| Virginia Board of Education Agenda Item | Seal of the Commonwealth of Virginia |
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# Agenda Item: D

## Date: March 22, 2018

### Title: First Review of Proposed Emergency Amendments to the *Regulations Establishing Standards for Accrediting Public Schools in Virginia* (8VAC20-131)(Emergency/NOIRA Stage) and Amendments to the Board’s Guidance on the use of Locally-Awarded Verified Credits

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## Purpose of Presentation:

Action required by state or federal law or regulation.

## Executive Summary:

The Board of Education approved comprehensive revisions to the Regulations Establishing Standards for the Accreditation of Public Schools in Virginia, more commonly referred to as the Standards of Accreditation or SOA, on November 16, 2017. These regulations have completed the Administrative Process Act review process and will become effective at the beginning of the 2018-2019 academic year.

The revised regulations make changes to graduation requirements, including the availability of locally-awarded verified credits. Under the existing and revised requirements, locally-awarded verified credits provide students the opportunity to receive a verified credit in a course that they have passed, but failed the related end-of-course Standards of Learning test twice within a narrow margin. To receive a locally-awarded verified credit, the student must take the test twice, score between 375 and 399 on one of the attempts, and demonstrate achievement and mastery in the academic content through a local appeal process.

The Standards of Accreditation applicable to first-time ninth graders until the 2018-2019 academic year limit the award of locally-awarded verified credit to science and history/social science. The revised graduation requirements that will take effect for first-time ninth graders beginning in the 2018-2019 school year will allow a student to earn one locally-awarded verified credit among English, mathematics, science, or history/social science.

These changes will result in inequitable opportunities to earn verified credits for students that will be attending high school at the same time. Current high school students that are struggling to pass either the English or mathematics end-of-course test will not have access to locally-awarded verified credits, while students that will enter the ninth grade beginning in the fall of 2018-2019 will.

To provide parity among these high school cohorts, and to help current students earn their diplomas for graduation in the spring of 2018, the Board would need to adopt emergency regulations to extend the availability of a locally-awarded verified credit to English and mathematics for students who entered the ninth grade prior to the 2018-2019 school year. In addition, the Board’s guidance document governing the award of locally-awarded verified credit would need to be updated to extend the use of locally-awarded verified credits in English and mathematics for current students.

These proposed amendments align with Priority 1 in the Board’s Comprehensive Plan, since they will help provide high-quality, effective learning environments for all students by advancing policies that expand equitable opportunities.

## Action Requested:

Other. Specify below:

The Board is requested to waive first review and approve the emergency regulations and revised guidance.

## Superintendent’s Recommendation:

The Superintendent of Public Instruction recommends the Board of Education waive first review and approve the proposed emergency amendments to the *Regulations Establishing Standards for Accrediting Public Schools in Virginia* (Emergency/NOIRA Stage). Further action would be governed by the requirements of the Administrative Process Act.

The Superintendent of Public Instruction also recommends the Board of Education waive first review and approve the proposed amendments to the Board’s guidance on the use of locally-awarded verified credits, subject to the approval of the proposed emergency regulations.

## Rationale for Action:

Expedited regulatory action is necessary to ensure that existing high school students, including students graduating in the spring of 2018, will have access to locally-awarded verified credits in the same subject areas as their younger peers.

## Previous Review or Action:

No previous review or action.

Date: September 28, 2017

## Background Information and Statutory Authority:

The *Code of Virginia* requires the Board to prescribe standards for the accreditation of public elementary, middle, and high schools. Section 22.1-19 of the *Code* provides, in part:

The Board shall provide for the accreditation of public elementary, middle, and high schools in accordance with standards prescribed by it…

Section 22.1-253.13:4 of the *Code* further specifies that the Board shall prescribe the requirements for graduation:

A. Each local school board shall award diplomas to all secondary school students, including students who transfer from nonpublic schools or from home instruction, who meet the requirements prescribed by the Board of Education and meet such other requirements as may be prescribed by the local school board and approved by the Board of Education...

