



Proposed Regulation Agency Background Document

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) citation	<u>8VAC20-40-10</u> through <u>8VAC20-40-70</u>
Regulation title	Regulations Governing Educational Services for Gifted Students
Action title	Revision of regulations school divisions must meet in their gifted education programs, Kindergarten - Grade 12
Date this document prepared	May 30, 2007 Revised 9/17/2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The *Regulations Governing Educational Services for Gifted Students* provide definitions; criteria for screening, referral, and identification of gifted students; delivery of services parameters; and elements of appropriately differentiated curriculum and instruction necessary to meet the learning needs of these students. The regulations also provide requirements for professional development of instructional personnel, the school division's local plan for the education of the gifted, the annual report, and the local advisory committee for the education of the gifted.

The existing regulations were approved by the Virginia Board of Education in 1993. The purpose of these proposed revisions is to integrate findings from relevant research regarding identification, curriculum and instruction, delivery of services, and professional preparation into the standards Virginia public schools use to establish and operate programs for which the General Assembly has allocated funds through the *Standards of Quality*.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 22.1-16 of the *Code of Virginia* vests the Board of Education with the authority to 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 Title 22.1.

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 action is essential to ensure that students in the Commonwealth are provided with an education that is commensurate with their abilities. The state definitions and provisions found in the *Regulations Governing Educational Services for Gifted Students* establish the basic expectation for school divisions' services for gifted students. These regulations ensure that school divisions' programs respond appropriately to the learning needs of gifted students, especially those students with economically disadvantaged backgrounds, those with limited English language proficiency, or those with disabilities. The proposed regulations reflect the relevant findings from research regarding effective program options, appropriate curricular designs and instructional strategies, and the significance of teacher professional development in providing appropriate instruction for gifted students.

Substance

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

The following changes are proposed to the *Regulations Governing Educational Services for Gifted Students*:

1. Additions to and revisions of critical terms;
2. Clarification of the screening, referral, identification, and placement components;
3. Addition of parental rights, notification, consent, and appeals information;
4. Revision of components of the local plan for the education of the gifted;
5. Revision of the role and function of the local advisory committee for the education of the gifted to comply with section 22.1-18.1 of the *Code of Virginia*; and
6. Addition and expansion of annual report expectations to comply with section 22.1-18.1 of the *Code of Virginia*.

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 so indicate.

The primary advantages of the proposed regulations for the public or the Commonwealth:

1. The proposed regulations require alignment of services for gifted students with current standards and practices found in relevant research and practice;
2. The proposed regulations establish basic expectations for the annual screening of all students for gifted education services;
3. The proposed regulations reduce the number of instruments used to identify gifted students from four to three;
4. The proposed regulations establish basic expectations that programs for the gifted include monitoring and assessment of student outcomes;
5. The proposed regulations establish expectations that programs for the gifted will be provided within the school day and week to ensure these students have time to study with their age-level peers, their intellectual peers, and time to study independently; and
6. The proposed regulations establish expectations that school boards, and not the Department of Education, will approve local plans that are in compliance with the regulations.

There are no perceived disadvantages to the public, to the agency, or to the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include 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 statement to that effect.

There are no applicable federal 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.

There are no disproportionately significant negative or positive effects of the proposed regulations to any specific locality.

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 of Education is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal.

Anyone wishing to submit written comments may do so to Dr. Barbara McGonagill, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, by phone at 804-225-2884, by facsimile at 804-786-1597, or by e-mail to Barbara.McGonagill@doe.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing will appear on the Virginia Regulatory Town Hall Web site (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Notice of the public hearing will be posted on the Commonwealth Calendar and will be posted as required at the Department of Education. Written notice of the public hearing will be sent to interested individuals and professional organizations. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>There is minimal cost to the state to implement the proposed regulation revisions. Existing allocations should be sufficient to fund the state’s responsibilities.</p>
<p>Projected cost of the regulation on localities</p>	<p>It is anticipated that additional costs would not exceed those funds currently allocated by the General Assembly through the <i>Standards of Quality</i>.</p> <ol style="list-style-type: none"> 1. SOQ Basic Aid Funding – Gifted education funding supports the state share of one full-time equivalent instructional position per 1,000 students in adjusted average daily membership. 2. Governor’s School Categorical Funding – Governor’s School funding supports gifted and talented high school students through a variety of Governor’s Schools that operate during the school year. These programs provide an opportunity for these students to study with fellow students of similar interest and abilities across the Commonwealth. The schools offer specialized curriculum offerings. State funds are provided to assist with the costs of operations for residential and regional programs held during the summer.
<p>Description of the individuals, businesses or</p>	<p>Public elementary, middle, and secondary schools,</p>

