



Proposed Regulation Agency Background Document

Agency name	Board of Education
Virginia Administrative Code (VAC) citation	8 VAC 20-131
Regulation title	Regulations Establishing the Standards for Accrediting Public Schools in Virginia
Action title	In response to HB 1215, passed by the 2012 General Assembly, the Board of Education is required to “promulgate regulations establishing standards for accreditation public virtual schools under the authority of the local school board that enroll students full time.” (§ 22.1-253.13:3 of the <i>Code of Virginia</i>)
Date this document prepared	April 25, 2013

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The proposed amendments would define a public virtual school as a school under the authority of the local school board where a student may receive all of his instruction electronically, using the Internet or other computer-based methods. It would further specify those provisions in the current regulations that would apply to public brick-and-mortar schools, but would not apply to public virtual schools (such as exempting the school from school facilities and safety requirements unless the school is in a stand-alone facility, and providing appropriate options for library services, counseling and student services, and extracurricular activities). It would add provisions that would apply to public virtual schools, but not to public brick-and-mortar schools (such as ensuring that students have access to the necessary technology, and monitoring student engagement online).

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.

None.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

The Board of Education’s authority for promulgating regulations governing standards for accrediting public schools may be found in § 22.1-253.13:3 of the *Code of Virginia*:

“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, but not be limited to, 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, course and credit requirements for graduation from high school, community relations, and the philosophy, goals, and objectives of public education in Virginia.”

“The Board of Education shall promulgate regulations establishing standards for accreditation of public virtual schools under the authority of the local school board that enroll students full time.”

The Board of Education’s overall regulatory authority may be found in § 22.1-16 of the *Code of Virginia*:

“The Board of Education may adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title.”

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, the environmental benefits, and the problems the proposal is intended to solve.

This regulatory action is necessary to protect the health, safety, and welfare of citizens, particularly those of school age. The action is essential to comport with the Code of Virginia, and to ensure that an effective educational program is established and maintained in all of Virginia's public schools, including Virginia’s public virtual schools. These regulations will further ensure that public virtual schools meet the same accreditation requirements as the brick-and-mortar public school. It is important that all public schools

adhere to the same rigorous standards so that all students receive an effective education that helps them to become career and college ready.

Substance

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

The proposed amendments would define a public virtual school as a school under the authority of the local school board where a student is enrolled full-time and receives instruction primarily electronically, using the Internet or other computer-based methods.

The proposed amendments are designed to provide public virtual schools with an alternative way of meeting the requirements that are currently in place for public brick-and-mortar schools, or an exemption from any requirement that would not be reasonable for a public virtual school. Specifically, the proposed amendment would provide for the following:

- Licensed personnel employed either by the school division or the public virtual school provider would be required to supervise student testing for the Virginia assessment program.
- If a student enrolled in a public virtual school participates in a career and technical education course that requires cooperative education/work-based experience, the safety training provided in the virtual classroom would be required to be equivalent to the safety training given at a worksite.
- Any teacher providing instruction in a full-time virtual school in Virginia shall hold a valid Virginia teaching license and shall be appropriately endorsed by the Board of Education for their assignment.
- Each student enrolled in a public virtual school must have access to the necessary technology for participation in public virtual school courses, including a computer and printer, as well as a broadband Internet connection for school work purposes.
- The local school board shall develop a policy that students who are unable to afford the necessary technology, including the hardware, software, and the broadband connection to the Internet, shall be provided with these items.
- Students and teachers would be required to have the necessary technical security to ensure student safety while using the computer for school work.
- Technical support services and training must be provided to assist in the resolution of technical problems for teachers and students.
- New and experienced online teachers employed to instruct students in the public virtual school must participate annually in professional development for online teaching.
- The requirement for 140-clock hours of instruction to earn a standard unit of credit may be waived if the content of the course is comparable to a course that would otherwise require 140 clock hours of instruction in a non-virtual setting and, upon completion, the student would be able to demonstrate mastery of the course.
- The school board would be required to develop a written policy to ensure that all students receiving instruction in a public virtual school setting have access to adequate and appropriate library resources.

- Guidance counseling and other student support services are required to be available to students in the public virtual school from appropriately licensed and endorsed personnel.
- Extracurricular activities and eligibility requirements for students in virtual school settings shall be established and approved by the superintendent and the school board.
- Public virtual schools would be exempt from the school facilities and safety requirements unless the public virtual school is operated in a stand-alone facility.
- A full time public virtual school shall have a learning management system that provides secure and appropriate access to the virtual learning environment; supports the creation and management of content and assessments; provides communication tools that facilitate synchronous and asynchronous discussion and collaboration among learners and teachers; and supports the collection, management, and reporting of data on learning outcomes.
- Student engagement shall be monitored. If a student fails to interact with the learning management system every school day, the public virtual school principal or designee shall contact the student's parent or guardian.
- Public virtual schools would be required to provide all policies and procedures unique to enrollment and matriculation in the public virtual school to parents prior to enrollment and post such information for the public on the school division's Web site.

