# Agenda Item: G

## Date: July 27, 2023

## Title: First and Final Review of Regulatory Actions Following the 2023 Legislative Session

##

## Presenter: Jim Chapman, Director of Board Relations

##

## Email: Jim.Chapman@doe.virginia.gov Phone: 804-225-2924

## Purpose of Presentation

Action required by state or federal law or regulation (i.e., a change in law requires a change in program requirements; this is part of a regulatory action).

## Executive Summary

During the 2023 legislative session, the General Assembly passed—and the Governor subsequently signed—numerous bills that affect education in Virginia. Of those, Chapters [4](https://lis.virginia.gov/cgi-bin/legp604.exe?231+ful+CHAP0004+hil), [7](https://lis.virginia.gov/cgi-bin/legp604.exe?231+ful+CHAP0007+hil), [748](https://lis.virginia.gov/cgi-bin/legp604.exe?231+ful+CHAP0748+hil), and [771](https://lis.virginia.gov/cgi-bin/legp604.exe?231+ful+CHAP0771+hil) of the 2023 Acts of the Assembly (“Chapter 4,” “Chapter 7,” “Chapter 748,” and “Chapter 771,” respectively) require the Virginia Board of Education (“Board”) to amend its regulations.

Each of the regulatory changes included in this item are required by legislative mandate. The Board is not exercising discretion in the changes, but simply amending its regulations in order to align with legislative changes to the *Code of Virginia*. Accordingly, the actions are being presented as exempt actions under § [2.2-4006](https://law.lis.virginia.gov/vacode/title2.2/chapter40/section2.2-4006/)(A)(4)(a) of the *Code of Virginia*.

## Action Requested

Final review: Action requested at this meeting.

## Superintendent’s Recommendation

The Superintendent of Public Instruction recommends that the Board of Education waive first review and approve the regulatory changes included with this item.

## Rationale for Action

The Board is being asked to approve this action in order to keep its regulations consistent with the requirements of the *Code of Virginia* or in order to fulfill a directive approved by the General Assembly and the Governor.

## Previous Review or Action

No previous review or action.

## Background Information and Statutory Authority

Section [2.2-4006](https://law.lis.virginia.gov/vacode/title2.2/chapter40/section2.2-4006/)(A)(4)(a) of the *Code of Virginia* exempts from the operation of Article II of the Administrative Process Act regulations that are “necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. However, such regulations shall be filed with the Registrar within 90 days of the law’s effective date.”

[Chapter 4](https://lis.virginia.gov/cgi-bin/legp604.exe?231+ful+CHAP0004+hil) directs the Board to amend subdivisions [8VAC20-81-60](https://law.lis.virginia.gov/admincode/title8/agency20/chapter81/section60/)(B)(1)(g) and [8VAC20-81-70](https://law.lis.virginia.gov/admincode/title8/agency20/chapter81/section70/)(H)(2) and (3) of the [*Regulations Governing Special Education Programs for Children with Disabilities in Virginia*](https://law.lis.virginia.gov/admincode/title8/agency20/chapter81/section70/)to permit local educational agencies to shorten the deadline from 65 business days from the date of receipt of referral for an initial evaluation or a reevaluation of a child to determine eligibility for special education and related services.

[Chapter 7](https://lis.virginia.gov/cgi-bin/legp604.exe?231+ful+CHAP0007+hil) amends § [22.1-253.13:4](https://law.lis.virginia.gov/vacode/22.1-253.13%3A4/) of the *Code of Virginia* also to allow the Board to waive certain graduation requirements and award a high school diploma “upon the request of the parent of any high school senior who died in good standing prior to graduation during the student’s senior year.” The waiver process described in § [22.1-253.13:4](https://law.lis.virginia.gov/vacode/22.1-253.13%3A4/) is currently regulated in [8VAC20-131-420](https://law.lis.virginia.gov/admincode/title8/agency20/chapter131/section420/)(B) of the [*Regulations Establishing Standards for Accrediting Public Schools in Virginia*](https://law.lis.virginia.gov/admincode/title8/agency20/chapter131/).

[Chapter 748](https://lis.virginia.gov/cgi-bin/legp604.exe?231+ful+CHAP0748+hil) clarifies when the Board must extend a three-year provisional license issued to a teacher working in a school division by specifying that the division superintendent must provide satisfactory performance evaluations for the teacher *during* the original three-year provisional license *that such teacher was actually employed and received a filed performance evaluation*. The Board must amend [8VAC20-23-50](https://law.lis.virginia.gov/admincode/title8/agency20/chapter23/section50/)(A) of the [*Licensure Regulations for School Personnel*](https://law.lis.virginia.gov/admincode/title8/agency20/chapter23/section50/) in order to account for the additional statutory language.

[Chapter 771](https://lis.virginia.gov/cgi-bin/legp604.exe?231+ful+CHAP0771+hil) allows a teacher who has had a founded complaint of child abuse or neglect and whose license the Board has revoked to apply for reinstatement if a court reverses the finding of abuse or neglect. In such situation, the Board is required to consider and act upon the application for reinstatement within 90 days of submission. The statutory provision is being added to [8VAC20-23-720](https://law.lis.virginia.gov/admincode/title8/agency20/chapter23/section720/)(B) of the [*Licensure Regulations for School Personnel*](https://law.lis.virginia.gov/admincode/title8/agency20/chapter23/section50/)for clarity.

## Stakeholder Engagement

Since the regulatory changes are the result of activity by the General Assembly and Governor that require the Board’s actions, no stakeholder engagement has been performed.

## Implementation and Communication

Upon approval by the Board, the regulatory actions will be submitted to the Register of Regulations for publication in accordance with the Administrative Process Act.

## Impact on Fiscal and Human Resources:

Any fiscal impact was considered by the General Assembly and Governor.