<p>other entities likely to be affected by the regulation</p>	<p>local school boards, school administrators, and institutions of higher education will be affected by the revisions to the regulations.</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>Elementary, middle, and secondary schools in Virginia’s 132 school divisions will be affected by the revisions to the regulations. The proposed regulations do not affect small businesses.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>Estimates of the cost of the regulations would vary based on the size and levels of service Virginia’s 132 school divisions choose to implement. However, the cost should be minimal since the proposed regulations do not impose major changes in requirements from previous regulations. The proposed regulations do not affect small businesses.</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.

Neither the 1993 Regulations Governing Educational Services for Gifted Students nor these revisions increase the responsibilities of localities; small businesses will not be affected at all. There are no viable alternatives to updating these regulations.

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.

The revised regulations are less stringent on school divisions since the expectation that the divisions would present their local plans for the education of the gifted to the Department of Education for approval is removed. Such approval now will become a matter for the local school board based on a process it establishes. School divisions will continue to report their implementation of the local plan through the annual report, programs for the gifted, authorized by §22.1-18.1. *Annual report on gifted education required; local advisory committee on gifted education, Code of Virginia.*

The current *Regulations Governing Educational Services for Gifted Students* do not affect small businesses; consequently, these revisions do not change the affect on small business.

Public comment

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

Three focus groups and public comment from 19 constituents provided the department with recommendations used in the development of these revisions to the current regulations. A special regulations advisory group, the Virginia Advisory Committee for the Education of the Gifted, and the Virginia Administrative Consortium for Gifted Education offered comments and reviews of the current regulations.

The proposed regulations are more explicit and reflect relevant research and practices. The recommendations of the focus groups and the public comment were considered during the review process and were incorporated when possible.

Commenter	Comment	Agency response
Karen Lanning, parent	Supports review; no specific request.	No specific change requested.
Elizabeth Boylan, parent	Seeks increased funding especially for additional staff and faculty.	Department does not have the authority to increase or designate additional funds.
Lee Lorber, teacher	Supports review; no specific request.	No specific change requested.
Lisa Dooley, parent	Supports review; supports these programs.	No specific change requested.
Claire Goodwin, parent	Seeks increased funding.	Department does not have the authority to increase or designate additional funds.
B. Black, parent	Seeks sufficient funding for qualified staff to provide extra gifted services, especially as compared to remedial services.	Department does not have the authority to increase or designate additional funds.
Mike Warnalis, parent	<p>1. Supports the revision of the regulations and the opportunity to offer suggestions.</p> <p>2. Requests policies to ensure that consistent educational styles and formats of services are offered at all grades, so that middle and high school programs are as strong as are elementary programs.</p>	<p>1. No specific change requested.</p> <p>2. Clarification in the revised regulations of service options and curriculum and instruction expectations for school division's services at all grades, kindergarten through grade twelve.</p>
Kim Blair, parent	Supports the revision of the regulations.	No specific change requested.
Cynthia Coleman, parent	Supports increased middle and high school programs for gifted students.	Clarification in the revised regulations of service options and curriculum and instruction expectations for all grades, kindergarten through grade twelve.
Mike Mitchell, parent	Requests the removal of the word "public" in the definition of applicability to public school students.	Current regulation does not prevent school divisions from providing such services as determined by the school board. No changes were made in the revised regulations.

