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Fast-Track Regulation Agency Background Document

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) Chapter citation(s)	8VAC20-23 8VAC20-543
VAC Chapter title(s)	Chapter 23. Licensure Regulations for School Personnel Chapter 543. Regulations Governing the Review and Approval of Education Programs in Virginia
Action title	Amendments to the <i>Licensure Regulations for School Personnel</i> and the <i>Regulations Governing the Review and Approval of Education Programs in Virginia</i>
Date this document prepared	September 28, 2020 – Revised 4/30/2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This action is to amend the *Licensure Regulations for School Personnel* and the *Regulations Governing the Review and Approval of Education Programs in Virginia* to comport with Virginia General Assembly legislation in the 2019 and 2020 sessions.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

All terms have been defined.

Statement of Final Agency Action

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 approved the amendments to the *Licensure Regulations for School Personnel* and the *Regulations Governing the Review and Approval of Education Programs* at its October 15, 2020, meeting.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

The regulatory changes were prompted and are mandated by the following Acts of Assembly:

- Chapter 587 of the 2019 Acts of Assembly
- Chapters 108, 109, 172, 513, 639, 640, 684, and 870 of the 2020 Acts of Assembly

This rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process because the amendments align these regulations with recent amendments to legislation.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The Board of Education is amending 8VAC20-23 and 8VAC20-543 under its authority to promulgate regulations to carry out its statutory powers and duties pursuant to Section 22.7-76 of the Code of Virginia (Code). Section 22.1-253.13:3 of the Code authorizes the board to promulgate

regulations for certain school personnel. In addition, Section 22.1-298.1 authorizes the board to prescribe requirements for the licensure of teachers and licensed school personnel. Section 22.1-298.2 also authorizes the board to prescribe, by regulation, the requirements for the accreditation approval of education preparation programs. Finally, the 2019 and 2020 Acts of Assembly amended the following statutes, requiring changes to the impacted

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The purpose of the amendments is to comport the regulation with statute, which was recently amended through the following Acts of Assembly:

Chapters 108 and 109 of the 2020 Acts of Assembly - Requires the Board of Education to amend its regulations to require that persons seeking a technical professional license with an endorsement to teach military science have either the appropriate credentials issued by the United States military or a recommendation from a Virginia employing educational agency.

Chapter 684 of the 2020 Acts of Assembly - Requires the Board of Education pursuant to regulation, to permit any individual who seeks a technical professional license to substitute the successful completion of an intensive, job embedded, three-year program of professional development for the nine semester hours of professional studies required for such license.

Chapter 640 of the 2020 Acts of Assembly - Authorizes any school board and division superintendent to extend from three months to six months the period within which the provisional license of an individual seeking initial teacher licensure who has not completed professional assessments will expire for the purpose of establishing such individual's eligibility for initial licensure, provided that such individual has received a satisfactory mid-year performance review in the current school year and meets all other eligibility criteria.

Chapters 639 and 172 of the 2020 Acts of Assembly - Requires the Board of Education to extend for at least one additional year, but for no more than two additional years, the three-year provisional license of a teacher employed in a school for students with disabilities that is licensed by the Board upon receiving from the school administrator of such school (i) a recommendation for such extension and (ii) satisfactory performance evaluations for such teacher for each year of the original three-year provisional license. The provisions of the bill mirror current law relating to the extension of provisional licenses for public school teachers.

Chapter 587 of the 2019 Acts of Assembly – Authorizes the Board of Education to issue a written reprimand to any holder of a license issued by the Board who commits certain offenses.

Chapter 513 of the 2020 Acts of Assembly - Requires that the licensure regulations include procedures for the issuance of written reprimand of a license holder “on grounds established by the Board of Education, in accordance with law.” Clarifies that these regulations may include procedures for the written reprimand for any reasons established by the Board in accordance with law.

Chapter 570 of the 2020 Acts of Assembly - Requires every person seeking initial licensure as a teacher who has not received instruction on positive behavior interventions etc. to receive such instruction as a condition of licensure and requires education preparation programs offered by public institutions of higher education and private institutions of higher education to ensure that,

as a condition of degree completion, each student enrolled in the education preparation program receives such instruction.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The following regulatory sections are proposed for amendment to comply with the legislative mandates as indicated below:

- 8VAC20-23-10 to comply with Chapters 640, 639, and 172 of the 2020 Acts of Assembly

- 8VAC20-23-50 to comply with Chapters 108, 109, and 684 of the 2020 Acts of Assembly

- 8VAC20-23-760 and 8VAC20-23-800 to comply with Chapter 587 of the 2019 Acts of Assembly and Chapter 513 of the 2020 Acts of Assembly

- 8VAC20-543-20 to comply with Chapter 570 of the 2020 Acts of Assembly

In addition, the following regulatory section is proposed to be added to comply with the legislative mandates as indicated below:

- 8VAC20-23-755 to comply with Chapter 587 of the 2019 Acts of Assembly and Chapter 513 of the 2020 Acts of Assembly

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

The primary advantage of the proposed regulations for the public or the Commonwealth is providing clarity by aligning the regulation with statute. The regulatory revisions are necessary to ensure the public is informed of the amended provisions of the Code of Virginia.

