

Virginia Board of Education Agenda Item



Agenda Item: D

Date: July 24, 2014

Title	Final Review of Amendments to the <i>Regulations Governing Driver Education</i> and the Repeal of <i>Regulations Governing the Approval of Correspondence Courses for Home Instruction</i> (Reconsideration of Final Stage)		
Presenter	Ms. Susan B. Williams, Director of Policy		
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Purpose of Presentation:

Action required by state or federal law or regulation.

Previous Review or Action:

Previous review and action. Specify date and action taken below:

Date: May 22, 2014

Action: First Review (Reconsideration of Final Stage)

Action Requested:

Final Review (Reconsideration of Final Stage): Action requested at this meeting.

Alignment with Board of Education Goals: Please indicate (X) all that apply:

	Goal 1: Accountability for Student Learning
	Goal 2: Rigorous Standards to Promote College and Career Readiness
	Goal 3: Expanded Opportunities to Learn
	Goal 4: Nurturing Young Learners
	Goal 5: Highly Qualified and Effective Educators
	Goal 6: Sound Policies for Student Success
	Goal 7: Safe and Secure Schools
X	Other Priority or Initiative. Specify: Technical changes to comply with § 22.1-201 and § 22.1-254.1 of the <i>Code of Virginia</i>

Background Information and Statutory Authority:

The 2008 General Assembly adopted amendments that eliminated the requirement in § 22.1-254.1 of the *Code of Virginia* for the Superintendent of Public Instruction to approve correspondence courses for parents who homeschool their children. However, § 22.1-205 of the *Code* still requires that the Board of Education approve driver education correspondence courses for parents who homeschool their children. As a result of this action by the General Assembly, the *Regulations Governing the Approval of Correspondence Courses for Home Instruction* are no longer necessary, and provisions about driver education correspondence courses could be moved to the *Regulations Governing Driver Education*.

Summary of Important Issues:

Instead of having two sets of regulations, one governing correspondence courses and another governing driver education, this proposal would simply add a new section about driver education correspondence courses to the *Regulations Governing Driver Education*, and repeal the *Regulations Governing the Approval of Correspondence Courses for Home Instruction*.

The Board received no public comment on the proposed regulations, and there were no changes to the regulations when the Board took final action to approve them on October 24, 2013.

However, when the Attorney General's Office conducted its review of the final regulations, it advised staff that the Board would need to make a number of changes regarding due process if a correspondence school's application is denied or if the approval is revoked for good cause. The Attorney General's Office had reviewed the regulations at the proposed stage and had made no recommendations for changes.

The amendments are highlighted in yellow. These amendments would make changes to the due process provisions. Instead of a fact-finding conference and a hearing before a hearing officer, the amendments would provide for the Board of Education to review and reconsider the decision.

On May 22, 2014, the Board accepted for first review the amendments to the *Regulations Governing Driver Education* and the repeal of *Regulations Governing the Approval of Correspondence Courses for Home Instruction* (Reconsideration of Final Stage). Because the proposed changes are substantive, a 30-day public comment period was conducted beginning on May 29, 2014 and ending on June 30, 2014. No comments were received during this period.

Impact on Fiscal and Human Resources:

The impact on fiscal and human resources of repealing these regulations would be negligible.

Timetable for Further Review/Action:

The timetable is governed by the requirements of the Administrative Process Act and Executive Order 17 (2014). The amendments to the regulations will be submitted to the Attorney General's Office and will undergo executive review by the Department of Planning and Budget, the Secretary of Education's Office, and the Governor's Office. Following executive review, the regulations will be published in the *Virginia Register* and become effective 30 days thereafter.

Superintendent's Recommendation:

The Superintendent of Public Instruction recommends that the Board of Education approve the amendments to the *Regulations Governing Driver Education* and the repeal of the *Regulations Governing the Approval of Correspondence Courses for Home Instruction*. (Reconsideration of Final Stage).

