



COMMONWEALTH of VIRGINIA
Department of Education

DATE: July 29, 2016
TO: Division Superintendents
FROM: Steven R. Staples, Superintendent of Public Instruction
SUBJECT: **Flexibility Provisions in the *Code of Virginia* and the 2016 Appropriation Act**

In recent years, the Virginia General Assembly has approved a number of statutory and budgetary measures intended to give flexibility to school divisions related to staffing as well as the provision of instruction and certain services. The purpose of this memorandum is to provide a compendium of these measures and to distinguish those that require a waiver from the Board of Education (Board) from the automatic provisions for which a waiver is not required.

I. Statutory Flexibility

No Waiver Required

The flexibility provisions contained in the *Code of Virginia* § [22.1-253.13:2](#) (emphasis added) are automatic and do not require a waiver from the Board. The flexibility provisions are shown in italicized text.

§ [22.1-253.13:2](#). Standard 2. Instructional, administrative, and support personnel.

E. In addition to the positions supported by basic aid and in support of regular school year programs of prevention, intervention, and remediation, state funding, pursuant to the appropriation act, shall be provided to fund certain full-time equivalent instructional positions for each 1,000 students in grades K through 12 who are identified as needing prevention, intervention, and remediation services. State funding for prevention, intervention, and remediation programs provided pursuant to this subsection and the appropriation act may be used to support programs for educationally at-risk students as identified by the local school boards.

To provide algebra readiness intervention services required by § [22.1-253.13:1](#), school divisions may employ mathematics teacher specialists to provide the required algebra readiness intervention services. School divisions using the Standards of Learning Algebra Readiness Initiative funding in this manner shall only employ instructional personnel licensed by the Board of Education.¹

F. In addition to the positions supported by basic aid and those in support of regular school year programs of prevention, intervention, and remediation, state funding, pursuant to the appropriation act, shall be provided to support 17 full-time equivalent instructional positions for each 1,000 students identified as having limited English proficiency.

To provide flexibility in the instruction of English language learners who have limited English proficiency and who are at risk of not meeting state accountability standards, school divisions may use state and local funds from the Standards of Quality Prevention, Intervention, and Remediation account to employ additional English language learner teachers to provide instruction to identified limited English proficiency students. Using these funds in this manner is intended to supplement the instructional services provided in this section. School divisions using the SOQ Prevention, Intervention, and Remediation funds in this manner shall employ only instructional personnel licensed by the Board of Education.²

G. In addition to the full-time equivalent positions required elsewhere in this section, each local school board shall employ the following reading specialists in elementary schools, one full-time in each elementary school at the discretion of the local school board.

To provide reading intervention services required by § [22.1-253.13:1](#), school divisions may employ reading specialists to provide the required reading intervention services. School divisions using the Early Reading Intervention Initiative funds in this manner shall employ only instructional personnel licensed by the Board of Education.³

H. Each local school board shall employ, at a minimum, the following full-time equivalent positions for any school that reports fall membership, according to the type of school and student enrollment:

2. Assistant principals in elementary schools, one half-time at 600 students, one full-time at 900 students; assistant principals in middle schools, one full-time for each 600 students; assistant principals in high schools, one full-time for each 600 students; *and school divisions that employ a sufficient number of assistant principals to meet this staffing requirement may assign assistant principals to schools within the division according to the area of greatest need, regardless of whether such schools are elementary, middle, or secondary;*⁴

3. Librarians in elementary schools, one part-time to 299 students, one full-time at 300 students; librarians in middle schools, one-half time to 299 students, one full-time at 300 students, two full-time at 1,000 students; librarians in high schools, one half-time to 299 students, one full-time at 300 students, two full-time at 1,000 students. *Local school divisions that employ a sufficient number of librarians to meet this staffing requirement may assign librarians to schools within the division according to the area of greatest need, regardless of whether such schools are elementary, middle, or secondary; and*

4. Guidance counselors in elementary schools, one hour per day per 100 students, one full-time at 500 students, one hour per day additional time per 100 students or major fraction thereof; guidance counselors in middle schools, one period per 80 students, one full-time at 400 students, one additional period per 80 students or major fraction thereof; guidance counselors in high schools, one period per 70 students, one full-time at 350 students, one additional period per 70 students or major fraction thereof. *Local school divisions that employ a sufficient number of guidance counselors to meet this staffing requirement may assign guidance counselors to schools within the division according to the area of greatest need, regardless of whether such schools are elementary, middle, or secondary.*⁵

J. Local school boards shall employ two full-time equivalent positions per 1,000 students in grades kindergarten through 12, one to provide technology support and one to serve as an instructional technology resource teacher.

