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

## Date: July 25, 2019

### Title: Final Review of Revisions to the *Regulations Governing Reduction of State Aid When Length of School Term Below 180 Teaching Days or 990 Hours* to Conform to 2019 General Assembly Legislation (Exempt Action)

#### Presenter: Mr. Zachary Robbins, Director of Policy

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## Purpose of Presentation:

Action required by state or federal law or regulation.

## Executive Summary:

The Board of Education’s *Regulations Governing Reduction of State Aid When Length of School Term Below 180 Teaching Days or 990 Hours* implement the statutory requirements in §22.1-98 of the *Code of Virginia*, including provisions for: (i) the minimum number of instructional days or hours required for each school; (ii) reductions in state aid when the minimum number of days or hours is not met; and (iii) circumstances in which local school boards may apply to have the number of instructional days or hours waived without a reduction in state aid. These regulationsmust be revised to comport with 2019 General Assembly legislation – House Bill 2124 and Senate Bill 1269 – which mandates the Board of Education grant a waiver to those schools that lost instructional time due to an evacuation directed and compelled by the Governor. This revision is an exempt action as governed by the Administrative Process Act (APA).

## Action Requested:

Final review: Action requested at this meeting.

## Superintendent’s Recommendation:

## The Superintendent of Public Instruction recommends the Board of Education approve the revisions to the *Regulations Governing Reduction of State Aid When Length of School Term Below 180 Teaching Days or 990 Hours*.

## Rationale for Action:

The revisions align the *Regulations Governing Reduction of State Aid When Length of School Term Below 180 Teaching Days or 990 Hours* with amendments to § 22.1-98 in the *Code of Virginia* as the result of HB 2124 and SB 1269 (2019). Approval allows for the revised regulations to proceed as an exempt action under the Administrative Process Act (APA).

## Previous Review or Action:

No previous review or action.

## **Background Information and Statutory Authority:**

The Board of Education’s statutory authority to promulgate and revise the *Regulations Governing Reduction of State Aid When Length of School Term Below 180 Teaching Days or 990 Hours* (8VAC20-521 *et seq*.) is found in § 22.1-98 of the *Code of Virginia*.

In the regulations, the Board of Education affirms that the length of every school term meet a minimum of 180 teaching days or 990 teaching hours in any school year (as earlier directed in 8VAC20-131-150, *Regulations Establishing Standards for Accrediting Public Schools in Virginia*). Per § 22.1-98, if a school fails to meet the minimum instructional days or hours, the amount paid by the Commonwealth from the Basic School Aid Fund shall be proportionally reduced.

**§ 22.1-98. Public School Funds.**

B. 2. If the length of the term of any school or the schools in a school division shall be less than 180 teaching days or 990 teaching hours in any school year, the amount paid by the Commonwealth from the Basic School Aid Fund shall, except as otherwise hereinafter provided or as otherwise provided by law, be reduced in the same proportion as the length of the school term has been reduced in any school or the schools in the school division from 180 teaching days or 990 teaching hours.

Section § 22.1-98.C requires schools to attempt to make up time lost due to a declared state of emergency, severe weather conditions, or other emergency situations, and permits a reduction in the number of makeup days in instances where schools have been closed for more than five days. In those instances, only one-half of the makeup days in excess of five makeup days must be provided to avoid a reduction in state aid.

When a school has been unable to make up for instructional time lost due to a declared state of emergency, severe weather conditions, or other emergency situations, 8VAC20-521-40 (as authorized by § 22.1-98) allows local school boards to apply to the Board of Education to have the instructional time requirement waived, assuming application criteria is met. Through this regulation, the Board of Education has delegated the Superintendent of Public Instruction the authority to approve these waivers.

## 8VAC20-521-40. Waivers for a Declared State of Emergency, Severe Weather Conditions, or Other Emergency Situations.

A. The Board of Education may waive the requirement that school divisions provide additional teaching days or teaching hours to compensate for closings resulting from a declared state of emergency, severe weather conditions, or other emergency situations.

