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Final Regulation Agency Background Document

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) citation(s)	<u>8 VAC 20 - 730</u>
Regulation title(s)	<i>Regulations Governing The Collection and Reporting of Truancy Related Data and Student Attendance Policies</i>
Action title	Procedures for the collection of truancy data and unexcused/nonverified absence intervention process and responsibilities.
Date this document prepared	April 14, 2016

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The proposed regulations are new. The regulations set criteria for truancy data collection and a procedure for intervening with a student who has unexcused absences. The regulations provide definitions to promote consistency in data collection and reporting among school divisions and to the Virginia Department of Education (VDOE). Attendance data can be used to establish and revise attendance policies and best practices to engage students in daily attendance and to promote early intervention for repeated unexcused absences. Procedures and responsibilities are defined for providing intervention and support services to increase school attendance and attachment. Finally, the regulations direct a complaint to be filed with court services when a student is noncompliant with compulsory attendance law. In response to review and public comment, the regulations as initially proposed have been edited and amended.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

There are no acronyms or technical terms that are not also defined in the definitions section of the regulations.

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 is anticipated to approve the 8VA20-730 *Regulations Governing the Collection and Reporting of Truancy Related Data and Student Attendance Policies* on May 26, 2016.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

§ 22.1-16. Bylaws and regulations generally.

“The Board of Education may adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title.”

§ 22.1-254. Compulsory attendance required; excuses and waivers; alternative education program attendance; exemptions from article.

A summation of the compulsory attendance code relevant to this regulation is as follows: “Any child five years old on or before September 30 of each school year and who has not reached eighteen years of age shall be enrolled and attend a public, private, denominational, or parochial school, or be home schooled in accordance with state regulations. A local school board may excuse a youth from attendance under certain circumstances as described in subsection B and C of § 22.1-254.”

§ 22.1-269. Board to enforce.

The *Code of Virginia* authorizes and requires the Board of Education to enforce Virginia’s compulsory school attendance statutes as follows:

“The Board of Education shall have the authority and it shall be its duty to see that provisions of this article are properly enforced throughout the Commonwealth.”

§ 22.1-258. Appointment of attendance officers; notification when pupil fails to report to school.

In summary, the *Code of Virginia* requires each school division to create an attendance plan for any student with five unexcused absences and to schedule a conference with parents after the sixth unexcused absence ... upon the next unexcused absence by such pupil, the school attendance officer shall enforce compulsory attendance by “(i) filing a complaint with the juvenile and domestic relations court alleging the pupil is a child in need of supervision as defined in § 16.1-288 or (ii) instituting proceedings against the parent pursuant to § 18.2-371 or § 22.1-262....”

§ 22.1-261. Attendance officer to make list of children not enrolled; duties of attendance officer.

“...It shall be the duty of the attendance officer, on behalf of the local school board, to investigate all cases on nonenrollment and, when no valid reason is found therefore, to notify the parent, guardian or other person having control of the child to require the attendance of such child at the school within three days from the date of such notice.”

§ 22.1-267. Proceedings against habitually absent child.

“Any child permitted by any parent, guardian, or other person having control thereof to be habitually absent from school contrary to the provisions of this article may be proceeded against as a child in need of supervision as provided in Chapter 11 (§ 16.1-226 et seq.) of Title 16.1.”

§ 22.1-262. Complaint to court when parent fails to comply with law.

“...If the parent (i) fails to comply with the provisions of § 22.1-261 within the time specified in the notice; or (ii) fails to comply with the provisions of § 22.1-254; or (iii) refuses to participate in the development of the plan to resolve the student’s nonattendance or in the conference provided for in § 22.1-258, the attendance officer is to provide documentation to the court regarding the school division’s compliance with § 22.1-258. In addition thereto, such child may be proceeded against as a child in need of services or a child in need of supervision as provided in Chapter 11 (§ 16.1-226 et seq.) of Title 16.1.”

§ 22.1-265. Inducing children to absent themselves.

“Any person who induces or attempts to induce any child to be absent unlawfully from school or who knowingly employs or harbors, while school is in session, any child absent unlawfully shall be guilty of a Class 3 misdemeanor and willfully violated the provisions of this section ... having been convicted previously of a violation of this section, ... shall be guilty of a Class 2 misdemeanor.”

