

8 VAC 20-670-10 et seq.  
Virginia board of Education  
REGULATIONS GOVERNING THE OPERATION OF  
PRIVATE DAY SCHOOLS FOR STUDENTS WITH DISABILITIES  
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**PRELUDE**

**STATEMENT**

These regulations supersede the provisions of Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits that were applicable to private [~~special education~~] day schools [**for students with disabilities**].

**PART I**

**DEFINITIONS**

8 VAC 20-670-10. Definitions.

"Behavioral intervention plan" means a plan that utilizes positive behavioral interventions and supports to address behaviors that interfere with learning of students with disabilities or with the learning of others or behaviors that require disciplinary action.

"Behavior management [**program**]" means those principles and methods employed by a school to help an individual student achieve a positive outcome and to address and correct inappropriate behavior in a constructive and safe manner. Behavior management

principles and methods must be employed in accordance with the individualized education program or individualized instructional plan and written policies and procedures governing service expectation, educational and treatment goals, and safety and security.

"Board" means the Virginia Board of Education.

"Branch campus" means any multi-site location in the same town, city, county where the school is offered on a regular continuing basis.

"Consent" means the voluntary and revocable agreement of the parent or parents or eligible student who has been fully informed of all information relevant to the activity including which records, if any, will be released for which consent is sought in the parent's, parents' or eligible student's native language, or other mode of communication, and understands and agrees, in writing, to the carrying out of the activity for which consent is sought.

"Department" means the Virginia department of Education.

"Disability category" means a listing of special education eligibility classifications for students served.

"Extension classroom" means a location away from but in close proximity to the main campus where only classes are offered.

"Guaranty Instrument" means a surety bond, irrevocable letter of credit or certificate of deposit.

"License to Operate" means the legal document issued by the board of Education that provides institutional and programmatic authority to operate a school as further defined in these regulations.

"Paraprofessional" means an appropriately trained employee who assists and is supervised by qualified professional staff.

"Physical restraint" (also referred to as "manual hold") means the use of approved physical interventions or "hands-on" holds to prevent a student from moving his body to engage in behavior that places himself or others at risk of physical harm.

Physical restraint does **not** include the use of "hands on" approaches that occur for extremely brief periods of time and never exceed more than a few seconds duration and are used for the following purposes:

- a. To intervene in or redirect a potentially dangerous encounter in which the student may voluntarily move away

from the situation or hands-on approach; or

- b. To quickly deescalate a dangerous situation that could cause harm to the individual or others.

"Regulations" means this document in its entirety.

"Rules of conduct" means a listing of rules that is maintained to inform students and others about behaviors that are not permitted and the consequences applied when the behaviors occur.

"School for students with disabilities" means a privately owned and/or operated preschool, school or educational organization, no matter how titled, maintained or conducting classes for the purpose of offering instruction, for a consideration, profit or tuition, to persons determined to have autism, deaf-blindness, a developmental delay, a hearing impairment, including deafness, mental retardation, multiple disabilities, an orthopedic impairment, other health impairment, an emotional disturbance, a severe disability, a specific learning disability, a speech or language impairment, a traumatic brain injury, or a visual impairment including blindness.

"Time out" means removing the individual from his immediate

environment to a different, open location until the student is calm or the problem behavior has subsided.

## PART II

### GENERAL REQUIREMENTS

- 8 VAC 20-670-20. License to operate
- 8 VAC 20-670-30. Initial application
- 8 VAC 20-670-40. Assessment of application
- 8 VAC 20-670-50. Advertising and enrolling restrictions
- 8 VAC 20-670-60. Certification, licensing of branch campus/  
extension classroom
- 8 VAC 20-670-70. Penalty for non-compliance

8 VAC 20-670-20. License to operate.

- A. Any school defined in the Code of Virginia as a school for students with disabilities shall receive a license to operate from the board prior to operation.
- B. A License to operate shall be prominently displayed on the premises of the school.

8 VAC 20-670-30. Initial application.

- A. The application forms and information regarding the application process shall be available from the department.
- B. Complete applications and other required documentation shall be [~~submitted to~~ **received by**] the department at least 60 [~~administrative~~ **business**] days in advance of the school's planned opening date.