B. If the local school board desires a waiver for days missed as the result of a declared state of emergency, severe weather conditions, or other emergency situations, it shall submit a request

for a waiver to the Board of Education. The request shall include evidence of efforts that have been made by the school division to reschedule as many days as possible.

C. The division superintendent and the chair of the local school board shall certify that every reasonable effort for making up lost teaching days or teaching hours was exhausted before requesting a waiver of the requirement.

D. The Board of Education authorizes the Superintendent of Public Instruction to approve, in compliance with this chapter, reductions in the school term for a school or the schools in a school division.

E. If the waiver is denied, the school division shall make up the missed instructional time in accordance with 8VAC20-521-30 and § 22.1-98 of the Code of Virginia.

There is no state or local funding penalty when the Board of Education grants a waiver as stated in 8VAC20-521-50.

## 8VAC20-521-50. Funding.

A. There shall be no proportionate reduction in the amount paid by the Commonwealth from the Basic School Aid Fund if a local school division:

1. Completes instructional time in accordance with [8VAC20-521-30](https://law.lis.virginia.gov/admincode/title8/agency20/chapter521/section30/) and § [22.1-98](https://law.lis.virginia.gov/vacode/22.1-98/) of the

Code of Virginia; or

2. Obtains a waiver for closings resulting from a declared state of emergency, severe

weather conditions, or other emergency situations in accordance with [8VAC20-521-40](https://law.lis.virginia.gov/admincode/title8/agency20/chapter521/section40/).

B. The local appropriations for educational purposes necessary to fund 180 teaching days or 990 teaching hours shall not be proportionally reduced by any local governing body due to a reduction in the length of the term of any school if the missed days are made up in accordance with [8VAC20-521-30](https://law.lis.virginia.gov/admincode/title8/agency20/chapter521/section30/) or the schools in a school division have been granted a waiver in accordance with [8VAC20-521-40](https://law.lis.virginia.gov/admincode/title8/agency20/chapter521/section40/).

During its 2019 session, the General Assembly passed HB2124 and SB1269 requiring the Board of Education to waive the requirement that schools provide additional teaching days or teaching hours to compensate for school closings resulting from an evacuation directed and compelled by the Governor for up to five teaching days, given that the local school division has applied and demonstrated certified evidence of its efforts to reschedule as many days as possible. The legislation further provides that there shall be no proportionate reduction in the amount paid by the Commonwealth from the Basic School Aid Fund or the amount paid by a local governing body when such a waiver is granted.

**House Bill 2124 and Senate Bill 1269**

**CHAPTER 644/CHAPTER 645**

**An Act to amend and reenact § 22.1-98 of the Code of Virginia, relating to length of school term; waiver for school closings resulting from evacuation.**

**[H 2124] [S 1269]**

**Approved March 19, 2019**

Be it enacted by the General Assembly of Virginia:

1. That § 22.1-98 of the Code of Virginia is amended and reenacted as follows:

§ 22.1-98. Reduction of state aid when length of school term below 180 days or 990 hours.

A. For the purposes of this section:

1. "Declared state of emergency" means the declaration of an emergency before or after an event, by the Governor or by officials in a locality, that requires the closure of any or all schools within a school division.

2. "Severe weather conditions or other emergency situations" means those circumstances presenting a threat to the health or safety of students that result from severe weather conditions or other emergencies, including, but not limited to, natural and man-made disasters, energy shortages, or power failures.

B. Except as provided in this section:

1. The length of every school's term in every school division shall be at least 180 teaching days or 990 teaching hours in any school year; and

2. If the length of the term of any school or the schools in a school division shall be less than 180 teaching days or 990 teaching hours in any school year, the amount paid by the Commonwealth from the Basic School Aid Fund shall, except as otherwise hereinafter provided or as otherwise provided by law, be reduced in the same proportion as the length of the school term has been

reduced in any school or the schools in the school division from 180 teaching days or 990 teaching hours.

