduled as required by § 22.1-258. The division superintendent shall compile such grade level information for the division and provide such information to the Superintendent of Public Instruction annually.”

Federal regulations, *Section 4112 of the No Child Left Behind Act* (NCLB), mandate truancy data to be

collected at the local level by each school and be reported to the State Department of Education. Data for each individual school will be made public. The aggregated state data results will be reported to the United States Department of Education (USED).

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe 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.*

---

It is the primary goal of the Virginia Board of Education, through these regulations, to set forth definitions for data collection, and procedures and responsibilities of the participants to address nonattendance issues. Enacting these regulations should enhance daily school attendance and decrease referrals to court services for truancy.

It is the intent of the Virginia Board of Education, through these regulations, to:

- Provide for consistent and accurate data collection and reporting;
- Improve attendance related policies, procedures and evidence-based prevention and intervention Practices;
- Enhance school staff's capability to early identify students with nonattendance issues and to intervene and provide support and to case manage and monitor progress;
- Create a positive impact on the family, the student, school divisions and court services in their efforts to improve school attendance;
- Increase a student's opportunity to benefit from a quality education in preparation for a career or postsecondary education;
- Create a climate for improving communication, cooperation, and coordination of services among community service agencies and public systems to address issues manifested in truancy behavior; and
- Encourage dissemination of information to increase public knowledge of the importance of regular school attendance and these regulations.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.*

---

The re-proposed regulations are organized according to the following sections:

Part I, 8 VAC 20-730-10, which provides the definition of terms, such as "attendance plan," "excused absence," and "unexcused absence."

Part II, 8 VAC 20-730-20, which articulates the procedures and responsibilities for early identification and

intervention with nonattendance behavior and the issues that manifest truancy. It delineates processes for assisting the student and family in preventing nonattendance and defines the steps to intercede.

Part III, 8 VAC 20-730-30, which identifies the attendance data to be reported to VDOE that includes for each individual student: (1) all excused and unexcused absences; (2) students with five, six or more unexcused absences; (3) the number of attendance plans developed and conferences scheduled and held; and (4) the number of complaints for students in need of supervision made to the court or proceedings against parents.

The Board of Education adopted the re-proposed regulations and authorized VDOE staff to proceed with Virginia Administrative Process Act (APA) requirements on January 10, 2013. Once approved by the executive review process in September 2015, a public hearing was held during the November 19, 2015, Board of Education meeting. There were no public comments made at the meeting. Five comments were received on the Regulatory Town Hall Web site. As a result of the public comments and staff review, amendments are proposed to the re-proposed regulations.

Part I of the regulations, 8VAC 20-730-10, which provides definitions of terms, and Part II, 8VAC 20-730-20, which provides process and responsibilities for addressing unexcused absences, have been amended to allow for flexibility through the use of technology when conducting conferences as follows:

- Part I. Attendance conference was amended to read...means a face-to-face meeting, “which may be conducted through the use of communication technology....”
- Part II. 2., ...The parent shall be contacted either in a face-to-face conference, by telephone “or through the use of other communication devices....”
- Part III. 3., ...schedule a face-to-face attendance conference, “which may be conducted through the use of communication technology....”

## 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 final regulations pose no disadvantage to the public or the Commonwealth. The regulations will serve to more accurately collect daily school attendance and nonattendance data and guide early identification and intervention processes to remove barriers that disengage a student from school, thus improving school attendance. The procedures in the final regulations align with the *Code of Virginia* and reflect those requirements.

Students, who attend school daily, kindergarten through twelfth grade, are more likely to graduate. Students who do not attend school regularly are more likely to experience academic failure, school dropout, criminal and violent acts, unemployment, substance abuse, adult criminality and incarceration, unwanted pregnancy and social isolation. Due to the strong link between truancy and these negative consequences, it is critical to address attendance issues early and effectively.

## 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.*

---

There are no requirements more restrictive than applicable federal requirements

## 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.*

The regulations will affect all school divisions but none will be materially impacted disproportionately.

