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Fast-Track Regulation Agency Background Document

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) citation(s)	8VAC20-250-10. Testing of sight and hearing
Regulation title(s)	Regulations Governing the Testing of Sight and Hearing of Pupils
Action title	Revisions to the Regulations Governing the Testing of Sight and Hearing of Pupils
Date this document prepared	August 19, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This fast-track regulatory action is for the purpose of addressing legislation that was approved by the General Assembly during the 2017 Session. [HB 1408](#) (Wade) amended [§ 22.1-273](#) of the *Code of Virginia*, related to the timeline and scheduling of vision screenings. The amendment to [§ 22.1-273](#) of the *Code of Virginia* allows schools divisions sixty administrative working days to schedule vision screenings and defines the required grade levels in which vision screenings are to occur, to include: kindergarten, second or third grade, seventh grade, and tenth grade.

The proposed revisions to [8VAC-20-250-10](#) align the chapter with [§ 22.1-273](#) of the *Code of Virginia*. Additionally, the revisions offered an opportunity for the Virginia Department of Education (VDOE) to incorporate feedback from stakeholders that align the hearing screening

schedule to the required changes to the vision schedule as per [§ 22.1-273](#). The proposed revisions allow schools to conduct vision and hearing screenings at any time of the school year as long as the scheduling of such screenings is completed no later than the sixtieth administrative working day of the school year. It also provides schools with the option and flexibility to conduct vision and hearing screenings in second or third grade.

The proposed revisions also update the language used in reference to how the hearing and vision screenings are monitored. Specifically, the proposed revisions clarify that the screenings are monitored through the VDOE’s annual data collection process. This reflects updated language as the “administrative review process” has not been utilized in many years.

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.

No acronyms used in this document.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The Board of Education approved these amendments to the *Regulations Governing the Testing of Sight and Hearing of Pupils* under the fast-track provision of the *Administrative Process Act* at its public meeting on September 19, 2019.

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

As required by Virginia Code § 2.2-4012.1, please also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

The amendments to 8VAC20-250-10. Testing of sight and hearing; Monitoring, are mandated by legislation enacted by the General Assembly (HB 1408) in 2017. This regulatory action is noncontroversial because its only purpose is to comport the regulations to align with legislation.

Legal Basis

Please identify (1) the agency or other promulgating entity, 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 entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity’s overall regulatory authority.

The Board of Education is the promulgating entity.

The Board’s authority to establish regulations establishing standards for accrediting public schools is 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.

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it’s intended to solve.

This regulatory action is necessary to amend 8VAC20-250-10. Testing of Sight and Hearing; Monitoring, to comport with legislation HB 1408 (Wade) enacted by the General Assembly during the 2017 Session. This regulatory action also updates the language used in reference to how the hearing and vision screenings are monitored to reflect current practice.

Substance

Please 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 2017 Virginia General Assembly amended [§ 22.1-273](#) of the *Code of Virginia*, related to the timeline and scheduling of vision screenings. Specifically, [§ 22.1-273](#) requires that:

D. The principal of each public elementary school shall cause the vision of students enrolled in kindergarten and students enrolled in grade two or grade three to be tested, unless such students are students admitted for the first time to a public elementary school and produce a written record of a comprehensive eye examination performed within the preceding 24 months or the parents or guardians of such students object on religious grounds; and,

E. The principal of each public middle school and high school shall cause the vision of students enrolled in grade seven and grade 10 to be tested, unless such students produce a written record of a comprehensive eye examination performed within the preceding 24 months or the parents or guardians of such students object on religious grounds.

Code of Virginia [§ 22.1-273](#) also states that vision screenings:

“may be conducted at any time during the school year; however, the scheduling of such screenings shall be completed no later than the sixtieth administrative working day of the school year.”

The Virginia Department of Education engaged several stakeholders and gathered input and feedback to draft the proposed revisions to the Regulations. Stakeholder groups included Conexus, Lions Club of Virginia, school nurse coordinators, and licensed hearing and vision providers.

Based on the feedback from stakeholders, the proposed revisions to [8VAC-20-250-10](#) align the chapter with [§ 22.1-273](#) of the *Code of Virginia* regarding the timeline and scheduling of vision screenings and align the hearing screening timeline and scheduling to match that of the required vision screenings. It also updates the language used in reference to how the hearing and vision screenings will be monitored to reflect current practice.

Issues

Please 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.

There are no disadvantages to the public, the agency, or the Commonwealth. These revisions are required by changes to § 22.1-273, adopted by the Virginia General Assembly.

Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

All local school boards and school divisions will be affected equally.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.

Impact on State Agencies

<i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	None
<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	None
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	None

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	None
Benefits the regulatory change is designed to produce.	None

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	All local school boards and school divisions will be affected equally.
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: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	132 local school boards and school divisions. No small businesses are affected.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;	None

b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	
Benefits the regulatory change is designed to produce.	The amendments in the regulations are designed to ensure that all local school boards and local school divisions are aware of and in compliance with the pertinent legislation.

Alternatives

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

The proposed revisions to [8VAC-20-250-10](#) align the chapter with [§ 22.1-273](#) of the *Code of Virginia* regarding the timeline and scheduling of vision screenings and align the hearing screening timeline and scheduling to match that of the required vision screenings.

Therefore, there are no alternative regulatory methods that will accomplish the objectives of the statutory requirements.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

There are no regulatory alternatives that would be less stringent that are consistent with protecting the health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business.

Public Participation

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Detail of Changes

Please 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.

If the regulatory change will be 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 change. Delete inapplicable tables.

If the regulatory change is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below. Please include citations to the specific section(s) of the regulation that are changing.

For changes to existing regulation(s), please use the following chart:

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
8VAC-20-250-10		That sight and hearing of pupils in grades Kindergarten, third, seventh, and tenth be screened within 60 administrative working days of the opening of school. Whenever a pupil is found to have any defect of vision or hearing or a disease of the eyes or ears, the principal shall notify the parent or guardian in writing, of such defect or disease. This screening of pupils will be monitored through the administrative review process.	<p>Change:</p> <p>The principal of each public elementary and secondary school, shall cause the vision and hearing of students enrolled in (i) kindergarten; (ii) grades second or third; (iii) grade seventh; and (iv) grade tenth to be screened, subject to the conditions and exceptions as established in § 22.1-273 of the <i>Code of Virginia</i>. The vision and hearing screening of students shall be scheduled within the first 60 administrative working days of the school year.</p> <p>Whenever a student is found to have any defect of vision or hearing or a disease of the eyes or ears, the principal shall notify the parent or guardian in writing, of such defect or disease. This screening of students will be monitored through the Department’s annual data collection process.</p> <p>Intent/rationale:</p> <p>The changes align regulations with § 22.1-273 of the <i>Code of Virginia</i> related to vision screenings. Changes also align the hearing screening schedule to the required changes to the vision schedule as per § 22.1-273. Finally, the changes update the</p>

			<p>language used in reference to how the hearing and vision screenings are monitored. Specifically, the proposed revisions clarify that the screenings are monitored through the VDOE’s annual data collection process as the “administrative review process” has not been utilized in many years</p> <p>Impact:</p> <p>The proposed revisions allow schools to conduct vision and hearing screenings at any time of the school year as long as the scheduling of such screenings is completed no later than the sixtieth administrative working day of the school year. It also provides schools with the option and flexibility to conduct vision and hearing screenings in second or third grade.</p>
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