Rationale for Action:

As a result of action by the 2008 General Assembly, the *Regulations Governing the Approval of Correspondence Courses for Home Instruction* are no longer necessary, and provisions about driver education correspondence courses can be moved to the *Regulations Governing Driver Education*. This regulatory action will eliminate one set of regulations, which is in keeping with the Board's ongoing work to update, consolidate, or eliminate regulations whenever possible.

~~REGULATIONS GOVERNING THE APPROVAL OF CORRESPONDENCE COURSES FOR HOME INSTRUCTION~~

~~8VAC20-60-10. Definitions. (Repealed)~~

~~The following words or terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:~~

~~"Board" means the Virginia Board of Education.~~

~~"Correspondence school" means a school, organization, or other entity, no matter how titled, that teaches nonresident students by mailing them lessons and exercises which, upon completion, are returned to the school for grading. The lessons or exercises may also be transmitted and graded through electronic means.~~

~~"Course" means presentation of an orderly sequence of material dealing with an individual subject area such as mathematics, biology, etc.~~

~~"Department" means the Department of Education.~~

~~"Home instruction" means the teaching of a child or children in the home as an alternative to compulsory attendance as defined in § 22.1-254 of the Code of Virginia.~~

~~"School" means a correspondence school.~~

~~8VAC20-60-20. Schools seeking approval. (Repealed)~~

~~Schools seeking approval of the academic courses offered shall submit the following:~~

- ~~1. A catalog or other documents containing the following information:
 - ~~a. A statement of ownership or control of the institution;~~
 - ~~b. Descriptions of courses offered by the institution;~~
 - ~~c. A description of the evaluative method used; and~~
 - ~~d. A schedule of tuition and fees.~~~~
- ~~2. Verification of approval or exemption from regulation from the appropriate government agency in its state of domicile.~~
- ~~3. Such additional information as the board or department may deem necessary.~~

~~8VAC20-60-30. Approval renewal. (Repealed)~~

~~Approval of the academic courses shall be renewed annually on or before August 1, provided the school verifies that it continues to meet the requirements of 8VAC20-60-50. Forms for this purpose shall be provided by the department.~~

~~8VAC20-60-40. Review. (Repealed)~~

~~Each school meeting the criteria listed in 8VAC20-60-50 is required to submit the material in 8VAC20-60-20 for review every five years concurrent with the renewal affidavit.~~

~~8VAC20-60-50. Approval criteria. (Repealed)~~

~~Academic courses offered by schools submitting the information required by 8VAC20-60-20 of this chapter shall be approved if the following criteria have been met:~~

- ~~1. The school is, in fact, a correspondence school as defined in this chapter;~~
- ~~2. The courses offered are not in conflict with state or federal laws or regulations;~~
- ~~3. The school evaluates the students' work on a periodic basis and maintains a permanent record of that work.~~

~~8VAC20-60-60. Disclaimer. (Repealed)~~

~~Board of Education's approval of correspondence courses is not an endorsement of the program as a substitute for public school programs nor is it an endorsement of the educational or operational philosophy of the school. Additionally, the approval of courses is not intended as an endorsement of the quality of the courses nor is it a conclusion that they are appropriate to meet the educational needs of the student or the assessment required by § 22.1-254.1 of the Code of Virginia.~~

~~It is manifest that parents who choose to educate their children at home through a correspondence course are directly responsible for the educational progress of their children and the adequacy of instruction. The General Assembly has provided a mechanism to ensure that a child is receiving adequate instruction at home by requiring annual competency testing or evaluation. This testing program or evaluation is a measure of educational adequacy and the determining factor in the decision regarding the continuation of home study.~~

~~The approval of the board does not guarantee that a school has a refund policy for uncompleted courses. The Board of Education assumes no liability for damages or financial loss to parents using any course to meet Option iii of § 22.1-254.1 of the Code of Virginia relating to home instruction.~~

~~8VAC20-60-70. Listing of approved schools. (Repealed)~~

~~The department shall maintain a list of schools whose courses are approved under the provisions of this chapter for dissemination to the public upon request.~~

~~8VAC20-60-80. Restrictions.~~ *(Repealed)*

~~No school whose courses are approved for home instruction shall advertise in any way that the courses have the endorsement, recommendation, accreditation, recognition, or any other similar term, of the board, the department, or the Commonwealth of Virginia.~~

