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Regulatory
Town Hall

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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Board of Education
Virginia Administrative Code (VAC) citation	8 VAC 20-131
Regulation title	<i>Regulations Establishing the Standards for Accrediting Public Schools in Virginia</i>
Action title	Update to comport with legislative changes made by HB 1061 and SB 489 (2012) to amend the <i>Regulations Establishing the Standards for Accrediting Public Schools in Virginia</i>
Date this document prepared	June 19, 2012

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Preamble

The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006.

- 1) Please explain why this is an emergency situation as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

The 2012 General Assembly passed, and the Governor signed into law, HB 1061 and SB 489, which amend § 22.1-253.13:4 of the *Code of Virginia* to strengthen postsecondary education and workplace readiness opportunities for all students, and to consolidate the number of Board of Education-approved diplomas. The bills eliminate the Standard Technical, Advanced Technical, and Modified Standard Diplomas, and change the graduation requirements for the Standard and Advanced Studies Diplomas.

The legislation requires the Board of Education to promulgate emergency regulations to effect these changes.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

Section [22.1-16](#) of the *Code of Virginia* states that 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.

HB 1061 and SB 489, passed by the 2012 General Assembly and signed by the Governor, amend § 22.1-253.13:4 of the *Code of Virginia* to require the Board of Education to promulgate these changes to the regulations to implement the provisions of the legislation.

In addition, Section 2.2-4011 of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The following changes would be made to the *Regulations Establishing the Standards for Accrediting Public Schools in Virginia* to comport with the legislation:

- The proposed regulations would require that, beginning with first-time ninth graders in the 2013-2014 school year, students must earn a career and technical education credential that has been approved by the Board in order to graduate with a Standard Diploma. This credential could include, but not be limited to, the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia workplace readiness skills assessment.
- The regulations would fold the Modified Standard Diploma into the Standard Diploma, and would establish credit accommodations for students with disabilities. Such credit accommodations for students with disabilities may include:
 - ✓ Approval of alternative courses to meet the standard credit requirements;
 - ✓ Modifications to the requirements for local school divisions to award locally awarded verified credits;
 - ✓ Approval of additional tests to earn a verified credit;
 - ✓ Adjusted cut scores required to earn verified credit; and
 - ✓ Allowance of work-based learning experiences.
- The proposed regulations would require that students pursuing a Standard or Advanced Studies Diploma successfully complete one virtual course, which may be a noncredit-bearing course.

- The Standard Technical Diploma and the Advanced Technical Diploma would be eliminated. These diplomas have not yet been implemented.
- Consistent with the legislation, the regulations would specify that the Advanced Studies Diploma shall be the recommended diploma for students pursuing baccalaureate study. Both the Standard and the Advanced Studies Diploma shall prepare students for postsecondary education and the career readiness required by the Commonwealth’s economy.

In addition, when the Board of Education promulgates the permanent regulations, it will have the opportunity to conduct a comprehensive review of the regulations. One topic that will be addressed in the permanent regulations is the provision in HB 642 and SB 514, passed by the 2012 General Assembly and signed by the Governor, which would require an adjustment to the Graduation and Completion Index for those schools that are fully accredited.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The second enactment clause in HB 1061 and SB 489 requires the promulgation of emergency regulations. The emergency regulations provide for a foundation for a quality education for adult students receiving a General Achievement Adult High School Diploma so that they will be successful and productive citizens and are prepared for postsecondary education and for the workplace.

Substance

Please detail any changes that will be proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, and likely impact of proposed requirements
8 VAC 20-131-5		Definitions	Adds the definition of “credit accommodations” to mean adjustments to the standard and verified credit requirements for earning a Standard Diploma for students with disabilities, as specified in the legislation. Removes references to the Standard Technical, Advanced Technical, and Modified Standard Diplomas, which are being eliminated.

