| **Virginia Board of Education Agenda Item** | **Seal of the Commonwealth of Virginia** |
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# Agenda Item: K

## Date: June 18, 2020

**Title: Written Report on State Regulatory and Statutory Waivers and Relief Measures Pursuant to Chapter 1283 of the 2020 Acts of Assembly**

#### Presenter: Dr. Leslie Sale, Director of Policy

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## Purpose of Presentation:

For information only. No action required.

Executive Summary:
On March 23, 2020, Governor Ralph Northam ordered that all K-12 schools close for the remainder of the 2019-2020 academic year in an effort to control the spread of COVID-19. The extended closures made it difficult for local school divisions to reasonably meet certain statutory and regulatory requirements.

Governor Northam’s Executive Order Fifty-One (2020) declared a state of emergency in response to the COVID-19 pandemic and authorized heads of executive branch agencies to waive any state requirement or regulation on behalf of its regulatory board. Chapters 1283 and 1289 of the 2020 Acts of Assembly gave the Superintendent of Public Instruction the additional authority to grant temporary flexibility or waivers for certain deadlines and requirements in the *Code of Virginia* and Appropriation Act that cannot be met for the 2019-2020 and 2020-2021 school years due to COVID-19.

With the above privileges, the Superintendent of Public Instruction has provided a number of waivers and relief measures for state-level mandates that could not be resolved through existing pathways or flexibilities and where inaction would have caused irrevocable harm to students, families, and teachers. The attached written report provides a list of those waivers and relief measures in effect as of May 27, 2020.

## Action Requested:

No action requested.

Superintendent’s Recommendation:
The Superintendent of Public Instruction recommends that the Board of Education accept this written report.

## Previous Review or Action:

No previous review or action.

Background Information and Statutory Authority:
On March 12, 2020, Governor Northam issued Executive Order Fifty-One which declared a state of emergency in response to the COVID-19 pandemic and authorized heads of executive branch agencies to waive any state requirement or regulation on behalf of its regulatory board.

Executive Order Fifty-One (2020)

C. Authorization for the heads of executive branch agencies, on behalf of their regulatory boards as appropriate, and with the concurrence of their Cabinet Secretary, to waive any state requirement or regulation, and enter into contracts without regard to normal procedures or formalities, and without regard to application or permit fees or royalties. All waivers issued by agencies shall be posted on their websites.

With this authority, the Superintendent of Public Instruction granted several waivers of regulatory language, primarily as it related to graduation requirements for students graduating with the 2019-2020 cohort.

During reconvened session, the General Assembly passed House Bill 29 including a budget amendment that provides the Superintendent of Public Instruction with the additional authority to grant temporary flexibility or issue waivers of certain deadlines and requirements set out in Title 22.1 of the *Code of Virginia* and Appropriation Act that could not be met due to COVID-19. This authority is limited to the fiscal year 2020 (school year 2019-2020) or fiscal year 2021 (school year 2020-2021). This amended budget bill was signed by Governor Northam on April 27, 2020. House Bill 30 (or the 2020-2022 Biennium Budget), signed by Governor Northam on May 21, 2020, has an identical provision which allows the Superintendent of Public Instruction’s authority in remain in effect after July 1, 2020.

Chapters 1283 and 1289, 2020 Acts of Assembly

Item 134. J. Notwithstanding the provisions set forth in this Act or in § 22.1, Code of Virginia, the Superintendent of Public Instruction may grant temporary flexibility or issue waivers of certain deadlines and requirements that cannot be met due to the state of emergency or school closures resulting from Novel Coronavirus (COVID-19). Such flexibility or waivers may include, but are not limited to, accreditation, testing and assessments, graduation, licensure, including temporary licensure, school calendars, and program applications and reports due to the Department of Education or Board of Education. Such authority only applies to deadlines and requirements for fiscal year 2020 (school year 2019-2020) or fiscal year 2021 (school year 2020-2021). Prior to granting any flexibility or waivers pursuant to this language, the Superintendent of Public Instruction must report to the Secretary of Education and substantiate how the state of emergency or school closures resulting from COVID-19 impacted each deadline or requirement, the proposed alternative, and the affected fiscal and school years. Subsequently, information about waivers or flexibility extended shall be reported to the Board of Education and made available on the agency website.

