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

## Date: April 25, 2019

### Title: First Review of Proposed *Regulations Governing the Designation of School Divisions of Innovation* (Final Stage)

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## Purpose of Presentation:

Action required by state or federal law or regulation.

## Executive Summary:

The 2017 Virginia General Assembly approved House Bill 1981 (Greason), directing the Board to develop regulations for the designation of School Divisions of Innovation (SDI). To be eligible for designation, a local school board would submit a plan of innovation according to Board criteria as presented in these regulations. The legislation defines “innovation” as a new or creative alternative to existing instructional or innovative practices or school structures that evidence-based practice suggests will be effective in improving student learning and educational performance.

The legislation requires the Board to establish expectations for plans of innovation, including goals and performance targets, which could include reducing achievement and opportunity gaps, implementing high standards for student performance and balanced assessments, increasing learning opportunities through integrated coursework, and providing additional learning choices such as personalized learning opportunities and experiences through community service projects, and work-based learning. The plan of innovation could also include requests for exemptions from selected regulations, allowing school divisions to implement alternative policies to address local needs. The Board would also be required to establish a procedure for the ongoing evaluation of a SDI.

The Board initiated the regulatory review process at its September 28, 2017 meeting, when it approved a Notice of Intended Regulatory Action (NOIRA), then on April 26, 2018, the Board approved the proposed regulations. Throughout the regulatory development and review process, no public comments have been received.

The regulations would establish the procedure and criteria for the designation of a SDI, and provide that the Superintendent of Public Instruction establish a format and timelines for local school boards to submit plans of innovation. The regulations would prohibit any exemptions to regulations that are mandated by state or federal law or are designed to promote health or safety, special education regulations, and certain provisions in the Standards of Accreditation. The regulations also include provisions to evaluate the performance of a SDI, including revocation in the event that performance expectations are not met.

These regulations align with several of the goals outlined in the Board’s Comprehensive Plan. In promulgating these regulations, the Board will help provide high-quality, effective learning environments for all students (Priority 1) by allowing alternative policies to be developed and implemented to address the diverse needs of students. Additionally, the regulations would assist with the implementation of the Profile of a Virginia Graduate and the revised accountability system (Priority 3) through the implementation of innovative practices, and the utilization of evaluative data to identify additional measures impacting student achievement or school quality.

## Action Requested:

Action will be requested at a future meeting. Specify anticipated date below:

June 20, 2019

## Superintendent’s Recommendation:

The Superintendent of Public Instruction recommends the Board of Education receive for first review the proposed *Regulations Governing the Designation of School Divisions of Innovation.*

## Previous Review or Action:

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

Date: September 28, 2017

Action: Final Review of Notice of Intended Regulatory Action (NOIRA) for *Regulations Governing the Designation of School Divisions of Innovation*

Date: March 22, 2018

Action: First Review of Proposed *Regulations Governing the Designation of School Divisions of Innovation* (Proposed Stage)

Date: April 26, 2018

Action: Final Review of Proposed *Regulations Governing the Designation of School Divisions of Innovation* (Proposed Stage)

## Background Information and Statutory Authority:

The 2017 Virginia General Assembly approved HB1981 (Greason), amending the Code of Virginia by adding §§ 22.1-212.28 through 22.212.32 relating to the designation of School Divisions of Innovation (SDI).

Article 1.5.

School Divisions of Innovation.

§ 22.1-212.28. Definitions.

As used in this article, unless the context requires a different meaning:

"School Division of Innovation" or "SDI" means a school division in which the local school board has developed and for which the Board has approved pursuant to regulations as set forth in this article a plan of innovation to improve student learning; educational performance; and college, career, and citizenship readiness skills in each school in the local school division.

"Innovation" means a new or creative alternative to existing instructional or administrative practices or school structures that evidence-based practice suggests will be effective in improving student learning and educational performance.

§ 22.1-212.29. Purpose.

The Board shall promulgate regulations for the designation of School Divisions of Innovation in which the local school board in the local school division so designated shall, pursuant to a plan of innovation, be exempted from selected regulatory provisions and be permitted to adopt alternative policies for school administrators, teachers, and staff to meet the diverse needs of students.

§ 22.1-212.30. Board regulations; procedure.

