



# VIRGINIA BOARD OF EDUCATION

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# AGENDA ITEM

**Agenda Item:** I

**Date:** August 28, 2024

**Title:** First Review of Regulatory Actions Resulting from Periodic Reviews

**Presenter:** Jim Chapman, Director of Board Relations

### **Purpose of Presentation**

Action required by state law and regulation.

### **Executive Summary**

The Board has stated in 8VAC20-11-110 that the agency shall conduct a periodic review of regulations consistent with the following:

1. An executive order issued by the governor pursuant to § 2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and
2. The requirements in § 2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

After conducting several periodic reviews, the Board fulfilled its statutory obligation regarding those chapters. VDOE staff reviewed each chapter to assess the statutory authority for the regulations, whether they are necessary for the protection of public health, safety and welfare, and whether they are clearly written and easily understandable.

Staff has found the following chapters are not clearly written and easily understandable, the statutory authority for the regulations no longer exists, or are no longer necessary for the protection of public health, safety and welfare, and thus should be repealed:

- 8VAC20-25 Technology Standards for Instructional Personnel
- 8VAC20-180 Regulations Governing School Community Programs
- 8VAC20-490 Regulations Governing School Board Local

- 8VAC20-521 Regulations Governing Reduction of State Aid when Length of School Term Below 180

Staff suggests the following chapters should be amended for protection of public health, safety and welfare, or to increase clarity and understandability, or to be in line with the statutory authority for the regulations:

- 8VAC20-30 Regulations Governing Adult High School Programs
- 8VAC20-210 Classification of Expenditures
- 8VAC20-240 Regulations Governing School Activity Funds

### **Action Requested**

First review: Action will be requested at a future meeting.

### **Superintendent's Recommendation**

The Superintendent of Public Instruction recommends that the Board accept this item for first review.

### **Previous Review or Action**

None

### **Background Information and Statutory Authority**

At the July Board meeting, the Board [approved](#) closing the periodic reviews for 12 chapters. VDOE staff suggested that after closing of those periodic reviews, the Board approve the repeal of 8VAC20-25, 8VAC20-180, 8VAC20-490, and 8VAC20-521 and amendment of 8VAC20-30, 8VAC20-210, 8VAC20-240.

Section 22.1-16 of the Code of Virginia authorizes the State Board of Education to “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.

### **8VAC20-25 Technology Standards for Instructional Personnel (REPEAL)**

The periodic review found that chapter 8VAC20-25 is no longer needed and should be repealed. The promulgation of chapter 8VAC20-25 was completed and became effective on March 4, 1998. Since that time, this chapter has not been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. There is no longer a continued need for the regulation. Section 8VAC20-23-40 of the Virginia Administrative Code previously required individuals seeking initial licensure to demonstrate proficiency in the use of educational technology for instruction. The standards for such proficiency were set by 8VAC20-25. The collateral requirements in 8VAC20-23 were removed

from the regulation on April 15, 2021. Additionally, the role of technology in daily life, as well as education, has changed significantly since the chapter was originally promulgated. The chapter was designed to facilitate technological proficiency in an era before the current expansion of technology into daily life and education (through smart phones, the internet social media, learning management systems, etc.). The delivery of education today is far more dependent on technology than when these regulations were promulgated, and school divisions have responded appropriately.

#### 8VAC20-30 Regulations Governing Adult High School Programs (AMEND)

Section 22.1-224 requires, in part, that the Board “[r]equire the development of adult education programs in every school division” and “[p]romulgate appropriate standards and guidelines for adult education programs.” Chapter 8VAC20-30 requires local school officials to be responsible for evaluating and awarding credit for educational achievement.

However, when an adult high school diploma is awarded to an adult student who demonstrates through full mastery of an applied performance assessment full mastery, there is no longer a need to rely solely upon the January 2013 version (5.0) of the National External Diploma Program Competencies or incorporate the January 2013 version by referenced into this regulatory chapter.

Along with the amendment to this chapter, VDOE staff recommends that the Board approve the National External Diploma Program Competencies as promulgated by the American Council on Education as meeting the requirements of the amended 8VAC20-30-20(3)(c). If VDOE staff receives any future requests for similar programs to gain Board approval, such requests will be presented to the Board after review and recommendation by Board staff.

