



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Virginia Department of Education
VAC Chapter Number:	8 VAC 20-440-10 et. seq.
Regulation Title:	Regulations Governing the Employment of Professional Personnel
Action Title:	Amend the Regulations
Date:	October 10, 2002

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The Regulations Governing the Employment of Professional Personnel were originally adopted by the Board of Education in 1994. In response to an amendment to Section 22.1-302 of the Code of Virginia, the regulations were revised in 1996 to incorporate a model extracurricular activity sponsorship contract adopted by the Board of Education. No revisions to the regulations have been made since 1996.

The purposes of revising the regulations are as follows:

- (1) Revise the language in the regulations to reflect amendments to the Code of Virginia [Section 22.1-302].

- (2) Amend the language as follows to assist school boards in establishing consequences for breach of contract and add language allowing the Board of Education to require a written report or an appearance of an appropriate representative when a petition for breach is filed:

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

The Virginia Board of Education approved the final language during its September 26, 2002, meeting.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

Under Article VIII, § 4 of the Constitution of Virginia (1971), the Board has the authority and responsibility for the “general supervision of the public school system.” The Board has specific authority by statute to prescribe forms for written contracts. Va. Code § 22.1-302, -303.1, -304, and -305.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The regulations were revised to reflect amendments to the Code of Virginia.

In addition, the Virginia Board of Education requested that the regulations be amended to include a statement that school boards may pursue remedies consistent with law or contract in

cases of breach. School boards may request action on a teaching license for breach, but this change in the regulation provides another option.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

The purposes of revising the regulations are as follows:

- (1) Revise the language in the regulations to reflect amendments to the Code of Virginia.
- (2) Amend the language as follows to assist school boards in establishing consequences for breach of contact and add language allowing the Board of Education to require a written report or an appearance of an appropriate representative when a petition for breach is filed:

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The advantages in revising the regulation are as follows:

- (1) The regulations will be consistent with the Code of Virginia;
- (2) School boards are advised that they can pursue remedies prescribed by the Board of Education or other remedies consistent with law or contract. This provides options for school boards.

Statement of Changes Made Since the Proposed Stage

Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.

Those changes made to the text of the proposed regulation since the text was proposed are highlighted in "blue" below:

8VAC20-440-140. Phase One of the three-phase employment process.

- A. Phase One covers employment sought for the next school year and covers the period from the beginning of the current school year to the close of business on April 14 of the current school year, unless otherwise provided by §22.1-304 of the Code of Virginia. The end of the phase on April 14 corresponds to the provisions of

§22.1-304 of the Code of Virginia allowing written notice of non-continuation of contract by April 15. If April 14 ends on a Saturday, Sunday, or legal holiday, the end of Phase One will be the last administrative working day prior to the Saturday, Sunday, or legal holiday. ~~[For any school division permitted by §22.1-304 of the Code of Virginia to extend the written notice of non-continuation of contract to May 15, the end of Phase One is May 14, or if May 14 is on a Saturday, Sunday, or legal holiday, the last administrative working day prior to May 14.]~~

- B. During Phase One, a teacher may apply and be interviewed for employment for the next school year in other school divisions without notice to or permission from the division where he is currently employed.
- C. During Phase One, a teacher accepting employment in another division for the next school year must resign by giving written notice to the current employer. The notice should specify that the resignation is applicable for the next school year only.

8VAC20-440-150. Phase Two of the three-phase employment process.

- A. Phase Two begins on April 15 and ends on May 31 or the date the teacher contract is final, whichever is later, ~~unless otherwise provided by §22.1-304 of the Code of Virginia. [For any school division permitted by §22.1-304 of the Code of Virginia to extend the written notice of non-continuation of contract to May 15, Phase Two begins on May 15 and ends on June 30 or the date the teacher contract is final, whichever is later.]~~ The contract is final when the date of signature and, at a minimum, the salary terms are finally known.
- B. During Phase Two, teachers, whether probationary or continuing contract, may seek employment and file applications for the next school year with other school divisions. Teachers may seek employment during this phase without notification to the current employer.
- C. During Phase Two, the prospective employer may offer a contract without proof of release from contract from the current employer. The teacher must obtain a written release from the contract with the current employer prior to signing a contract with the prospective employer. Releases should be liberally granted during this phase.