Any local school board may apply to the Board for the local school division or any school therein to be designated as an SDI. Such application shall consist of a plan of innovation for the local school division. The Board shall include in regulations promulgated pursuant to § 22.1-212.29:

1. The procedure and timeline for application, review, amendment, approval, renewal, and revocation of SDI designation;

2. The procedure for the ongoing evaluation of an SDI; and

3. Any other process or procedure that the Board deems appropriate.

§ 22.1-212.31. Board regulations; application; expectations.

The Board shall establish in regulations promulgated pursuant to § 22.1-212.29 expectations for the plan of innovation of an SDI applicant, including:

1. Establishing goals and performance targets that may include:

a. Reducing achievement and opportunity gaps among groups of public school students by expanding the range of engaging and relevant learning experiences for students who are identified as academically low-achieving;

b. Increasing student learning through the implementation of high, rigorous standards for student performance and balanced assessments that measure both student growth and achievement;

c. Creating opportunities for students to demonstrate mastery of learning at different points in the learning process based on readiness;

d. Increasing student participation in opportunities that enhance students' preparation for college, career, and citizenship;

e. Increasing the number of students who are college, career, and citizenship ready;

f. Increasing opportunities for students to learn from content experts through integrated course opportunities; and

g. Motivating students at all levels by offering additional curricular choices, personalized learning opportunities, and relevant student learning experiences such as community service projects, internship opportunities, and job shadowing.

2. Identifying divisionwide and school-level policies that will lead students to be better prepared for success in work and life.

3. Describing the ways in which all schools will incorporate innovative practices.

4. Incorporating relevant professional development.

5. Providing evidence of collaboration, support, and shared leadership among teachers in the school division.

6. Providing evidence of the support and engagement of educators, parents, the local community, and the local business community in the development of the plan of innovation and of the capacity of such individuals and entities to support the implementation of innovation.

7. Providing the rationale for requests for waivers from regulatory and statutory provisions.

8. Identifying specific measures of student success that may include alternate assessments or approved substitute tests that will be used to determine if students have met graduation requirements, as applicable.

§ 22.1-212.32. SDI designation; duration; renewal.

A. The initial designation of an SDI shall be for a five-year period.

B. The initial designation of an SDI may be renewed for subsequent periods not to exceed five years each.

The Board is already authorized to grant waivers to its regulations, as § 22.1-253.13:3(H) of the *Code* states, in part:

…Waivers of regulatory requirements may be granted by the Board of Education based on submission of a request from the division superintendent and chairman of the local school board. The Board of Education may grant, for a period up to five years, a waiver of regulatory requirements that are not (i) mandated by state or federal law or (ii) designed to promote health or safety…

The Board has only received one waiver request in recent years pursuant to this language. Albemarle County Public Schools requested a waiver to the requirement to provide weighted grades on transcripts for Advanced Placement and International Baccalaureate courses, which it approved at its January 28, 2018 meeting.

Since 2015, the *Appropriation Act* has provided funding for High School Program Innovation planning grants to encourage experimental or innovative programs. Applicants have been encouraged to seek waivers of Board regulations that prevent reform efforts. Some applicants expressed desire for waivers; however, none of the waivers desired are permissible by law.

Regulation Development Process. To develop the regulations required by HB 1981, the Board approved a Notice of Intended Regulatory Action (NOIRA) at its September 28, 2017 meeting, which was subsequently approved by the Governor pursuant to the Administrative Process Act, and published in the Virginia Register on December 11, 2017, opening a 30-day public comment period.

At the Board’s March 22, 2018 meeting, the proposed *Regulations Governing the Designation of School Divisions of Innovation* were presented to the Board for first review. An amendment was suggested to clarify that innovative programs do not need to be implemented in every school in a school division in order for the division to be designated a SDI. There was also concern that by excluding the teacher licensure regulations from waivers, possible innovative learning approaches may be prohibited. These changes were incorporated into the proposed regulations.

The Board subsequently approved the regulations at its April 26, 2018 meeting, which was subsequently approved by the Governor and published in the Virginia Register on December 24, 2018. The Board held a public hearing on January 24, 2019 and a 60-day public comment period began on December 24, 2018 and ended on February 22, 2019.

No comments were received during any of the public comment periods.

