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

## Date: July 23, 2020

### Title: First Review of Proposed Amendment to the *Regulations Governing the Employment of Professional Personnel* (8VAC20-441*)* to Comport with Legislation Passed by the 2020 General Assembly (Exempt Action)

#### Presenter: Patty S. Pitts, Assistant Superintendent for Teacher Education and Licensure

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## Purpose of Presentation:

Action required by state or federal law or regulation.

Executive Summary:
House Bill [365](https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB365&201+sum+HB365) and [Senate Bill 98](https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+SB98) passed by the 2020 General Assembly amended the *Code of Virginia* to remove (i) the option for local school boards to extend the three-year probationary term of service for teachers by up to two additional years and (ii) the prohibition against school boards reemploying any teacher whose performance evaluation during the probationary term of service is unsatisfactory.

The Board of Education’s *Regulations Governing the Employment of Professional Personnel* must be amended to comport with legislation passed by the 2020 General Assembly.

**Action Requested:**

Other. Specify below:

The Board is requested to waive first review and approve the proposed amendment to the *Regulations Governing the Employment of Professional Personnel* (8VAC20-441).

**Superintendent’s Recommendation:**
The Board is requested to waive first review and approve the proposed amendment to the *Regulations Governing the Employment of Professional Personnel* (8VAC20-441) to comport with legislation passed by the 2020 General Assembly.

## Rationale for Action:

Board action is required to make the amendment to the regulations to comport with *the Code of Virginia*.

## Previous Review or Action:

No previous review or action.

Background Information and Statutory Authority:

[House Bill 365](https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=hb365) and [Senate Bill 98](https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=sb98) were passed by the 2020 General Assembly and the Board’s *Regulations Governing the Employment of Professional Personnel* must be revised to comport with the *Code of Virginia.*

House Bill 365 and Senate Bill 98

 Be it enacted by the General Assembly of Virginia:

1. That § [**22.1-303**](http://law.lis.virginia.gov/vacode/22.1-303) of the Code of Virginia is amended and reenacted as follows:

§ [**22.1-303**](http://law.lis.virginia.gov/vacode/22.1-303). Probationary terms of service for teachers.

A. A probationary term of service of~~at least~~ three years~~and, at the option of the local school board, up to five years~~ in the same school division shall be required before a teacher is issued a continuing contract. School boards shall provide each probationary teacher except probationary teachers who have prior successful teaching experience, as determined by the local school board in a school division, a mentor teacher, as described by Board guidelines developed pursuant to § [**22.1-305.1**](http://law.lis.virginia.gov/vacode/22.1-305.1), during the first year of the probationary period, to assist such probationary teacher in achieving excellence in instruction. During the probationary period, such probationary teacher shall be evaluated annually based upon the evaluation procedures developed by the employing school board for use by the division superintendent and principals in evaluating teachers as required by subsection C of § [**22.1-295**](http://law.lis.virginia.gov/vacode/22.1-295). A teacher in his first year of the probationary period shall be evaluated informally at least once during the first semester of the school year. The division superintendent shall consider such evaluations, among other things, in making any recommendations to the school board regarding the nonrenewal of such probationary teacher's contract as provided in § [**22.1-305**](http://law.lis.virginia.gov/vacode/22.1-305).

~~If the teacher's performance evaluation during the probationary period is not satisfactory, the school board shall not reemploy the teacher; however, nothing contained in this subsection shall be construed to require cause, as defined in §~~[**22.1-307**](http://law.lis.virginia.gov/vacode/22.1-307)~~, for the nonrenewal of the contract of a teacher who has not achieved continuing contract status.~~

Any teacher hired on or after July 1, 2001, shall be required, as a condition of achieving continuing contract status, to have successfully completed training in instructional strategies and techniques for intervention for or remediation of students who fail or are at risk of failing the

Standards of Learning assessments. Local school divisions shall be required to provide said training at no cost to teachers employed in their division. In the event a local school division fails to offer said training in a timely manner, no teacher will be denied continuing contract status for failure to obtain such training.

B. Once a continuing contract status has been attained in a school division in the Commonwealth, another probationary period need not be served in any other school division unless such probationary period, not to exceed two years, is made a part of the contract of employment. Further, when a teacher has attained continuing contract status in a school division in the Commonwealth and separates from and returns to teaching service in a school division in Virginia by the beginning of the third year, such teacher shall be required to serve a probationary period not to exceed two years, if made a part of the contract for employment.