Per procedural requirements, any waiver or relief measure requested by the Superintendent of Public Instruction must also be reviewed and approved by the Secretary of Education before taking effect. All waivers and relief measures are posted on the Virginia Department of Education website [here](http://www.doe.virginia.gov/support/health_medical/office/covid-19.shtml#parent-guide).

Timetable for Further Review/Action:
No additional review or action required.

## Impact on Fiscal and Human Resources:

No costs associated with waivers or relief measures.

**Attachment A**

# State-Level Waivers and Relief Measures in Effect

## Effective as of May 27, 2020

***Graduation Requirements***

1. A waiver of any verified credit requirement, as set out in [8VAC20-131-50](https://law.lis.virginia.gov/admincode/title8/agency20/chapter131/section50/), that is a barrier to graduation for students who were enrolled in the Virginia public schools in spring 2020 and scheduled to graduate with the 2019-2020 cohort.
2. A waiver for those students who were enrolled in a course as of March 13, 2020, or have previously completed a course leading to a CTE credential necessary for a Standard Diploma but have not yet earned the credential.
3. A waiver on the cap of locally-awarded verified credits that can be earned by students affected by the 2019-2020 extended school closures. Such students, whether subject to graduation requirements in [8VAC20-131-50](https://law.lis.virginia.gov/admincode/title8/agency20/chapter131/section50/) or [8VAC20-131-51](https://law.lis.virginia.gov/admincode/title8/agency20/chapter131/section51/), can use the locally-awarded verified credit process for any course eligible for a verified credit in which the student was enrolled as of March 13, 2020. This applies to students seeking either a Standard or Advanced Diploma. This waiver is supplemented by VDOE’s guidance on [Guidance on Graduation Requirements, Awarding of Credits, and Continuity of Learning](http://www.doe.virginia.gov/support/health_medical/office/covid-19-grad-credits.shtml) and the Board of Education’s *Emergency Guidelines: Locally-Awarded Verified Credits,* adopted April 2, 2020.
4. Verified credits can be awarded in accordance with [8VAC20-131-110](https://law.lis.virginia.gov/admincode/title8/agency20/chapter131/section110/) in the Board of Education’s *Regulations Establishing Standards for the Accreditation of Public* *Schools*. A student who was enrolled in a high school credit-bearing course eligible for a verified credit as of March 13, 2020, and who has received the standard unit of credit may be awarded a locally-awarded verified credit. For these classes only, the requirement to attempt the associated SOL end-of-course test twice and score within the 375-399 scaled score range in order to earn the locally awarded verified credits will be waived.
5. Students graduating with the 2019-2020 cohort, including terms in spring and summer 2020, shall be relieved of the requirement to complete training in emergency first aid, cardiopulmonary resuscitation, and the use of automated external defibrillator, including hands-on practice of the skills necessary to perform cardiopulmonary resuscitation (§ [22.1-253.13:4.D.7](https://law.lis.virginia.gov/vacode/title22.1/chapter13.2/section22.1-253.13%3A4/)).
6. Students graduating with the 2019-2020 cohort, including terms in spring and summer 2020, shall be relieved of the requirement to complete a virtual course (§ [22.1-253.13:4.D.9](https://law.lis.virginia.gov/vacode/title22.1/chapter13.2/section22.1-253.13%3A4/)).
7. A waiver of requirements for all state-level diploma seals as provided in [8VAC20-131-50](https://law.lis.virginia.gov/admincode/title8/agency20/chapter131/section50/) for ONLY those students graduating with the 2019-2020 cohort. Diploma seals for 2019-2020 should be awarded based on new requirements as approved below.
8. For only those students graduating with the 2019-2020 cohort, diploma seals may be awarded based on revised eligibility criteria as set out below. These new requirements are designed to maintain existing pathways to the diploma seal as well as academic rigor, but recognize that some final seal requirements may be unattainable due to the extended school closures. Please note the bolded items reflect changes from original seal requirements.

