

Board of Education Agenda Item

Item: E.

Date: July 28, 2011

Topic: Final Review of the Proposed Amendments to the *Guidelines for Considering and Approving Requests for Pre-Labor Day Openings* to Comport with HB 1483 and HB 1885 Passed by the 2011 General Assembly

Presenter: Ms. Anne D. Wescott, Assistant Superintendent for Policy and Communications

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Origin:

Topic presented for information only (no board action required)

Board review required by
 State or federal law or regulation
 Board of Education regulation
 Other: Official actions and policy decisions

Action requested at this meeting

Action requested at future meeting: _____

Previous Review/Action:

No previous board review/action
 Previous review/action
date June 23, 2011
actions First review

Background Information: Section [22.1-79.1](#), *Code of Virginia*, provides that each local school board shall set the school calendar so that the first day students are required to attend school shall be after Labor Day. However, the *Code* further provides that the Virginia Board of Education may waive this requirement if one of the three “good cause” provisions has been met.

HB 1483, passed by the 2011 General Assembly and signed by the Governor, adds a fourth “good cause” provision, which permits a school division to open before Labor Day if it is entirely surrounded by a school division with a waiver to open prior to Labor Day.

HB 1885, passed by the 2011 General Assembly and signed by the Governor, updates and repeals several sections of the *Code* containing outdated language. It amends § 22.1-79.1 to replace the term “the electronic classroom” with the “Virtual Virginia,” which is the current name of the Virginia Department of Education’s distance learning program that offers online Advanced Placement, world language, core academic, and elective courses to students across the Commonwealth.

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

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

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

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

2. A school division is providing, in the school year for which the waiver is sought, an instructional program or programs in one or more of its elementary or middle or high schools, excluding ~~the electronic classroom~~ *Virtual Virginia*¹, which are dependent on and provided in one or more elementary or middle or high schools of another school division that qualifies for such waiver. However, any waiver granted by the Board of Education pursuant to this subdivision shall only apply to the opening date for those schools where such dependent programs are provided; ~~or~~

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

*4. A school division is entirely surrounded by a school division that has an opening date prior to Labor Day in the school year for which the waiver is sought. Such school division may open schools on the same opening date as the surrounding school division*² . . .

Summary of Major Elements: Three changes are proposed:

- Language is added to set forth the requirements to request a waiver if the school division is completely surrounded by a school division that has been granted a waiver to begin before Labor Day. To request initial approval of a waiver to open before Labor Day by a school division that is completely surrounded by another school division that has been approved for a waiver, the school division shall submit the request to the Superintendent of Public Instruction by letter signed by the superintendent and the chairman of the local school board. The Superintendent of

¹ HB 1885 (2011) <http://leg1.state.va.us/cgi-bin/legp504.exe?ses=111&typ=bil&val=hb1885>

² HB 1483 (2011) <http://leg1.state.va.us/cgi-bin/legp504.exe?ses=111&typ=bil&val=hb1483>

Public Instruction shall determine that the school division is completely surrounded by another school division, and that the other school division has been granted a waiver to open before Labor Day. Once the initial waiver is granted, the local school board shall submit information annually to the Superintendent of Public Instruction indicating that the conditions under which a waiver was granted have not changed.

- Instead of being embedded in a resolution, the provisions are set forth as Board guidelines consistent with other Board guidelines. The guidelines are reorganized and revised for clarity.
- Language from the Standards of Accreditation, related to experimental and innovative programs, which was referenced in the 1999 resolution, but was not actually included in the resolution, is added for clarity. The language says:

The experimental or innovative program must be approved by the Board pursuant to its *Regulations Establishing Standards for Accrediting Public Schools in Virginia* [8 VAC 20-131-290](#), which specifies that the request must include:

- 1) Purpose and objectives of the experimental/innovative programs;
- 2) Description and duration of the programs;
- 3) Anticipated outcomes;
- 4) Number of students affected;
- 5) Evaluation procedures; and
- 6) Mechanisms for measuring goals, objectives, and student academic achievement.

Superintendent's Recommendation: The Superintendent of Public Instruction recommends that the Board of Education approve the proposed guidelines.

Impact on Resources: The impact on resources is not expected to be significant.

Timetable for Further Review/Action: Upon approval, the Department of Education will disseminate a copy of the guidelines to all local school divisions and will post them on the agency's Web site.