The Board of Education approved comprehensive revisions to the Regulations Establishing Standards for the Accreditation of Public Schools in Virginia, more commonly referred to as the Standards of Accreditation or SOA, on November 16, 2017. These regulations become effective at the beginning of the 2018-2019 academic year.

Under the existing and revised SOA, locally-awarded verified credits provide students the opportunity to receive a verified credit in a course that they have passed, but failed the end-of-course Standards of Learning test twice within a narrow margin. The Board’s adopted guidance document governing locally-awarded verified credit provides that in order to receive a locally-awarded verified credit, the student must take the test twice, score between 375 and 399 on one of the attempts, and demonstrate achievement and mastery in the relevant academic content through a local appeal process.

The revised regulations change the availability of locally-awarded verified credit for students entering the ninth grade beginning in 2018-2019. These students will be able to access no more than one locally-awarded verified credit among English, mathematics, science, or history/social science. Students entering the ninth grade prior to the 2018-2019 academic year remain subject to the existing regulations and Board guidance, which limit the award of locally-awarded verified credits to science, or history/social science. These students may apply these locally-awarded verified credits to the Standard diploma requirement to earn one verified credit each in science, in history/social science, and one of the student’s choosing.

These changes will result in inequitable opportunities to earn verified credits for students that will be attending high school at the same time. Current high school students that are struggling to pass either the English or mathematics end-of-course test will not have access to locally-awarded verified credits, while students that will enter the ninth grade beginning in the fall of 2018-2019 will.

To provide parity among these high school cohorts, and to help current students earn their diplomas for graduation in the spring of 2018, the Board would need to adopt emergency regulations to extend the availability of a locally-awarded verified credit to English and mathematics for students who entered the ninth grade prior to the 2018-2019 school year. In addition, the Board’s guidance document governing the award of locally-awarded verified credit would need to be updated to extend the use of locally-awarded verified credits in English and mathematics for current students.

The *Code of Virginia* establishes the authority for the Board of Education to adopt regulations necessitated by an emergency situation, subject to the discretion of the Governor. These proposed emergency amendments are necessary because the new regulations will create different access to locally-awarded verified credits for students subject to the current graduation requirements. Without this emergency action, students that need to access locally-awarded verified credits in English and mathematics in order to graduate, beginning with the spring of 2018, will not be able to meet the requirements for graduation, while their younger peers (students subject to the graduation requirements effective with beginning in the 2018-2019 school year) will have such access.

Emergency regulations take effect immediately upon publication in the *Virginia Register*, and are limited to 18 months in duration; therefore, simultaneously the development of the permanent regulations would occur. This is outlined in § 2.2-4011 of the *Code,* which states, in part:

§ 2.2-4011. Emergency regulations; publication; exceptions.

A. Regulations that an agency finds are necessitated by an emergency situation may be adopted by an agency upon consultation with the Attorney General, which approval shall be granted only after the agency has submitted a request stating in writing the nature of the emergency, and the necessity for such action shall be at the sole discretion of the Governor…

C. All emergency regulations shall be limited to no more than 18 months in duration. During the 18-month period, an agency may issue additional emergency regulations as needed addressing the subject matter of the initial emergency regulation, but any such additional emergency regulations shall not be effective beyond the 18-month period from the effective date of the initial emergency regulation. If the agency wishes to continue regulating the subject matter governed by the emergency regulation beyond the 18-month limitation, a regulation to replace the emergency regulation shall be promulgated in accordance with this article. The Notice of Intended Regulatory Action to promulgate a replacement regulation shall be filed with the Registrar within 60 days of the effective date of the emergency regulation and published as soon as practicable, and the proposed replacement regulation shall be filed with the Registrar within 180 days after the effective date of the emergency regulation and published as soon as practicable.