*Board of Education's Career and Technical Education Seal*

The Board of Education's Career and Technical Education Seal is awarded to students who:

Earn a Standard or Advanced Studies Diploma and complete a prescribed sequence of courses in a career and technical education concentration or specialization that they choose and maintain a "B" or better average in those courses. **If a Pass/Fail grade option is used, school divisions are provided the discretion to determine if a student has met the qualification**;

* OR pass an examination or an occupational competency assessment in a career and technical education concentration or specialization that confers certification or occupational competency credential from a recognized industry, trade or professional association;
* OR acquire a professional license in that career and technical education field from the Commonwealth of Virginia.

The Board of Education shall approve all professional licenses and examinations used to satisfy these requirements. See [The Path to Industry Certification](http://www.doe.virginia.gov/instruction/career_technical/path_industry_certification/index.shtml) for the current approved licenses and examinations.

*Board of Education’s STEM Seal*

The Board of Education’s STEM Seal shall be awarded to students who earn either a Standard Diploma or an Advanced Studies Diploma and satisfy all Math and Science requirements for the Advanced Studies diploma with a “B” average or better in all course work. **If a Pass/Fail grade option is used, school divisions are provided the discretion to determine if a student has met the qualification**;

* AND successfully complete a **25** hour or more work-based learning opportunity in a STEM area;
* AND satisfy all requirements for a Career and Technical Education concentration. A concentration is a coherent sequence of two or more state-approved courses as identified in the course listing within the CTE Administrative Planning Guide.
* **[The requirement that the student must also pass either a CTE STEM-H credential or examination approved by the Board that confers a college level-credit in a STEM field is stricken.]**

The Board of Education shall approve all professional licenses and examinations used to satisfy these requirements. See [The Path to Industry Certification](http://www.doe.virginia.gov/instruction/career_technical/path_industry_certification/index.shtml) for the current approved licenses and examinations.

*Board of Education's Advanced Mathematics and Technology Seal*

The Board of Education's Advanced Mathematics and Technology Seal is awarded to students who earn either a Standard or Advanced Studies Diploma and satisfy all of the mathematics requirements for the Advanced Studies Diploma (four units of credit including Algebra II; two verified units of credit) with a "B" average or better. **If a Pass/Fail grade option is used, school divisions are provided the discretion to determine if a student has met the qualification**; and either

* pass an examination in a career and technical education field that confers certification from a recognized industry, or trade or professional association;
* OR **successfully complete all courses necessary to earn a professional license and in lieu of the examination, submit a portfolio of student work which is signed by the division superintendent or designee;**
* OR **pass a course associated with an examination that is approved by the Board of Education and which may confer college-level credit or a dual enrollment/concurrently enrolled course in a technology or computer science area**.

The Board of Education shall approve all professional licenses and examinations used to satisfy these requirements. See [The Path to Industry Certification](http://www.doe.virginia.gov/instruction/career_technical/path_industry_certification/index.shtml) for the current approved licenses and examinations.

*Board of Education's Excellence in Civics Education Seal*

The Board of Education's Excellence in Civics Education Seal is awarded to students who meet each of the following four criteria:

* Satisfy the requirement to earn a Modified Standard Diploma, a Standard Diploma or an Advanced Studies Diploma;
* Complete Virginia & United States History and Virginia & United States Government courses with a grade of "B" or higher. **If a Pass/Fail grade option is used, school divisions are provided the discretion to determine if a student has met the qualification**;
* Complete **25** hours of voluntary participation in community service or extracurricular activities, such as volunteering for a charitable or religious organization that provides services to the poor, sick or less fortunate; participating in Boy Scouts, Girl Scouts or similar youth organizations; participating in Junior Reserve Officer Training Corps (JROTC); participating in political campaigns, government internships, Boys State, Girls State or Model General Assembly; and participating in school-sponsored extracurricular activities that have a civics focus. Any student who enlists in the United States military prior to graduation will be deemed to have met this community service requirement; and
* Have good attendance and no disciplinary infractions as determined by local school board policies.