8 VAC 20-670-40. Assessment of application.

- A. The department shall evaluate each completed application within 60 [~~administrative~~ **business**] days of its receipt for licensure and advise the school in writing of its approval or any deficiencies.
- B. All deficiencies shall be corrected within 100 calendar days from receipt of the department's written evaluation of the application. Any school not meeting this deadline shall submit to the department a written request for continued consideration.

8 VAC 20-670-50. Advertising and enrolling restrictions.

- A. A school shall not advertise or enroll students prior to

receiving a license to operate.

- B. A license to operate shall be restricted to the disability categories specifically indicated.
- C. Authority is granted to the department to suspend enrollment in or withdraw approval of programs of holders of license to operate that do not continue to meet the requirements of these regulations. A school that has had enrollment suspended or approval withdrawn shall be notified by certified mail and shall not enroll new students in such programs.

8 VAC 20-670-60. Certification, licensing of branch campus/extension classroom.

A school with a license to operate may open an additional facility in the same town, city or county under the same certificate or license. The school shall submit an application and secure authorization from the department.

8 VAC 20-670-70. Penalty for non-compliance.

- A. Any person who opens, operates, or conducts a school without first obtaining a license to operate may be found guilty of a Class 2 Misdemeanor [**§22.1-331 Code of**



Virginia].

- B. Each day the school remains open without a license to operate the owner or board of Directors shall incur a separate offense.
- C. The department shall refer to the Office of the Attorney General any alleged or known violation of these provisions. The Office of the Attorney General shall refer the matter to the Commonwealth Attorney of proper jurisdiction.

**PART III**

**APPLICATION**

8 VAC 20-670-80. Application requirements for schools seeking a license to operate

8 VAC 20-670-90. Applicant commitments

8 VAC 20-670-80. Application requirements for schools seeking a license to operate.

The following information shall be submitted as part of the application:

1. Title or name of the school which is permanent and distinct and shall not be changed without first securing

- approval from the department.
2. Names and addresses of owners, controlling officials, and managing employees.
  3. Evidence of compliance with applicable State Corporation Commission regulations when the school is owned by a partnership or corporation.
  4. Curriculum information in department's required format.
  5. A scale drawing or copy of the floor plan including room use and dimensions.
  6. A certificate of occupancy or other report(s) from the appropriate government agency(ies) indicating that the location or locations meet applicable fire safety, building code, and sanitation requirements.
  7. A copy of the deed, lease, or other legal instruments authorizing the school to occupy such locations.
  8. A listing of the equipment, training aids, and textbooks used for instruction.
  9. The maximum anticipated enrollment to be accommodated with the equipment available and the ratio of students to teachers and instructional aides.
  10. A listing of the qualifications of the staff in the school.
  11. A proposed budget, a three year financial plan, and

documentation of sufficient operating capital to carry the school through its first year including proof of a guaranty instrument described in #13 below.

12. A copy of the student enrollment agreement, a current schedule of tuition and other fees, copies of all other forms used to keep student records, and the procedure for collecting and refunding tuition.
  13. A surety bond, irrevocable letter of credit or certificate of deposit as required by Section 8 VAC 20-670-320.
  14. Copies of all proposed advertising.
  15. [A handbook describing the school's programs and policies.]
- ~~[15~~ 16]. Any additional information as the board or department may deem necessary to carry out the provisions of the Code of Virginia.

8 VAC 20-670-90. Applicant commitments.

Each applicant for a license to operate shall provide a notarized certificate of compliance form provided by the Department of Education, acknowledging their commitment to conduct the school in an ethical manner and in accordance with the provisions of state and federal laws and applicable regulations.

PART IV

PROGRAM REQUIREMENTS

8 VAC 20-670-100. Statement of purpose, philosophy, and objectives

8 VAC 20-670-110. Instructional program

8 VAC 20-670-120. Intradepartmental cooperation

8 VAC 20-670-130. Behavior management programs

8 VAC 20-670-140. Equipment and instructional materials

8 VAC 20-670-150. Provisions for health

8 VAC 20-670-160. Transportation

8 VAC 20-670-100. Statement of purpose, philosophy, and objectives.

Each school shall be responsible for formulating a written statement setting forth its purpose, philosophy, objectives, and admissions policies which shall be used for guidance concerning the character and number of students with disabilities to be served, the instructional program to be offered, the staff to be used, and the services to be provided.

