

# Virginia Board of Education Agenda Item



**Agenda Item:** D

**Date:** January 26, 2017

<b>Title</b>	Final Review of Proposed Amendments to the <i>Regulations Governing Local School Boards and School Divisions</i> (8VAC 20-720) Regarding Use of Sexually Explicit Instructional Materials (Proposed Stage)		
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**Purpose of Presentation:**

Other initiative or requirement. Specify below:

Consideration of amendments in response to public comments received at 2013 Board of Education meetings and by mail and email and follow-up reviews by the Board of Education

**Previous Review or Action:**

Previous review and action. Specify date and action taken below:

Date: October 24, 2013

Action: Final Review of Notice of Intended Regulatory Action (NOIRA) for Amendments to the *Regulations Governing Local School Boards and School Divisions*

Date: November 17, 2016

Action: First Review of Proposed Amendments to the *Regulations Governing Local School Boards and School Divisions* (8VAC 20-720) Regarding Use of Sexually Explicit Instructional Materials (Proposed Stage)

**Action Requested:**

Final review: Action requested at this meeting.

January 26, 2017

**Alignment with Board of Education Goals: Please indicate (X) all that apply:**

	Goal 1: Accountability for Student Learning
	Goal 2: Rigorous Standards to Promote College and Career Readiness
	Goal 3: Expanded Opportunities to Learn
	Goal 4: Nurturing Young Learners
	Goal 5: Highly Qualified and Effective Educators
X	Goal 6: Sound Policies for Student Success
	Goal 7: Safe and Secure Schools
	Other Priority or Initiative. Specify:

**Background Information and Statutory Authority:**

Goal 6: The *Regulations Governing Local School Boards and School Divisions* set forth the responsibilities of local school boards in the selection of instructional materials and textbooks. Section 8VAC20-720-160 requires local school boards to adopt policies and criteria for the selection of

instruction materials that shall include, at a minimum, the rights of parents to inspect any instructional materials used as part of the curriculum; the basis upon which an individual may seek reconsideration of these materials, including those that might be controversial or sensitive; and clear procedures for handling challenged materials.

Proposed amendments would add language that requires local school boards to adopt policies and criteria regarding the selection of instructional materials which would include the basis upon which a person may request reconsideration of the school board's selection of sexually explicit materials, in addition to those considered controversial or sensitive as currently provided in the regulation. Moreover, as prescribed, the amendments would require procedures that would provide to any student whose parent or legal guardian requests alternatives to sexually explicit instructional materials and related academic activities, to have as a replacement, non-explicit instructional material and non-explicit related academic activities. Each school would be required to provide at the beginning of the school year to the parent or legal guardian an annual notice identifying any sexually explicit materials that may be included in any course or any supplemental materials.

The overall regulatory authority for the Board of Education (Board) may be found in § [22.1-16](#) of the *Code of Virginia*:

§ [22.1-16](#) of the *Code of Virginia*

The 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 this title.

In February 2013, the Board amended the *Regulations Governing Local School Boards and School Divisions* to address local school divisions' approvals of textbooks not included in the Board's list of approved textbooks. During and following this action, the Board received public comments expressing concern about content and language used in some instructional materials. The Board then discussed whether or not the section of the same regulations that addresses local school board selection and approval of instructional materials should be amended to require parental notification, alternative materials, and/or opt-out provisions for certain materials. The following language included in the regulation (8VAC20-720-160) at that time (and currently included in the regulation) did not explicitly include such options as available to parents or legal guardians.

[8VAC20-720-160](#). Instructional Materials.

A. Local school boards shall be responsible for the selection and utilization of instructional materials.

B. Local school boards shall adopt policies and criteria for the selection of instructional materials that shall include, at a minimum:

1. The rights of parents to inspect, upon request, any instructional materials used as part of the educational curriculum for students, and the procedure for granting a request by a parent for such access, in accordance with the Protection of Pupil Rights Amendment, 20 USC § 1232H, and its implementing regulation, 34 CFR Part 9;

2. The basis upon which a person may seek reconsideration of the local school board's selection of instructional materials, including but not limited to materials that might be considered sensitive or controversial, and the procedures for doing so; and

3. Pursuant to § [22.1-253.13:7](#) of the *Code of Virginia*, clear procedures for handling challenged controversial materials.

In 2013, as parents began to raise concerns about parental notification of and approval of sexually explicit materials found in textbooks used in some Virginia classrooms, the Board and department staff began to review this issue. The Board was asked to clarify current language to ensure that parents would be provided advance notification of sensitive materials, alternative selections, and opt-out options. Board members requested information about parental notification at the February 2013 Board meeting and asked the Virginia Department of Education to collect information from school divisions regarding their policies on selecting and utilizing instructional materials. In turn, a survey was circulated to all school divisions and five organizations. One hundred eight school divisions and all five professional organizations responded to the survey. Responses were received from the Virginia School Boards Association, the Virginia Education Association, the Virginia Parent-Teacher Association, the Virginia Association for Elementary School Principals, and the Virginia Association for Secondary School Principals. A [Report on Surveys Regarding Parental Notification Related to Controversial or Sensitive Materials](#) was presented to the Board on June 27, 2013. The Board accepted that report and asked the Superintendent of Public Instruction to provide a report on options regarding parental notification related to controversial or sensitive materials for the Board's consideration at the July 2013 Board meeting. As reported in the [Report on Surveys Regarding Parental Notification Related to Controversial or Sensitive Materials](#) presented to the Board on June 27, 2013 and at the July 2013 meeting in the [Report on Options Regarding Parental Notification Related to Controversial or Sensitive Materials](#)):

- Ninety-eight percent of the school divisions responding to the survey reported that they had policies related to the selection and utilization of instructional materials.
- The definition of *sensitive or controversial materials* varied among school divisions.
- Seventy-four percent of the school divisions responding to the survey reported they had policies that allowed students to be excused from all or part of instruction related to sensitive or controversial materials.
- Forty-eight percent of the school divisions responding to the survey reported that their instructional materials policy required that parents receive advance notice prior to the use of potentially sensitive or controversial materials in the classroom.

