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## Proposed Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Education
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	8VAC20-40
<b>VAC Chapter title(s)</b>	Regulations Governing Educational Services for Gifted Students
<b>Action title</b>	Revision of regulations school divisions must meet in their gifted education programs, Kindergarten - Grade 12
<b>Date this document prepared</b>	September 25, 2020

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 (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the 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 requirements for professional development of instructional personnel, the school division's local plan for the education of the gifted, the annual report, and the local advisory committee for the education of the gifted.

An extensive review to the existing regulations was approved by the Virginia Board of Education in 2010, with the Regulations requiring changes to be implemented by 2012. **On September 17, 2020, first review of the proposed changes were accepted by the Virginia Board of Education and changes were made to support Board recommendations.** The purpose of these proposed revisions is to integrate findings from relevant research regarding best practices and equitable access in 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

*Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

All definitions are included in the regulations.

## Mandate and Impetus

*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, or board decision). 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."*

The impetus of these proposed revisions came from direction from the Virginia Board of Education to their Gifted Education Advisory Committee to review with an equity lens. Additionally, Chapter 871 from the 2020 General Assembly required the Board to review and revise.

## Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency'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

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.*

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 proposed regulations reflect the relevant findings from research regarding effective program options that support equitable access to gifted programs, appropriate curricular designs and instructional

strategies for gifted students, and the significance of teacher professional development in providing appropriate instruction for gifted students.

## Substance

*Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.*

The proposed regulations include:

1. Additions to and revisions of definitions for critical terms;
2. Realignment of aspects of the screening, referral, identification, and placement components of the regulations to support best practices aligning with equitable access for gifted students;
3. Revision of components of the local plan for the education of the gifted;
4. Revision of the role and function of the local advisory committee for the education of the gifted; and
5. Addition of annual report expectations.

## Issues

*Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.*

The primary advantages of the proposed regulations for the public or the Commonwealth:

1. The proposed regulations require alignment of services for gifted students with current standards and practices found in relevant research and practice around equitable access to gifted programs;
2. The proposed regulations establish basic expectations for the annual screening of all students for gifted education services;
3. The proposed regulations establish the procedures for a talent development program in the primary grades, kindergarten through second grade;
4. The proposed regulations require advanced and accelerated options for gifted students through early entrance, whole-grade and single-subject acceleration;
5. The proposed regulations establish additional guidelines for the annual review of effectiveness;
6. The proposed regulations establish a local advisory committees reflective of the ethnic and geographically composition of the school division; and
7. The proposed regulations require school division leadership to share the annual report information and data/graphs with school board members and its community.

There are no perceived disadvantages to the public, to the agency, or to the Commonwealth.

## Requirements More Restrictive than Federal

*Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.*

There are no applicable federal requirements.

**Agencies, Localities, and Other Entities Particularly Affected**

*Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

Other State Agencies Particularly Affected

- There are no disproportionately significant negative or positive effects of the proposed regulations to any specific state agency.

Localities Particularly Affected

- There are no disproportionately significant negative or positive effects of the proposed regulations to any specific locality.

Other Entities Particularly Affected

- There are no disproportionately significant negative or positive effects of the proposed regulations to any specific entity.

**Economic Impact**

*Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.*

**Impact on State Agencies**

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:                  a) fund source / fund detail;                  b) delineation of one-time versus on-going expenditures; and                  c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>There is minimal cost to the state to implement the proposed regulation revisions. Existing allocations should be sufficient to fund the state's responsibilities.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>No impact</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>Greater diversity in gifted education identification and access to advanced programs and acceleration for the gifted students in all school divisions.</p>

**Impact on Localities**

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>It is anticipated that additional costs would not exceed those funds currently allocated by the General Assembly through the <i>Standards of Quality</i>.</p> <p>1. SOQ Basic Aid Funding – Gifted education funding supports the state share of one full-time equivalent instructional position per 1,000 students in adjusted average daily membership.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Equitable access to talent development and gifted education programs for underrepresented populations of students. Access to advanced level programs and acceleration for all identified gifted student to equitably support their academic needs.</p>

