



Final Regulation Agency Background Document

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) citation	8 VAC 20-281-10 through 8 VAC 20-281-30
Regulation title	Regulations Governing Jointly Owned and Operated Schools and Jointly Operated Programs
Action title	Repeal of regulations governing joint schools and jointly operated programs and promulgation of new regulations
Date this document prepared	April 6, 2009

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 Jointly Owned and Operated Schools and Jointly Operated Programs* was adopted on or before September 1, 1980. These regulations have not been amended since then and do not address changes made in these schools and programs since that time. As defined in the proposed regulation, *joint school* means a joint or regional school or program established by two or more local school boards, pursuant to § 22.1-26 of the Code of Virginia, which may include but not be limited to a regional public charter school, a regional residential charter school, a regional academic year Governor's school, a regional career and technical center, a regional special education program, or a regional alternative education program as defined in § 22.1-209.1:2 of the Code of Virginia.

In a concurrent action, the Board of Education proposes to repeal the text of the current regulations (8 VAC 20-280-10 et seq.) and promulgate new regulations (8 VAC 20-281-10 et seq.). The present action proposes significant changes in the regulations. In the proposal a definitions section has been added for clarity; and new language was added in response to legislation passed during the 2003, 2004, 2007, and 2008 General Assembly Sessions. In addition, changes were made in response to agency review.

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.

During its meeting on April 30, 2009, the Board of Education adopted the proposed revisions to the *Regulations Governing Jointly Owned and Operated Schools* (8 VAC 20-281-10 et seq.) and directed the Department of Education to proceed with the requirements of the Administrative Process Act.

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 promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1. In addition, §22.1-26 of the Code of Virginia provides the Board of Education with the legal authority to promulgate regulations that govern joint schools.

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.

These regulations provide joint schools and programs and joint school boards with guidance and operating procedures that support regional efforts to establish schools and programs that meet the needs of their communities and ensure that these schools and programs are managed appropriately and in a fiscally sound manner.

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.

The current regulations (8 VAC 20-280-10 et seq.) are being repealed. The proposed regulations (8 VAC 20-281-10 et seq.) include the following:

- Addition of a definitions section for clarity.

- Revision of the second section of the repealed regulations which includes all of the organizing and operating procedures, including membership, organization, joint board authority, authority of the division superintendent, annual budget and financing plan, and expenditures. Most of the headings/catchlines from the current regulations remain, but the language has been streamlined and is more user-friendly.
- Addition of new language related to SB 1099 (2003 General Assembly Session) regarding a new category of high school operated as a joint or regional school and offering a comprehensive high school curriculum and specialized training to students desiring to pursue careers in law enforcement, fire fighting, emergency and rescue services, and other occupations addressing public safety and welfare.
- Addition of new language related to SB 553 (2004 General assembly Session) that allows two or more school boards, with the consent of the State Board, to establish joint or regional schools, including regional public charter schools, to serve as high schools offering a specialized curriculum leading to a high school diploma and a postsecondary credential, such as industry certification, career certificate, or degree; or (iii) both.
- Addition of new language related to HB 2371 (2007 General Assembly Session) regarding the appointment of a fiscal agent and the holding of title to property.
- Addition of new language related to HB 771 (2008 General Assembly Session) which permits any joint school already in operation to request a waiver from any new regulation requirements promulgated, effective July 1, 2008.

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 proposed revisions to these regulations are advantageous to the public, the agency, and the Commonwealth for the following reasons:

1. The proposed regulations establish clear and minimum expectations for all schools and programs subject to its requirements.
2. The proposed regulations replace current regulations that are ambiguous in some areas.
3. The proposed regulations replace one section of the current regulations where much of the language is aspirational.
4. The proposed regulations clarify which schools and programs are subject to these regulations.

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

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.

