

# Virginia Board of Education Agenda Item



**Agenda Item:** N

**Date:** November 17, 2016

<b>Title</b>	First Review of Proposed Amendments to the <i>Regulations Governing Local School Boards and School Divisions</i> (8VAC 20-720) Regarding Use of Sexually Explicit Instructional Materials (Proposed Stage)		
<b>Presenter</b>	Dr. Cynthia Cave, Assistant Superintendent for Policy and Communications		
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**Purpose of Presentation:**

Other initiative or requirement. Specify below:

Consideration of amendments in response to public comments received at 2013 Board of Education meetings and follow-up reviews by the Board of Education

**Previous Review or Action:**

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

Date: October 24, 2013

Action: Final Review of Notice of Intended Regulatory Action (NOIRA) for Amendments to the *Regulations Governing Local School Boards and School Divisions*

**Action Requested:**

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

January 26, 2017

**Alignment with Board of Education Goals: Please indicate (X) all that apply:**

	Goal 1: Accountability for Student Learning
	Goal 2: Rigorous Standards to Promote College and Career Readiness
	Goal 3: Expanded Opportunities to Learn
	Goal 4: Nurturing Young Learners
	Goal 5: Highly Qualified and Effective Educators
X	Goal 6: Sound Policies for Student Success
	Goal 7: Safe and Secure Schools
	Other Priority or Initiative. Specify:

**Background Information and Statutory Authority:**

Goal 6: The *Regulations Governing Local School Boards and School Divisions* set forth the responsibilities of local school boards in the selection of instructional materials and textbooks. Section 8VAC20-720-160 requires local school boards to adopt policies and criteria for the selection of instruction materials that shall include, at a minimum, the rights of parents to inspect any instructional materials used as part of the curriculum; the basis upon which an individual may seek reconsideration of these materials, including those that might be controversial or sensitive; and clear procedures for handling challenged materials.

Proposed amendments would add language that requires local school boards to adopt policies and criteria regarding the selection of instructional materials which would include the following: the rights of parents or legal guardians to review any instructional material used as part of the curriculum and the basis upon which a person may request reconsideration of the school board's selection of sexually explicit materials, in addition to those considered controversial or sensitive as currently provided in the regulation. Moreover, the amendments would require procedures that would allow parents or legal guardians to request alternative materials in lieu of materials that are sexually explicit and would require each school provide to parents or legal guardians annual notice at the beginning of the school year identifying any sexually explicit materials in any course, textbook, or any supplemental materials.

The overall regulatory authority for the Board of Education (Board) may be found in § [22.1-16](#) of the *Code of Virginia*:

§ [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.

In February 2013, the Board amended the *Regulations Governing Local School Boards and School Divisions* to address local school divisions' approval of textbooks not included in the Board's list of approved textbooks. During and following this action, the Board received public comments expressing concern about content and language used in some instructional materials. The Board then discussed whether or not the section of the same regulations that address local school board selection and approval of instructional materials should be amended to require parental notification, alternative materials, and/or opt-out provisions for certain materials. The following language included in the regulation (8VAC20-720-160) at that time (and currently included in the regulation) did not explicitly address such options as available to parents or legal guardians.

[8VAC20-720-160](#). Instructional Materials.

- A. Local school boards shall be responsible for the selection and utilization of instructional materials.
- B. Local school boards shall adopt policies and criteria for the selection of instructional materials that shall include, at a minimum:
  - 1. The rights of parents to inspect, upon request, any instructional materials used as part of the educational curriculum for students, and the procedure for granting a request by a parent for such access, in accordance with the Protection of Pupil Rights Amendment, 20 USC § 1232H, and its implementing regulation, 34 CFR Part 9;
  - 2. The basis upon which a person may seek reconsideration of the local school board's selection of instructional materials, including but not limited to materials that might be considered sensitive or controversial, and the procedures for doing so; and
  - 3. Pursuant to § [22.1-253.13:7](#) of the *Code of Virginia*, clear procedures for handling challenged controversial materials.