§ 22.1-263. Violation constitutes misdemeanor.

“Any person violating the provisions of either § 22.1-254, except for clause (ii) of subsection A, §§ 22.1-255, 22.1-258, 22.1-267, or the parental responsibility provisions relating to compulsory school attendance included in § 22.1-279.3, shall be guilty of a Class 3 misdemeanor.... that such person has been convicted previously of a violation of any provision of § 22.1-254, except for clause (ii) of subsection A, or any provision of §§ 22.1-255, 22.1-258 or § 22.1-267, such person shall be guilty of a Class 2 misdemeanor.”

§ 22.1-266. Law-enforcement officers and truant children.

“A. Notwithstanding the provisions of § 16.1-246, any law-enforcement officer ... or any attendance officer may pick up any child who (i) is reported to be truant from public school by a school principal or division superintendent or (ii) the law-enforcement officer or attendance officer reasonably determines to be a public school student and by reason of the child’s age and circumstances is either truant from public school or has been expelled from school and has been required to attend an alternative education program... and may deliver such child to the appropriate public school, alternative education program, or truancy center and personnel thereof without charging the parent or guardian of such child with a violation of any provision of law....”

§ 22.1-260.B – Reports of children enrolled and not enrolled; nonattendance; social security numbers required.

“At the end of each school year, each public school principal shall report to the division superintendent the number of students by grade level for whom a conference was scheduled as required by § 22.1-258. The division superintendent shall compile such grade level information for the division and provide such information to the Superintendent of Public Instruction annually.”

Federal regulations, *Section 4112 of the No Child Left Behind Act (NCLB)*, mandate truancy data to be collected at the local level by each school and be reported to the State Department of Education. Data for each individual school will be made public. The aggregated state data results will be reported to the United States Department of Education (USED).

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation 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.

It is the primary goal of the Virginia Board of Education, through these regulations, to set forth definitions for data collection, and procedures and responsibilities of the participants to address nonattendance issues. Enacting these regulations should enhance daily school attendance and decrease referrals to court services for truancy.

It is the intent of the Virginia Board of Education, through these regulations, to:

- Provide for consistent and accurate data collection and reporting;
- Improve attendance related policies, procedures and evidence-based prevention and intervention Practices;
- Enhance school staff's capability to early identify students with nonattendance issues and to intervene and provide support and to case manage and monitor progress;
- Create a positive impact on the family, the student, school divisions and court services in their efforts to improve school attendance;
- Increase a student's opportunity to benefit from a quality education in preparation for a career or postsecondary education;
- Create a climate for improving communication, cooperation, and coordination of services among community service agencies and public systems to address issues manifested in truancy behavior; and
- Encourage dissemination of information to increase public knowledge of the importance of regular school attendance and these regulations.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

The re-proposed regulations are organized according to the following sections:

Part I, 8 VAC 20-730-10, which provides the definition of terms, such as “attendance plan,” “excused absence,” and “unexcused absence.”

Part II, 8 VAC 20-730-20, which articulates the procedures and responsibilities for early identification and intervention with nonattendance behavior and the issues that manifest truancy. It delineates processes for assisting the student and family in preventing nonattendance and defines the steps to intercede.

Part III, 8 VAC 20-730-30, which identifies the attendance data to be reported to VDOE that includes for each individual student: (1) all excused and unexcused absences; (2) students with five, six or more unexcused absences; (3) the number of attendance plans developed and conferences scheduled and held; and (4) the number of complaints for students in need of supervision made to the court or proceedings against parents.

The Board of Education adopted the re-proposed regulations and authorized VDOE staff to proceed with Virginia Administrative Process Act (APA) requirements on January 10, 2013. Once approved by the executive review process in September 2015, a public hearing was held during the November 19, 2015, Board of Education meeting. There were no public comments made at the meeting. Five comments were received on the Regulatory Town Hall Web site. As a result of the public comments and staff review, amendments are proposed to the re-proposed regulations.

Part I of the regulations, 8VAC 20-730-10, which provides definitions of terms, and Part II, 8VAC 20-730-20, which provides process and responsibilities for addressing unexcused absences, have been amended to allow for flexibility through the use of technology when conducting conferences as follows:

- Part I. Attendance conference was amended to read...means a face-to-face meeting, “which may be conducted through the use of communication technology....”
- Part II. 2., ...The parent shall be contacted either in a face-to-face conference, by telephone “or through the use of other communication devices....”
- Part III. 3., ...schedule a face-to-face attendance conference, “which may be conducted through the use of communication technology....”