Commenter	Comment	Agency response
<p>Liz Nelson, executive director, Virginia Association for the Gifted</p>	<ol style="list-style-type: none"> 1. Requests that specific academic aptitude include mathematics, sciences, English and language arts, <u>or</u> history and social studies. 2. Requests that programs serving visual and performing arts and practical and technical arts programs be optional areas of service, based on local needs. 3. Requests that when testing occurs, that norm-referenced instruments be used in the identification and placement. 4. Seeks inclusion of divisionwide screening to widen pool of candidates. 5. Requests that multiple criteria for identification include multiple sources of information or data on each student. 6. Requests that all students, including special education and English language learners be screened for inclusion in gifted education programs. 7. Requests that the local school board and the Department of Education ensure that divisions are in compliance and both approve the school division's local plan for the education of the gifted. 8. Requests that modifications to local plans be reviewed and approved by the Department. 9. Requests that local plans provide goals for specific identification, delivery of services, curriculum and instruction, teacher preparation, ongoing professional development, and parent and community involvement. 10. Specify that service options include accelerative provisions at the classroom, school, and school division levels to enable students to learn at their own pace. 	<ol style="list-style-type: none"> 1. Definition for specific academic aptitude has been changed to include the core subjects of English, history and social science, mathematics, and sciences. 2. Clarification that visual and performing arts and career and technical programs are optional areas of service that school divisions may elect to serve. 3. Clarification of the areas of appropriate assessment, including norm-referenced assessment, for the identification of gifted students. 4. Current regulations and revisions continue to require divisionwide screening of all students, kindergarten through grade twelve. 5. Clarification has been incorporated to require no fewer than three sources of information or data on each referred student. 6. Clarification of language regarding responsibility to screen students whose identification may be affected because they are economically disadvantaged, have limited English proficiency, or have a disability. 7. Approval of local plan now rests with the local school board. 8. See note 7. 9. Clarifications have been added to the revised regulations for school divisions to develop goals in the prescribed areas. 10. Clarification of language requiring programs for the gifted to meet the learning needs of gifted students through acceleration options. Clarification of language that requires students to be provided time to study and learn

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	<p>11. Requests that an add-on endorsement in gifted educations shall include a minimum of 12 hours of graduate coursework in gifted education; and shall include a practicum of at least 45 instructional hours. One year of successful full-time teaching experience in a public or accredited nonpublic school may be accepted in lieu of the practicum. A mentor with a valid license with an endorsement in gifted education must be assigned to the teacher. Professional development in-service training shall be on going, comprehensive, and reflective of research-based best practices in the field of gifted education.</p>	<p>with their age-level peers, their intellectual peers, and time to study and learn independently.</p> <p>11. <i>Licensure Regulations for School Personnel</i> 8VAC20-21-270 include competencies for the add-on endorsement in gifted education, requiring 12 hours of graduate studies, and a 45-instructional hour practicum. Language has been added to the revised regulations indicating that professional development for teachers of the gifted must be based on those same competencies.</p>
<p>Dave Dubay, teacher</p>	<p>1. Requests funding for gifted programs to be used only for gifted programs and not rolled into the general budget.</p> <p>2. Requests sufficient funding for all qualified candidates for Governor’s Schools to attend.</p>	<p>1. Department does not have the authority to increase or designate additional funds.</p> <p>2. Department does not have the authority to increase or designate additional funds.</p>
<p>Deborah Piper, parent</p>	<p>1. Requests that regulations be revised to address specific and detailed accountability procedures for the delivery of services, that differentiated instruction in heterogeneous classrooms, and that differentiation plans to be included in school divisions’ local plans for the education of the gifted.</p> <p>2. Requests additional funding to ensure delivery of services.</p>	<p>1. Changes were made in the reporting of services through the annual report, programs for the gifted, concerning the school division’s responsibility to determine its delivery of services, curriculum, instruction, and documentation of student outcomes.</p> <p>2. Department does not have the authority to increase or designate additional funds.</p>
<p>Dr. Andreas Tolk</p>	<p>Seeks mandatory education for teachers of the gifted who provide differentiated services.</p>	<p>Revised regulations continue to require divisions to indicate what training teachers of the gifted are required to have and how that training will be provided. Clarification of the language related to professional development requires that professional development be based on the competencies for the add-on endorsement in gifted education found in 8 VAC20-21-270.</p>
<p>Margaret Turley, gifted education coordinator</p>	<p>1. Requests specific definition of “humanities” as an area of identification.</p>	<p>1. Definition for specific academic aptitude has been changed to include the core subjects of English, history and social science, mathematics, and science.</p>