At the Board's July 2013 meeting, the [July 2013 report](#) was presented and included options for consideration at the request of the Board president:

- Amend the language in the [Regulations Establishing Standards for Accrediting Public Schools in Virginia](#) (SOA) to require school divisions to provide to parents at the beginning of the school year "a notice about any sensitive or explicit materials that may be included in the course, textbook, or any supplemental instructional materials" (8VAC20-131-270)
- Amend the language in the [Regulations Governing Local School Boards and School Divisions](#) to require "reasonable advance notice to parents and students of the intended use of controversial materials" (8VAC20-720-160.B)
- Amend both sets of regulations

At its July 2013 meeting, the Board requested that a Notice of Intended Regulatory Action (NOIRA) be

issued to add language to the *Regulations Governing Local School Boards and School Divisions* regarding procedures school divisions must have in place to address the use of sensitive or controversial instructional materials in the classroom.

The agenda item, [First Review of Notice of Intended Regulatory Action \(NOIRA\) for Amendments to the Regulations Governing Local School Boards and School Divisions \(8 VAC 20-720\) Regarding Use of Controversial or Sensitive Instructional Materials](#), was presented at the September 2013 Board meeting. The Board approved for first review the NOIRA for these regulations.

The [Final Review of Notice of Intended Regulatory Action \(NOIRA\) for Amendments to the Regulations Governing Local School Boards and School Divisions \(8 VAC 20-720\) Regarding Use of Controversial or Sensitive Instructional Materials](#) was discussed at the October 2013 Board meeting. The Board requested that a NOIRA be issued to add language to these regulations regarding procedures school divisions must have in place to address the use of sensitive or controversial instructional materials in the classroom. This agenda item was included on the consent agenda and approved by the Board unanimously.

In the Town Hall Agency Background Document (TH-01) required as part of the promulgation process, the purpose of the NOIRA was described as follows: “The Virginia Board of Education plans to propose amendments to the *Regulations Governing Local School Boards and School Divisions* to address procedures school divisions must have in place to address the use of sensitive or controversial instructional materials in the classroom.” That document also included the first two options recommended by the Board at its July 2013 meeting:

1. A proposal to add language to the *Regulations Governing Local School Boards and School Divisions* regarding procedures school divisions must have in place to address the use of sensitive or controversial instructional materials in the classroom, and in the alternative,
2. A proposal to amend the *Regulations Establishing Standards for Accrediting Public Schools in Virginia*, to require “a notice to parents about any sensitive or sexually explicit materials that may be included in the course, the textbook, or any supplemental materials

The NOIRA was submitted, and public comment received. The Board received 1,241 public comments, including the 1,209 public comments received through the Virginia Regulatory Town Hall (Town Hall). Of the 1,209 Town Hall comments received, 586 (46 percent) were generally supportive of amendments to the regulations. Of the 1,209 Town Hall comments received, 598, or a little more than 49 percent were generally opposed to the amendments. Of the 32 emails/letters received, 25 (78 percent) were generally supportive of amendments to the regulations. Of the 32 emails/letters received, 6 or a little more than 18 percent were generally opposed to the amendments to the regulations. Of all the comments received, 611 (about 49 percent) were generally supportive. However, no further action was taken following publication of this NOIRA pending consideration of a more comprehensive review in 2014.

Below is an explanation of the public comments received under the 2013 NOIRA:

Generally Support	611	49.23%
Generally Oppose	604	48.67%
Other	13	1.05%
Repeat	<u>13</u>	<u>1.05%</u>
TOTAL	1,241	100.00%

While not all commenters identified themselves, a general breakdown of the supporters is provided below:

Parent	29%
Educator	2%
Student	2%
University	0%
Unidentified	67%

While not all commenters identified themselves, a general breakdown of the opposition is provided below:

Parent	12%
Educator	47%
Student	4%
University	1%
Unidentified	36%

The [Final Review of Amendments to the Regulations Establishing Standards for Accrediting Public Schools in Virginia \(8 VAC 20-131\) \(Standards of Accreditation - Proposed Stage\)](#) was also discussed at the October 2013 Board meeting. During Board discussion, proposed language was added which would require notification of parents about sensitive or sexually explicit materials, and this language was approved unanimously by the Board. However, this promulgation process was delayed after the Board decided to conduct a comprehensive review of those regulations in 2014.

During the 2016 General Assembly Session, [HB 516](#) was proposed to amend the *Code of Virginia* by adding a section numbered 22.1-16.6, relating to the Board policy on sexually explicit instructional material. This bill passed the House and the Senate and would have required the Board to establish a policy to require each public elementary or secondary school to:

- Notify the parent of any student whose teacher reasonably expects to provide instructional material that includes sexually explicit content, as defined by the Board
- Permit the parent of any student to review instructional material that includes sexually explicit content upon request
- Provide non-explicit instructional material and related academic activities to any student whose parent so requests, as an alternative to instructional material and related academic activities that include sexually explicit content

The Governor vetoed this bill because he determined that the Board had been examining this issue and had engaged in lengthy and substantive conversations with school boards, teachers, parents, and students about existing local policies and potential state policies to address these concerns. He indicated in his veto statement that he believed that school boards are best positioned to ensure that students are exposed to those appropriate literary and artistic works that will expand students' horizons and enrich their learning experiences.

