

# Virginia Board of Education Agenda Item



**Agenda Item:** F

**Date:** July 26, 2012

<b>Title</b>	Second Review of the Proposed <i>Regulations Governing Unexcused Absences and Truancy</i>		
<b>Presenter</b>	Dr. Cynthia A. Cave, Director, Office of Student Services		
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**Purpose of Presentation:**

Action required by state or federal law or regulation.

**Previous Review or Action:**

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

Date: September 17, 2009 and July 22, 2010

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

Date: January 13, 2011

Action: First Review

Date: March 22, 2012

Action: Public Hearing

**Action Requested:**

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

September 27, 2012

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

	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 proposed regulations to govern the *Collection and Reporting of Unexcused Absences and Truancy Data and Student Attendance Policies* are new and 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.
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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 waived first review 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 enacted 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 final stages of 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, with no comments received in opposition to the proposed regulations, as shown in the attached Town Hall document. Based on comments received and on the proposed HB 886 and the Governor's veto message, the proposed regulations have been amended to provide clarity and to increase specificity, as shown in the attached edited regulations and summarized below.

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

Part I of the regulations, 8VAC 20-730-10, which provides definitions of terms, has been amended as follows:

- Definition of "attendance plan" amended to specify participating school representatives, to include resolution of a student's nonattendance, and to include participation by the student
- Definition of "attendance conference" amended to remove "if appropriate" from attendance of student at the conference in order to align with the *Code* and to specify role of community representatives
- Definition of "court referral" amended to replace "referral...to intake worker" with "filing a complaint through petition" for clarity. "Records of interventions regarding the student's unexcused absences" added to list of materials provided for specificity
- Definition of "excused absence" amended to replace "excuse" with "reason" and to add "authority" to school administration for consistency. "Absences resulting from suspensions shall be considered excused" added for consistency and similar phrase stating that absences for suspensions shall not be

considered unexcused removed from definition of “unexcused absence.” “Expelled students continue to remain under the provisions of compulsory school attendance, *Code of Virginia*, § 22.1-254” added for clarity.

- Definition of “multidisciplinary team” amended to specify ability to participate in addressing student attendance. Reference to how work is done deleted
- Definition of “parent” amended to align with *Code*, “legal custodian(s)” added
- Definition of “unexcused absence” amended to delete references to missing “part of the scheduled instructional school day without permission from an administrator” as an unexcused absence. School division policies vary on how partial absences from school without acceptable reasons are counted. In some cases, a school division policy is different for how absences are counted in elementary schools (whole days) to how they are counted in high schools (specified hours for block schedules or class periods in high school.) Also, in some cases, records of an unexcused tardy or unexcused early dismissal are kept, and follow up occurs with the family and student; however, for purposes of truancy, unexcused absences are based on full days. To avoid potential complicating of division data reporting systems and overloading of court cases required by the *Code* after seven unexcused absences, the definition was changed to missing a full day only, with the recognition of the importance and goal of early intervention in attendance problems remaining in the regulations’ Foreword. This proposed change also aligns the definition of “unexcused absence” with that of the federal Uniform Data Set (UDS) guidelines supporting the No Child Left Behind Act, which is missing an entire school day. The definition of “unexcused absence” was also amended to replace “excuse” with “reason,” to add “authority” to “school administration,” and to replace school “administrator” with “administration” for consistency. A further amendment is the deletion of “absences resulting from suspensions shall not be considered unexcused” from this definition and adding similar phrasing to the definition of “excused absence.”
- Note that the proposed definition of truancy is “the act of accruing one or more unexcused absences.” This definition differs from the federal UDS guide supporting NCLB, which defines truancy as “a pattern of repeated unexcused absences from compulsory education.” The reporting requirement from the UDS is that states collect and report data on truancy rates. The “truancy rate” as defined by UDS is “the rate of students who have 10 or more unexcused absences per year per 100 students, with the definition of ‘unexcused’ based on local definition. Prior to the issuance of the federal guidance, the Virginia Department of Education had determined that a report of truancy rates be based on unexcused absences of seven or more. Reporting ten or more unexcused absences, instead of seven, can be easily achieved.

Part II, 8VAC 20-730-20, which provides process and responsibilities for addressing unexcused absences, has been amended as follows:

- Under A.(1), Sentence added to state “Early intervention with the student and parent(s) shall take place for repeated unexcused absences” to reinforce the timely identification of repeated unexcused absences and early intervention to address nonattendance reasons
- Under A.(2), “with the student and parent(s)” has been added after “attendance plan shall be made” to align with the *Code*

- Under A.(3), “fifteen” replaced with “15”
- Under A.(3), “calendar” added before “days” for clarity
- Under A.(3), “when applicable” after “student” deleted to align with the *Code*
- Under A.(4), addition of “all records of intervention regarding the student’s unexcused absences, such as” added before list of materials to accompany petition to Juvenile and Domestic Relations Court for specificity
- Under A.(4), The phrase “presented to the intake worker” deleted and replaced with “attached to the petition” for specificity
- Under A.(4), Deletion of “The decision shall be made by the intake worker either to divert the case or to file the petition for presentation before the court.” because it is unnecessary.
- Under B., the phrase “This record does not become a part of the student’s permanent scholastic record” deleted for consistency with *Code* requirements for the student record

Part III, 8VAC 20-730-30, which provides requirements for data collection and reporting, has been amended as follows:

- Under “5,” the phrase “court referral” before “petition” deleted and “or if proceedings against parents were instituted, and the reason” added after “petition was filed” for specificity and consistency

**Impact on Fiscal and Human Resources:**

There may be an administrative impact on some school divisions, depending upon current practice.