D. In the event that an agency concludes that despite its best efforts a replacement regulation cannot be adopted before expiration of the 18-month period described in subsection C, it may seek the prior written approval of the Governor to extend the duration of the emergency regulation for a period of not more than six additional months. Any such request must be submitted to the Governor at least 30 days prior to the scheduled expiration of the emergency regulation and shall include a description of the agency's efforts to adopt a replacement regulation together with the reasons that a replacement regulation cannot be adopted before the scheduled expiration of the emergency regulation. Upon approval of the Governor, provided such approval occurs prior to the scheduled expiration of the emergency regulation, the duration of the emergency regulation shall be extended for a period of no more than six months. Such approval shall be in the sole discretion of the Governor and shall not be subject to judicial review. Agencies shall notify the Registrar of Regulations of the new expiration date of the emergency regulation as soon as practicable.

E. Emergency regulations shall be published as soon as practicable in the Register…

## Timetable for Further Review/Action:

The timetable for further action shall be governed by the requirements of the Administrative Process Act.

## Impact on Fiscal and Human Resources:

The administrative impact required in promulgating these regulations will be absorbed within existing resources at the department.

# ATTACHMENT A

## PROPOSED EMERGENCY REGULATIONS TO AMEND THE STANDARDS OF ACCREDITATION, AS EFFECTIVE UNTIL THE 2018-2019 ACADEMIC YEAR, AND AS EFFECTIVE BEGINNING WITH THE 2018-2019 ACADEMIC YEAR

### 8VAC20-131-110. Standard and verified units of credit. (as it is effective until the beginning of the 2018-2019 academic year)

A. The standard unit of credit for graduation shall be based on a minimum of 140 clock hours of instruction and successful completion of the requirements of the course. When credit is awarded in less than whole units, the increment awarded must be no greater than the fractional part of the 140 hours of instruction provided. If a school division elects to award credit on a basis other than the 140 clock hours of instruction required for a standard unit of credit defined in this subsection, the local school division shall provide the Board of Education with satisfactory proof, based on board guidelines, that the students for whom the 140-clock-hour requirement is waived have learned the content and skills included in the relevant Standards of Learning. In addition, the local school division shall develop a written policy approved by the superintendent and school board that ensures:

1. That the content of the course for which credit is awarded is comparable to 140 clock hours of instruction; and

2. That upon completion, the student will have met the aims and objectives of the course.

B. A verified unit of credit for graduation shall be based on a minimum of 140 clock hours of instruction, successful completion of the requirements of the course, and the achievement by the student of a passing score on the end-of-course SOL test for that course or additional tests as described in this subsection. A student may also earn a verified unit of credit by the following methods:

1. In accordance with the provisions of the Standards of Quality, students may earn a standard and verified unit of credit for any elective course in which the core academic SOL course content has been integrated and the student passes the related end-of-course SOL test. Such course and test combinations must be approved by the Board of Education.

2. Upon waiver of the 140-clock-hour requirement according to Board of Education guidelines, qualified students who have received a standard unit of credit will be permitted to sit for the relevant SOL test to earn a verified credit without having to meet the 140-clock-hour requirement.

3. Students who do not pass Standards of Learning tests in ***English, mathematics,*** science or history and social science may receive locally awarded verified credits from the local school board in accordance with criteria established in guidelines adopted by the Board of Education.

C. The Board of Education may from time to time approve additional tests for the purpose of awarding verified credit. Such additional tests, which enable students to earn verified units of credit, must, at a minimum, meet the following criteria:

1. The test must be standardized and graded independently of the school or school division in which the test is given;

2. The test must be knowledge based;

3. The test must be administered on a multistate or international basis, or administered as part of another state's accountability assessment program; and

4. To be counted in a specific academic area, the test must measure content that incorporates or exceeds the SOL content in the course for which verified credit is given.

The Board of Education will set the score that must be achieved to earn a verified unit of credit on the additional test options.

D. With such funds as are appropriated by the General Assembly, the Board of Education will provide opportunities for students who meet criteria adopted by the board to have an expedited retake of a SOL test to earn verified credit.

