

Board of Education Agenda Item

Item: C.

Date: November 17, 2009

Topic: First Review of the Technical Amendments to the Regulations Governing Special Education Programs for Children with Disabilities in Virginia (8 VAC 20-81-10 et seq.)

Presenter: Dr. Judith A. Douglas, Director of the Office of Dispute Resolution and Administrative Services

Telephone Number: (804) 225-2771

E-Mail Address: Judy.Douglas@doe.virginia.gov

Origin:

Topic presented for information only (no board action required)

Board review required by
 State or federal law or regulation
 Board of Education regulation
 Other: _____

Action requested at this meeting Action requested at future meeting: _____ (date)

Previous Review/Action:

No previous board review/action

Previous review/action
date May 29, 2009
action Readopted the revisions to the Regulations Governing Special Education Programs for Children with Disabilities in Virginia (8 VAC 20-81-10 et seq.)

Background Information:

The *Code of Virginia*, at § 22.1-214, requires the Board of Education to “prepare and supervise the implementation by each school division of a program of special education designed to educate and train children with disabilities” between the ages of two and twenty-one, inclusive. The program developed by the Board of Education must “be designed to ensure that all children with disabilities have available to them a free and appropriate education.” The *Code of Virginia*, at § 22.1-16, authorizes the Board of Education to “promulgate such regulations as may be necessary to carry out its powers and duties....” The current *Regulations Governing Special Education Programs for Children with Disabilities in Virginia (8 VAC 20-81-10 et seq.)* were readopted by the Board of Education on May 29, 2009, and became effective July 7, 2009.

The *Code of Virginia*, at 2.2-4006 A., permits specific agency actions to be exempt from the standard regulatory process required by the Virginia Administrative Process Act, including the following:

4. Regulations that are:

- a. Necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved;
- b. Required by order of any state or federal court of competent jurisdiction where no agency discretion is involved; or
- c. Necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation, and the Registrar has so determined in writing. Notice of the proposed adoption of these regulations and the Registrar's determination shall be published in the Virginia Register not less than 30 days prior to the effective date of the regulation.

The *Code of Virginia*, at 2.2-4006 B., states, “B. Whenever regulations are adopted under this section, the agency shall state as part thereof that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision. The effective date of regulations adopted under this subsection shall be in accordance with the provisions of § 2.2-4015....”

Changes to the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* (8 VAC 20-81-10 et seq.) are required to ensure compliance with federal and state laws and regulations regarding special education, including changes in the federal regulations implementing the *Individuals with Disabilities Education Improvement Act of 2004* (IDEA), at 34 CFR Part 300, effective December 31, 2008, and changes in the *Code of Virginia*, which became effective July 1, 2009. The proposed changes do not differ materially from the requirements of federal and state laws or regulations.

Summary of Major Elements

The attached Virginia Regulatory Town Hall form includes detail regarding the proposed changes, including the rationale for each.

Superintendent's Recommendation:

The Superintendent of Public Instruction recommends that the Board of Education waive first review and adopt the proposed revisions to the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*, authorizing staff to complete the requirements under the Administrative Process Act.

Impact on Resources:

The recommended action has no impact on resources.

Timetable for Further Review/Action:

N/A



Exempt Action Final Regulation Agency Background Document

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) citation	8 VAC 20-81
Regulation title	Regulations Governing Special Education Programs for Children with Disabilities in Virginia
Action title	Technical revisions to comply with changes to the “Individuals with Disabilities Education Improvement Act of 2004,” its federal implementing regulations, and the Code of Virginia
Final agency action date	November 17, 2009
Document preparation date	October 20, 2009

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

* Denotes a substantive change

Section Number	What has changed	Rationale
* 8 VAC 20-81-10	Insert new provision in the definition of “Consent”: “b. <u>If the parent revokes consent in writing for their child’s receipt of special education services after the child is initially provided special education and related services, the local educational agency is not required to amend the child’s education records to remove any references to the child’s</u>	To comply with the December 2008 revision to the IDEA regulations, at 34 CFR 300.9

