

# Virginia Board of Education Agenda Item



**Agenda Item:** J

**Date:** October 15, 2020

**Title:** Final Review of Proposed Revisions to the *Regulations Governing Educational Services for Gifted Students* (8 VAC 20-40-10 et. seq.) (Proposed Stage)

**Presenter:** Michael Bolling, Assistant Superintendent, Department of Learning and Innovation

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**Purpose of Presentation:**

Action required by Board of Education regulation.

**Executive Summary:**

In 2010, the last comprehensive review of the *Regulations Governing Educational Services for Gifted Students* occurred, with the changes requiring implementation in 2012. In 2018, the Virginia Board of Education (Board) charged the Virginia Advisory Committee for the Education of the Gifted (VACEG) with reviewing policies and programming practices that supported equitable access to gifted programs. In July 2019, the VACEG presented their report to the Board. Following their report, the VACEG began to review the regulations and propose changes that aligned with their report. In addition, [House Bill 1139](#) (Kearney) passed the 2020 General Assembly that requires the Board to review the regulations and make changes for more equitable screening and identification of gifted students. The proposed changes align with the requirements of HB1139. Following first review on September 17, 2020 and Board suggestions, the regulations were modified to incorporate more accountability for addressing inequities and underrepresentation student groups in the goals and objectives section of the local plan (double-underlined and in red type on page 11). In addition, the regulations require divisions participating in an Academic Year Governor's School (AYGS) to address diversity goals, objectives, and strategies associated with the AYGS program. Finally, VDOE staff has initiated steps to increase

the transparency of gifted identification data by race/ethnicity, gender, and socioeconomic status for each school. In the future, these data will be reported in each school's School Quality Profile.

Representatives of VACEG contributed to the proposed revised regulations over a two-year timeframe. Members consisted of parents, superintendents, gifted education coordinators, teachers, and college faculty. The diverse stakeholders provided suggestions regarding the implementation and development of gifted education programs with respect to equitable access for underrepresented populations and programs that support increased identification of diverse students. Additionally, a study of current literature and practice from the field of gifted education informed the process.

The proposed revised regulations include:

1. Additions to and revisions of definitions for critical terms;
2. Realignment of aspects of the screening, referral, identification, and placement components of the regulations to support best practices aligning with equitable access for gifted students, especially students from underrepresented populations;
3. Revision of components of the local plan for the education of the gifted;
4. Revision of the role and function of the local advisory committee for the education of the gifted; and
5. Addition of annual report expectations.

The proposed revisions to the regulations will allow the Board to update and guide school division identification procedures and services for gifted education.

**Action Requested:**

Final review: Action requested at this meeting.

**Superintendent's Recommendation:**

The Superintendent of Public Instruction recommends the Board of Education accept for final review the proposed revisions to the *Regulations Governing Educational Services for Gifted Students* (Proposed Stage).

**Rationale for Action:**

Board action is required to move forward on the changes to the *Regulations Governing Educational Services for Gifted Students*.

**Previous Review or Action:**

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

Date: September 17, 2020  
Action: First Review (Proposed Stage).

Date: June 20, 2019  
Action: Final Review (NOIRA)

**Background Information and Statutory Authority:**

[Section 22.1-16 of the Code of Virginia](#) permits the Board of Education to promulgate regulations as necessary to carry out its powers and duties. The current *Regulations Governing Educational Services for Gifted Students (8VAC20-40)* were adopted by the Board of Education in 2010 after an extensive review with proposed changes, and became effective in 2012. A comprehensive revision to these regulations has not occurred since 2012.

In 2018, the Board charged the VACEG with reviewing policies and programming practices that supported equitable access to gifted programs for underserved populations of students. In June 2019, the VACEG presented their report to the Board. At the June 2019 Board meeting, the Notice of Intended Regulatory Action (NOIRA) was opened to begin review of the regulations. Following the opening of the NOIRA, the VACEG began their 2019-2020 meetings by reviewing the regulations and proposing changes that aligned with 2019 report. During the 2020 General Assembly session, House Bill 1139 (Keam) passed that requires the Board to review the regulations and make changes for more equitable screening and identification of gifted students. The proposed changes align with the requirements of HB1139.