Commenter	Comment	Agency response
	<p>2. Requests guidelines for local plans to include improved staffing, settings, instructional approaches, and evaluation options.</p> <p>3. Requests guidelines for local plans to include standards and accountability for teaching and learning, pupil-teacher ratios, and per pupil funding.</p> <p>4. Requests revision to language for selection, evaluation, and training of gifted education teachers.</p>	<p>2. Limited changes were made since staffing, settings, instructional approaches, and evaluation options are determined at the local level. Revisions require programs for the gifted to meet the assessed learning needs of gifted students and include acceleration options. Clarification of language requires students to be provided time to study and learn with their age-level peers, their intellectual peers, and time to study and learn independently.</p> <p>3. Limited changes were made since standards, accountability for teaching and learning, pupil-teacher ratios, and per pupil funding are determined at the local level. Revisions continue to require divisions to indicate required training for teachers of the gifted.</p> <p>4. Clarification of the regulatory language related to professional development requiring that such training be based on the competencies that form the basis of the add-on endorsement in gifted education found in 8VAC20-21-270.</p>
<p>Louise Epstein, president, Fairfax County Association for the Gifted</p>	<p>1. Requests establishment of the 90th percentile and above as the boundary for eligibility.</p> <p>2. Requests that divisions be required to describe and evaluate gifted education programs separately for different categories of gifted students.</p> <p>3. Requests requirement that gifted students' knowledge be measured yearly through above-grade level, standardized tests, as a measure of program effectiveness, instead of the use of the <i>Standards of Learning Assessments</i>.</p>	<p>1. Limited changes were made since identification and placement decisions are made by the school division based on their specific needs.</p> <p>2. Revisions specify that a summary of the school division's evaluation for program effectiveness be provided as part of the annual report. Limited changes were made since gifted education program evaluation decisions are made at the local level based on the needs of local school divisions.</p> <p>3. Revised regulations include a requirement that one of the measures for identification in general intellectual aptitude or specific academic aptitude be a norm-referenced instrument, which allows divisions the opportunity to use out-of-level testing. Limited changes were made since gifted education program evaluation decisions are made at the local level based on the needs of local school divisions. Clarification has been made to require divisions to monitor and assess student outcomes and to include a summary of the division's evaluation of program effectiveness to be provided as part of the division's annual report.</p>

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	<p>4. Requests that school Web sites include information about specific grade services for each grade-level served.</p> <p>5. Requests that divisions be required to provide requested data within 1-2 months of such requests; specifically that Advanced Placement (AP) test scores be reported by single scores, (e.g. 3, 4, 5), not by aggregate scores (e.g. 3-5).</p> <p>6. Requests that membership by current and past employees of the school division be limited to no more than 20 percent of the local advisory committee.</p>	<p>4. Limited changes were made since school divisions may use a variety of methods to make information available to the public.</p> <p>5. Limited changes were made since access to public information may be sought through requirements of the <i>Virginia Freedom of Information Act</i>.</p> <p>6. Limited revisions were made to bring the description of the role and function of the local advisory committee into agreement with §22.1-18.1. <i>Annual report on gifted education required; local advisory committee on gifted education.</i></p>
<p>David and Meghan Rainey, parents</p>	<p>1. Requests that “humanities” be specifically defined as language arts and English and history and social science to be consistent with other state documents.</p> <p>2. Requests the elimination of designation of “potentially gifted,” identifying children only as “gifted.”</p> <p>3. Requests language clarification that students must be served sequentially and continuously beginning in kindergarten through graduation.</p> <p>4. Requests clarification that divisions must offer either specific academic aptitude (SAA) or general intellectual aptitude (GIA); with technical and practical arts (TPA) and visual and performing arts (VPA) as optional services.</p> <p>5. Requests that divisions be required to use at least four evaluation criteria for all students, including special populations.</p>	<p>1. Definition for specific academic aptitude has been changed to include the core subjects of English, history and social science, mathematics, and sciences.</p> <p>2. Existing definition does not include “potentially gifted” category; no change to that language has been made.</p> <p>3. Revisions include clarification of delivery of services models and curriculum and instruction components of the local plan for the education of the gifted to include monitoring to ensure that students’ learning needs in their strength areas are supported continuously and sequentially, from kindergarten through graduation.</p> <p>4. Revisions include clarification of language to ensure that school divisions offer services in general intellectual aptitude or specific academic aptitude from kindergarten through graduation. Further clarification that services for technical and practical arts (TPA) and visual and performing arts (VPA) may be offered at the school division’s discretion.</p> <p>5. Revisions require school divisions to use a minimum of three sources of data or assessment measures to determine eligibility for each referred student. School divisions were duplicating information in the administration of both aptitude and achievement measures. Statistics indicate that</p>

