



**Virginia
Regulatory
Town Hall**

Proposed Regulation Agency Background Document

Agency Name:	Virginia Department of Education
VAC Chapter Number:	8 VAC 20-440-10 et. seq.
Regulation Title:	Regulations Governing the Employment of Professional Personnel
Action Title:	Amend the Regulations
Date:	January 9, 2002

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Regulations Governing the Employment of Professional Personnel were originally adopted by the Board of Education in 1994. In response to an amendment to Section 22.1-302 of the Code of Virginia, the regulations were revised in 1996 to incorporate a model extracurricular activity sponsorship contract adopted by the Board of Education. No revisions to the regulations have been made since 1996.

. The purposes of revising the regulations are as follows:

- (1) Revise the language in the regulations to reflect amendments to the Code of Virginia [Section 22.1-302].

- (2) Amend the language as follows to assist school boards in establishing consequences for breach of contract and add language allowing the Board of Education to require a written report or an appearance of an appropriate representative when a petition for breach is filed:

In the event that a local board declines to grant a request for release from a contract on the grounds of insufficient or unjustifiable cause, and the teacher breaches ~~or expresses an intent to breach~~ the contract, the current employer may, ~~within 30 days of the breach,~~ pursue remedies prescribed by the Board of Education or other remedies consistent with law or contract. Such remedies could include filing ~~file~~ a petition with the Board of Education setting forth all the facts in the case and requesting that the teacher's license be suspended ~~for the next school year~~ or applying other remedies appropriate under law or contract.

If the Board of Education receives a petition from a local school board for action on the license of a teacher who has breached the present contract by accepting a contract with another school board within the Commonwealth, the Board of Education may require a full written report and/or request an appropriate representative from the hiring school board to appear before the Board of Education to explain the circumstances that led to the hiring decision before the Board considers any petition for action on the license of such teacher.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Under Article VIII, § 4 of the Constitution of Virginia (1971), the Board has the authority and responsibility for the “general supervision of the public school system.” The Board has specific authority by statute to prescribe forms for written contracts. Va. Code § 22.1-302, -303.1, -304, and -305.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The regulations must be revised to reflect amendments to the Code of Virginia.

In addition, the Virginia Board of Education requested that the regulations be amended to include a statement that school boards may pursue remedies consistent with law or contract in cases of breach. School boards may request action on a teaching license for breach, but this change in the regulation provides another option.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

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- (1) Revise the language in the regulations to reflect amendments to the Code of Virginia.
- (2) Amend the language as follows to assist school boards in establishing consequences for breach of contract and add language allowing the Board of Education to require a written report or an appearance of an appropriate representative when a petition for breach is filed:

In the event that a local board declines to grant a request for release from a contract on the grounds of insufficient or unjustifiable cause, and the teacher breaches ~~or expresses an intent to breach~~ the contract, the current employer may, ~~within 30 days of the breach,~~ pursue remedies prescribed by the Board of Education or other remedies consistent with law or contract. Such remedies could include filing file a petition with the Board of Education setting forth all the facts in the case and requesting that the teacher's license be suspended for the next school year or applying other remedies appropriate under law or contract.

If the Board of Education receives a petition from a local school board for action on the license of a teacher who has breached the present contract by accepting a contract with another school

board within the Commonwealth, the Board of Education may require a full written report and/or request an appropriate representative from the hiring school board to appear before the Board of Education to explain the circumstances that led to the hiring decision before the Board considers any petition for action on the license of such teacher.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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, please include a sentence to that effect.