C. Notwithstanding the requirements of subsection B, in any case in which severe weather conditions or other emergency situations, as defined in this section, result in the closing of a school or the schools in a school division, the amount paid by the Commonwealth from the Basic School Aid Fund shall not be reduced if the following schedule of make-up days is followed:

1. When severe weather conditions or other emergency situations have resulted in the closing of a school or the schools in a school division for five or fewer days, the school or the schools in the

school division shall make up all missed days by adding teaching days to the school calendar or extending the length of the school day;

2. When severe weather conditions or other emergency situations have resulted in the closing of a school or the schools in a school division for six days or more, the school or the schools in the school division shall make up the first five days plus one day for each two days missed in excess of the first five by adding teaching days to the school calendar or extending the length of the school day; or

3. When severe weather conditions or other emergency situations have resulted in the closing of any school in a school division and such school has been unable to meet the 180 teaching day requirement, the school division may make up the missed teaching days by providing its students with instructional hours equivalent to such missed teaching days to meet the minimum 990 teaching hour requirement.

D. The local appropriations for educational purposes necessary to fund 180 teaching days or 990 teaching hours shall also not be proportionally reduced by any local governing body because of any reduction in the length of the term of any school or the schools in a school division authorized by subsection C.

E. The foregoing provisions of this section notwithstanding, the Board of Education may waive the requirement that school divisions provide additional teaching days or teaching hours to compensate for school closings resulting from a declared state of emergency or severe weather conditions or other emergency situations. If the local school board desires a waiver, it shall submit a request to the Board of Education. The request shall include evidence of efforts that have been made by the school division to reschedule as many days as possible and certification

by the division superintendent and chairman of the local school board that every reasonable effort for making up lost teaching days or teaching hours was exhausted before requesting a waiver of this requirement. If the waiver is denied, the school division shall make up the missed instructional time in accordance with this section.

If the Board grants such a waiver, there shall be no proportionate reduction in the amount paid by the Commonwealth from the Basic School Aid Fund. Further, the local appropriations for

educational purposes necessary to fund 180 teaching days or 990 teaching hours shall not be proportionally reduced by any local governing body due to any reduction in the length of the term of any school or the schools in a school division permitted by such waiver.

*F. Notwithstanding the provisions of this section, the Board of Education shall waive the requirement that school divisions provide additional teaching days or teaching hours to compensate for school closings resulting from an evacuation directed and compelled by the*

*Governor pursuant to § 44-146.17 for up to five teaching days. If the local school board desires such a waiver, it shall notify the Board of Education and provide evidence of efforts that have been made by the school division to reschedule as many days as possible and certification by the division superintendent and chairman of the local school board that every reasonable effort for making up lost teaching days or teaching hours was exhausted. After receiving such notification, the Board shall grant the waiver and there shall be no proportionate reduction in the amount paid by the Commonwealth from the Basic School Aid Fund. Further, the local appropriations for educational purposes necessary to fund 180 teaching days or 990 teaching hours shall not be proportionally reduced by any local governing body due to any reduction in the length of the term of any school or the schools in a school division permitted by such waiver.*

~~F.~~ G. If the professional personnel of any such school division actually render service for less than the contracted period for such school year and their compensation is reduced because of insufficient funds or other reason, the proportionate amount paid by the Commonwealth for the personnel component of the Basic School Aid Fund for such school year shall be reduced pro rata.

Notwithstanding any provision of law to the contrary, the school board of any school division in which the length of the term for any school or for the schools in the school division is reduced as provided in this section may pay its professional personnel such salary as they would have received if the term had not been so reduced.

~~G.~~ H. In developing the school calendar as provided for in § 22.1-79.1, each local school board shall establish such calendars and teaching contracts in accordance with applicable regulations of the Board of Education to include contingencies for making up teaching days and teaching hours

missed for emergency situations described in this section. Historical data shall be used to determine the needs of the locality including scheduled holidays and breaks and work days.