*Board of Education’s Seal of Biliteracy*

The Board of Education’s Seal of Biliteracy is awarded to students who earn a Board of Education-approved diploma and:

* Pass all required End-of-Course Assessments in English reading and writing at the proficient or higher level **or pass all required English courses;**
* **AND** demonstrate proficiency at the intermediate-mid level or higher in one or more languages other than English as demonstrated through an assessment from a list approved by the Superintendent of Public Instruction. **For students who have not completed an assessment as of the time of school closing, school divisions should:**
* **Accept student evidence submitted through the Virginia LinguaFolio® Online language portfolio system or the traditional LinguaFolio® paper portfolio, with teacher verification of meeting the intermediate-mid level requirements; or**
* **Accept assessments completed with one of the remote proctoring options offered by the assessment providers; or**
* **Award the Seal up to one year after graduation at such time as the candidate is able to complete and submit the required evidence.**

American Sign Language qualifies as a language other than English.

The following seals remain in effect without revision, but please note the added guidance on grading.

*The Governor’s Seal*

The Governor's Seal is awarded to students who complete the requirements for an Advanced Studies Diploma with an average grade of "B" or better, and successfully complete college-level coursework that will earn the student at least nine transferable college credits in Advanced Placement (AP), International Baccalaureate (IB), Cambridge, or dual enrollment courses. **If a Pass/Fail grade option is used, school divisions are provided the discretion to determine if a student has met the qualification**.

*Board of Education Seal*

The Board of Education Seal is awarded to students who complete the requirements for a Standard Diploma or Advanced Studies Diploma with an average grade of "A" beginning with the ninth-grade class of 2006-2007 and beyond. **If a Pass/Fail grade option is used, school divisions are provided the discretion to determine if a student has met the qualification**.

***Teacher Education and Licensure***

1. A waiver of the requirement that any teacher eligible for and seeking a STEM incentive award, as provided for in [Item 135.G.2](https://budget.lis.virginia.gov/item/2020/1/HB29/Chapter/1/135/) of the 2019 Appropriation Act, have a signed contract in the same school division for the 2020-2021 school year. Instead, eligible teachers can provide evidence from the division superintendent that the same school division intends to offer a contract for the following school year.
2. Any individual seeking an initial license or renewal of licensure and who has completed all other components of training in emergency first aid, cardiopulmonary resuscitation, and the use of automated external defibrillator shall be relieved of the requirement to have hands-on practice of the skills necessary to perform cardiopulmonary resuscitation for the purpose of their licensure application until January 1, 2021. (§ [22.1-298.1.D](https://law.lis.virginia.gov/vacode/title22.1/chapter15/section22.1-298.1/))
3. Upon request, the Board of Education shall issue a One-Year License, effective July 1, 2020 to June 30, 2021, to individuals who have deficiencies for full licensure, including licensure assessments, but have not completed such licensure requirements due to the COVID-19 pandemic. VDOE will follow up in subsequent communication on the process for obtaining such a license and with details about allowable deficiencies. This license is intended to be nonrenewable and shall not be extended unless the declared state of emergency due to COVID-19 continues well into 2021. An application fee shall not be required for the One-Year License; however, the individual must pay applicable fees for any subsequent license.

***Assessments and Accreditation***

1. Local school boards shall be relieved of the requirements to administer Standards of Learning end-of-course and end-of-grade assessments and the alternative assessments for students with significant cognitive disabilities for the 2019-2020 school year. No local school board shall be required to certify it has administered an alternative assessment in 2019-2020 (§ [22.1-253.13:3.C](https://law.lis.virginia.gov/vacode/title22.1/chapter13.2/section22.1-253.13%3A3/)).
2. The Superintendent of Public Instruction will identify a new label for accreditation (“accreditation waived”) and thus waive accreditation for each public school for the 2020-2021 school year based on data from 2019-2020.
3. Divisions shall be relieved from the Virginia Kindergarten Readiness Program spring testing requirements for the 2019-2020 school year. ([Item 128.H.a-d](https://budget.lis.virginia.gov/item/2019/1/HB1700/Chapter/1/128/) of the 2019 Appropriation Act)
4. Divisions participating in Phonological Awareness Literacy Screening assessments, as well as divisions with waivers, shall be relieved from the spring assessment requirement for the 2019-2020 school year. ([Item 128.C.14](https://budget.lis.virginia.gov/item/2019/1/HB1700/Chapter/1/128/) of the 2019 Appropriation Act)
5. Local school divisions shall be relieved of the end-of-year assessment requirement for any early intervention reading services provided in the 2019-2020 school year. (§ [22.1-253.13:1.D.13](https://law.lis.virginia.gov/vacode/title22.1/chapter13.2/section22.1-253.13%3A1/))
6. Local school divisions shall be relieved of the end-of-year assessment requirement for any algebra readiness intervention services provided in the 2019-2020 school year. (§ [22.1-253.13:1.D.13](https://law.lis.virginia.gov/vacode/title22.1/chapter13.2/section22.1-253.13%3A1/))

