



Virginia
Regulatory
Town Hall

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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

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| Agency name | Virginia Board of Education |
| Virginia Administrative Code (VAC) citation | 8 VAC 20-720 |
| Regulation title | Regulations Governing Local School Boards and School Divisions |
| Action title | Amendments to 8 VAC 20-720-160 . Instructional materials. |
| Date this document prepared | October 2, 2013 |

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*.

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 Virginia Board of Education plans to propose amendments to the [Regulations Governing Local School Boards and School Divisions \(8 VAC 20-720\)](#) to address procedures school divisions must have in place to address the use of sensitive or controversial instructional materials in the classroom.

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.

The Board of Education’s overall regulatory authority is 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 this title.”

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.

Parents have raised concerns about the use of controversial instructional materials without parental notification in some school divisions. At the request of the Virginia Board of Education, the Virginia Department of Education conducted a survey of school divisions regarding their local policies related to advance parental notification on the use of sensitive or controversial materials and on opportunities for parents to request alternative materials for their children or to opt out of classes where the materials are being discussed. The survey revealed that while many school divisions have such policies in place, not all do. The Board of Education would like to ensure that all school divisions have procedures in place to address the use of sensitive or controversial materials.

Substance

Please detail any changes that will be proposed. Be sure to define all acronyms. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The Board of Education proposes to add language to the *Regulations Governing Local School Boards and School Divisions (8 VAC 20-720)* regarding procedures school divisions must have in place to address the use of sensitive or controversial instructional materials in the classroom.

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, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The Board of Education has also proposed to amend the *Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC 20-131 et seq.)*, specifically [8 VAC 20-131-270](#). School and community communications, Item B.1, to include the following language:

1. The learning objectives developed in accordance with the provisions of [8 VAC 20-131-70](#) to be achieved at their child's grade level; or, in high school, a copy of the syllabus for each of their child's courses, including a notice to parents about any sensitive or sexually explicit materials that may be included in the course, the textbook, or any supplemental instructional materials; and a copy of the school division promotion, retention, and remediation policies;

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including 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 hearing is to be held to receive comments on this notice.

The Board of Education has received public comment on this issue, and will continue to do so during the Administrative Process Act procedures.

Anyone wishing to submit comments may do so via the Regulatory Town Hall Web site (<http://www.townhall.virginia.gov>), or by mail, e-mail, or fax to Dr. Linda Wallinger, Assistant Superintendent for Instruction, Virginia Department of Education, P. O. Box 2120, Richmond, VA 23218-2120, (804) 371-2350, Linda.Wallinger@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 Web site (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar Web site (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time.

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 is expected to support the family by informing parents that there are plans for classroom use of instructional materials that the school division deems of educational value, but that contain controversial or sensitive content.