Section number	Requirement at Proposed stage	What has changed	Rationale for change
8 VAC 20-281-10	The proposed regulation includes a definition for the term <i>alternative education program</i> .	This term has been deleted.	It was not necessary.
8 VAC 20-281-10	The proposed regulation includes a definition for the term <i>finance officer</i> .	This term has been deleted.	It was not necessary.
8 VAC 20-281-10	The proposed regulation includes a definition for the term <i>joint school</i> .	This term has been revised.	It was revised to comport with §22.1-26.
8 VAC 20-281-20	The proposed regulation requires the election of a finance officer and describes that individual's duties.	This reference has been deleted.	It was not necessary.
8 VAC 20-281-30	The 2008 General Assembly passed HB 771 which permits any joint school already in operation to request a waiver from any new regulation requirements promulgated, effective July 1, 2008.	8 VAC 20-281-30 was added to the regulation to reflect this change in the law.	The language in HB 771 has been added to the regulation.

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.

The official public comment period extended from June 23, 2008 through August 25, 2008. One individual submitted comments by e-mail. A public hearing was held immediately following the adjournment of the business session of the Board of Education on July 17, 2008, but no one appeared for the hearing.

Commenter	Comment	Agency response
Program director	The current regulation includes lay members as well as school board members as members of the joint board. The proposed regulations	School board members in Virginia are either elected or appointed. It is not clear what the term <i>lay member</i> means as it is not defined in the current regulations or referenced in the

	<p>only require school board members as joint board participants. The proposed regulations do not include safeguards for input from those involved in day-to-day operations or input from persons knowledgeable in this specialized field of education. In addition, the joint school structure as proposed is top-heavy.</p>	<p>Code of Virginia; therefore, that term is not included in the proposed regulations. Instead, the regulations were changed to include only participating school board members as members of the joint board. This individual also had concerns about the impact on the organizational structure of these schools and decision-making authority. However, all public schools in Virginia are supervised by local school boards (Article VIII, § 7 of the Constitution of Virginia and § 22.1-28 of the Code of Virginia) and each school board appoints a school superintendent (§ 22.1-58 et seq.). In addition, the proposed regulations describe the joint board’s authority and the school superintendents’ authority and require the joint board to adopt bylaws or rules of operation.</p> <p>HB 771 was approved during the 2008 General Assembly Session and it permits any joint school already in operation to request a waiver from any new regulation requirements promulgated, effective July 1, 2008.</p>
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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.

The current regulations are proposed for repeal (8 VAC 20-280-10 et seq.) and new regulations are being promulgated (8 VAC 20-281-10 et seq.)

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
8 VAC 10-280-20	8 VAC 10-281-20	This section of the current regulations describes arrangements for jointly owned and operated schools and jointly operated programs.	8 VAC 20-281-10 has been added to the new regulations to include definitions for clarity.
8 VAC 20-280-20	8 VAC 20-281-10	The language in the original regulations has been repealed because much of the language is aspirational.	The term joint school is defined in the new section.
8 VAC 20-280-20	8 VAC 20-281-20	This section of the current regulations describes organization and operating procedures, including	8 VAC 281-20 (in the new regulations) also describes organization and operating procedures. However, the language has been revised for clarity and is more user-

		membership, organization, joint board authority, division superintendent's authority, annual budget and financing plan, annual appropriations, and expenditures.	friendly. In addition, language from HB 2371 (2007 General Assembly Session), which addresses the appointment of a fiscal agent and the holding of title to property, is included in this section.
NA	8 VAC 20-281-30	This section is not included in the current regulations. The 2008 General Assembly passed HB 771 which permits any joint school already in operation to request a waiver from any new regulation requirements promulgated, effective July 1, 2008.	8 VAC 20-281-30 was added to the regulations to reflect this change in the law.

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.

During the development of the proposed regulations, this department has made efforts to minimize the number of regulations that will impact these schools. Small businesses will not be impacted by these regulations.

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.

It is not anticipated that the proposed regulations will have any impact on the institution of the family or family stability.