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Fast-Track Regulation Agency Background Document

Agency name	Virginia Board of Education
Virginia Administrative Code (VAC) Chapter citation(s)	8VAC20-23 and 8VAC20-543
VAC Chapter title(s)	Licensure Regulations for School Personnel and Regulations Governing the Review and Approval of Education Programs in Virginia
Action title	Fast-Track Regulatory Action to Amend Certain Board Regulations (8VAC20-23 and 8VAC20-543) to Comport with Legislation from the 2021 Session of the General Assembly
Date this document prepared	June 2, 2021

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 (1VAC7-10), 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 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.

During its 2021 Special Session I, the General Assembly passed several bills pertaining to requirements for teacher licensure and endorsements as well as educator preparation programs in Virginia. [House Bill 1904](#) (Jenkins) and [Senate Bill 1196](#) (Locke) require, in part, that every person seeking initial licensure or renewal of a license with an endorsement in history and social sciences shall complete instruction in African American history, as prescribed by the Board. [House Bill 2299](#) (Carr) and [Senate Bill 1288](#) (Dunnivant) include several provisions that ensure educators are equipped to serve students with disabilities, including the requirement that every person seeking renewal of a license as a teacher shall complete training in the instruction of students with disabilities, with details on training content set out in the bills. Additionally, the Board of Education is directed to amend its regulations for teacher and administrator preparation programs to ensure graduates demonstrate comprehension and proficiency in a number of knowledge and skill areas, according to their respective roles, that support the needs of

students with disabilities. [House Bill 2316](#) also establishes the requirement that the Board amend its teacher preparation program regulations to guarantee that each graduate in a K-12 general education endorsement area demonstrates proficiency in understanding the role of general education teachers on the IEP team.

These legislative mandates impact two regulatory chapters under the purview of the Virginia Board of Education (Board): (1) *Licensure Regulations for School Personnel* (8VAC20-23); and (2) *Regulations Governing the Review and Approval of Education Programs in Virginia* (8VAC20-543). The Board’s *Licensure Regulations for School Personnel* set out the criteria for an initial license or renewal of a license for school personnel in Virginia. Among the provisions in the Board’s *Regulations Governing the Review and Approval of Education Programs in Virginia* are expectations for the types of instruction and content provided to aspiring educators in Board-approved educator preparation programs in Virginia.

The Board is initiating this fast-track regulatory action to align its existing regulations with the new statutory requirements and to provide additional clarity on the expectations for teachers and educator preparation program providers in meeting these mandates.

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.

There are no acronyms or technical terms that need to be defined for this action.

Statement of Final Agency Action

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.

It is anticipated that the Board of Education will approve this fast track regulatory action to amend (1) *Licensure Regulations for School Personnel* (8VAC20-23) and *Regulations Governing the Review and Approval of Education Programs in Virginia* (8VAC20-543) at its July 22, 2021, business meeting.

Mandate and Impetus

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, or board decision). 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, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

The Board is initiating this regulatory change at the direction of the General Assembly. During its 2021 Special Session I, the General Assembly passed several bills - HB1904/SB1196, HB2299/SB1288, and HB2316 - related to requirements for teacher licensure and endorsements as well as educator preparation programs in Virginia, each of which required a change in the corresponding regulations.

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 and 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 Virginia Board of Education is the promulgating agency for the *Licensure Regulations for School Personnel* (8VAC20-23) and the *Regulations Governing the Review and Approval of Education Programs in Virginia* (8VAC20-543). Section [22.1-16](#) of the *Code of Virginia* establishes the Board’s authority to promulgate regulations, generally. The language reads, “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.” Additionally, § [22.1-298.1](#) states, “The Board of Education shall prescribe, by regulation, the requirements for the licensure of teachers and other school personnel required to hold a license.”