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 indicate.

There are no disadvantages to the public, the Commonwealth or the agency. The primary advantage to the public is in ensuring that the same standards apply to all public schools – both virtual and bricks-and-mortar, which will mean that all students receive a quality public education. The primary advantage to the Commonwealth, the agency and local school divisions is that there will be now be standards that are applicable to virtual public schools, which will assist local school boards in developing, establishing and maintaining an effective educational program in such schools.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no federal regulations specifically governing virtual schools. The same accreditation requirements that govern public brick-and-mortar schools would apply to public virtual schools, and students would have to meet the same graduation requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

Not applicable.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Town Hall Web site (<http://www.townhall.virginia.gov>), or by mail, e-mail or fax to Anne Wescott, Assistant Superintendent for Policy and Communications, Virginia Department of Education, P. O. Box 2120, Richmond, VA 23218-2120, phone (804) 225-2403, fax (804) 530-4502, e-mail SOAcomments@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 date of the public comment period.

A public hearing will be held after this regulatory stage is published in the *Virginia Register of Regulations* and notice of the hearing will be posted on the Virginia Regulatory Town Hall Web site (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar Web site (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</p>	<p>The cost of implementing and enforcing the proposed amendments is not expected to be significant, and would be absorbed within the agency's general fund appropriation.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>It would be optional to local school board to establish public virtual schools. If they choose to establish a virtual school, the cost could vary considerably, depending upon the size, grade levels, courses, and other services the local school board might wish to provide, as well as the number of students who would be unable to afford the necessary hardware and the broadband Internet connection.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Local school divisions, public school students, and providers of online courses for K-12 students.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Unknown. There is currently one public virtual school in Virginia, in Carroll County. The school is accredited, having been granted waivers by the Board of Education from certain provisions in these regulations that were not applicable to virtual schools. It is not known if other school boards will decide to establish virtual schools.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>Unknown. The costs could vary considerably from one school division to another. As this is an optional program, these amendments would apply only when a school board decides to establish a public virtual school.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The beneficial impact of public virtual schools is that it would provide parents and students with another option for public school choice.</p>

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.

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 regulation.

None. The proposed amendments would make minimal changes to the current regulations to provide public virtual schools with an alternative way of meeting the requirements that are currently in place for public brick-and-mortar schools, or an exemption from the requirements when such requirement would not be reasonable for a public virtual school. These proposed amendments are neither intrusive nor costly to small businesses. Small businesses would not be affected unless they provide online courses for K-12 public schools and would choose to contract with a school board.

Regulatory flexibility analysis

Please 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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

These proposed amendments are neither intrusive nor costly to small businesses. Small businesses would not be affected unless they provide online courses for K-12 public schools and would choose to contract with a school board.

Public comment

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

No public comments were received during the NOIRA stage. The Board of Education considered these regulations for first review on January 10, 2013, and held a work session to discuss these regulations on March 27, 2013. The meeting materials, minutes, and videos of these meetings may be found at <http://www.doe.virginia.gov/boe/meetings/index.shtml>. On April 22, 2013, the Virginia School Boards Association Virtual Learning Task Force submitted comments that are attached to this document.

Family impact

Please assess the 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 proposed amendments would have positive impact on the family in that they would provide parents with another option for public school choice. If parents believe that their children would be more successful in a public virtual school than a brick-and-mortar school, they would be able to enroll their children in a public virtual school knowing that the school would meet the same accreditation requirements as the brick-and-mortar school.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the pre-emergency regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulation(s), use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
8 VAC 20-131-05		Definitions section	The definitions of learning management system and public virtual school would be added for clarity.
N/A	8 VAC 20-131-185	N/A	<p>The following provisions in the proposed amendments would provide public virtual schools with an alternative way of meeting the requirements that are currently in place for public brick-and-mortar schools, or an exemption from any requirement that would not be reasonable for a public virtual school:</p> <ul style="list-style-type: none"> • Licensed personnel employed either by the school division or the public virtual school provider would be required to supervise student testing for the Virginia assessment program. • If a student enrolled in a public virtual school participates in a career and technical education course that requires cooperative education/work-based experience, the safety training provided in the virtual classroom would be required to be equivalent to the safety training given at a worksite. • Each student enrolled in a public virtual school must have access to the necessary technology for participation in