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		the correlation between aptitude and achievement is .7, with the aptitude measure being more predictive of potential.
Marti Freidman	Seeks to establish grade standards for identified students in programs ("C" or above).	Limited changes were made since gifted education program evaluation decisions are based on the needs of local school divisions. Clarification has been made to require divisions to monitor and assess student outcomes and to provide summaries of those assessments through the annual report.
Bryan Byers	<p>1. Requests universal eligibility criteria across state.</p> <p>2. Requests that [Governor's] schools for gifted students be centrally located for joint participation of smaller divisions; include elementary students.</p> <p>3. Requests increased services for elementary students, not just pull-out 25 minutes twice a week.</p> <p>4. Requests assurance that all children who qualify for Governor's schools be allowed to attend (not just quota per school).</p>	<p>1. Limited changes were made to acknowledge that determination of area of giftedness, identification, and placement decisions are local decisions.</p> <p>2. No changes were made in regulations since participation in Governor's schools is voluntary. Department does not have the authority to increase or designate additional funds.</p> <p>3. Clarification of language for delivery of services and curriculum and instruction indicate that programs shall be continuous and sequential in nature and that student outcomes be monitored and assessed.</p> <p>4. Department does not have the authority to increase or designate additional funds.</p>

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 primary advantages of the proposed regulations for families may include:

1. Greater access to gifted services that are designed to meet the educational needs of students through increased availability of the local plan;
2. Better alignment of services for students based on their individual strengths and the application of current relevant research and practice;
3. Increased parental and student involvement through the establishment and monitoring of student outcomes;
4. Increased communication between the school division and parents of identified students through the periodic reports of student progress;

5. Increased access to academic challenges; accelerated acquisition of coursework; and entry into college-level opportunities for growth;
6. Increased earning power associated with the acquisition of educational advancement; and
7. Increased direct responsibility for the local school board in the development, approval, and annual evaluation of the comprehensive plan for the education of the gifted.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

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

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
8VAC20-40-10. Applicability.	No change	This chapter shall apply to all local school divisions in the Commonwealth.	The proposed language clarifies the existing language and moves applicability language from 8VAC20-40-30, regarding the applicability of these services for gifted students from kindergarten through high school graduation, to this section to eliminate redundancy.
8VAC20-40-20. Definitions.	No change	The words and terms, when used in this chapter, shall have the following meanings, unless the content clearly indicates otherwise:	The proposed language indicates that the definitions apply to the given term, unless the context clearly indicates otherwise.
8VAC20-40-20. Definitions.	No change	“Appropriately differentiated curricula” for gifted students refer to curricula designed in response to their cognitive and effective needs. Such curricula emphasis on both accelerative and enrichment opportunities for (i) advanced content and pacing of instruction, (ii) original research or production, (iii) problem finding and solving, (iv) higher level thinking that leads to the generation of products, and (v) a focus	The proposed language clarifies that appropriately differentiated curriculum and instruction for gifted students focus on (1) content and strategies in the student’s area of strength, (2) that recognize the student’s need for advanced content and pacing, and (3) that are presented continuously and sequentially in response to established student outcomes and expectations.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
		on issues, themes, and ideas within and across areas of study.	
8VAC20-40-20. Definitions.	No change	No previous definition	The proposed revision adds a definition for “Eligible Student” to establish that “identification” and “eligibility” are interchangeable terms.
8VAC20-40-20. Definitions.	No change	"Gifted students" means those students in public elementary and secondary schools beginning with kindergarten through graduation whose abilities and potential for accomplishment are so outstanding that they require special programs to meet their educational needs. These students will be identified by professionally qualified persons through the use of multiple criteria as having potential or demonstrated abilities and who have evidence of high performance capabilities, which may include leadership, in one or more of the following areas:	The proposed revision clarifies that “Gifted Students” are those who demonstrate high levels of accomplishment or who show the potential in one or more specific areas for higher levels of accomplishment when compared to others of their same age, experience, and environment.
8VAC20-40-20. Definitions.	No change	1. Intellectual aptitude or aptitudes. Students with advanced aptitude or conceptualization whose development is accelerated beyond their age peers as demonstrated by advanced skills, concepts, and creative expression in multiple general intellectual ability or in specific intellectual abilities.	The proposed revision clarifies that general intellectual aptitude is demonstrated by a student’s superior reasoning; persistent intellectual curiosity; advanced use of language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; and creative and imaginative expression across a broad range of intellectual disciplines beyond that of their age-level peers.
8VAC20-40-20. Definitions.	No change	2. Specific academic aptitude. Students with specific aptitudes in selected academic areas: mathematics; the sciences; or the humanities as	The proposed revision clarifies that specific academic aptitude is demonstrated by a student’s superior reasoning; persistent intellectual curiosity; advanced use of language; exceptional problem solving; rapid acquisition and