*To provide flexibility, school divisions may use the state and local funds for instructional technology resource teachers to employ a data coordinator position, an instructional technology resource teacher position, or a data coordinator/instructional resource teacher blended position. The data coordinator position is intended to serve as a resource to principals and classroom teachers in the area of data analysis and interpretation for instructional and school improvement purposes, as well as for overall data management and administration of state assessments. School divisions using these funds in this manner shall employ only instructional personnel licensed by the Board of Education.*⁶

O. Each local school board shall provide those support services that are necessary for the efficient and cost-effective operation and maintenance of its public schools.

For the purposes of this title, unless the context otherwise requires, "support services positions" shall include the following:...

8. School-based clerical personnel in elementary schools; part-time to 299 students, one full-time at 300 students; clerical personnel in middle schools; one full-time and one additional full-time for each 600 students beyond 200 students and one full-time for the library at 750 students; clerical personnel in high schools; one full-time and one additional full-time for each 600 students beyond 200 students and one full-time for the library at 750 students. *Local school divisions that employ a sufficient number of school-based clerical*

personnel to meet this staffing requirement may assign the clerical personnel to schools within the division according to the area of greatest need, regardless of whether such schools are elementary, middle, or secondary.

Pursuant to the appropriation act, support services shall be funded from basic school aid. *School divisions may use the state and local funds for support services to provide additional instructional services.*⁷

Waiver Required

Unlike the other provisions outlined in this memorandum, flexibility pursuant to *Code* § [22.1-253.13:3\(H\)](#) is not automatic. Instead, a waiver must be granted by the Board based on a request from the division superintendent and chairman of the school board. The required waiver form is attached.

§ [22.1-253.13:3](#). Standard 3. Accreditation, other standards, assessments, and releases from state regulations.

H. Any school board may request the Board of Education for release from state regulations or, on behalf of one or more of its schools, for approval of an Individual School Accreditation Plan for the evaluation of the performance of one or more of its schools as authorized for certain other schools by the Standards of Accreditation pursuant to [8VAC20-131-280](#) C of the Virginia Administrative Code. Waivers of regulatory requirements may be granted by the Board of Education based on submission of a request from the division superintendent and chairman of the local school board. The Board of Education may grant, for a period up to five years, a waiver of regulatory requirements that are not (i) mandated by state or federal law or (ii) designed to promote health or safety. The school board shall provide in its waiver request a description of how the releases from state regulations are designed to increase the quality of instruction and improve the achievement of students in the affected school or schools. The Department of Education shall provide (a) guidance to any local school division that requests releases from state regulations and (b) information about opportunities to form partnerships with other agencies or entities to any local school division in which the school or schools granted releases from state regulations have demonstrated improvement in the quality of instruction and the achievement of students.

The Board of Education may also grant local school boards waivers of specific requirements in § [22.1-253.13:2](#), based on submission of a request from the division superintendent and chairman of the local school board, permitting the local school board to assign instructional personnel to the schools with the greatest needs, so long as the school division employs a sufficient number of personnel divisionwide to meet the total number required by § [22.1-253.13:2](#) and all pupil/teacher ratios and class size maximums set forth in subsection C of § [22.1-253.13:2](#) are met. The school board shall provide in its request a description of how the waivers from specific Standards of Quality staffing standards are designed to increase the quality of instruction and improve the achievement of students in the affected school or schools. The waivers may be renewed in up to five-year increments, or revoked, based on student achievement results in the affected school or schools.⁸

II. 2016 Appropriation Act Flexibility⁹

The flexibility provisions that follow are found in [Item 139](#) of the 2016 Appropriation Act and do not require a waiver from the Board.