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 final regulations pose no disadvantage to the public or the Commonwealth. The regulations will serve to more accurately collect daily school attendance and nonattendance data and guide early identification and intervention processes to remove barriers that disengage a student from school, thus improving school attendance. The procedures in the final regulations align with the *Code of Virginia* and reflect those requirements.

Students, who attend school daily, kindergarten through twelfth grade, are more likely to graduate. Students who do not attend school regularly are more likely to experience academic failure, school dropout, criminal and violent acts, unemployment, substance abuse, adult criminality and incarceration, unwanted pregnancy and social isolation. Due to the strong link between truancy and these negative consequences, it is critical to address attendance issues early and effectively.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is 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 requirements more restrictive than 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.

The regulations will affect all school divisions but none will be materially impacted disproportionately.

Family impact

Please assess the impact of this 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.

Research has demonstrated that missing at least ten percent of school days in a year for any reason, excused or unexcused is a primary cause of low academic achievement and a powerful predictor of which students will eventually drop out of schools¹. Due to the strong link between attendance and successful completion of school, consistent monitoring of attendance and intervening with supports for students and

¹ U.S. Department of Education, health and Human Services, Housing and Urban Development, and Justice, Every Student, Every Day: A Community Toolkit to Address and Eliminate Chronic Absenteeism, Washington, D.C., 2015

families are critical. The intent of the regulations is to strengthen supports to students and families that will impact positively their relationships, create pride through educational achievements that will endow self-responsibility and economic self-sufficiency.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change
8VAC20-730.10. Definitions	Attendance conference was defined as a face-to-face meeting.	The language [which may be conducted through the use of communication technology] was inserted to allow greater flexibility for conducting meetings between school personnel, parents and students.	Face-to-face meetings can be held through communication technology. Including this language eases the burden and restriction on parents and school personnel.
8VAC20-730-20. C2 Unexcused absences intervention process and responsibilities.	Parental contact is noted as being conducted through a face-to-face meeting or by telephone.	The language [or through the use of other communication devices] was inserted to allow greater flexibility for conducting meetings between school personnel, parents and students.	Face-to-face meetings can be held through communication technology. Including this language eases the burden and restriction on parents and school personnel.
8VAC20-730-20. C3 Unexcused absences intervention process and responsibilities.	The guidance indicates that a “face-to-face” meeting shall be scheduled.	The language [which may be conducted through the use of communication technology] was inserted to allow greater flexibility for conducting meetings between school personnel, parents and students.	Face-to-face meetings can be scheduled and held through communication technology. Including this language eases the burden and restriction on parents and school personnel.
8VAC20-730-30.5 Data Collection and reporting.	The sentence indicated that data will be reported VDOE on “whether a court referral or a petition was filed....”	School divisions cannot file petitions with court services but do file a complaint, which is defined in section 8VAC20-730.10. Definitions. Hence the words [or a petition was filed] is being stricken and replaced with...,whether a court referral [was made].	Language was changed for legality and consistency within 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. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

Committer	Comment	Agency response
Christin East Goochland County Public Schools	Town Hall Comment <ul style="list-style-type: none"> • "...when is a student considered officially enrolled, the day of enrollment or the day the student actually shows up for classes;" and how do other school divisions collect the data requested." 	<p>8VAC20-730-30. Data Collection and reporting states that "...student's attendance is cumulative and begins on the first official day of the school year or the first day the student is officially enrolled. All nonattendance days are cumulative and begin with the first absence. For purposes of this data collection, truancy shall start with the first "unexcused" absence and will be cumulative."</p> <p>Furthermore, all excused and unexcused absences are reported to the Virginia Department of Education. Thus, if a student is officially enrolled but there is a lapse of time before that student actually shows up to attend school, the school division is given the flexibility to determine if the lapsed days of nonattendance should be excused or unexcused.</p> <p>Presently, school divisions are not reporting this information. A reporting system and guidance will be provided once the regulations are approved.</p>
Elaine Cranford	Town Hall Comment- <ul style="list-style-type: none"> • "The proposed regulatory changes make no attempt to collect excessive absenteeism and the meetings and interventions that are conducted to address this issue... "conferences are often held regarding "unexcused absences and the parent later providing an excuse after the fact. This situation can result in overwhelming numbers of students with unexcused absences and unrealistic time frame expectations for meetings to be held." 	<p>8VAC20-730-30. Data Collection and reporting of the re-proposed regulation states that all excused and unexcused absences and data on meetings and outcomes are reported to the Virginia Department of Education.</p>