The advantages in revising the regulation are as follows:

- (1) The regulations will be consistent with the Code of Virginia;
- (2) School boards are advised that they can pursue remedies prescribed by the Board of Education or other remedies consistent with law or contract. This provides options for school boards.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

There are no anticipated fiscal impacts related to the proposed amendments to the regulations.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

REGULATORY REVISION	RATIONALE OR BASIS FOR REVISION
<p>8VAC20-440-10 Definitions. "Breach of contract" means, for the purpose of Phase Three of this chapter, a teacher failing to honor a contract for the <u>current or next school year</u> without formal release from that contract from the local board.</p>	<p>The first revision in this sentence is editorial, and the second revision clarifies that breach of contract can occur during the current or the following school year.</p>
<p>8VAC20-440-10 Definitions. "Current employer" means the local school board with whom <u>which</u> the teacher is currently under contract.</p>	<p>This revision is editorial.</p>
<p>8VAC20-440-10 Definitions. <u>"Extracurricular Activity Sponsorship Contract" means a separate contract between the employee and the local school board which includes responsibilities, for which a monetary supplement is received, for sponsorship of any student organizations, clubs, or groups, such as service clubs, academic clubs and teams, cheerleading squads, student publication and literary groups, and visual and performing arts organizations except those that are conducted in conjunction with regular classroom, curriculum, or instructional programs.</u></p>	<p>This definition was added to reflect language in the Code of Virginia, Section 22.1-302, C, (fourth paragraph)</p>
<p><u>8VAC20-440-90. Eligibility for continuing contract</u> <u>Any teacher hired on or after July 1, 2001 shall be required, as a condition of achieving continuing contract status, to have successfully completed training in instructional strategies and techniques for intervention for or remediation of students who fail or are at risk of failing the Standards of Learning assessments. Local school divisions shall be required to provide said training at no cost to teachers employed in their division. In the</u></p>	<p>This statement was added to reflect language in the Code of Virginia, Section 22.1-303, A (last paragraph).</p>

<p><u>event a local school division fails to offer said training in a timely manner, no teacher will be denied continuing contract status for failure to obtain such training.</u></p>	
<p>8VAC20-440-110. Contract to be separate and apart from annual or continuing contract.</p> <p>The coaching contract <u>or extracurricular activity sponsorship contract</u> shall be separate and apart from the annual or continuing contract and termination of the contract shall not constitute cause for the termination of the annual or continuing contract.</p> <p>8VAC20-440-120. Termination notice required.</p> <p>The coaching contract <u>or extracurricular activity sponsorship contract</u> shall require the party intending to terminate the contract to give reasonable notice to the other party prior to the effective date of the termination.</p>	<p>The revisions reflect the Code of Virginia, Section 22.1-302, C.</p>
<p><u>8VAC20-440-140</u></p> <p><u>For any school division permitted by §22.1-304 of the Code of Virginia to extend the written notice of non-continuation of contract to May 15, the end of Phase One is May 14, or if May 14 is on a Saturday, Sunday, or legal holiday, the last administrative working day prior to May 14.</u></p>	<p>This section clarifies the administration of the Code of Virginia, Section 22.1-304, F</p>
<p><u>8VAC20-440-150</u></p> <p><u>For any school division permitted by §22.1-304 of the Code of Virginia to extend the written notice of non-continuation of contract to May 15, Phase Two begins on May 15 and ends on June 30 or the date the teacher contract is final, whichever is later.</u></p>	<p>This section clarifies the Code of Virginia, Section 22.1-304, F</p>
<p><u>8VAC20-440-160</u></p> <p><u>For any school division permitted by §22.1-304 of the Code of Virginia to extend the written notice of non-continuation of contract</u></p>	<p>This addition to the language clarifies the Code of Virginia, Section 22.1-304, Section F</p>

