



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action
Agency Background Document

Agency Name:	Virginia Department of Education
VAC Chapter Number:	8 VAC 20-440-10 et. seq.
Regulation Title:	Regulations Governing the Employment of Professional Personnel
Action Title:	Amend the Regulations
Date:	April 5, 2001

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

The Regulations Governing the Employment of Professional Personnel were originally adopted by the Board of Education in 1994. In response to an amendment to Section 22.1-302 of the Code of Virginia, the regulations were revised in 1996 to incorporate a model extracurricular activity sponsorship contract adopted by the Board of Education. No revisions to the regulations have been made since 1996.

The Notice of Intended Regulatory Action (NOIRA) is submitted to the Board of Education to amend and reenact the Regulations Governing the Employment of Professional Personnel. The purposes of revising the regulations are as follows:

- (1) Ensure that the regulations are consistent with the requirements of §22.1-302 of the Code of Virginia and with the provisions of HB 2514 and SB 1304 (§22.1-303) as adopted by the 2001 Session of the General Assembly.

- (2) Examine the definition of “breach of contract” in the current regulation and determine whether the definition is consistent with the current Code and make adjustments as needed to ensure that such definition is consistent and to add to the definitions “Extracurricular Activity Sponsorship Contract” as specified in §22-1-302 of the Code; and
- (3) Consider the advisability of removing the reference to the suspension of teachers’ licenses based on breach of contract (8 VAC 20-440-160 of the current regulation). This would be a change in the current regulation which was recently discussed by the members of the Board of Education and a change upon which the board now wishes to receive further public comment from constituent groups.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

Code of Virginia

§ 22.1-302. Written contracts required; execution of contracts; qualifications of temporarily employed teachers; rules and regulations.

A. A written contract, in a form prescribed by the Board of Education, shall be made by the school board with each teacher employed by it, except those who are temporarily employed, before such teacher enters upon his duties. Such contract shall be signed in duplicate, with a copy thereof furnished to both parties. A temporarily employed teacher, as used in this section, shall mean (i) one who is employed to substitute for a contracted teacher for a temporary period of time during the contracted teacher's absence, or (ii) one who is employed to fill a teacher vacancy for a period of time, but for no longer than ninety teaching days in such vacancy during one school year.

B. The Board of Education shall promulgate regulations regarding temporarily employed teachers, as defined in this section, which shall provide that such teachers be at least eighteen years of age and that they hold a high school diploma or a general educational development (GED) certificate.

However, local school boards shall establish employment qualifications for temporarily employed teachers which may exceed the Board's regulations for the employment of such teachers. School boards shall also seek to ensure that temporarily employed teachers who are engaged as long-term substitutes shall exceed baseline employment qualifications.

C. A separate contract in a form prescribed by the Board of Education shall be executed by the school board with such employee who is receiving a monetary supplement for any athletic coaching or extracurricular activity sponsorship assignment.

This contract shall be separate and apart from the contract for teaching. Termination of a separate contract for any athletic coaching or extracurricular activity sponsorship assignment by either party thereto shall not constitute cause for termination of the separate teaching contract of the coach or teacher.

All such contracts shall require the party intending to terminate the coaching or extracurricular activity sponsorship contract to give reasonable notice to the other party before termination thereof shall become effective.

For the purposes of this section, "extracurricular activity sponsorship" means an assignment for which a monetary supplement is received, requiring responsibility for any student organizations, clubs, or groups, such as service clubs, academic clubs and teams, cheerleading squads, student publication and literary groups, and visual and performing arts organizations except those that are conducted in conjunction with regular classroom, curriculum, or instructional programs.

§ 22.1-303. Probationary terms of service for teachers.

A. A probationary term of service for three years in the same school division shall be required before a teacher is issued a continuing contract. School boards shall provide each probationary teacher except probationary teachers who have prior successful teaching experience, as determined by the local school board in a school division, a mentor teacher, as described by Board guidelines developed pursuant to § 22.1-305.1, during the first year of the probationary period, to assist such probationary teacher in achieving excellence in instruction. During the probationary period, such probationary teacher shall be evaluated annually based upon the evaluation procedures developed by the employing school board for use by the division superintendent and principals in evaluating instructional personnel as required by § 22.1-295 B. The division superintendent shall consider such evaluations, among other things, in making any recommendations to the school board regarding the nonrenewal of such probationary teacher's contract as provided in § 22.1-305.

If the teacher's performance evaluation during the probationary period is not satisfactory, the school board shall not reemploy the teacher; however, nothing contained in this subsection shall be construed to require cause, as defined in § 22.1-307, for the nonrenewal of the contract of a teacher who has not achieved continuing contract status.

Any teacher hired on or after July 1, 2001, shall be required, as a condition of achieving continuing contract status, to have successfully completed training in instructional strategies and techniques for intervention for or remediation of students who fail or are at risk of failing the Standards of Learning assessments. Local school divisions shall be required to provide said training at no cost to teachers employed in their division. In the event a local school division fails to offer said training in a timely manner, no teacher will be denied continuing contract status for failure to

obtain such training.

B. Once a continuing contract status has been attained in a school division in the Commonwealth, another probationary period need not be served in any other school division unless such probationary period, not to exceed one year, is made a part of the contract of employment. Further, when a teacher has attained continuing contract status in a school division in the Commonwealth, and separates from and returns to teaching service in a school division in Virginia by the beginning of the third year, such teacher shall be required to serve a probationary period not to exceed one year, if made a part of the contract for employment.

C. For the purpose of calculating the three years of service required to attain continuing contract status, at least 160 contractual teaching days during the school year shall be deemed the equivalent of one year in the first year of service by a teacher.

D. Teachers holding three-year local eligibility licenses pursuant to § 22.1-299.3 shall not be eligible for continuing contract status while teaching under the authority of such license. Upon attainment of a collegiate professional or postgraduate professional license issued by the Department of Education, such teachers shall serve the three-year probationary period prior to being eligible for continuing contract status pursuant to this section.

Substance

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

Specific changes and the wording of any proposed changes are not determined at this time. The Board of Education wishes to publicly announce, however, that it is considering changes to this regulation so that the constituent groups may have an equal opportunity to express their views on what changes are needed. The Board of Education wishes to discuss this regulation with constituent groups, but the board wishes to hold those discussions after the public notice of intent is released. The board wishes for broad public comment prior to making any specific recommendations for proposed changes to the regulation.

Also, the Board of Education finds the review necessary for two additional reasons: 1) the regulations have not been reviewed since 1996 and 2) the Board wishes to ensure that the regulations are consistent with the Code of Virginia (sections referenced above).

Alternatives

Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.

The Board of Education will consider whether or not establishing guidelines (rather than changing the regulation) will address the new Code provisions. At this time, however, it is the preliminary thinking of the Board of Education that a regulatory review is in order, regardless of whether the Board subsequently develops guidelines to assist local school divisions.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the proposed 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 regulations should not have an impact on the family and family stability, except as related to the impact of the regulation on sound personnel and employment policies for local school divisions. Contractual matters are naturally of great interest to the welfare of the general school community and to the persons employed under such contracts.