House Bill 1139 (Keam)

*1. § 1. As part of its current comprehensive review of its Regulations Governing Educational Services for Gifted Students (8VAC20-40-10 et seq.), the Board of Education shall consider revisions to the process of screening and identifying students for eligibility for gifted and talented programs and referring students to such programs to improve the identification of student populations that are underrepresented in such programs, including economically disadvantaged students, English language learner students, and students with disabilities. The Board of Education shall also consider revisions to the data collection requirements of the annual report required by such regulations to better inform equitable screening and identification for and access to gifted and talented programs for student populations that are underrepresented in such programs.*

The proposed revisions to the regulations will allow the Board to update and guide school division identification procedures and services for gifted education.

**Timetable for Further Review/Action:**

Final review of these proposed revisions is anticipated at the October 15, 2020, meeting. Following the approval of these proposed regulations, the Department of Education will proceed with submission under the provisions of the Administrative Process Act.

**Impact on Fiscal and Human Resources:**

The impact on resources for the revision of these regulations is not expected to be significant.

# 8VAC20-40 Regulations Governing the Educational Services for Gifted Students

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## **8VAC20-40-10. Applicability.**

This chapter shall apply to all local school divisions in the Commonwealth, regarding their gifted education services for students from kindergarten through twelfth grade.

## **8VAC20-40-20. Definitions.**

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

"Appropriately differentiated curriculum and instruction" means curriculum and instruction adapted or modified to accommodate the accelerated learning aptitudes of identified students in their areas of strength. Such curriculum and instructional strategies provide accelerated and enrichment opportunities that recognize gifted students' needs for (i) advanced content and pacing of instruction; (ii) original research or production; (iii) problem finding and solving; (iv) higher level thinking that leads to the generation of products; and (v) a focus on issues, themes, and ideas within and across areas of study. Such curriculum and instruction are offered continuously and sequentially to support the achievement of student outcomes and provide support necessary for these students to work at increasing levels of complexity that differ significantly from those of their age-level peers.

"Eligible student" means a student who has been identified as gifted by the identification and placement committee for the school division's gifted education program.

“Equitable representation” means the identification and development of all students who are capable of high levels of achievement when compared to others of the same age, experience, environment, or cultural background. A commitment to equitable access requires an examination of student representation for all groups of learners, especially underrepresented groups, economically disadvantaged students, English learners, and students with disabilities, and the diverse ways giftedness manifests itself as well as meeting the needs of gifted students at their advanced levels of achievement to develop their potential through gifted programs or acceleration.

"Gifted students" means those students in public elementary and secondary schools beginning with kindergarten through twelfth grade who demonstrate high levels of **achievement** or who show the potential for higher levels of **achievement** when compared to others of the same age, experience, environment, or **cultural background**. Their aptitudes and potential for **achievement** are so outstanding that they require special programs to meet their educational needs. These students will be identified by professionally qualified persons through the use of multiple criteria as having potential or demonstrated aptitudes in one or more of the following areas:

1. General intellectual aptitude. Such students demonstrate or have the potential to demonstrate **several of the following characteristics beyond their age-level peers: advanced thinking and** reasoning; persistent intellectual curiosity; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; **or** creative and imaginative expression across a broad range of intellectual disciplines.

2. Specific academic aptitude. Such students demonstrate or have the potential to demonstrate several of the following characteristics beyond their age-level peers in selected academic areas that may include English, history and social science, mathematics, or science: advanced thinking and reasoning; persistent intellectual curiosity; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; or creative and imaginative expression .

3. Career and technical aptitude. Such students demonstrate or have the potential to demonstrate several of the following characteristics beyond their age-level peers in career and technical fields: advanced thinking and reasoning; persistent technical curiosity; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; or creative and imaginative expression .

