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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Board of Education
Virginia Administrative Code (VAC) Chapter citation(s)	____ VAC ____ - ____
VAC Chapter title(s)	
Action title	Virginia Early Childhood Unified Measurement and Improvement System Regulation
Date this document prepared	February 8, 2024

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

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

This regulatory action is to establish new regulations for the Virginia’s Early Childhood Unified Measurement and Improvement System, known as VQB5. Section [§22.1-289.05](#) of the *Code of Virginia* directs the Board of Education (“Board”) to establish a unified quality rating and improvement system for all publicly funded early childhood providers in order to improve school readiness in the Commonwealth. The *Code of Virginia* states that the quality rating and improvement system should be established by July 1, 2021, that there should be optional participation beginning in 2021-2022, and that participation becomes mandatory for publicly funded providers in the 2023-2024 school year with initial quality ratings published in the fall of 2024. The Board fulfilled these timebound requirements by establishing [Guidelines for VQB5](#)

[Practice Year 1](#) (approved in June 2021), [Guidelines for VQB5 Practice Year 2](#) (approved in June 2022), and [VQB5 Guidelines for 2023-2024](#) (approved in June 2023).

As of the 2023-2024 school year, VQB5 is now fully implemented and includes 3,288 birth-to-five programs, including school-based preschools, Head Start/Early Head Start programs, and child care centers and family day homes that participate in the child care subsidy or other forms of public subsidy.

This regulatory action will formally establish the requirements for the VQB5 unified measurement and improvement system. The proposed VQB5 regulations will specify which sites are legislatively required to participate, explain the key activities that participating sites must complete, and outline the consequences for refusal to participate.

[RIS2]

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

“Board” means the State Board of Education.

“VQB5” means the Virginia Quality Birth to Five System, which is the state’s unified measurement and improvement system for birth to five early care and education programs.

“Publicly funded provider” means any (i) educational program provided by a school division or local government to children between birth and age five or (ii) child day program that receives state or federal funds in support of its operations that serves three or more unrelated children.

"Publicly funded provider" does not include any program for which the sole source of public funding is the federal Child and Adult Care Food Program (CACFP) administered by the U.S. Department of Agriculture Food and Nutrition Service.

Mandate and Impetus

[RIS3]

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

The Board’s general authority to establish regulation is found in § 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 [Title 22.1 of the Code of Virginia].

Section [22.1-289.05](#) of the *Code of Virginia* directs the Board to “establish a uniform measurement and improvement system designed to provide parents and families with

information about the quality and availability of publicly funded providers.” The Board must establish consequences for providers who do not meet the expectations for participation or meet minimal quality standards. Establishing regulations will meet this requirement for the Board.

The Code also indicates that the Board must establish a set of regional entities that are responsible for coordinating early childhood care and education services, guiding quality improvement of such services and coordinated access to such services for families, and implementing the uniform measurement and improvement system.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The Board of Education has the statutory authority to establish a uniform measurement and improvement system. Section [22.1-289.05](#) of the *Code of Virginia* details the authority for the Board of Education and the requirements for the system and the participation requirements of the system.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

To prepare all children for kindergarten, Virginia’s public-private early childhood system must ensure that all children have quality teaching and learning experiences that meet their unique needs, regardless of which program or setting parents choose. However, Virginia’s kindergarten readiness data currently shows that four out of ten children enter school without the key literacy, math, and social-emotional skills needed.

Research shows that stimulating and supportive interactions between teachers and children and effective use of quality curricula promote children’s holistic learning and development, resulting in improved school readiness. To improve school readiness, Virginia must not only ensure that all publicly funded programs are providing experiences that support children to thrive, but also support continuous quality improvement in early childhood programs of all types, including public schools, Head Start/Early Head Start, child care, and family day homes. Virginia’s early childhood system serves 80,000 birth to five children with public funds in both public and private settings through state and federal funding. While families have choice in where they send

their child, Virginia has historically had limited information on how publicly funded programs compare in measures of quality and continuous improvement.

To strengthen early childhood experiences and better inform families, the Virginia General Assembly passed legislation in 2020 that required the Board of Education to establish a uniform measurement and improvement system, known as VQB5. VQB5 focuses on measurable indicators of quality, with the ultimate goal of promoting positive child outcomes through ongoing feedback and targeted improvement supports. All publicly funded birth to five programs are required to participate in this measurement and improvement system.

VQB5 measures the quality of infant, toddler, and preschool teaching and learning based on two nationally recognized quality indicators, 1) teacher-child interactions and 2) curriculum. Teacher-child interactions form the foundation for all social and cognitive learning and studies have shown that quality teacher-child interactions result in improved school readiness for all children. Using approved and effective curricula helps teachers support learning and development of critical learning skills in all early childhood programs and settings. Identifying curriculum that is aligned with Virginia's Early Learning and Development Standards helps ensure that all areas of children's learning and development is addressed.

Each year, every site will receive a VQB5 quality profile which includes information about performance on measurements (i.e., quality rating results) and other topics of interest to families, policymakers, and the general public. VDOE will create a VQB5 Quality Profile website to support families to choose quality programming across program types. The Board of Education, with recommendation from the Early Childhood Advisory Committee, will review and approve the final version of the public VQB5 quality profile. The Federal Office of Child Care also requires states to include quality rating information on a publicly accessible consumer education website for families, which VQB5 quality profiles fulfill.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The proposed regulatory action will establish the regulations needed for the Board to meet the requirements set forth in Section [22.1-289.05](#) of the *Code of Virginia*. In developing such regulations, the Board will consider the following:

- Establishing the consistent quality standards and measurements that are used to provide parents and families with information about the quality and availability of publicly funded providers.
- Establishing the mechanism for enforcing the participation requirement for all publicly funded providers.
- Establishing the consequences for publicly funded providers that fail to participate.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

There are no alternatives to regulation. While the Board has established guidelines to support the implementation of the VQB5 unified measurement and improvement system on the required, regulations are necessary to meet the expectations within the *Code of Virginia*.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert "This NOIRA is not being used to announce a periodic review or a small business impact review."

Since these are new regulations, this NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Board of Education is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by email to Kris Meyers, Associate Director of Early Childhood Quality Measurement and Improvement, at Kris.Meyers@doe.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

The Early Childhood Advisory Committee will advise the Board as regulations are developed and will be available to receive additional public comment. A public hearing will not be held following the publication of the proposed stage of this regulatory action.