*Summary of Major Provisions.* The regulations include the mandatory components of the legislation. In addition, the regulations would provide that:

* applications must conform to a format and timeline developed by the Superintendent of Public Instruction, including deadlines for a pre-application conference with department staff and submission;
* regulatory waivers are not available for regulations that are mandated by state or federal law or are designed to promote health or safety, special education regulations, and provisions in the Standards of Accreditation related to assessments, graduation requirements, instructional programming, and accreditation;
* the Board may grant all or a portion of a waiver and designate appropriate conditions for approval;
* the five-year term of a SDI designation period would begin with the school year following the Board’s approval;
* ongoing evaluation of a SDI would occur through the annual submission of information showing adequate progress toward meeting identified goals and targets; and
* a procedure for the revocation of the SDI designation for reasons the Board deems appropriate, including failure to meet the goals and targets identified in the plan of innovation, or failure to maintain accredited schools.

## **Timetable for Further Review/Action:**

It is anticipated that the Board will approve the proposed *Regulations Governing the Designation of School Divisions of Innovation* (final stage) at the June 20, 2019, meeting. The timetable for further action shall be governed by the requirements of the Administrative Process Act.

## Impact on Fiscal and Human Resources:

The administrative impact required in promulgating these regulations will be absorbed within existing resources at the department.

# ATTACHMENT A

REGULATIONS GOVERNING THE DESIGNATION OF SCHOOL DIVISIONS OF INNOVATION

**8VAC20-760-10. Definitions.**

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

"Board of Education" or "board" means the board responsible for the general supervision of the public school system in Virginia as prescribed in Section 4 of Article VIII of the Constitution of Virginia and § 22.1-8 of the Code of Virginia.

"Innovation" means a new or creative alternative to existing instructional or administrative practices or school structures that evidence-based practice suggests will be effective in improving student learning and educational performance.

"School Division of Innovation" or "SDI" means a school division in which the local school board has developed and for which the board has approved a plan of innovation to improve student learning; educational performance; and college, career, and citizenship readiness skills in one or more schools, for the benefit of all schools in the school division.

**8VAC20-760-20. School Division of Innovation designation.**

A. Any local school board may apply to the board for the local school division to be designated as an SDI.

B. Pursuant to a plan of innovation, an SDI shall be exempted from selected regulatory provisions and permitted to adopt alternative policies for school administrators, teachers, and staff to meet the diverse needs of students.

C. An application for an SDI designation shall consist of a plan of innovation for the local school division, following a format prescribed by the Superintendent of Public Instruction. The plan of innovation shall include:

1. Goals and performance targets that may include:

a. Reducing achievement and opportunity gaps among groups of public school students by expanding the range of engaging and relevant learning experiences for students who are identified as academically low-achieving;

b. Increasing student learning through the implementation of high, rigorous standards for student performance and balanced assessments that measure both student growth and achievement;

c. Creating opportunities for students to demonstrate mastery of learning at different points in the learning process based on readiness;

d. Increasing student participation in opportunities that enhance students' preparation for college, career, and citizenship;

e. Increasing the number of students who are college, career, and citizenship ready;

f. Increasing opportunities for students to learn from content experts through integrated course opportunities; or

g. Motivating students at all levels by offering additional curricular choices, personalized learning opportunities, and relevant student learning experiences such as community service projects, internship opportunities, and job shadowing;

2. Divisionwide and school-level policies that will lead students to be better prepared for success in work and life;

3. A description of the ways in which designatedschools will incorporate innovative practices;

4. A description of how schools in the division will benefit from innovative practices and share experiences and practices for application in other schools;

5. The incorporation of relevant professional development;

6. Evidence of collaboration, support, and shared leadership among teachers in the school division;

7. Evidence of the support and engagement of educators, parents, the local community, and the local business community in the development of the plan of innovation and of the capacity of such individuals and entities to support the implementation of innovation;

8. Any requests for exemptions from regulatory provisions as provided in 8VAC20-760-30, including the rationale for such exemptions and alternative policies; and

9. Specific measures of student success that may include alternate assessments or approved substitute tests that will be used to determine if students have met graduation requirements, as applicable.

D. Applications for SDI designation shall conform to a format and timeline prescribed by the Superintendent of Public Instruction. Thetimeline shall include deadlines for (i) a preapplication conference to be held with staff if any exemptions are requested and (ii) submission for consideration by the board.