8VAC20-440-160. Phase Three of the three-phase employment process.

- A. Phase Three begins on June 1 or the date the salary is finally set by the local school board, whichever occurs later. ~~[For any school division permitted by §22.1-304 of the Code of Virginia to extend the written notice of non-continuation of contract to May 15, Phase Three begins on July 1 or the date the salary is finally set by the local school board, whichever occurs later.]~~ In Phase Three, the contract is a firm and binding obligation on the teacher and the school division.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

No comment was received during the public hearing; however, three letters were submitted during the public comment period. All three comments (submitted by the superintendent of Fairfax County Schools, assistant superintendent of Loudoun County Schools, and the director of personnel in Prince William County Schools) addressed the same issue. Currently, phase three

begins on June 1 or the date the salary is finally set by the local school board, whichever occurs later. The proposed language called for this date to change to July 1. These school division representatives opposed a later date for teachers to be released from their contract due to the hardship that it will impose in filling late vacancies with competent teachers. They stated that the mid-size to large school divisions would suffer more because they will have more positions to fill than small school divisions. Further, the change to Virginia Code §22.1-304 giving a few local school boards the temporary option to notify certain probationary teachers of reemployment by May 15, rather than by April 15, has no bearing on the dates set for the three-Phase employment process. [This option expires for all school divisions bur one on July 1, 2003.]

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

REGULATORY REVISION	RATIONALE OR BASIS FOR REVISION
<p>8VAC20-440-10 Definitions. "Breach of contract" means, for the purpose of Phase Three of this chapter, a teacher failing to honor a contract for the <u>current or next</u> school year without formal release from that contract from the local board.</p>	<p>The first revision in this sentence is editorial, and the second revision clarifies that breach of contract can occur during the current or the following school year.</p>
<p>8VAC20-440-10 Definitions. "Current employer" means the local school board with whom <u>which</u> the teacher is currently under contract.</p>	<p>This revision is editorial.</p>
<p>8VAC20-440-10 Definitions. "<u>Extracurricular Activity Sponsorship Contract</u>" means a separate contract between <u>the employee and the local school board which includes responsibilities, for which a monetary supplement is received, for sponsorship of any student organizations, clubs, or groups, such as service clubs, academic clubs and teams, cheerleading squads, student publication and literary groups, and visual and performing arts organizations except those that are conducted in conjunction with regular classroom, curriculum, or instructional programs.</u></p>	<p>This definition was added to reflect language in the Code of Virginia, Section 22.1-302, C, (fourth paragraph)</p>

<p><u>8VAC20-440-90. Eligibility for continuing contract</u> <u>Any teacher hired on or after July 1, 2001 shall be required, as a condition of achieving continuing contract status, to have successfully completed training in instructional strategies and techniques for intervention for or remediation of students who fail or are at risk of failing the Standards of Learning assessments. Local school divisions shall be required to provide said training at no cost to teachers employed in their division. In the event a local school division fails to offer said training in a timely manner, no teacher will be denied continuing contract status for failure to obtain such training.</u></p>	<p>This statement was added to reflect language in the Code of Virginia, Section 22.1-303, A (last paragraph).</p>
<p>8VAC20-440-110. Contract to be separate and apart from annual or continuing contract.</p> <p>The coaching contract <u>or extracurricular activity sponsorship contract</u> shall be separate and apart from the annual or continuing contract and termination of the contract shall not constitute cause for the termination of the annual or continuing contract.</p> <p>8VAC20-440-120. Termination notice required.</p> <p>The coaching contract <u>or extracurricular activity sponsorship contract</u> shall require the party intending to terminate the contract to give reasonable notice to the other party prior to the effective date of the termination.</p>	<p>The revisions reflect the Code of Virginia, Section 22.1-302, C.</p>
<p>8VAC20-440-140. Phase One of the three-phase employment process.</p> <p>Phase One covers employment sought for the next school year and covers the period from the beginning of the current school year to the close of business on April 14 of the current school year, <u>unless otherwise provided by §22.1-304 of the Code of Virginia.</u> The end of</p>	<p>This section clarifies the administration of the Code of Virginia, Section 22.1-304, F</p> <p>The statement at the end of this section was removed to respond to public comment.</p>