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
		demonstrated by advanced skills, concepts, and creative expression in those areas.	mastery of facts, concepts, and principles; and creative and imaginative expression in English, history and social studies, mathematics, or science.
8VAC20-40-20. Definitions.	No change	3. Technical and practical arts aptitude. Students with specific aptitudes in selected technical or practical arts as demonstrated by advanced skills and creative expression in those areas to the extent they need and can benefit from specifically planned educational services differentiated from those provided by the general program experience.	The proposed revision clarifies that career and technical aptitude is demonstrated by a student's superior reasoning; persistent technical curiosity; advanced use of language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; and creative and imaginative expression in career and technology fields.
8VAC20-40-20. Definitions.	No change	4. Visual or performing arts aptitude. Students with specific aptitudes in selected visual or performing arts as demonstrated by advanced skills and creative expression who excel consistently in the development of a product or performance in any of the visual and performing arts to the extent that they need and can benefit from specifically planned educational services differentiated from those generally provided by the general program experience.	The proposed revision clarifies that visual and performing arts aptitude is demonstrated by a student's superior reasoning; persistent artistic curiosity; advanced use of language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; and creative and imaginative expression in visual and performing arts.
8VAC20-40-20. Definitions.	No change	"Identification" is the process of reviewing student data collected at the screening level and conducting further evaluation of student potential to determine the most qualified students for the specific gifted program available.	The proposed revision clarifies that identification of students is a multi-staged process. The proposed language indicates the identification process starts with divisionwide screening, with a formal referral phase, followed by the assessment of students' aptitudes using multiple criteria, and ending with the determination of eligibility by the identification and placement committee.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
8VAC20-40-20. Definitions.	No change	"Identification/Placement Committee" means a standing committee which is composed of a professional who knows the child, classroom teacher or teachers, others representing assessment specialists, gifted program staff and school administration, and others deemed appropriate. This committee may operate at the school or division level. In either case, consistent criteria must be established for the division.	The proposed revision clarifies that the building- or division-level committee determines eligibility based on the student's assessed aptitude and learning needs; and it expands the definition to clarify that the identification and placement committee is responsible for the determination of service options considered appropriate for the student based on the student's assessed learning needs.
8VAC20-40-20. Definitions.	No change	None	The proposed revision adds a definition of "Learning needs of gifted students" to clarify that eligible students shall be provided instruction that responds to their needs for advanced and complex content, that is paced and sequenced to respond to their persistent intellectual, artistic, or technical curiosity; exceptional problem solving abilities; rapid acquisition and mastery of information; conceptual thinking processes; and imaginative expression across a broad range of disciplines.
8VAC20-40-20. Definitions.	No change	"Placement" means the determination of the appropriate educational option for each eligible student.	The proposed revision clarifies the existing language that multiple options may need to be provided to the identified or eligible student.
8VAC20-40-20. Definitions.	No change	None	The proposed revision adds a definition of "Referral" to define the formal and direct process that parents, teachers, professionals, or students use to request that a kindergarten through twelfth-grade student be assessed for gifted education services.
8VAC20-40-20. Definitions.	No change	"Screening" is the process of creating the pool of potential candidates using multiple criteria through the referral process, review of test data, or from other	The proposed revision clarifies the existing language regarding the division-wide search conducted across all students at least once annually to determine which students should be referred for identification and service in the gifted

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		sources. Screening is the active search for students who should be evaluated for identification.	education program. The proposed revision also indicates that, at a minimum, the annual screening shall consist of a review of current assessment data for all kindergarten through twelfth-grade students, with students selected through the school division's screening process then referred for formal identification.
8VAC20-40-20. Definitions.	No change	"Service options" include the instructional approach or approaches, setting or settings, and staffing selected for the delivery of appropriate service or services that are based on student needs.	The proposed revision clarifies that service options include the instructional approaches, settings, and staffing selected for the delivery of appropriate programs based on the students' assessed needs in their areas of strength.
8VAC20-40-20. Definitions.	No change	"Student outcomes" are specified expectations based on the assessment of student cognitive and affective needs. Such outcomes should articulate expectations for advanced levels of performance for gifted learners.	The proposed revision clarifies that student outcomes for advanced achievement and performance are based on a review of the student's assessed learning needs and the goals for the program of study, and those outcomes are reviewed and reported to parents or legal guardians.
8VAC20-40-30. Applicability.	Repealed		The proposed revision moves some of this language to 8VAC20-40-10 and deletes the remainder to avoid redundancy.
8VAC20-40-40. Identification.	8VAC20-40-40. Screening, referral, identification, and placement.	A. Each school division shall establish a uniform procedure with common criteria for screening and identification of gifted students. If the school division elects to identify students with specific academic aptitudes, they shall include procedures for identification and service in mathematics, science, and humanities...	The proposed revision merges and realigns the screening, referral, identification, and placement processes into one section. The proposed language requires that each school division shall establish uniform procedures with common criteria for screening, referral, and identification of general intellectual or specific academic aptitude gifted students; clarification that specific academic aptitudes include procedures for identification and service in, at a minimum, English, history and social science, mathematics, and science; and an option for school divisions to identify and serve gifted students in career and technical aptitude or visual and performing arts aptitude, or both, at their discretion. (8VAC20-40-40.A)