~~H.~~ I. The Board of Education may authorize the Superintendent of Public Instruction to approve, in compliance with this section, reductions in the school term for a school or the schools in a

school division without a proportionate reduction in the amount paid by the Commonwealth from the Basic School Aid Fund.

~~I.~~ J. With the exception of the Basic School Aid Fund as provided for above, the Commonwealth shall not distribute funds to a locality for costs not incurred when the school term is reduced below 180 teaching days or 990 teaching hours.

~~J.~~ K. As part of the annual report required by § 22.1-81, the division superintendent and local school board chairman shall certify the total number of teaching days and teaching hours each year.

## Timetable for Further Review/Action:

HB2124 and SB1269 (Chapters 644 and 645) became effective July 1, 2019. The timetable for further action will be governed by the exempt action requirements of the APA. The Department of Education will notify school divisions of the revisions to the regulations when they become final, pursuant to the requirements of the APA.

## Impact on Fiscal and Human Resources:

The administrative impact required in promulgating these regulations will be absorbed within existing agency resources.

# Attachment A

## Proposed Amendments to the *Regulations Governing Reduction of State Aid When Length of School Term Below 180 Teaching Days or 990 Hours*, 8VAC20-521-40 and 8VAC20-521-50

## 8VAC20-521-40. Waivers for a Declared State of Emergency, Evacuations, Severe Weather Conditions, or Other Emergency Situations.

A. The Board of Education may waive the requirement that school divisions provide additional teaching days or teaching hours to compensate for closings resulting from a declared state of emergency, severe weather conditions, or other emergency situations.

B. The Board of Education shall waive the requirement that school divisions provide additional teaching days or teaching hours to compensate for school closings resulting from an evacuation directed and compelled by the Governor pursuant to § [**44-146.17**](http://law.lis.virginia.gov/vacode/44-146.17) for up to five teaching days.

~~B.~~ C. If the local school board desires a waiver for days missed as the result of a declared state of emergency, severe weather conditions, or other emergency situations, it shall submit a request for a waiver to the Board of Education. The request shall include evidence of efforts that have been made by the school division to reschedule as many days as possible.

~~C.~~ D. The division superintendent and the chair of the local school board shall certify that every reasonable effort for making up lost teaching days or teaching hours was exhausted before requesting a waiver of the requirement.

~~D.~~ E. The Board of Education authorizes the Superintendent of Public Instruction to approve, in compliance with this chapter, reductions in the school term for a school or the schools in a school division.

~~E.~~ F. If the waiver is denied, the school division shall make up the missed instructional time in accordance with [8VAC20-521-30](https://law.lis.virginia.gov/admincode/title8/agency20/chapter521/section30/) and § [22.1-98](https://law.lis.virginia.gov/vacode/22.1-98/) of the Code of Virginia.

## 8VAC20-521-50. Funding.

A. There shall be no proportionate reduction in the amount paid by the Commonwealth from the Basic School Aid Fund if a local school division:

1. Completes instructional time in accordance with [8VAC20-521-30](https://law.lis.virginia.gov/admincode/title8/agency20/chapter521/section30/) and § [22.1-98](https://law.lis.virginia.gov/vacode/22.1-98/) of the Code of Virginia; or

2. Obtains a waiver for closings resulting from a declared state of emergency, an evacuation directed and compelled by the Governor, severe weather conditions, or other emergency situations in accordance with [8VAC20-521-40](https://law.lis.virginia.gov/admincode/title8/agency20/chapter521/section40/).

B. The local appropriations for educational purposes necessary to fund 180 teaching days or 990 teaching hours shall not be proportionally reduced by any local governing body due to a reduction in the length of the term of any school if the missed days are made up in accordance with [8VAC20-521-30](https://law.lis.virginia.gov/admincode/title8/agency20/chapter521/section30/) or the schools in a school division have been granted a waiver in accordance with [8VAC20-521-40](https://law.lis.virginia.gov/admincode/title8/agency20/chapter521/section40/).