In 2013, as parents began to raise concerns about parental notification of and approval of sexually explicit materials found in textbooks used in some Virginia classrooms, the Board and department staff began to review this issue. The Board was asked to clarify current language to ensure that parents

would be provided advance notification of sensitive materials, alternative selections, and opt-out options. Board members requested information about parental notification at the February 2013 Board meeting. A [Report on Surveys Regarding Parental Notification Related to Controversial or Sensitive Materials](#) was presented to the Board on June 27, 2013. Information was received from the Virginia School Boards Association, the Virginia Education Association, the Virginia Parent-Teacher Association, the Virginia Association for Elementary School Principals, and the Virginia Association for Secondary School Principals. In addition, email requests were sent to school division superintendents. One hundred eight school divisions and all five professional organizations responded to the survey. The Board accepted that report and asked the Superintendent of Public Instruction to provide a report on options regarding parental notification related to controversial or sensitive materials for the Board's consideration at the July 2013 Board meeting. As reported at the July 2013 meeting:

- Ninety-eight percent of the school divisions responding to the survey reported that they had policies related to the selection and utilization of instructional materials.
- The definition of *sensitive or controversial materials* varied among school divisions.
- Seventy-four percent of the school divisions responding to the survey reported they had policies that allowed students to be excused from all or part of instruction related to sensitive or controversial materials.
- Forty-eight percent of the school divisions responding to the survey reported that their instructional materials policy required that parents receive advance notice prior to the use of potentially sensitive or controversial materials in the classroom.

At its July 2013 meeting, a [Report on Options Regarding Parental Notification Related to Controversial or Sensitive Materials](#) was presented to the Board. The report included the following options:

- Amend the language in the [Regulations Establishing Standards for Accrediting Public Schools in Virginia](#) (SOA) to require school divisions to provide to parents at the beginning of the school year a notice about any sensitive or explicit materials that may be included in the course, textbook, or any supplemental instructional materials ([8VAC20-131-270](#))
- Amend the language in the [Regulations Governing Local School Boards and School Divisions](#) to require reasonable advance notice of the intended use of controversial materials ([8VAC20-720-160.B](#))

The Board requested that a Notice of Intended Regulatory Action (NOIRA) be issued to add language to the *Regulations Governing Local School Boards and School Divisions* regarding procedures school divisions must have in place to address the use of sensitive or controversial instructional materials in the classroom.

The agenda item, [First Review of Notice of Intended Regulatory Action \(NOIRA\) for Amendments to the Regulations Governing Local School Boards and School Divisions \(8 VAC 20-720\) Regarding Use of Controversial or Sensitive Instructional Materials](#), was presented at the September 2013 Board meeting. The Board approved for first review the NOIRA for these regulations.

The [Final Review of Notice of Intended Regulatory Action \(NOIRA\) for Amendments to the](#)

[Regulations Governing Local School Boards and School Divisions \(8 VAC 20-720\) Regarding Use of Controversial or Sensitive Instructional Materials](#) was discussed at the October 2013 Board meeting. The Board requested that a NOIRA be issued to add language to these regulations regarding procedures school divisions must have in place to address the use of sensitive or controversial instructional materials in the classroom. This agenda item was included on the consent agenda and approved by the Board unanimously. The NOIRA was submitted, and public comment received. The Board received 1,241 public comments, including the 1,209 public comments received through the Virginia Regulatory Town Hall (Town Hall). Of the 1,209 Town Hall comments received, 586 (46 percent) were generally supportive of amendments to the regulations. Of the 1,209 Town Hall comments received, 598, or a little more than 49 percent were generally opposed to the amendments. Of the 32 emails/letters received, 25 (78 percent) were generally supportive of amendments to the regulations. Of the 32 emails/letters received, 6 or a little more than 18 percent were generally opposed to the amendments to the regulations. Of all the comments received, 611 (about 49 percent) were generally supportive. However, no further action was taken pending consideration of a more comprehensive review in 2014.

