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August 29, 2003

Dr. JoLynne DeMary
Superintendent of Public Instruction
Virginia Department of Education
Monroe Building
101 N. 14th Street
Richmond, Virginia 23219

Re: 8 VAC 20-21, Amendments to Licensure Regulations for School Personnel

Dear Dr. DeMary:

You have asked that I review the above proposed regulatory amendments and advise you whether the Virginia Board of Education possesses the requisite statutory authority to promulgate them.

The proposed amendments are prompted by the federal No Child Left Behind Act, P.L. 107-110, and by an amendment of Va. Code § 22.1-298 that requires teachers to complete training in child abuse recognition and intervention.

The amendments would (1) require a reading instructional assessment for candidates seeking endorsements in early primary education pre K-3, elementary education pre K-6, special education, and as a reading specialist, (2) require a bachelor degree in interdisciplinary studies or a major in English, mathematics, science or social studies for elementary pre K-6 and middle education 6-8, (3) create an alternate licensure route license, (4) discontinue the issuance of the Local License in the teaching areas of English, reading or language arts, mathematics, science, foreign language, arts, civics and government, economics, history and geography, (5) allow the addition of endorsements in specified subject areas by passing an academic subject test, (6) include requirements for highly qualified teachers, (7) allow issuance of a middle education 6-8 endorsement with one academic preparation, (8) increase pre-clinical experiences for prospective teachers, (9) establish a mathematics specialist for elementary and middle education endorsement, (10) revise license renewal requirements, (11) clarify the prerequisite requirements for the Alternative Route: Special Education Conditional License, (12) revise the competencies in the licensure regulations to align them with recent revisions in the Standards of Learning, (13) add the requirement of study in child abuse recognition and intervention, (14) eliminate the "visiting teacher" endorsement, and (15) change the names of selected endorsement areas.

Under Art. VIII, §§ 4 and 5 of the Constitution of Virginia (1971), the Virginia Board of Education has general supervisory authority over the public school programs in Virginia. Further, the General Assembly has provided that no teacher “shall be regularly employed by a school board or paid from public funds unless such teacher holds a license or provisional license issued by the Board of Education or a three-year local eligibility license issued by a local school board. . . .”

Section 22.1-298 of the Code of Virginia provides:

A. The Board of Education shall, by regulation, prescribe the requirements for licensure of teachers. Regardless of the authority of any other agency of the Commonwealth to approve educational programs, only the Board of Education shall have the authority to license teachers to be regularly employed by school boards, including those teachers employed to provide nursing education.

B. Such regulations shall include requirements that:

1. Every teacher seeking initial licensure take a professional teacher's examination prescribed by the Board;

2. Persons seeking licensure on and after July 1, 2000, complete study in attention deficit disorder and gifted education, including the use of multiple criteria to identify gifted students;

3. Persons seeking initial licensure on and after July 1, 2002, complete study in, among other things, (i) methods of improving communication between schools and families; (ii) ways of increasing family involvement in student learning at home and in school; and (iii) the Standards of Learning;

4. Persons seeking licensure with endorsements as teachers of the blind and visually impaired on and after July 1, 2000, demonstrate proficiency in reading and writing Braille;

5. Persons seeking initial licensure on and after July 1, 2003, complete study in instructional methods tailored to promote student academic progress and effective preparation for the Standards of Learning end-of-course and end-of-grade assessments;

6. Persons seeking licensure renewal on and after July 1, 2004, receive training in instructional methods tailored to promote student academic progress and effective preparation for the Standards of Learning end-of-course and end-of-grade assessments;

7. On and after July 1, 2003, persons seeking initial licensure or license renewal as teachers demonstrate proficiency in the use of educational technology for instruction; and

8. On and after July 1, 2004, persons seeking initial licensure as teachers and persons seeking licensure renewal as teachers for the first time after such date complete study in child abuse recognition and intervention in accordance with curriculum guidelines developed by the Board of Education in consultation with the Department of Social Services that are relevant to the specific teacher licensure routes.

C. Notwithstanding any provision of law to the contrary, the Board may provide for the issuance of a provisional license, valid for a period not to exceed three years, to any person who does not meet the requirements of this section or any other requirement for licensure imposed by law.

D. The Board's licensure regulations shall also require that licensure for superintendents and principals, on and after July 1, 2000, be contingent upon acquiring the skills established in the Board's leadership standards.

E. Persons seeking initial licensure who graduate from Virginia institutions of higher education shall, on and after July 1, 2002, only be licensed as instructional personnel by the Board of Education if the endorsement areas offered at such institutions have been assessed by a national accrediting agency or by a state approval process, with final accreditation by the Board of Education.