4. Visual or performing arts aptitude. Such students demonstrate or have the potential to demonstrate several of the following characteristics beyond their age-level peers in visual or performing arts: advanced creative reasoning and imaginative expression; persistent artistic curiosity; or advanced acquisition and mastery of techniques, perspectives, concepts, and principles.

"Identification" means the multistaged process of finding students, including students for whom accurate identification may be affected because they are from an underrepresented group, economically disadvantaged, have limited English proficiency, or have a disability, who are eligible for service options offered through the division's gifted education program. The

identification process begins with a divisionwide screening component that may be followed by

a referral component.. The identification process includes the review of valid and reliable student data based on **multiple** criteria established and applied consistently by the school division. The process shall include the review of information or data from multiple sources to determine whether a student's aptitudes and learning needs are most appropriately served through the school division's gifted education program. **The process concludes with the determination of eligibility by the school division's identification and placement committee or committees.**

"Identification and placement committee" means the building-level or division-level committee that shall determine a student's eligibility for the division's gifted education program based on the student's assessed aptitude and learning needs. The identification and placement committee shall determine which of the school division's service options are appropriate for meeting the learning needs of the eligible student.

"Learning needs of gifted students" means gifted students' needs for advanced and complex content that is paced and sequenced to respond to their persistent intellectual, artistic, or technical curiosity; exceptional problem-solving abilities; rapid acquisition and mastery of **facts**; conceptual thinking processes; and imaginative expression across a broad range of disciplines.

"Placement" means the determination of the appropriate educational options for each eligible student.

"Referral" means the formal and direct process that parents or legal guardians, teachers, professionals, students, peers, self, or others use to request a kindergarten through twelfth-grade student be assessed for gifted education program services.

"Screening" means the annual process of creating a pool of candidates from kindergarten through twelfth grade using multiple criteria through the review of current assessment data or information from other sources. Screening is the active search for students who may be then referred for the formal identification process.

"Service options" means the instructional approaches, settings, and staffing selected for the delivery of appropriate service or services provided to eligible students based on their assessed needs in their areas of strength.

“Single subject acceleration” means a strategy of progressing through a single subject at a rate faster than age-level peers.

"Student outcomes" means the advanced achievement and performance expectations established for each gifted student, through the review of the student's assessed learning needs and the goals of the program of study, that are reviewed and reported to parents or legal guardians.

“Talent development program” means a program model that exposes all students, especially those in the primary grades, to advanced and enriched curricula and instruction. Talent development programs encourage advanced thinking and reasoning and allow for the demonstration and documentation of gifted potential.

“Whole grade acceleration” means a strategy of advancing a student one or more grade levels.

**8VAC20-40-30. (Repealed.)**

**8VAC20-40-40. Screening, Referral, Identification, and Service.**

A. Each school division shall establish uniform procedures for screening, referring, identifying, and serving students in kindergarten through twelfth grade who are gifted in general intellectual or specific academic aptitude, including students for whom accurate identification may be affected because they are from an underrepresented group, economically disadvantaged, have limited English proficiency, or have a disability. If the school division elects to identify students in general intellectual aptitude, it shall provide service options from kindergarten through twelfth grade.

Identification in a specific academic aptitude area may occur as assessment instruments exist to support identification. If the school division elects to identify students in one or more selected academic aptitude areas, it shall provide service options through twelfth grade.

School divisions may identify and serve gifted students in career and technical aptitude or visual or performing arts aptitude, or both, at their discretion.

B. These uniform procedures shall include a screening process that requires instructional personnel to review, at a minimum, current assessment data on each kindergarten through twelfth-grade student annually. Some data used in the screening process may be incorporated into multiple criteria reviewed by the designated identification and placement committee to determine eligibility, but those data shall not replace norm-referenced aptitude or achievement test data.