The authority to promulgate regulations for these specific mandates is further reinforced in Chapters 23, 24, 173, 451, 452 of the 2021 Acts of Assembly (or HB1904, SB1196, HB2316, HB2299, and SB1288 respectively). The relevant language from each of these bills is as follows:

Chapters 23 and 24, 2021 Acts of Assembly

C. The Board of Education’s regulations shall include requirements that a person seeking initial licensure:

...

10. Every person seeking initial licensure or renewal of a license with an endorsement in history and social sciences shall complete instruction in African American history, as prescribed by the Board.

Chapters 451 and 452, 2021 Acts of Assembly

C. The Board of Education’s regulations shall include requirements that a person seeking initial licensure:

...

9. Every person seeking renewal of a license as a teacher shall complete training in the instruction of students with disabilities that includes (i) differentiating instruction for students depending on their needs; (ii) understanding the role of general education teachers on the individualized education program team; (iii) implementing effective models of collaborative instruction, including co-teaching; and (iv) understanding the goals and benefits of inclusive education for all students.

...

5. That the Board of Education shall review and amend its regulations governing general education teacher preparation programs for kindergarten through twelfth grade to ensure graduates are required to demonstrate proficiency in (i) differentiating instruction for students depending on their needs; (ii) understanding the role of general education teachers on the individualized education program team; (iii) implementing effective models of collaborative instruction, including co-teaching; and (iv) understanding the goals and benefits of inclusive education for all students.

6. That the Board of Education shall review and amend its regulations governing administrator preparation programs to ensure graduates are required to demonstrate comprehension of (i) key special education laws and regulations, (ii) individualized education program development, (iii) the roles and responsibilities of special education teachers, and (iv) appropriate behavior management practices.

Chapters 173, 2021 Acts of Assembly

§ 2. In order to (i) promote and improve the quality of individualized education programs (IEPs) for students with disabilities across the Commonwealth and (ii) ensure that each IEP contains key and required elements such as the student's academic or functional needs and goals, the Board of Education shall amend its Regulations Governing the Review and Approval of Education Programs in Virginia (8VAC20-543-10 et seq.) to ensure that each education preparation program graduate in a K-12 general education endorsement area demonstrates proficiency in understanding the role of general education teachers on the IEP team.

Purpose

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 change is to comport the Board's *Licensure Regulations for School Personnel* (8VAC20-23) and *Regulations Governing the Review and Approval of Education Programs in Virginia* (8VAC20-543) with new statutory requirements from the 2021 Special Session I of the General Assembly. The bills that initiated these regulatory changes were each offered to protect the health, safety, and welfare of citizens.

Regulatory changes related to requirements for earning or renewing a license with a history and social science endorsement are the result of recommendations from the [Virginia African American History Education Commission](#) which sought to ensure that content in Virginia schools is accurate, inclusive, and relatable and all Virginia students. Many educators employed by the Commonwealth's school divisions have not taken a course or received professional development on teaching African American history and thus may not have the knowledge necessary to present students with a full and comprehensive representation of African American voices. Additional robust professional development is needed that outlines specific knowledge required to teach African American history.

Regulatory changes related to special education respond to recommendations from Joint Legislative Audit and Review Commission's [K-12 Special Education in Virginia](#). In Virginia and nationally, approximately 95 percent of students with disabilities are served in public schools, and a majority of students with disabilities spend most, and increasingly more, of their time in the general education classroom. Seventy-one percent of students with disabilities receive instruction for most of their day in the general education classroom. As such, general education teachers play a critical role in educating students with disabilities, but many general education teachers do not know how to effectively teach and support students with disabilities. Additionally, there seems to be inconsistent knowledge among key school staff about individualized education programs (IEPs) and staff's roles in developing them.

These regulatory changes help to address these gaps in teacher preparation and training. Amending the requirements for teacher licensure and endorsement help to guarantee that those qualified to teach are even better-equipped to serve their students in the classroom. As a result, public school environments will be more inclusive and prepared to meet the needs of all students, giving more students an opportunity to thrive and succeed in the public school setting.