<p>Amy Dew Alleghany County Schools</p>	<p>Town Hall Comment-</p> <ul style="list-style-type: none"> Request a limit be placed on the number of times a parent can submit an excuse for a student’s absence from school. The burden placed on school divisions by the <i>Code’s</i> tight timeframe for intervening with attendance problems is unrealistic and additional personnel are needed. Technical assistance inquiry was made regarding writing an attendance plan and the impact “block scheduling ” has on addressing attendance. 	<p>The school administrators may determine rather an absent is excused or unexcused. If no explanation is provided by the parent or if the excuse is unacceptable then according to the <i>Code of Virginia</i>, contact with the parent must be made to make a corrective action plan.</p> <p>Local school boards have the flexibility to determine attendance policies that are more restrictive than the <i>Code of Virginia</i>. Furthermore school divisions have the authority to determine if the reason provided for the absence is excused or unexcused.</p> <p>This timeframe is noted in the <i>Code of Virginia</i> § 22.1-258 and unless the statue is amended the regulations must follow the <i>Code</i>.</p> <p>The 2016 Virginia General Assembly passed legislation, if signed by the Governor, would allow school divisions to use increased funding for student service personnel, including assistant principals.</p> <p>The VDOE offers technical assistance to support school divisions.</p> <p>“Block scheduling” and its impact on attendance should be handled according to school division policy.</p>
<p>John Butcher</p>	<p>Town Hall Comments and the same comments were emailed to Virginia Department of Education on December 1, 2015.</p> <ul style="list-style-type: none"> “The Code requires the Board to enforce the “mandatory attendance laws.” 	<p>None required</p>

