



Virginia  
Regulatory  
Town Hall

## Proposed Regulation Agency Background Document

<b>Agency Name:</b>	Department of Education
<b>VAC Chapter Number:</b>	Chapter 16
<b>Regulation Title:</b>	Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits
<b>Action Title:</b>	Proposed Regulations
<b>Date:</b>	March 26, 2003

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

### Summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits were last amended in 1996 and govern the regulation and oversight of private proprietary schools and schools for students with disabilities. First, this action proposes to amend these regulations to remove the provisions governing proprietary schools for the disabled. A draft of new regulations specific to proprietary schools for students with disabilities has been proposed. Second, this action proposes to: (1) revise the regulations for proprietary schools to make them current and responsive to the operating practices emerging in the private postsecondary training sector; (2) have them comport with requirements of the Code of Virginia; (3) remove excess regulatory language not required in the Code of Virginia; (4) increase fees to cover the costs

associated with the regulation and oversight of this sector; (5) introduce penalties to be applied in instances where the schools are found to be in non-compliance with the Board of Education's regulations; and (6) make the regulations responsive to the needs of consumers who purchase the services of these types of programs .

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.*

The scope of legal authority is defined by §22.1-16 of the Code of Virginia, which states "The Board of Education may adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title." Chapter 16 of the *Code of Virginia* in §§ 22.1-319 through 22.1-335 provides the legal requirements for Private Trade, Technical, Business and Correspondence Schools, and Schools for Students with Disabilities. The Board of Education is charged in §22.1-321 with promulgation of regulations for the management and conduct of the schools.

## Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

The major purpose of these proposed revisions is to separate and clarify the current complex and intertwined regulations that govern two types of schools that serve very diverse student populations. It is intended that revised regulations for the career schools and new regulations for the private day schools for students with disabilities will be promulgated to provide clarity and add specificity for each type of school. This would remove questions about applicability and ensure that both classifications of schools are licensed and operated in accordance with requirements of the *Code of Virginia*. The goal is to give clear, orderly requirements for the establishment and conduct of proprietary career schools. There have been amendments to the *Code* and in applicable standards that need to be updated in the regulations. Additionally, the changes will simplify the regulations.

This action also proposes to revise the regulations for proprietary schools to make them current and responsive to the needs of the schools and their consumers and to address business practices that are prevalent in today's postsecondary training environment. This document also proposes to increase fees to support the approval and oversight functions for private career schools. The Department of Education collects fees based on the fee schedule included in the 1994 regulations. A revision of the regulations will seek to increase fees to support the increasing operating costs of administering the program as required by the *Code of Virginia*.

When the current fees were implemented in 1994, it was only necessary to collect 50 percent of the revenue needed to fund the regulation and oversight activities. The remaining costs of operations were supported with funds provided by the General Assembly. The fees have not been increased to the level necessary to support 100 percent funding as required by a subsequent appropriations act revision that required the proprietary schools function to become fully fee supported. Implementation of increased fees will ensure that the Department of Education will not incur a deficit as a result of inadequate collections.

The number of schools being regulated has increased by approximately 50% over the last two years. Currently, the department oversees 140 proprietary career schools with valid Certificates to Operate, and another 20 applications are pending. The unit is staffed with 1.5 FTEs funded solely by fees collected for various services provided to the schools.

Another important focus of these proposed revisions is to update and strengthen consumer protection provisions of this chapter.

### Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.*

The regulations set forth requirements addressing the management and conduct of the schools including staff qualifications, physical facilities, instructional programs, student services, records and contracts, and cancellation and refund policies. They provide the guidance necessary to operate schools in compliance with the law and to protect both the students' and the proprietors' interests. The regulations define a clear process by which a school receives and maintains a certificate to operate. Types of approval, advertising, student guaranty provisions, denial, revocation, suspension or refusal to renew certificates to operate and the application of penalties for non-compliance with the regulations are detailed in the document.

## Issues

*Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

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The advantages to owners and operators and the students who invest their time and money in these schools, is the fact that the regulations provide a set of clear, concise, and orderly requirements for the establishment and conduct of these schools. In today's economy, with the rising cost of the training offered in the regulated schools, citizens of the commonwealth need assurances that the schools are operated in a structured and orderly manner. The advantage to the Commonwealth is that these regulations will be strengthened in such a way as to ensure that these schools conform and maintain compliance with the state's requirements, which will result in better consumer protection by the Commonwealth on behalf of its citizens. There are no known disadvantages to the public or the Commonwealth.

## Fiscal Impact

*Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.*

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The fees collected as part of the regulation of private postsecondary career schools currently provides approximately 50 percent of the required costs. The remaining costs are paid with funds that have accumulated over the years. Those funds are rapidly dwindling due to the increased cost of regulating the schools. The proposed increase in fees will support 100 percent all of the activities required to carry out the responsibilities of this function, including salary, benefits, travel, and other non-personal expenses. There will be no fiscal impact on agency resources since the operation of this unit is funded through the collection of fees. However, there is an increasing administrative and staffing burden on the agency because of the number of new schools beginning operation and the maintenance of records and issuing of transcripts from schools that have closed over the years. All costs associated with the promulgation of these regulations and carrying out the functions of the office will be funded through the fees collected for licensing functions. There will be a fiscal impact on the regulated entities due to the increased fees and proposed penalties for noncompliance.

