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Periodic Review and Small Business Impact Review Report of Findings

Agency name	State Board of Education
Virginia Administrative Code (VAC) Chapter citation(s)	8 VAC20-40
VAC Chapter title(s)	Regulations Governing Educational Services for Gifted Students
Date this document prepared	December 3, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

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

"Board" means the Virginia Board of Education.
"Department" means the Virginia Department of Education

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 or 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 overall regulatory authority is found in § 22.1-16 of the Code of Virginia, which states that "[t]he Board of Education may 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 of the Code of Virginia].”

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

These regulations were promulgated as was necessary for the Board to carry out its powers and duties and the provisions of Title 22.1 of the Code of Virginia. There are no alternatives to regulation.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency’s response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
Doreen Dougherty, Virginia Peninsula Community College	Testing and access to gifted education should be expanded. Too many bright kids are unchallenged and unmotivated in school. There is a rise in the number of neurodivergent and twice exceptional students who benefit from the current gifted education model. With the implementation of academies in Hampton VA gifted students are having to give up the gifted differentiated education. If they have been found gifted and require full day or partial day differentiated education that should still be provided in high school academies.	Thank you for your comments regarding whether this regulation should be repealed, amended, or retained in its current form.
Anonymous CommentID: 228011	The regulations for gifted education in Virginia should not only be retained but they should also be reviewed and updated. The regulations should be updated to reflect best practice for gifted students in the area of English Language Arts and how it relates to the Virginia Literacy Act's requirement for all students to receive core literacy instruction.	Thank you for your comments regarding whether this regulation should be repealed, amended, or retained in its current form.
Sherry Moore	This policy should be kept and reviewed. It is important to keep	Thank you for your comments regarding whether this regulation should be repealed, amended, or retained in its current form.

	gifted students engaged at their level of learning.	
Marcia Nealy	As a parent of a gifted child, I believe that the current policies for gifted education SHALL remain in effect as it has allowed gifted students to matriculate successfully within their education and not feel confined or restricted to learning below their full potential. This program allows gifted children the opportunity to explore and challenge themselves in all subject areas. If these policies are changed or taken away, it can cause a hinderance to the education of gifted children which then forces them to be held back from expanding their minds at their specific levels of learning and can result in boredom or behavioral issues.	Thank you for your comments regarding whether this regulation should be repealed, amended, or retained in its current form.
L. Boyd	Consideration should be given to the early assessment of students to determine gifted status and need for access to Gifted education services. The earlier students are assessed (prior to starting Kindergarten) or at least within the first month, the better for the students and the easier it is for teachers in the early grades to appropriately differentiate within their classrooms.	Thank you for your comments regarding whether this regulation should be repealed, amended, or retained in its current form.
Anonymous CommentID: 228015	The gifted program should be expanded, and testing increased to identify whether a child is gifted. Children who have been identified as gifted should be transferred to their local gifted school (Kilgore in Hampton). Although appreciated, one hour a week of gifted services is not enough to develop a child's academic or personal growth. They need to be consistently intellectually challenged while being guided in their socio-emotional development. They should be allowed the opportunity to engage with other children who are also eager to learn and teachers who are better trained to support and stimulate their development.	Thank you for your comments regarding whether this regulation should be repealed, amended, or retained in its current form.

	<p>With most curriculums designed to "teach the test" gifted students need more lessons targeted to develop thinking, metacognitive skills, and differentiated teaching. Most teachers are not trained to do this. This need is understood and met in other countries. If we are to stay competitive, internationally, we need to address the above. Lastly, it was concerning to learn that schools are not scheduling weekly time for students in the library. The practice of expecting children to read passages, only, and develop their reading comprehension skills is ill-considered. Yes, parents should be encouraging and supporting their kids with reading at home. However, reading and the love of reading should be encouraged at school as well. Why are we paying librarians (whom we need) and purchasing books if we are not allowing children to visit and check out books?</p>	
<p>Haley Bolton</p>	<p>Gifted children should be given the opportunity to attend a full day program at a gifted school. One class per week is not enough. These kids typically learn differently. The standard curriculum does not provide enough enrichment.</p>	<p>Thank you for your comments regarding whether this regulation should be repealed, amended, or retained in its current form.</p>
<p>Anonymous CommentID: 228020</p>	<p>It is a new year time for some buses with the traffic pattern being different and being late. Buses are a good thing.</p>	<p>Outside the scope of this action.</p>
<p>Anonymous CommentID: 228021</p>	<p>Current gifted policies form a well-rounded gifted program. However, I do think more support should be given to students identified as twice exceptional. Students attending their school and receiving weekly gifted services have full support for their alternate needs. However, at Kilgore there is not enough support personnel to be able to help those students that need additional assistance.</p>	<p>Thank you for your comments regarding whether this regulation should be repealed, amended, or retained in its current form.</p>
<p>Anonymous CommentID: 228022</p>	<p>Buses to Eaton Middle School.</p>	<p>Outside the scope of this action.</p>