### 8VAC20-131-110. Standard and Verified Units of Credit. (as it is effective beginning with the 2018-2019 academic year)

A. A "standard unit of credit" or "standard credit" is a credit awarded for a course in which the student successfully completes 140 clock hours of instruction and the requirements of the course. A school division may waive the requirement that a student receive 140 clock hours of instruction to earn a standard credit, effective with students enrolled in the 2015-2016 school year, as prescribed in the Standards of Quality and board guidelines. When credit is awarded in less than whole units, the increment awarded must be no greater than the fractional part of the 140 hours of instruction provided. If a school division elects to award credit on a basis other than the 140 clock hours of instruction required for a standard unit of credit defined in this subsection, the local school division shall provide the board with satisfactory proof, based on board guidelines, that the students for whom the 140-clock-hour requirement is waived have learned the content and skills included in the relevant Standards of Learning. In addition, the local school division shall develop a written policy approved by the superintendent and school board that ensures:

1. That the content of the course for which credit is awarded is comparable to 140 clock hours of instruction; and

2. That upon completion, the aims and objectives of the course have been met.

B. A "verified unit of credit" or "verified credit" is a credit awarded for a course in which a student earns a standard unit of credit and completes one of the following:

1. Achieves a passing score on a corresponding end-of-course SOL test. In accordance with the provisions of the Standards of Quality, students may earn a standard and verified unit of credit for any elective course in which the core academic Standards of Learning course content has been integrated and the student passes the related end-of-course SOL test. Such course and test combinations must be approved by the board.

Upon waiver of the 140-clock-hour requirement according to board guidelines, qualified students who have received a standard unit of credit shall be permitted to sit for the relevant SOL test to earn a verified credit without having to meet the 140-clock-hour requirement.

2. Achieves a passing score on an additional test, as defined in 8VAC20-131-5, as a part of the Virginia Assessment Program.

3. Meets the criteria for the receipt of a locally awarded verified credit when the student has not passed a corresponding SOL test.

a. Students who enter the ninth grade for the first time prior to the 2018-2019 school year and do not pass SOL tests in ***English, mathematics,*** science or history and social science may receive locally awarded verified credits from the local school board in accordance with criteria established in guidelines adopted by the board. Credit accommodations for students with disabilities may be used to confer locally awarded verified credits as provided in 8VAC20-131-50 B 3.

b. Students who enter the ninth grade for the first time in the 2018-2019 school year or thereafter and do not pass SOL tests in English, mathematics, laboratory science, or history and social science may receive locally awarded verified credits from the local school board in accordance with criteria established in guidelines adopted by the board. No more than one locally awarded verified credit may be used to satisfy graduation requirements, except as provided in 8VAC20-131-51 B 3 for students with disabilities seeking a standard diploma.

4. Meets the criteria for the receipt of a verified credit in history and social science by demonstrating mastery of the content of the associated course on an authentic performance assessment that complies with guidelines adopted by the board. Such students shall not also be required to take the corresponding SOL test in history and social science.

5. Meets the criteria for the receipt of a verified credit in English (writing) by demonstrating mastery of the content of the associated course on an authentic performance assessment, that complies with guidelines adopted by the board. Such students shall not also be required to take the corresponding SOL test in English (writing).

C. The board may from time to time approve additional tests for the purpose of awarding verified credit. Such additional tests, which enable students to earn verified units of credit, must, at a minimum, meet the following criteria:

1. The test must be standardized and graded independently of the school or school division in which the test is given;

2. The test must be knowledge based;

3. The test must be administered on a statewide, multistate, or international basis, or administered as part of another state's accountability assessment program; and

4. To be counted in a specific academic area, the test must measure content that incorporates or exceeds the Standards of Learning content in the course for which verified credit is given.

The board shall set the score that must be achieved to earn a verified unit of credit on the additional test options.