C. These uniform procedures shall permit referrals from parents or legal guardians, teachers, professionals, students, peers, self, or others. Such referrals shall be accepted for kindergarten through twelfth-grade students.

D. An identification and placement committee shall review pertinent information, records, and other performance evidence for referred students. The committee shall consider input from a professional who knows the child. The committee shall include classroom teachers, assessment specialists, gifted program staff, school administrators, or others with credentials or experience in gifted education. The committee shall (i) review data from multiple sources selected and used consistently within the division to assess students' aptitudes in the areas of giftedness the school division serves, (ii) determine whether a student is eligible for the division's services, and (iii) determine which of the school division's service options match the learning needs of the eligible student. The committee may review valid and reliable data administered by another division for a transfer student who has been identified previously.

1. Identification of students for the gifted education program shall be based on multiple criteria established by the school division and designed to seek out those students with **advanced** aptitudes, including students for whom accurate identification may be affected because they are economically disadvantaged, have limited English proficiency, or have a disability. Data shall include scores from valid and reliable instruments that assess students' potential for advanced achievement as well as instruments that assess demonstrated advanced skills, conceptual knowledge, and problem-solving aptitudes.

2. Valid and reliable data for each referred student shall be examined by the building-level or division-level identification and placement committee. The committee shall determine the eligibility of each referred student for the school division's gifted education services. Students who are found eligible by the identification and placement committee shall be offered service options with appropriately differentiated curriculum and instruction by the school division.

3. The identification process used by each school division must ensure that no single criterion is used to determine a student's eligibility. The identification process shall include at least three measures from the following categories:

a. Assessment of appropriate student products, performance, or portfolio;

b. Classroom observation;

c. Appropriate rating scales, checklists, or questionnaires;

d. Individual interview;

e. Individually administered or group-administered, nationally norm-referenced aptitude or achievement tests;

f. Record of previous accomplishments (such as awards, honors, grades, etc.); or

g. Additional valid and reliable measures or procedures.

4. If a program is designed to address general intellectual aptitude, an individually administered or group-administered, nationally norm-referenced aptitude test shall be included as one of the three measures used in the school division's identification procedure.

5. If a program is designed to address specific academic aptitude, an individually administered or group-administered, nationally norm-referenced aptitude or achievement test shall be included as one of the three measures used in the school division's identification procedures.

6. If a program is designed to address either the visual or performing arts or career and technical aptitude, a portfolio or other performance assessment measure in the specific aptitude area shall be included as a part of the data reviewed by the identification and placement committee.

E. Within 90 instructional days, beginning with the receipt of a parent's or legal guardian's consent for assessment, the identification and placement committee shall determine the eligibility status of each student referred for the division's gifted education program and notify the parent or guardian of its decision. If a student is identified as gifted and eligible for services, the identification and placement committee shall determine which service options most effectively meet the assessed learning needs of the student. Identified gifted students shall be offered placement in an instructional setting that provides:

1. Appropriately differentiated curriculum and instruction provided by professional instructional personnel trained to work with gifted students; and
2. Monitored and assessed student outcomes that are reported to the parents and legal guardians.

**8VAC20-40-50. (Repealed.)**

**8VAC20-40-55. Parental Rights for Notification, Consent, and Appeal.**

A. School divisions shall provide written notification to and seek written consent from parents and legal guardians to:

1. Conduct any required assessment to determine a referred student's eligibility for the school division's gifted education program;
2. Announce the decision of the identification and placement committee regarding a referred student's eligibility for and placement in the school division's gifted education program; and
3. Provide services for an identified gifted student in the school division's gifted education program.

B. Each school division shall adopt a review procedure for students whose cases are appealed.

This procedure shall involve a committee, the majority of whose members did not serve on the initial identification and placement committee, and shall inform parents or legal guardians, in writing, of the appeal process. Requests filed by parents or legal guardians to appeal any action of the identification and placement committee shall be filed within 10 instructional days of receipt of notification of the action by the division. The process shall include an opportunity to meet with an administrator to discuss the decision.