<p>Anonymous, CommentID: 228026</p>	<p>Once tested for the gifted program and accepted why are they retested? Especially in elementary school. I believe they should continue to be in the gifted program once tested and accepted the first time. What is the point of making them retest?</p>	<p>Thank you for your comments regarding whether this regulation should be repealed, amended, or retained in its current form.</p>
<p>Anonymous CommentID: 228027</p>	<p>Students identified as Gifted, and being served by their LEA, have needs in the most extreme percentiles. Because those students have such extreme abilities, and therefore extreme needs, the policies and programs in place should be robust enough to meet those needs. Our LEAs utilize resources in the best way possible, but without regulatory guidelines protecting Gifted programs and the extreme needs of Gifted students, our high ability students will suffer. More state funding should be dedicated to preserving and expanding Gifted programs.</p>	<p>Thank you for your comments regarding whether this regulation should be repealed, amended, or retained in its current form.</p>
<p>Aney Massie</p>	<p>The needs of the gifted are as important as those of other subgroups. And the gifted do have specific needs that must be met in order for these students to achieve their potential. Gifted students must be offered a rigorous curriculum beyond what is offered to their typical peers. Virginia needs strong gifted education regulations to protect gifted students from being marginalized when the focus is on lower achieving students.</p>	<p>Thank you for your comments regarding whether this regulation should be repealed, amended, or retained in its current form.</p>
<p>SEVA (Region II) Gifted Education Coordinators</p>	<p>SEVA is a group that represents the gifted education coordinators for public school divisions in Virginia's Region II. Our members wholeheartedly endorse a review and update of these essential regulations. The regulatory process was initiated, and an updated draft of the gifted regulations was considered by the BOE in September and October of 2020, and then it was withdrawn in 2021. A tremendous amount of work was done to create that version, and so it is a preferred place to start when reviewing current research and</p>	<p>Thank you for your comments regarding whether this regulation should be repealed, amended, or retained in its current form.</p>

	best practices to include in future revisions.	
Selena Dickey	I feel that we should not only retain, but also review and update the regulations regarding gifted education. As educators, it is essential that we continuously consider best practices to ensure that we are meeting all students' needs, both academic and social-emotional.	Thank you for your comments regarding whether this regulation should be repealed, amended, or retained in its current form.
Ladona Gorhan	With the implementation of the VLA in Virginia Elementary Schools, all gifted students are being required to be taught grade level material in their English/Language Arts classes. This sends the message that gifted students' needs are not important. Please expand regulations to address the need for above grade level instruction for our gifted children. In addition, strengthen the language of the regulations to make it clear that gifted education is not a choice but a requirement. I have been in gifted education in Virginia for decades and I have not seen one step forward in regard to expanding gifted education requirements or even recognizing them statewide as a need and not a want. The sweeping requirements of the VLA has proven that gifted students are not recognized as needing "different" instruction. The VLA has given LEA's an excuse to not require advanced instruction in ELA.	Thank you for your comments regarding whether this regulation should be repealed, amended, or retained in its current form.
Virginia Association for the Gifted	On behalf of the Virginia Association for the Gifted (VA Gifted), we respectfully submit our comments to urge the Virginia Department of Education to retain and update the current gifted education regulations. These regulations provide critical guidance to ensure that gifted and talented students across the Commonwealth receive the support they need to reach their full potential. As a network of educators, parents, and community members dedicated to the needs of gifted	Thank you for your comments regarding whether this regulation should be repealed, amended, or retained in its current form.