C. For the purpose of calculating the years of service required to attain continuing contract status, at least 160 contractual teaching days during the school year shall be deemed the equivalent of one year in the first year of service by a teacher.

D. Teachers holding three-year local eligibility licenses issued prior to July 1, 2013, shall not be eligible for continuing contract status while teaching under the authority of such license. Upon attainment of a collegiate professional or postgraduate professional license issued by the Department of Education, such teachers shall serve a probationary term of service of~~at least~~ three years~~and, at the option of the local school board, up to five years~~ prior to being eligible for continuing contract status pursuant to this section.

Attachment A highlights the proposed amendment to the *Regulations Governing the Employment of Professional Personnel (8VAC20-441)* to comport with the *Code of Virginia*.

Timetable for Further Review/Action:
Following Board approval, the timetable for further action will be governed by the standard rulemaking requirements of the Administrative Process Act (APA).

## Impact on Fiscal and Human Resources:

The administrative impact required in amending the regulations will be absorbed within existing resources.

# ATTACHMENT A

## Regulations Governing the Employment of Professional Personnel (8VAC20-441)

**8VAC20-441-10. Definitions.**

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

"Annual contract" means a contract between a probationary teacher, assistant principal, principal, or supervisor and the local school board that sets forth the terms and conditions of employment for one school year.

"Assistant principal" means a person (i) who is regularly employed full time as an assistant principal and (ii) who holds a valid license issued by the Board of Education necessary to be an assistant principal.

"Board" means the Virginia Board of Education, which has general supervision of the public school system.

"Breach of contract" means, for the purpose of this chapter, a teacher failing to honor a contract for the current or next school year without formal release from that contract from the local school board. "Breach of contract" does not include dismissal for cause.

"Coaching contract" means a separate contract between the employee and the local school board that includes responsibilities for an athletic coaching assignment.

"Continuing contract" means a contract between a teacher, assistant principal, principal, or supervisor who has satisfied the probationary term of service and the local school board.

"Current employer" means the local school board with which the employee is currently under contract.

"Extracurricular activity sponsorship contract" means a separate contract between the employee and the local school board that includes responsibilities, for which a monetary supplement is received, for sponsorship of any student organizations, clubs, or groups, such as service clubs, academic clubs and teams, cheerleading squads, student publication and literary groups, and visual and performing arts organizations except those that are conducted in conjunction with regular classroom, curriculum, or instructional programs.

"Next school year" means the school year immediately following the current contract year.

"Principal" means a person (i) who is regularly employed full time as a principal and (ii) who holds a valid license issued by the Board of Education necessary to be a principal.

"Prospective employer" means the division in which application for employment is made.

"Supervisor" means a person (i) who is regularly employed full time in an instructional supervisory position as specified in this chapter and (ii) who is required by the board to hold a license prescribed in this chapter to be employed in that position. An instructional supervisory position has authority to direct or evaluate teachers, assistant principals, principals, or other instructional personnel.

"Teacher" means a person (i) who is regularly employed full time as a teacher, guidance counselor, or librarian and (ii) who holds a valid teaching license.

**8VAC20-441-20. Conditions of Employment (Fingerprinting, Department of Social Services Registry Search, Licensure).**

A. Applicants who are offered or accept employment must comply with the fingerprinting provisions contained in § [22.1-296.2](https://law.lis.virginia.gov/vacode/22.1-296.2/) of the Code of Virginia.

B. Applicants who are offered or accept employment requiring direct contact with students must satisfy the requirements of § [22.1-296.4](https://law.lis.virginia.gov/vacode/22.1-296.4/) of the Code of Virginia and provide written consent and the personal information necessary for the school board to obtain a search of the registry of founded complaints of child abuse and neglect maintained by the Department of Social Services pursuant to § [63.2-1515](https://law.lis.virginia.gov/vacode/63.2-1515/) of the Code of Virginia.

C. Additional Code of Virginia references for conditions for licensure include §§ [22.1-295](https://law.lis.virginia.gov/vacode/22.1-295/), [22.1-298.1](https://law.lis.virginia.gov/vacode/22.1-298.1/), and [22.1-299](https://law.lis.virginia.gov/vacode/22.1-299/), of the Code of Virginia.

D. Principals and assistant principals are to be licensed in accordance with § [22.1-293](https://law.lis.virginia.gov/vacode/22.1-293/) of the Code of Virginia.