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8VAC20-40-40. Identification.	8VAC20-40-40. Screening, referral, identification, and placement.	B. Each school division shall maintain a division review procedure for students whose cases are appealed. This procedure shall involve individuals, the majority of whom did not serve on the Identification/Placement Committee.	<p>The existing language in this section has been moved to a new section, 8VAC20-40-55. Parental rights for notification, consent, and appeal.</p> <p>The proposed revision clarifies that the screening process shall include, at minimum, an annual review of current assessment data.</p> <p>(8VAC20-40-40.B)</p>
8VAC20-40-40. Identification.	8VAC20-40-40. Screening, referral, identification, and placement.	C. These procedures will permit referrals from school personnel, parents or legal guardians, other persons of related expertise, peer referral and self-referral of those students believed to be gifted.	<p>The proposed revision clarifies that school divisions shall permit referrals from school personnel, parents or legal guardians, other persons of related expertise, as well as peer- or self-referral; and that such referrals shall be accepted for kindergarten through twelfth-grade students.</p> <p>(8VAC20-40-40.C)</p>
8VAC20-40-40. Identification.	8VAC20-40-40. Screening, referral, identification, and placement.	D. Pertinent information, records, and other performance evidence of referred students will be examined by a building level or division level identification committee. Further, the committee or committees will determine the eligibility of the referred students for differentiated programs. Students who are found to be eligible by the Identification/Placement Committee shall be offered a differentiated program by the school division.	<p>The proposed revision clarifies that the identification and placement committee shall review pertinent information; determine a student's eligibility for the division's services; and determine which service options match the learning needs of the eligible student.</p> <p>(8VAC20-40-40.D)</p> <p>Additional proposed language clarifies the use of screening data in subsequent stages of the identification process.</p> <p>(8VAC20-40-40.B)</p> <p>The proposed revision adds new language encouraging school divisions to accept valid and reliable data for transfer students from identification processes conducted previously by other school divisions.</p> <p>(8VAC20-40-40.D)</p>
	8VAC20-40-40. Screening, referral, identification, and	Eligibility of students for programs for the gifted shall be based on multiple criteria for screening and identification established by	The proposed revision clarifies that the identification of gifted students shall be based on multiple criteria designed to seek out those students with superior aptitudes, including students in

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	placement.	<p>the school division, and designed to seek out high aptitude in all populations. Multiple criteria shall include four or more of the following categories:</p> <ol style="list-style-type: none"> 1. Assessment of appropriate student products, performance, or portfolio; 2. Record of observation of in-classroom behavior; 3. Appropriate rating scales, checklists, or questionnaires; 4. Individual interview; 5. Individual or group aptitude tests; 6. Individual or group achievement tests; and 7. Record of previous accomplishments (such as awards, honors, grades, etc.); 8. Additional valid and reliable measures or procedures. 	<p>underserved populations, and that identification include data from multiple sources.</p> <p>(8VAC20-40-40.D.1)</p> <p>This section also reduces the number of categories that school divisions are required to use in the identification process from four to three:</p> <ol style="list-style-type: none"> 1. Assessment of appropriate student products, performance, or portfolio; 2. Record of observation of in-classroom behavior; 3. Appropriate rating scales, checklists, or questionnaires; 4. Individual interview; 5. Individually-administered or group-administered, norm-referenced aptitude tests; 6. Record of previous accomplishments (such as awards, honors, grades, etc.); and 7. Additional valid and reliable measures or procedures. <p>(8VAC20-40-40.D.3)</p>
8VAC20-40-50. Criteria for screening and identification.	8VAC20-40-40. Screening, referral, identification, and placement.	<p>If a program is designed to address general intellectual aptitude, aptitude measures must be included as one of the categories in the division identification plan. If a program is designed to address specific academic aptitude, an achievement or an aptitude measure in the specific academic area must be included as one of the categories in the division identification plan. If a program is designed to address either the</p>	<p>The proposed revision clarifies that the identification process for a general intellectual aptitude or a specific academic aptitude program shall include an individually administered or group-administered, norm-referenced aptitude test as one of the three measures used in the school division's identification procedure.</p> <p>(8VAC20-40-40.D.4)</p> <p>Identification for visual and performing arts or career and technical aptitude identification shall include a portfolio or other performance assessment measure.</p>

