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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Board of Education
Virginia Administrative Code (VAC) Chapter citation(s)	8 VAC20-131
VAC Chapter title(s)	Regulations Establishing Standards for Accrediting Public Schools in Virginia
Action title	Amendments to the Regulations Establishing the Standards for Accrediting Public Schools in Virginia (8 VAC 20-131) to Include Standards for Virtual Education
Date this document prepared	June 2, 2021

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 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).

In 2012, the Virginia General Assembly passed [House Bill 1215](#), requiring the Virginia Board of Education (VBOE) to promulgate regulations establishing standards for the accreditation of virtual public schools that enroll students full-time. The intent of this legislation is to address situations where local school boards could establish a virtual public education program or school, with all students taking coursework virtually, rather than in a traditional “brick and mortar” environment. The Board’s Regulations Establishing the Standards for Accrediting Public Schools in Virginia (SOA) are designed to

ensure that an effective educational program is established and maintained in Virginia's public schools. These regulations are applicable to all public schools in Virginia and are geared to the traditional “brick and mortar” public school. Consequently, the regulations do not specifically address differences in service delivery that exist between a “brick and mortar” public school and virtual schools that enroll students full-time.

On May 24, 2012, the Board approved the NOIRA stage of this regulatory action. On June 14, 2012, the NOIRA was submitted for executive branch review. On April 25, 2013, the Board approved the proposed stage of this regulatory action, which was approved by the Governor on June 30, 2015 and submitted to the Registrar for publication and public comment on July 2, 2015. For reasons unknown to VDOE staff, this regulatory action did not proceed following the proposed stage.

On April 22, 2021 the Board of Education approved the withdrawal of the 2013 proposed stage of the *Regulations Establishing Standards for Accrediting Public Schools in Virginia* to comport with legislative changes from House Bill 1215 (2012 General Assembly).

Section [2.2-4016](#) of the Code of Virginia provides the Board with the authority to withdraw at any point in the regulatory process before regulations become effective.

In order to comply with § [22.1-253.13:3](#) of the *Code of Virginia* as amended by [HB 1215](#), this Notice of Intended Regulatory Action establishes initial steps toward adopting regulations establishing standards for accreditation of public virtual schools and virtual education in Virginia.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

No acronyms or technical definitions are used in this form.

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.”

While HB1215 required the Board to promulgate regulations governing virtual public schools, this NOIRA seeks to broaden the scope of regulations to include virtual education in Virginia public schools. As the options available to Virginia’s public school students through virtual learning programs continue to expand, students enrolled in public schools may be able to take all coursework virtually and may not attend traditional “brick and mortar” schools at all. Therefore, the Board must establish standards governing public virtual education that will maintain a level of student achievement commensurate with high-quality instruction delivered in traditional “brick and mortar” schools.

The regulations governing virtual education would expand opportunities to learn by setting forth the expectations for a virtual school as an option for Virginia school divisions, Multidivision Online Providers, and Virtual VA. In promulgating these regulations, the Board would establish the policies and standards necessary to ensure accountability of student learning in public virtual education. Finally, the regulations would provide the Board with the opportunity to develop and implement sound policies for student success in a virtual setting, including students in kindergarten through twelfth grade.

SOA standards, such as those related to library media, staffing requirements, hours of instruction, extracurricular activities, and school facilities and safety, need to be examined for virtual schools and for appropriate service delivery in a virtual environment. Currently, the Board may grant waivers of those sections of the SOA that may not be appropriate, or may be inapplicable, for a virtual education program. Once these regulations are promulgated, school divisions would no longer be required to request waivers of those regulations that would not be applicable to virtual education. In addition, the Board may determine that there are additional, or alternate, requirements that are needed to ensure the accountability of virtual education programs.

The climate and necessity of virtual learning expanded dramatically in 2020 due to the COVID-19 pandemic. The pandemic has highlighted areas of need for Virginia’s public education system to ensure equity of opportunity for all students. While promulgating regulations establishing standards for accreditation of public virtual education may not address each aspect of those inadequacies, more consistent standards and expectations would likely have a positive impact on quality instruction and student achievement supporting three goals of the Board’s Comprehensive Plan.