At its October 26, 2016 Committee on School and Division Accountability meeting, after discussion, the Board decided to include language referencing notification of parents and legal guardians and student and parent options regarding sexually explicit materials in the *Regulations Governing Local School Boards and School Divisions*, rather than in the Standards of Accreditation.

For First Review in November, 2016, the following amendments to the regulations were presented for consideration:

8VAC20-720-160. Instructional Materials.

A. Local school boards shall be responsible for the selection and utilization of instructional materials.

B. Local school boards shall adopt policies and criteria for the selection of instructional materials that shall include, at a minimum:

1. The rights of parents **or legal guardians** to **inspect review**, upon request, any instructional materials used as part of the educational curriculum for students, and the procedure for granting a request by a parent **or legal guardian** for such access, in accordance with the Protection of Pupil Rights Amendment, 20 USC § 1232H, and its implementing regulation, 34 CFR Part 9;
2. The basis upon which a person may seek reconsideration of the local school board's selection of instructional materials, including but not limited to materials that might be considered sensitive, **or** controversial, **or sexually explicit**, and the procedures for doing so; **and**
3. Pursuant to § **22.1-253.13:7** of the Code of Virginia, clear procedures for handling challenged controversial materials, **including procedures that would provide non-explicit instructional material and related academic activities to any student whose parent or legal guardian so requests, as an alternative to instructional material and related academic activities that include sexually explicit content; and;**
4. **A requirement that each school shall provide an annual notice to the parent or legal guardian at the beginning of the school year, identifying any sexually explicit materials that may be included in any course, inclusive of the textbook, or in any supplemental materials.**

Since October 2016, the Board has received 74 comments in support of the amendments and 97 comments in opposition to the amendments. This included letters regarding this issue from the Kids' Right to Read Project, the National Council of Teachers of English, the American Association of School Librarians, and the Virginia Association of School Librarians. The letters from the Kids' Right to Read Project was signed by representatives from the National Coalition Against Censorship, the American Civil Liberties Union of Virginia, the Comic Book Legal Defense Fund, the Association of American Publishers, the Children's and Young Adult Book Committee, the American Booksellers for Free Expression, and the Authors Guild. Each of these organizations opposes the proposed amendments. A letter also was received from a professor and an associate professor at the Virginia Commonwealth University School of Education. They, too, oppose the amendments due to concerns about their impact on all courses, the undue burden on teachers, and concerns about censorship.

The commenters continue to post common themes. Those in support of these amendments continue to ask for the notification of parents prior to use of sexually explicit instructional materials in the classroom. Some parents indicated that they believe it is their responsibility to discuss these matters

with their children. One parent asked that parents be notified every time such materials are used. One parent commented that this should not be an issue since there are so many other reading materials to choose from; therefore, this type of material can be avoided. Several individuals commented that parents should decide what their children are taught. Several parents specifically mentioned those materials referencing bestiality, rape of any kind, incest, or pedophilia and asked for advance notice of these materials. Some commenters supported the amendments, but did not include any details explaining why.

Common themes also continued to be posted by those who oppose these amendments. Some said these amendments are not necessary because teachers are always willing to give alternative assignments. Some said this process would be over-burdensome to teachers. Some asked how the term *sexually explicit* would be defined. (This would be left up to the local school board.) Many said this was censorship. (The regulations allow individual parents and legal guardians to ask for replacement materials. The current regulation also requires local school boards to adopt policies and criteria that “shall include, at a minimum, the basis upon which a person may seek reconsideration of the local school board’s selection of instruction material, including but not limited to, materials that might be considered sensitive or controversial.” In the proposal this requirement has been expanded to include sexually explicit materials. Some commenters asked that teachers be trusted to make the right decisions regarding instructional materials. (These regulations do not take that responsibility away from teachers.) One person said this process would allow the minority to dictate the curriculum to the majority. However, policy regarding these matters would be set by the local school board and would not impact students state-wide.

The number of public comments received in the last few months follows.

<b>Commenter</b>	<b>Oppose</b>	<b>Support</b>	<b>Generally Support, but oppose beginning of year notification (Other)</b>
Association	9	0	0
Other	53	44	2
University	7	0	0
Educator	15	0	1
Parent	4	30	0
Student	<u>9</u>	<u>0</u>	<u>0</u>
<b>Total (174)</b>	<b>97</b>	<b>74</b>	<b>3</b>
Generally oppose	56%		
Generally support		43%	
Other		1%	

The Board continued to hear and receive public comment, and at its November 29, 2016 meeting, the Board was presented, through public comment, suggested language to clarify the provision of alternatives to sexually explicit instructional materials.

**Summary of Important Issues:** In response to substantial review, the Board is considering proposed amendments to the *Regulations Governing Local School Boards and School Divisions* regarding procedures and policies for school divisions to provide parents and legal guardians an opportunity to review in advance and to address sexually explicit materials that may be included in any course, inclusive of the textbook, or in any supplemental materials.

The amendments to the regulations as proposed in November 2016 have been revised as follows, as a result of consideration of public comment.