8 VAC 20-670-110. Instructional program.

A. The instructional program of each school shall reflect

the written philosophy of the school by implementing the stated objectives through methods, procedures, and practices which reflect an understanding of and meet the applicable academic, vocational, therapeutic, recreational, and socialization needs of the students served. Instructional programs for students with disabilities shall be conducted in accordance with appropriate regulations governing the education of children with disabilities approved and issued by the board [8 VAC 20-80-10 et. seq.].

- B. Each school shall provide a program of instruction that promotes the individual student's developmental growth or academic achievement at successive grade levels. Instruction shall be designed to accommodate each student and meet the abilities, interest, educational and transitional needs of the students.
- C. Programs for students with disabilities shall also comply with the following requirements:
1. Each student identified by local education agency (LEA) as eligible for special education and related services and placed by a local school division or for non-educational reasons by a comprehensive services team shall have an individualized

education program (IEP) on file with the school in accordance with regulations of the board governing the education of children with disabilities. Students not identified as such and those placed by parents shall have an individualized instruction program (IIP).

2. Individualized education programs (IEPs) shall address participation in the general curriculum and acquisition of the knowledge and skills contained in the Virginia Standards of Learning for English, mathematics, science, and history/social science[ 8 VAC 20-80-62.F].
3. Confidentiality of information including access rights, record of access, record on more than one child, list of types and location of information, fees, amendment of records at parent's request, consent, collection, storage, disclosure and destruction safeguards, and destruction of information shall be kept in accordance with regulations of the board [8 VAC 20-150-10 et. seq.].
4. The school shall use testing and evaluation materials that are not racially or culturally dis-

criminatory and do take into consideration the student's disabling condition(s), racial and cultural background.

5. The Virginia State Assessment Program shall be addressed in the student's individualized education program [8 VAC 20-80-62.F.5].
6. Schools shall follow the Standards for Accrediting Public Schools in Virginia or standards approved by the Virginia Council of Private Education for conferring credit and diplomas [8 VAC 20-131-110].
7. Records of current initial eligibility determinations or re-evaluations of eligible students with disabilities, conducted in accordance with board regulations, shall be on file [8 VAC 20-80-56].
8. A planned program for personnel development shall be provided.
9. A plan for and documentation of contact with parents, guardians, and local school division personnel shall be available.
10. All procedural safeguards required by regulations governing the education of students with disabilities shall apply for eligible students [8

VAC 20-80-70].

11. Instructional/training schedules shall be conducted in accordance with board regulations [8 VAC 20-131-150].
  12. The school shall maintain pupil-teacher ratios in accordance with department regulations [8 VAC 20-80-45].
- D. A written agreement between the school and any third party organization shall be entered into for programs requiring an enrolled student internship or externship. A copy of the agreement shall be available for review by the board or department.

8 VAC 20-670-120. Intradepartmental cooperation.

- A. Staff from the Department of Education will be available for consultation on educational programming.

8 VAC 20-670-130. Behavior management programs.

- A. If a school has a program for behavior management or modification, the school shall develop, implement, and have on file written policies and procedures that describe the use of behavior management techniques approved by the governing body of the school. Positive



approaches to behavior management shall be emphasized.  
The behavior management techniques used by the school  
shall be listed in order of their relative degree of  
intrusiveness or restrictiveness and the conditions under  
which they may be used by trained school personnel. The  
policies must protect the safety and well-being of the  
student at all times, including during fire and other  
emergencies. Policies must specify the mechanism for  
monitoring and methods of documenting the use of behavior  
management techniques.

B. All interested parties, including students, their  
parents, guardians and local education agencies when the  
student is publicly placed, shall be informed of the  
policies and rules of conduct through written information  
contained in the school's handbooks, brochure, enrollment  
contract, and/or other publications. Informed consent  
shall be obtained before implementation of any behavior  
management program.

C. Schools may allow students to voluntarily take time  
outside the classroom or in a designated area of the  
classroom to regroup. If the student requires assistance  
to remove himself from the immediate environment, it must  
be done in accordance with the school's policies and

procedures for the use of time out that comply with sound therapeutic practice. Staff must be available to students during this time in regaining emotional control.

