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| **Virginia Board of Education Agenda Item** | **Seal of the Commonwealth of Virginia** |

# Agenda Item: F

## Date: June 17, 2021

### Title: First Review of a Notice of Intended Regulatory Action (NOIRA) to the Regulations Establishing the Standards for Accrediting Public Schools in Virginia (8 VAC 20-131) to Include Standards for Virtual Education

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## Purpose of Presentation:

Action required by state or federal law or regulation.

**Executive Summary:**
In 2012, the Virginia General Assembly passed [House Bill 1215](https://lis.virginia.gov/cgi-bin/legp604.exe?ses=121&typ=bil&val=hb1215) (R.P. Bell), amending § [22.1-253.13:3.A](https://law.lis.virginia.gov/vacode/title22.1/chapter13.2/section22.1-253.13%3A3/) of the *Code of Virginia* (the Standards of Quality) requiring the Virginia Board of Education (Board) to promulgate regulations establishing standards for the accreditation of virtual public schools that enroll students full-time. The intent of this legislation was to address situations where local school boards could establish a virtual public program or school, with all students taking coursework virtually, rather than in a traditional “brick and mortar” environment. The Board’s *Regulations Establishing the Standards for Accrediting Public Schools in Virginia* (SOA) are designed to ensure that an effective educational program is established and maintained in Virginia's public schools. The current regulations are applicable to all public schools in Virginia and are geared to the traditional “brick and mortar” public school. Consequently, the regulations do not specifically address differences in service delivery that exist between a “brick and mortar” public school and virtual schools or programs that enroll students.

Previous Board’s took some steps towards promulgating these regulations. On May 24, 2021, the Board approved the NOIRA of this regulatory action, and it was submitted to Town Hall for executive branch review on June 14, 2012. The original proposed stage of this regulatory action was approved by the Board on April 25, 2013, was approved by the Governor on June 30, 2015, and submitted for publication and public comment on July 2, 2015. For reasons unknown to Virginia Department of Education (VDOE) staff, this regulatory action did not proceed following the proposed stage.

Pursuant to [2.2-4016](https://law.lis.virginia.gov/vacode/title2.2/chapter40/section2.2-4016/) of the *Code of Virginia,*  the Board approved the withdrawal of the 2013 proposed stage of the *Regulations Establishing Standards for Accrediting Public Schools in Virginia* to comport with legislative changes from House Bill 1215 (2012 General Assembly) at its April 22, 2021 business meeting. This action provides time to enable the VDOE staff, along with the Virtual Learning Advisory Committee to develop recommended regulatory language to the Board that will address requirements relating to program categorizations, teacher/student workload, staff licensure requirements, and other complementary issues relating to the virtual learning environment.

While HB1215 required the Board to promulgate regulations governing “virtual public schools,” this NOIRA seeks to broaden the scope of regulations to include all virtual education in Virginia public schools. As the options available to Virginia’s public school students through virtual learning programs continue to expand and evolve, students enrolled in public schools may be provided a variety of options to take coursework virtually. Proposed regulations governing virtual education would expand opportunities to learn by setting forth the expectations for virtual education in Virginia school divisions, for Multidivision Online Providers, and Virtual Virginia. In promulgating these regulations, the Board would establish the policies and standards necessary to ensure accountability of student learning in public virtual education. Finally, the regulations would provide the Board with the opportunity to develop and implement sound policies for student success in a virtual setting, including students in kindergarten through twelfth grade.

## Action Requested:

Other. Specify below:

The Board is requested to waive first review and approve the NOIRA.

## Superintendent’s Recommendation: The Superintendent of Public Instruction recommends that the Board of Education waive first review and approve the Notice of Intended Regulatory Action for promulgating regulations for virtual education.

## Previous Review or Action:

**Date:** April 22, 2021

**Action:** Withdrawal of the 2013 proposed stage of the *Regulations Establishing Standards for Accrediting Public Schools in Virginia* to comport with legislative changes from House Bill 1215 (2012 General Assembly).

**Background Information and Statutory Authority:**
In 2012, the Virginia General Assembly passed [House Bill 1215](https://lis.virginia.gov/cgi-bin/legp604.exe?ses=121&typ=bil&val=hb1215), requiring the Virginia Board of Education (VBOE) to promulgate regulations establishing standards for the accreditation of virtual public schools that enroll students full-time.

§ [22.1-253.13:3](http://law.lis.virginia.gov/vacode/22.1-253.13%3A3) of the *Code of Virginia* as amended by [HB 1215](https://lis.virginia.gov/cgi-bin/legp604.exe?ses=121&typ=bil&val=hb1215)

[A.](https://lis.virginia.gov/cgi-bin/legp604.exe?ses=121&typ=bil&val=hb1215) The Board of Education shall promulgate regulations establishing standards for accreditation of public virtual schools under the authority of the local school board that enroll students full time.

The intent of this legislation is to address situations where local school boards could establish a virtual public education program or school, with all students taking coursework virtually, rather than in a traditional “brick and mortar” environment.

On May 24, 2012, the Board approved the NOIRA stage of this regulatory action. On, June 14, 2012, the NOIRA was submitted for executive branch review. On April 25, 2013, the Board approved the proposed stage of this regulatory action, which was approved by the Governor on June 30, 2015 and submitted to the Registrar for publication and public comment on July 2, 2015. For reasons unknown to VDOE staff, this regulatory action did not proceed following the proposed stage.

On April 22, 2021 the Board of Education approved the withdrawal of the 2013 proposed stage of the *Regulations Establishing Standards for Accrediting Public Schools in Virginia* to comport with legislative changes from House Bill 1215 (2012 General Assembly).

In order to comply with § [22.1-253.13:3](http://law.lis.virginia.gov/vacode/22.1-253.13%3A3) of the *Code of Virginia* as amended by [HB 1215](https://lis.virginia.gov/cgi-bin/legp604.exe?ses=121&typ=bil&val=hb1215), this Notice of Intended Regulatory Action establishes initial steps toward adopting regulations establishing standards for accreditation of public virtual schools and virtual education in Virginia.

**Timetable for Further Review/Action:**
Following Board approval, the NOIRA will be submitted to Town Hall pursuant to the Administrative Process Act. Additionally, the VDOE will convene a workgroup of stakeholders to research and develop proposed virtual education regulations to be recommended to the Board for review and approval.

## Impact on Fiscal and Human Resources:

There will be an administrative impact as VDOE will need to develop draft regulations, prepare and file all documentation related to the Administrative Process Act, and ensure that public comments are solicited and addressed. The agency’s existing resources can absorb this responsibility at this time. If the agency is required to absorb additional responsibilities related to this process, other services will be impacted.