



COMMONWEALTH of VIRGINIA
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Jason S. Miyares

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

From: Deborah A. Love *DAL*
Senior Assistant Attorney General/Chief

Date: March 29, 2024

Re: Revisions to the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* to Comport with Federal Requirements – Exempt Action

I have reviewed the version of the draft 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 the *Code of Virginia* § 22.1-16, the Board has authority to promulgate regulations to carry out its statutory powers and duties. In addition, the Board has the duty to “prepare and supervise the implementation by each school division of a program of special education.” See *Code of Virginia* § 22.1-214. The proposed revisions to the regulations have been identified as necessary to meet the requirements of federal law.

It is my view that the Board has the authority 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* § 2.2-4006 (A)(4)(c).

If you have any questions or concerns, please feel free to contact me at the address above, by telephone at (804) 786-3807 or by electronic mail at dlove@oag.state.va.us.