	<p>learners, we believe the updated regulations should address evolving educational practices. Specifically, we advocate for the inclusion of talent development, acceleration, and early access to kindergarten as essential components of the updated framework. These elements are crucial for supporting a broad spectrum of gifted learners, particularly those from underrepresented populations. The retention and enhancement of these regulations are vital for maintaining the high standards and equitable opportunities that Virginia's gifted students deserve.</p>	
<p>E.S. Moore</p>	<p>While I am thankful for the presence of a gifted program in each VA school district and the flexibility for each district to develop a Gifted & Talented (G&T) program that will best meet its learners' needs, I would love to see an increase in funding for Virginia's G&T programs. At the national level, it has been recommended to have at least one G&T teacher per 1,000 students (TOTAL, not just those identified for G&T services) in the district. Given our district's current enrollment, we have few than half the number of G&T teachers recommended. Each of our G&T teachers is responsible for serving multiple school buildings (services we provide include but are not limited to: administering all evaluations and leading eligibility meetings, teaching classes for identified learners, and co-planning with/providing resources for general ed teachers). I believe that every student should be able to learn something every day. Investing in G&T programs (including increasing number of G&T staff) would yield more opportunities for all of our children to grow!</p>	<p>Thank you for your comments regarding whether this regulation should be repealed, amended, or retained in its current form.</p>
<p>William & Mary's Center for Gifted Education</p>	<p>Dear Members of the Board of Education, We from William & Mary's Center of Gifted Education are writing to</p>	<p>Thank you for your comments regarding whether this regulation should be repealed, amended, or retained in its current form.</p>

	<p>express our deep concern regarding the outdated gifted education regulations currently in place. These regulations, last revised in 2010, do not reflect the significant advancements in research and best practices in the field over the past decade.</p> <p>As dedicated academics in gifted education and talent development, we believe effective policies have a positive impact on the lives of gifted students. The proposed gifted regulations submitted in 2021 represented a valuable step forward in aligning our state's policies with contemporary understandings of giftedness. Unfortunately, these proposed changes have not been implemented, leaving a critical gap in our educational system.</p> <p>We urge the Board of Education to revisit and revise the current gifted education regulations. By incorporating the insights and recommendations from the 2021 proposals, we can ensure that our state's gifted programs are equitable, accessible, and responsive to the unique needs of gifted learners.</p> <p>By taking action to update our gifted education regulations, we can create a more inclusive and supportive learning environment for gifted students. Revised regulations will benefit gifted students, helping them thrive and contribute positively to society.</p> <p>Thank you for your attention to this urgent matter.</p> <p>The Center for Gifted Education Directors Ashley Y Carpenter, Ph.D. Mihyeon Kim, Ph.D. Chandra B. Floyd, Ph.D.</p>	
<p>Ashley Y Carpenter</p>	<p>Dear Board of Education, As a parent of a gifted child, I urge you to revise our outdated gifted education regulations. These regulations are outdated and do not adequately address the unique needs of today's gifted students.</p>	<p>Thank you for your comments regarding whether this regulation should be repealed, amended, or retained in its current form.</p>

	<p>The proposed 2021 regulations offered valuable improvements. Please reconsider them and implement them to ensure gifted students receive the necessary support and opportunities to reach their full potential. Thank you for your attention to this important matter. Ashley Carpenter Mother to a twice-exceptional child in James City County</p>	
<p>Anonymous CommentID: 228071</p>	<p>I would recommend the inclusion of acceleration policies in the gifted regulations. The policies should include provision for early entrance to kindergarten and first grade as well as single subject and whole grade acceleration for grades 2 - 12. This policy should include procedures for nomination, notification, assessment, and a fair and equitable decision-making process.</p>	<p>Thank you for your comments regarding whether this regulation should be repealed, amended, or retained in its current form.</p>
<p>Virginia Consortium of Gifted Education Administrators (VCGEA)</p>	<p>The VCGEA is a group that represents the gifted education administrators for public school divisions in Virginia. Our members wholeheartedly endorse a review and update of these essential regulations. The regulatory process was initiated, and an updated draft of the gifted regulations was considered by the BOE in September and October of 2020 (October 14-15, 2020, Virginia Department of Education, see Action/Discussion Items, letter J), and then it was withdrawn in 2021. A tremendous amount of work was done to create that version, and so it should be the place to start when reviewing current research and best practices to include in future revisions.</p>	<p>Thank you for your comments regarding whether this regulation should be repealed, amended, or retained in its current form.</p>
<p>Northern Virginia Council for Gifted/Talented Education</p>	<p>On behalf of the Northern Virginia Council for Gifted/Talented Education, we are writing to express our strong support for the retention and revision (amending) of the Regulations Governing the Education of the Gifted in Virginia, as part of the current regulatory review process. We believe that these regulations are essential for</p>	<p>Thank you for your comments regarding whether this regulation should be repealed, amended, or retained in its current form.</p>