~~8VAC20-60-90. Revocation or suspension of approval.~~ *(Repealed)*

~~Approval of courses offered by a school may be revoked or suspended for cause by action of the board; such action shall be reported and preserved in writing and shall not take place prior to a hearing as provided for in §XVII of Regulations Governing Operation of Proprietary Schools and Issuing of Agent Permits.~~

~~8VAC20-60-100. Transmitting documents and other materials.~~ *(Repealed)*

~~The mailing of applications, forms, letters, or other papers shall not constitute receipt of the same by the department unless sent by registered or certified mail, return receipt requested. Such materials should be sent to the Associate Director of Proprietary School Service, Department of Education, P.O. Box 6-Q, Richmond, VA 23216.~~

~~DOCUMENTS INCORPORATED BY REFERENCE (8VAC20-60)~~ *(Repealed)*

~~Regulations Governing the Operation of Proprietary Schools, and Issuing of Agent Permits, revised 1994.~~

REGULATIONS GOVERNING DRIVER EDUCATION

8VAC20-340-10. Driver education program.

- A. In accordance with provisions of the National Highway Safety Act of 1966 (23 USC § 401 et seq.) and § [46.2-334](#) of the Code of Virginia, local school boards shall determine whether to offer a driver education program, and, if offered, whether it will be elective or required. School divisions offering programs that comply with the standardized program of study and regulations established by the Board of Education and the provisions of § [22.1-205](#) of the Code of Virginia are entitled to participate in the distribution of state funds for driver education.
- B. A state-approved driver education program consists of a minimum of 36 periods of classroom instruction and 14 periods of in-car instruction (laboratory phase). The standardized driver education program established by the Board of Education requires that:
 - 1. Classroom and in-car instruction shall follow the standardized program of study.
 - 2. Local programs shall have the option that classroom driver education may be taught in lieu of 36 class periods of health education or as an elective course.
 - 3. Superintendents and heads of private schools must seek program approval from the Department

of Education prior to providing instruction and certify that the proposed program meets all state-approved program requirements.

4. The length of a class period must be a minimum of 50 minutes.
5. Students must drive a minimum of 50 miles during the in-car phase of instruction.
6. In-car instruction must be limited to no more than two periods of instruction in any 24-hour period, of which at least one must be actual driving.
7. No more than four periods of actual driving and four periods of observation on a multiple-car-range can count towards the 14-period in-car requirement.
8. Combination, on-street, simulation, and multiple-car-range programs must provide at least six periods of on-street driving and observation, four periods of multiple-car-range driving and observation, and eight periods of simulation.
9. Only fees approved by the Board of Education shall be collected for the laboratory phase of driver education pursuant to the Appropriation Act.
10. Public or private schools must submit classroom and in-car driver education teachers' driver license information for driver record monitoring as required by § [46.2-340](#) of the Code of Virginia.
11. Local school boards must develop written policies concerning initial or continued employment of classroom and in-car teachers who receive excessive demerit points on their driving record.
12. Public and private schools must provide the Department of Education with the previous year's program data to calculate in-car basic aid reimbursement and to monitor program compliance.
13. Classroom and laboratory phases of the program must be offered concurrently at the same school, or allow only a limited amount of time to elapse between classroom completion and laboratory instruction.
14. Students who have not successfully completed the classroom phase at one school cannot begin in-car instruction at another school.
15. Successful completion of a standardized end-of-course road skills assessment must be achieved prior to the school issuing a 90-day provisional license.

8VAC20-340-20. Driver education vehicles.

The school division or school shall:

1. Provide a vehicle in excellent mechanical condition, equipped with dual-control brakes, a roof top sign, dual side mirrors, and safety restraints;
2. Ensure all driver education vehicles are equipped with restraint systems of the type approved by

the Department of State Police in accordance with §§ [46.2-1093](#) and [46.2-1095](#) of the Code of Virginia;

3. Provide a vehicle with a current Virginia inspection sticker and license plate;
4. Insure the vehicle above the minimum amount required by state statute for liability and property damage; and
5. Identify the instructional vehicle by displaying "DRIVER EDUCATION VEHICLE" and name of school (or school division) attached to the top of the vehicle. The school name does not have to be on the rooftop sign and may appear in another visible location on the vehicle.