1. A parent or legal guardian of a student who was referred but not identified by the identification and placement committee as eligible for services in the school division's gifted

education program shall be informed, in writing, within 10 instructional days, of the school division's process to appeal the committee's decision.

2. A parent or legal guardian of an identified gifted student may appeal any action taken by the school division to change the student's identification for, placement in, or exit from the school division's gifted education program.

C. Following the notification and consent of a parent or legal guardian, the identification and placement committee shall **notify** school administrators of each student's eligibility status.

**8VAC20-40-60. Local Plan, Local Advisory Committee, and Annual Report.**

A. Each school board shall submit a comprehensive plan for the education of gifted students to the Department of Education (DOE) for technical review on a schedule determined by the department. Each school board shall approve a comprehensive plan for the education of gifted students that includes the components identified in these regulations. The development process for the school division's local plan for the education of the gifted shall include opportunities for public review of the school division's plan. The approved local plan shall be accessible through the school division's website and the school division shall ensure that printed copies of the comprehensive plan are available to citizens who do not have online access. The plan shall include the following components:

1. A statement of philosophy for the gifted education program and the local operational definition of giftedness for the school division;

2. A statement of the school division's gifted education program goals and objectives for identification, delivery of services, curriculum and instruction, professional development, equitable representation of students, and parent and community involvement. Specific language shall be included within the goals, objectives, and strategies that address inequities and underrepresentation of student groups. If the school division is a participating member of an Academic Year Governor's School (AYGS), the division's efforts to support the diversity goals of the AYGS shall be addressed;

3. Procedures for the early and on-going screening, referral, identification and placement of gifted students, beginning with kindergarten through twelfth grade in at least a general intellectual or a specific academic aptitude program; and, if provided in the school division, procedures for the screening, referral, identification, and placement of gifted students in visual or performing arts or career and technical aptitude programs;

4. A procedure for written notification of parents or legal guardians when additional testing or additional information is required during the identification process and for obtaining permission of parents or legal guardians prior to placement of a gifted student in the appropriate service options;

5. A procedure for written notification to parents or legal guardians of identification and placement decisions, including initial **eligibility and placement decision**, changes in placement, or exit from the program. Such notice shall include an opportunity for parents or guardians to meet and discuss their concerns with an appropriate administrator and to file an appeal;

6. Assurances that student records are maintained in compliance with applicable state and federal privacy laws and regulations;

7. Assurances that (i) the selected and administered testing and assessment materials have been evaluated by the developers for cultural, racial, and linguistic biases; (ii) identification procedures are constructed so that those procedures may identify high potential or aptitude in any student whose accurate identification may be affected by economic disadvantages, by limited English proficiency, or by disability; (iii) standardized tests and other measures have been validated for the purpose of identifying gifted students; and (iv) instruments are administered and interpreted by a trained personnel in conformity with the developer's instructions;

8. Assurances that accommodations or modifications determined by the school division's special education Individualized Education Program (IEP) team, as required for the student to receive a free appropriate public education, shall be incorporated into the student's gifted education services;

9. Assurances that a copy of the school division's approved local plan for the education of the gifted is available to parents or legal guardians of each referred student, and to others upon request;

10. Evidence that gifted education service options from kindergarten through twelfth grade are offered continuously and sequentially, with instructional time during the school day and week to (i) work with their age-level peers, (ii) work with their intellectual and academic peers, (iii)

work independently, and (iv) foster intellectual and academic growth of gifted students.

