



COMMONWEALTH of VIRGINIA
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September 30, 2004

Dr. Jo Lynne DeMary
Superintendent of Public Instruction
Department of Education
Monroe Building
101 North 14th Street
Richmond, VA 23219

**Re: Emergency Regulations Governing Reduction of State Aid
When Length of School Term Below 180 Teaching Days
Or 990 Teaching Hours
(8 VAC 20-520-5 *et seq.*)**

Dear Dr. DeMary:

You ask whether the Virginia Board of Education possesses the requisite statutory authority to promulgate the above Emergency Regulations Governing Reduction of State Aid When Length of School Term Below 180 Teaching Days or 990 Teaching Hours, 8 VAC 20-520-5 *et seq.*

Section 22.1-98 addresses reduction in aid when the school term is less than 180 days or 990 teaching hours. Subsection H directs the Board of Education to promulgate regulations to implement authority of the section. This specific authority is in addition to that conveyed by § 22.1-16, which vests the Board of Education with the authority to promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1. In my view, therefore, the Board possesses the requisite authority to promulgate these regulations.

In my view, the Board has the authority to find that the adoption of these regulations on an emergency basis is necessitated by an emergency situation, as defined in § 2.2-4011.A, item (ii), which states that an "emergency situation" is a situation "in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment." Chapters 868 and 887 of the 2004 Acts of Assembly, cl. 2 provides: "the Board of Education shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment."

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The foregoing represents my view and does not constitute an official opinion of the Attorney General. If you require additional assistance from me on this matter, please do not hesitate to contact me.

Sincerely,

Deborah Love Feild
Senior Assistant Attorney General