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Emergency Regulation Agency Background Document

Agency name	Virginia Board of Education
Virginia Administrative Code (VAC) Chapter citation(s)	8VAC20-23
VAC Chapter title(s)	<i>Licensure Regulations for School Personnel</i>
Action title	Emergency Regulations to Amend the Licensure Regulations for School Personnel (8VAC20-23) to Extend the Expiration for Renewable Licenses
Date this document prepared	May 11, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

On May 11, 2023, at an emergency meeting, the Board of Education (“Board”) voted on first and final review to approve the action “Emergency Regulations to Amend the Licensure Regulations for School Personnel (8VAC20-23) to Extend the Expiration for Renewable Licenses.”

The Virginia Department of Education’s Office of Teacher Education and Licensure (“TEAL”) is experiencing significant delays in the issuance of licenses under [8VAC20-23](#), and those delays are impacting the ability of teachers and school personnel to obtain and maintain employment in school divisions. The backlog volume is at a record high.

The Board of Education must grant immediate relief to ensure that renewable licenses that expire in June 2023 are extended so that the licensing delays do not impact the delivery of instruction for the 2023–2024 school year.

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.

“Board” means the Virginia Board of Education.

“TEAL” means the Office of Teacher Education and Licensure at the Virginia Department of Education.

“VDOE” means the Virginia Department of Education.

Mandate and Impetus (Necessity for Emergency)

Explain why this rulemaking is an emergency situation in accordance with § 2.2-4011 A and B of the Code of Virginia. In doing so, either:

- a) *Indicate whether the Governor’s Office has already approved the use of emergency regulatory authority for this regulatory change.*
- b) *Provide specific citations to Virginia statutory law, the appropriation act, federal law, or federal regulation that require that a regulation be effective in 280 days or less from its enactment.*

As required by § 2.2-4011, also describe the nature of the emergency and of the necessity for this regulatory change. In addition, delineate any potential issues that may need to be addressed as part of this regulatory change.

In developing this emergency regulation, the Board has consulted with and has the approval of the Governor’s Office of Regulatory Management for the use of emergency regulatory authority for this regulatory change.

At the start of the 2022–2023 school year, the teacher vacancy rate in the Commonwealth of Virginia was 3.85%, which equates to approximately 3,602 teachers. The vacancy rate had already increased by 26.14% from October 2021 to October 2022. Enrollment in teacher preparation programs has declined 35% in the last five years and actual completers declined 21.8%. Additionally, the number of provisionally licensed teachers has increased 84.7% in the last 10 years.

There are currently over 20,000 active licenses expiring on June 30, 2023. Of those active licenses, 15,500 are renewable licenses. TEAL currently has 2,000 pending requests for evaluations for an initial license. With the systemic processing challenges within TEAL, VDOE is not currently equipped to process these requests in a timely manner, which will impact thousands of teachers and school personnel, as well as students and families across the Commonwealth.

The most effective and efficient short-term solution that ensures teachers and school personnel with renewable licenses will not be negatively impacted by the agency’s licensing processing delays is to extend by one year every current renewable license set to expire on June 30, 2023. If approved, this action will automatically extend 15,500 current renewable licenses and thereby provide immediate relief to teachers and school personnel, as well as the students and school divisions that rely upon them.

This emergency regulation, as presented, is appropriate given the impact the delays, and backlog will have on students, families, teachers and school personnel, and school divisions. The regulatory change holds teachers, school personnel, and others harmless for the processing delays in TEAL in order for the agency to address the backlog.

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 or 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 is the promulgating agency of this emergency regulatory change.

The Board's general regulatory authority is granted in § [22.1-16](#) of the *Code of Virginia*, which states, in part, that the Board "may . . . promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of [Title [22.1](#)]."

The Board's authority to promulgate regulations regarding teacher licensure is granted in § [22.1-298.1\(B\)](#) of the *Code of Virginia*, which states, in part, that the Board "shall prescribe, by regulation, the requirements for the licensure of teachers and other school personnel required to hold a license."

Section [2.2-4011\(A\)](#) of the *Code of Virginia* states that "[r]egulations that an agency finds are necessitated by an emergency situation may be adopted by an agency upon consultation with the Attorney General, which approval shall be granted only after the agency has submitted a request stating in writing the nature of the emergency, and the necessity for such action shall be at the sole discretion of the Governor."

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

At an emergency meeting on May 11, 2023, the Board has determined that this regulation is necessary to protect the health, safety, and welfare of children, families, and citizens.

As described above, the Commonwealth is facing a crisis of 15,500 teachers and school personnel whose license is set to expire on June 30, 2023. Due to license processing delays with TEAL, these applications may not be processed in a timely manner. This leaves thousands of teachers and school personnel who may not be able to practice their profession, school divisions across the Commonwealth without adequate staffing, and ultimately children who will be left without adequate instruction or guidance for the 2023–2024 school year.

The primary issue is that TEAL is currently unable to process the current number of renewals, which jeopardizes the licenses of teachers and school personnel across the Commonwealth. Student scores on the Standards of Learning and other national assessments—such as the National Assessment of Educational Progress or NAEP—show that student academic progress has suffered significantly over the last few years. Students cannot be subjected to further hinderances or interruptions to their education.

There are no additional issues that will need to be addressed as the regulation is developed. This is a temporary measure designed to alleviate the pressures caused by the licensing backlog in TEAL.

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 proposed substantive provisions extend until June 30, 2024, any renewable license identified in [8VAC20-23-50](#) that is held by a person as of May 11, 2023, that is set to expire on June 30, 2023.

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 regulatory action to the public is that it will provide immediate relief to teachers and school personnel—and ultimately students, families, and schools—by extending for one year licenses that are set to expire on June 30, 2023.

The proposed regulatory change has no disadvantages to the agency or the Commonwealth.

Alternatives to Regulation

Describe all viable alternatives to the proposed regulatory action that have been 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.

There are no alternatives to the proposed regulatory action. However, while the emergency regulatory change is a solution to provide immediate relief, the Superintendent of Public Instruction has already begun examining short-term and long-term solutions to address the existing backlog and correct processes that led to this backlog.

Short-term and long-term solutions include (1) hiring additional full-time and part-time employees to add to the licensure team; (2) implementing a new organizational structure within the office to maximize efficiency and better position staff to meet the needs of educators and school divisions; (3) conducting a desk-top audit of the licensure division’s procedures that govern the processing of provisional licenses; (4) forming a task force to advise how VDOE can be more responsive to school divisions and teacher and school personnel applicants; (5) coordinating with other state agencies to identify process challenges; and (6) expediting the current contract with the new online licensing vendor to ensure it goes live by the end of summer 2023.

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 emergency 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.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
	8VAC20-23-51		<p>The proposed regulation provides that any renewable license identified in 8VAC20-23-50 that is (1) held by any person as of May 11, 2023, and (2) set to expire on June 30, 2023, to continue in effect until June 30, 2024, until final administrative action is taken by the Board.</p> <p>Further, before final administrative action on an application, the State Superintendent is permitted to offer applicants covered under this section the opportunity to complete any educational or training elements necessary for the license being sought.</p> <p>The section states specifically that the extension provided in the proposed action does not prolong any license beyond the maximum period authorized by statute and does not affect the authority of the Board to deny, revoke, cancel, or suspend a license in accordance with law or regulation.</p> <p>The impact of the new section is to provide relief for those affected by the current processing delays in TEAL.</p>