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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Education
Virginia Administrative Code (VAC) citation(s)	8 VAC20-131
Regulation title(s)	<i>Regulations Establishing Standards for Accrediting Public Schools in Virginia</i>
Action title	Amendments to permit students entering the ninth grade prior to the 2018-19 school year to be awarded locally-awarded verified credit in English and mathematics when certain Board of Education-established criteria are met.
Date this document prepared	March 22, 2018

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to eighteen months), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation. 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 amendments allow students that entered the ninth grade prior to the 2018-19 school year to be awarded locally-awarded verified credits in English and mathematics when certain Board of Education-established criteria are met. Currently, these students may receive locally-awarded verified credits in only science and history/social science. These proposed amendments would amend the Standards of Accreditation as they are currently effective for the current school year, and as they will be effective for the 2018-19 school year.

Changes to the *Regulations Establishing Standards for Accrediting Public Schools in Virginia* that will be effective beginning with the 2018-19 school year will allow students that enter the ninth grade in 2018-

2019 and thereafter to receive locally-awarded verified credits in English, mathematics, science, and history/social science.

The proposed amendments will provide access to locally-awarded verified credits in English, mathematics, science, and history/social science for both existing and future students.

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.

Locally-awarded verified credits provide students that opportunity to receive verified credits required for graduation in a course that they have passed, but failed the related end-of-course Standards of Learning test. To receive a locally-awarded verified credit, a student must fail the end-of-course test twice, scoring between 375 and 399 on one of the attempts, and demonstrate achievement and mastery in the academic content area through an appeal that is reviewed by a local school division-established committee.

Standards of Accreditation, or **SOA** refers to 8VAC20-131, the Board of Education's *Regulations Establishing Standards for Accrediting Public Schools in Virginia*.

Emergency Authority

The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006. Please explain why this is an emergency situation as described above, and provide specific citations to the Code of Virginia or the Appropriation Act, if applicable.

An emergency exists because the new Standards of Accreditation that will take effect for the 2018-19 school year will create different access to locally-awarded verified credits for students subject to the current graduation requirements. Without this emergency action, students that need to access locally-awarded verified credits in English and mathematics in order to graduate, beginning with the spring of 2018, will not be able to meet the requirements for graduation, while their younger peers (students subject to the graduation requirements effective beginning in the 2018-2019 school year) will have such access. To achieve parity between these two groups of students on a timely basis, emergency regulations are necessary.

Legal basis

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) the promulgating entity, i.e., agency, board, or person.

The Board of Education is the promulgating entity.

The Board's authority to establish graduation requirements through its Standards of Accreditation are established in § 22.1-253.13:3 of the Code:

A. The Board of Education shall promulgate regulations establishing standards for accreditation pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), which shall include student outcome measures,

requirements and guidelines for instructional programs and for the integration of educational technology into such instructional programs, administrative and instructional staffing levels and positions, including staff positions for supporting educational technology, student services, auxiliary education programs such as library and media services, requirements for graduation from high school, community relations, and the philosophy, goals, and objectives of public education in Virginia.

The Board's authority to establish graduation requirements are further referenced in § 22.1-253.13:4 of the Code:

A. Each local school board shall award diplomas to all secondary school students, including students who transfer from nonpublic schools or from home instruction, who meet the requirements prescribed by the Board of Education and meet such other requirements as may be prescribed by the local school board and approved by the Board of Education...

Purpose

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

The Board of Education approved comprehensive revisions to the Standards of Accreditation, on November 16, 2017. These regulations have completed the Administrative Process Act review process and will become effective at the beginning of the 2018-2019 academic year.

The revised regulations make changes to graduation requirements, including the availability of locally-awarded verified credits. Under the current and revised requirements, locally-awarded verified credits provide students the opportunity to receive a verified credit in a course that they have passed, but failed the related end-of-course Standards of Learning test twice within a narrow margin. To receive a locally-awarded verified credit, the student must take the test twice, score between 375 and 399 on one of the attempts, and demonstrate achievement and mastery in the academic content through a local appeal process.

The Standards of Accreditation applicable to first-time ninth graders until the 2018-2019 academic year limit the award of locally-awarded verified credit to science and history/social science. The revised graduation requirements that will take effect for first-time ninth graders beginning in the 2018-2019 school year will allow a student to earn one locally-awarded verified credit among English, mathematics, science, or history/social science.

