



Final Regulation Agency Background Document

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) citation	<u>8 VAC20-40-10</u> through <u>8VAC20-40-10-70</u>
Regulation title	Regulations Governing Educational Services for Gifted Students
Action title	Revision of regulations school divisions must meet in their gifted education programs, K - 12
Date this document prepared	May 2010

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

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

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. Additional information is provided about the Department of Education's technical review of local plans for gifted programs and the funding of gifted programs to school divisions through the Appropriation Act.

On March 26, 2009, the proposed *Regulations Governing Educational Services for Gifted Students* were approved by the Virginia Board of Education. Upon signing the *Regulations*, Governor Kaine directed the Department of Education to initiate a study to analyze disproportionately low representation of minority students in gifted education. The *Regulations* were then posted to the Town Hall on February 1, 2010. During the required 30-day posting to the Town Hall, the *Regulations* were petitioned and suspended pursuant to Section 2.2-4007 of the *Code of Virginia*. As a result of the petition, the *Regulations* were resubmitted to the Town Hall for an additional 30-day comment period, beginning on March 29, 2010, and

ending on April 28, 2010. The Department of Education received sixty-three comments on the Town Hall and two e-mails. A summary of public comments from the additional 30-day comment period can be found within the attached Town Hall Final Regulations Agency Background Document (Attachment A). The proposed revised *Regulations Governing Educational Services for Gifted Students* can be found in Attachment B.

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 adopted proposed revisions to the *Regulations Governing Educational Services for Gifted Students* on March 26, 2009. As a result of a petition pursuant to Section 2.2-4007 of the *Code of Virginia*, the *Regulations* were resubmitted to the Town Hall for an additional 30-day comment period, beginning on March 29, 2010, and ending on April 28, 2010.

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 numbers, if applicable, and (2) promulgating entity, i.e., 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. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

This action is essential to ensure that gifted 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 and equitable representation of students in the division, including those students with economically disadvantaged backgrounds, those with limited English language proficiency, or those with disabilities. The proposed revised Regulations provide clarification to the definitions and to the program operations in order to assist school divisions in providing educational services to gifted students.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

8 VAC20-40-60. Local plan, local advisory committee, and annual report:

1. School divisions shall provide an operational definition of giftedness that is applicable to their local program for gifted education.
2. School divisions shall use information from the review of program effectiveness to develop a statement of program goals and objectives intended to support the achievement of equitable representation of students in gifted education programs.
3. School divisions shall provide professional development based on the teacher competencies outlined in 8 VAC20-542-310 related to gifted education.
4. The annual review of program effectiveness shall include the review of program procedures toward the achievement of equitable representation of students.

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 there are no disadvantages to the public or the Commonwealth, please indicate.*

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

1. School divisions shall provide an operational definition of giftedness that is applicable to their local program for gifted education for increased public understanding.
2. School divisions shall use information from the review of program effectiveness to develop a statement of program goals and objectives intended to support the achievement of equitable representation of students in gifted education programs throughout the community.
3. School divisions shall provide professional development based on the teacher competencies outlined in 8 VAC20-542-310 related to gifted education, thereby increasing teacher awareness of effective practices in identifying and serving all eligible gifted students.
4. The annual review of program effectiveness shall include the review of program procedures toward the achievement of equitable representation of students from across the locality.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

The changes are as follows:

Section number	What has changed	Rationale for change
8VAC20-40-60. Local plan, local advisory committee, and annual report.	Change: 1. A statement of philosophy for the gifted education program to . . . 1. A statement of philosophy for the gifted education program and the local operational definition of giftedness for the school division.	Language change requires an operational definition of giftedness for the school division to support identification practices and informational dissemination to the public.
	Change: 2. A statement of the school division's gifted program goals and objectives for identification, delivery of services, curriculum and instruction, professional development, and parent and community involvement to . . . 2. A statement of the school division's gifted program goals and objectives for identification, delivery of services, curriculum and instruction, professional development, equitable representation of students , and parent and community involvement.	Language changed to shift school divisions toward the achievement of equitable representation of students within gifted programs.
	Change: 13. Evidence that school divisions provide professional development based on the competencies specified in 8VAC20-542-310, Gifted education (add-on endorsement), for instructional personnel who deliver services within the gifted education program; and to . . . 13. Evidence that school divisions provide professional development based on the teacher competencies outlined in 8VAC20-542-310 related to gifted education; and	Language changed to support professional development of staff within the division who may be involved in the screening, referral, or instruction of students who may be gifted.