The [Final Review of Amendments to the Regulations Establishing Standards for Accrediting Public Schools in Virginia \(8 VAC 20-131\) \(Standards of Accreditation - Proposed Stage\)](#) was also discussed at the October 2013 Board meeting. During Board discussion, proposed language was added which would require notification of parents about sensitive or sexually explicit materials, and this language was approved unanimously by the Board. However, this promulgation process was delayed after the Board decided to conduct a comprehensive review of those regulations.

During the 2016 General Assembly Session, [HB 516](#) was proposed to amend the *Code of Virginia* by adding a section numbered 22.1-16.6, relating to the Board policy on sexually explicit instructional material. This bill passed the House and the Senate and would have required the Board to establish a policy to require each public elementary or secondary school to:

- Notify the parent of any student whose teacher reasonably expects to provide instructional material that includes sexually explicit content, as defined by the Board
- Permit the parent of any student to review instructional material that includes sexually explicit content upon request
- Provide non-explicit instructional material and related academic activities to any student whose parent so requests, as an alternative to instructional material and related academic activities that include sexually explicit content

The Governor vetoed this bill because he determined that the Board had been examining this issue and had engaged in lengthy and substantive conversations with school boards, teachers, parents, and students about existing local policies and potential state policies to address these concerns. He indicated in his veto statement that he believed that school boards are best positioned to ensure that students are exposed to those appropriate literary and artistic works that will expand students' horizons and enrich their learning experiences.

At its October 26, 2016 Committee on School and Division Accountability, after discussion, the Board decided to include language referencing parental options regarding sexually explicit materials in the *Regulations Governing Local School Boards and School Divisions*, rather than in the Standards of Accreditation. The following language is proposed for consideration:

8VAC20-720-160. Instructional Materials.

A. Local school boards shall be responsible for the selection and utilization of instructional materials.

B. Local school boards shall adopt policies and criteria for the selection of instructional materials that shall include, at a minimum:

1. The rights of parents or legal guardians to inspect review, upon request, any instructional materials used as part of the educational curriculum for students, and the procedure for granting a request by a parent or legal guardian for such access, in accordance with the Protection of Pupil Rights Amendment, 20 USC § 1232H, and its implementing regulation, 34 CFR Part 9;
2. The basis upon which a person may seek reconsideration of the local school board's selection of instructional materials, including but not limited to materials that might be considered sensitive, ~~or~~ controversial, or sexually explicit, and the procedures for doing so; ~~and~~
3. Pursuant to § 22.1-253.13:7 of the Code of Virginia, clear procedures for handling challenged controversial materials, including procedures that would provide non-explicit instructional material and related academic activities to any student whose parent or legal guardian so requests, as an alternative to instructional material and related academic activities that include sexually explicit content; and-
4. A requirement that each school shall provide an annual notice to the parent or legal guardian at the beginning of the school year, identifying any sexually explicit materials that may be included in any course, inclusive of the textbook, or in any supplemental materials.

**Summary of Important Issues:** In response to substantial review, the Board has requested consideration of proposed amendments to the *Regulations Governing Local School Boards and School Divisions* regarding procedures and policies for school divisions to provide parents and legal guardians an opportunity to review in advance and to address sexually explicit materials that may be included in any course, inclusive of the textbook, or in any supplemental materials.

**Impact on Fiscal and Human Resources:** The administrative impact required in promulgating these regulations will be absorbed within existing resources at the department. Local school boards would need to adhere to the provisions of the *Regulations Governing Local School Boards and School Divisions*.

**Timetable for Further Review/Action:** The timetable for further action shall be governed by the requirements of the Administrative Process Act. Final review is requested for the January 26, 2017 meeting.

**Superintendent's Recommendation:** The Superintendent of Public Instruction recommends the Board receive for first review the proposed amendments to the *Regulations Governing Local School Boards and School Divisions* regarding notice and options for parents regarding sexually explicit instructional materials.

**Proposed Amendments to the *Regulations Governing Local School Boards and School Divisions (8VAC 20-720) Regarding Use of Sexually Explicit Instructional Materials***

8VAC20-720-10. Definitions.

The following word or term when used in this chapter shall have the following meaning unless the context clearly indicates otherwise:

"Textbooks" means print or electronic media for students use that serve as the primary curriculum basis for grade-level subject or course.