D. A school that uses physical restraints shall have and implement written policies and procedures governing their use. The procedures shall include methods to be followed should physical restraint, less intrusive interventions, or measures permitted by other applicable state regulations prove unsuccessful in calming and moderating the student's behavior. Use of physical restraints shall be limited to that which is minimally necessary to protect the student or others and may only be used by trained staff and only after less intrusive interventions have failed and when failure to restrain would result in harm to the student or others.

E. The behavior management program shall be developed, implemented, and monitored by staff trained in behavior management programming. Staff shall review the training in physical restraints and less intrusive interventions at least annually.

F. Application of a formal behavior management **[technique program]** designed to reduce or eliminate severely maladaptive, violent, or self injurious behavior

contingent upon the exhibition of such behaviors is allowed only as part of an individually approved time specific plan that is consistent with sound therapeutic practice. Consent of the individual, parent or guardian, and the placing school division is required.

- G. Individual applications of formal behavior management techniques including use of physical restraints shall be reported to the parents and documented in the student's record and, at a minimum, include date and time; staff involved; circumstances and reasons for use, including other behavior management techniques attempted, duration, type of technique used, and outcomes.
- H. Injuries resulting from or occurring during the implementation of behavior management techniques shall be documented and appropriate health care shall be administered. The student's parents or legal guardian shall be notified.
- I. Students shall not discipline, restrain or implement behavior management plans of other students.
- J. The following actions are prohibited:
1. Any action which is humiliating, degrading, or abusive;
  2. Deprivation of drinking water or food necessary to

meet a student's daily nutritional needs except as ordered by a licensed physician for a legitimate medical purpose and documented in the student's file;

3. Denial of use of toilet facilities, or toileting assistance;
4. Use of restraint as punishment, reprisal or for the convenience of staff;
5. Corporal punishment;
6. Deprivation of health care including counseling;
7. Use of mechanical and chemical restraints.

8 VAC 20-670-140. Equipment and instructional materials.

- A. Equipment and materials for instruction shall be provided in sufficient variety, quantity, and design to implement the educational program to meet the needs of the students with disabilities as identified in the individualized education program (IEP) or individualized instruction plan (IIP) as appropriate.
- B. There shall be a library adequately equipped or resource materials available on site to meet the needs of the students according to the types of training and/or educational programs offered by the school, if applicable.

Depending upon the age and needs of the students with disabilities, reference materials should be available to the pre-academic, the academic, and the career education levels, if applicable.

8 VAC 20-670-150. Provisions for health.

- A. A report of [a comprehensive] physical examination [not more than three years old] by a qualified healthcare provider and an up- to-date immunization record shall be on file for each student.
- B. A student suffering with a contagious or infectious condition or disease shall be excluded from school while in that condition unless attendance is approved by a qualified healthcare provider.
- C. An adequate first-aid kit shall be provided for use in the case of accidents, minor injuries, and medical emergencies.
- D. All medications shall be accepted only in current original labeled prescription container with parental permission to administer.
- E. Transportation of medication shall be expressly covered in the school's policy manual. All interested parties shall be informed of the policy through written

information.

- F. Training shall be provided to all staff in medication procedures and effects and in infection control measures including the use of universal precautions. All staff administering medication shall receive approved training for medication management. At least one person **[trained certified]** in first-aid and CPR shall be available at all times to the students at the school ~~[and on field trips]~~.
- G. In schools where meals are served on a daily basis, the school shall have the services of either a full-time or part-time dietitian or nutritionist, or consultative assistance to insure that a well-balanced nutritious daily menu is provided. Records of menus for all meals served shall be kept on file for six months.
- K. Any case of suspected child abuse or neglect shall be reported immediately to the local child protective services unit as required by the Code of Virginia [**§63.2-1509**]. Any case of suspected child abuse or neglect which is related to the facility shall be reported immediately to the department and placing agency, and to either the parent or legal guardian. When a case of suspected child abuse or neglect is reported to child protective services, the students records shall include:

the date and time the suspected abuse or neglect occurred; a description of the incident; action taken as a result of the incident; and, the name of the person to whom the report was made at the local child protective services unit.