These changes will result in inequitable opportunities to earn verified credits for students that will be attending high school at the same time. Current high school students that are struggling to pass either the English or mathematics end-of-course test will not have access to locally-awarded verified credits, while students that will enter the ninth grade beginning in the fall of 2018-2019 will.

These proposed emergency amendments to the current and revised regulations are proposed to provide parity among these high school cohorts, and to help current students earn their diplomas for graduation in the spring of 2018.

Need

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

As of January 10, 2018, the Board of Education amended its regulations to expand the availability of locally-awarded verified credits to English, mathematics, in addition to science, and history/social science.

The Board’s regulations were only made applicable to students entering the ninth grade beginning in the 2018-19 school year.

Students that entered the ninth grade prior to the 2018-19 school year will not be able to access locally-awarded verified credit in English or mathematics. This means that these students, if they are unable to pass an English or mathematics assessment needed for graduation, will not be able to graduate, while a younger peer facing the same situation would be able to graduate from high school.

There is no reason to limit access to locally-awarded verified credits in these subject areas for existing now that the Board has approved expanded access for future students.

In addition to these proposed emergency regulations, the Board of Education will need to revise its guidance governing the award of locally-awarded verified credits.

Substance

Please describe any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons the agency has determined that the proposed regulatory action is essential to protect the healthy, safety, or welfare of Virginians.

For changes to existing regulations, use this chart:

Current section number	Current requirement	Proposed change, intent, and likely impact of proposed requirements
8VAC20-131-110 (as it is effective until the 2018-19 school year)	Students who do not pass Standards of Learning tests in science or history/social science may receive locally-awarded verified credits from the local school board in accordance with Board of Education guidelines.	The proposed change would add English and mathematics to the list of subject areas for which a locally-awarded verified credit can be awarded. This would allow students that would graduate in the spring of 2018 to access locally-awarded verified credits in these areas.
8VAC20-131-110 (as it will be effective beginning with the 2018-19 school year)	Students that enter the ninth grade for the first time prior to the 2018-19 school year and do not pass SOL tests in science or history/social science may receive locally awarded verified credits from the local school board in accordance with Board of Education guidelines. Students that enter the ninth grade for the first time in the 2018-19 school year and thereafter may receive not more than one locally-awarded verified credit in English, mathematics, science, or history/social science.	The proposed change would add English and mathematics to the list of subject areas for which a locally-awarded verified credit can be awarded for students that entered the ninth grade for the first time before the 2018-19 school year. The limit of one locally-awarded verified credits for students entering ninth grade in 2018-19 and thereafter is established in the regulation. The Board’s guidance includes a limit on the number of verified credits for students that entered the ninth grade prior to 2018-19. Currently, the limit is three.
8VAC20-131-430	The revised SOA will become effective beginning in the 2018-19 school year, with certain exceptions. Availability of locally-awarded verified credits	This amendment is proposed to comport with the amendments proposed for 8VAC20-131-110.

	<p>established in 8VAC20-131-110 is repeated in this section for clarity.</p>	
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Alternatives

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

If the emergency regulations are not adopted, students currently in high school would not be able to access locally-awarded verified credit in English or mathematics. Students that are unable to pass the SOL test, but are scoring within a narrow margin of passing, will be unable to graduate from high school.

Another alternative would be to utilize the Board’s authority established in § 22.1-253.13:4.D.11 of the Code, and promulgated through 8VAC20-131-350 (as it is applicable until the 2018-19 school year) and 8VAC20-131-420.B (which will become applicable for the 2018-19 school year).

This regulation allows the Board of Education to waive certain graduation requirements on a case-by-case basis either upon the Board’s initiative or upon request from a local school board. To accomplish waivers for locally-awarded verified credits would create an unnecessary administrative burden for local school boards, local division staff, the Board of Education, and Department of Education staff, because these case-by-case waivers would have to be submitted and automatically approved.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments. Please also indicate whether a Regulatory Advisory Panel or a Negotiated Rulemaking Panel has been used in the development of the emergency regulation and whether it will also be used in the development of the permanent regulation.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the [Virginia Regulatory Town Hall website](#), or by mail, email, or fax to Zachary Robbins, P.O. Box 2120, Richmond, Virginia 23218-2120, telephone (804) 225-2092, fax (804)530-4502, or by email at BOE@doe.virginia.gov.

Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

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.

The proposed amendments should positively impact families in Virginia by encouraging economic self-sufficiency and self-pride by providing flexibility to meet high school graduation requirements. These proposed amendments should have no impact on the authority and rights of parents in the education, nurturing, and supervision of their children.