## Family impact

*Please assess the impact of this 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.*

Research has demonstrated that missing at least ten percent of school days in a year for any reason, excused or unexcused is a primary cause of low academic achievement and a powerful predictor of which students will eventually drop out of schools<sup>1</sup>. Due to the strong link between attendance and successful completion of school, consistent monitoring of attendance and intervening with supports for students and families are critical. The intent of the regulations is to strengthen supports to students and families that will impact positively their relationships, create pride through educational achievements that will endow self-responsibility and economic self-sufficiency.

## Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. \*Please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change
8VAC20-730.10. Definitions	Attendance conference was defined as a face-to-face meeting.	The language [which may be conducted through the use of communication technology] was inserted to allow greater flexibility for conducting meetings between school personnel, parents and students.	Face-to-face meetings can be held through communication technology. Including this language eases the burden and restriction on parents and school personnel.
8VAC20-730-20. C2	Parental contact is noted as being conducted	The language [or through the use of other communication devices] was	Face-to-face meetings can be held through

<sup>1</sup> U.S. Department of Education, health and Human Services, Housing and Urban Development, and Justice, Every Student, Every Day: A Community Toolkit to Address and Eliminate Chronic Absenteeism, Washington, D.C., 2015

Unexcused absences intervention process and responsibilities.	through a face-to-face meeting or by telephone.	inserted to allow greater flexibility for conducting meetings between school personnel, parents and students.	communication technology. Including this language eases the burden and restriction on parents and school personnel.
8VAC20-730-20. C3 Unexcused absences intervention process and responsibilities.	The guidance indicates that a “face-to-face” meeting shall be scheduled.	The language [which may be conducted through the use of communication technology] was inserted to allow greater flexibility for conducting meetings between school personnel, parents and students.	Face-to-face meetings can be scheduled and held through communication technology. Including this language eases the burden and restriction on parents and school personnel.
8VAC20-730-30.5 Data Collection and reporting.	The sentence indicated that data will be reported VDOE on “whether a court referral or a petition was filed....”	School divisions cannot file petitions with court services but do file a complaint, which is defined in section 8VAC20-730.10. Definitions. Hence the words [or a petition was filed] is being stricken and replaced with....,whether a court referral [was made].	Language was changed for legality and consistency within the regulation.

## Public comment

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Christin East Goochland County Public Schools	Town Hall Comment <ul style="list-style-type: none"> <li>“...when is a student considered officially enrolled, the day of enrollment or the day the student actually shows up for classes;” and how do other school divisions collect the data requested.”</li> </ul>	8VAC20-730-30. Data Collection and reporting states that “...student’s attendance is cumulative and begins on the first official day of the school year or the first day the student is officially enrolled. All nonattendance days are cumulative and begin with the first absence. For purposes of this data collection, truancy shall start with the first “unexcused” absence and will be cumulative.” Furthermore, all excused and unexcused absences are reported to the Virginia Department of Education. Thus, if a student is officially enrolled but there is a lapse of time before that student actually shows up to attend school, the school division is given the

<p>Elaine Cranford</p>	<p>Town Hall Comment-</p> <ul style="list-style-type: none"> <li>• “The proposed regulatory changes make no attempt to collect excessive absenteeism and the meetings and interventions that are conducted to address this issue... “conferences are often held regarding “unexcused absences and the parent later providing an excuse after the fact. This situation can result in overwhelming numbers of students with unexcused absences and unrealistic time frame expectations for meetings to be held.”</li> </ul>	<p>flexibility to determine if the lapsed days of nonattendance should be excused or unexcused.</p> <p>Presently, school divisions are not reporting this information. A reporting system and guidance will be provided once the regulations are approved.</p> <p>8VAC20-730-30. Data Collection and reporting of the re-proposed regulation states that all excused and unexcused absences and data on meetings and outcomes are reported to the Virginia Department of Education.</p>
<p>Amy Dew Alleghany County Schools</p>	<p>Town Hall Comment-</p> <ul style="list-style-type: none"> <li>• Request a limit be placed on the number of times a parent can submit an excuse for a student’s absence from school. The burden placed on school divisions by the <i>Code’s</i> tight timeframe for intervening with attendance problems is unrealistic and additional personnel are needed. Technical assistance inquiry was made regarding writing an attendance plan and the impact “block scheduling ” has on addressing attendance.</li> </ul>	<p>The school administrators may determine rather an absent is excused or unexcused. If no explanation is provided by the parent or if the excuse is unacceptable then according to the <i>Code of Virginia</i>, contact with the parent must be made to make a corrective action plan.</p> <p>Local school boards have the flexibility to determine attendance policies that are more restrictive than the <i>Code of Virginia</i>. Furthermore school divisions have the authority to determine if the reason provided for the absence is excused or unexcused.</p> <p>This timeframe is noted in the <i>Code of Virginia</i> § 22.1-258 and unless the statute is amended the regulations must follow the <i>Code</i>.</p> <p>The 2016 Virginia General Assembly passed legislation, if signed by the Governor, would allow school divisions to use increased funding for student service personnel, including assistant principals.</p>