Resolution Number 1999-2
March 25, 1999

~~WHEREAS Section 22.1-79.1 of the Code of Virginia provides that each local school board shall set the school calendar so that the first day students are required to attend school shall be after Labor Day and further provides that the Board of Education may waive this requirement on a showing of good cause; and~~

~~WHEREAS the aforementioned section of the Code specifies that “good cause” shall mean:~~

- ~~1. A school division had been closed an average of eight days per year during any five of the last ten years because of severe weather conditions, energy shortages, power failures, or other emergency situations;~~
- ~~2. A school division is providing, in the school year for which the waiver is sought, an instructional program or programs in one or more of its elementary or middle or high schools, excluding the electronic classroom, which are dependent on and provided in one or more elementary or middle or high schools of another school division that qualifies for such a waiver. However, any waiver granted by the Board of Education pursuant to this subdivision shall only apply to the opening date for those schools where such dependent programs are provided; or~~
- ~~3. A school division is providing its students, in the school year for which the waiver is sought, with an experimental or innovative program which requires an earlier opening date than that established by this section and which has been approved by the Department of Education pursuant to the regulations of the Board of Education establishing standards for accrediting public schools. However, any waiver or extension of the school year granted by the Board of Education pursuant to this subdivision or its standards for accrediting public schools for such an experimental or innovative program shall only apply to the opening date for those schools where such experimental or innovative programs are offered to the student body of the school. For the purposes of this subdivision, experimental or innovative programs shall include instructional programs which are offered on a year-round basis by the school division in one or more of its elementary or middle or high schools.~~

~~WHEREAS first in 1986 and again in 1994, the Board of Education examined and adopted internal guidelines that it subsequently followed in considering and granting requests by local school divisions to open their schools before Labor Day;~~

~~THEREFORE, BE IT RESOLVED that the Board of Education, deeming it now appropriate to reexamine its guidelines, states its guidelines for considering and approving requests by local school divisions to open their schools before Labor Day to be as follows:~~

- ~~1. At any time prior to the opening of the school year, local school divisions may apply to the Board of Education for a waiver of the requirements of Section 22.1-79.1 of the Code by submitting such request~~

on a form prescribed by the Superintendent of Public Instruction and by setting forth a thorough explanation of all conditions that constitute good cause for such a waiver.

2. The Superintendent of Public Instruction is hereby delegated the authority by the Board of Education to grant, on its behalf, waivers under the provisions of Section 22.1-79.1 of the Code of Virginia where it is shown, to the satisfaction of the Superintendent, that the following conditions are met:

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

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

c. The school is providing an experimental or innovative program pursuant to the provisions of the standards for accrediting schools, having first received the approval of the Board of Education, as described in item 3 below, to provide such an experimental or innovative program.

3. To obtain a waiver for a pre-Labor Day opening for an experimental or innovative program, the local school division shall submit such request to the Board of Education on a form prescribed by the Superintendent of Public Instruction and shall set forth a thorough explanation of the experimental or innovative program. The following procedures apply to applications for experimental or innovative programs:

a. The experimental or innovative program must be approved by the Board of Education pursuant to its Regulations Establishing Standards for Accrediting Public Schools in Virginia (8 VAC 20-131-10 et. seq.).

b. However, any waiver or extension of the school year granted by the Board of Education pursuant to the experimental or innovative program provisions contained in Section 22.1-79.1:3 or its standards for accrediting public schools shall apply only to the opening date for those schools where such experimental or innovative programs are offered generally to the student body of the school.

c. In accordance with Section 22.1-79.1:3, experimental or innovative programs shall include instructional programs which are offered on a year-round basis by the school division in one or more of its elementary or middle or high schools.

4. All requests for waivers as described herein under items 1 through 3 above shall be made by the local school divisions on an annual basis.

~~BE IT FURTHER RESOLVED~~ that the Board of Education requests the Superintendent of Public Instruction to provide an annual report to the Board concerning the status of waivers granted under the above-stated policies, as follows:

- ~~a. A listing of the local school divisions applying for waivers, those receiving waivers and those being denied waivers, and the reasons for each action;~~
- ~~b. Be provided on an annual basis and at a time as agreed by the Superintendent and the President of the Board; and~~
- ~~c. Additional information deemed pertinent by the Superintendent of Public Instruction.~~

~~BE IT FINALLY RESOLVED~~ that the Superintendent of Public Instruction is requested to transmit a copy of this resolution forthwith to all local division superintendents and school board chairs in order that they may be informed of the Board of Education's policies regarding the opening of the school year.