Parents and legal guardians shall receive assessment of each gifted student's academic growth;

11. Procedures for a talent development program in the primary grades, kindergarten through second grade, shall be included. Procedures should include:

- a. plans to expose all students to advanced learning opportunities, and
- b. methods of documenting student progress to demonstrate the need for differentiated instruction and/or future gifted education referral and identification;

12. A description of the school division's program of **appropriately** differentiated curriculum and instruction demonstrating accelerated and advanced content. **Options for additional advanced courses for middle school and options for dual enrollment and additional advanced courses for high school students shall be included;**

13. Policies and procedures that allow access to programs of study and advanced courses at a pace and sequence commensurate with their learning needs;

14. Policies and procedures that allow for early entrance into kindergarten and/or first grade.

These procedures shall include multiple measures of a child's readiness for school. Multiple measures may include but are not limited to the following:

- a. a common kindergarten/first grade readiness assessment,
- b. a comprehensive evaluation that uses multiple valid and reliable instruments,
- c. an assessment of cognitive, social, and emotional developmental domains, and

- d. a supervised transition period with consideration to the transition points all children experience;

15. Policies and procedures for whole-grade and single-subject acceleration shall be included. These procedures shall include:

- a. a referral and screening process,
- b. an assessment and placement process,
- c. a supervised transition period with consideration to the transition points all children experience, and
- d. professional development regarding current research on acceleration practices;

16. Evidence that school divisions provide professional development based on the teacher competencies outlined in [8VAC20-543-320](#) related to gifted education; and

17. Procedures for the annual review of the effectiveness of the school division's gifted education program **addressing at least one or more of the following components:** the review of screening, referral, identification, and/or program **outcomes and** procedures toward the achievement of equitable representation of students, the review of student outcomes, and the academic growth of gifted students **that do not overly rely on standardized test measures.**

Such review shall be based on multiple criteria and shall include multiple sources of information. **Multiple criteria should include but is not limited to:**

- a. differentiated product-based assessments,
- b. differentiated pre- and post- performance assessments,
- c. multiple indicators that measure mastery of content,

- d. higher level thinking skills,
- e. achievement in specific program areas,
- f. affective growth,
- g. off-level standardized assessments, and
- h. gifted annual report data.

B. Each school division shall establish a local advisory committee composed of parents, school personnel, and other community members who are appointed by the school board. This committee shall reflect the ethnic and geographical composition of the school division. This committee shall have two responsibilities: (i) to review annually the local plan for the education of gifted students, including revisions, and (ii) to determine the extent to which the plan for the previous year was implemented. The findings of the annual program effectiveness and the recommendations of the advisory committee shall be submitted annually in writing to the division superintendent and the school board.

C. Each school division shall submit an annual report to the Department of Education in a format prescribed by the department. The information and data/graphs from the annual report shall be shared each year by school division leadership with school board members and the community. D. The administrator supervising gifted education services should have a gifted education endorsement or nationally recognized gifted education micro-credentialing or equivalent.

**8VAC20-40-70. Funding.**

Funds designated by the Virginia General Assembly for the education of gifted students shall be used by school divisions in accordance with the provisions of the appropriation act.



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## Proposed Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Education
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	<u>8VAC20-40-10</u> through <u>8VAC20-40-70</u>
<b>VAC Chapter title(s)</b>	Regulations Governing Educational Services for Gifted Students
<b>Action title</b>	Revision of regulations school divisions must meet in their gifted education programs, Kindergarten - Grade 12
<b>Date this document prepared</b>	September 25, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), 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.*

The *Regulations Governing Educational Services for Gifted Students* provide definitions; criteria for screening, referral, and identification of gifted students; delivery of services parameters; and elements of appropriately differentiated curriculum and instruction necessary to meet the learning needs of these students. The regulations also provide requirements for professional development of instructional

personnel, the school division's local plan for the education of the gifted, the annual report, and the local advisory committee for the education of the gifted.

An extensive review to the existing regulations was approved by the Virginia Board of Education in 2010, with the Regulations requiring changes to be implemented by 2012. On September 17, 2020, first review of the proposed changes were accepted by the Virginia Board of Education and changes were made to support Board recommendations. The purpose of these proposed revisions is to integrate findings from relevant research regarding best practices and equitable access in identification, curriculum and instruction, delivery of services, and professional preparation into the standards Virginia public schools use to establish and operate programs for which the General Assembly has allocated funds through the *Standards of Quality*.

## Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

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All definitions are included in the regulations.

## 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, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "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."*

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None

## Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

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Section 22.1-16 of the *Code of Virginia* vests the Board of Education with the authority to adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1.

## Purpose

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.*

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This action is essential to ensure that students in the Commonwealth are provided with an education that is commensurate with their abilities. The state definitions and provisions found in the *Regulations Governing Educational Services for Gifted Students* establish the basic expectation for school divisions' services for gifted students. These regulations ensure that school divisions' programs respond appropriately to the learning needs of gifted students, especially those students with economically disadvantaged backgrounds, those with limited English language proficiency, or those with disabilities. The proposed regulations reflect the relevant findings from research regarding effective program options that support equitable access to gifted programs, appropriate curricular designs and instructional strategies for gifted students, and the significance of teacher professional development in providing appropriate instruction for gifted students.

[RIS6]

## Substance

*Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.*

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The proposed regulations include:

1. Additions to and revisions of definitions for critical terms;
2. Realignment of aspects of the screening, referral, identification, and placement components of the regulations to support best practices aligning with equitable access for gifted students;
3. Revision of components of the local plan for the education of the gifted;
4. Revision of the role and function of the local advisory committee for the education of the gifted; and
5. Addition of annual report expectations.

## Issues

*Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary 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, include a specific statement to that effect.*

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The primary advantages of the proposed regulations for the public or the Commonwealth:

1. The proposed regulations require alignment of services for gifted students with current standards and practices found in relevant research and practice around equitable access to gifted programs;
2. The proposed regulations establish basic expectations for the annual screening of all students for gifted education services;
3. The proposed regulations establish the procedures for a talent development program in the primary grades, kindergarten through second grade;
4. The proposed regulations require advanced and accelerated options for gifted students through early entrance, whole-grade and single-subject acceleration;
5. The proposed regulations establish additional guidelines for the annual review of effectiveness;
6. The proposed regulations establish a local advisory committees reflective of the ethnic and geographically composition of the school division; and

7. The proposed regulations require school division leadership to share the annual report information and data/graphs with school board members and its community.

There are no perceived disadvantages to the public, to the agency, or to the Commonwealth.

## Requirements More Restrictive than Federal

*Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.*

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There are no applicable federal requirements.

## Agencies, Localities, and Other Entities Particularly Affected

*Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

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### Other State Agencies Particularly Affected

- There are no disproportionately significant negative or positive effects of the proposed regulations to any specific state agency.

### Localities Particularly Affected

- There are no disproportionately significant negative or positive effects of the proposed regulations to any specific locality.

### Other Entities Particularly Affected

- There are no disproportionately significant negative or positive effects of the proposed regulations to any specific entity.

## Economic Impact

*Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.*

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### Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:</p> <p>a) fund source / fund detail;  b) delineation of one-time versus on-going expenditures; and  c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>There is minimal cost to the state to implement the proposed regulation revisions. Existing allocations should be sufficient to fund the state's responsibilities.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>No impact</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>Greater diversity in gifted education identification and access to advanced programs and acceleration for the gifted students in all school divisions.</p>

**Impact on Localities**

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>It is anticipated that additional costs would not exceed those funds currently allocated by the General Assembly through the <i>Standards of Quality</i>.</p> <p>1. SOQ Basic Aid Funding – Gifted education funding supports the state share of one full-time equivalent instructional position per 1,000 students in adjusted average daily membership.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Equitable access to talent development and gifted education programs for underrepresented populations of students. Access to advanced level programs and acceleration for all identified gifted student to equitably support their academic needs.</p>

