

**Guidelines for Considering and Approving  
Requests for Year-Round Instructional  
Program Waivers Pursuant to § 22.1-79.1  
Pre-Labor Day Openings**

**Statutory Authority**

Section [22.1-79.1](#) of the *Code of Virginia*, provides that governs the conditions under which the Board of Education may grant a waiver to a local school board providing its students with year-round instructional programs in one or more schools to open school such year-round school(s) prior to Labor Day the date permitted by § 22.1-79.1.

§ [22.1-79.1](#). Opening of the school year; approvals for certain alternative schedules.

A. Each local school board shall set the school calendar so that the first day students are required to attend school shall be no earlier than 14 days before Labor Day. In each school division in which the school board sets the school calendar so that the first day students are required to attend school is before Labor Day, such school board shall close each school in the school division from the Friday immediately preceding Labor Day through Labor Day. The Board of Education may waive this requirement based on a school board certifying that it meets the good cause requirements of subsection B.

B. For purposes of this section, "good cause" means a school division is providing its students, in the school year for which the waiver is sought, with instructional programs that are offered on a year-round basis by the school division in one or more of its elementary or middle or high schools. Any waiver provided pursuant to this subsection shall only apply to the opening date for those schools where such year-round instructional programs are offered.

C. Individual schools may propose, and local school boards may approve, pursuant to guidelines developed by the Board of Education, alternative school schedule plans providing for the operation of schools on a four-day weekly calendar, so long as a minimum of 990 hours of instructional time is provided for grades one through 12 and 540 hours for kindergarten.

D. Notwithstanding the provisions of this section or any other provision of law, the school board of any school division located in Planning District 16 that was not granted a good cause waiver pursuant to this section for the 2018-2019 school year but would qualify for such a waiver pursuant to this section as it was in effect prior to July 1, 2019, for the 2019-2020 school year may set the school calendar so that the first day students are required to attend is earlier than Labor Day, including earlier than 14 days before Labor Day. Additionally, the school board of any school division located in Planning District 16 that is entirely surrounded by two school divisions that either were granted a waiver pursuant to Chapter 3 of the Acts of Assembly of 2012, Special Session I, or would qualify for a good cause waiver pursuant to this section as it was in effect prior to July 1, 2019, for the 2019-2020 school year may open schools on the same opening date as either such surrounding school division.

In addition, clause 2 of [Chapters 569](#) and [570](#) of the 2019 Acts of Assembly, provides:

2. That any school board of a school division that was granted a waiver for the 2018-2019 school year under one of the good cause requirements then in effect pursuant to § 22.1-79.1 of the Code of Virginia or pursuant to Chapter 3 of the Acts of Assembly of 2012, Special Session I, may continue to set the school calendar so that the first day students are required to attend is earlier than 14 days before Labor Day. Additionally, any school board of a school division that was granted a waiver pursuant to Chapter 3 of the Acts of Assembly of 2012, Special Session I, shall not be required to close the Friday immediately preceding Labor Day.

A. Each local school board shall set the school calendar so that the first day students are required to attend school shall be after Labor Day. The Board of Education may waive this requirement based on a school board certifying that it meets one of the good cause requirements of subsection B.

B. For purposes of this section, "good cause" means:

1. A school division has been closed an average of eight days per year during any five of the last 10 years because of severe weather conditions, energy shortages, power failures, or other emergency situations;

2. A school division is providing, in the school year for which the waiver is sought, an instructional program or programs in one or more of its elementary or middle or high schools, excluding Virtual Virginia, which are dependent on and provided in one or more elementary or middle or high schools of another school division that qualifies for such waiver. However, any waiver granted by the Board of Education pursuant to this subdivision shall only apply to the opening date for those schools where such dependent programs are provided;

3. A school division is providing its students, in the school year for which the waiver is sought, with an experimental or innovative program which requires an earlier opening date than that established in subsection A of this section and which has been approved by the Department of Education pursuant to the regulations of the Board of Education establishing standards for accrediting public schools. However, any waiver or extension of the school year granted by the Board of Education pursuant to this subdivision or its standards for accrediting public schools for such an experimental or innovative program shall only apply to the opening date for those schools where such experimental or innovative programs are offered generally to the student body of the school. For the purposes of this subdivision, experimental or innovative programs shall include instructional programs that are offered on a year-round basis by the school division in one or more of its elementary or middle or high schools; or

4. A school division is entirely surrounded by a school division that has an opening date prior to Labor Day in the school year for which the waiver is sought. Such school division may open schools on the same opening date as the surrounding school

division....