8VAC20-340-30. Teacher requirements.

The standardized driver education program established by the Board of Education requires that teachers:

1. Hold a valid Virginia teaching license with an add-on endorsement or approved program endorsement in driver education; or, for in-car instruction, satisfy the paraprofessional training requirements;
2. Hold a valid Virginia driver's license; or, for teachers with valid out-of-state driver's licenses, provide the Department of Education with a copy of their driving record at the beginning of each semester, at the beginning of summer school, and when they receive a moving violation;
3. Have a broad background of driving experiences (two years minimum) in cities, rural roadways and highways;
4. Possess sound physical, mental and emotional qualities;
5. Have a satisfactory driving record; teachers who have accumulated six or more demerit points shall be removed from providing behind-the-wheel instruction for a period of 24 months, (no public or private school shall retain its driver education program approval by the Department of Education unless the teacher is removed);
6. Who have had their license suspended or revoked, or who have received a Driving Under the Influence (DUI) arrest or conviction, be immediately removed from any classroom or laboratory driver education teaching assignment;
7. Obtain parent/guardian permission to enroll a student in the laboratory phase of instruction;
8. Make every reasonable effort to protect students from injury;
9. Ensure the proper use of safety restraints by all persons occupying the driver education vehicle;
10. Ensure that the student driver has in his possession a valid Virginia learner's permit when operating a driver education vehicle;

11. Have at least two students, or no more than three students, in the car; however, when it is in the best interest of the student, and with prior written permission from the parents or legal guardians, one student may be scheduled for in-car instruction;
12. Shall not allow the driver education vehicle to be used by any student during on-street instruction without the teacher being in the vehicle providing direct instruction. If the vehicle is parked and students remain in the vehicle, the keys shall be removed by the teacher. In no event should the vehicle's engine remain running with students inside the vehicle without the teacher also being inside the vehicle; and
13. Shall not allow the driver education vehicle to be used during multiple-car range instruction without teacher supervision.

DOCUMENT INCORPORATED BY REFERENCE ([8VAC20-340](#))

Curriculum Guide of Driver Education in Virginia

8VAC 20-340-40. Approval of Correspondence Courses for Driver Education.

A. Definitions.

The following words or terms, when used in these regulations, shall have the following meaning unless the context clearly indicates otherwise:

"Board" means the Virginia Board of Education.

"Correspondence school" means a school, organization, or other entity, no matter how titled, that teaches students by mailing them lessons and exercises which upon completion are returned to the school for grading. Such lessons or exercises also may be transmitted and graded by electronic means.

"Course" means the presentation of an orderly sequence of material dealing with an individual subject area such as driver education.

"Department" means the Virginia Department of Education.

"Home instruction" means the teaching of a child or children by a teaching parent in the home as an alternative to meeting the requirements of compulsory attendance as defined in § 22.1-254 of the Code of Virginia and as a means of complying with § 22.1-254.1 of the Code of Virginia.

"Parent" means any parent, guardian, legal guardian, or other person having control or charge of a child as specified in § 22.1-1 of the Code of Virginia.

"School" means a correspondence school for driver education programs.

B. Required Submissions.

Schools seeking approval to offer the classroom portion of a driver education program to school-age children through a correspondence program or course in Virginia shall submit the following:

1. A signed and completed copy of the Department's Affidavit form.
 2. A catalog or other documents containing the following information:
 - a) A statement of ownership or control of the institution;
 - b) Descriptions of the driver education courses offered by the institution;
 - c) A description of the method used to evaluate the students' work;
 - d) A schedule of tuition and fees; including its refund policies; and
 - e) Copies of all application forms and enrollment agreements used by the school.
 3. Verification of approval or exemption from regular oversight from the appropriate state or local government agency in the school's state of domicile.
 4. Information regarding its accreditation status.
 5. The name and publisher of the textbook required.
 6. An estimate of the minimum amount of time (in hours) required to complete the course.
 7. Such additional information as the Board or Department may deem necessary.
- C. All schools must evaluate the students' work at regular intervals specified by the Department and maintain a permanent record of the work.
- D. Each school meeting the criteria listed in these regulations is required to submit the required materials for review every year concurrent with the renewal Affidavit.
- E. Approval Criteria