#### **8VAC20-720-160. Instructional Materials.**

A. Local school boards shall be responsible for the selection and utilization of instructional materials.

B. Local school boards shall adopt policies and criteria for the selection of instructional materials that shall include, at a minimum:

1. The rights of parents or legal guardians to inspect review, upon request, any instructional materials used as part of the educational curriculum for students, and the procedure for granting a request by a parent or legal guardian for such access, in accordance with the Protection of Pupil Rights Amendment, 20 USC § 1232H, and its implementing regulation, 34 CFR Part 9;
2. The basis upon which a person may seek reconsideration of the local school board's selection of instructional materials, including but not limited to materials that might be considered sensitive, ~~or~~ controversial, or sexually explicit, and the procedures for doing so; ~~and~~
3. Pursuant to § 22.1-253.13:7 of the Code of Virginia, clear procedures for handling challenged controversial materials, including procedures that would provide non-explicit instructional material and related academic activities to any student whose parent or legal guardian so requests, as an alternative to instructional material and related academic activities that include sexually explicit content; and to any student whose parent or legal guardian requests alternatives to instructional materials and related academic activities, to have as a replacement, non-explicit instructional material and non-explicit related academic activities.
4. A requirement that each school shall provide an annual notice to the parent or legal guardian at the beginning of the school year, identifying any sexually explicit materials as defined by the local school board that may be included in any course, inclusive of the textbook, or in any supplemental materials, or during the school year if such materials have not been previously included.

This proposal differs from the bill vetoed by the Governor in that, in the proposed amendment, the term *sexually explicit materials* is to be defined by the local school board. In addition, any related policy or criteria set would be determined by the local school board.

**Impact on Fiscal and Human Resources:** The administrative impact required in promulgating these regulations will be absorbed within existing resources at the department. Local school boards would need to adhere to the provisions of the *Regulations Governing Local School Boards and School Divisions*.

**Timetable for Further Review/Action:** The timetable for further action shall be governed by the requirements of the Administrative Process Act.

**Superintendent's Recommendation:** The Superintendent of Public Instruction recommends that the Board approve the proposed amendments to the *Regulations Governing Local School Boards and School Divisions* for further action as governed by the requirements of the Administrative Process Act.

**Rationale:** The amendments to the Instructional Materials section of the *Regulations Governing Local School Boards and School Divisions* clarify the specific actions to be taken when sensitive and controversial materials to be used for instruction are sexually explicit, and ensure that parents will be noticed in advance in order to provide an opportunity for material review.

**Proposed Amendments to the *Regulations Governing Local School Boards and School Divisions (8VAC 20-720) Regarding Use of Sexually Explicit Instructional Materials***

8VAC20-720-10. Definitions.

The following word or term when used in this chapter shall have the following meaning unless the context clearly indicates otherwise:

"Textbooks" means print or electronic media for students use that serve as the primary curriculum basis for grade-level subject or course.

Statutory Authority

§ [22.1-16](#) of the Code of Virginia.

Historical Notes

Derived from [Volume 28, Issue 26](#), eff. September 26, 2012.

8VAC20-720-80. Student Fees and Charges.

- A. No fees or charges may be levied on any pupil by any school board unless authorized by regulation of the Board of Education or by the General Assembly.
- B. Each local school board shall develop a policy in accordance with the requirements of the Standards of Quality, § 22.1-253.13:7 of the Code of Virginia, addressing any fees that are charged. The policy shall include the schedule of fees charged by the school division, provisions for reducing or waiving fees, and consequences for nonpayment of fees. The policy and the fee schedule shall be provided to parents annually and posted on the school division's website.
- C. The policy shall provide for the reduction or waiver of fees for economically disadvantaged students and students whose families are undergoing economic hardships and are financially unable to pay them. This shall include, but not be limited to, families receiving unemployment benefits or public assistance, including Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), Supplemental Security Income (SSI) or Medicaid; foster families caring for children in foster care; or families that are homeless.
- D. School divisions shall provide notice that a fee waiver may be requested, including directions as to how to apply for the waiver, each time a fee is charged.
- E. School divisions shall not charge any fees that have not been approved by the local school board.

F. The fee policy and the fee schedule shall be consistent throughout the school division, although there may be different fee schedules assessed at the elementary, middle, and high school levels.

G. Local school boards shall not charge fees:

1. As a condition of school enrollment, except for students who are not of school-age or who do not reside within the jurisdiction, in accordance with §§ 22.1-1 and 22.1-3 of the Code of Virginia and as provided for in § 22.1-5 of the Code of Virginia;
2. For instructional programs and activities, or materials required for instruction, except as specified in subsection H of this section;
3. For textbooks or textbook deposits; however, § 22.1-243 of the Code of Virginia permits a local school board to assess a reasonable fee or charge for lost or damaged textbooks;
4. For pupil transportation to and from school; or
5. For summer school programs or other forms of remediation required by the Standards of Quality, § 22.1-253.13:1 of the Code of Virginia.

H. Local school boards may charge fees for the following:

1. Optional services, such as parking or locker rental;
2. Student-selected extracurricular activities;
3. Class dues; however, class dues shall not be mandatory, and the school board shall specify the kinds of programs and activities covered by class dues;
4. Field trips or educationally-related programs that are not required instructional activities;
5. Fees for musical instruments, so long as the instruction in the use of musical instruments is not part of the required curriculum;
6. Distance learning classes for enrichment and not necessary to meet the requirements for a diploma;
7. Summer school, unless the classes are required for remediation as prescribed by the Standards of Quality, § 22.1-253.13:1 of the Code of Virginia;
8. Overdue or lost or damaged library books;

9. Lost or damaged textbooks, in accordance with § 22.1-243 of the Code of Virginia; however, textbooks shall be provided free of charge;
10. Consumable materials such as workbooks, writing books, drawing books, and fine arts materials and supplies; however, in accordance with § 22.1-243 of the Code of Virginia, the local school board shall develop a policy ensuring that workbooks, writing books, drawing books, and fine arts materials and supplies are furnished to students who are unable to afford them at a reduced price or free of charge. In addition, local school boards are not authorized to charge fees to students for instructional materials, textbooks, or other materials that are not directly used by a public school student;
11. The behind-the-wheel portion of the driver's education program in accordance with § 22.1-205 of the Code of Virginia;
12. A fee not to exceed a student's pro rata share of the cost of providing transportation for voluntary extracurricular activities, in accordance with § 22.1-176 of the Code of Virginia; and
13. The preparation and distribution of official paper copies of student transcripts; however, each school board shall provide a reasonable number of copies for free before a charge is levied for additional official copies. Official electronic copies of student transcripts shall be provided for free.

