



**COMMONWEALTH of VIRGINIA**  
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*Richmond 23219*

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**MEMORANDUM**

**TO:** Dr. Lisa Coons  
Superintendent of Public Instruction  
Virginia Department of Education

**FROM:** Deborah A. Love  
Senior Assistant Attorney General

**DATE:** December 8, 2023

**SUBJECT:** Regulations Governing the Operation of Private Schools for Students with Disabilities, 8 VAC 20-671-10 *et seq.*

I have reviewed the amendments to the regulations identified above in order to determine whether the State Board of Education (Board) has the authority to promulgate the regulations and if the regulations comport 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, pursuant to § 22.1-216 of the *Code of Virginia*, the Board of Education has the authority to promulgate regulations related to special education programs for children with disabilities.

It is my view that the Board has the authority to adopt these fast-track regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act. It is further my view that this action remains subject to Governor Executive Order 14 (2018)<sup>1</sup>, and that the Board has not exceeded its authority.

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](mailto:dlove@oag.state.va.us).

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<sup>1</sup> This Executive Order has been replaced by Executive Order 19 (2022), which by its terms applies to regulatory activity initiated on or after July 1, 2022. The subject regulation was initiated prior to July 1, 2022, and so is not governed by EO 19 (2022).