There are no perceived disadvantages to the public, to the agency, or to the Commonwealth.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no identified applicable federal requirements or requirements that exceed applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

The Department of Education is primarily impacted; the Virginia Community College; and the State Council of Higher Education for Virginia

Localities Particularly Affected

School divisions

Other Entities Particularly Affected

Individuals licensed; individuals applying for licensure

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>Any economic impact is minimal. The impact will be on human resources to implement the new regulations.</p> <p>The additional training required for initial licensure for both the colleges and universities was established by the Virginia Department of Education.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	Any economic impact is minimal.
Benefits the regulatory change is designed to produce.	The revisions are to provide more flexibility to licensure requirements.

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	Any economic impact is minimal.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	
Benefits the regulatory change is designed to produce.	

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

No alternatives were considered since the proposed regulations are required for comport to the Code of Virginia.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

Alternative regulatory methods were not applicable since the requirements are required by the Code of Virginia.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

As required by § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Virginia Department of Education is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency’s regulatory flexibility analysis stated in this background document.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Technical corrections have been made throughout the text of the regulation such as changing “10” to “ten,” “board” to “Board,” and other technical changes as needed for clarity.

Table 1: Changes to Existing VAC Chapter(s) – Begins on next page.

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
<p>LICENSURE REGULATIONS FOR SCHOOL PERSONNEL</p> <p>8VAC20-23-10. Definitions.</p>		<p>8VAC20-23-10. Definitions.</p>	<p>Add language to the definition of a Provisional License that allows the Board to extend for at least one additional year, but for no more than two additional years, the three-year provisional license of a teacher employed in an accredited private elementary or secondary school or a school for students with disabilities that is licensed pursuant to Chapter 16 (§ 22.1-319 et seq.) upon receiving from the school administrator of such school (i) a recommendation for such extension and (ii) satisfactory performance evaluations for such teacher for each year of the original three-year provisional license.</p> <p>Add language to allow a longer period of time for a school board and division superintendent to request a license for an individual who has not completed professional assessments and meets specific requirements:</p> <p>The Board shall issue a license to an individual seeking initial licensure who has not completed professional assessments as prescribed by the Board, if such individual (i) holds a provisional licensure that will expire within three <u>months or, at the discretion of the school board and division superintendent, within six months if the individual has received a satisfactory mid-year performance review in the current school year;</u>..</p> <p>Add a definition of “Reprimand.”</p> <p><u>“Reprimand” means a written admonishment of a license holder that does not result in the withdrawal of a license.</u></p>
<p>8VAC20-23-30 Administering this chapter.</p>		<p>8VAC20-23-30 Administering this chapter.</p>	<p>Require professional education programs to ensure that, as a condition of degree completion, each student enrolled in the education preparation program receives instruction on positive behavior interventions, etc. as mandated by Chapter 870 of the 2020 Acts of Assembly.</p>

<p>8VAC20-23-40. Conditions for licensure.</p>		<p>8VAC20-23-40. Conditions for licensure.</p>	<p>In subsection K, strike “or I” because the exception listed in subsection I regarding industry credentials for individuals with a provisional license is not provided as an acceptable reason for delaying this requirement in § 22.1-298.1(E).</p>
<p>8VAC20-23-50. Types of licenses; dating licenses.</p>		<p>8VAC20-23-50. Types of licenses; dating licenses.</p>	<p>Move descriptive language under Provisional License to the definition of provisional license in 8VAC20-23-10</p> <p>Add the following underlined text to the Technical Professional License:</p> <p>Technical Professional License. ...The nine semester hours of professional studies coursework shall include three semester hours of human development and learning, three semester hours of curriculum and instruction, and three semester hours of applications of instructional technology or classroom and behavior management. <u>Individuals who seek a technical professional license may substitute the successful completion of an intensive, job-embedded, three-year program of professional development submitted by a Virginia employing educational agency and preapproved by the Department of Education for the nine semester hours of professional studies required.</u> The Technical Professional License is issued at the recommendation of a Virginia employing educational agency in the areas of career and technical education, educational technology, and military science. Individuals seeking an endorsement to teach military science shall have the appropriate credentials issued by the United States military. <u>Individuals holding a technical professional license may teach a military science leadership class with either the appropriate credentials issued by the United States military or (for non Junior Reserve Officers’ Training Corps) a recommendation from a Virginia employing educational agency.</u></p> <p>Revise the description of Career and Technical Education or Dual Enrollment License after “(iii) complies with the requirements set forth in,” replace “subsections E and F of 8VAC20-23-40” with the statutory reference to “subdivisions D1 and 3 of §22.1-298.1 of the Code of Virginia”</p>