A. Definitions

Item 139.A.17 and 18

17. To provide temporary flexibility, notwithstanding any other provision in statute or in this Item, school divisions may elect to increase the teacher to pupil staffing ratios in kindergarten through grade 7 and English classes for grades 6 through twelve by one additional student; the teacher to pupil staffing ratio requirements for Elementary Resource teachers, Prevention, Intervention and Remediation, English as a Second Language, Gifted and Talented, Career and Technical funded programs (other than on Career and Technical courses

where school divisions will have to maintain a maximum class size based on federal Occupational Safety & Health Administration safety requirements) are waived; and the instructional and support technology positions, librarians and guidance counselors staffing ratios for new hires are waived.

18. To provide additional flexibility, notwithstanding the provisions of § [22.1-79.1](#), *Code of Virginia*, any school division that was granted a waiver regarding the opening date of the school year for the 2011-12 school year under the good cause requirements shall continue to be granted a waiver for the 2016-17 school year and the 2017-2018 school year.

B. General Conditions

Item 139.B.7.d through .f

d. To provide flexibility, school divisions may use the state and local funds for instructional technology resource teachers required by the Standards of Quality to employ a data coordinator position, an instructional technology resource teacher position, or a data coordinator/instructional resource teacher blended position. The data coordinator position is intended to serve as a resource to principals and classroom teachers in the area of data analysis and interpretation for instructional and school improvement purposes, as well as for overall data management and administration of state assessments. School divisions using these SOQ funds in this manner shall only employ instructional personnel licensed by the Board of Education.

e. To provide flexibility in the provision of reading intervention services, school divisions may use the state Early Reading Intervention initiative funding provided from the Lottery Proceeds Fund and the required local matching funds to employ reading specialists to provide the required reading intervention services. School divisions using the Early Reading Intervention Initiative funds in this manner shall only employ instructional personnel licensed by the Board of Education.

f. To provide flexibility in the provision of mathematics intervention services, school divisions may use the state Standards of Learning Algebra Readiness initiative funding provided from the Lottery Proceeds Fund and the required local matching funds to employ mathematics teacher specialists to provide the required mathematics intervention services. School divisions using the Standards of Learning Algebra Readiness initiative funding in this manner shall only employ instructional personnel licensed by the Board of Education.

Item 139.B.24.a and .24.b

24.a. Any locality that has met its required local effort for the Standards of Quality accounts for FY 2017 and that has met its required local match for incentive or Lottery-funded programs in which the locality elected to participate in FY 2017 may carry over into FY 2018 any remaining state Direct Aid to Public Education fund balances available to help minimize any FY 2018 revenue adjustments that may occur in state funding to that locality. Localities electing to carry forward such unspent state funds must appropriate the funds to the school division for expenditure in FY 2018.

b. Any locality that has met its required local effort for the Standards of Quality accounts for FY 2018 and that has met its required local match for incentive or Lottery-funded programs in which the locality elected to participate in FY 2018 may carry over into FY 2019 any remaining state Direct Aid to Public Education fund balances available to help minimize any FY 2019 revenue adjustments that may occur in state funding to that locality. Localities electing to carry forward such unspent state funds must appropriate the funds to the school division for expenditure in FY 2019.

Item 139.B.25

25. Localities are encouraged to allow school boards to carry over any unspent local allocations into the next fiscal year. Localities are also encouraged to provide increased flexibility to school boards by appropriating state and local funds for public education in a lump sum.

C. Appovrtionment

9. Remedial Education Payments

Item 139.C.9.d

d. To provide flexibility in the instruction of English Language Learners who have limited English proficiency and who are at risk of not meeting state accountability standards, school divisions may use state and local funds from the SOQ Prevention, Intervention, and Remediation account to employ additional English Language Learner teachers to provide instruction to identified limited English proficiency students. Using these funds in this manner is intended to supplement the instructional services provided through the SOQ staffing standard of 17 instructional positions per 1,000 limited English proficiency students. School divisions using the SOQ Prevention, Intervention, and Remediation funds in this manner shall only employ instructional personnel licensed by the Board of Education.