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

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

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

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

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

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

2. A school division is providing, in the school year for which the waiver is sought, an instructional program or programs in one or more of its elementary or middle or high schools, excluding ~~the electronic classroom~~ *Virtual Virginia*³, which are dependent on and provided in one or more elementary or middle or high schools of another school division that qualifies for such waiver. However, any waiver granted by the Board of Education pursuant to this subdivision shall only apply to the opening date for those schools where such dependent programs are provided; ~~or~~

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

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

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

³ HB 1885 (2011) <http://leg1.state.va.us/cgi-bin/legp504.exe?ses=111&typ=bil&val=hb1885>

⁴ HB 1483 (2011) <http://leg1.state.va.us/cgi-bin/legp504.exe?ses=111&typ=bil&val=hb1483>

1. The initial request for a waiver to approve an experimental or innovative program, including a year-round school program, shall be submitted to the Board of Education for approval. Once the initial approval is granted by the Board of Education, the Superintendent of Public Instruction is hereby delegated authority to continue to approve the waiver in subsequent years unless the Board places conditions or time limits on its approval, or unless the conditions under which the approval was granted to the local school board are changed.
2. The Superintendent of Public Instruction is hereby delegated the authority by the Board of Education to waive, on its behalf, all other requests from local school boards to begin school prior to Labor Day where “good cause” requirements have been certified by the school division to the satisfaction of the Superintendent.
3. The local school board shall submit annually to the Superintendent of Public Instruction certification of eligibility for a waiver of the “good cause” requirements of §[22.1-79.1](#), *Code of Virginia*. Such certification shall be made in a manner prescribed by the Superintendent of Public Instruction. School divisions must maintain evidence that such “good cause” conditions have been met.
4. To request approval of a waiver for weather-related or other emergency conditions, the local school board shall submit information annually indicating that the school division has been closed for an average of eight days per year in any five of the past ten years because of severe weather conditions, energy shortages, power failures, or other emergency conditions.
5. To request approval of a waiver for a dependent program, the local school board shall submit information annually indicating that each school for which a waiver is requested provides an instructional program, excluding Virtual Virginia, which is dependent upon a school in another division that qualifies for a waiver.
6. To request initial approval of a waiver for a pre-Labor Day opening for an experimental or innovative program, the local school division shall submit such request to the Board of Education on a form prescribed by the Superintendent of Public Instruction. Such request shall set forth a thorough explanation of the experimental or innovative program and the specific reasons that compel a pre-Labor Day opening. The following procedures apply to applications for experimental or innovative programs:

a. The experimental or innovative program must be approved by the Board pursuant to its *Regulations Establishing Standards for Accrediting Public Schools in Virginia* [8 VAC 20-131-290](#), which specifies that the request must include:

- 1) Purpose and objectives of the experimental/innovative programs;
- 2) Description and duration of the programs;
- 3) Anticipated outcomes;
- 4) Number of students affected;
- 5) Evaluation procedures; and
- 6) Mechanisms for measuring goals, objectives, and student academic achievement.

- b. Any waiver or extension of the school year granted by the Board pursuant to the experimental or innovative program provisions contained in § [22.1-79.1](#) of the *Code*, or the Board's *Regulations Establishing Standards for Accrediting Public Schools in Virginia* shall apply only to the opening date for those schools where such experimental or innovative programs are offered generally to the student body of the school.
 - c. In accordance with § [22.1-79.1](#), of the *Code*, experimental or innovative programs shall include instructional programs which are offered on a year-round basis by the school division in one or more of its elementary or middle or high schools.
 - d. To request approval of a waiver for a pre-Labor Day opening for an experimental or innovative program subsequent to the Board of Education's initial approval, unless the Board of Education has specified conditions under which the waiver request must go back to the Board for approval, the local school board shall submit information annually to the Superintendent of Public Instruction indicating that each school for which a waiver was granted is continuing to operate under the conditions for which the waiver was granted.
7. To request initial approval of a waiver to open before Labor Day by a school division that is completely surrounded by another school division that has been approved for a waiver, the school division shall submit the request to the Superintendent of Public Instruction by letter signed by the superintendent and the chairman of the local school board. The Superintendent of Public Instruction shall determine that the school division is completely surrounded by another school division, and that the other school division has been granted a waiver to open before Labor Day. Once the initial waiver is granted, the local school board shall submit information annually to the Superintendent of Public Instruction indicating that the conditions under which a waiver was granted have not changed.
8. The Board of Education may request the Superintendent of Public Instruction to provide a report to the Board regarding the status of certifications submitted and waivers granted under the above-stated policies. Such report shall be provided in a manner and at a time as agreed to by the Superintendent and the President of the Board and shall include information deemed pertinent by the Superintendent of Public Instruction.