	<p>ensuring that the Commonwealth continues to provide high-quality, equitable educational opportunities to meet the diverse needs of gifted students.</p> <p>As advancements in the field of gifted education continue to emerge, it is imperative that Virginia's regulations reflect the latest best practices and research. In particular, we respectfully request that the updated regulations include the following elements:</p> <ol style="list-style-type: none">1. Talent Development: Comprehensive guidance on talent development is essential to ensure that schools identify and nurture potential giftedness in students from all backgrounds, especially those who may be underrepresented in traditional identification processes.2. Acceleration and Early Access: Clear provisions for acceleration, as well as early access to kindergarten for academically advanced students, will allow gifted learners to progress at a pace that aligns with their intellectual and social-emotional development.3. Equitable Identification Practices: It is critical that the updated regulations emphasize the importance of using inclusive, research-based methods for identifying gifted learners. By doing so, we can ensure that all students, regardless of socioeconomic background, race, ethnicity, or primary language, are given the opportunity to benefit from gifted education services. <p>Revising these regulations to reflect modern standards will help</p>	
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	Virginia's schools better address the unique academic and social-emotional needs of gifted learners. By supporting talent development, equitable identification, and appropriate academic acceleration, we can ensure that all gifted learners in Virginia are provided with the resources they need to thrive.	
Anonymous CommentID: 228076	I am writing to express my support for amending the Regulations Governing the Education of the Gifted in Loudoun County. These regulations must reflect the most current best practices and research in gifted education to ensure high-quality and equitable educational opportunities for gifted students.	Thank you for your comments regarding whether this regulation should be repealed, amended, or retained in its current form.
Anonymous CommentID: 228081	It would be beneficial for gifted training to be included in general licensure of all educators. Teachers who work full time with gifted students should be required to earn VDOE's gifted add on endorsement. This would help improve the general experience of gifted students because teachers and administrators (who were once teachers) would have graduate level coursework on the social / emotional needs of gifted students, appropriate gifted curriculum, have training on how to design learning experiences suitable for the advanced learner.	Thank you for your comments regarding whether this regulation should be repealed, amended, or retained in its current form.
Hillary Coley	As a parent of a gifted student in Loudoun County, I am writing to express support for amending the Regulations Governing the Education of the Gifted to reflect the most up-to-date best practices and research in the field of gifted education. Keeping our regulations in line with recent findings around the best practices in gifted education ensures that the Commonwealth continues to provide high-quality, equitable educational opportunities to meet the diverse needs of gifted students.	Thank you for your comments regarding whether this regulation should be repealed, amended, or retained in its current form.
Katherine Torres	On behalf of the gifted learners in Loudoun County, I am writing to express support for amending the	Thank you for your comments regarding whether this regulation should be repealed, amended, or retained in its current form.

	<p>Regulations Governing the Education of the Gifted to ensure that they reflect the most up-to-date best practices and research in the field of gifted education. These regulations are essential for ensuring that the commonwealth continues to provide high-quality, equitable educational opportunities to meet the diverse needs of gifted students.</p>	
<p>J. Greathouse, Ed. D.</p>	<p>As a current and long-time instructor of the gifted endorsement courses for Shenandoah University, I wholeheartedly request and endorse a review and update of the gifted regulations. The regulatory process was initiated, and an updated draft of the gifted regulations was considered by the BOE in September and October of 2020 (October 14-15, 2020, Virginia Department of Education, see Action/Discussion Items, letter J), and then it was withdrawn in 2021. As a former (retired 2024) supervisor of gifted services, former member of the Gifted Advisory Committee for two terms, former member and officer of the Virginia Consortium of Gifted Education Administrators, former member of the Virginia Association for the Gifted, former member and officer of the Northern Virginia Council for Gifted/Talented Education (Supt. Region IV), member of the National Association of Gifted and Talented and other gifted organizations I know a tremendous amount of work was done to create the previous version. Where that process left off should be the place to start when reviewing current research and best practices to include in future revisions.</p>	<p>Thank you for your comments regarding whether this regulation should be repealed, amended, or retained in its current form.</p>
<p>Anonymous CommentID: 228111</p>	<p>As a Virginia educator of the gifted, I wholeheartedly support the amendment of the current gifted regulations. I request that we start any amendments with the draft regulations put forth in 2020. A lot of research, time, and effort went</p>	<p>Thank you for your comments regarding whether this regulation should be repealed, amended, or retained in its current form.</p>