D. With such funds as are appropriated by the General Assembly, the board shall provide opportunities for students who meet criteria adopted by the board to have an expedited retake of a SOL test to earn verified credit.

### 8VAC20-131-430. Effective Dates.

A. Graduation requirements.

1. The graduation requirements for students entering the ninth grade for the first time in the 2013–2014 school year and prior to the 2018–2019 school year shall be those provided in 8VAC20-131-50.

2. The graduation requirements for students entering the ninth grade for the first time in the 2018-2019 school year and beyond shall be those provided in 8VAC20-131-51.

3. The graduation requirements applicable to students transferring into a Virginia high school for the first time shall be as determined by 8VAC20-131-60 G.

B. Locally awarded verified credits.

1. Locally awarded verified credits conferred for ***English, mathematics, laboratory science, and*** history and social science for students entering the ninth grade for the first time prior to the 2018–2019 school year shall be as provided in 8VAC20-131-110 B 3 a.

2. Locally awarded verified credits conferred for English, mathematics, laboratory science, and history and social science for students entering the ninth grade for the first time in 2018–2019 or thereafter shall be as provided in 8VAC20-131-110 B 3 b.

C. Academic and career planning.

1. The requirements for academic and career planning prescribed in 8VAC20-131-140 B shall be effective beginning with the 2013–2014 academic year and through the 2017–2018 academic year.

2. The requirements for Academic and Career Plans prescribed in 8VAC20-131-140 C shall be effective beginning with the 2018–2019 academic year.

D. The application of the college, career, and civic readiness index as a school quality indicator used for accreditation shall be made no later than the 2021–2022 school year.

E. Unless otherwise specified, the remainder of this chapter shall become effective beginning with the 2018–2019 academic year.

# ATTACHMENT B

## PROPOSED AMENDMENTS TO BOARD GUIDANCE GOVERNING THE USE OF LOCALLY-AWARDED VERIFIED CREDITS

### STANDARD: 8 VAC 20-131-110. Standard and Verified Units of Credit (ADOPTED: October 26, 2006)

#### Locally-Awarded Verified Credit Guidance:

~~The awarding of verified credit using this process applies only for the Standard Diploma retroactive to the ninth-grade class of 2003-2004. This process does not apply to awarding verified credit for an Advanced Studies Diploma.~~

***For students entering the ninth grade prior to the 2018-2019 academic year, no*** ~~No~~ more than ~~four~~ ***three*** verified credits may be awarded through this process and ~~these~~ ***locally-awarded verified credits*** may not be used to award verified credits for the Advanced Studies Diploma.

***For students entering the ninth grade in the 2018-2019 academic year or thereafter, no more than one verified credit may be awarded through this process.***

***Students eligible for credit accommodations shall not be subject to the limitations on the number of verified credits that may be awarded through this process.***

The award of verified credits under this guidance will not be used to recalculate a school’s accreditation rating.

To be eligible to earn locally awarded verified credits in ***English, mathematics,*** science, or history/social science under this guidance, a student must:

* Pass the high school course,
* Score within a 375-399 scale score range on any administration of the Standards of Learning test after taking the test at least twice, and
* Demonstrate achievement in the academic content through an appeal process administered at the local level.

The Board of Education requires that local school boards adopt policies to govern procedures used to award local verified credit. The appeal process will include:

* The appointment by the local school board of a local review panel comprised of at least three educators. Different panels may be appointed for individual schools or groups of schools, at the local school board’s discretion.
* The local review panel will review information that provides evidence of the student’s achievement of adequate knowledge of the Standards of Learning content. The panel shall have discretion in determining the information to be considered and may include, but not be limited to, results of classroom assessments, divisionwide exams, course grades, and additional academic assignments (e.g., papers, projects, essay or written questions) as deemed appropriate.
* Based on the evidence reviewed, the local review panel may award the verified credit, deny the verified credit, suggest participation in a remedial program and retesting, or make additional academic assignments as deemed appropriate prior to determining whether to award the verified credit.