Statutory Authority

§ [22.1-16](#) of the Code of Virginia.

Historical Notes

Derived from [Volume 28, Issue 26](#), eff. September 26, 2012.

8VAC20-720-80. Student Fees and Charges.

- A. No fees or charges may be levied on any pupil by any school board unless authorized by regulation of the Board of Education or by the General Assembly.
- B. Each local school board shall develop a policy in accordance with the requirements of the Standards of Quality, § 22.1-253.13:7 of the Code of Virginia, addressing any fees that are charged. The policy shall include the schedule of fees charged by the school division, provisions for reducing or waiving fees, and consequences for nonpayment of fees. The policy and the fee schedule shall be provided to parents annually and posted on the school division's website.
- C. The policy shall provide for the reduction or waiver of fees for economically disadvantaged students and students whose families are undergoing economic hardships and are financially unable to pay them. This shall include, but not be limited to, families receiving unemployment benefits or public assistance, including Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), Supplemental Security Income (SSI) or Medicaid; foster families caring for children in foster care; or families that are homeless.
- D. School divisions shall provide notice that a fee waiver may be requested, including directions as to how to apply for the waiver, each time a fee is charged.
- E. School divisions shall not charge any fees that have not been approved by the local school board.

F. The fee policy and the fee schedule shall be consistent throughout the school division, although there may be different fee schedules assessed at the elementary, middle, and high school levels.

G. Local school boards shall not charge fees:

1. As a condition of school enrollment, except for students who are not of school-age or who do not reside within the jurisdiction, in accordance with §§ 22.1-1 and 22.1-3 of the Code of Virginia and as provided for in § 22.1-5 of the Code of Virginia;
2. For instructional programs and activities, or materials required for instruction, except as specified in subsection H of this section;
3. For textbooks or textbook deposits; however, § 22.1-243 of the Code of Virginia permits a local school board to assess a reasonable fee or charge for lost or damaged textbooks;
4. For pupil transportation to and from school; or
5. For summer school programs or other forms of remediation required by the Standards of Quality, § 22.1-253.13:1 of the Code of Virginia.

H. Local school boards may charge fees for the following:

1. Optional services, such as parking or locker rental;
2. Student-selected extracurricular activities;
3. Class dues; however, class dues shall not be mandatory, and the school board shall specify the kinds of programs and activities covered by class dues;
4. Field trips or educationally-related programs that are not required instructional activities;
5. Fees for musical instruments, so long as the instruction in the use of musical instruments is not part of the required curriculum;
6. Distance learning classes for enrichment and not necessary to meet the requirements for a diploma;
7. Summer school, unless the classes are required for remediation as prescribed by the Standards of Quality, § 22.1-253.13:1 of the Code of Virginia;
8. Overdue or lost or damaged library books;

9. Lost or damaged textbooks, in accordance with § 22.1-243 of the Code of Virginia; however, textbooks shall be provided free of charge;

10. Consumable materials such as workbooks, writing books, drawing books , and fine arts materials and supplies; however, in accordance with § 22.1-243 of the Code of Virginia, the local school board shall develop a policy ensuring that workbooks, writing books, drawing books , and fine arts materials and supplies are furnished to students who are unable to afford them at a reduced price or free of charge . In addition, local school boards are not authorized to charge fees to students for instructional materials, textbooks, or other materials that are not directly used by a public school student;

11. The behind-the-wheel portion of the driver's education program in accordance with § 22.1-205 of the Code of Virginia;

12. A fee not to exceed a student's pro rata share of the cost of providing transportation for voluntary extracurricular activities, in accordance with § 22.1-176 of the Code of Virginia; and

13. The preparation and distribution of official paper copies of student transcripts; however, each school board shall provide a reasonable number of copies for free before a charge is levied for additional official copies. Official electronic copies of student transcripts shall be provided for free.

**H I.** Local school boards shall not:

1. Withhold any student's scholastic report card or diploma because of nonpayment of fees and charges, in accordance with § 22.1-6 of the Code of Virginia;
2. Withhold any student's class schedule; or
3. Suspend or expel a student for nonpayment of fees and charges.

