



Virginia  
Regulatory  
Town Hall

## Proposed Regulation Agency Background Document

<b>Agency Name:</b>	Virginia Department of Education
<b>VAC Chapter Number:</b>	Chapter 670
<b>Regulation Title:</b>	Regulations Governing the Operation of Private Day Schools for Students with Disabilities
<b>Action Title:</b>	Proposed Regulations
<b>Date:</b>	September 26, 2002

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

### Summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

*Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits, 8-VAC 20-13-10 et.seq. were originally adopted by the Virginia Board of Education in 1970. The regulations were amended to have an effective date of March 9, 1994. Those regulations provide the basis upon which private trade, technical, business and correspondence schools, and private day schools for children with disabilities can be established and operated within the Commonwealth. The proposed new regulations separate the current complex and intertwined regulations and provide the basis upon which private day schools for students with disabilities are licensed and operated in accordance with §22.1-16 and §22.1-321 of the *Code of Virginia*.*

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.*

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The scope of legal authority is defined by §22.1-16 of the Code of Virginia which states that “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.” Chapter 16 of the *Code of Virginia* §22.1-319 through 22.1-335 provides the legal requirements for Private Trade, Technical, Business and Correspondence Schools; Schools for Students with Disabilities. The Board of Education is charged in §22.1-321 with promulgation of regulations for the management and conduct of the schools. <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod=TOC220100000160000000000000> The schools for students with disabilities must also comply with federal special education law, 20 U.S. C. §1400-1485, the *Individuals with Disabilities Education Act*, and *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*.  
<http://www.pen.k12va.us/VADOE/Instruction/Sped/varegs.pdf>

## Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

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Private day schools for students with disabilities are currently regulated by *The Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits* which also covers private career schools. The purpose of these planned regulations is to separate the current complex and intertwined regulations. It is intended that revised regulations for the career schools and new regulations for the private day schools for students with disabilities be promulgated to provide clarity and specificity for each type of school. This would remove questions about applicability and ensure that both schools are licensed and operated in accordance with § 22.1-16 and §22.1-321 of the *Code of Virginia*.

The goal of the new regulations for private day schools for students with disabilities is to give clear, orderly requirements for the establishment and conduct of such schools. There have been several changes in the Code and in applicable standards that need to be updated in the regulations. Additionally, the changes will reorganize, renumber, and simplify the regulations.

There are inconsistencies that need to be addressed including academic standards, behavior management and the elimination of fees for such schools.

### Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.*

The regulations set forth requirements addressing the management and conduct of the schools including staff qualifications, physical facilities, instructional programs, student services, records and contracts, and cancellation and refund policies. They provide schools the guidance necessary to implement programs that are in compliance with the law and that protect both the students' and the proprietors' interests. The regulations provide a clear process by which a school receives and maintains a license or a certificate to operate. Types of approval, advertising, student guaranty provisions, denial, revocation, suspension or refusal to renew certificates to operate or licenses are detailed in the document. Specific requirements clarify academic standards and educational programs, administrative, instructional, and support personnel, behavior management, accessibility, provisions for health care, and safety.

### Issues

*Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.*

The advantages to parents of students who are placed in private day schools for students with disabilities, persons wishing to establish and operate such schools, local education agencies and Community Services Act team, and the general public is a set of clear concise fully applicable and orderly requirements for the establishment and conduct of such schools. There are no known disadvantages to the public or the Commonwealth.

### Fiscal Impact

*Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.*

The cost to the agency will continue at its current allocation of approximately \$100,000 annually which includes employment of a full time specialist, part-time administrative support, travel, and

materials. All funds are federal dollars. A minor impact on agency resources resulting from the new regulations is only that for printing and disseminating the new regulations. Some cost savings may occur in travel as school visits will be required every three years rather than the current requirement of an on-site visit every two years. The savings would be contingent on the number of unannounced visits deemed prudent during the three years. Localities will not incur any cost as a result of the new regulations. There will be little to no fiscal impact on the private day schools for students with disabilities that are currently licensed and monitored by the Department. School that serve only publicly placed students will see an annual cost savings of approximately \$100 after three years of operation as they will no longer have to have a surety bond.

### Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.*

- Fees are eliminated to conform to an action of the General Assembly to eliminate collection of fees from private day schools for students with disabilities.
- On-site visits currently required by regulation every two years will be aligned with the Code which allows the issuing of licenses for up to three years. The regulations will require visits every three years and allow unannounced visits during the three-year time period.
- Language is added that requires criminal background checks including fingerprinting of full or part-time, permanent or temporary employees of schools whose accreditation is recognized by the State Board of Education.
- Language was added to ensure that schools have policies and procedures for behavior management that protect the safety and well being of students at all times.
- Language was added to conform to the SOA to require the private day schools to be maintained in a manner ensuring compliance with the *Virginia Uniform Statewide Building Code* and regulations of the Board pertaining to facilities. Also added is the establishment of procedures to deal with emergencies including hostage situations, bomb threats, power outages, fires and inclement weather.
- Medication management including the transportation and dispensing of medications is addressed.
- Schools serving privately placed students are required to offer access to a tuition insurance plan if they financially obligate students for more than quarterly increments of the annual tuition.
- Provisions were added to conform to the current Regulations Governing Special Education Programs for Children with Disabilities in Virginia.

### Alternatives

*Please describe the specific 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.*

Private trade, technical, business and correspondence schools and schools for students with disabilities are required by state law to be regulated. Those regulations must be current and provide schools the guidance necessary to provide programs that are in compliance with the law and that protect both the students' and the proprietors' interests. The proposed regulations provide a clear process by which a school receives and maintains a license to operate. Two alternatives have been considered. First considered and attempted was revisions to *Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits* continuing to have the proprietary career schools and the private special education day schools continue under the same regulations. This has been determined to be most confusing to both types of schools and to the public. The other alternative considered is to provide to the schools updates to their requirements based on statutory and other regulatory changes. This piecemeal approach is not efficient and gives a disjointed view of the requirements that places both the students and the schools in potential jeopardy.

### Public Comment

*Please summarize all public comment received during the NOIRA comment period and provide the agency response.*

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No comment was received during the NOIRA comment period.

### Clarity of the Regulation

*Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.*

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The proposed regulations were reviewed for clarity and simplicity as well as content by staff of the Department of Education, by representatives of the private day schools for students with disabilities including proprietors, staff, and parents, and by local school division representatives.

### Periodic Review

*Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.*

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The regulations will be formally reviewed no later than the spring of 2006. There will be ongoing evaluation of the regulations to ensure consistency with other applicable regulations including the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* especially as mandate changes occur on the Federal level.

The Attorney General's Office will be asked to review the proposed regulations to determine whether the State Board of Education has the requisite legal authority to promulgate such regulations.

## Family Impact Statement

*Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.*

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The positive family impact of these proposed regulations comes from the clear articulation of what families can expect of and from private day schools for students with disabilities in the way of staff qualifications, physical facilities, instructional programs, student services, records and contracts, cancellation and refunds including their contractual rights and school closings. The regulations also provide a tool for families to use should they have a complaint.

The availability of private day schools for students with disabilities provides families and placing school divisions with viable, generally less restrictive, alternatives to residential school services. The child continues to live in the home with his family and be part of the community. The schools generally list among their goals the promotion of self-sufficiency and self-pride. The special education day schools give students whose educational needs cannot be met in the public sector an opportunity for both academic and personal success. Many of the day school students gain the skills necessary to reenter the public education system.

The fiscal impact on the families would be a discretionary one which cannot be determined as local schools divisions are required to provide a free appropriate education for students identified as eligible for special education services. If the local school cannot provide the needed services themselves, they are, by law, required to fund the provision of education services elsewhere which may be at a private special education day school. Parents who unilaterally place their children would have to pay for the services just as would a parent who places a child in a regular private school.