Section number	What has changed	Rationale for change
	Change: 14. Procedures for the annual review of the effectiveness of the school division's gifted education program, including review of student outcomes and the academic growth of gifted students to . . . 14. Procedures for the annual review of the effectiveness of the school division's gifted education program, including the review of screening, referral, identification, and program procedures toward the achievement of equitable representation of students, the review of student outcomes, and the academic growth of gifted students.	Language changed to shift school divisions toward the achievement of equitable representation of students within gifted programs.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

These comments represent the comments received during the extended 30-day comment period from March 29, 2010 through April 28, 2010.

Issue	Source	Comments	VDOE Response
8VAC20-40-20 Definitions <i>1 comment</i>	1 Concerned Citizen <i>(1 comment)</i>	Request: Provide an operational definition of a gifted student to facilitate accurate and uniform demographic data collection of gifted programs between school divisions and the VDOE as required by the Code of Virginia Section 22.1-18.	Language changes are reflected in the <i>Regulations</i> .
8VAC20-40-40. Screening, referral, identification, and placement. <i>14 comments</i> Paragraph A	1 Concerned Citizen <i>(1 comment)</i>	Change: A. Each school division shall establish uniform procedures for screening, to . . . A. Each school division should not establish uniform procedures for screening,	No change.

Issue	Source	Comments	VDOE Response
Paragraph D.3	2 NAACP Members 1 Teacher 4 Concerned Citizens 1 Former Student (8 comments)	Recommend: Subparagraph D.3 be replaced with specific language that establishes how to weight the criteria relied upon for gifted identification	No change.
	4 Concerned Citizens (4 comments)	Change: include at least three measures from the following category to: . . . include at least four measures from the following category, one of which should be a nontraditional, non-biased assessment tool.	No change.
	1 NAACP Member (1 comment)	Change: include at least three measures from the following category to: . . . include at least four measures from the following category, two of which must be qualitative.	No change.
8VAC20-40-60. Local plan, local advisory committee, and annual report. 1 comment Paragraph A.13	1 NAACP Member (1 comment)	Recommend: require divisions to train teachers to identify gifted students from all backgrounds and to promote parent and student engagement in the identification process	Language changes in the <i>Regulations</i> require additional professional development for teachers related to gifted education.
General Remarks	4 NAACP Members 3 Teachers 1 Parent 15 Concerned Citizens 3 Former Students (26 comments)	Recommend: VDOE must report annually on school divisions with regard to disproportional identification in gifted programs of racial, ethnic, and low-income student populations	Not a regulatory change. VDOE will report the requested data with its other summary reports.
	5 NAACP Members 4 Teachers 1 Parent 17 Concerned Citizens 3 Former Students (30 comments)	Recommend: If disproportionality exists, regulations should require divisions to revise their policies, procedures, and practices and dedicate resources toward reducing disproportionality	Language changes in the <i>Regulations</i> require that, as part of their annual review of program effectiveness, divisions include a review of program procedures toward the achievement of equitable representation of students.

Issue	Source	Comments	VDOE Response
	4 NAACP Members 3 Teachers 1 Parent 16 Concerned Citizens 3 Former Students <i>(27 comments)</i>	Recommend: In divisions with significant disproportionality, VDOE shall require school divisions to comply with regulations addressing disproportionality and to report publicly on the revisions to policies, procedures, and practices	Language changes in the <i>Regulations</i> require that school divisions post their local gifted education plans to their public Web site. The VDOE will also provide technical assistance in helping school divisions develop strategies that increase equitable representation of students.
	4 NAACP Members 3 Teachers 1 Parent 16 Concerned Citizens 3 Former Students <i>(27 comments)</i>	Recommend: divisions should be required to reserve 15% of gifted funds to address any existing disproportionality in gifted programs	While the Appropriation Act does not give the VDOE the authority to require a set-aside of funds to address disproportionality, local funds could be used in this manner.
	1 Concerned Citizen <i>(1 comment)</i>	Recommend: gifted education regulations be amended to provide the rules governing the administration of Governor's School programs which are a component of gifted education programs	Governor's Schools operate under the provisions within Section 22.1-26 of the <i>Code of Virginia</i> for a joint school, and their policies and procedures are determined by a joint governing board representing the participating school divisions.
	1 Concerned Citizen <i>(1 comment)</i>	Recommend: regulations allowing school divisions to include as part of their gifted plan the use of geographical representation in all gifted programs and Governor's Schools	School divisions and joint governing boards of Governor's Schools determine the number of Governor's School slots available to each school division.
	2 Concerned Citizens <i>(2 comments)</i>	Recommend: require divisions to serve culturally and linguistically gifted students that are represented in their general population	Language changes in the <i>Regulations</i> require school divisions to include in their local plans ways to address equitable distribution of students, including culturally and linguistically diverse students.
	1 NAACP Member 1 Parent 6 Concerned Citizens 1 Former Student <i>(9 comments)</i>	Revise: regulations to support equitable representation in gifted education programs	Language changes to the <i>Regulations</i> throughout address this comment.
	1 Concerned Citizen <i>(1 comment)</i>	Recommend: a provision requiring all Governor's School budgetary information be reported on the VDOE database in a manner similar to that of all school division budget information	No specific regulatory change related to gifted education requested.