<p><u>to May 15, Phase Three begins on July 1 or the date the salary is finally set by the local school board, whichever occurs later</u></p>	
<p><u>8VAC20-440-160</u></p> <p>In the event that a local board declines to grant a request for release from a contract on the grounds of insufficient or unjustifiable cause, and the teacher breaches or expresses an intent to breach the contract, the current employer may, within 30 days of the breach, <u>pursue remedies prescribed by the Board of Education or other remedies consistent with law or contract. Such remedies could include filing</u> file a petition with the Board of Education setting forth all the facts in the case and requesting that the teacher's license be suspended for the next school year or <u>applying</u> other remedies appropriate under law or contract.</p>	<p>The Board of Education requested this revision in the language to allow school boards to take actions other than requesting a suspension of the license for breach of contract.</p>
<p><u>8 VAC20-440-160</u></p> <p><u>If the Board of Education receives a petition from a local school board for action on the license of a teacher who has breached the present contract by accepting a contract with another school board within the Commonwealth, the Board of Education may require a full written report and/or request an appropriate representative from the hiring school board to appear before the Board of Education to explain the circumstances that led to the hiring decision before the Board considers any petition for action on the license of such teacher.</u></p>	<p>The Board of Education requested this revision in the language to allow them the option of requiring a written report and/or a representative of the school board to appear when a school board is requesting action on a license due to breach of contract.</p>

The revised language in the regulations is as follows:

**CHAPTER 440
REGULATIONS GOVERNING THE
EMPLOYMENT OF PROFESSIONAL PERSONNEL**

**PART I - CONTRACTUAL AGREEMENTS
ARTICLE 1 - DEFINITIONS**

8VAC20-440-10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Annual contract" means a contract between the employee and the local school board which sets forth the terms and conditions of employment for one school year.

"Board" means the Virginia Board of Education which has general supervision of the public school system.

"Breach of contract" means, for the purpose of ~~Phase Three~~ of this chapter, a teacher failing to honor a contract for the current or next school year without formal release from that contract from the local board. It does not include dismissal for cause.

"Coaching contract" means a separate contract between the employee and the local school board, which includes responsibilities for an athletic coaching assignment.

"Continuing contract" means a contract between the employee who has satisfied the probationary term of service and the local school board.

"Current employer" means the local school board with ~~whom~~ which the teacher is currently under contract.

"Extracurricular Activity Sponsorship Contract" means a separate contract between the employee and the local school board which includes responsibilities, for which a monetary supplement is received, for sponsorship of any student organizations, clubs, or groups, such as service clubs, academic clubs and teams, cheerleading squads, student publication and literary groups, and visual and performing arts organizations except those that are conducted in conjunction with regular classroom, curriculum, or instructional programs.

"Next school year" is defined as the school year immediately following the current contract year.

"Principal" means a person (i) who is regularly employed full time as a principal or assistant principal, and (ii) who holds a valid teaching license issued by the board.

"Prospective employer" means the division in which application for employment is made.

"Supervisor" means a person (i) who is regularly employed full time in a supervisory capacity, and (ii) who is required by the board to hold a license to be employed in that position.

"Teacher" means a person (i) who is regularly employed full time as a teacher, visiting teacher/school social worker, guidance counselor, or librarian, and (ii) who holds a valid teaching license.

ARTICLE 2 - CONTRACTS, GENERALLY

8VAC20-440-20. Contractual period defined.

The local school board shall define the length of the contract period for each employee. A 10-month contractual period is defined to include 200 days as follows:

1. One hundred and eighty teaching days or 990 instructional hours (minimum required by law);
2. Ten days for activities such as teaching, planning for the opening of school, evaluation, completing records and reports incident to the closing of each semester or school year, committee assignments, and conferences;
3. Ten days for a continuation of activities under subdivisions 1 and 2 of this section, and such other activities as may be assigned or approved by the local school board.

8VAC20-440-30. Contract to be in writing.

The contract must be in writing. The local school board may utilize prototypes of contract forms provided by the board, as shown in Appendix A, or may choose to develop its own contracts, but in so doing must ensure that the essential elements set forth in Appendix B of this chapter are included.

ARTICLE 3 - ANNUAL CONTRACTS, PROBATIONARY PERIOD

8VAC20-440-40. Length of the probationary term.

