

Virginia Board of Education Agenda Item



Agenda Item: N

Date: November 20, 2014

Title	First Review of Amendments to <i>Management of the Student's Scholastic Record in the Public Schools of Virginia</i> (8 VAC 20-150) (Exempt Action)		
Presenter	John Eisenberg, Assistant Superintendent for Special Education and Student Services		
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Purpose of Presentation:

Action required by state or federal law or regulation.

Previous Review or Action:

No previous review or action.

Action Requested:

Final review: 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
x	Goal 6: Sound Policies for Student Success
	Goal 7: Safe and Secure Schools
	Other Priority or Initiative. Specify:

Background Information and Statutory Authority:

Goal 6: By promulgating these regulations, the Board would establish policies and standards necessary for student success.

The 2014 General Assembly passed, and the Governor signed into law, HB 449, adds § 22.1-287.01 to the *Code of Virginia*. The legislation provides the following:

Except as required by federal law or regulation, no member or employee of a local school board or the Department of Education shall transmit personally identifiable information, as that term is defined in the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and related regulations, from a student's record to a federal government agency or an authorized representative of such agency.

The Regulations regarding management of student scholastic records provide, in general, that disclosure of a student's personally identifiable information be in accordance with the Family Educational Rights and Privacy Act (FERPA). Because FERPA allows voluntary disclosure of certain limited types of personally identifiable information (directory information), the Regulations must be amended to make clear that voluntary disclosure of such information to a federal government agency or its representative is not permitted.

The Administrative Process Act, at Virginia Code §2.2-4006, provides exemptions for certain routine regulatory action. Relevant in this instance is the following:

A. The following agency actions otherwise subject to this chapter and § [2.2-4103](#) of the Virginia Register Act shall be exempted from the operation of this article:

....

3. Regulations that consist only of changes in style or form or corrections of technical errors....

4. Regulations that are:

a. Necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved.

Summary of Important Issues:

The Board of Education has no discretion with regard to the amendments proposed to the regulations.

Impact on Fiscal and Human Resources:

The administrative burden of enactment of these regulations will be absorbed through existing resources.

Timetable for Further Review/Action:

The Department of Education will notify local school divisions of the changes in the regulations when the regulations become final, pursuant to the requirements of the Administrative Process Act.

Superintendent's Recommendation:

The Superintendent of Public Instruction recommends that the Board of Education waive first review and approve the amendments to the *Management of the Student's Scholastic Record in the Public Schools of Virginia* (Exempt Action).

Rationale for Action:

The requested amendment concerning student records is a matter in which the Board has no discretion, and is technical in nature.

8VAC20-150-20. Management of scholastic record.

A. Local education agencies shall manage the scholastic records of all students in compliance with applicable law, including the Family Educational Rights and Privacy Act of 1974, 20 USC § 1232g, 34 CFR 99; the Individuals with Disabilities Education Act, 20 USC §§ 1400-1485, 34 CFR 300; and §§ 2.1-377 through 2.1-386, 16.1-260, 16.1-305.1, 16.1-305.2, 22.1-3.1, 22.1-270, 22.1-271.2, 22.1-287, 22.1-287.1, 22.1-287.01, 22.1-288, 22.1-288.2, 22.1-289, 32.1-36.1 and 42.1-76 through 42.1-91.



Exempt Action Final Regulation Agency Background Document

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) citation	8 VAC 20-150
Regulation title	Management of the Student's Scholastic Record in the Public Schools of Virginia
Action title	Update to comport with legislative changes made by HB 449 (2014) restricting disclosure of personally identifiable information in a student's record to a federal agency or representative of such agency.
Final agency action date	November 20, 2014
Document preparation date	November 3, 2014

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, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

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.

The 2014 General Assembly passed, and the Governor signed into law, HB449, which amends the Code of Virginia by adding § 22.1-287.01. The new section provides that, "Except as required by federal law or regulation, no member or employee of a local school board or the Department of Education shall transmit personally identifiable information, as that term is defined in the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and related regulations, from a student's record to a federal government agency or an authorized representative of such agency." The amendment to 8 VAC 20-150-2 brings existing regulations into conformance with the requirements of the Code of Virginia.

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.

The Virginia Board of Education is expected to approve the changes to the Management of the Student's Scholastic Record in the Public Schools of Virginia on November 20, 2014.

Family impact

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

The proposed amendment will have no impact on the institution of the family and family stability.