**H I.** Local school boards shall not:

1. Withhold any student's scholastic report card or diploma because of nonpayment of fees and charges, in accordance with § 22.1-6 of the Code of Virginia;
2. Withhold any student's class schedule; or
3. Suspend or expel a student for nonpayment of fees and charges.

**H J.** Nothing in this chapter shall be construed to prohibit the school board of any county, city, or town from making supplies, services, or materials available to pupils at cost.

**H K.** These regulations do not address the operation of school stores or fund-raising activities where transactions are strictly voluntary.

Statutory Authority

§ 22.1-16 of the Code of Virginia.

Historical Notes

Derived from [Volume 29, Issue 06](#), eff. December 19, 2012.

8VAC20-720-160. Instructional Materials.

A. Local school boards shall be responsible for the selection and utilization of instructional materials.

B. Local school boards shall adopt policies and criteria for the selection of instructional materials that shall include, at a minimum:

1. The rights of parents **or legal guardians** to **inspect review**, upon request, any instructional materials used as part of the educational curriculum for students, and the procedure for granting a request by a parent **or legal guardian** for such access, in accordance with the Protection of Pupil Rights Amendment, 20 USC § 1232H, and its implementing regulation, 34 CFR Part 9;
2. The basis upon which a person may seek reconsideration of the local school board's selection of instructional materials, including but not limited to materials that might be considered sensitive, **or** controversial, **or sexually explicit**, and the procedures for doing so; **and**
3. Pursuant to § [22.1-253.13:7](#) of the Code of Virginia, clear procedures for handling challenged controversial materials, **including procedures that would provide non-explicit instructional material and related academic activities to any student whose parent or legal guardian so requests, as an alternative to instructional material and related academic activities that include sexually explicit content, and to any student whose parent or legal guardian requests alternatives to instructional materials and related academic activities, to have as a replacement, non-explicit instructional material and non-explicit related academic activities.**
4. **A requirement that each school shall provide an annual notice to the parent or legal guardian at the beginning of the school year, identifying any sexually explicit materials as defined by the local school board that may be included in any course, inclusive of the textbook, or in any supplemental materials, or during the school year if such materials have not been previously included.**

Statutory Authority

§ [22.1-16](#) of the Code of Virginia.

Historical Notes

Derived from [Volume 28, Issue 26](#), eff. September 26, 2012.

8VAC20-720-170. Textbooks.

A. Textbook approval.

1. The Board of Education shall have the authority to approve textbooks for use in the public schools of Virginia.
2. In approving basal textbooks for reading in kindergarten and first grade, the Board of Education shall report to local school boards those textbooks with a minimum decodability standard based on words that students can correctly read by properly attaching speech sounds to each letter to formulate the word at 70% or above for such textbooks in accordance with § [22.1-239](#) of the Code of Virginia.
3. Any local school board may use textbooks not approved by the Board of Education provided the local school board selects such books in accordance with this chapter.
4. Contracts and purchase orders with publishers of textbooks approved by the Board of Education for use in grades 6-12 shall allow for the purchase of printed textbooks, printed textbooks with electronic files, or electronic textbooks separate and apart from printed versions of the same textbook. Each local school board shall have the authority to purchase an assortment of textbooks in any of the three forms listed in this subdivision.

B. Procedures for selection of textbooks by local school boards. Local school boards shall adopt procedures for the selection of textbooks. These procedures shall include, at a minimum, the following:

1. Appointment of evaluation committees by the local school board to review and evaluate textbooks in each of the subject areas.
2. Notice to parents that textbooks under consideration for approval will be listed on the school division's website and made available at designated locations for review by any interested citizens.
3. Opportunities for those reviewing such textbooks to present their comments and observations, if any, to the local school board through locally approved procedures.
4. Procedures to ensure appropriate consideration of citizen comments and observations.
5. Selection criteria.

C. Local school board selection of textbooks other than those approved by the Board of Education.

1. The selection process for non-Board of Education approved textbooks is subject to the procedures outlined in subsection B of this section.
2. The selection process for such textbooks pertaining to Virginia Standards of Learning subjects shall include at the local level a correlation of the content to the Virginia Standards of Learning in the content area and an analysis of strengths and weaknesses of the textbook in terms of instructional planning and support.
3. The publisher of such textbooks shall:
  - a. Provide to the local school board a certification that the content of the textbook is accurate; and
  - b. Sign an agreement with the local school board to correct all factual and editing errors found in a textbook at its own expense.

D. Purchasing Board of Education approved textbooks.

1. Local school divisions shall purchase textbooks approved by the Board of Education directly from the publishers of the textbooks by either entering into written term contracts or issuing purchase orders on an as-needed basis in accordance with § 22.1-241 of the Code of Virginia.
2. Such written contracts or purchase orders shall be exempt from the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia).

E. Purchasing non-Board of Education approved textbooks. The purchase of textbooks other than those approved by the Board of Education is not exempt from the Virginia Public Procurement Act.

F. Distribution of textbooks. Each local school board shall provide, free of charge, such textbooks required for courses of instruction for each child attending public schools.

G. Certifications.

1. The division superintendent and chairperson of the local school board shall annually certify to the Virginia Department of Education that:
  - a. All textbooks were selected and purchased in accordance with this chapter; and
  - b. The price paid for each textbook in accordance with § 22.1-241 of the Code of Virginia.