A probationary term of full-time employment under an annual contract for three years in the same school division is required prior to the issuance of a continuing contract. When continuing contract status has been attained in a school division in the state, another probationary period need not be served in any other school division unless a probationary period not exceeding one year is made a part of the contract of employment.

8VAC20-440-50. Calculating term for first year of teaching.

For the purpose of calculating the three years of service required to attain continuing contract status, at least 160 contractual teaching days during the school year shall be deemed the equivalent of one year in the first year of service by the teacher.

8VAC20-440-60. Probationary period for principal or supervisor.

A person employed as a principal or supervisor, including a person who has previously achieved continuing contract status as a teacher, shall serve three years in such position in the same school division before acquiring continuing contract status as a principal or supervisor.

8VAC20-440-70. Probationary period when employee separates from service.

If a teacher, principal, or supervisor separates from service during his probationary period and does not return to service in the same school division by the beginning of the year following the year of separation, such person shall be required to begin a new probationary period.

8VAC20-440-80. Effect of service outside the Virginia system.

Teaching service outside of the Virginia public school system shall not be counted as meeting in whole or in part the required probationary term.

ARTICLE 4 - CONTINUING CONTRACTS

8VAC20-440-90. Eligibility for continuing contract.

Only persons regularly employed full time by a school board who hold a valid license as teachers, principals, or supervisors shall be eligible for continuing contract status.

Any teacher hired on or after July 1, 2001 shall be required, as a condition of achieving continuing contract status, to have successfully completed training in instructional strategies and techniques for intervention for or remediation of students who fail or are at risk of failing the Standards of Learning assessments. Local school divisions shall be required to provide said training at no cost to teachers employed in their division. In the event a local school division fails to offer said training in a timely manner, no teacher will be denied continuing contract status for failure to obtain such training.

8VAC20-440-100. Continuing contract status when employee separates from service.

If a teacher who has attained continuing contract status separates from service and does not return to teaching in Virginia public schools for a period longer than two years, such person shall be required to begin a new three- year probationary period.

ARTICLE 5 - COACHING AND EXTRACURRICULAR ACTIVITY SPONSORSHIP CONTRACTS

8VAC20-440-110. Contract to be separate and apart from annual or continuing contract.

The coaching contract or extracurricular activity sponsorship contract shall be separate and apart from the annual or continuing contract and termination of the contract shall not constitute cause for the termination of the annual or continuing contract.

8VAC20-440-120. Termination notice required.

The coaching contract or extracurricular activity sponsorship contract shall require the party intending to terminate the contract to give reasonable notice to the other party prior to the effective date of the termination.

PART II - UNIFORM HIRING OF TEACHERS
ARTICLE 1 - PURPOSE

8VAC20-440-130. Purpose of a uniform hiring process.

The goal for regulations for uniform hiring of teachers is to establish a calendar for hiring that is compatible with the dates budgets are completed by local governing bodies. The calendar dates, which are embodied in the three-phase employment process, establish minimum time frames to accommodate the local hiring process, offer local flexibility in including contract terms to cover unique needs and practices of the locality, and offer professional mobility for teachers.

8VAC20-440-140. Phase One of the three-phase employment process.

- A. Phase One covers employment sought for the next school year and covers the period from the beginning of the current school year to the close of business on April 14 of the current school year. The end of the phase on April 14 corresponds to the provisions of §22.1-304 of the Code of Virginia allowing written notice of non-continuation of contract by April 15. If April 14 ends on a Saturday, Sunday, or legal holiday, the end of Phase One will be the last administrative working day prior to the Saturday, Sunday, or legal holiday. For any school division permitted by §22.1-304 of the Code of Virginia to extend the written notice of non-continuation of contract to May 15, the end of Phase One is May 14, or if May 14 is on a Saturday, Sunday, or legal holiday, the last administrative working day prior to May 14.
- B. During Phase One, a teacher may apply and be interviewed for employment for the next school year in other school divisions without notice to or permission from the division where he is currently employed.
- C. During Phase One, a teacher accepting employment in another division for the next school year must resign by giving written notice to the current employer. The notice should specify that the resignation is applicable for the next school year only.