**8VAC20-760-30. Exemption from regulatory provisions.**

A. In conjunction with the designation of an SDI, the board may exempt a local school board from board regulations as requested in a school division's plan of innovation. However, the board shall not grant exemptions from the following provisions:

1. Regulations mandated by state or federal law;

2. Regulations designed to promote health or safety;

3. Regulations Governing Special Education Programs for Children with Disabilities in Virginia (8VAC20-81);

4. Student achievement expectations (8VAC20-131-30);

5. Requirements for graduation (8VAC20-131-50 and 8VAC20-131-51);

6. Program of instruction and learning objectives (8VAC20-131-70); or

7. Part VIII of the Regulations Establishing Standards for Accrediting Public Schools in Virginia, School Accreditation (8VAC20-131-370 through 8VAC20-131-430).

B. The board may grant all or a portion of any request for such an exemption and designate conditions as appropriate.

**8VAC20-760-40. Approval, amendment, and renewal.**

A. The designation of an SDI shall be for a five-year period beginning with the school year following the board's approval.

B. SDI designations may be renewed for subsequent periods not to exceed five years each.

C. School boards seeking to amend a plan of innovation shall be required to seek board approval following the same procedure as provided in 8VAC20-760-20.

**8VAC20-760-50. Evaluation.**

A. Each SDI shall annually submit to the Department of Education, prior to a date designated by the Superintendent of Public Instruction, information demonstrating progress toward meeting the goals and performance targets included in the approved plan of innovation.

B. Such information shall be considered by the board when possible SDI designation renewals are being reviewed.

C. The board may revoke an SDI designation prior to the end of the five-year approval period in circumstances where it deems appropriate, including:

1. Continued failure to meet goals and performance targets established in the plan of innovation.

2. Continued failure to maintain accredited status for any school subject to the SDI designation.

ATTACHMENT B

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Final Regulation

Agency Background Document

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| **Agency name** | Virginia Department of Education |
| **Virginia Administrative Code (VAC) citation(s)**  | 8 VAC 20-740 |
| **Regulation title(s)** | Regulations Governing the Designation of School Divisions of Innovation |
| **Action title** | New regulations to govern the designation of School Divisions of Innovation, as required by HB 1981 (2017). |
| **Date this document prepared** | April 4, 2019 |

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 (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations.*

Brief Summary

*Please 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 2017 Virginia General Assembly approved HB 1981 (Greason), directing the Board to develop regulations for the designation of School Divisions of Innovation (SDI). To be eligible for designation, a local school board would submit a plan of innovation according to Board criteria as presented in these proposed regulations. The legislation defines “innovation” as a new or creative alternative to existing instructional or innovative practices or school structures that evidence-based practice suggests will be effective in improving student learning and educational performance.

The legislation requires the Board to establish expectations for plans of innovation, including goals and performance targets, which could include reducing achievement and opportunity gaps, implementing high standards for student performance and balanced assessments, increasing learning opportunities through integrated coursework, and providing additional learning choices such as personalized learning opportunities and experiences such as community service projects, and work-based learning. The plan of innovation could also include requests for exemptions from selected regulations, allowing school divisions to implement alternative policies to address local needs. The Board would also be required to establish a procedure for the ongoing evaluation of a SDI.

The regulations will establish the procedure and criteria for the designation of a SDI, and provide that the Superintendent of Public Instruction establish a format and timelines for local school boards to submit plans of innovation. The regulations will prohibit any exemptions to regulations that are mandated by state or federal law or are designed to promote health or safety, to as well as special education regulations, and certain provisions of the Standards of Accreditation (8VAC20-131-5 et seq.). The regulations also include provisions to evaluate the performance of a SDI, including revocation in the event that performance expectations are not met.

Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.*

"Innovation" means a new or creative alternative to existing instructional or administrative practices or school structures that evidence-based practice suggests will be effective in improving student learning and educational performance.

"School Division of Innovation" or "SDI" means a school division in which the local school board has developed and for which the board has approved a plan of innovation to improve student learning; educational performance; and college, career, and citizenship readiness skills in one or more schools, for the benefit of all schools in the school division.

Statement of Final Agency Action

*Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

The Board of Education will consider these final regulations at its June 20, 2019 meeting.

Mandate and Impetus

*Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously-reported information, include a specific statement to that effect.*

There are no changes to the previously reported information from the proposed stage.