Driver education courses offered by schools submitting the materials required by these regulations shall be approved **if when** the following criteria have been met:

1. The school is, in fact, a correspondence school as defined in these regulations;
2. The courses offered are consistent with state or federal laws or regulations;
3. The school evaluates the students' progress at regular intervals specified by the Department and maintains a permanent record of that work; and
4. The content of each course is accurate, rigorous, and meets the requirements of the Curriculum and Administrative Guide for Driver Education which includes

the Driver Education Standards of Learning.

The school must provide evidence that at least two subject matter experts have reviewed and validated the accuracy of online content and textbook materials.

F. The Department will consider an An application shall be complete when it determines that all required information has been submitted in the form required by the Department. If the Department, on behalf of the Board, finds determines the application to be incomplete, the Department shall notify the applicant of the insufficiencies will be notified in writing within 45 days of receipt of the incomplete application. If the The applicant does not resubmit must submit a the required items to complete the application, to be received by the Department within 45 days from the notification. If the application is not completed within the 45 day period, the case file for the request for approval as a provider will be closed. Prior to closure, the applicant may withdraw the request for approval at any time. The applicant may resubmit submit a complete new application at a later any time.

G. Approval-Process, Denial, and Revocation

After a review of the complete application, the Department will notify the applicant of its decision regarding approval. If the application is approved, the Department will issue a letter of approval with terms of the approval. If the Department denies or revokes the approval for good cause, the Department will issue a letter stating the reasons for revocation and denial including information regarding the applicant's right to appeal this decision.

The Department, on behalf of the Board, shall notify applicants in writing when an application is approved.

Applications that do not meet the criteria required in 8 VAC 20-340-40 (B), (C) and (E) shall be denied. The Department shall notify applicants in writing of the denial, stating the reasons the application was denied, and including the applicant's right to request the Board to reconsider the application, pursuant to 8 VAC 20-340-40 (H).

An approved application may be revoked for good cause, which could include, but not be limited to, the conviction of the applicant, or any employee thereof of any felony, or the conviction of any offense involving the sexual molestation, physical or sexual abuse, or rape of a child.

H. Reconsideration by the Board of Education When an Application Is Denied or When Approval Is Revoked

A school whose application has been denied or whose approval has been revoked for good cause may request reconsideration by letter to the Board. The letter of request shall include the reasons that the school believes the denial or revocation was inappropriate and shall document how it has corrected any insufficiency identified in the letter of denial or revocation. The Board's decision on reconsideration shall be final on that application; however, a denial of reconsideration shall not prevent the school from submitting a new application at a later time.

I. Appeal Process for Denial or Revocation

1. Fact-finding conference; notification, appearance, conduct.

- a) Unless emergency circumstances exist that require immediate action, no application shall be denied, suspended or revoked except upon notice stating the proposed basis for such action and the time and place for a fact-finding conference.
- b) If a basis exists for a refusal to approve or a suspension or a revocation of the Department's approval, the Department shall notify, by certified mail or by hand delivery, the interested parties at the address of record maintained by the Department.
- c) Notification shall include the basis for the proposed action and any information in the possession of the Department that can be relied upon in making an adverse decision.
- d) The fact-finding conference shall afford the interested party the opportunity to present written and oral information to the Department that may have a bearing on the proposed action at a fact-finding conference. Such information should include a brief, written statement of errors the party believes were made in the Department's decision.
- e) If no withdrawal occurs, a fact-finding conference shall be scheduled at the earliest mutually agreeable date, but no later than 60 days from the date of the notification. A school wishing to waive its right to a conference to proceed directly to a formal hearing shall notify the Department of such at least 14 days before the scheduled conference.
- f) The Department may rely on public data, documents or information in making its decision if all parties are given advance notice of the Department's intent to rely on such data.
- g) If after consideration of information presented during an informal fact-finding conference, a basis for adverse action still exists, the Department shall send to the interested parties a report on the fact-finding conference within 90 days of the conference, via certified or hand-delivered mail, which shall include the decision, a brief and general description of the factual or procedural basis for the decision, and the right to a formal hearing.
- h) Parties may enter into a consent agreement to settle the issues at any time prior to, during or subsequent to an informal fact-finding conference.

