



COMMONWEALTH of VIRGINIA

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MEMORANDUM

TO: L. RICHARD MARTIN, JR.
Virginia Department of Social Services

FROM: ALLEN T. WILSON
Senior Assistant Attorney General

DATE: December 14, 2009

SUBJECT: Proposed Regulation 22 VAC 40-131-10 et seq.
Standards for Licensed Child-Placing Agencies

I have reviewed the above-referenced proposed regulation to determine if the State Board of Social Services (“State Board”) has the statutory authority to promulgate the proposed regulation and if this action by the State Board comports with applicable state law. This regulatory action also was reviewed to determine if the State Board has the statutory authority to repeal one regulation, 22 VAC 40-130 Minimum Standards for Licensed Private Child Placing Agencies. The repealed regulation will be replaced by the proposed regulation.

Virginia Code § 63.2-217 mandates that the State Board promulgate regulations that are necessary to carry out the provisions of Title 63.2. Virginia Code § 63.2-1734 specifically authorizes the State Board to promulgate regulations relating to child welfare agencies, including licensed child-placing agencies. It appears that the State Board has the authority to repeal the existing regulation and promulgate the proposed replacement regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act and Executive Order 6 (2006), and has not exceeded that authority.

If you have any questions, please feel free to call me at 786-0095.



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MEMORANDUM

TO: KARIN CLARK
Virginia Department of Social Services

COPY: MARTIN D. BROWN, COMMISSIONER
STATE BOARD OF SOCIAL SERVICES

FROM: ALLEN T. WILSON
Senior Assistant Attorney General

DATE: April 12, 2011

SUBJECT: Proposed Regulation 22 VAC 40-131-10 et seq.
Standards for Licensed Child-Placing Agencies

On December 14, 2009, this office forwarded a memorandum to Richard Martin on the issue of whether the State Board of Social Services (“State Board”) had the statutory authority to promulgate the proposed regulation and if this action by the State Board comports with applicable state law. Additionally, the memorandum addressed whether the State Board had the statutory authority to repeal one regulation, 22 VAC 40-130 Minimum Standards for Licensed Private Child Placing Agencies.

Our Memorandum of December 14, 2009, advised that it appeared the State Board had the authority to repeal the existing regulation and promulgate the proposed replacement regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act and Executive Order 6 (2006).

This Memorandum revises and amends the Memorandum of December 14, 2009, in the following manner:

1. The proposed regulation contains language which would “prohibit acts of discrimination based on race, color, gender, national origin, age, religion, political beliefs, sexual orientation, disability, or family status” by licensed child placing agencies.
2. This proposed language does not comport with applicable state law and public policy.
3. Therefore the State Board lacks the authority to adopt this proposed language.

4. To comport with applicable state law and public policy, and to ensure consistency with federal law, 42 U.S.C. § 671, it is recommended that the proposed language be amended to “prohibit acts of discrimination based on race, color, or national origin” by licensed child placing agencies.

Further guidance will be provided, upon request, at the Board meeting on April 20, 2011.