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Final Regulation Agency Background Document

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) citation(s)	8VAC20-441
Regulation title(s)	<i>Regulations Governing the Employment of Professional Personnel</i>
Action title	Repeal 8VAC20-440 and Promulgate 8VAC20-441 <i>Regulations Governing the Employment of Professional Personnel</i> to Comport with the <i>Code of Virginia</i> .
Date this document prepared	January 12, 2017

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 regulatory action replaces the existing regulation numbered 8VAC20-440 with a new regulation numbered 8VAC20-441. Proposed amendments reflect changes in the *Code of Virginia* based on Chapters 106 and 687 of the 2012 Acts of Assembly and Chapters 588 and 650 of the 2013 Acts of Assembly. The proposed amendments include: defining assistant principals; clarifying the definitions of teachers and supervisors; defining the probationary terms for teachers, which, at local option, can be three years and up to five years; defining the standard 10-month contract; and adding the list of essential contract elements in the regulations. Additional amendments repeal the provisions on the uniform hiring of teachers.

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.

The proposed regulations define technical terms.

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.

- 1) the date the action was taken: anticipated on February 23, 2017
- 2) the name of the agency taking the action: Virginia Board of Education
- 3) the title of the regulation: Regulations Governing the Employment of Professional Personnel

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.

Virginia Board of Education

The *Constitution of Virginia* grants the Board of Education authority for the general supervision of the public school system, and Section 22.1-16 of the *Code of Virginia* authorizes the Board to promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title. Section 22.1-302 references contracts, permitted by the Board of Education's regulations.

The 2012 Virginia General Assembly approved House Bill [76](#) and Senate Bill [278](#) to amend and re-enact § [22.1-304](#) of the *Code of Virginia*, as follows. Senate Bill [278](#) bill is identical to House Bill [76](#). The 2013 Virginia General Assembly approved Senate Bill [1223](#) to amend and re-enact §§ [2.2-507](#), [22.1-79](#), [22.1-253.13:5](#), [22.1-293](#), [22.1-294](#), [22.1-295](#), [22.1-298.1](#), [22.1-299](#), [22.1-302](#), [22.1-303](#), [22.1-304](#), [22.1-305](#), [22.1-305.1](#), [22.1-306](#), [22.1-307](#), [22.1-309](#), [22.1-311](#), [22.1-313](#), and [22.1-314](#) of the *Code of Virginia* and to repeal §§ [22.1-299.3](#), [22.1-310](#), and [22.1-312](#) of the *Code of Virginia*, relating to public schools; evaluation policies and grievance procedures.

Statutory Authority: Sections 22.1-16, 22.1-253.13:5, 22.1-293, 22.1-294, 22.1-295, 22.-302, 22.1-303, 22.1-304, and 22.1-305 of the *Code of Virginia*

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.

The regulations provide the requirements for contracts, probationary periods of teachers, assistant principals, and principals. The goals of the proposal are to provide clarity to the regulations and align the regulations with the *Code of Virginia*.

Substance

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

The proposed regulatory action replaces the existing regulation numbered 8VAC20-440 with a new regulation numbered 8VAC20-441. Proposed amendments reflect changes in the *Code of Virginia* based on Chapters 106 and 687 of the 2012 Acts of Assembly and Chapters 588 and 650 of the 2013 Acts of Assembly. The proposed amendments include: defining assistant principals; clarifying the definitions of teachers and supervisors; defining the probationary terms for teachers, which, at local option, can be three years and up to five years; defining the standard 10-month contract; and adding the list of essential contract elements in the regulations. Additional amendments repeal the provisions on the uniform hiring of teachers.

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 revisions to the *Regulations Governing the Employment of Professional Personnel* conform to statute; therefore, the advantage is that the regulations provide clarity to the policies and procedures regarding contracts. The regulations do not pose any major disadvantages to the public or the Commonwealth.

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 applicable federal requirements as contracts are issued by Virginia school boards.

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 proposed regulations do not disproportionately affect particular localities.

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.

The regulations do not pose any major impact on families.

