



COMMONWEALTH of VIRGINIA
Department of Education

DATE: August 28, 2020

TO: Division Superintendents

FROM: James F. Lane, Ed.D., Superintendent of Public Instruction

SUBJECT: Statutory and Regulatory Instructional Expectations for the 2020-2021 School Year

As we move into the 2020-2021 school year, Virginia's local school divisions are adjusting to the realities of COVID-19 with a wide array of instructional modalities and calendars. For some divisions, the school year is beginning entirely remote or virtual with a blend of synchronous and asynchronous instruction; others are offering nearly all in-person instruction. These adaptive approaches allow divisions to balance the health and safety of school communities with academic requirements, but have also raised a number of concerns about meeting several statutory and regulatory instructional requirements. This memo provides an overview of state expectations for learning and instruction, as well as new flexibility related to the issuance of waivers for the length of school term requirement for the 2020-2021 school year.

Statutory and Regulatory Requirements for the 2020-2021 School Year

Despite the unique circumstances due to the COVID-19 pandemic, public school divisions are required to deliver new instruction, including the standards of learning, course objectives and course content in the 2020-2021 school year to all students regardless of instructional modality. Furthermore, divisions are required to meet the requirements of the Code of Virginia, the Appropriations Act, the Standards of Quality, the Standards of Accreditation and all other statutory and regulatory provisions except for those that have been explicitly waived by the State Superintendent of Public Instruction, pursuant to authority granted to him in Chapter 1283 of the 2020 Acts of Assembly, a comprehensive list of which is available [here](#). Additionally, divisions are expected to meet state and federal obligations to serve students with disabilities, as [the U.S. Department of Education has not issued any waivers for the *Individuals with Disabilities Education Act*](#).

To date, the State Superintendent has not waived requirements related to planning time or class size requirements and divisions must adhere to those relevant statutory and regulatory requirements. The only exception has been a limited waiver offering flexibility with class sizes for those receiving the K-3 class size reduction funding.

Board of Education Reporting Requirements

Given the unique circumstances of the 2020-2021 school year, and the waivers of accreditation issued by State Superintendent for Public Instruction, the Board of Education will be requesting periodic reports from all of Virginia's public school divisions throughout the school year that include information about instruction being delivered to students, the use of formative and/or summative assessments to monitor student progress, the availability of professional development, and details related to remediation efforts for students falling behind. Detailed instructions for submitting these reports are forthcoming.

Time-Based Requirements

Time-based requirements, including length of school term and core instruction minimums, are a complement to other standard-setting and broad state accountability measures. These requirements help to ensure that every learner receives an amount of instructional time that is equal to their peers and that every school meets a baseline obligation to its students. However, the Virginia Department of Education recognizes that because of the variability in instructional delivery models necessitated by COVID-19, time-based instructional minimums do not have the same traditional application for the 2020-2021 school year.

Core Instruction Time Requirements

Section § [22.1-200.2](#) of the *Code of Virginia* and [8VAC20-131-80](#) of the Standards of Accreditation require local school boards to provide: (i) a minimum of 680 hours of the required 990 hours of instructional time to students in elementary school in the four academic disciplines of English, mathematics, science, and history and social science; and (ii) a minimum of 375 hours of the required 540 hours of instructional time to students in half-day kindergarten in the four academic disciplines of English, mathematics, science, and history and social science.

Section [8VAC20-131-90](#) of the Standards of Accreditation requires each student in a middle school be provided a total of 560 instructional hours per year in the four academic disciplines of English, mathematics, science, and history and social science.

The requirement to offer non-core subject areas such as art, music, career and technical education remains in sections [8VAC20-131-80](#) and [8VAC20-131-90](#) of the Standards of Accreditation, and remain an important part of the educational experience of students.

School divisions may meet these core instruction hour requirements through any combination of virtual, remote, synchronous, asynchronous, or in-person instruction. These core instruction

hour requirements have not been waived for the 2020-2021 school year, and remain in place regardless of instructional modality. The hours can be met with a variety of types of instruction (e.g. in-person, synchronous, asynchronous, or remote), given the range in modalities divisions are utilizing this year. When the instruction is delivered in a remote or virtual environment, teachers should be cognizant of developmental considerations of students. Effective virtual instruction with young learners in particular will require a wide variety of synchronous and asynchronous engagement in their learning, including live time with the instructor when possible, independent and small group work. Where possible, schools should maximize the amount of time that students receive direct instruction from a teacher (i.e. synchronous instruction whether virtual/conference call/in-person based on school division operational status). Schools should make attempts regardless of modality to incorporate characteristics of a typical school day schedule when possible, while being flexible based on the needs of students and the schools' operational status. School divisions should be cognizant of screen time based on students' age and developmental level.

Instructional Time Requirements for Virginia Preschool Initiative (VPI)

[Item 145.C.14.c](#) of Chapter 1289 of the Acts of Assembly (i.e. the 2020 Appropriation Act) dictates instructional hour requirements for full time and part time Virginia Preschool Initiative classrooms. The Appropriation Act language states that:

Full-day programs shall operate for a minimum of five and one-half instructional hours, excluding breaks for meals, and half-day programs shall operate for a minimum of three hours of classroom instructional time per day, excluding breaks for lunch. Virginia Preschool Initiative programs may include unstructured recreational time that is intended to develop teamwork, social skills, and overall physical fitness in any calculation of total instructional time, provided that such unstructured recreational time does not exceed 15 percent of total instructional time or teaching hours.

As with instructional hours in K-12, VPI hours may be met through a variety of in-person, synchronous, asynchronous and remote learning for the 2020-2021 school year. The Superintendent will continue to consider additional flexibility in meeting required hours for VPI.

Length of School Term Requirement

Section [22.1-98](#) of the *Code of Virginia* states that 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. This requirement is reaffirmed in the Board's Standards of Accreditation at [8VAC20-131-5](#) and its *Regulations Governing Reduction of State Aid When Length of School Term Below 180 Teaching Days or 990 Teaching Hours* ([8VAC20-521](#)). If the length of the term falls below 180 teaching days or 990 teaching hours in any school year and the school or school division is unable to recover time according to the statutory makeup schedule, the amount paid by the Commonwealth

from the Basic School Aid Fund shall be reduced by an amount proportionate to the deficit of teaching time. Section 22.1-98 does allow schools and/or school divisions the option to request a length of school term waiver from the Board of Education if lost teaching time is a result of severe weather conditions, other emergency situations, or a declared state of emergency. This waiver is granted only for cases meeting certain conditions and when the school or school division has demonstrated reasonable effort to make up missed teaching time.

Length of School Term Waiver Process for the 2020-2021 School Year

The following instructional time requirement waiver process has been authorized by the Superintendent of Public Instruction pursuant to Governor Northam's [Executive Order 51](#) (2020) and [Item 143.I](#) in Chapter 1289 of the Acts of Assembly (i.e. the 2020 Appropriation Act):

For the 2020-2021 school year only, schools or local school divisions unable to offer 180 teaching days or 990 teaching hours to each student in a brick-and-mortar setting will be able to meet the length of school term requirement by demonstrating and certifying “completion” as described in the below “2020-2021 Length of School Term Waiver Process.”

Any school divisions exercising the flexibility provided for the 180-day/990-hour requirement will still be subject to a waiver approval process. Local schools boards will need to submit a waiver request to the Board of Education and approval will be contingent on the school board providing certain evidence or documentation, as determined by the Superintendent of Public Instruction.

To align regulatory requirements with the modified waiver process, the Superintendent of Public Instruction will also issue a waiver of 8VAC20-521-40 subsections C and D of the Board of Education's Regulations Governing Reduction of State Aid When Length of School Term Below 180 Teaching Days or 990 Teaching Hours.

2020-2021 Length of School Term Waiver Process

For any school or division unable to offer 180 teaching days and 990 teaching hours to *each* student in the brick-and-mortar setting, its local school board will be required to submit a length of school term waiver based on the flexible waiver criteria in order to avoid any reduction in basic state aid. Waiver requests will be favorably considered if the school term is considered “complete” as determined by the following:

- Submission of periodic reports over the duration of the school year that include information about instructional delivery. Detailed instructions for submitting these reports is forthcoming.

- Certification by the division superintendent and chairman of the local school board that the school division has provided and completed instruction that aligns with the Standards of Learning (SOL) and/or course requirements in every course offered by the school division for the 2020-2021 school year; and for all instruction missed during the school closures from March 13, 2020 until the end of the 2019-2020 school year.
- Certification by the division superintendent and chairperson of the local school board that the school division has met the minimum required time for core instruction under the direction of a teacher per the information provided above in this memo.
- Submission of evidence in periodic reports that every reasonable effort was made to maximize all possible time under the required hours to include direct exposure to the teacher (virtually or in person) as developmentally appropriate and as outlined in the virtual learning expectations document provided subsequent to this guidance. Planning time for teachers and activities not associated with core instruction, whereas they are very important and must be a part of school division plans, will not count towards the instructional hours requirements.
- Submission of a report that details the school division’s instructional plan, *as executed* for the 2020-2021 school year, including details on how instruction was provided and evidence that the Standards of Learning and/or course requirements were met.

For those schools or divisions that are unable to provide the above, the Board of Education will consider such waivers on a case-by-case basis. Those schools or divisions that do not receive a waiver may have state aid reduced by an amount deemed appropriate by the Board of Education based on an in-depth review of the individual circumstances that limited the school or division’s ability to “complete” the school term.

Designing the School Term: Important Considerations for School Divisions

Within the parameters of targeted waivers and relief measures, and existing statutory and regulatory requirements, all schools and divisions are required to uphold the standards and assurances that sustain systems of high quality education.

For more information on the length of school term waiver, you may contact the Office of Policy at (804)225-2092 or policy@doe.virginia.gov.

JFL/lms