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Proposed Regulation Agency Background Document

Agency name	Virginia Board of Education
Virginia Administrative Code (VAC) citation	8 VAC 20 - 700
Regulation title	Proposed Regulations for Conducting Division-Level Academic Reviews
Action title	Division-Level Academic Reviews
Document preparation date	August 24, 2005

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

House Bill 1294, passed by the General Assembly and signed into law on April 15, 2004, gave the Board of Education the authority to require division-level academic reviews in school divisions where findings of school-level academic reviews show that the failure of the schools to reach full accreditation is related to the local school board's failure to meet its responsibilities under the *Standards of Quality*. House Bill 1294 also required, in part:

“That the Board of Education shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.”

The Board of Education promulgated emergency regulations as a result of this requirement that will expire February 15, 2006.

The proposed regulations, which will replace the emergency regulations, do not deviate substantially from the provisions of the emergency regulations.

Legal basis

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) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The Code of Virginia, § 22.1-16, vests the Board of Education with the authority to promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1. Section 22.1-253.13:3 of the Code of Virginia includes the following provision: “When the Board of Education has obtained evidence through the school academic review process that the failure of schools within a division to achieve full accreditation status is related to division level failure to implement the Standards of Quality, the Board may require a division level academic review. After the conduct of such review and within the time specified by the Board of Education, each school board shall submit for approval by the Board of Education an improvement plan, setting forth specific actions and a schedule designed to ensure that schools within its division achieve full accreditation status. Such plans shall be part of the relevant school division's six-year improvement plan pursuant to § [22.1-253.13:6](#).” The legislation effecting this provision also required the Board to promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The regulation is necessary to protect the health, safety, and welfare of citizens, particularly those of school age. It is essential to provide the structure for the Board of Education and staff of the Department of Education for the orderly conduct of division-level academic reviews in selected school divisions that have underperforming schools or fail to meet the requirements of the Standards of Quality. It outlines the process and procedures for conducting the division-level academic review and for local school boards to submit a corrective action plan to the Board of Education. In addition, it defines some flexibility for options for reviews to be conducted by agencies or organizations other than the Department of Education when appropriate.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the “Detail of changes” section.)

The proposed permanent regulations do not deviate substantially from the emergency regulations. However, as a result of the department’s experience with reviews conducted during the 2004-2005 school year, some changes were necessary to the structure of the review section to provide more flexibility to tailor reviews to the perceived needs of school divisions chosen for reviews in the future. In addition, the section detailing division improvement plans and corrective actions has been strengthened to provide more guidance to local school boards in the development of those plans and actions.

Issues

Please identify the issues associated with the proposed regulatory action, including:

1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The Constitution of Virginia requires the Board of Education to provide for the general supervision of the system of free public education in the Commonwealth. The Standards of Quality for public schools (§ 22.1-253.13:1 et seq. of the *Code of Virginia*) set the minimum requirements for local school boards to maintain a quality educational program in the various school divisions in the state. The proposed regulations provide the Board of Education a mechanism to review the program provided in the school division when there is a probability that a local school board is failing to comply with the Standards of Quality and children are attending underperforming schools. Performance standards for schools are set by the Board of Education in 8 VAC 20-131-10 et seq., *Regulations Establishing Standards for Accrediting Public Schools in Virginia*. These standards and the provision that school boards maintain schools that are fully accredited are also required by the Standards of Quality.

These regulations will provide the Board of Education with the structure to monitor low-performing school divisions as needed and, thus, ensure that children in the Commonwealth are receiving a high-quality education. The Commonwealth as a whole benefits from a better-educated citizenry.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	The cost to the state to implement the regulation will vary from year-to-year depending on the number of school divisions identified for review and the size and scope of the review. Funds have been appropriated by the General Assembly for conducting reviews during the 2004-2006 biennium.
Projected cost of the regulation on localities	The cost of the regulation to affected entities will vary depending on the need for corrective action on the part of the local school division.
Description of the individuals, businesses or other entities likely to be affected by the regulation	The affected entities are local school divisions (boards) and the schools within the divisions selected for review.
Agency’s best estimate of the number of such entities that will be affected	The number of affected entities will vary from year to year depending on the performance of schools within the various school divisions.
Projected cost of the regulation for affected individuals, businesses, or other entities	The cost of the regulation to affected entities will vary depending on the need for corrective action on the part of the local school division.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

No alternatives were considered, as the agency believes this is the least burdensome or intrusive means of assisting local school divisions to improve the services provided to students and the community at large.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

There were no comments during the Emergency/NOIRA stage.

Commenter	Comment	Agency response
(None)		

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The proposed regulatory action will impact the institution of the family and family stability in that the reviews conducted as a result of the implementation of the regulation will result in an improved educational program in the division(s) reviewed. This program improvement will benefit the children who attend public schools and provide for a better-educated citizenry that, in turn, will improve the economic status of the family.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections. If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
8 VAC 20-700-20		<p>The emergency regulation requires that a school division be identified as “in improvement” under federal law to be targeted for review.</p> <p>The emergency regulation also requires a designation of “accredited with warning” under state regulations as a condition of consideration for a division-level review.</p>	<p>The proposed regulation removes this requirement and permits the Board to review the overall status of school divisions instead of only those designated as “in improvement.” Individual schools in the divisions may be underperforming but the division not designated as “in improvement.”</p> <p>The proposed revisions to the Board’s accrediting standards for public schools include new ratings that may be awarded schools that are not fully accredited. The proposed language would not restrict the Board from considering school divisions that have low performing schools rated other than “accredited with warning”</p>
8 VAC 20-700-30		<p>The emergency regulation spells out all facets of the structure of the academic review.</p>	<p>Some of the detailed structure of the review has been removed. The proposed regulation provides greater flexibility to the Board of Education and Department of Education to construct reviews to meet the perceived need of the school division being reviewed.</p>
8 VAC 20-700-40		<p>The emergency regulation requires that the local school board approve the improvement plan before submitting it to the Board of Education and periodically report its actions to the Board of Education.</p>	<p>The proposed regulation will require that the local school board hold a public hearing on the improvement plan prior to submitting it to the Board of Education and to make periodic reports on its actions to the public in addition to submitting reports to the Board of Education.</p>