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
8VAC20-440-20	*8VAC20-440-20. Conditions of Employment (Fingerprinting, Department of Social Services Registry Search, Licensure) A. Section 22.1-296.2 of the <i>Code of Virginia</i> , requires as a condition of employment, the school boards of the Commonwealth shall require any applicant who is offered or accepts employment after July 1, 1989, whether full-time or part-time,	The section was removed.	The revision was made during the review for publication in the <i>Virginia Register of Regulations</i> . This section (now entitled "Reserved") was

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>permanent, or temporary, to submit to fingerprinting and to provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant. The school board may (i) pay for all or a portion of the cost of the fingerprinting or criminal records check or (ii) in its discretion, require the applicant to pay for all or a portion of the cost of such fingerprinting or criminal records check.</p> <p>B. As required by Section 22.1-296.4 of the <i>Code of Virginia</i>, on and after July 1, 1997, every school board shall require, as a condition of employment, that any applicant who is offered or accepts employment requiring direct contact with students, whether full-time or part-time, permanent or temporary, provide written consent and the necessary personal information for the school board to obtain a search of the registry of founded complaints of child abuse and neglect maintained by the Department of Social Services pursuant to Section 63.2-1515 of the <i>Code</i>.</p> <p>C. Section 22.1-299 of the <i>Code of Virginia</i> requires that no teacher shall be regularly employed by a school board or paid from public funds unless such teacher holds a license or provisional license issued by the Board of Education. Notwithstanding the provision in Section 22.1-298.1 that the provisional license is limited to three years, if a teacher employed in Virginia under a provisional license is activated or deployed for military service within a school year (July 1-June 30), an additional year will be added to the teacher's provisional license for each school year or portion thereof the teacher is activated or deployed. The additional year or years shall be granted the following year or years after the return of the teacher from deployment or activation. <i>Code</i> Section 22.1-295 states that the teachers in the public schools of a school division shall be employed and placed in appropriate schools by the school board upon recommendation of the division superintendent. In placing teachers, school boards shall fill positions with licensed instructional personnel qualified in the relevant subject areas.</p> <p>D. Section 22.1-293 of the <i>Code of Virginia</i> states a school board, upon recommendation of the division superintendent, may employ principals and assistant principals. Persons employed in these positions shall</p>		<p>deleted since this text was from the <i>Code of Virginia</i> and did not need to be repeated in regulations.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	hold licenses as prescribed by the Board of Education.		
<p>8VAC20-440-130.</p> <p>8VAC20-440-140.</p> <p>8VAC20-440-150.</p> <p>8VAC20-440-160.</p>	*Part II, Uniform Hiring of Teachers was deleted.	This section was removed.	<p>After the Board of Education approved the proposed <i>Regulations Governing the Employment of Personnel</i> (Proposed Stage) on June 27, 2013, the executive review process commenced. During this review, Part II Uniform Hiring of Teachers of the <i>Regulations Governing the Employment of Personnel</i> was stricken from the text because the <i>Constitution of Virginia</i> (Article VIII, Section 7) provides that “The supervision of schools in each school division shall be vested in a school board, to be composed of members selected in the manner, for the term, possessing the qualifications, and to the number provided by law.” The employment of teachers is the responsibility of a school board.</p>

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.

Commenter	Comment	Agency response
	NONE	

No comment was received.

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
	8VAC20-441-20 (Reserved)	The statutory text was added in the proposed stage, but was removed during review.	*removing additional sections proposed that mirror Code of Virginia text The revision was made during the review for publication in the <i>Virginia Register of Regulations</i> .
	8VAC-441-10	Assistant principals were not defined.	*defining assistant principals; The definition was added to comport with state statute.
8VAC-440-10	8VAC-441-10	Current definitions may be reviewed at 8VAC-440-10 .	*clarifying the definitions of teachers and supervisors; The clarification was made to comport with state statute.
8VAC20-440-140 . 8VAC20-440-150. 8VAC20-440-160.		The notification dates were referenced in Part II- Uniform Hiring of Teachers.	*removing notification dates – changed by statute from April 15 to June 15; The section of the current regulations that included notification dates (Part II) was deleted.
8VAC-440-40	8VAC-441-50	Current regulations are not aligned with the <i>Code of Virginia</i> . The current regulations state that a	defining the probationary terms for teachers, which, at local option, can be three years and up to five years;

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
		probationary term for teachers is three years.	The revision is to comport with state stature.
8VAC-440-20	8VAC-20-441-30	Reference the following link for the current text of 8VAC-440-20 .	defining the standard 10-month contract The revision is to comport with state stature.
8VAC20-440-130. 8VAC20-440-140 . 8VAC20-440-150. 8VAC20-440-160.		Current regulations include the section, Uniform Hiring of Teachers .	repealing the provisions on the uniform hiring of teachers This section was removed because the employment of teachers is the responsibility of a school board.
Forms	8VAC20-441-140. Listing of essential contract elements.	The list of essential contract elements is an attachment.	adding the list of essential contract elements (as requested during the review for publication in the <i>Virginia Register of Regulations</i>) This change was to make clear the essential contract elements in the regulation.