**H J.** Nothing in this chapter shall be construed to prohibit the school board of any county, city, or town from making supplies, services, or materials available to pupils at cost.

**H K.** These regulations do not address the operation of school stores or fund-raising activities where transactions are strictly voluntary.

Statutory Authority

§ 22.1-16 of the Code of Virginia.

Historical Notes

Derived from [Volume 29, Issue 06](#), eff. December 19, 2012.

8VAC20-720-160. Instructional Materials.

A. Local school boards shall be responsible for the selection and utilization of instructional materials.

B. Local school boards shall adopt policies and criteria for the selection of instructional materials that shall include, at a minimum:

1. The rights of parents or legal guardians to inspect review, upon request, any instructional materials used as part of the educational curriculum for students, and the procedure for granting a request by a parent or legal guardian for such access, in accordance with the Protection of Pupil Rights Amendment, 20 USC § 1232H, and its implementing regulation, 34 CFR Part 9;
2. The basis upon which a person may seek reconsideration of the local school board's selection of instructional materials, including but not limited to materials that might be considered sensitive, or controversial, or sexually explicit, and the procedures for doing so; and
3. Pursuant to § [22.1-253.13:7](#) of the Code of Virginia, clear procedures for handling challenged controversial materials, including procedures that would provide non-explicit instructional material and related academic activities to any student whose parent or legal guardian so requests, as an alternative to instructional material and related academic activities that include sexually explicit content; and;
4. A requirement that each school shall provide an annual notice to the parent or legal guardian at the beginning of the school year, identifying any sexually explicit materials that may be included in any course, inclusive of the textbook, or in any supplemental materials.

Statutory Authority

§ [22.1-16](#) of the Code of Virginia.

Historical Notes

Derived from [Volume 28, Issue 26](#), eff. September 26, 2012.

8VAC20-720-170. Textbooks.

A. Textbook approval.

1. The Board of Education shall have the authority to approve textbooks for use in the public schools of Virginia.

2. In approving basal textbooks for reading in kindergarten and first grade, the Board of Education shall report to local school boards those textbooks with a minimum decodability standard based on words that students can correctly read by properly attaching speech sounds to each letter to formulate the word at 70% or above for such textbooks in accordance with § [22.1-239](#) of the Code of Virginia.

3. Any local school board may use textbooks not approved by the Board of Education provided the local school board selects such books in accordance with this chapter.

4. Contracts and purchase orders with publishers of textbooks approved by the Board of Education for use in grades 6-12 shall allow for the purchase of printed textbooks, printed textbooks with electronic files, or electronic textbooks separate and apart from printed versions of the same textbook. Each local school board shall have the authority to purchase an assortment of textbooks in any of the three forms listed in this subdivision.

B. Procedures for selection of textbooks by local school boards. Local school boards shall adopt procedures for the selection of textbooks. These procedures shall include, at a minimum, the following:

1. Appointment of evaluation committees by the local school board to review and evaluate textbooks in each of the subject areas.

2. Notice to parents that textbooks under consideration for approval will be listed on the school division's website and made available at designated locations for review by any interested citizens.

3. Opportunities for those reviewing such textbooks to present their comments and observations, if any, to the local school board through locally approved procedures.

4. Procedures to ensure appropriate consideration of citizen comments and observations.

5. Selection criteria.

C. Local school board selection of textbooks other than those approved by the Board of Education.

1. The selection process for non-Board of Education approved textbooks is subject to the procedures outlined in subsection B of this section.

2. The selection process for such textbooks pertaining to Virginia Standards of Learning subjects shall include at the local level a correlation of the content to the Virginia Standards of

Learning in the content area and an analysis of strengths and weaknesses of the textbook in terms of instructional planning and support.

3. The publisher of such textbooks shall:

- a. Provide to the local school board a certification that the content of the textbook is accurate; and
- b. Sign an agreement with the local school board to correct all factual and editing errors found in a textbook at its own expense.