**8VAC20-441-30. Contractual Period Defined.**

The local school board shall define the length of the contract period for each employee. A standard 10-month contract for a teacher shall include 200 days, including:

1. 180 teaching days or 990 instructional hours (minimum required by law); and

2. Up to 20 days for activities such as teaching, participating in professional development, planning, evaluating, completing records and reports, participating on committees or in conferences, or such other activities as may be assigned or approved by the local school board.

**8VAC20-441-40. Annual and Continuing Contract to Be in Writing.**

Annual and continuing contracts with teachers, assistant principals, principals, and supervisors must be in writing. The local school board may utilize prototypes of contract forms provided by the board or may choose to develop its own contracts, but in so doing must ensure that the essential elements set forth in [8VAC20-441-140](https://law.lis.virginia.gov/admincode/title8/agency20/chapter441/section140/) are included.

**8VAC20-441-50. Length of the Probationary Term for Teacher.**

A probationary term of full-time employment under an annual contract for ~~at least~~ three years ~~and, at the option of the local school board, up to five consecutive years~~ in the same school division is required before a teacher is issued a continuing contract. Once continuing contract status has been attained in a school division in the Commonwealth, another probationary period as a teacher need not be served in any other school division unless a probationary period not exceeding two years is made a part of the contract of employment.

**8VAC20-441-60. Calculating Term for First Year of Teaching.**

For the purpose of calculating the years of service required to attain continuing contract status, at least 160 contractual teaching days during the school year shall be deemed the equivalent of one year in the first year of service by the teacher.

**8VAC20-441-70. Probationary Period for Principal or Supervisor.**

A person employed as a principal, assistant principal, or supervisor, including a person who has previously achieved continuing contract status as a teacher, shall serve a probationary term of three consecutive years in such position in the same school division before acquiring continuing contract status as a principal, assistant principal, or supervisor.

**8VAC20-441-80. Probationary Period When Employee Separates from Service.**

If a teacher, principal, assistant principal, or supervisor separates from service during his probationary period and does not return to service in the same school division by the beginning of the year following the year of separation, such person shall be required to begin a new probationary period.

**8VAC20-441-90. Effect of Service Outside the Virginia System.**

Teaching service outside of the Virginia public school system shall not be counted as meeting in whole or in part the required probationary term.

**8VAC20-441-100. Eligibility for Continuing Contract.**

A. Only persons regularly employed full time by a school board who hold a valid license as teachers, assistant principals, principals, or supervisors shall be eligible for continuing contract status.

B. Any teacher hired on or after July 1, 2001, shall be required, as a condition of achieving continuing contract status, to have successfully completed training in instructional strategies and techniques for intervention for or remediation of students who fail or are at risk of failing the Standards of Learning assessments. Local school divisions shall be required to provide such training at no cost to teachers employed in their division. In the event a local school division fails to offer such training in a timely manner, no teacher will be denied continuing contract status for failure to obtain such training.

**8VAC20-441-110. Continuing Contract Status When Employee Separates from Service.**

When a teacher has attained continuing contract status in a school division in the Commonwealth, and separates from and returns to teaching service in a school division in Virginia by the beginning of the third year, such teacher shall be required to serve a probationary period not to exceed two years if such probationary period is made part of the contract for employment. If a teacher who has attained continuing contract status separates from service and does not return to teaching in Virginia public schools by the beginning of the third year, such teacher shall be required to begin a new probationary period.

**8VAC20-441-120. Contract to Be Separate and Apart from Annual or Continuing Contract.**

The coaching contract or extracurricular activity sponsorship contract with a teacher shall be separate and apart from the teacher's annual or continuing contract, and termination of the coaching or extracurricular activity sponsorship contract shall not constitute cause for the termination of the annual or continuing contract.

For the purposes of this chapter, "extracurricular activity sponsorship" means an assignment for which a monetary supplement is received, requiring responsibility for any student organizations, clubs, or groups, such as service clubs, academic clubs and teams, cheerleading squads, student publication and literary groups, and visual and performing arts organizations except those that are conducted in conjunction with regular classroom, curriculum, or instructional programs.

**8VAC20-441-130. Termination Notice Required.**

The coaching contract or extracurricular activity sponsorship contract shall require the party intending to terminate the contract to give reasonable notice to the other party prior to the effective date of the termination.

**8VAC20-441-140. Listing of Essential Contract Elements.**

A. The list of essential contract elements can be used by certain local school divisions who prefer to develop contracts specific to their circumstances or situations. This list of essential elements is provided as an alternative to the formal prototypes available.

