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Exempt Action: Final Regulation Agency Background Document

Agency name	State Board of Education
Virginia Administrative Code (VAC) Chapter citation(s)	8 VAC 20-81-10, 110, and 170
VAC Chapter title(s)	<i>Regulations Governing Special Education Programs for Children with Disabilities in Virginia</i>
Action title	Legislative Amendments to <i>Regulations Governing Special Education Programs for Children with Disabilities in Virginia</i>
Final agency action date	September 23, 2021
Date this document prepared	September 16, 2021

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), 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 this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

During the 2021 Special Session I, the Virginia General Assembly enacted [Chapter 170](#), [Chapter 451](#), and [Chapter 109](#) of the Acts of the Assembly.

Chapter 170 directed the Board of Education to amend the definition of "traumatic brain injury" in 8VAC20-81-10 to read as follows:

"Traumatic brain injury" means an acquired injury to the brain caused by an external physical force or by other medical conditions, including stroke, anoxia, infectious disease, aneurysm, brain tumors, and neurological insults resulting from medical or surgical treatments, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning;

abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma. (34 CFR 300.8(c)(12)).

Chapter 451 directed the Board of Education to amend 8VAC20-81 to include a provision that, if a school division develops a draft individualized education program (IEP) prior to a scheduled IEP meeting, it shall provide such draft IEP to the parents at least two business days in advance of such IEP meeting. The Board is adding such provision to 8VAC20-81-110.

Chapter 109 directed the Board of Education to amend 8VAC20-81-170.B.2.a and e to remove the word “component” following the word “evaluation.”

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). “Mandate” is defined as “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 regulatory change is the result of legislative mandate. The change is necessary to conform the Board’s regulations to the changes in Virginia statutory law, and the Board has no discretion in the change. Accordingly, the regulatory action is exempt from the operation of the Administrative Process Act under § 2.2-4006.A.4.a of the Code of Virginia.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The Board of Education reviewed and adopted the final regulation, entitled “Legislative Amendments to Regulations Governing Special Education Programs for Children with Disabilities in Virginia,” on September 23, 2021.