***Reporting Requirements and Deadlines***

1. Any local school division participating in an After-the-Bell breakfast program shall be relieved of the requirement to include tardy arrivals, office discipline referrals, student achievement measures, teachers' and administrators' responses to the impact of the program on student hunger, student attentiveness, and overall classroom learning environment before and after implementation, and the financial impact on the division's school food program in its annual program report, due on August 31, 2020 to the Department of Education. No funded school division shall be excluded from funding eligibility in the 2020-2021 school year based on unavailability of data from the 2019-2020 school year. ([Item 136.C.30.c.3](https://budget.lis.virginia.gov/item/2020/1/hb29/reenrolled/1/136/))
2. The deadline for submitting Virginia Preschool Initiative applications remains set for May 15, but those divisions in need of flexibility can email earlychildhood@doe.virginia.gov ([Item 145.14.a-b](https://budget.lis.virginia.gov/item/2020/1/HB30/Enrolled/1/145/) of the 2020 Appropriation Act);
3. Any school division or consortium of divisions applying for the School Program Innovation Grant for the 2020-2021 school year may have until July 2, 2020 to submit their grant application to the Department of Education ([Item 144.T](https://budget.lis.virginia.gov/item/2020/1/HB30/Enrolled/1/144/) of the 2020 Appropriation Act).

***Other***

1. For the 2020-2021 school year only, good cause waivers, pursuant to § [22.1-79.1](https://law.lis.virginia.gov/vacode/title22.1/chapter7/section22.1-79.1/), shall include any division seeking additional instructional days prior to the allowable school start date for students for lost teaching time in the 2019-2020 school year due to extended closures required by COVID-19;
2. Parents electing to provide home instruction during the 2019-2020 school year shall be relieved of the requirement to provide evidence of student progress to the local school division superintendent ([§ 22.1-254.1](https://law.lis.virginia.gov/vacode/title22.1/chapter7/section22.1-254.1/));
3. For FY21, school divisions that are unable to provide remedial programs during the summer school session, or during intersession in the case of year round school, due to COVID-19 are eligible to use remedial summer school funds towards remedial programming provided to students through November 1, 2020.

School divisions should continue to report any students participating in a remedial summer school program as part of the Remedial Summer School data collected via the Summer Student Record Collection. For this one year only, the Summer Student Record Collection will be due in November of 2020 so that any students receiving remedial services during the 2020 summer or fall terms can be reported.

The instructional time minimums and staffing ratios set out in the Board of Education’s *Standards for State-Funded Remedial Programs* at [8VAC20-630-60](https://law.lis.virginia.gov/admincode/title8/agency20/chapter630/section60/) remain in effect. However, school divisions offering state-funded remedial summer school programs shall have maximum flexibility with respect to the use of these funds and the types of remediation, intervention, and recovery programs offered, including the use of virtual learning, distance learning, or remote learning in meeting its instructional time requirements. However, in exercising this flexibility, students attending these programs shall not be charged tuition.

Any remedial services provided in the 2020 fall term must be offered outside of the regular instructional day. Regular school year expenses for the 2020 fall term are not eligible for reimbursement under this flexibility.

To accommodate those students that were affected by the extended school closures, high school credit may be awarded only to those students who are receiving remediation for a course in which the student was enrolled in the spring 2020 term and was unable to earn a standard unit of credit. In no other instances may high school credit be awarded to students who participate in a remedial program that is funded through this provision, whether in the summer or fall of 2020, as this was an existing restriction as the time of school closure.

Remedial summer school funds may be used in conjunction with other sources of state funding for remediation, or intervention as well as state and federal funding to support recovery efforts. ([Item 145.C.9.G](https://budget.lis.virginia.gov/item/2020/1/HB30/Chapter/1/145/) of the 2020 Appropriation Act)