8 VAC 20-670-160. Transportation.

- A. All drivers of vehicles transporting students shall comply with the requirements of the applicable laws of Virginia [§22.1-180]. Appropriate safety measures which take into consideration the age range and disabling conditions of students served at the school shall be taken by staff members or other adults who may transport students to and from school [or on school-sponsored activities].
- B. Evidence of vehicle liability insurance to protect those students transported to and from the school shall be submitted.
- C. All schools shall have on file evidence that school-owned vehicles used for the purpose of transporting students to and from school and school-related activities meet federal and state standards and are maintained in accordance with applicable state and federal laws [49 CFR

571].

- D. All vehicles used to transport students on school activities, shall be equipped with first-aid kits, fire extinguisher, and two-way communication devices.
- E. Individual student emergency information including currently prescribed and over the counter medications, significant medical problems, and any allergies shall accompany students when they are being transported.

PART V

DISABILITY CATEGORIES

8 VAC 20-670-170. Disability categories

8 VAC 20-670-170. Disability categories.

- A. The instructional program shall exist only for those students who have a disability listed in the categories posted on the school's current license to operate.
- B. Supplementary applications to serve additional categories of students may be submitted to the department for approval at any time. The information must be submitted in such form as prescribed by the department.
- C. Revisions to existing program services must be submitted to the department for approval prior to implementation.



**PART VI**

**STAFF**

8 VAC 20-670-180. Personnel policies

8 VAC 20-670-190. Administrative personnel

8 VAC 20-670-200. Teachers

8 VAC 20-670-210. Ancillary personnel

8 VAC 20-670-220. Personnel files

8 VAC 20-670-180. Personnel policies.

Each school shall develop written personnel policies for employees which shall include, but not be limited to, job descriptions, evaluation procedures, procedures for handling accusation against staff and termination policies and make them available to the board or department if requested.

Licensure Regulations for School Personnel issued by the board are to be used by the schools when hiring staff employed by another school.

8 VAC 20-670-190. Administrative personnel.

- A. Each school shall designate a person to be responsible for the administration of the school. This person shall

be a graduate of an accredited college or university and shall have sufficient time, training, and ability to carry out effectively the duties involved.

- B. The individual responsible for the day-to-day operation of the educational program, no matter how titled, shall hold and maintain a valid five year renewable post graduate professional license issued by the board. This individual shall hold an endorsement in at least one appropriate area of disability served by the school [8 VAC 20-21-10 et. seq.]. The individual serving in this capacity could be the same person functioning as the administrator identified in Paragraph 1 above provided licensure requirements are met.
- C. The department may make exception to the above requirements for good cause upon application by the school.

8 VAC 20-670-200. Teachers.

- A. Teachers of academic courses in elementary and non-departmentalized middle and high school programs shall hold a current Virginia teaching license, issued by the board, with endorsement in at least one of the specific areas of disability served by the school, or otherwise

~~comply with [Board regulations. "Otherwise comply"~~  
~~means: A teacher without endorsement in a specific area~~  
~~of disability must secure a Special Education Conditional~~  
~~License from the board and agree in writing to earn~~  
~~credit at the rate of six semester hours per year toward~~  
~~full endorsement beginning in the next semester.~~  
~~Requirements for a teaching license and the procedure for~~  
~~securing a license are outlined in the current edition~~  
~~of] the Licensure Regulations for School Personnel 8 VAC~~  
~~20-21[-10 et. seq.].~~

- B. Teachers in middle and high schools that are departmentalized must hold a current Virginia teachers license with endorsement in the academic area they are instructing [8 VAC 20-21-10 et. seq.]. A sufficient number of appropriately endorsed special education teachers must be available to case manage Individualized Education Programs (IEPs) and to provide disability specific technical assistance and instruction. On-going staff development must include disability specific training.
- C. Teachers of specialized subjects such as music, art, physical education, health and vocational education must hold a valid teaching license with an endorsement in the

teaching area of responsibility, and agree to complete course work and/or in-service training in working with the types of students served by the school.

- D. The board may make exception to the above requirements for good cause.