	<ul style="list-style-type: none"> • The amended definitions of “excused absence” and “unexcused absence” render the regulation unlawful.... Under this regulation; a student could march into school only during the last five minutes of class on each school day, or report for the first roll call and then leave for the day, and never be classified as truant. • “...parents are required to be notified “[w]henver any pupil fails to report to school on a regularly scheduled school day” and require an attendance plan after the fifth such failure.” “...§ 22.1-258 ...requires a conference “[i]f the pupil is absent” a sixth time and requires referral to court “[u]pon the next absence,” both without mentioning failure to “report” is not in compliance with the compulsory attendance section of the Code... moreover, the Board has the authority (and duty) to rectify any ambiguity in the statute in order that it may serve its clear purpose.” • “Finally, the separate definitions of excused and unexcused absences are dangerous and unworkmanlike... the Board should set out careful and narrow standards for excused absences, and then define any other absence as “unexcused.” • ...“the regulation requires a report whether a seventh absence leads to a complaint but fails to require the attendance officer or Superintendent to set out the reasons for choosing one course or the other – i.e., file a complaint for a child in need of supervision or file charges against the 	<p>The proposed regulation defines truancy, provides guidance for defining excused and unexcused absences and directs school boards to provide guidance to school divisions for determining if an explanation provided by a parent is a reasonable and acceptable excuse from school attendance.</p> <p>Also, each school board is directed to develop appropriate intervention procedures for students who engage in a pattern of missing less than a full-day of school. Section 8VAC20-730-20. Unexcused absences intervention process and responsibilities of the re-proposed regulations defines responsibilities and implementation steps for addressing unexcused absences.</p> <p>The collection of attendance data is noted in section 8VAC20-730-30. Data collection and reporting of the proposed regulations. The data reporting system will be enhanced to collect information regarding dispositions. This will assist with accountability and monitoring.</p> <p>The proposed regulation defines truancy, provides guidance for defining excused and unexcused absences and directs school boards to provide guidance to school divisions for determining if an explanation provided by a parent is a reasonable and acceptable excuse from school attendance.</p> <p>A student attendance record includes dates of contacts with parents, individuals present at meetings and the improvement plans. This record serves as a document for decision-making to determine if a complaint is filed for a child in need of supervision or</p>
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<p>Dr. Karen Garza, Fairfax County Public Schools</p>	<p>parent(s)... the attendance officer</p> <ul style="list-style-type: none"> • “The regulations fail to require a system of accountability so that the public, the Board, and the local school boards, can measure the performance of a school system and its employees.” <p>Town Hall Comment</p> <ul style="list-style-type: none"> • “We appreciate that the draft regulations appear to at least make an initial movement in the direction of evidence-based best practices as shown in the proposed definitions of an “Attendance Plan” and a “Multidisciplinary Team” in 8 VAC 20-730-10. We particularly appreciate references to the specific factors which may contribute to a student’s attendance issues (“academic, social, emotional, and familial barriers”) and the encouragement of the use of “positive strategies” to support student attendance.” However, the following concerns were noted: • Having to conduct “face-to-face” meetings will restrict and burden staff and parents in meeting. The use of communication technology and devices are necessary in accommodating parents and managing time, or consider just eliminating the words “face-to-face” from the regulations. • Concerned about the potential impact of required data collection and reporting will divert staff time from connecting with students and families... especially without additional 	<p>charges are being filed against the parent(s).</p> <p>Technical assistance and professional assistance will be offered to school divisions on the implementation of the regulations and evidence-based practices for improving school attendance.</p> <p>The collection of attendance data is noted in section 8VAC20-730-30. Data collection and reporting of the proposed regulations. The data reporting system will be enhanced to collect information regarding dispositions. This will assist with accountability and monitoring.</p> <p>None required</p> <p>In each section of the regulations that references a “face-to-face” meeting is now followed by language which clarifies that the use of communication technology or devices as acceptable means for conducting the meeting.</p> <p>The state data reporting system will be enhanced for ease of input in order to collect this information regarding dispositions of cases. This data will assist with planning, accountability and monitoring at the division and state levels.</p>
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	<p>resources.</p> <ul style="list-style-type: none"> • “The underlying Code governing attendance and truancy relies very heavily on court-based and punishment-oriented interventions and contains rigid and unrealistic timelines for interventions, with significant (and different) interventions required after the fifth, sixth and seventh unexcused absence. Because current Code is so rigid and strays so far from current evidence-based best practices, it fundamentally constrains the usefulness of regulatory change to affect real reform by limiting a school division's ability to address the root causes of truant behavior or to implement “positive strategies”....the Code’s timeline is fundamentally flawed and undermines the potential of moving student attendance policies in school divisions toward evidence-based best practices. 	<p>The regulations must follow the <i>Code of Virginia</i> sections pertaining to attendance and is intended to support consistency across school divisions in the collection and reporting of school attendance data, as well as guidance on student attendance policies. School divisions can use documented attendance data to examine and evaluate attendance patterns, to address identified problems, to assess the effectiveness of interventions, and to develop policies and practices to promote daily student attendance.</p>
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All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	8 VAC 20-730	There are no current regulations for procedures for collection of truancy data and unexcused/nonverified absence intervention process and responsibilities	<p>The proposed regulations provide consistency across school divisions in the collection and reporting of school attendance data that are required by the Code of Virginia at § 2.1-260.B, as well as guidance on student attendance policies. This regulation has three sections as noted below.</p> <p>Part I, 8 VAC 20-730-10, defines terms, such as “attendance plan,” “excused absence,” “truancy,” and “unexcused absence.”</p> <p>Part II, 8 VAC 20-730-20, articulates the procedures and responsibilities for</p>

			<p>intervening with nonattendance behavior, in accordance with § 22.1-258 of the <i>Code of Virginia</i>.</p> <p>Part III, 8 VAC 20-730-30, describes data collection and reporting requirements.</p>
	8VAC 20-730-10. Definitions	Currently there is no requirement.	This section provides definitions to advance common and consistently used definitions, identify data points and improve reliability of data collection.
	8VAC-20 730-20. Unexcused absences intervention process and responsibilities	Currently there is no requirement.	This section directs local school boards to provide guidance on 1) the parameters for determining what constitutes an excused absence, and 2) procedures for intervening with students who develop a pattern of absences less than a full-day. Furthermore, guidance is provided to school divisions for implementing graduated intervention steps.
	8VAC 20-730-30. Data collection and reporting.	Currently there is no requirement.	This section identifies data collection and data reporting points.