<p>8 VAC 20-131-50</p>		<p>Requirements for Graduation</p>	<p>Includes language from the legislation that the Advanced Studies Diploma shall be the recommended diploma for students pursuing baccalaureate study, and that both the Standard and the Advanced Studies Diploma shall prepare students for postsecondary education and the career readiness required by the Commonwealth's economy.</p> <p>Specifies that the new requirements for the Standard and Advanced Studies Diplomas will begin with the ninth-grade class of 2013-2014.</p> <p>Requires students pursuing a Standard Diploma to earn a career and technical education credential approved by the Board that could include, but not be limited to, the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia workplace readiness skills assessment.</p> <p>Requires students pursuing a Standard or Advanced Studies Diploma to complete one virtual course, which may be a noncredit-bearing course and could be a semester course, an elective course, or a full-credit course to satisfy a graduation requirement.</p> <p>Provides for credit accommodations for students with disabilities that would be established by the Board of Education and could include:</p> <ul style="list-style-type: none"> • Approval of alternative courses to meet the standard credit requirements; • Modifications to the requirements for local school divisions to award locally awarded verified credits; • Approval of additional tests to earn a verified credit; • Adjusted cut scores required to earn verified credit; and • Allowance of work-based learning experiences. <p>Eliminates the Standard Technical, Advanced Technical, and Modified Standard Diplomas.</p>
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			<p>Makes technical changes to remove references to the Standard Technical, and Advanced Technical, and Modified Standard Diplomas.</p> <p>All of these changes are specified in the legislation.</p>
8 VAC 20-131-60		Transfer Students	Makes technical changes to remove references to the Standard Technical, and Advanced Technical, and Modified Standard Diplomas.
8 VAC 20-131-110		Standard and Verified Units of Credit	Makes technical changes to remove a reference to the Modified Standard Diploma.
8 VAC 20-131-270		School and Community Communications	Makes technical changes to remove references to the Standard Technical, and Advanced Technical, and Modified Standard Diplomas.
8 VAC 20-131-280		Expectations for School Accountability	Makes technical changes to remove references to the Standard Technical, and Advanced Technical, and Modified Standard Diplomas.
8 VAC 20-131-360		Effective Date	<p>Establishes the effective date for the new requirements for the Standard and Advanced Studies Diplomas. Pursuant to the legislation, the new requirements are effective with the ninth-grade class of 2013-2014.</p> <p>Eliminates the effective dates for the Standard Technical and Advanced Technical Diplomas.</p>

Other amendments to the regulations will be considered in response to public comment and any additional direction from the Board of Education as the permanent regulations move through the regulatory process.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

HB 1061 and SB 489 include a second enactment clause that states: “That the Board of Education shall eliminate technical diplomas that have not been implemented and shall promulgate regulations to implement the other provisions of this act to be effective within 280 days of its enactment.” Therefore, there are no alternatives to this regulatory action.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments on this notice.

Please also indicate, pursuant to your Public Participation Guidelines, whether a Regulatory Advisory Panel or a Negotiated Rulemaking Panel has been used in the development of the emergency regulation and whether it will also be used in the development of the permanent regulation.

The agency is seeking comments on the regulation that will permanently replace this emergency regulation, including but not limited to 1) ideas to be considered in the development of the permanent replacement regulation, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to Michelle Vucci; P.O. Box 2120; Richmond, Va. 23218; (p) 804-225-2092; (f) 804-530-4502; or SOACOMMENTS@doe.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time. The Board of Education did not convene a Regulatory Advisory Panel or a Negotiated Rulemaking Panel in the development of the emergency regulation, nor is either panel expected to be used in the development of the permanent regulation.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulatory action will impact the family by providing opportunities for all public school children to gain strong academic and career skills to become productive citizens and be prepared for postsecondary education and for employment in the workplace. The increased rigor of the diplomas as addressed in the legislation will increase economic self-sufficiency and pride in student accomplishments. The enhanced academic and workplace training for all students should provide the basis for securing highly-skilled employment opportunities after graduation and greater success in postsecondary education.