**Detail of Changes**

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.*

1. Throughout the regulations, language that intertwines the requirements for the proprietary career schools and the schools for students with disabilities is being stricken. A new chapter (8 VAC 20-670-10 et. seq.) is being proposed for the regulation of private day schools for children with disabilities.
2. 8VAC20-350-70 eliminates the exemption of certain information for accredited schools, except for monitoring visits under certain circumstances.
3. 8VAC20-350-120 (8) requires the school owner/operator to verify that all instructional staff has the appropriate qualifications. This eliminates the department's role in verifying the information. Further in 8VAC20-350-160, a financial penalty may be imposed for non-compliance with this requirement.
4. 8VAC20-350-120 (15), language is proposed that requires the disclosure of certain school owner/operator criminal background information to ensure that no individuals with a criminal history are operating schools.
5. 8VAC20-350-125, language is being proposed that comports the regulations to the requirements of the Code of Virginia for dual regulatory responsibilities between the Department of Education and the State Council of Higher Education.
6. 8VAC20-350-130 (10), language is being proposed that commits the school operator to maintain financial and educational resources consistent with program requirements.
7. 8VAC20-350-170, language is being proposed that requires that certain information describing educational and work experiences be maintained in personnel files at the school.
8. 8VAC20-350-200, language is being proposed that establishes three-year monitoring visit requirements and includes language that allows the department to visit the school in the event certain triggers occur.
9. 8VAC20-350-210, language is being proposed that requires the schools to secure outside curriculum reviews of proposed programs prior to submission to the department for approval.
10. 8VAC20-350-230 (G), language is being proposed that establishes a statute of limitations and requires consumer complaints to be submitted to the department for investigation within one year of the occurrence of the grievable action, and that certain types of complaints may only be submitted against schools that are in operation.
11. 8VAC20-350-470, language is being proposed that strengthens and better defines the department's authority to take immediate action in the event a school is faced with exposing its students to loss of training or financial loss.
12. 8VAC20-350-490, an increase in the amount that schools are required to pay into a student guaranty fund is being proposed as a safeguard against an unexpected

- closing of a school without its owners providing the training students contract for or providing refunds of unearned tuition.
13. 8VAC20-350-490 (F) (4), language is being proposed that eliminates the waiver of payments into the fund after three years. Schools holding a valid certificate on a continuous basis prior to the enactment of this provision will be exempt from this requirement.
  14. 8VAC20-350-490 (I), language is being proposed that changes eliminates the current method of appointing advisory committee members and establishes a new one. The language also proposes to re-establish the committee’s relationship with the superintendent and the fund director and re-defines its duties.
  15. 8VAC20-350-490 (O) (P), language is being introduced that establishes a different system for how to operate the fund in response to claims against it and defines what constitutes a bona fide student claim.
  16. 8VAC20-350-500, language is being proposed that strengthens and better defines the requirements for waiver from the guaranty instrument provisions.
  17. 8VAC20-350-500 (E), language is being proposed that increases the amount of guaranty needed for securing and maintaining a certificate.
  18. 8VAC20-350-510 (A), an increase in fees is being proposed to provide the Department of Education with receipts from fee collections that will provide 100 percent of the funds necessary to sustain the function as required by the appropriations act.
  19. 8VAC20-350-510 (B), language is being proposed that will give the Department of Education the authority to impose financial penalties for owners’ failure to comply with the regulations.
  20. 8VAC20-350-545, language is being proposed that describes the penalty assessment provisions and establishes due process for the school operators.
  21. Language is being proposed that delegates certain board actions/functions to the superintendent or designee.

**Alternatives**

*Please describe the specific 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.*

Certain private trade, technical, business and distance education schools are required by state law to be regulated by the Board of Education. The regulations that support this function must be current and they must give the guidance necessary for the schools to provide programs that comply with the law and guidance that protects both the students’ and the proprietors’ interests. The proposed regulations provide clear and concise information that outlines the process by which a school receives and maintains a certificate to operate. Two alternatives have been considered. First considered and attempted was revisions to *Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits* continuing to have the proprietary career schools and the private special education day schools governed the same regulations. This has been determined to be most confusing to both types of schools and to the public. As a result of the regulatory review process required by the APA, it was recommended that the

regulations governing the two types of institutions be separated. The other alternative considered is to deregulate the industry; however, because of the history of prevailing business practices common to this industry (i.e., no refund policies, substandard equipment, unqualified instructors, etc.) both the students and the industry as a whole would suffer if the industry were to be deregulated.

**Public Comment**

*Please summarize all public comment received during the NOIRA comment period and provide the agency response.*

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No comments were received during the NOIRA comment period.

**Clarity of the Regulation**

*Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.*

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The proposed regulations were reviewed for clarity and simplicity as well as content by staff of the Department of Education.

**Periodic Review**

*Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.*

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The regulations will be formally reviewed no later than the spring of 2006. There will be ongoing evaluation of the regulations to ensure consistency with other applicable regulations, industry practices and standards, and consumer needs.

The Attorney General's Office will be asked to review the proposed regulations to determine whether the State Board of Education has the requisite legal authority to promulgate such regulations.

**Family Impact Statement**

*Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.*

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The positive family impact of these proposed regulations comes from the clear articulation of what families can expect of and from proprietary career schools in the way of staff qualifications, physical facilities, instructional programs, student services, records and contracts, cancellation and refunds including their contractual rights and school closings. These regulations also provide a tool for families to use should they have a complaint. Training obtained in schools governed by these regulations also provide the following benefits to families:

1. Encouragement toward economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents.
2. Strengthen the marital commitment by providing training possibilities for career development or advancement to provide family stability and security.
3. Provision of a vehicle to increase disposable family income via career opportunities and/or advancement.