The Board of Education will consider the following guidelines in approving requests of local school boards to open one or more schools prior to Labor Day.

### **Waiver by Superintendent on Board's Behalf**

In accordance with § 22.1-79.1 of the *Code*, the Board of Education may waive the requirements of § 22.1-79.1 based on a school board certifying that it is providing its students, in the school year for which the waiver is sought, with instructional programs that are offered on a year-round basis by the school division in one or more of its elementary or middle or high schools.

The Board of Education delegates to the Superintendent of Public Instruction the authority to collect, on its behalf, the certifications of local school boards submitted for the purpose of obtaining a waiver to open one or more schools providing year-round instruction prior to the date permitted by § 22.1-79.1.

To receive a waiver, the local school board shall submit annually to the Superintendent of Public Instruction certification that the school division is providing its students, in the school year for which the waiver is sought, with instructional programs that are offered on a year-round basis by the school division in one or more of its schools.

Such certification shall be made in a manner prescribed by the Superintendent of Public Instruction. School divisions must maintain evidence that the certified conditions have been met.

The Board of Education delegates to the Superintendent of Public Instruction the authority to approve, on its behalf, a local school board's request for a waiver to open all schools in the division prior to Labor Day if the school division meets one of the following good cause requirements of subsection § 22.1-79.1 B:

- The school division has been closed an average of eight days per year during any five of the last 10 years because of severe weather conditions, energy shortages, power failures, or other emergency situations. (§ 22.1-79.1 B. 1)
- The school division is entirely surrounded by a school division that has an opening date prior to Labor Day in the school year for which the waiver is sought. Such school division may open schools on the same opening date as the surrounding school division. (§ 22.1-79.1 B. 4)

### **Waiver by Board of Education Action**

The Board of Education will consider a local school board's request for a waiver to open one or more schools in its division prior to Labor Day if one of the following good cause

requirements of subsection § 22.1-79.1.B. are met.

The Board will not provide advisory opinions or hypothetical waivers. The local school board must certify that if granted a waiver, the division intends to provide the program in the school year for which the waiver is being sought.

- The school division is providing an instructional program or programs in the schools for which the waiver is requested, excluding *Virtual Virginia*, which are dependent on and provided in one or more schools of another school division that qualifies for a waiver to open prior to Labor Day. Any waiver granted by the Board of Education pursuant to this provision shall *only* apply to the opening date for those schools where such dependent programs are provided. (§ 22.1-79.1 B. 2)
- The school division is providing its students with an experimental or innovative program, which *requires* the school to open prior to Labor Day. Any waiver granted by the Board of Education pursuant to this provision shall *only* apply to the opening date for those schools where such experimental or innovative programs are offered generally to the student body of the school. (§ 22.1-79.1 B. 3)

### **Experimental and Innovative Program Considerations**

- In accordance with § 22.1-79.1 of the Code of Virginia, experimental or innovative programs shall include instructional programs which are offered on a year-round basis by a school division in one or more of its elementary, middle, or high schools.
- An *experimental program* is defined, for purposes of a waiver, as a program which is operated under controlled circumstances and which is designed to test and to establish, by objective measures, the positive cognitive effect of an educational theory. The experimental program must be offered generally to the student body of the school.
- An *innovative program* is defined, for purposes of a waiver, as an educational program that implements creative, original, or new ideas or methods and are likely to result in better outcomes for student participants. The innovative program must be offered generally to the student body of the school.
- Any experimental or innovative program must ensure parental and community involvement.

### **Application for Waiver**

1. The initial request for a waiver to approve an experimental or innovative program, including a year-round school program, shall be submitted to the Board of Education for approval. Once the initial approval is granted by the Board of Education, the Superintendent of Public Instruction is hereby delegated authority to continue to approve the waiver in subsequent years, unless the Board places conditions or time limits on its approval, or unless the Superintendent determines that the conditions

under which the approval was granted to the local school board are changed.