D. Purchasing Board of Education approved textbooks.

1. Local school divisions shall purchase textbooks approved by the Board of Education directly from the publishers of the textbooks by either entering into written term contracts or issuing purchase orders on an as-needed basis in accordance with § 22.1-241 of the Code of Virginia.

2. Such written contracts or purchase orders shall be exempt from the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia).

E. Purchasing non-Board of Education approved textbooks. The purchase of textbooks other than those approved by the Board of Education is not exempt from the Virginia Public Procurement Act.

F. Distribution of textbooks. Each local school board shall provide, free of charge, such textbooks required for courses of instruction for each child attending public schools.

G. Certifications.

1. The division superintendent and chairperson of the local school board shall annually certify to the Virginia Department of Education that:

- a. All textbooks were selected and purchased in accordance with this chapter; and
- b. The price paid for each textbook in accordance with § 22.1-241 of the Code of Virginia.

2. The certification shall include a list of all textbooks adopted by the local school board.

Statutory Authority

§ 22.1-16 of the Code of Virginia.

## Historical Notes

Derived from [Volume 28, Issue 26](#), eff. September 26, 2012; Errata, 30:4 VA.R. 453 October 21, 2013; amended, Virginia Register [Volume 30, Issue 12](#), eff. March 27, 2014.



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## Proposed Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Education
<b>Virginia Administrative Code (VAC) citation(s)</b>	<u>8 VAC 20-720</u>
<b>Regulation title(s)</b>	<i>Regulations Governing Local School Boards and School Divisions</i>
<b>Action title</b>	Proposed amendments to the regulations
<b>Date this document prepared</b>	October 31, 2016

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

In response to parental concerns, the Board of Education (Board) has conducted a comprehensive review of issues related to sexually explicit instructional materials used in Virginia's public school. Amendments to the language in the *Regulations Governing Local School Boards and School Divisions* (8CAC20-720-160) have been proposed which would require each public school to:

- Provide an annual notification to the parent or legal guardian of any student whose teacher expects to provide instructional material that includes sexually explicit content, as defined by the board.
- Permit the parent or legal guardian of any student to review instructional material that includes sexually explicit content upon request.

- As an alternative to instructional material and related academic activities that include sexually explicit content, provide non-explicit instructional material and related academic activities to any student whose parent or legal guardian so requests.

### 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.*

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Not applicable

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.*

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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. (§ [22.1-16](#) of the Code of Virginia)

### Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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The *Regulations Governing Local School Boards and School Divisions* set forth the responsibilities of local school boards in the selection of instructional materials and textbooks. These regulations will be amended by the addition of language that requires local school boards to provide parents and legal guardians an annual notice identifying any sexually explicit materials that may be included in a course, inclusive of the textbook, or any supplemental materials; to provide an opportunity to review such materials; and, as an alternative to instructional material and related academic activities that include sexually explicit content, to provide non-explicit instructional material and related academic activities to any student whose parent or legal guardian so requests.

### 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.*

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The current regulation ([8VAC20-720-160](#)) does not address specifically action to be taken regarding sexually explicit instructional materials when parents or legal guardians have concerns about such materials. The regulation requires school boards to adopt policies and criteria for the selection of

instructional materials that shall include at a minimum the rights of parents to inspect, upon request, instructional materials; the basis upon which a parent may seek reconsideration of the board's selection of such materials; and clear procedures for handling controversial materials.

Proposed amendments would add language that requires local school boards to adopt policies and criteria regarding the selection of instructional materials which would include the following: the rights of parents or legal guardians to review any instructional material used as part of the curriculum; the basis upon which a person may request reconsideration of the school board's selection of sexually explicit materials; procedures that would allow parents or legal guardians to request alternative materials; and a requirement that each school shall provide annual notice to parents or legal guardians identifying any sexually explicit materials in any course textbook, or any supplemental materials.

### Issues

*Please identify the issues associated with the proposed regulatory action, 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, please indicate.*

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This regulatory action clarifies the use of sexually explicit materials for purposes of instruction, requires advance notice of such material to parents and legal guardians, and makes clear what options parents or legal guardians have when they have concerns about use of these materials by their students.

### Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

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There are no applicable federal requirements.

### Localities particularly affected

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

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All 132 school divisions would be affected. It is not expected that any school division would incur a disproportionate material impact.

### Public participation

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

In addition to any other comments, the board is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to [insert: staff contact person's name, mailing address, phone number, fax number and email address]. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

### Economic impact

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including:</b>  <b>a) fund source / fund detail; and</b>  <b>b) a delineation of one-time versus on-going expenditures</b></p>	<p>Students in K-12 public schools, their families, and local school divisions in Virginia would be affected by this regulation. It is believed that any costs would be minimal.</p>
<p><b>Projected cost of the new regulations or changes to existing regulations on localities.</b></p>	<p>There are more than 1,284,000 students in K-12 public schools and 132 local school divisions in Virginia. The cost is expected to be minimal.</p>
<p><b>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</b></p>	<p>Students in K-12 public schools, their families, and local school divisions in Virginia would be affected by this regulation. Businesses would not be impacted.</p>
<p><b>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that:  a) is independently owned and operated and;  b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>None anticipated.</p>
<p><b>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including:</b>  <b>a) the projected reporting, recordkeeping, and</b></p>	<p>None anticipated.</p>

<p><b>other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b></p>	
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>No economic impact is anticipated.</p>

### Alternatives

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

The Board considered amendment of the *Regulations Establishing Standards for Accrediting Public Schools in Virginia (SOA)* at [8VAC20-131-270](#) to address the issues regarding sexually explicit materials. However, after some consideration, the Board decided that this issue was best addressed in the *Regulations Governing Local School Boards and School Divisions* which set forth the responsibilities of local school boards in the selection of instructional materials and textbooks.

### Regulatory flexibility analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

These regulations are not expected to affect small businesses.

### Periodic review and 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 was announced during the NOIRA stage, please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please 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 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.*

Not applicable.

**Public comment**

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Generally support (611)	<p>Parents have the right to direct their child's education.</p> <p>Amending the regulations would not restrict what children may read.</p> <p>Amending the regulations would standardize what is already common practice in many localities.</p> <p>There are notification and opt out policies in Family Life Education – reading materials of a sensitive nature should be treated the same way.</p> <p>Critical thinking skills do not require children to read about rape, violence against children, etc.</p>	<p>The regulations will be amended by the addition of language that requires local school boards to provide parents and legal guardians an annual notice identifying any sexually explicit materials that may be included in a course, inclusive of the textbook, or any supplemental materials; to provide an opportunity to review such materials; and to provide non-explicit instructional material and related academic activities to any student whose parent or legal guardian so requests, as an alternative to instructional material and related academic activities that include sexually explicit content. These changes will provide parents and legal guardians options and give them an opportunity to opt-out if they so choose with an opportunity to use an alternative.</p>
Generally oppose (604)	<p>Determining what is sensitive or controversial varies from family to family.</p> <p>The task of noting every instance of a sensitive issue on a syllabus would be overly burdensome.</p> <p>Books should not be judged by a couple of offensive words.</p> <p>The community should trust the teachers' judgement.</p> <p>This amendment would stifle education.</p> <p>If this amendment was in effect, how could teachers amend their lesson plans throughout the year to take into consideration a news story or students' needs?</p> <p>There are already processes in place to ensure materials are in line with Standards of Learning and there are policies in place for parents to discuss concerns with teachers and challenge</p>	<p>The proposed amendments would give all parents or legal guardians an opportunity to review the instructional materials and make decisions for their students, as they deem appropriate.</p>

