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Dr. Jo Lynn DeMary
Superintendent of Public Instruction
Department of Education
Monroe Building
101 North 14th Street
Richmond, VA 23219

**Re: Emergency Regulations for Conducting
Division-Level Academic Reviews,
8 VAC 20-700-10 *et seq.***

Dear Dr. DeMary:

You ask whether the Board of Education has the requisite authority to promulgate the regulations described above.

Section 22.1-16 vests the Board of Education with the authority to promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1. In addition, Chapter 965 of the 2004 Acts of Assembly authorizes the Board to require division level academic reviews, and the submission of corrective action plans. The second enactment of the chapter directs the Board to promulgate regulations to implement the provisions of the act. I conclude, therefore, that the Board possesses the requisite authority to promulgate the above-referenced regulations.

In my view, the Board has the authority to find that the adoption of these regulations on an emergency basis is necessitated by an emergency situation, as defined in § 2.2-4011.A, item (ii), which states that an "emergency situation" is a situation "in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment." Chapter 965 of the 2004 Acts of Assembly, cl. 2 requires the Board to "promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment."

The foregoing represents my analysis and does not constitute an official opinion of the Attorney General. If you require additional assistance from me on this matter, please do not hesitate to contact me.

Sincerely,

Deborah Love Feild
Senior Assistant Attorney General