



Virginia
Regulatory
Town Hall

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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) citation	8VAC 20-671-10 et seq.
Regulation title	Regulations Governing the Operation of Private Schools for Students with Disabilities
Action title	First Review of the Notice of Intended Regulatory Action (NOIRA) to Promulgate <i>Regulations Governing the Operation of Private Day Schools for Students with Disabilities and Educational Programs Offered in Group Homes and Residential Facilities in the Commonwealth</i> and to Repeal <i>Regulations Governing the Operation of Private Day Schools for Students with Disabilities</i> (8 VAC 20-670-10 et seq.)
Date this document prepared	July 7, 2010

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The 2008 General Assembly passed SB 472, licensure of group homes and residential facilities for children, patroned by Senator Hanger. The bill eliminates the interdepartmental regulation of children's residential facilities (CRFs) and requires the Departments of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS); Social Services (DSS) and Juvenile Justice (DJJ) to regulate and license CRFs. The bill stipulates that the DMHMRSAS (Department of Behavioral Health and Developmental Services (DBHDS), effective July 1, 2009) will license facilities providing mental health, mental retardation or substance abuse

services; the DSS will license facilities providing social services, and DJJ will license facilities providing care of juveniles in direct state care. The DSS and DBHDS are responsible for licensing the additional facilities that the Virginia Department of Education (VDOE) will no longer license. Each CRF will have one regulatory agency except those that operate education programs, in which case those facilities will have two regulatory agencies.

SB 472 states:

- A. The Department of Education shall cooperate with other state departments in fulfilling their respective licensing and certification responsibilities regarding educational programs offered in group homes and residential facilities in the Commonwealth. The Board shall promulgate regulations allowing the Department of Education to so assist and cooperate with other state departments.
- B. The Board’s regulations shall address the educational services required to be provided in such group homes and residential facilities as it may deem appropriate to ensure the education and safety of the students.

The Board of Education regulates private day schools for students with disabilities (8 VAC 20-670-10 et seq.). It is proposed that the Board replace the current regulations with new regulations governing both private day schools for students with disabilities and the education programs in private residential facilities and group homes.

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., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

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.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

These regulations are required by the *Code of Virginia*. Effective October 31, 2009, the provisions of the *Code* are revised pursuant to legislation passed by the 2008 General Assembly. SB 472 eliminates the interdepartmental regulation of children's residential facilities. Thus, 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 hold all private providers of special education to consistent standards. The new regulations will allow consistency in the operation and management of these education programs.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The new regulations will provide provisions for the operation of private schools for students with disabilities. It will provide 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); an organized library media center as the resource center of the school; licensure for school personnel; maintenance of student education records, and school facilities and safety.

The proposed regulations will outline provisions for obtaining a license to operate, denial, revocation or suspension of a license, and renewal of licenses; application fees; student guaranty; application commitments; license restrictions; monitoring and investigation of complaints.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The Board has the option to promulgate two separate regulations, a regulation to govern the education programs in children's residential facilities and group homes and a regulation to govern the education programs in day schools for students with disabilities or a single regulation governing both.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also 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 Town Hall Web site, www.townhall.virginia.gov or by mail to Dr. Sandra E. Ruffin, Director, Office of Federal Program Monitoring, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone: (804) 225-2768, e-mail: sandra.ruffin@doe.virginia.gov, or fax: (804) 371-8796. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

A public hearing will not be held to receive comments on this notice.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The agency is using the participatory approach in the development of the proposal.

Family impact

Assess the potential 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 regulatory action is not expected to have a negative impact on the institution of the family and family stability. It will provide parents assurance that their child is enrolled in an education program that meets at least minimum standards of the Board of Education.