<p>Part VII. Revocation, Cancellation, Suspension, Denial, and Reinstatement of Licenses</p>	<p>8VAC20-23-720. Revocation</p> <p>8VAC20-23-755. Written Reprimand.</p>	<p>Part VII. Revocation, Cancellation, Suspension, Denial, and Reinstatement of Licenses</p>	<p>Amend the title of Part VII as shown below:</p> <p>Part VII. Revocation, Cancellation, Suspension, Denial, and Reinstatement of Licenses <u>and Written Reprimand of License Holders</u></p> <p>In subsection G, remove reference to subdivision 4 under (2.) because subdivision 4 does not exist.</p> <p>In subsection G, under (3.), replace the reference to subsection C with a reference to subsection H to appropriately address the Board of Education's authority to initiate a petition for revocation. This change is being made to provide the correct reference, which is currently how the regulation is interpreted in practice.</p> <p>Add section on Written Reprimand</p> <p>8VAC20-23-755. Written Reprimand.</p> <p>A. <u>A written reprimand of a license holder may be issued for the following reasons:</u></p> <p><u>1. Acts related to secure mandatory tests as specified in subsection A of §22.1-292.1 of the Code of Virginia;</u></p> <p><u>2. Breach of employment contract, in the event that a school board or division superintendent declines to grant a license holder's request for release from an employment contract on the grounds of insufficient or unjustifiable cause; and</u></p> <p><u>3. In accordance with law and at the discretion of the Board of Education after reviewing the specific facts and circumstances of a license holder's case and determining that the license holder's conduct is not sufficiently serious or harmful to merit the withdrawal of a license, any of the reasons that a license may be revoked or suspended listed in 8VAC20-23-720 A and 8VAC20-23-740 A, respectively, except (i) conviction of any violent felony set forth in the definition of barrier crime in subsection A of § 19.2-392.02 of the Code of Virginia; (ii) any offense involving the sexual molestation, physical or sexual abuse, or rape of a child; and (iii) the conduct listed in 8VAC20-23-720 A(10) and 8VAC20-23-740 A(5),</u></p>
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<p>8VAC20-23-760. Expired License.</p>		<p>8VAC20-23-760. Expired License.</p>	<p><u>which requires revocation or suspension of a license by the Board of Education under §22.1-292.2 A of the Code of Virginia.</u></p> <p><u>B. Further, the Board of Education may not issue a written reprimand of any license holder for whom it has received a notice of dismissal or resignation pursuant to subsection F of §22.1-313 of the Code of Virginia and, in the case of a person who is the subject of a founded complaint of child abuse or neglect after all rights to any administrative appeal provided by §63.2-1526 of the Code of Virginia have been exhausted, assuming the founded complaint of child abuse or neglect remains on the Central Registry.</u></p> <p>Add the following text to the section, “Expired License” related to written reprimand. 8VAC20-23-760. Expired License. <u>Written reprimand of a license holder may be issued for any reason listed in 8VAC20-23-760 A and</u> Action against a license issued by the Virginia Board of Education may be taken for any of the reasons listed in <u>8VAC20-23-720 A, 8VAC20-23-740 A, or 8VAC20-23-750 A, even if the license is expired, as long as the basis for the reprimand or action occurred prior to the issuance of the license or while the license was active.</u></p>
<p>8VAC20-23-800</p>		<p>8VAC20-23-800. Right of Applicant or License Holder to Appear at Hearing.</p>	<p>Add notification of reprimands to regulations:</p> <p>Notification of the revocation, suspension, cancellation, denial, or reinstatement of a license <u>or the written reprimand to a license holder shall be made by the Superintendent of Public Instruction, or his designee, to division superintendents in Virginia and, through a national clearinghouse, to chief state school officers of the other states and territories of the United States.</u></p>

<p>REGULATIONS GOVERNING THE REVIEW AND APPROVAL OF EDUCATION PROGRAMS IN VIRGINIA</p> <p>8VAC20-543-20. Accreditation and Administering This Chapter.</p>		<p>8VAC20-543-20. Accreditation and Administering This Chapter.</p>	<p>8VAC20-543-20. Accreditation and Administering This Chapter.</p> <p>Part II</p> <p>Accreditation and Administering this Chapter</p> <p>Add language to require education preparation programs to provide the following additional instruction:</p> <p>...F. Professional education programs shall <u>ensure that, as a condition of degree completion, each student enrolled in the education preparation program receives instruction on positive behavior interventions and supports; crisis prevention and de-escalation; the use of physical restraint and seclusion, consistent with regulations of the Board of Education; and appropriate alternative methods to reduce and prevent the need for the use of physical restraint and seclusion</u>; ensure that candidates demonstrate proficiency in the use of educational technology for instruction; complete study in child abuse recognition and intervention; and complete training or certification in emergency first aid, cardiopulmonary resuscitation, and the use of automated external defibrillators. Candidates in education endorsement programs must demonstrate an understanding of competencies, including the core concepts and facts of the disciplines and the Virginia Standards of Learning, for the content areas they plan to teach. Professional education programs shall ensure that candidates demonstrate skills needed to help preK-12 students achieve college and career performance expectations.</p>
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Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments also may be submitted by mail, email or fax to Maggie Clemmons, Director of Licensure and School Leadership, P. O. Box 2120, Richmond, VA 23218-2120; Maggie.clemmons@doe.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.