2. The certification shall include a list of all textbooks adopted by the local school board.

Statutory Authority

§ [22.1-16](#) of the Code of Virginia.

Historical Notes

Derived from [Volume 28, Issue 26](#), eff. September 26, 2012; Errata, 30:4 VA.R. 453 October 21, 2013; amended, Virginia Register [Volume 30, Issue 12](#), eff. March 27, 2014.



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## Proposed Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Education
<b>Virginia Administrative Code (VAC) citation(s)</b>	<u>8 VAC 20-720</u>
<b>Regulation title(s)</b>	<i>Regulations Governing Local School Boards and School Divisions</i>
<b>Action title</b>	Proposed amendments to the regulations
<b>Date this document prepared</b>	January 9, 2017

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

In response to parental concerns, the Board of Education (Board) has conducted a comprehensive review of issues related to the use of sexually explicit instructional materials in Virginia's public schools. Amendments to the language in the *Regulations Governing Local School Boards and School Divisions* (8CAC20-720-160) have been proposed which would require each public school to:

- Provide annual notification to the parent or legal guardian of any student whose teacher expects to provide instructional materials that include sexually explicit content as defined by the local school board, or during the school year if prior notice has not been given.
- As part of the clear procedures for handling challenged controversial materials, expand the language to include procedures that would provide non-explicit alternatives to sexually explicit

instructional materials and related academic activities as a replacement(s) for any student whose parent or legal guardian requests it.

- Add language that would require local school boards to adopt policies and criteria regarding the selection of instructional materials which would include the basis upon which a person may request reconsideration of the school board's selection of sexually explicit materials, in addition to those considered controversial or sensitive as currently provided in the regulation

## Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

Not applicable

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

The 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 this title. (§ [22.1-16](#) of the Code of Virginia)

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The *Regulations Governing Local School Boards and School Divisions* set forth the responsibilities of local school boards in the selection of instructional materials and textbooks. These regulations will be amended by the addition of language that requires local school boards to provide parents and legal guardians an annual notice identifying any sexually explicit materials that may be included in a course, inclusive of the textbook, or any supplemental materials, and to provide notice during the school year if sexually explicit materials are to be used which have not been noticed. As an alternative to instructional material and related academic activities that include sexually explicit content, non-explicit instructional material and related academic activities are to be provided to any student whose parent or legal guardian so requests them as a replacement. In addition, the amendments would require school boards to provide procedures regarding the selection of instructional materials which would include the basis upon which a person may request reconsideration of the school board's selection of sexually explicit materials, in addition to those considered controversial or sensitive as currently provided in the regulation. These amendments would provide more options for parents and students who have concerns about the use of sexually explicit instructional materials in Virginia's public schools.

## Substance

*Please 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 current regulation ([8VAC20-720-160](#)) does not specify action to be taken regarding sexually explicit instructional materials when parents or legal guardians have concerns about such materials. The regulation requires school boards to adopt policies and criteria for the selection of instructional materials that shall include at a minimum the rights of parents to inspect, upon request, instructional materials; the basis upon which a parent may seek reconsideration of the board’s selection of such materials, including those that might be controversial or sensitive; and clear procedures for handling controversial materials.

Proposed amendments would add language that requires local school boards to adopt policies and criteria regarding the selection of instructional materials which would include the basis upon which a person may request reconsideration of the school board’s selection of sexually explicit materials, in addition to those considered controversial or sensitive as currently provided in the regulation. Moreover, as prescribed, the amendments would require procedures that would provide to any student whose parent or legal guardian requests alternatives to sexually explicit instructional materials and related academic activities, to have as a replacement, non-explicit instructional material and non-explicit related academic activities. Each school would be required to provide at the beginning of the school year to the parent or legal guardian an annual notice identifying any sexually explicit materials that may be included in any course or any supplemental materials. Notice would be provided during the school year of any anticipated use of sexually explicit materials not previously included.

These amendments would ensure that all Virginia school divisions would have policy and criteria addressing these issues.

## Issues

*Please identify the issues associated with the proposed regulatory action, 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, please indicate.*

This regulatory action amends the current regulations to require local school boards to adopt policies and criteria which requires advance notice to parents and legal guardians regarding the use of sexually explicit instructional materials and requires school boards to have policies that make clear what options parents or legal guardians have when they have concerns about use of these instructional materials by their students.

## Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 statement to that effect.*

There are no applicable federal requirements.

### Localities particularly affected

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

All 132 school divisions would be affected. It is not expected that any school division would incur a disproportionate material impact.

### Public participation

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the Board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to [insert: staff contact person’s name, mailing address, phone number, fax number and email address]. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. 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 this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

### Economic impact

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</b>	Students in K-12 public schools, their families, and local school divisions in Virginia would be affected by this regulation. It is believed that any costs would be minimal.
<b>Projected cost of the new regulations or changes to existing regulations on localities.</b>	There are more than 1,284,000 students in K-12 public schools and 132 local school divisions in Virginia. The cost is expected to be minimal.
<b>Description of the individuals, businesses, or</b>	Students in K-12 public schools, their families,

<p><b>other entities likely to be affected by the new regulations or changes to existing regulations.</b></p>	<p>and local school divisions in Virginia would be affected by this regulation. Businesses would not be impacted.</p>
<p><b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that:  a) is independently owned and operated and;  b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>None anticipated.</p>
<p><b>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including:</b>  a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and  b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>None anticipated.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>No economic impact is anticipated.</p>

## Alternatives

*Please describe any viable 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. 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 regulation.*

The Board considered amendment of the Regulations Establishing Standards for Accrediting Public Schools in Virginia (SOA) at 8VAC20-131-270 to address the issues regarding sexually explicit materials. However, after some consideration, the Board decided that this issue was best addressed in the Regulations Governing Local School Boards and School Divisions which set forth the responsibilities of local school boards in the selection of instructional materials and textbooks.