#### 8VAC20-180 Regulations Governing School Community Programs (REPEAL)

Chapter 8VAC20-180 is not necessary for the protection of public health, safety, and welfare, and it does not comport with the current statutory requirements. The chapter was promulgated in 1980, and it appears that the statutory environment in which it originally grew has changed. Section 22.1-253.13:6 has not required a “six-year school improvement plan” since 2004, and since 2005 the section has required a “six-year divisionwide comprehensive, unified, long-range plan.” The current regulatory framework for 8VAC20-180 uses the old term “six-year school improvement plan” and it does not capture the minimum statutory requirements for the “six-year divisionwide comprehensive, unified, long-range plan.” More importantly, in its current form, 8VAC20-180 conflicts with the statutory requirements. 8VAC20-180 serves no beneficial purpose if it will merely repeat the statutory requirements and so this chapter ought to be repealed.

#### 8VAC20-210 Classification of Expenditures (AMEND)

There is no alternative for achieving the purpose of the regulation. Section 22.1-115 of the Code of Virginia requires the Board, in conjunction with the Auditor of Public Accounts, to establish and require each school division a modern system of accounting for all school funds. Moreover, the Board is required to prescribe the following major classifications for

expenditures of school funds: (i) instruction, (ii) administration, attendance and health, (iii) pupil transportation, (iv) operation and maintenance, (v) school food services and other noninstructional operations, (vi) facilities, (vii) debt and fund transfers, (viii) technology, and (ix) contingency reserves. The amendment of this chapter will add the technology classification into this regulatory chapter, and the amendment will align this chapter with the requirements that were enacted under Chapter 131 of the 2008 acts of assembly.

#### 8VAC20-240 Regulations Governing School Activity Funds (AMEND)

This regulation is necessary for the protection of public health, safety and welfare because it ensures the proper accounting of public funds. However, VDOE staff have amended sections 10, 20, and 40 to make this chapter more readable and easier for the public and the Commonwealth to understand. Moreover, VDOE staff have identified sections 30 and 50 as no longer necessary and ripe for repeal.

#### 8VAC20-490 Regulations Governing School Board Local (REPEAL)

This regulatory chapter is no longer necessary for the protection of public health, safety and welfare. VDOE staff identified sections 10, 20, 40, 50, and 60 this regulatory chapter as duplicative of current state law.

Regulatory section 8VAC20-490-30 will be repealed and its regulatory requirements will be moved to 8VAC20-720-20. One regulatory requirement found under 8VAC20-490-40, concerning the requirement that local school boards provide, free of charge, any workbooks required for courses of instruction will be moved to 8VAC20-720-170. Chapter 720, Regulations Governing Local School Boards and School Divisions, was found to be the better location within the Virginia Administrative Code for these requirements as these changes will make this chapter more readable and easier for the public and the Commonwealth to understand.

#### 8VAC20-521 Regulations Governing Reduction of State Aid when Length of School Term Below 180 (REPEAL)

The regulation is no longer necessary for the protection of public health, safety, and welfare because it essentially duplicates the requirements found in § 22.1-98 of the Code of Virginia. The regulation fails to reflect the 2021 changes to the statute. Specifically, the current regulation fails to include the language in § 22.1-98 which provides that when severe weather or other emergency situations result in a school closure a school division may elect to have an unscheduled remote learning day as an option to make up time. VDOE staff identified sections 10, 20, 30, 40, 50, and 60 this regulatory chapter as duplicative of current state law.

VDOE staff identified one regulatory requirement (8VAC20-521-40(E)) that should be retained and moved to Chapter 510, Regulations Governing Superintendent of Public Instruction, Section 10, Duties of Superintendent.

**Stakeholder Engagement**

The 30-day public comment period concerning these actions will open when these actions are published in the Virginia Register following executive branch review.

**Implementation and Communication**

Upon approval by the Board, VDOE staff will begin the regulatory process pursuant to the relevant provisions of the Administrative Process Act.

**Impact on Fiscal and Human Resources**

There is no impact on the agency's fiscal or human resources.