**Impact on Other Entities**

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>Elementary, middle, and secondary schools in Virginia’s 132 school divisions will be affected by the revisions to the regulations. The proposed regulations do not affect small businesses.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <p>a) is independently owned and operated and;</p> <p>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Estimates of the cost of the regulations would vary based on the size and levels of service Virginia’s 132 school divisions choose to implement. However, this cost should be minimal. The proposed regulations do not affect small businesses.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p> <p>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;</p> <p>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;</p> <p>c) fees;</p> <p>d) purchases of equipment or services; and</p> <p>e) time required to comply with the requirements.</p>	<p>No impact</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Greater diversity in gifted education identification and access to advanced programs and acceleration for the gifted students in all school divisions.</p>

### Alternatives to Regulation

*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.*

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Neither the 2012 *Regulations Governing Educational Services for Gifted Students* nor these revisions increase the responsibilities of localities; small businesses will not be affected at all. There are no viable alternatives to updating these regulations.

### Regulatory Flexibility Analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.*

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The proposed regulations do not affect small businesses.

### Periodic Review and Small Business Impact Review Report of Findings

*If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.*

*In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.*

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The proposed regulations do not affect small businesses.

## Public Comment

*Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.*

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Other than the proposed changes to the regulations from the Virginia Advisory Committee for the Education of the Gifted, no public comments were received.

## Public Participation

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.*

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The Virginia Board of Education is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of this background document.

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://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Dr. Donna Poland, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23218-2120; or by email to [Donna.Poland@doe.virginia.gov](mailto:Donna.Poland@doe.virginia.gov); or phone at 804-225-2884. 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 not be held following the publication of this stage of this regulatory action.

## Detail of Changes

*List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.*

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*If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.*

**Table 1: Changes to Existing VAC Chapter(s)**

Current chapter-	New chapter-section	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
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section number	number, if applicable		
8VAC20-40-10		Applicability	No change
8VAC20-40-20		Definition of terms used throughout the regulations for clarity of meaning	The addition of news terms used in the proposed regulations: equitable representation, single-subject acceleration, talent development program, and whole grade acceleration. Additional clarification in support of best practices, research, and equitable access for the following terms: gifted students and identification.
8VAC20-40-40		Screening, Referral, Identification, and Service	Minor word changes to reflect consistence throughout the document.
8VAC20-40-55		Parental rights for notification, consent, and appeal	Minor word changes to reflect consistence throughout the document.
8VAC20-40-60		Local Plan, Local Advisory Committee, and Annual Report provide school divisions with the required components of their local gifted plan as well as the structure requirements of the local gifted advisory committee and annual report.	<p>Wording changes were made throughout to align terminology and provide consistency.</p> <p>Additional wording in Item 2 requires more alignment of school division goals, objectives, and strategies with Academic Year Governor's School's diversity goals.</p> <p>New Item 11 was added to include the procedures for a talent development program in the primary grades in support of early identification and equitable access.</p> <p>New Item 12 provides more clarification on advanced coursework for middle and high school students.</p> <p>New Item 13 was only a change in item number; no change in requirement</p> <p>New Item 14 was added to include policies and procedures that allow early entrance and access to gifted programs in support of early identification and equitable access.</p> <p>New Item 15 was added to include policies and procedures for whole grade and single-subject acceleration in support of equitable access and best practices research.</p> <p>New Item 16 was only a change in the VAC number.</p>

			<p>New Item 17 provides additional guidance on the procedures for the annual review of effectiveness.</p> <p>Item B requires divisions to establish a local advisory committee reflective of the ethnic and geographic composition of the community.</p> <p>Item C requires school divisions to share information and data from the local gifted annual report to school board members and the community.</p>
8VAC20-40-70		Funding statement	No change