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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) citation(s)	<u>8VAC20-40-10</u> through <u>8VAC20-40-70</u>
Regulation title(s)	Regulations Governing Educational Services for Gifted Students
Action title	First Review of a Notice of Intended Regulatory Action (NOIRA) for the <i>Regulations Governing Educational Services for Gifted Students</i>
Date this document prepared	June 20, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing 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 standards for professional development of instructional personnel; requirements for the school division's local plan for the education of the gifted; annual report; and local advisory committee for the education of the gifted.

The existing regulations became effective in 2012 and should be periodically reviewed for revisions in accordance with best practices in the field of gifted education. The purpose of these potential 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*.

Acronyms and Definitions

Please define all acronyms or technical definitions used in the Agency Background Document. .

Acronyms or technical definitions are not used in the Agency Background Document.

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

This is a periodic review of the *Regulations Governing Educational Services for Gifted Students*.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must 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 or promulgating entity’s overall regulatory authority.

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 describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

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 regulations should reflect the most current, relevant research findings to promote equitable access to effective program options, appropriate curricular designs and instructional strategies for gifted students, and teacher professional development in providing appropriate instruction for gifted students.

Substance

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

This NOIRA will begin the process for reviewing the *Regulations Governing Educational Services for Gifted Students* for potential changes in keeping with current best practices in the field of gifted education. A preliminary list of issues that will be considered include the following items:

1. Revisions to definitions to assist school divisions in program design and evaluation.
2. Language related to equitable access for under-represented populations of students.
3. Language related to 8VAC20-40-60. Local Plan. To assist divisions in identifying and serving a more diverse population of students.

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

The revisions to the *Regulations Governing Educational Services for Gifted Students* do not increase the responsibilities of localities; small businesses will not be affected at all. There are no viable alternatives to updating these regulations.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert "This NOIRA is not being used to announce a periodic review or a small business impact review."

In addition, pursuant to Executive Order 14 (as amended, July 16, 2018) and § 2.2-4007.1 of the *Code of Virginia*, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public Participation

Please indicate how the public should contact the agency to submit comments on this regulation, including ideas to assist the agency in the development of the regulation and the costs and benefits of the alternatives stated in this notice or other alternatives.

Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on

the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulation.

The Virginia Department of Education is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. Also, the agency/board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include: 1) projected reporting, recordkeeping, and other administrative costs; 2) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at <https://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to Dr. Donna L. Poland, VDOE Gifted Specialist, P.O. Box 2120, Richmond, VA 23218-2120, 804-225-2884, 804-786-1597, Donna.Poland@doe.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.