2. Hearing; notification, appearance, conduct.

- a) If an interested party intends to request a formal hearing, it shall notify the Department within 30 days of receipt of a report on the fact-finding conference.
- b) Parties shall be given reasonable notice of the (i) time, place, and nature of the hearing, (ii) basic law under which the Department contemplates its possible exercise of authority, and (iii) matters of fact and law asserted or questioned by the Department.

- c) If an interested party or representative fails to appear at a hearing, the hearing officer may proceed in the party's/representative's absence and make a recommendation.
- d) Oral and written arguments may be submitted to and limited by the hearing officer. Oral arguments shall be recorded in an appropriate manner.
- e) The burden of proof at such hearings shall be on the party seeking to reverse the decision of the Department.

3. Hearing location.

Hearings before a hearing officer shall be held, insofar as practical, in the county or city in which the school is located. Hearing officers may conduct hearings at locations convenient to the greatest number of persons or by telephone conference, videoconference or similar technology in order to expedite the hearing process. No hearing shall be located outside of the state of Virginia unless it is held by electronic means as specified in the Code of Virginia.

4. Hearing decisions.

- a) Recommendations of the hearing officer shall be a part of the record and shall include a written statement of the hearing officer's findings of fact and recommendations as well as the reasons or basis for the recommendations. Recommendations shall be based upon all the material issues of fact, law or discretion presented on the record.
- b) The Superintendent of Public Instruction shall review the recommendation of the hearing officer and render a decision on the recommendation within 30 days of receipt. The decision shall cite the appropriate rule, relief or denial thereof as to each issue.
- c) The Superintendent's decision regarding the school's approval shall be delivered to the concerned parties within 5 days of the decision and include a brief statement of the conclusions, the basis of the conclusions, the basic law upon which the Department relies, the recommendation of the hearing officer.

5. Agency representation.

The Superintendent's designee may represent the Department in an informal conference or at a hearing.

J. Determination of Continued Compliance

Approval of the academic courses shall be renewed annually on or before August 1, provided that the school verifies that it continues to meet the requirements of these regulations. Forms for this purpose shall be provided by the Department.

K. Disclaimer

The Board of Education's approval of a correspondence course is not an endorsement of the

program as a substitute for public school programs nor is it an endorsement of the educational or operational philosophy of the school. Additionally, the approval of courses is not intended as an endorsement of the quality of the courses nor is it a conclusion that these courses meet the educational needs of the student or the assessment required by § 22.1-254.1 of the Code of Virginia.

Parents who choose to educate their children at home through a driver education correspondence course are directly responsible for the educational progress of their children and the adequacy of instruction. The Board of Education assumes no liability for damages or financial loss to parents using any of the approved driver education correspondence courses.

L. Restrictions

No school whose courses are approved as a driver education program shall advertise in any way that the courses have the endorsement, recommendation, accreditation, recognition, or any other similar term, of the Board, the Department, or the Commonwealth of Virginia.

M. Transmitting the Affidavit, Documents and Other Materials

The Affidavit, related letters, forms, and other required application materials, must be submitted to the Division of Instruction at the Virginia Department of Education by e-mail to the Driver Education Specialist, whose contact information may be found at <http://www.doe.virginia.gov/directories/index.shtml#vdoe>

DOCUMENT INCORPORATED BY REFERENCE (8VAC20-340)

Curriculum and Administrative Guide for Driver Education in Virginia, which includes the Driver Education Standards of Learning