**Timetable for Further Review/Action:**

Upon approval and after the remaining public comment period, the regulations will be brought before the Board of Education for final approval.

**Superintendent's Recommendation:**

The Superintendent of Public Instruction recommends that the Board of Education accept for second review the proposed *Regulations Governing the Collection and Reporting of Truancy Related Data and Student Attendance Polices* and authorize an additional 30-day public comment period.

Title of Regulations: Regulations Governing the Collection and Reporting of Truancy  
Related Data and Student Attendance Policies

**[8-VAC 20-730]**

Foreword

The Virginia Board of Education is setting forth procedures for the collection and use of data to identify students at risk of academic failure due to missed days at school and to promote early intervention to improve school attendance. 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 drop out of school and experience crime and violence, unemployment, substance abuse, adult criminality and incarceration, unwanted pregnancy and social isolation. Due to the strong link between missing school and these negative consequences, it is critical to address attendance issues early and effectively. School divisions can use documented attendance data to examine and evaluate attendance patterns, and to develop policies and practices to promote student daily attendance.

The primary goal of the Virginia Board of Education, through these regulations, is to set forth definitions with data collection requirements and procedures to address nonattendance issues. The intent of the regulations is to promote consistent and accurate data collection and reporting and to improve attendance related policies.

The regulations offer definitions for the collection of data at the school building level. These regulations define data that shall be collected on students with five, six and seven unexcused absences at each interval. The data collection correlates with the requirements in [§] [§§] 22.1-

258 [and 260] of the *Code of Virginia*. Data should be used to evaluate and analyze student attendance patterns at the school division and state levels. These regulations will generate more consistent data and effective practices that will assist continuous improvement of daily school attendance.

PART I

DEFINITIONS

8 VAC 20-730-10 Definitions.

The following words and terms, when used in this chapter, shall have the following meaning, unless the text clearly indicates otherwise:

“Attendance plan” means a plan ~~action steps~~ developed jointly by a school representative(s) (school principal or 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 them and support regular attendance. This plan may include school-based activities and/ or suggested referrals to community supports , or both.

“Attendance conference” means a face-to-face meeting, 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.

“Court referral” means filing a complaint through petition referral to the Juvenile and Domestic Relations Court intake worker after the student’s seventh unexcused absence. Records of interventions regarding the student’s unexcused absences, such as Ccopies of the attendance plan and documentation of conference meetings, will be provided to the intake worker.



“Excused absence” means an absence of an entire assigned instructional school day with a [n excuse] [reason] acceptable to the school administration [authority] that is provided by the parent. If circumstances permit, the parent should provide the school authority 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. **Absences resulting from suspensions shall be considered excused. Expelled students continue to remain under the provisions of compulsory school attendance, Code of Virginia, § 22.1-254.**

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

“Multidisciplinary team” means a school-based team that [may be convened] [convenes on a regular basis] to review student records and to [identify an integrated system of care for the student in need, including] [participate in] prevention, early intervention, and [provision of] support services [to address unexcused absences, including] [and] 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(s), guardian(s), [legal custodian(s)] or other person(s) having legal control

[or charge] of the student.

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

“Unexcused absence” is an absence where: [(1)] [(i)] [either] the student misses his/her scheduled instructional school day in its entirety [or (2) misses part of the scheduled instructional school day without permission from an administrator;] and [(3)] [(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] that is unacceptable to the school administration

[authority]. [An administrator] [The school administration authority] 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.]

## PART II

### UNEXCUSED ABSENCES INTERVENTION PROCESS AND RESPONSIBILITIES

8 VAC 20-730-20. Unexcused Absences Intervention Process and Responsibilities.

[A.] 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, other school personnel or volunteer will notify the parent by phone or e-mail 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(s) 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. During the direct contact with the parent and the student (if appropriate), reason(s) for nonattendance shall be documented and the consequences of nonattendance explained. An attendance plan shall be made [with the student and parent(s)] to resolve the nonattendance issues. The student and parent may be referred to a school-based multidisciplinary 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 within ten school days from the date of the student's sixth unexcused absence for the school year. The attendance conference must be held within ~~fifteen~~ **15 calendar** 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(s) from the multidisciplinary team) and may include community service providers.

[4.] The principal or designee shall notify the attendance officer or 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 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~~ **attached to the petition**. ~~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.] A record shall be maintained of each meeting that includes the attendance plan, the name of individuals in attendance at each conference meeting (including 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.~~

### PART III

#### DATA COLLECTION AND REPORTING

##### 8 VAC 20-730-30 Data Collection and Reporting.

This 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:

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