



COMMONWEALTH of VIRGINIA
Office of the Attorney General
Richmond 23219

Jerry W. Kilgore
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071

July 3, 2003

Dr. Jo Lynne DeMary
Superintendent of Public Instruction
Department of Education
101 N. 14th Street
Richmond, Virginia 23219

Re: Regulations Governing the Operation of Proprietary Schools and Issuing
of Agent Permits (8 VAC 20-350)

Dear Dr. DeMary:

You have asked that this Office review the above proposed regulations to determine whether the Virginia Board of Education ("Board") possesses the requisite legal authority for their promulgation.

Title 22.1-16 of the *Code of Virginia* gives the Board the authority to "promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of" Title 22.1. That Title gives the Board authority to regulate the operation of proprietary schools and the issuance of agent permits for such schools. See Va. Code §§ 22.1-319 through 22.1-335. It defines a proprietary career school as:

[A] privately owned and operated institution or organization, no matter how titled, maintaining or conducting classes for the purpose of offering instruction for a consideration, profit or tuition, designed to prepare an individual for entry level positions in occupations, including but not limited to business, industry, skilled trades, or service occupations, or to upgrade an individual in previously acquired occupational-related skills.

It further provides that "[s]uch schools may be further classified by the Board as necessary."

Section 22.1-321, which authorizes the Board to promulgate regulations, specifically provides:

- A. 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.
- B. In its regulations the Board may, among other things, provide that certification by other accrediting agencies may justify the issuance of a certificate to operate a school without the submission of the information otherwise required in this chapter, with the exception of the student tuition guaranty provisions of § 22.1-324.
- C. The Board may authorize the Superintendent to issue certificates to operate schools.

Title 22.1-324 provides for the establishment and maintenance of a "student tuition guaranty fund" and provides that:

- B. The Board shall promulgate regulations establishing a student tuition guaranty fund for proprietary career schools to be used to reimburse students who suffer losses of tuition and fees because a school has failed to perform faithfully its contractual obligations to its students. The Department may contract with a third party to administer the fund.
 - 1. The regulations shall provide for the following:
 - a. A minimum balance and periodic assessments to be paid by the schools in amounts determined by the Department based upon the probable amount of money needed for the fund;
 - b. Supplemental assessments in the event the fund is insufficient to satisfy approved claims; and
 - c. Procedures for approving claims to be paid out of the fund.
 - 2. The fund shall be maintained in a separate account and any income earned on the fund shall be credited to the fund. The cost of administering the fund shall be paid out of the fund.
 - 3. A school shall pay all assessments in order to obtain and maintain a certificate to operate.
 - 4. The guaranty instrument requirements set forth in subsection C below may be waived by the Department if it is satisfied from information supplied by the school that the school has met its obligations to the fund.
- C. The surety bond, certificate of deposit, or irrevocable letter of credit shall be payable to the Commonwealth of Virginia and conditioned to protect the contractual rights of students. The amount of such bond shall

Dr. Jo Lynne DeMary
July 3, 2003
Page 3

be established in the Board's regulations. The guaranty instrument requirement may be reduced for schools for students with disabilities, at the discretion of the Department, on a showing by the school that the school collects no advance tuition other than equal monthly installments or payment for services rendered. The minimum guaranty instrument for any school shall be \$1,000. The word "students" as used in this subsection means all enrolled students.

Based upon the above general and specific statutory provisions, I believe that the Board possesses the requisite authority to propose and to promulgate the above regulations. Although this is not an official opinion of the Attorney General rendered pursuant to Va. Code § 2.2-505, I hope that this information is helpful to you.

Sincerely,

/s/

Joan W. Murphy
Senior Assistant Attorney General