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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Board of Education
Virginia Administrative Code (VAC) Chapter citation(s)	8VAC20-821 [new chapter]; 8VAC20-820 [repeal]
VAC Chapter title(s)	<i>General Procedures and Information for Licensure</i> [new chapter]; <i>General Procedures and Information for Licensure</i> [Repeal]
Action title	Adopt New Standards for the <i>General Procedures and Information for Licensure</i>
Date this document prepared	November 17, 2021 [Revised November 19, 2021]

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The *General Procedures and Information for Licensure* ("General Procedures") applies to child day centers, family day homes, and family day systems that are licensed by the Virginia Board of Education ("Board"). The chapter sets out requirements and procedures for the licensure process, including: the application process; license maintenance; inspections; and enforcement of violations. The current *General Procedures* were originally promulgated by the Virginia Department of Social Services ("DSS") in 1984 and adopted by the Board in 2021. The Board intends to repeal the current chapter and promulgate a new chapter in its place in order to implement statutory requirements, clarify existing regulatory requirements, and update practices and procedures.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

General Procedures = The General Procedures and Information for Licensure or 8VAC20-820
Board = Virginia Board of Education
DSS = Virginia Department of Social Services

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The Board has determined that significant revisions to the current chapter are necessary in order to implement statutory requirements, clarify existing regulatory requirements, and update practices and procedures. The Board will repeal the current chapter and promulgate a new chapter in its place.

On June 18, 2020, DSS completed a [Periodic Review](#) of the *General Procedures* that recommended amending the chapter to removed outdated definitions, add enforcement procedures, and reorganize sections for clarity. However, DSS never began a regulatory action to amend the chapter.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The Board's overall regulatory authority is found in § [22.1-16](#) of the *Code of Virginia*, which states that "[t]he 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."

The Board's regulatory authority over child day programs and family day systems is found in § [22.1-289.046](#) of the *Code of Virginia*, which states in part that "[t]he Board shall adopt regulations for the activities, services, and facilities to be employed by persons and agencies required to be licensed under this chapter, which shall be designed to ensure that such activities, services, and facilities are conducive to the welfare of the children under the control of such persons or agencies."

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The *General Procedures* out requirements and procedures for the licensure process—including the application process, license maintenance, inspections, and enforcement of violations—for child day centers, family day homes, and family day systems. The Board has determined that a comprehensive revision of the chapter is necessary in order to implement statutory requirements, clarify existing regulatory requirements, and update practices and procedures. The current chapter was first promulgated almost three decades ago under the Virginia Department of Social Services. A comprehensive review of the regulations will provide clear, understandable, and updated requirements for licensees and ensure the sufficiency of care provided to children receiving services.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

Since the proposed regulatory action involves a comprehensive review of the chapter, revisions to all areas of the chapter will be considered. The regulatory action will potentially include the following:

- Improvements to the licensing process and procedures;
- Updating definitions and terminology;
- Update and clarify license types;
- Addition of performance levels for license issuance;
- Revision of risk assessment processes; and
- Revision to processes related to investigations, sanctions, and compliance

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

There are no alternatives to regulatory action, as the *General Procedures and Information for Licensure* are necessary for program implementation.

The Board considered amending the *General Procedures and Information for Licensure* in its current structure and format. However, due to the number of updates and revisions, the Board has determined that promulgation of a new chapter will be more expedient.

Periodic Review and Small Business Impact Review Announcement

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Virginia Department of Education is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by email to Tatanishia Armstrong, Legislative Consultant, Virginia Department of Education, 101 N. 14th St., Richmond, VA 23219, 804-382-5047, tatanishia.armstrong@doe.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

The Early Childhood Advisory Committee will advise the Board as regulations are developed.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.