B. Annual contracts. Any annual contract for professional personnel shall, to the maximum extent possible, be written in clear and concise language easily understood by all parties, and include, at a minimum, the following provisions:

1. A statement identifying the names and titles of the parties to the contract.

2. A statement of the licensure requirements for the position or options thereto.

3. A statement of the beginning date of service, the term, and the effective date of the contract.

4. A statement of the duties to be performed under the contract.

5. A statement of expectations of the employee with regard to compliance with local, state, or federal statutes, regulations and constitutional provisions.

6. A statement of the provisions concerning assignment, reassignment, termination, suspension, probation, or resignation of the employee, and mutual termination of the contract.

7. A statement of the penalties for the employee's failure to comply with the terms of the contract.

8. A statement identifying the school term.

9. A statement of the conditions under which the school term or contract may be extended.

10. A statement of the amount of compensation due the employee and the method of payment.

11. A statement of special covenants mutually agreed upon by the employer and employee which form a basis for the contract.

C. Continuing contracts. Any continuing contract for professional personnel shall, to the maximum extent possible, be written in clear and concise language easily understood by all parties and include at a minimum the following provisions:

1. All of the provisions required for the annual contract.

2. A statement explaining the continuing nature of the contract.

D. Coaching and extracurricular. Any athletic coaching contract with school personnel shall, to the maximum extent possible, be written in clear and concise language easily understood by all parties and include the following provisions:

1. A statement identifying the names and titles of the parties to the contract.

2. A statement of the duties to be performed under the contract.

3. A statement of the amount of compensation due the employee and the method of payment.

4. A statement of expectations of the employee with regard to compliance with local, state, or federal statutes, regulations and constitutional provisions.

5. A statement setting forth conditions for termination of the contract.

6. A statement identifying the limitations on the use of the experience toward length of service, substitution for teaching experience and rights in favor of the employee.

7. A statement of the beginning date of service, the term, and the effective date of the contract.

8. A statement of special covenants mutually agreed upon by the employer and employee that form a basis for the contract.

**Forms (8VAC20-441)**

[Annual Form - Contract with Professional Personnel (eff. 1/2017)](http://leg5.state.va.us/reg_agent/frmView.aspx?Viewid=322c6003478~5L.pdf&typ=40&actno=003478&mime=application/pdf)

[Continuing Form Contract with Professional Personnel (eff. 1/2017)](http://leg5.state.va.us/reg_agent/frmView.aspx?Viewid=e31f9003478~6).pdf&typ=40&actno=003478&mime=application/pdf)

[Athletic Coaching Contract with School Personnel (eff. 1/2017)](http://leg5.state.va.us/reg_agent/frmView.aspx?Viewid=21ae7003478~7).pdf&typ=40&actno=003478&mime=application/pdf)

[Extracurricular Activity Sponsorship Contract with School Personnel (eff. 1/2017)](http://leg5.state.va.us/reg_agent/frmView.aspx?Viewid=cf79d003478~8).pdf&typ=40&actno=003478&mime=application/pdf)

# Attachment B

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Exempt Action: Final Regulation

Agency Background Document

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| --- | --- |
| **Agency name** | Virginia Department of Education |
| **Virginia Administrative Code (VAC) Chapter citation(s)**  |  8VAC20-441 |
| **VAC Chapter title(s)** | *Regulations Governing the Employment of Professional Personnel* |
| **Action title** | Amend the *Regulations Governing the Employment of Professional Personnel*  |
| **Final agency action date** | July 23, 2020 |
| **Date this document prepared** | July 13, 2020 |

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, 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
[RIS1]

*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.*

House Bill [365](https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB365&201+sum+HB365) and [Senate Bill 98](https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+SB98) passed by the 2020 General Assembly amend the *Code of Virginia* to remove (i) the option for local school boards to extend the three-year probationary term of service for teachers by up to two additional years and (ii) the prohibition against school boards reemploying any teacher whose performance evaluation during the probationary term of service is unsatisfactory.

[RIS2]

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, internal staff review, petition for rulemaking, periodic review, or board decision). “Mandate” is defined as “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.”*

The 2020 General Assembly amended the *Code of Virginia*, and the Virginia Board of Education must revise its regulations to comport with the law.

Statement of Final Agency Action

*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.*

On July 23, 2020, the Virginia Board of Education is anticipated to approve the amendments to the *Regulations Governing the Employment of Professional Personnel*.