8VAC20-440-150. Phase Two of the three-phase employment process.

- A. Phase Two begins on April 15 and ends on May 31 or the date the teacher contract is final, whichever is later. For any school division permitted by §22.1-304 of the Code of Virginia to extend the written notice of non-continuation of contract to May 15, Phase Two begins on May 15 and ends on June 30 or the date the teacher contract is final, whichever is later. The contract is final when the date of signature and, at a minimum, the salary terms are finally known.
- B. During Phase Two, teachers, whether probationary or continuing contract, may seek employment and file applications for the next school year with other school divisions.

Teachers may seek employment during this phase without notification to the current employer.

- C. During Phase Two, the prospective employer may offer a contract without proof of release from contract from the current employer. The teacher must obtain a written release from the contract with the current employer prior to signing a contract with the prospective employer. Releases should be liberally granted during this phase.

8VAC20-440-160. Phase Three of the three-phase employment process.

- A. Phase Three begins on June 1 or the date the salary is finally set by the local school board, whichever occurs later. For any school division permitted by §22.1-304 of the Code of Virginia to extend the written notice of non-continuation of contract to May 15, Phase Three begins on July 1 or the date the salary is finally set by the local school board, whichever occurs later. In Phase Three, the contract is a firm and binding obligation on the teacher and the school division.
- B. During Phase Three, teachers may seek employment and file applications for the next school year with other school divisions; however, a prospective employer should not offer a contract to any teacher during Phase Three until the teacher has secured a written release from the contract with the current employer, and a teacher should not accept a contract until a written release has been secured.
- C. A current employer, at its discretion, may release a teacher from the contract. The employer should release teachers for good cause.
- D. Good cause is determined by the local school board. It should reflect a consideration of all the factors affecting both the employee and the school board. Factors in determining good cause may include the employee's reason for leaving, contractual terms and agreements, and the overall effect of the resignation on the employee and the school division.
- E. In the event that a local board declines to grant a request for release from a contract on the grounds of insufficient or unjustifiable cause, and the teacher breaches ~~or expresses an intent to breach~~ the contract, the current employer may, ~~within 30 days of the breach,~~ pursue remedies prescribed by the Board of Education or other remedies consistent with law or contract. Such remedies could include ~~filing~~ file a petition with the Board of Education setting forth all the facts in the case and requesting that the teacher's license be suspended ~~for the next school year~~ or applying other remedies appropriate under law or contract.

If the Board of Education receives a petition from a local school board for action on the license of a teacher who has breached the present contract by accepting a contract with another school board within the Commonwealth, the Board of Education may require a full written report and/or request an appropriate representative from the hiring school board to appear before the Board of Education to explain the circumstances that led to the hiring decision before the Board considers any petition for action on the license of such teacher.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

No specific alternatives to the proposal were considered; however, the proposed regulations were reviewed by Board of Education members, professional organizations, and school division representatives to ensure that the proposed revisions were appropriate.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

A letter from Delegate Phillip Hamilton, Virginia House of Delegates, dated September 7, 2001, was submitted to Mr. Kirk Schroder, President of the Board of Education. Delegate Hamilton expressed concern regarding the Notice of Intended Regulatory Action that indicated that the Virginia Board of Education planned to “consider the advisability of removing the reference to the suspension of teachers’ licenses based on breach of contract.” His concern has been resolved because after review and discussion, the board did not pursue this particular revision in the regulation.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The proposed amendments to the regulations have been reviewed by the Board of Education as well as staff in the Department of Education and professional organization representatives to ensure that the regulation is clear and understandable by the entities affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The regulations will be examined periodically, but no later than three years after the proposed regulations become effective, to determine if the regulation should be revised.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The family and family stability will not be impacted by the proposed amendments to the regulations.