	<p>controversial materials (and for students to receive alternative materials) – this is a local issue and should be handled by local school boards.</p> <p>This amendment would be dangerous to the free practice of education (it borders on censorship).</p> <p>Many commenters support parental involvement and agreed that parents need to be actively engaged with teachers regarding the education of their children, but this is not the way to go about engaging parents.</p> <p>This amendment would implicitly encourage schools to avoid material that might elicit objections, regardless of merit.</p>	
Other (13)	<p>The term <i>controversial and sensitive</i> needs to be defined. Parents should be able to opt-in rather than opt-out.</p> <p>The initial proposal may be appropriate for some ages, but not for all.</p> <p>One person provided examples of activities parents can opt out of, including surveys and directory information.</p>	<p>Since local school boards know best the expectations of their communities, the Board is not proposing a definition of sexually explicit.</p> <p>The regulations, as proposed, will require local school boards to provide parents and legal guardians an annual notice identifying any sexually explicit materials that may be included in a course, inclusive of the textbook, or any supplemental materials; to provide an opportunity to review such materials; and to provide non-explicit instructional material and related academic activities to any student whose parent or legal guardian so requests, as an alternative to instructional material and related academic activities that include sexually explicit content. These changes will provide parents and legal guardians options and give them an opportunity to opt-out if they so choose with an opportunity to use an alternative.</p>
Repeaters (13)	Some commenters provided comments multiple times. These were duplicates posted in error.	
<b>Total (1,241)</b>		

**Categories:**

Parents support 30%  
 Parents opposed 12%  
 Educators support 3%  
 Educators opposed 48%  
 Students support 2%

Students opposed 4%  
 Unidentified supporters 65%  
 Unidentified opposed 35%  
 University supporters 0%  
 University opposed 4%

In addition, the National Council of Teachers of English opposed the initial proposal because they believed it would undermine existing school policies that provide for the selection of instructional materials by qualified professionals. The Kids' Right to Read Project asked the Board to reject the proposal because they believed it would undermine the quality of public education in Virginia.

All commenters did not identify themselves or indicate a category they would fall in. While there were many comments in support of the regulations, there were numerous indicators of support without any description or detail as to why.

### Family impact

*Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

This regulatory action will impact the families in Virginia by requiring each public school to:

- Provide an annual notification to the parent or legal guardian of any student whose teacher expects to provide instructional material that includes sexually explicit content, as defined by the Board.
- Permit the parent or legal guardian of any student to review instructional material that includes sexually explicit content upon request.
- As an alternative to instructional material and related academic activities that include sexually explicit content, provide non-explicit instructional material and related academic activities to any student whose parent or legal guardian so requests.

Parents or legal guardians who have concerns about these issues will have an opportunity to have them addressed by the public schools.

### Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.*

For changes to existing regulation(s), please use the following chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
<a href="#">8VAC20-720-160</a>	Not applicable	The current regulation does not address sexually explicit instructional material. It does require local school boards to adopt policies and criteria for the selection of instructional materials that shall include at a minimum the rights of parents to inspect any instructional materials used as part of the curriculum, the basis upon which a person may seek reconsideration of that selection, and clear procedures for handling challenged materials.	The revised regulation will require that schools provide an annual notification to the parent or legal guardian of any student whose teacher expects to provide instructional material that includes sexually explicit content; permit the parent or legal guardian of any student to review instructional material that includes sexually explicit content upon request; and, as an alternative to instructional material and related academic activities that include sexually explicit content, provide non-explicit instructional material and related academic activities to any student whose parent or legal guardian so requests.

If an existing regulation or regulations (or parts thereof) are being repealed and replaced by one or more new regulations, please use the following chart:

Current chapter-section number	Proposed new chapter-section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
N/A			

If a new regulation is being promulgated, that is not replacing an existing regulation, please use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
N/A			

If the proposed regulation is intended to replace an emergency regulation, and the proposed regulation is identical to the emergency regulation, please choose and fill out the appropriate chart template from the choices above. In this case “current section number” or “current chapter-section number” would refer to the **pre-emergency** regulation.

If the proposed regulation is intended to replace an emergency regulation, and the proposed regulation includes changes since the emergency regulation, please create two charts: 1) a chart describing changes from the **pre-emergency** regulation to the proposed regulation as described in the paragraph above, and 2) a chart describing changes from the **emergency** regulation to the proposed regulation. For the second chart please use the following title: “Changes from the

Emergency Regulation.” In this case “current section number” or “current chapter-section number” would refer to the **emergency** regulation.