	<u>receipt of special education and related services because of the revocation of consent.”</u>	
8 VAC 20-81-10	Revise the definition of “Level II services”: “means the provision of special education and related services to children with disabilities for 50% or more of the instructional school day....“	To ensure consistency with the definition of “Level I services” and with the application of the SOQ funding formulae
* 8 VAC 20-81-10	Revise the definition of “parent” to be consistent with the Code of Virginia, including changing “natural” to “biological”.	To ensure consistency with the new COV provision, at § 22.1-213.1
* 8 VAC 20-81-20 35.	Insert a new provision: <u>“Ensure each recipient of assistance under Part B of the Act makes positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the Act.”</u>	To comply with the December 2008 revision to the IDEA regulations, at 34 CFR 300.177(b)
8 VAC 20-81-30 E 8	Revise subdivision E 8 to delete the last sentence: “The adult child’s residence shall be the fixed home to which the adult child will return from a facility and at which the adult child intends to stay. No adult child shall have more than one residence at a time.”	This language was duplicated in this provision in error. It correctly appears in subdivision E 7 of this subsection.
* 8 VAC 20-81-70 B 2	Revise subdivision B 2: “The notice shall indicate the purpose, date, time, and location of the meeting and who will be in attendance meet the requirements of 8 VAC 20-81-110 E 2 a.”	To ensure consistency with federal language. The current language does not include all federally-mandated notice requirements.
* 8 VAC 20-81-80 D 5 e (1)	Revise the provision to insert at the end: <u>“policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;”</u>	Federal language from 34 CFR § 300.311 (a)(7)(ii)(A) was inadvertently deleted
* 8 VAC 20-81-90 E & 8 VAC 20-81-170 E 3	Revise subsection 90 E and insert a new provision at 170 E 3 to identify new procedural safeguards regarding a parent’s right to revoke consent for a child to receive special education and related services.	To comply with the December 2008 revision to the IDEA regulations, at 34 CFR 300.9 and 34 CFR 300.300(b)(4)
8 VAC 20-81-210 D 2 b and D 3 b	In these provisions, replace the phrases “the effective date of this regulation” and “the effective date of these regulations”, respectively, with “July 7, 2009”.	To comply with a request from the Registrar’s office to clarify the effective date of the regulations.
* 8 VAC 20-81-210 T 1	Revise the timeline for appealing a due process decision to state circuit court from 90 to 180 days.	To ensure consistency with the revised COV provision, at § 22.1-214 D
* 8 VAC 20-81-220 B & D	Revise the surrogate parent provisions in subsection B to be consistent with the Code of Virginia.	To ensure consistency with the new COV provision, at § 22.1-213.1
8 VAC 20-81-240 A	Insert the following at the end of subsection A: <u>“Revisions to policies and procedures must be approved by local school boards for local school</u>	To provide clarity regarding the approval process required for changes to local policies and

	<u>divisions, or the Board of Visitors for the Virginia School for the Deaf and the Blind at Staunton. State-operated programs shall submit revisions to policies and procedures to the state special education advisory committee for review."</u>	procedures.
8 VAC 20-81-270 I.	Delete subsection I. " I. Regional and local jails. State funds for education services are appropriated to the Virginia Department of Education. (Virginia Appropriation Act; 34 CFR 300.705) "	The language was included in this section in error. It correctly appears in 8 VAC 20-81-250 E.

Statement of final agency action

Please 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.

During its meeting on November 17, 2009, the Board of Education adopted the proposed revisions to the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* (8 VAC 20-81-10 et seq.), and directed the Department of Education to proceed with the requirements of the Administrative Process Act.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

Since the proposed revisions to the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* incorporate existing federal and state mandates, they are not anticipated to have an impact on the institution of the family or on family stability. Parental involvement continues to be a fundamental component of the special education process.