<p>John Butcher</p>	<p>Town Hall Comments and the same comments were emailed to Virginia Department of Education on December 1, 2015.</p> <ul style="list-style-type: none"> <li>• “The Code requires the Board to enforce the “mandatory attendance laws.”</li> <li>• The amended definitions of “excused absence” and “unexcused absence” render the regulation unlawful.... Under this regulation; a student could march into school only during the last five minutes of class on each school day, or report for the first roll call and then leave for the day, and never be classified as truant.</li> <li>• “...parents are required to be notified “[w]henver any pupil fails to report to school on a regularly scheduled school day” and require an attendance plan after the fifth such failure.”</li> </ul> <p>“...§ 22.1-258 ...requires a conference “[i]f the pupil is absent” a sixth time and requires referral to court “[u]pon the next absence,” both without mentioning failure to “report” is not in compliance with the compulsory attendance section of the <i>Code</i>... moreover, the Board has the authority (and duty) to rectify any ambiguity in the statute in order that it may serve its clear purpose.”</p>	<p>The VDOE offers technical assistance to support school divisions.</p> <p>“Block scheduling” and its impact on attendance should be handled according to school division policy.</p> <p>None required</p> <p>The proposed regulation defines truancy, provides guidance for defining excused and unexcused absences and directs school boards to provide guidance to school divisions for determining if an explanation provided by a parent is a reasonable and acceptable excuse from school attendance.</p> <p>Also, each school board is directed to develop appropriate intervention procedures for students who engage in a pattern of missing less than a full-day of school. Section 8VAC20-730-20. Unexcused absences intervention process and responsibilities of the re-proposed regulations defines responsibilities and implementation steps for addressing unexcused absences.</p> <p>The collection of attendance data is noted in section 8VAC20-730-30. Data collection and reporting of the proposed regulations. The data reporting system will be enhanced to collect information regarding dispositions. This will assist with accountability and monitoring.</p> <p>The proposed regulation defines truancy, provides guidance for</p>
---------------------	--	--

<p>Dr. Karen Garza, Fairfax County Public Schools</p>	<ul style="list-style-type: none"> <li>• “Finally, the separate definitions of excused and unexcused absences are dangerous and unworkmanlike... the Board should set out careful and narrow standards for excused absences, and then define any other absence as “unexcused.”</li> <li>• ...“the regulation requires a report whether a seventh absence leads to a complaint but fails to require the attendance officer or Superintendent to set out the reasons for choosing one course or the other – i.e., file a complaint for a child in need of supervision or file charges against the parent(s)... the attendance officer</li> <li>• “The regulations fail to require a system of accountability so that the public, the Board, and the local school boards, can measure the performance of a school system and its employees.”</li> </ul> <p>Town Hall Comment</p> <ul style="list-style-type: none"> <li>• “We appreciate that the draft regulations appear to at least make an initial movement in the direction of evidence-based best practices as shown in the proposed definitions of an “Attendance Plan” and a “Multidisciplinary Team” in 8 VAC 20-730-10. We particularly appreciate references to the specific factors which may contribute to a student’s attendance issues (“academic, social, emotional, and familial barriers”) and the encouragement of the use of “positive strategies” to support student attendance.” However, the following concerns were noted:</li> </ul>	<p>defining excused and unexcused absences and directs school boards to provide guidance to school divisions for determining if an explanation provided by a parent is a reasonable and acceptable excuse from school attendance.</p> <p>A student attendance record includes dates of contacts with parents, individuals present at meetings and the improvement plans. This record serves as a document for decision-making to determine if a complaint is filed for a child in need of supervision or charges are being filed against the parent(s).</p> <p>Technical assistance and professional assistance will be offered to school divisions on the implementation of the regulations and evidence-based practices for improving school attendance.</p> <p>The collection of attendance data is noted in section 8VAC20-730-30. Data collection and reporting of the proposed regulations. The data reporting system will be enhanced to collect information regarding dispositions. This will assist with accountability and monitoring.</p> <p>None required</p> <p>In each section of the regulations that references a “face-to-face” meeting is now followed by</p>
---	--	---

