



## Proposed Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Education
<b>Virginia Administrative Code (VAC) citation</b>	8 VAC 20-671-10
<b>Regulation title</b>	Regulations Governing the Operation of Private Schools for Students with Disabilities
<b>Action title</b>	First Review of the Proposed Regulations Governing the Operation of Private Day Schools for Students with Disabilities (8 VAC 20-671), and repeal of the Regulations Governing the Operation of Private Day Schools for Students with Disabilities ( 8 VAC 20-670-10 et seq.)
<b>Date this document prepared</b>	February 4, 2011

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.*

The proposed regulations address the provisions for licensing private day schools and schools in private residential facilities for students with disabilities, including group homes. The regulations set standards for licensing and providing educational programs. Definitions are provided to promote consistency in operation and management of schools for students with disabilities. The regulations are designed to serve students with disabilities who cannot be served in public schools because of their disabilities. With the promulgation of these new regulations, the Board of Education's *Regulations Governing the Operation of Private Day Schools for Students with Disabilities*, VAC 20-670-10 et seq., effective September 10, 2004, will be repealed.

## Acronyms and Definitions

There are no acronyms or technical terms used in the Agency Background Document that are not defined in the “Definition” section of the regulations.

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.*

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## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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Bill Number SB 472, passed by the 2008 General Assembly, amended and re-enacted certain sections of the *Code of Virginia*, §§ 22.1-323.2, 37.2-408, 63.2-1737, and 66-24, concerning the interdepartmental regulation of children’s residential facilities, thus, changing the interdepartmental licensing model.

Title 22.1. Education, Chapter 16 of the *Code of Virginia* outlines the provisions for schools for students with disabilities. Section 22.1-321. Regulations, states: The Board of Education shall make regulations not inconsistent with law for the management and conduct of schools. The regulations may include standards for programs offered by the schools.

Section 22.1-323. Licenses generally, states: No person shall open, operate or conduct any school for students with disabilities in this Commonwealth without a license to operate such school issued by the Board of Education. A License shall be issued for a school if it is in compliance with the regulations of the Board.

## Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

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Pursuant to legislation passed by the 2008 General Assembly, new regulations are needed to govern the operation of educational programs and services in children’s residential facilities and group homes. The new regulations will provide provisions for the operation of schools for students with disabilities and provide consistency in operation and management of these private schools. The regulations are needed to protect the health and safety of students served in private schools for students with disabilities and to protect contractual rights of parents and other contracting parties.

## Substance

*Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)*

The new regulations provide provisions for the operation of private schools for students with disabilities. The regulations provide clarity to provisions for school administration, including school and instructional leadership; a philosophy, goals, and objectives that will serve as the basis for all policies and practices and student achievement expectations; a program of instruction that promotes individual student academic achievement in the essential academic disciplines, (English, mathematics, science, and history/social science); licensure for school personnel; maintenance of student education records, and school facilities and safety.

The new regulations provide clarity to the provisions for obtaining a license to operate, denial, revocation or suspension of a license, and renewal of licenses; application fees; application commitments; license restrictions; monitoring, and investigation of complaints and serious incidents.

## Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.*

Promulgation of these regulations would be an advantage for public schools that cannot serve a student because of his or her disability. Private school options would be available if parents chose not to educate their child in a public school.

Currently, there is no single set of regulations applicable to the educational programs in private residential facilities as is currently offered to day school providers. It is necessary to refer to several sets of regulations. The proposed regulations outline all applicable requirements for both private day schools and education programs in residential facilities, including group homes.

The regulatory action poses no disadvantages to the public or the Commonwealth.

## Requirements more restrictive than federal

*Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

There are no requirements that exceed applicable federal requirements.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

The regulations will have no impact on any locality.

**Public participation**

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, [www.townhall.virginia.gov](http://www.townhall.virginia.gov), or by mail, email or fax to Dr. Sandra E. Ruffin, Virginia Department of Education, Special Education and Student Services, P.O. Box 2120, Richmond, VA 23218-2120, telephone number (804) 225-2768, fax number (804) 371-8796, e-mail [sandra.ruffin@doe.virginia.gov](mailto:sandra.ruffin@doe.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)) and the Commonwealth Calendar. Both oral and written comments may be submitted at that time.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements create the anticipated economic impact.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</b>	There is no additional projected cost to the state to implement and enforce the proposed regulation.
<b>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</b>	There is no projected cost of the new regulations or changes to existing regulations on localities.
<b>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</b>	The new regulations will affect owners of private schools for children with disabilities. Currently, there are 85 private day schools and 47 schools in private residential facilities. These schools have

	<p>student enrollments ranging from 5 to 125 students. Students are placed by public agencies, court, or by their parents.</p>
<p><b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Of the existing 132 private schools for students with disabilities, about 50 of them may be affected by the increase in the amount of the guaranty instrument. A school is affected if it collects payments in advance of providing contracted services.</p>
<p><b>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b></p>	<p>The new regulations require a minimum guaranty of \$10,000 for up to 25 students and \$5,000 for each additional 25 students. If a school collects no advance tuition other than equal monthly installments or receives payment after services have been rendered, the school may apply for exemption from the guaranty requirements. There has been no increase in the guaranty instrument since 2004.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>The regulations are designed to license private schools for students with disabilities to operate in the commonwealth. These schools are able to provide programs to meet the needs of students that cannot be met in public schools. The regulations ensure the operation of private schools for students with disabilities that meet at least minimum requirements established by the Board of Education. The regulations ensure a structured educational program that provides opportunities for students to return to their public school with credits toward graduation.</p>

**Alternatives**

*Please describe any viable 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. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

There are no other viable alternative to the proposal considered.

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less*

*stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

The regulations allow considerable flexibility to meeting the requirements. Less stringent compliance and reporting requirements were taken into consideration.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.*

There were no comments received during the public comment period following the publication of the NOIRA.

Commenter	Comment	Agency response

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.*

The proposed regulations are expected to have a positive impact on the institution of the family and family stability. The regulations provide parents assurance that their child is enrolled in an education program that meets at least minimum standards of the Board of Education. The regulations are essential to protect the health, safety, and welfare of students who are enrolled in private schools for students with disabilities.

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulations, use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change, rationale, and consequences</b>
	8 VAC 20-671-230	The minimum guaranty for up to 50 students is \$5,000. The minimum increases incrementally, by \$5,000 for each additional 50 students or portion thereof.	<p>The minimum guaranty of \$10,000 for up to 25 students and \$5,000 for each additional 25 students shall apply.</p> <p>This change is for the protection of contractual rights. There is increasing cost in tuition and other contractual services.</p> <p>Failure to increase the amount of the guaranty instrument may impose a hardship on families and other contracting parties. If a school closed and had received payments in advance of delivering contracted services, the contracting parties would be able to recoup at least a portion of their lose.</p>

For new chapters, use this chart:

<b>Section number</b>	<b>Proposed requirements</b>	<b>Other regulations and law that apply</b>	<b>Intent and likely impact of proposed requirements</b>

Enter any other statement here

There are no substantive changes in these proposed regulations from the current day school regulations, (8 VAC 20-670-10 et seq.) other than the one section referred to above. The proposed regulations bring clarity to the current day school regulations and other applicable regulations that apply to both day schools and the educational programs in residential facilities.