MEMORANDUM

TO: Board of Education

FROM: John Butcher

DATE: October 6, 2017

RE: Comments on Proposed Revisions to 8VAC20-131

Please insert the following comments into the record of this rulemaking.

Background

The entire Petersburg school system has been operating under Memoranda of Understanding with this Board since 2004. Four of nine Petersburg schools were denied accreditation in 2006. Notwithstanding seventeen years of "supervision" by this Board, the Petersburg school system remains in "Accreditation Denied" status today.

A.P. Hill Elementary	Accreditation Withheld - Board Decision
J.E.B. Stuart Elementary	Accreditation Denied
Petersburg High	Partially Accredited: Warned School-Pass Rate
Robert E. Lee Elementary	To Be Determined
Vernon Johns Middle	Accreditation Denied
Walnut Hill Elementary	Partially Accredited: Warned School-Pass Rate

After the data above were posted on the Board's Web site, the Board voted to deny accreditation to Hill Elementary in response to cheating there on the SOLs. Thus, half of the Petersburg schools now are in "denied" status.

Alexandria's Jefferson-Houston School failed to achieve full accreditation until 2008. It slipped back into "warning" the following year and was denied accreditation in 2012. It remains in "denied" status today.

Alexandria and Petersburg are paradigms of the Board's inability to repair failed public schools that are under its supervision.

In recognition of its ineptitude, the Board now proposes to change the rules to make it almost impossible for a school to be denied accreditation.

Summary

VA. CODE § 22.1-253.13:3.A provides:

> The Board[of Education's] regulations establishing standards for accreditation shall ensure that the accreditation process is transparent and based on objective measurements . . .

The current accreditation process is in wholesale violation of that law:

- The Board increases pass rates at some high schools based on the performance of students who do not attend those schools;
- The Board fails to adjust accreditation scores for a major factor known to affect test scores, poverty, and the Board has abandoned its measure of academic progress, the Student Growth Percentile, that is not affected by poverty.
- The Board's indifference to misclassification of students as "disabled" and the abuse of relaxed testing procedures for those students continues; and
- The Board's opaque and byzantine "adjustments" increase accreditation scores by methods and in amounts that the Board does not disclose to the public.

The proposed regulation exacerbates these violations of the law.

Moreover, the proposed regulation provides that a school cannot be denied accreditation, no matter how awful its performance, so long as it has created a "plan" and executes that plan "with fidelity," whether or not the execution improves educational outcomes. This amnesty provision makes it almost impossible for a school to be denied accreditation and renders the entire regulation ridiculous.

The only benefit of the rulemaking would be to virtually eliminate denials of accreditation thereby relieving the Board of the embarrassment of being incompetent to repair schools under its supervision that have been denied accreditation. The proposed regulation demonstrates that the Board values the avoidance of that embarrassment above the proper education of Virginia's schoolchildren.

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D. 8VAC20-131-30.

The provision that a local committee is to determine the participation level of English Learner (EL) students is an invitation to abuse. The alert schools will place as many ELs as possible in the lowest classification possible in order to maximize "growth" (see § G, below). The Board should provide objective standards and either make the decision in the first place or audit the determination made locally.

E. 8VAC20-131-51.

The dilution of the graduation requirements in 8VAC20-131-51, along with the provisions for locally awarded verified credit, will improve the graduation rate at the unacceptable cost of cheapening the diploma. If the Board merely wants to look good, this will be a useful (albeit dishonest) change. If the Board is serious about "provid[ing] children with a high quality education" (8VAC20-131-10), it will look for ways to make our schools more effective, which is the correct (and honest) way to increase the graduation rate.

The proposed emasculation of the requirements for the advanced studies diploma is a cynical malfeasance that will make the schools (and, doubtless, this Board) look better while providing less education to Virginia's schoolchildren.

8VAC20-131-370.A and -B and 8VAC20-131-380.A might be appropriate in a self-serving press release. They are content-neutral surplus in this regulation.

As well, the redundant numbering system in -380.A is an embarrassment (well, in light of the other provisions of the regulation, a further embarrassment) to the Board.

F. Part VIII.

Both the current regulation and the proposed version suffer from a deformity that renders the accreditation process unfair and arbitrary: Economically disadvantaged ("ED") students generally score lower on the SOL tests than their more affluent

peers. Because of this, a teacher, school, or division with a large population of ED students can do an excellent job and still produce poor SOL scores.

Perhaps some of the opaque "adjustments" in the accreditation process are intended to counteract this fundamental disadvantage of some of our schools. Perhaps not: See below. In any case, the Board created, and now has abandoned, the only objective performance measure that is unaffected by poverty, the Student Growth Percentile ("SGP").

The Board's excuse for rejecting the SGP is that the results cannot be calculated until the summer testing has been completed. Yet the SOL averages suffer from the same defect. Indeed, the accreditation data are not available until September for the same reason.

In short, the Board has abandoned its "transparent" and "objective" measure of student progress, based on a transparently false excuse, and is erecting an amended accreditation structure that is founded upon a measure that it knows to be unfair.

The proposed regulation serves to tinker with (and enervate, see below) the accreditation process without addressing this fundamental flaw. To the extent the Board is committed to a fair process for identifying schools that are failing to properly serve their students, it will redraft the regulation to base the process on a fair and accurate measure of student learning.

G. 8VAC20-131-380.E.

Apparently unsatisfied with its record of diluting the history requirements for accreditation, the Board now proposes to abandon history as a criterion for accreditation. This looks to be a further abasement of learning in the pursuit of improved accreditation rates.

The draft regulation does not tell us whether the 10% improvement criterion in § 380E.1 is to be measured in actual terms (*e.g.*, from a pass rate of 50% to 60%) or in relative terms (*e.g.* from a pass rate of 50% to 55%). The draft regulation is unlawfully ambiguous on this point.

The Board now proposes to measure performance in English and math (but not science) by calculating a combined "quality indicator" for accreditation purposes. This appears to be an acknowledgement that, at least in English and math, the bare SOL pass rate is an inadequate measure of educational effectiveness. Unfortunately, the proposal provides only a partial, arbitrary, correction for that inadequacy. This

is particularly unfortunate in that the Board already has a uniform and fair measure of educational effectiveness, the SGP.

Unfortunately, the "quality indicator" is a one-way street: The numbers can be increased by score increases but not reduced by score declines. Said otherwise: The Board proposes to count a student who shows "progress" the same as a student who passes the exam but to ignore any student with declining scores. Thus, it is clear that the "quality indicator" is in fact a fudge factor, designed to palliate low pass rates while ignoring students whose performance is decaying.

Moreover, the draft regulation does not tell us how the "growth" students are to be measured or counted for English and math. Thus, for English,

> the academic indicator will be calculated based on the rate of students who passed board - approved assessments, any additional students who showed growth using board - approved measures, and any additional students who are English learners who showed growth toward English proficiency using board - approved measures.

This does not say how much "board-approved" growth is required for students who flunk the SOL or who are EL to be counted toward accreditation. As well, the draft regulation does not tell us whether the "growth" counts are to be included in the numerator only (in order to provide a further artificial boost for the rate) or whether the total number of students (including the failing and EL students) is to be included in the denominator. In short, this looks to be yet another unlawfully secret tool for "adjusting" accreditation scores upward.

On another subject: Virginia law requires court action against a truant student or the parents after a seventh unexcused absence. Subsection E.1.h unlawfully ignores unexcused absences of up to eighteen days(!) for up to fifteen percent of a school's students. The regulation must deny accreditation to any school where any student has seven or more unexcused absences and the attendance officer has failed to initiate the required court action.

Subsection E.2 purports to allow unlawful amendment of the regulation through "guidance."

H. 8VAC20-131-390.

The list of requirements on principals in subsection A. is mislabeled and misplaced. Those requirements are quite separate from the statement in the first sentence.

The regulation is silent as to transition provisions for schools that now are denied accreditation or are in one of the other situations short of full accreditation. The regulation must explicitly deal with the transition of those schools to the new system.

The transition year provision in subsection B.1 fails to state whether the "2018-2019" overlap refers to the accreditation year 2018-18 or the data year 2018-19.

Under this and the following section, even a school that has grossly failed in its purpose for up to four years is merely rated "Accredited with Conditions" and required to create a plan. Subsections 390.B.3 and 400.C.4 allow the school to escape denial of accreditation if it adopts and implements the plan "with fidelity." "Fidelity" in implementation of a plan is not the same as improved learning by the students.

Indeed, these provisions say that no school can be denied accreditation if it creates a mountain of paperwork and demonstrates that it is trying to climb that mountain, no matter whether all that sterile activity actually delivers improved learning. In short, these provisions render the already toothless accreditation process meaningless.

Conclusion

This proposed regulation is an amateurish, ill-considered, arbitrary, and unlawful step backward from the current accreditation process, which itself is opaque, ineffective, and unlawful. The Board should abandon this proposal and create a lawful regulation that is fair to the regulated schools and their students and that is faithful to the Board's professed goal "to enable each student to develop the skills that are necessary for success in school, preparation for life, and reaching their (*sic*) full potential."