9. Remedial Education Payments

g. Remedial Summer School

Item 139.C.9.g.1 and .2

1) This appropriation includes \$28,285,228 the first year and \$29,966,909 the second year from the general fund for the state's share of Remedial Summer School Programs. These funds are available to school divisions for the operation of programs designed to remediate students who are required to attend such programs during a summer school session or during an intersession in the case of year-round schools. These funds may be used in conjunction with other sources of state funding for remediation or intervention. School divisions shall have maximum flexibility with respect to the use of these funds and the types of remediation programs offered; however, in exercising this flexibility, students attending these programs shall not be charged tuition and no high school credit may be awarded to students who participate in this program.

2) For school divisions charging students tuition for summer high school credit courses, consideration shall be given to students from households with extenuating financial circumstances who are repeating a class in order to graduate.

10. K-3 Primary Class Size Reduction Payments

Item 139.C.10.d through .f

d. By October 15 of each year school divisions must provide data to the Department of Education that each participating school has a September 30 pupil/teacher ratio in grades K through 3 that meet the following criteria:

Qualifying School Percentage of Students Approved

| Eligible for Free Lunch, Three-Year Average | Grades K-3 School Ratio | Maximum Individual K-3 Class Size |
|----------------------------------------------------|--------------------------------|------------------------------------------|
| 30% but less than 45% | 19 to 1 | 24 |
| 45% but less than 55% | 18 to 1 | 23 |
| 55% but less than 65% | 17 to 1 | 22 |
| 65% but less than 70% | 16 to 1 | 21 |
| 70% but less than 75% | 15 to 1 | 20 |
| 75% or more | 14 to 1 | 19 |

e. School divisions may elect to have eligible schools participate at a higher ratio, or only in a portion of grades kindergarten through three, with a commensurate reduction of state and required local funds, if local conditions do not permit participation at the established ratio and/or maximum individual class size. In the event that a school division requires additional actions to ensure participation at the established ratio and/or

maximum individual class size, such actions must be completed by December 1 of the impacted school year. Special education teachers and instructional aides shall not be counted towards meeting these required pupil/teacher ratios in grades kindergarten through three.

f. The Superintendent of Public Instruction may grant waivers to school divisions for the class size requirement in eligible schools that have only one class in an affected grade level in the school.

31. Clinical Faculty and Mentor Teacher Program Payments

Item 139.C.31.d

d. The Department of Education shall allow flexibility to local school divisions and higher education institutions regarding compensation for clinical faculty and mentor teachers consistent with these elements of the programs;

33. Virginia Workplace Readiness Skills Assessment

Item 139.C.33

Appropriations in this Item include \$308,655 the first year and \$308,655 the second year from the general fund to provide support grants to school divisions for standard diploma graduates. To provide flexibility, school divisions may use the state grants for the actual assessment or for other industry certification preparation and testing.

Please contact the Office of Policy at (804) 225-2092 or by e-mail at policy@doe.virginia.gov if you have any questions or require additional information.

SRS/SBW/bj

Attachments:

- A. [Form: Request for Waiver of Certain Accrediting Standards and/or Approval of an Innovative or Experimental Program](#) (Word)

- 1) Reference [HB 2068](#) and [SB 1171](#) (2013) ^
- 2) Reference [HB 1792](#) and [SB 1270](#) (2011) ^
- 3) Reference [HB 2068](#) and [SB 1171](#) (2013) ^
- 4) Reference [HB 1792](#) and [SB 1270](#) (2011) ^
- 5) Reference [HB 2066](#) and [SB 1172](#) (2013) ^
- 6) Reference [HB 1792](#) and [SB 1270](#) (2011) ^
- 7) Reference [HB 1792](#) and [SB 1270](#) (2011) ^
- 8) Reference [HB 2089](#) and [SB 1189](#) (2013) ^
- 9) Reference [Item 139](#) ^