



Virginia Department of Planning and Budget **Economic Impact Analysis**

8 VAC 20-81 Regulations Governing Special Education Programs for Children with Disabilities in Virginia

Department of Education

Town Hall Action/Stage: 5882 / 9498

January 10, 2022

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented below represents DPB's best estimate of these economic impacts.¹

Summary of the Proposed Amendments to Regulation

The Board of Education (Board) proposes to amend text in 8 VAC 20-81 *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* to match text in federal regulations.

Background

Independent Educational Evaluation

Section 8 VAC 20-81-170.B.4 currently states the following: “Requests for evaluations by special education hearing officers. If a special education hearing officer requests an independent educational evaluation **for an evaluation component**,² as part of a hearing on a due process complaint, the cost of the evaluation shall be at public expense. (34 CFR 300.502(d)) [emphasis added]” The federal regulation 34 CFR 300.502(d) is the same as this text, except it

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² Bold is for emphasis. The original text is not in bold.

does not include the words “for an evaluation component.” The Board proposes to remove the words “for an evaluation component” from the regulation, so that the Virginia regulatory text would match the federal regulatory text.

Procedural Safeguards Notice

Section 8 VAC 20-81-170.D.3 states that “The procedural safeguards notice shall include a full explanation of all of the procedural safeguards available relating to: ...” followed by 13 items. The Board proposes to remove the language in the 13th item, which concerns the opportunity to present and resolve complaints through state complaint procedures, and add it to the text in one of the other 12 items.

Confidentiality of Information

Section 8 VAC 20-81-170.G.10.a currently is the following: “Parental consent shall be obtained before personally identifiable information is disclosed to anyone other than officials of the local educational agency unless the information is contained in the education records, and the **disclosure is authorized**³ under the Family Education Rights and Privacy Act. (20 USC § 1232g) [emphasis added].” The Board proposes to add the words “without parental consent” after the existing words “disclosure is authorized” in order to match text in federal regulation 34 CFR § 300.622(a).

Estimated Benefits and Costs

The federal regulations already apply in the Commonwealth. The proposed amendments essentially are clarifications of the rules that already apply. According to the Department of Education (DOE), removing the words “for an evaluation component” would have no impact on whether or not the costs (or the full costs) for any particular evaluations are at public expense. The proposed moving of text within Section 8 VAC 20-81-170.D.3 would not effectively change requirements. Also, DOE considers adding the words “without parental consent” to be clarifying the existing rule, and would have no effect in practice. Thus, overall the proposed amendments would likely have no impact beyond improving clarity for readers of the regulation.

³ Ibid

Businesses and Other Entities Affected

The *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* apply to all 132 local school divisions in the Commonwealth. The proposed amendments do not affect requirements in practice, but may improve clarity for readers of the regulation.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁴ An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As neither of these conditions appear to result from this proposed action, an adverse impact is not indicated.

Small Businesses⁵ Affected:⁶

The proposed amendments do not appear to adversely affect small businesses.

Localities⁷ Affected⁸

The *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* apply to all local school divisions, and hence affect all Virginia localities. No locality is disproportionately affected. Since the proposal does not affect rules and requirements in practice, costs for local governments are not affected.

⁴ Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

⁵ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

⁶ If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

⁷ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁸ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

Projected Impact on Employment

The proposal is unlikely to substantively affect employment.

Effects on the Use and Value of Private Property

The proposal is unlikely to substantively affect the use and value of private property. The proposal does not affect real estate development costs.