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		visual/performing arts or technical/practical arts aptitude, a performance measure in the specific aptitude area must be used. Inclusion of a test score in a division identification plan does not indicate that an individual student must score at a prescribed level on the test or tests to be admitted to the program. No single criterion shall be used in determining students who qualify for, or are denied access to, programs for the gifted.	(8VAC20-40-40.D.5)
8VAC20-40-50. Criteria for screening and identification.	8VAC20-40-40. Screening, referral, identification, and placement.	None	<p>The proposed language establishes an expectation that parents or legal guardians shall receive a determination of a referred student's eligibility within 60 business days of the receipt of a referral.</p> <p>(8VAC20-40-40.E)</p> <p>Additional new language indicates that identified gifted students shall be offered placement in a classroom or program setting that provides appropriately differentiated curriculum and instruction provided by professional instructional personnel trained to work with gifted students and who monitor and report student outcomes to the parents or legal guardians.</p> <p>(8VAC20-40-40.E.1-E.2)</p>
8VAC20-40-50. Criteria for Screening and Identification.		Repealed	
	8VAC20-40-55. Parental rights for notification, consent, and	None	The proposed language clarifies the rights of parents or legal guardians by specifying that school divisions shall provide written notification to and seek written consent from parents or legal guardians for

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	appeal.		identification of and services for eligible students. (8VAC 20-40-55.A.1–A.3)
	8VAC20-40-55. Parental rights for notification, consent, and appeal.	None	The proposed language realigns information from 8VAC20-40-40, clarifying the rights of parents or legal guardians for due process, including the right to appeal within ten days of receipt of the school division’s determination of eligibility, change in placement, or exit from the school division’s gifted education program. (8VAC20-40-55.B.1-B.2)
	8VAC20-40-55. Parental rights for notification, consent, and appeal.	None	The proposed language clarifies that administrators in the student’s school have access to the results of the identification and placement committee’s eligibility decisions. (8VAC20-40-55.C)
8VAC20-40-60. Local plan.	8VAC20-40-60. Local plan, local advisory committee, and annual report.	A. Each school division shall submit to the Department of Education for approval a plan for the education of gifted students. Modifications to the plan shall be reported to the Department of Education on dates specified by the Department.	The proposed revision requires that each school board review and approve annually a comprehensive local plan for the education of gifted students that includes components of these regulations, and that opportunities for public review are included in the plan development, review, and approval process. (8VAC20-40-60.A) It also clarifies details of each of the required components of the plan. (8VAC20-40-60.A.1-A.14)
8VAC20-40-60. Local plan.	8VAC20-40-60. Local plan, local advisory committee, and annual report.	B. Each school division shall establish a local advisory committee composed of parents, school personnel, and other community members. This committee shall reflect the ethnic and geographical composition of the school division. The purpose of this committee shall be to advise the school board	The proposed language revises the regulations to comply with § 22.1-18.1. <i>Code of Virginia</i> , which establishes a local advisory committee, appointed by the school board, composed of parents, school personnel, and other community members, that reviews the local plan for the education of gifted students annually, determines the extent to which the plan for the previous year was implemented, and reports its findings annually in writing to the division superintendent and the

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
		through the division superintendent of the educational needs of all gifted students in the division. As a part of this goal, the committee shall review annually the local plan for the education of gifted students, including revisions, and determine the extent to which the plan for the previous year was implemented. The recommendations of the advisory committee shall be submitted in writing through the division superintendent to the school board.	school board. (8VAC20-40-60.B)
8VAC20-40-60. Local plan.	8VAC20-40-60. Local plan, local advisory committee, and annual report.		The proposed language revises the regulations to comply with § 22.1-18.1. <i>Code of Virginia</i> , which establishes that each school division shall submit an annual report to the Department of Education in a format prescribed by the Department. (8VAC20-40-60.C)
8VAC20-40-70. Funding.		Repealed	

These revisions to the *Regulations Governing Educational Services for Gifted Students* do not replace an emergency regulation.