	into those draft regulations to reflect best practice, and then they were pulled in 2021.	
Anonymous CommentID: 228122	Dear Board of Education, As a parent of two children who received gifted services in Virginia and are currently enrolled in Virginia public universities, I encourage you to revise our outdated gifted education regulations so that future students will benefit from current best practices. Please seriously consider the draft that was created in the fall of 2020 as a starting point as it offers improvements that were current at the time of submission and much work was put into it. Today's gifted students should receive the necessary support and opportunities to reach their full potential and grow to be contributing members of society. Thank you, York County Resident	Thank you for your comments regarding whether this regulation should be repealed, amended, or retained in its current form.
Anonymous CommentID: 228130	On behalf of gifted learners in Loudoun County, I am writing to express support for amending the Regulations Governing the Education of the Gifted to ensure that they reflect the most up-to-date best practices and research in the field of gifted education. These regulations are essential for ensuring that the Commonwealth continues to provide high-quality, equitable educational opportunities to meet the diverse needs of gifted students. Thank you. -Mom to a gifted MS student in Loudoun County	Thank you for your comments regarding whether this regulation should be repealed, amended, or retained in its current form.
S Haywood	I have worked with Virginia's gifted students for more than 30 years. I served on the former VACEG for six years, and I am currently a part of the VCGEA and the Va. Association for the Gifted. Because of this work, it is important to me that these regulations be reviewed and updated. The updated draft of the regulations that was moving through the legislative process in 2020 should be considered as a starting point for much needed	Thank you for your comments regarding whether this regulation should be repealed, amended, or retained in its current form.

	<p>revisions. That document reflects many best practices and research in the field that have both advanced quite a bit since the current regulations were put into place. That draft was created by a diverse group from across Virginia with members who had an enormous amount of experience in gifted education.</p> <p>Gifted learners have unique needs that need to be addressed and protected. Specifically, talent development, acceleration, and early access to services need to be included in these updates. Gifted learners also need to be provided with instruction, materials, and activities that challenge them, even when these may be considered to be "above grade level". In addition, the regulations should ensure that equitable identification practices are in place.</p> <p>Please move forward with revisions and updates to the current regulations so that Virginia's gifted students receive the support and protection they deserve.</p>	
<p>YCSD GEAC</p>	<p>I am writing on behalf of the York County School Division's Gifted Education Advisory Committee. Regulations governing gifted education are necessary to protect the academic interests of our students and we hope that you will review and update the regulations. The current regulations were last revised in 2010 and thus do not reflect the advances in research over the past 14 years; as a result, they may not align with updated, evidence-based guidance for best practices.</p> <p>We strongly encourage the Board of Education to review the existing guidelines and to update them in accordance with current evidence on the best ways to equitably serve gifted students.</p>	<p>Thank you for your comments regarding whether this regulation should be repealed, amended, or retained in its current form.</p>

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This regulation is necessary for the protection of public health, safety, and welfare. The regulation outlines the gifted education components required by the Standards of Quality and §22.1-18.1. The regulation is clearly written and easily understandable.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The Board of Education will retain the regulation as is without making changes.

Small Business Impact

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.

There is a continued need for this regulation. The department received multiple comments asking the Board to retain these regulations as is and other comments asking the Board to make future amendments. The complexity of the regulation may call for amendments in the future. Derived from VR270-01-0002 § 2.4, Chapter 40 became effective June 25, 1986. Amendments to this chapter were made February 22, 1995 (Virginia Register Volume 11, Issue 9), and revisions requiring school divisions to meet gifted education programs were made July 21, 2010, (Volume 26, Issue 22). The Board amended and updated Chapter 40 to comport with legislative changes made by HB 1295 and SB 679 (2012) on August 29, 2012, (Virginia Register Volume 28, Issue 24). The current Notice of Intended Regulatory Action (NOIRA) from 2019, which resulted from the 2019 periodic review, may be withdrawn by the Board of Education before considering future amendments or revisions to Chapter 40. VDOE staff expect that retaining the regulation as is without making changes will have no impact on small businesses.