



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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MEMORANDUM

To: Emily V. Webb, Director
Office of Board Relations
Virginia Department of Education

From: Susan B. Williams
Senior Assistant Attorney General

A handwritten signature in black ink, appearing to read 'Susan B. Williams'.

Date: August 12, 2019

Re: Revisions to the *Regulations Governing Reduction of State Aid When Length of School Term Below 180 Teaching Days or 990 Hours to Conform to 2019 General Assembly Legislation, 8VAC20-521 (Exempt Action)*
(Action 5349 / Stage 8707)

I have reviewed the version of the final regulation identified above that was submitted to the Virginia Regulatory Town Hall on July 30, 2019 at 2:36 PM 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 § 22.1-16 of the *Code of Virginia*, the Board has authority to promulgate regulations to carry out its statutory powers and duties. In addition, § 22.1-98 of the *Code of Virginia* requires that the length of every school's term in every school division be at least 180 teaching days or 990 teaching hours in any school year, but sets forth certain conditions under which the Board may/shall waive this requirement. Amendments made by the 2019 General Assembly to § 22.1-98 of the *Code of Virginia* specifically require the Board to provide a waiver for up to five teaching days for school closings resulting from an evacuation directed and compelled by the Governor.

It is the view of this Office that the Board has the authority to promulgate this final regulation, subject to compliance with Virginia Office of the Governor Executive Order 14 (2018), and that the Board has not exceeded that authority. It is also this Office's view that this regulatory action is exempt from Article 2 of the Administrative Process Act. In accordance with the provisions of §2.2-4006(A)(4)(a), the proposed amendments to these regulations are necessary to conform the regulations to changes in Virginia statutory law, and such amendments only align the regulations with the changes made by the 2019 General Assembly through the adoption of identical HB 2124 and SB 1269. Moreover, the Virginia Board of Education had no discretion.

If you have any questions or concerns, please feel free to contact me at the address above, by telephone at (804) 371-8721 or by electronic mail at swilliams@oag.state.va.us. Thank you.

cc: Deborah A. Love, Senior Assistant Attorney General/Acting Section Chief