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.

This regulatory action amends sections 8VAC20-23-40, 8VAC20-23-110, and 8VAC20-23-390 of the Board's *Licensure Regulations for School Personnel*, outlining the new requirements for initial license or a renewal of a license with an endorsement in history and social science as well as the renewal of a license, generally.

This action also amends sections 8VAC20-543-20 and 8VAC20-543-80 of the *Regulations Governing the Review and Approval of Education Programs in Virginia* (8VAC20-543) adding the requirement that approved education preparation programs provide instruction in African American history and certain topics related to students with disabilities.

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 this regulatory change is the assurance that those teachers trained in Virginia-approved educator programs and/or licensed by the Board of Education will be even better-equipped to serve their students. This in turn, will create cultures of learning and inclusiveness that improve the student experience. In turn, students will have a more well-rounded knowledge and the skillsets to be thrive in school, and beyond.

As a result of this regulatory action, the Commonwealth can expect to benefit from future cohorts of students who have a more complete understanding of Virginia and U.S. history and more students with disabilities will be better positioned to take on their post-secondary goals, whether that be career- or college-track. There were no disadvantages to the agency or Commonwealth identified.

While this does add a few new training requirements for individuals in the profession, the Virginia African American History Commission and JLARC highlighted the importance and necessity of these amendments. Additionally, the impact the relevant changes will have on approved educator preparation programs will be marginal as many have already begun to incorporate these types of instruction/training opportunities into their course maps. Lastly, both teachers and preparation programs will be able to leverage resources provided by the Virginia Department of Education in order to meet these new requirements.

Requirements More Restrictive than Federal

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 federal requirements related or applicable to this regulatory change.

Agencies, Localities, and Other Entities Particularly Affected

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.

Other State Agencies Particularly Affected

Public institutions of higher education with approved educator preparation programs may be required to expand course or instructional offerings as a result of the changes to *Regulations Governing the Review and Approval of Education Programs in Virginia*.

Localities Particularly Affected

These regulatory changes do not directly affect localities.

Other Entities Particularly Affected

Private institutions of higher education with approved educator preparation programs may also be affected and required to expand course or instructional offerings as a result of the changes to *Regulations Governing the Review and Approval of Education Programs in Virginia*.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, 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. Keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><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</p>	<p>Item 143.G of the 2021 Appropriation Act does appropriate \$150,000 to assist the Department in a one-time for the development of a training module for teachers seeking to renew a teaching license on the instruction of students with disabilities. There are some additional one-time costs associated with developing an African American History course for teachers, but this can be absorbed by existing resources.</p>
<p><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.</p>	<p>Is it unclear what, if any, financial impact this may have on public institutions of higher education with educator preparation programs.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>This regulatory change will produce better-equipped teachers, more inclusive school environments, strong history and social science instruction in classrooms, and more opportunities</p>

	for students of color and/or with disabilities to thrive.
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Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	Not applicable.
Benefits the regulatory change is designed to produce.	Not applicable.

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.	Aspiring and licensed teachers will be affected by the regulatory change.
Agency's best estimate of the number of such entities that will be affected. 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.	All 36 of the institutions with approved educator preparation programs in Virginia will be affected.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. 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; 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.	There are no anticipated costs for teachers. It is difficult to estimate what, if any, cost may be associated with expanding educator preparation program instruction/training options.
Benefits the regulatory change is designed to produce.	Other entities will also benefit from a stronger public school system.

Alternatives to Regulation

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.

There are no viable alternatives to regulatory change. Without regulatory action, there would be discrepancies between the relevant statutory and regulatory requirements.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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.