## Regulatory flexibility analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, please 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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.*

These regulations are not expected to 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 was announced during the NOIRA stage, please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (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.*

Not applicable.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Generally support (682)	<p>Parents have the right to direct their child's education.</p> <p>Amending the regulations would not restrict what children may read.</p> <p>Amending the regulations would standardize what is already common practice in many localities.</p> <p>There are notification and opt out policies in Family Life Education – reading materials of a sensitive nature should be treated the same way.</p> <p>Critical thinking skills do not require children to read about rape, violence against children, etc.</p> <p>These provisions would give parents an opportunity to review the materials before the materials are presented to their students.</p> <p>Parents are in the best position to discuss these issues with their children.</p> <p>Thank you for requiring parental notification.</p> <p>We reserve the right to choose</p>	<p>The regulations will be amended by the addition of language that requires local school boards to provide parents and legal guardians an annual notice identifying any sexually explicit materials that may be included in a course, inclusive of the textbook, or any supplemental materials and to provide non-explicit instructional material and related academic activities to any student whose parent or legal guardian so requests, as a replacement for instructional material and related academic activities that include sexually explicit content. These changes will provide parents and legal guardians options and give them an opportunity to opt-out if they so choose.</p> <p>There is no censorship of the instructional materials and these regulations will not impact those students who have not requested replacement of materials.</p>

	<p>appropriate materials for our children.                  Parents should be notified in advance that these materials are being used in the classroom.                  Unless related to Family Life Education of biology, I believe anything sexually explicit has no place in the classroom.                  Parental involvement in every developmental aspect of our children’s lives can only be healthy and support the mission to educate well-rounded children.</p>	
<p>Generally oppose (701)</p>	<p>This is censorship.                  The wording is too vague.                  Who will define <i>sexually explicit</i>?                  It should be up to the teacher and department heads to determine what is graphic.                  Identification of such material is an impossible task for the teacher.                  English Teacher Associations objected to HB 516 and continue to express their concerns.                  Parents have the right to censor for their children, but not for others.                  Determining what is sensitive or controversial varies from family to family.                  The task of noting every instance of a sensitive issue on a syllabus would be overly burdensome.                  Books should not be judged by a couple of offensive words.                  The community should trust the teachers’ judgement.                  This amendment would stifle education.                  If this amendment was in effect, how could teachers amend their lesson plans throughout the year to take into consideration a news story or students’ needs?                  There are already processes in place to ensure materials are in line with Standards of Learning and there are policies in place for parents to discuss concerns with teachers and challenge controversial materials (and for students to receive alternative materials) – this is a local issue and should be handled by local school</p>	<p>The current regulation requires local school boards to adopt policies and criteria that permit parents to inspect upon request any instructional materials. The proposed amendment requires local school boards to adopt policies and criteria that would give all parents or legal guardians an opportunity to make decisions for their students, as they deem appropriate. A parent’s decision regarding these matters would not impact other students.</p> <p>These regulations do not include a prohibition on the selection or use of materials. The proposed language leaves the definition of “sexually explicit” to the local school board and its community. There is no censorship for students whose parents do not request replacement materials or activities..                  Decisions regarding these matters would be made by the local school boards based on community needs. This amendment requires notification to be made and procedures and policies to be in place.</p>

	<p>boards.                  This amendment would be dangerous to the free practice of education (it borders on censorship).                  Many commenters support parental involvement and agreed that parents need to be actively engaged with teachers regarding the education of their children, but stated this is not the way to go about engaging parents.                  This amendment would implicitly encourage schools to avoid material that might elicit objections, regardless of merit.                  The department has received letters regarding this issue from the Kids' Right to Read Project, the National Council of Teachers of English, the American Association of School Librarians, and the Virginia Association of School Librarians.                  The letters from the Kids' Right to Read Project was signed by representatives from the National Coalition Against Censorship, the American Civil Liberties Union of Virginia, the Comic Book Legal Defense Fund, the Association of American Publishers, the Children's and Young Adult Book Committee, the American Booksellers for Free Expression, and the Authors Guild.                  Each of these organizations opposes the amendments.                  Moreover, a letter was received from a professor and an associate professor at the Virginia Commonwealth University School of Education. They oppose the amendments due to concerns about their impact on all courses, the undue burden on teachers, and concerns about censorship.</p>	
<p>Other (13)</p>	<p>The term <i>controversial and sensitive</i> needs to be defined. Parents should be able to opt-in rather than opt-out.                  The initial proposal may be appropriate for some ages, but not for all.                  One person provided examples of activities parents can opt out of, including surveys and directory</p>	<p>Since local school boards know best the expectations of their communities, the Board is not proposing a definition of sexually explicit.                  The regulations, as proposed, will require local school boards to provide parents and legal guardians an annual notice identifying any sexually explicit materials that may be included in a course, inclusive of the textbook, or any supplemental materials; to provide an</p>

	information.	opportunity to review such materials; and to provide non-explicit instructional material and related academic activities to any student whose parent or legal guardian so requests, as an alternative to instructional material and related academic activities that include sexually explicit content. These changes will provide parents and legal guardians options and give them an opportunity to opt-out if they so choose with an opportunity to use an alternative.
Repeaters (13)	Some commenters provided comments multiple times. These were duplicates posted in error.	
<b>Total (1,396)</b>		

Here is an explanation of the public comments received under the 2013 NOIRA:

Generally Support	611	49.23%
Generally Oppose	604	48.67%
Other	13	1.05%
Repeat	13	1.05%
<b>TOTAL</b>	<b>1,241</b>	<b>100.00 %</b>

**Breakdown of Support**

Of all the comments received, 611 were generally supportive.