The Board’s authority to promulgate these regulations is provided in Section 22.1-16 and 22.1-253.13:3 of the Code of Virginia.

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.

The Board’s authority to promulgate these regulations is provided in Section 22.1-16 and 22.1-253.13:3 of the Code of Virginia. [HB 1215 \(2012\)](#) amended § [22.1-253.13:3.A](#) of the *Code of Virginia* to state: “The Board of Education shall promulgate regulations establishing standards for accreditation of public virtual schools under the authority of the local school board that enroll students full time.” Section [22.1-16](#) of the *Code* authorizes the Board 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 this title.

Purpose

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, explain any potential issues that may need to be addressed as the regulation is developed.

The proposed regulatory action is essential to protect the health, safety, or welfare of citizens in that it will ensure that virtual education will maintain a level of student achievement commensurate with instruction delivered in traditional “brick and mortar” schools. Currently, the provisions in these regulations are geared to traditional “brick and mortar” public schools and do not specifically address public virtual school programs. Therefore, SOA standards, such as those related to health and

physical education, library media, staffing requirements, hours of instruction, extracurricular activities, and school facilities and safety, need to be examined for virtual education and for appropriate service delivery in a virtual setting.

The climate and necessity of virtual learning expanded dramatically in 2020 due to the COVID-19 pandemic. The pandemic has highlighted areas of need for Virginia’s public education system to ensure equity of opportunity for all students. As school divisions pivoted to support students through multiple instructional methods including hybrid and virtual formats, several factors have had a large impact on consistent, effective implementation of quality instruction including:

- lack of broadband infrastructure and access for all students;
- lack of devices for each student to access virtual instruction;
- lack of capacity of school divisions and professional development for educators to support the shift to virtual teaching and learning; and
- the inadequacy of a virtual format to meet many students’ needs, particularly students with special needs and younger students.

While promulgating regulations establishing standards for accreditation of public virtual education may not address each aspect of those inadequacies, more consistent standards and expectations would likely have a positive impact on quality instruction and student achievement supporting three goals of the Board’s Comprehensive Plan.

Substance

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

The regulations are intended to provide Virginia school divisions, Multidivision Online Providers, and Virtual VA with baseline requirements for both educators and students while engaging in virtual learning. Virtual education is an instructional practice that uses digital technology to strengthen a student’s learning experience and improve educational outcomes. While virtual education utilizes digital technology, it relies on teacher facilitation to help students apply their learning in meaningful ways. Virtual education programs may include a variety of digital tools and practices, instructional content, rich-media, interactions (discussion boards, messaging, video communication, etc.), data and assessment systems, and feedback systems to receive timely and rich data used to guide learning tailored to individual student needs.

As the options available to Virginia’s public school students through virtual learning programs continue to expand, students enrolled in public schools may be able to take all coursework virtually and may not attend traditional “brick and mortar” schools at all. Therefore, the standards governing public virtual schools are designed to maintain a level of student achievement commensurate with high-quality instruction delivered in traditional “brick and mortar” schools.

Virtual education programs are required to ensure representation of diverse experiences and perspectives including, but not limited to racial, ethnic, language, religions, and gender groups and inclusion of content that represents, validates, and affirms diverse groups from different rings of culture.

Virtual education programs must comply with all federal laws and state regulations governing the education of all public school students. Services and counseling for special populations, including

students with disabilities, English Learners, gifted, minorities, and/or economically disadvantaged, must be provided to students participating in virtual education programs.

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.

Because [HB 1215](#) requires the promulgation of regulations “establishing standards for accreditation of public virtual schools under the authority of the local school board that enroll students full time,” no other alternative has been considered.

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.”

This NOIRA is not being used to announce a periodic review or a small business impact review.

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. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Board 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, and (iii) the potential impacts 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 website at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to instruction@doe.virginia.gov, 804.225.2034, Virginia Department of Education, Attn: Instruction, P.O. Box 2120, Richmond, VA 23218. 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, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the

Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.