**Attachment B**

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Exempt Action

Final Regulation

Agency Background Document

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| **Agency name** | Virginia Department of Education/Board of Education |
| **Virginia Administrative Code (VAC) citation(s)**  |  8 VAC 20-521-40 and 8 VAC-521-50 |
| **Regulation title(s)** | Regulations Governing Reduction of State Aid When Length of School Term Below 180 Teaching Days or 990 Hours |
| **Action title** | Adding evacuations to the regulations on waivers for school closings |
| **Final agency action date** | July 25, 2019 |
| **Date this document prepared** | July 5, 2019 |

While 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 (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 Board of Education’s *Regulations Governing Reduction of State Aid When Length of School Term Below 180 Teaching Days or 990 Hours* implement statutory requirements in Va. Code § 22.1-98. Per Va. Code § 22.1-98, if a school fails to meet the minimum instructional time - 180 teaching days or 990 teaching hours – the amount paid by the Commonwealth from the Basic School Aid Fund shall be reduced in the same proportion as the length of the school term has been reduced in any school or the schools in the school division from 180 teaching days or 990 teaching hours. When a school is unable to make up for instructional time lost due to a declared state of emergency, severe weather conditions, or other emergency situations, § 22.1-98 and 8 VAC 20-521-40 allow the local school board to apply to the Board of Education to have the instructional time requirement waived without penalty in state or local aid.

Pursuant to Chapters 644 and 645 of the 2019 Acts of Assembly*,* the Board of Education is now required to waive the requirement that school divisions provide additional teaching days or teaching hours to compensate for school closings resulting from an evacuation directed and compelled by the Governor for up to five teaching days. For such waivers, the local school division must apply and demonstrate certified evidence of its efforts to reschedule as many days as possible. As with cases of a declared state of emergency, severe weather conditions, or other emergency situations, waiver applications for time lost due an evacuation directed and compelled by the Governor may be approved by the Superintendent of Public Instruction, as the Board has delegated such authority. The legislation further provides that there shall be no proportionate reduction in the amount paid by the Commonwealth from the Basic School Aid Fund or the amount paid by a local governing body. The revisions to the Regulations Governing Reduction of State Aid When Length of School Term Below 180 Teaching Days or 990 Hoursreflect this statutory change.

Mandate and Impetus

*Please 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, board decision, etc.). “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.”*

Revisions to the Regulations Governing Reduction of State Aid When Length of School Term Below 180 Teaching Days or 990 Hourswere mandated by Chapters 644 and 645 (House Bill 2124 and Senate Bill 1269) of the 2019 Acts of Assembly, effective July 1, 2019.

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.*

On July 25, 2019, the Board of Education adopted final amendments to 8VAC20-521-40 and 8VAC20-521-50, Regulations Governing Reduction of State Aid When Length of School Term Below 180 Teaching Days or 990 Hours.

Periodic Review

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 proposed stage, please 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, include a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to the 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.

This form is not being used to announce a periodic review or a small business impact review.

1. There is a continued need for the Regulations Governing Reduction of State Aid When Length of School Term Below 180 Teaching Days or 990as it allows the Board of Education to execute statutory requirements in §22.1-98 and delegates the authority to field, review, and approve waiver applications to the Superintendent of Public Instruction.
2. Following the evacuations directed and compelled by the Governor during the 2018 hurricane season, several school divisions communicated concern about lost instructional time. This feedback resulted in House Bill 2124 and Senate Bill 1269
3. The regulation is not overly complex and is easily understandable for school administrators and school board members.
4. This regulation does not overlap, duplicate, or conflict with federal or state law or regulations.
5. The regulation was last amended December 1, 2016 in response to legislation that expanded the circumstances under which the Board of Education is authorized to waive the requirement that school divisions provide additional teaching days or teaching hours to compensate for school closings, including severe weather of other emergency situations. The regulations were evaluated during this revision period and there has been no change to relevant factors, including technological or economic conditions, in areas affected by the regulation.