<p>the phase on April 14 corresponds to the provisions of §22.1-304 of the Code of Virginia allowing written notice of non-continuation of contract by April 15. If April 14 ends on a Saturday, Sunday, or legal holiday, the end of Phase One will be the last administrative working day prior to the Saturday, Sunday, or legal holiday. [For any school division permitted by §22.1-304 of the Code of Virginia to extend the written notice of non-continuation of contract to May 15, the end of Phase One is May 14, or if May 14 is on a Saturday, Sunday, or legal holiday, the last administrative working day prior to May 14.]</p>	
<p>8VAC20-440-150. Phase Two of the three-phase employment process.</p> <p>Phase Two begins on April 15 and ends on May 31 or the date the teacher contract is final, whichever is later, unless otherwise provided by §22.1-304 of the Code of Virginia. [For any school division permitted by §22.1-304 of the Code of Virginia to extend the written notice of non-continuation of contract to May 15, Phase Two begins on May 15 and ends on June 30 or the date the teacher contract is final, whichever is later.] The contract is final when the date of signature and, at a minimum, the salary terms are finally known.</p>	<p>This section clarifies the Code of Virginia, Section 22.1-304, F</p> <p>The stricken sentence was removed to respond to public comment.</p>
<p>8VAC20-440-160. Phase Three of the three-phase employment process.</p> <p>Phase Three begins on June 1 or the date the salary is finally set by the local school board, whichever occurs later. [For any school division permitted by §22.1-304 of the Code of Virginia to extend the written notice of non-continuation of contract to May 15, Phase Three begins on July 1 or the date the salary is finally set by the local school board, whichever occurs later.] In Phase Three, the contract is a firm and binding obligation on the teacher and the school division.</p>	<p>This addition to the language clarifies the Code of Virginia, Section 22.1-304, Section F</p> <p>The stricken sentence was removed to respond to public comment.</p>

<p><u>8VAC20-440-160</u></p> <p>In the event that a local board declines to grant a request for release from a contract on the grounds of insufficient or unjustifiable cause, and the teacher breaches or expresses an intent to breach the contract, the current employer may; within 30 days of the breach, <u>pursue remedies prescribed by the Board of Education or other remedies consistent with law or contract. Such remedies could include filing</u> file a petition with the Board of Education setting forth all the facts in the case and requesting that the teacher's license be suspended for the next school year or <u>applying</u> other remedies appropriate under law or contract.</p>	<p>The Board of Education requested this revision in the language to allow school boards to take actions other than requesting a suspension of the license for breach of contract.</p>
<p><u>8 VAC20-440-160</u></p> <p><u>If the Board of Education receives a petition from a local school board for action on the license of a teacher who has breached the present contract by accepting a contract with another school board within the Commonwealth, the Board of Education may require a full written report and/or request an appropriate representative from the hiring school board to appear before the Board of Education to explain the circumstances that led to the hiring decision before the Board considers any petition for action on the license of such teacher.</u></p>	<p>The Board of Education requested this revision in the language to allow them the option of requiring a written report and/or a representative of the school board to appear when a school board is requesting action on a license due to breach of contract.</p>

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which 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.

The family and family stability will not be impacted by the proposed amendments to the regulations.