	<ul style="list-style-type: none"> <li>• Having to conduct “face-to-face” meetings will restrict and burden staff and parents in meeting. The use of communication technology and devices are necessary in accommodating parents and managing time, or consider just eliminating the words “face-to-face” from the regulations.</li> <li>• Concerned about the potential impact of required data collection and reporting will divert staff time from connecting with students and families... especially without additional resources.</li> <li>• “The underlying <i>Code</i> governing attendance and truancy relies very heavily on court-based and punishment-oriented interventions and contains rigid and unrealistic timelines for interventions, with significant (and different) interventions required after the fifth, sixth and seventh unexcused absence. Because current <i>Code</i> is so rigid and strays so far from current evidence-based best practices, it fundamentally constrains the usefulness of regulatory change to affect real reform by limiting a school division's ability to address the root causes of truant behavior or to implement “positive strategies”...<i>the Code's</i> timeline is fundamentally flawed and undermines the potential of moving student attendance policies in school divisions toward evidence-based best practices.</li> </ul>	<p>language which clarifies that the use of communication technology or devices as acceptable means for conducting the meeting.</p> <p>The state data reporting system will be enhanced for ease of input in order to collect this information regarding dispositions of cases. This data will assist with planning, accountability and monitoring at the division and state levels.</p> <p>The regulations must follow the <i>Code of Virginia</i> sections pertaining to attendance and is intended to support consistency across school divisions in the collection and reporting of school attendance data, as well as guidance on student attendance policies. School divisions can use documented attendance data to examine and evaluate attendance patterns, to address identified problems, to assess the effectiveness of interventions, and to develop policies and practices to promote daily student attendance.</p>
--	---	---

## All changes made in this regulatory action

*Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
	8 VAC 20-730	There are no current regulations for procedures for collection of truancy data and unexcused/nonverified absence intervention process and responsibilities	The proposed regulations provide consistency across school divisions in the collection and reporting of school attendance data that are required by the Code of Virginia at § 2.1-260.B, as well as guidance on student attendance policies. This regulation has three sections as noted below.

			<p>Part I, 8 VAC 20-730-10, defines terms, such as “attendance plan,” “excused absence,” “truancy,” and “unexcused absence.”</p> <p>Part II, 8 VAC 20-730-20, articulates the procedures and responsibilities for intervening with nonattendance behavior, in accordance with § 22.1-258 of the <i>Code of Virginia</i>.</p> <p>Part III, 8 VAC 20-730-30, describes data collection and reporting requirements.</p>
	8VAC 20-730-10. Definitions	Currently there is no requirement.	This section provides definitions to advance common and consistently used definitions, identify data points and improve reliability of data collection.
	8VAC-20 730-20. Unexcused absences intervention process and responsibilities	Currently there is no requirement.	This section directs local school boards to provide guidance on 1) the parameters for determining what constitutes an excused absence, and 2) procedures for intervening with students who develop a pattern of absences less than a full-day. Furthermore, guidance is provided to school divisions for implementing graduated intervention steps.
	8VAC 20-730-30. Data collection and reporting.	Currently there is no requirement.	This section identifies data collection and data reporting points.