			<p>public virtual school courses, such as a computer and printer, and to a broadband Internet connection for school work purposes.</p> <ul style="list-style-type: none"> • The local school board would be required to develop a policy that students who are unable to afford the necessary technology, including the hardware, software, and the broadband connection to the Internet, shall be provided with these items. • Students and teachers would be required to have the necessary technical security to ensure student safety while using the computer for school work. • Technical support services and training must be provided to assist in the resolution of technical problems for teachers and students. • The requirement for 140-clock hours of instruction to earn a standard unit of credit may be waived if the content of the course is comparable to a course that would otherwise require 140 clock hours of instruction in a non-virtual setting and, upon completion, the student would be able to demonstrate mastery of the course. • New and experienced online teachers employed to instruct students in the public virtual school must participate annually in professional development for online teaching. • The school board would be required to develop a written policy to ensure that all students receiving instruction in a public virtual school setting have access to adequate and appropriate library resources. • Guidance counseling and other student support services are required to be available to students in the public virtual school from appropriately licensed and endorsed personnel. • Extracurricular activities and eligibility requirements for students in virtual
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			<p>school settings shall be established and approved by the superintendent and the school board.</p> <ul style="list-style-type: none"> • Public virtual schools would be exempt from the school facilities and safety requirements unless the public virtual school is operated in a stand-alone facility. • A full time public virtual school shall have a learning management system that provides secure and appropriate access to the virtual learning environment; supports the creation and management of content and assessments; provides communication tools that facilitate synchronous and asynchronous discussion and collaboration among learners and teachers; and supports the collection, management, and reporting of data on learning outcomes. • Student engagement shall be monitored. If a student fails to interact with the learning management system every school day, the public virtual school principal or designee shall contact the student’s parent or guardian. • Public virtual schools would be required to provide all policies and procedures unique to enrollment and matriculation in the public virtual school to parents prior to enrollment and post such information for the public on the school division’s Web site. <p>The other proposed amendments simply reiterate requirements for all public schools, in order to make clear that public virtual schools are required to meet all laws and regulations required of all other public schools, unless otherwise specified, and to accommodate all students, including students with disabilities, students identified as gifted, and students who have limited English proficiency.</p>
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Public comment from the VSBA Virtual Learning Task Force:

Dear President Foster and members of the Board of Education,

Thank you again for the opportunity to present at the Board's March 28 work session on Virtual Learning. The VSBA Virtual Learning Task Force has spent significant time on the issue of accountability to ensure quality in Virtual Learning offerings, and we appreciated the opportunity to share our findings and accountability recommendations.

The Task Force would also like to provide comments as the Board prepares for its April 24 final review of the Proposed Amendments to the Regulations Establishing the Standards for Accrediting Public Schools in Virginia to address Public Virtual Schools:

First and foremost, we support the provision citing the authority of the local school board to offer a public virtual school. Local control over education decisions ensures not only constitutionality but also the development of offerings that are community-based and responsive to the unique needs of each locality.

Additionally, we support the requirements for public virtual schools to meet all laws and regulations required of other public schools, including adherence to the Standards of Learning, accommodation for all students, and employment of teachers licensed by the Board and endorsed in subjects taught.

We also concur with the definition of blended instruction added to 8VAC20-131-5 and reiterate the conclusion of the Task Force Interim Report: "In K-12 public education, blended courses offer promise and potential as an effective format for virtual learning. This approach is distinguished from full-time virtual schools in that it combines the best elements of traditional instructional models with the advantages and innovations of online learning."

Regarding 8VAC20-131-185 Section D, which specifies that each student enrolled in a public virtual school shall have access to necessary technology: we want to note that it is not specified who will be responsible for providing access to needed technology such as a computer, a printer, and Internet connections. We assume that such responsibility will be defined in local school board policy rather than state regulation.

As noted in the recent virtual learning presentations, virtual learning has tremendous potential to foster new skills and student engagement; the opportunity for competency-based advancement depends upon flexibility in assessment to allow students to demonstrate mastery as they progress. Thus, we would encourage the Board to explore increased flexibility of SOL assessment timing to facilitate student progress and assessment based upon mastery of content. The Task Force--which has broad representation from across Virginia--is unanimous in its viewpoint that such flexibility is needed.

Thank you for your work and the opportunity to provide input into these regulations. We look forward to continued dialogue and discussion about the evolution of Virtual Learning and remain eager to share the results of our efforts with all of you.

With appreciation,

VSBA Virtual Learning Task Force

John Lumpkins

(Board Member, Goochland County)

Dr. Gail Hardinge

(Board Member, New Kent County)

Dr. Michael Otaigbe

(Board Member, Prince William County)

Dr. Toni Jones

(Superintendent, Falls Church City)

Dr. Doug Schuch

(Superintendent, Bedford County)

Dr. Linda Reviea

(Superintendent, Staunton City)

Bill Johnsen

(Director of Instructional Technology, Virginia Beach Public Schools)

Kimberly Bridges

(VSBA Consultant)