F. The Board shall prescribe a professional teacher's examination for administration by Virginia's public institutions of higher education as provided in § 23-9.2:3.4 to persons seeking entry into teacher education programs in such public institutions and shall establish a minimum passing score for such examination. The examination shall be sufficiently rigorous and the minimum score set as necessary to ensure that candidates have adequate academic and professional preparation to teach.

Candidates who fail to achieve the minimum score established by the Board shall not be denied entrance into the relevant teacher education programs solely on the basis of such failure and shall have the opportunity to address any deficiencies if enrolled in such program. Before completing any approved teacher education program, candidates must achieve the minimum score on the test prescribed by the Board.

The Board of Education, in consultation with the State Council of Higher Education, shall develop guidelines for performance reports to be submitted by the public institutions of higher education pursuant to § 23-9.2:3.4. Such reports shall include annual data on the pass rates, by institution, of graduates of Virginia's institutions of higher education taking the state licensure examination and shall not include any information identifying individual graduates.

G. The Board's licensure regulations shall also provide for licensure by reciprocity with comparable endorsement areas for those individuals holding a valid out-of-state teaching license and national certification from the National Board for Professional Teaching Standards or a nationally recognized certification program approved by the Board of Education. The application for such individuals shall require evidence of such valid licensure and national certification and shall not require official student transcripts.

H. Notwithstanding the provisions of this section and the Board's authority to license teachers, local school boards shall be authorized to issue valid three-year local eligibility licenses pursuant to § 22.1-299.3.

I. Upon the expiration of a three-year local eligibility license, the holder of such license shall be eligible, as appropriate for the degree issued to such person, for a collegiate professional license or a postgraduate professional license to be issued by the Department of Education upon satisfaction of the following conditions: (i) recommendation by the division superintendent and the school board for such licensure; (ii) the completion of three successful years of teaching experience while holding a valid three-year local eligibility license as certified by the division superintendent and school board; (iii) achieving a satisfactory score on the professional teacher's examinations required by the Board; and (iv) such standards as may be prescribed by the Board of Education.

J. As used in this section and the Board of Education's regulations for the licensure of school personnel:

"Accredited institution" means an institution of higher education accredited by a national or regional accrediting agency recognized by the United States Department of Education, or by a state approval process.

Additionally, § 22.1-299.3 of the Code provides:

A. Local school boards shall be authorized, upon recommendation of the local superintendent, to issue a valid three-year nonrenewable local eligibility license to classroom teacher candidates in accordance with the following criteria:

1. No more than ten percent of the classroom teachers employed by the relevant local school division shall hold such local licenses, based on the number of classroom teachers employed by such school division during the preceding school year.
2. The applicant for a three-year local eligibility license shall have earned a baccalaureate degree from an accredited institution of higher education and shall have such experience or training in a subject or content area as the local school board and superintendent may deem appropriate for the intended teaching assignment.
3. The holder of a three-year local eligibility license shall be required to complete such training within the three-year licensure period as may be specified by the division superintendent, the school board, and standards prescribed by the Board of Education which shall include, but need not be limited to, curriculum and instruction, including educational technology, reading, and other specific course content relating to the Standards of Learning, differentiation of instruction, classroom/behavior management, and human growth and development.
4. The local eligibility license shall only be valid within the issuing school division.
5. No local eligibility license shall be issued if the teacher candidate/applicant is eligible for a collegiate professional or postgraduate professional license issued by the Department of Education.
6. Teachers issued a three-year local eligibility license shall be considered probationary teachers, shall not be eligible for continuing contract status while employed under the authority of a local license, and shall be subject to the probationary terms of employment specified in § 22.1-303.

B. Except as specified in this section and § 22.1-303, a teacher employed while holding a local eligibility license shall be entitled and subject to all other requirements and rights provided by law or regulation.

C. Any teacher employed pursuant to a local eligibility license shall be issued a collegiate professional or postgraduate professional license upon the expiration of the local eligibility license upon satisfaction of the following conditions: (i) recommendation by the division superintendent and the school board for such licensure; (ii) the completion of three successful years of teaching experience while holding a valid three-year local eligibility license as certified by the division superintendent and the school board; (iii) achieving a satisfactory score on the professional teacher's examinations required by the Board; and (iv) such standards as may be prescribed by the Board of Education.

D. Local school boards shall provide to the Board of Education information about teachers receiving local eligibility licenses and other data related to the local school division's issuance of eligibility licenses as prescribed by the Board. The Board is authorized to revoke and reinstate a local school board's authority to issue local eligibility licenses upon a determination of any violation of this section.

These statutory enactments, along with the Board's constitutional authority provide the requisite authority for the Board to promulgate the above referenced amendments to the teacher licensure regulations.

I hope that this information is helpful to you, even though this letter is not an official opinion of the Attorney General rendered under Va. Code § 2.2-505.

Please feel free to call me if you have any further questions.

Sincerely,

Joan W. Murphy
Senior Assistant Attorney General