The Board determined there were no adverse impacts on small business, and the proposed regulatory action was the appropriate method for implementing the new statutory requirements.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

As required by § 2.2-4011 of the Code of Virginia, 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.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Virginia Board of Education is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by email to Leslie Sale, Director of the Office of Policy, leslie.sale@doe.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

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 proposed 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
8VAC20-23-40	N/A	This section lists all of the conditions for licensure.	<p>This section is amended to comport with legislation from the 2021 Special Session I of the General Assembly and includes the following changes:</p> <ul style="list-style-type: none"> • New requirement for every person seeking renewal of a license as a teacher shall complete certain training in the instruction of students with disabilities, as prescribed by the language. • New requirement for every person seeking initial licensure or renewal of a license with an endorsement in history and social sciences shall complete instruction in African American history, as prescribed by the language. <p>These changes impact teachers seeking renewal for a license generally as well as those seeking an initial license or renewal of a license with an endorsement in history and social science.</p>
8VAC20-23-110	N/A	This section lists all of the conditions for renewal of a license.	<p>This section is amended to comport with legislation from the 2021 Special Session I of the General Assembly and includes the following changes:</p> <ul style="list-style-type: none"> • New requirement for every person seeking renewal of a license as a teacher shall complete certain training in the instruction of students with disabilities, as prescribed by the language. • New requirement for every person seeking initial licensure or renewal of a license with an endorsement in history and social sciences

			<p>shall complete instruction in African American history, as prescribed by the language.</p> <p>These changes impact teachers seeking renewal for a license generally as well as those seeking an initial license or renewal of a license with an endorsement in history and social science.</p>
8VAC20-23-390	N/A	This section lists all of the criteria for a license with an endorsement in history and social science.	This section is amended to comport with legislation from the 2021 Special Session I of the General Assembly and includes the requirement that endorsement candidates shall have completed instruction in African American history, either as part of the degree program or through other Department-approved alternatives, which shall include certain content. These changes impact teachers seeking an initial license or renewal of a license with an endorsement in history and social science.
8VAC20-543-20	N/A	This section enumerates instructional expectations for approved educator preparation programs in Virginia.	<p>This section is amended to comport with legislation from the 2021 Special Session I of the General Assembly and includes the following changes:</p> <ul style="list-style-type: none"> • Approved programs shall provide candidates for licensure with certain training in the instruction of students with disabilities, as prescribed by the language. • Approved programs shall provide candidates for licensure and seeking an endorsement in history and social sciences with instruction in African American history, as prescribed by the language. <p>These changes impact approved preparation programs in the types of course offerings and instruction to meet these requirements.</p>
8VAC20-543-80	N/A	This section enumerates instructional expectations for approved educator preparation programs with endorsement options in Virginia.	<p>This section is amended to comport with legislation from the 2021 Special Session I of the General Assembly and includes the following changes:</p> <ul style="list-style-type: none"> • Approved programs shall provide candidates for licensure with certain training in the instruction of students with disabilities, as prescribed by the language.

			<ul style="list-style-type: none"> Approved programs shall provide candidates for licensure and seeking an endorsement in history and social sciences with instruction in African American history, as prescribed by the language. <p>These changes impact approved preparation programs in the types of course offerings and instruction to meet these requirements.</p>
8VAC20-543-340	N/A	This section enumerates the types of preparation institutions of higher education must provide for candidates seeking an endorsement in history and social science.	This section is amended to comport with legislation from the 2021 Special Session I of the General Assembly and includes the requirement that approved programs shall provide candidates for licensure and seeking an endorsement in history and social sciences with instruction in African American history, as prescribed by the language.
8VAC20-543-570	N/A	This section enumerates the types of preparation institutions of higher education must provide for candidates in administration and supervision preK-12.	This section is amended to comport with legislation from the 2021 Special Session I of the General Assembly and includes the requirement that approved programs shall provide candidates for licensure and seeking an endorsement in administration and supervision preK-12 with certain training in the instruction of students with disabilities, as prescribed by the language.

If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements

If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.

If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.

Table 3: Changes to the Emergency Regulation

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage