



COMMONWEALTH of VIRGINIA
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MEMORANDUM

To: Jim Chapman, Director
Office of Board Relations
Virginia Department of Education

From: Susan B. Williams
Senior Assistant Attorney General

Date: September 3, 2026

Re: Revisions to the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* to comport 8VAC20-81-280 with the (federal) Individuals with Disabilities Education Act and its implementing regulations (Exempt Action) (Action 7106 / Stage 11313)

I have reviewed the version of the final regulation identified above in order to determine whether the State Board of Education (Board) has the authority to promulgate the regulation and if the regulation comports with applicable state law.

Pursuant to § 22.1-16 of the *Code of Virginia*, the Board has authority to promulgate regulations to carry out its statutory powers and duties. In addition, pursuant to § 22.1-214, the Board has the authority over special education programs for children with disabilities. Lastly, these changes are required in order to comport the regulation with Section 613(g) of the Individuals with Disabilities Education Act (IDEA) and 34 C.F.R. § 300.227 of the implementing regulations for IDEA.

It is my view that the Board has the authority – and duty – to promulgate this final regulation, and that the Board has not exceeded that authority. It is also my view that this regulatory action is exempt from Article 2 of the Administrative Process Act pursuant to *Code of Virginia* § 2.24006 (A)(4)(a). It is further my view that this action remains subject to Virginia Office of the Governor Executive Order 17 (2026), and that the Board has not exceeded its authority.

If you have any questions or concerns, please feel free to contact me at the address above, by telephone at (804) 366-6666 or by electronic mail at swilliams@oag.state.va.us.