



COMMONWEALTH of VIRGINIA
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MEMORANDUM

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

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

DATE: August 17, 2022

SUBJECT: Amendments to VAC 20-131-80, 20-131-150: Amendments to Regulations Establishing Standards for Accrediting Public Schools as required by Chapter 582 of the 2020 Acts of Assembly (minimum instruction time for kindergarten)

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 § 22.1-253.13:3 of the *Code of Virginia*, the Board of Education has the authority to promulgate regulations related to establishing standards for accrediting public schools.

It is my view that this regulatory action is exempt from Article 2 of the Administrative Process Act by virtue of § 2.2-4006.A.4.a, as this change is “[n]ecessary to

conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved.” This change is mandated by Chapter 582 of the 2020 Acts of Assembly. It is further my view that this action remains subject to Governor Executive Order 14 (2018)¹, 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.

¹ This Executive Order has been replaced by Executive Order 19 (2022), which by its terms applies to regulatory activity initiated on or after July 1, 2022.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).