Issue	Source	Comments	VDOE Response
	2 Concerned Citizens <i>(2 comments)</i>	Recommend: the Board of Education report, with specificity, in its 'Annual Report on the Conditions and Needs of Public Schools in Virginia' the disproportionate representation of low-income and minority students in gifted education	No specific regulatory change related to gifted education requested.
	1 Concerned Citizen <i>(1 comment)</i>	Recommend: require VDOE to collect data on school division gifted programs, level of gifted services, Governor's School programs, summer regional programs, and Math/Science Innovation Center programs.	No specific regulatory change related to gifted education requested.
	1 Concerned Citizen <i>(1 comment)</i>	Recommend: require divisions to annually report demographic data on service options provided to gifted students	No specific regulatory change related to gifted education requested.
	4 Concerned Citizens <i>(4 comments)</i>	Recommend: require divisions to report specific procedures utilized to ensure equitable access to local, regional, and state gifted services	No specific regulatory change related to gifted education requested.
	1 NAACP Member <i>(1 comment)</i>	Encourage Governor McDonnell and his administration to rectify statistically proven disparities in gifted education policies and programs in Virginia	No specific regulatory change requested.
	1 NAACP Member <i>(1 comment)</i>	The Virginia Board of Education's second objective is to eliminate the achievement gap . . . there are too few low-income and minority students in gifted education	No specific regulatory change requested.
	2 Concerned Citizens <i>(2 comments)</i>	Minority students have always been under represented in school divisions that are predominately Caucasian	No specific regulatory change requested.

Issue	Source	Comments	VDOE Response
	3 NAACP Members 1 Teacher 15 Concerned Citizens 4 Former Students (23 comments)	General statement of the ethnic percentages of gifted students in particular school divisions	No specific regulatory change requested.

All changes made in this regulatory action

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

Current section number	Current requirement	Proposed change and rationale
8VAC20-40-60. Local plan.	1. A statement of philosophy;	1. A statement of philosophy for the gifted education program and the local operational definition of giftedness for the school division. The proposed revision provides for an operational definition of giftedness at the division level.
8VAC20-40-60. Local plan.	2. A statement of program goals and objectives;	2. A statement of the school division's gifted program goals and objectives for identification, delivery of services, curriculum and instruction, professional development, equitable representation of students, and parent and community involvement. The proposed revision changed to support the achievement of equitable representation of students within gifted programs.
8VAC20-40-60. Local plan.	13. Other information as required by the Department of Education.	13. Evidence that school divisions provide professional development based on the teacher competencies outlined in 8VAC20-542-310 related to gifted education; and The proposed revision assures that school divisions provide professional development based on competencies specified in 8VAC20-542-310 related to gifted education.
8VAC20-40-60. Local plan.	No current requirement.	14. Procedures for the annual review of the effectiveness of the school division's gifted education program, including the review of screening, referral, identification, and program procedures toward the achievement of equitable representation of students, the review of student outcomes, and the academic growth of gifted students. Such review shall be based on multiple criteria and shall include multiple sources of information. The proposed new language assures that school divisions review annually the effectiveness of the school division's gifted education program based on multiple criteria and sources of information.

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

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 revised regulations for families may include:

1. Greater access to gifted services for all students;
2. Increased access to academic challenges; accelerated coursework; and entry into college-level opportunities for growth;
3. Increased earning power associated with the acquisition of educational advancement; and
4. Increased direct responsibility for the local school division and local advisory committee in the development, review, and approval of the comprehensive local plan for the education of the gifted.