Legal Basis

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

The Board of Education’s authority for promulgating regulations governing the designation of School Divisions of Innovation is as follows:

As noted above, the Virginia General Assembly enacted HB 1981 (Greason) in 2017, amending the *Code of Virginia* by adding in Chapter 13 of Title 22.1 an article numbered 1.5, consisting of sections numbered 22.1-212.28 through 22.1-212.32, relating to SDIs. This bill, which became effective on July 1, 2017, directs the Board of Education to develop regulations for the designation of SDIs.

The Board of Education’s overall regulatory authority may be found in § 22.1-16 of the *Code of Virginia*: “The Board of Education may 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 this title.”

Purpose

*Please 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.*

The proposed regulatory action is necessary to fulfill the General Assembly’s directive that regulations be developed for the designation of SDIs. In promulgating these regulations, the Board of Education will help provide high-quality, effective learning environments for all students by allowing alternative policies to be developed and implemented to address the diverse needs of students.

Substance

Please 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.

These regulations govern the designation of SDIs. The regulations would establish the procedure and criteria for the designation of a SDI, and provide that the Superintendent of Public Instruction establish a format and timelines for local school boards to submit plans of innovation. The proposed regulations would prohibit any exemptions certain requirements, including: special education regulations, graduation requirements, and any other regulations that are mandated by state or federal law or are designed to promote health or safety. The regulations also include provisions to evaluate the performance of a SDI, including revocation in the event that performance expectations are not met.

Issues

Please 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.

The primary advantage to the public is that the promulgation of these regulations will help provide high quality, effective learning environments for all students in the Commonwealth by allowing alternative policies to be developed and implemented to address the diverse needs of students.

Staff has identified no disadvantage to the proposed regulations.

Requirements More Restrictive than Federal

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously-reported information, include a specific statement to that effect.

Neither federal law nor regulation addresses the designation of school divisions as SDIs.

Agencies, Localities, and Other Entities Particularly Affected

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously-reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected

* No other state agency is expected to be affected by these regulations.

Localities Particularly Affected

* All school divisions in the Commonwealth will be subject to these regulations, as they will be able to apply for an SDI designation.

Other Entities Particularly Affected

* No other entity is expected to be affected by these regulations.

Public Comment

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

No public comments were received during the Proposed stage.

Detail of Changes Made Since the Previous Stage

Please list all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Please put an asterisk next to any substantive changes.

No changes have been made since the previous stage.

Detail of All Changes Proposed in this Regulatory Action

Please list all changes proposed in this action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Please put an asterisk next to any substantive changes.

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| **Current chapter-section number** | **New chapter-section number, if applicable** | **Current requirement**  | **Change, intent, rationale, and likely impact of updated requirements** |
|  | 8VAC20- 760-10 |  | Definitions. This section defines terms related to the designation of a school division as a School Division of Innovation.To set the framework for the remainder of the regulations. |
|  | 8VAC20- 760-20 |  | School Division of Innovation Designation. This section explains the application process through which a school division may seek designation of a SDI. This section states that applications for SDI designation must conform to a format and timeline prescribed by the Superintendent of Public Instruction.Establishes the minimum components of a plan of innovation submission, and delegates the development of the format and timelines for submissions to the Superintendent of Public Instruction. |
|  | 8VAC20- 760-30 |  | Exemptions from Regulatory Provisions. This section explains that, in the designation of an SDI, the Board of Education may exempt a local school board from regulations, with certain exceptions.Permits the waiver of regulations as part of a SDI application. Establishes certain regulatory provisions that cannot be waived. Permits the board to approve or conditionally approve a SDI application. |
|  | 8VAC20- 760-40 |  | Approval, Amendment, and Renewal. This section provides the terms for approval, amendment, and renewal of the designation of a SDI.Establishes five year terms for initial and renewal of a SDI designation. Requires resubmission for amendment to a plan of innovation |
|  | 8VAC20- 760-50 |  | Evaluation. This section explains how a designated SDI must annually submit information demonstrating progress toward meeting the goals and performance targets included in the plan of innovation. This section also provides how a SDI designation may be revoked.Requires a SDI to provide information annually showing progress toward stated goals. Permits the Board to revoke designation for appropriate reasons, including failure to meet goals, or failure to maintain accreditation. The anticipated impact is expected to be minimal as school divisions are already expected to review data on a regular basis. |