While not all commenters identified themselves, a general breakdown of the supporters is provided below:

Parent	29%
Educator	2%
Student	2%
University	0%
Unidentified	67%

Of all the comments received, 604 were generally opposed.

While not all commenters identified themselves a general breakdown of the opposition is provided below:

Parent	12%
Educator	47%
Student	4%
University	1%
Unidentified	36%

Since October 2016, the Board has received 74 comments in support of the amendments and 97 comments in opposition to the amendments. This included letters regarding this issue from the Kids’ Right to Read Project, the National Council of Teachers of English, the American Association of School Librarians, and the Virginia Association of School Librarians. The letters from the Kids’ Right to Read Project was signed by representatives from the National Coalition Against Censorship, the American Civil Liberties Union of Virginia, the Comic

Book Legal Defense Fund, the Association of American Publishers, the Children’s and Young Adult Book Committee, the American Booksellers for Free Expression, and the Authors Guild. Each of these organizations opposes the proposed amendments. A letter also was received from a professor and an associate professor at the Virginia Commonwealth University School of Education. They, too, oppose the amendments due to concerns about their impact on all courses, the undue burden on teachers, and concerns about censorship.

The commenters continue to post common themes. Those in support of these amendments continue to ask for the notification of parents prior to use of sexually explicit instructional materials in the classroom. Some parents indicated that they believe it is their responsibility to discuss these matters with their children. One parent asked that parents be notified every time such materials are used. One parent commented that this should not be an issue since there are so many other reading materials to choose from; therefore, this type of material can be avoided. Several individuals commented that parents should decide what their children are taught. Several parents specifically mentioned those materials referencing bestiality, rape of any kind, incest, or pedophilia and asked for advance notice of these materials. Some commenters supported the amendments, but did not include any details explaining why.

Common themes also continued to be posted by those who oppose these amendments. Some said these amendments are not necessary because teachers are always willing to give alternative assignments. Some said this process would be over-burdensome to teachers. Some asked how the term *sexually explicit* would be defined. (This would be left up to the local school board.) Many said this was censorship. (The regulations allow individual parents and legal guardians to ask for replacement materials. The current regulation also requires local school boards to adopt policies and criteria that “shall include, at a minimum, the basis upon which a person may seek reconsideration of the local school board’s selection of instruction material, including but not limited to, materials that might be considered sensitive or controversial.” In the proposal this requirement has been expanded to include sexually explicit materials. Some commenters asked that teachers be trusted to make the right decisions regarding instructional materials. (These regulations do not take that responsibility away from teachers.) One person said this process would allow the minority to dictate the curriculum to the majority. However, policy regarding these matters would be set by the local school board and would not impact students state-wide.

Here is the number of public comments received in the last few months:

Commenter	Oppose	Support	Generally
			Support, but oppose beginning of year notification (Other)
Association	9	0	0
Other	53	44	2
University	7	0	0
Educator	15	0	1
Parent	4	30	0
Student	<u>9</u>	<u>0</u>	<u>0</u>

Total (174)	97	74	3
Generally oppose	56%		
Generally support	43%		
Other	1%		

### Family impact

*Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent 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.*

This regulatory action will impact the families in Virginia by requiring each public school to:

- Provide an annual notification to the parent or legal guardian of any student whose teacher expects to provide instructional material that includes sexually explicit content
- As an alternative to instructional material and related academic activities that include sexually explicit content, provide replacement non-explicit replacement instructional material and non-explicit related academic activities to any student whose parent or legal guardian so requests.

Parents or legal guardians who have concerns about these issues will have an opportunity to have them addressed by the local school board.

### Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.*

For changes to existing regulation(s), please use the following chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
<a href="#">8VAC20-720-160</a>	Not applicable	The current regulation does not address sexually explicit instructional material, but addresses sensitive or	The revised regulation will require that schools at the beginning of the school year provide an annual notification to the parent or legal guardian of any student

		controversial materials. It does require local school boards to adopt policies and criteria for the selection of instructional materials that shall include at a minimum the rights of parents to inspect any instructional materials used as part of the curriculum, the basis upon which a person may seek reconsideration of that selection, and clear procedures for handling challenged materials.	whose teacher expects to provide instructional material that includes sexually explicit content; and, as an alternative to instructional material and related academic activities that include sexually explicit content, provide as a replacement non-explicit instructional material and non-explicit related academic activities to any student whose parent or legal guardian so requests. During the school year, the same provisions would apply to any sexually explicit materials not previously included.
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If an existing regulation or regulations (or parts thereof) are being repealed and replaced by one or more new regulations, please use the following chart:

Current chapter-section number	Proposed new chapter-section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
N/A			

If a new regulation is being promulgated, that is not replacing an existing regulation, please use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
N/A			

If the proposed regulation is intended to replace an emergency regulation, and the proposed regulation is identical to the emergency regulation, please choose and fill out the appropriate chart template from the choices above. In this case “current section number” or “current chapter-section number” would refer to the **pre-emergency** regulation.

If the proposed regulation is intended to replace an emergency regulation, and the proposed regulation includes changes since the emergency regulation, please create two charts: 1) a chart describing changes from the **pre-emergency** regulation to the proposed regulation as described in the paragraph above, and 2) a chart describing changes from the **emergency** regulation to the proposed regulation. For the second chart please use the following title: “Changes from the Emergency Regulation.” In this case “current section number” or “current chapter-section number” would refer to the **emergency** regulation.