2. The local school board shall submit annually to the Superintendent of Public Instruction certification of eligibility for a waiver of the “good cause” requirements of § 22.1-79.1, *Code of Virginia*. Such certification shall be made in a manner prescribed by the Superintendent of Public Instruction. School divisions must maintain evidence that the such “good cause” conditions have been met.
3. To request approval of a waiver for weather-related or other emergency conditions, the local school board shall submit information annually indicating that the school division has been closed for an average of eight days per year in any five of the past ten years because of severe weather conditions, energy shortages, power failures, or other emergency conditions.
4. To request initial approval of a waiver to open before Labor Day by a school division that is completely surrounded by another school division that has been approved for a waiver, the school division shall submit the request to the Superintendent of Public Instruction by letter signed by the superintendent and the chairman of the local school board. The Superintendent of Public Instruction shall determine that the school division is completely surrounded by another school division, and that the other school division has been granted a waiver to open before Labor Day. Once the initial waiver is granted, the local school board shall submit information annually to the Superintendent of Public Instruction indicating that the conditions under which a waiver was granted have not changed.
5. To request approval of a waiver for a dependent program, the local school board shall submit information annually indicating that each school for which a waiver is requested provides an instructional program, excluding Virtual Virginia, which is dependent upon a school in another division that qualifies for a waiver.
6. To request initial approval of a waiver for a pre-Labor Day opening for an experimental or innovative program, the local school division shall submit such request to the Board of Education on a form prescribed by the Superintendent of Public Instruction at least 180 calendar days prior to the expected implementation date. Such a request shall set forth a thorough explanation of the experimental or innovative program as well as the specific reasons that would compel a pre-Labor Day opening. The Department is available throughout the application process to provide technical assistance to the applicant. The following procedures apply to the initial application for experimental or innovative programs:
  - a. The experimental or innovative program must be approved by the Board pursuant to its *Regulations Establishing Standards for Accrediting Public Schools in Virginia* at 8 VAC 20-131-290. The request must include:
    - 1) The names of the participating schools and the school division requesting the waiver.
    - 2) The purpose and objectives of the experimental/innovative/year-round program.

Describe how the school meets the definition of experimental or innovative or year-round school and its goals and objectives. Include the title of the program or activity, a program description, the rationale for the program, the number and names of all schools involved, the names of any other organizations, including colleges, universities, and other postsecondary organizations and community organizations that are involved in the program, the grades served, the names of any other school divisions involved in the program, and other relevant information.

- 3) An explanation of the necessity for opening prior to Labor Day, including the proposed school year calendar's opening and closing dates as well as a general description of the school calendar and duration of the waiver. This explanation must show that this request meets the "good cause" requirements of §22.1-79.1 B.3, *Code of Virginia*.
- 4) Anticipated outcomes, including an explanation as to why it is believed the program will be a success.
- 5) Number of students affected, including demographic information describing the students who will be attending and the community the school serves.
- 6) Evaluation procedures including mechanisms for measuring goals and objectives, and analysis of data, to determine how this program will support an expected increase in proficiency in student academic achievement and any achievement gap.
- 7) Other anticipated outcomes.
- 8) Any other information that will support the request for a Pre-Labor Day waiver.

Each pre-Labor Day waiver request must be approved by the local school board and signed and dated by the chairman of the school board and the school superintendent and forwarded to Superintendent of Public Instruction.

b. Any waiver or extension of the school year granted by the Board pursuant to the experimental or innovative program provisions contained in § 22.1-79.1 of the *Code of Virginia*, or the Board's *Regulations Establishing Standards for Accrediting Public Schools in Virginia* shall apply only to the opening date for those schools where such experimental or innovative programs are offered generally to the student body of the school.

e. To request approval of a waiver for a pre-Labor Day opening for an experimental or innovative program subsequent to the Board of Education's initial approval, unless the Board of Education has specified conditions under which the waiver request must go back to the Board for approval, or the Superintendent determines that the conditions under which the initial approval was granted to the local school board have changed, the local school board shall submit information annually to the Superintendent of Public Instruction as part of the pre-Labor Day waiver self-certification process for public schools with pre-Labor Day waivers. The submission shall include evidence of the results achieved throughout the experimental or innovative program in prior years.

## Reports to the Board of Education

- The Board of Education may request that the Superintendent of Public Instruction provide a report to the Board regarding the status of certifications submitted and waivers granted under the above-stated policies. Such report shall be provided in a manner and at a time as agreed to by the Superintendent and the President of the Board and shall include information deemed pertinent by the Superintendent of Public Instruction.
- Any questions information required to be submitted to the Superintendent of Public Instruction for a pre-Labor Day waiver shall regarding § 22.1-79.1 waivers should be directed submitted to the Policy Office at [policy@doe.virginia.gov](mailto:policy@doe.virginia.gov) or (804) 225-2092.

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