**Impact on Other Entities**

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>Elementary, middle, and secondary schools in Virginia's 132 school divisions will be affected by the revisions to the regulations. The proposed regulations do not affect small businesses.</p>
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<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <ul style="list-style-type: none"> <li>a) is independently owned and operated and;</li> <li>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</li> </ul>	<p>Estimates of the cost of the regulations would vary based on the size and levels of service Virginia's 132 school divisions choose to implement. However, this cost should be minimal. The proposed regulations do not affect small businesses.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> <li>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;</li> <li>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;</li> <li>c) fees;</li> <li>d) purchases of equipment or services; and</li> <li>e) time required to comply with the requirements.</li> </ul>	<p>No impact</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Greater diversity in gifted education identification and access to advanced programs and acceleration for the gifted students in all school divisions.</p>

## Alternatives to Regulation

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.*

Neither the 2012 *Regulations Governing Educational Services for Gifted Students* nor these revisions increase the responsibilities of localities; small businesses will not be affected at all. There are no viable alternatives to updating these regulations.

## Regulatory Flexibility Analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.*

The proposed regulations do not affect small businesses.

## Periodic Review and Small Business Impact Review Report of Findings

*If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.*

*In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.*

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The proposed regulations do not affect small businesses.

## Public Comment

*Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.*

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Other than the proposed changes to the regulations from the Virginia Advisory Committee for the Education of the Gifted, no public comments were received.

## Public Participation

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.*

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In addition to any other comments, the Board of Education is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: 1) projected reporting, recordkeeping and other administrative costs; 2) probable effect of the regulation on affected small businesses; and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be

submitted by mail to Dr. Donna L. Poland, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23218-2120; or by email to [Donna.Poland@doe.virginia.gov](mailto:Donna.Poland@doe.virginia.gov); or by fax at (804) 786-1597. In order to be considered, comments must be received by 11:59 p.m. on the last day of the public comment period.

A public hearing will be held following the publication of this stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.

## Detail of Changes

*List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.*

*If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.*

*If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.*

*If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.*

*If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.*

For changes to existing regulation(s), please use the following chart:

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
8VAC20-40-10		Applicability	No change
8VAC20-40-20		Definitions of terms used throughout the regulations for clarity of meaning	The addition of new terms used in the proposed regulations: equitable representation, single-subject acceleration, talent development program, and whole grade acceleration. Additional clarification in support of best practices, research, and equitable access for the following terms: gifted students and identification.
8VAC20-40-30		This section was repealed prior to 2010.	
8VAC20-40-40		Screening, Referral, Identification, and Service	Minor word changes to reflect consistency throughout the document.

8VAC20-40-50		This section was repealed prior to 2010.	
8VAC20-40-55		Parental rights for notification, consent, and appeal	Minor word changes to reflect consistence throughout the document.
8VAC20-40-60		Local Plan, Local Advisory Committee, and Annual Report provide school divisions with the required components of their local gifted plan as well as the structure requirements of the local gifted advisory committee and annual report.	<p>Wording changes were made throughout to align terminology and provide consistency.</p> <p><b>Additional wording in Item 2 requires more alignment of school division goals, objectives, and strategies with Academic Year Governor’s School’s diversity goals.</b></p> <p>New Item 11 was added to include the procedures for a talent development program in the primary grades in support of early identification and equitable access.</p> <p>New Item 12 provides more clarification on advanced coursework for middle and high school students.</p> <p>New Item 13 was only a change in item number; no change in requirement</p> <p>New Item 14 was added to include policies and procedures that allow early entrance and access to gifted programs in support of early identification and equitable access.</p> <p>New Item 15 was added to include policies and procedures for whole grade and single-subject acceleration in support of equitable access and best practices research.</p> <p>New Item 16 was only a change in the VAC number.</p> <p>New Item 17 provides additional guidance on the procedures for the annual review of effectiveness.</p> <p>Item B requires divisions to establish a local advisory committee reflective of the ethnic and geographic composition of the community.</p> <p>Item C requires school divisions to share information and data from the local gifted annual report to school board members and the community.</p>

8VAC20-40-70		Funding statement	No change
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