8 VAC 20-670-210. Ancillary personnel.

- A. A therapist employed by a school shall be professionally trained in the area or areas of therapy in which he practices. If the school employs a therapist, this person shall be licensed or certified by the appropriate state and national authority or licensed eligible and currently working under the supervision of a licensed therapist. Documentation of continued progress toward licensure must be maintained.
- B. Audiologists or speech therapists employed by the school shall be licensed by the appropriate state authority or meet the requirements for licensure as outlined in Licensure Regulations for School Personnel (8 VAC 20-21).
- C. Psychologists employed by the school shall be licensed by the appropriate state authority, or meet the requirements for school psychologists, or both, as outlined in Virginia Licensure Regulations for School Personnel.

- D. Paraprofessionals employed by the school shall be, at a minimum, high school graduates or the equivalent and have in-service training or experience in working with the type of student served by the school.
- E. All support personnel such as librarians, guidance counselors, social workers, etc. shall have earned a bachelor's degree from an accredited institution and hold a valid license, where applicable, issued by the department or be licensed by the appropriate state authority.
- F. All medical personnel, including but not limited to nurses and physicians, shall hold all licenses required by the Commonwealth of Virginia.
- G. All volunteers and interns, or students who are receiving professional training shall be properly supervised.
- H. The department may make exception to the above for good cause upon application by the school.

8 VAC 20-670-220. Personnel files.

- A. Personnel files for staff shall be maintained and shall include the following documentation:
  - 1. Academic preparation and past experience;
  - 2. Attendance records;

3. Copies of contract(s) indicating dates and term(s) of employment;
4. Results of a [~~current~~] x-ray or tuberculin test and/or other health records required by §22.1-300 of the Code and applicable regulations of the Virginia Department of Health;
5. Evidence of child protective service and criminal records checks including finger printing. Additionally for all staff who may transport students, evidence of Department of Motor Vehicles checks and a current copy of the driver's license; and
6. Documentation of staff development.

## PART VII

### PHYSICAL FACILITIES, INSPECTIONS

8 VAC 20-670-230. Facilities

8 VAC 20-670-240. The school plant

8 VAC 20-670-230. Facilities.

- A. Department staff shall inspect the school facilities and file a report which is available to the board for review as a prerequisite to certification or licensing. The

department shall schedule periodic monitoring visits to each school for students with disabilities at least once every three years. Unannounced visits by department staff may be made during the three[-]year time period. All facilities in use must comply with appropriate state and local ordinances governing fire safety, sanitation, and health.

- B. A change in the location of a school shall be reported to the department at least 30 days before the move, on forms provided by the department. Documents required by 8 VAC 20-670-80(5), (6), and (7) of these regulations for the new location must be submitted to the department before the actual move takes place. An on-site visit must be made by department staff as soon as possible following notification of the pending change.
- C. Schools which find it necessary to utilize extension and branch facilities, must submit the information required by 8 VAC 20-670-80 (5), (6), and (7) of these regulations and have an on-site visit to the facilities conducted by department staff prior to utilizing the facilities.
- D. Schools which are modifying or expanding current facilities must submit the information required in 8 VAC 20-670-80 (5)and (6) of these regulations, and may have

an on-site visit conducted by department staff.

- E. In the event of fire or other emergency situations, the school must notify the department as soon as possible of the conditions and status of the school.

8 VAC 20-670-240. The School Plant.

- A. Schools shall be in compliance with the Uniform Statewide Building Code and the Americans with Disabilities Act. They shall maintain a physical plant that is accessible, barrier-free, safe, and clean.
- B. In the case of new construction, schools shall comply with § 2.1-514 of the Code with reference to architectural barriers.
- C. Emergency procedures shall be established by the school for handling emergencies including hostage situations, bomb threats, power outages, fires, medical emergencies, and inclement weather.

**PART VIII**

**STUDENT SERVICES, RECORDS, AND CONTRACTS**

8 VAC 20-670-250. Student services and records

8 VAC 20-670-260. Applications and enrollment agreements for students privately placed

8 VAC 20-670-270. Application and enrollment agreements for



students publicly placed

8 VAC 20-670-250. Student services and records.

- A. Each school shall maintain a listing of all students who enroll that includes, but is not limited to, the student's name, address, telephone number, social security number, disability, and enrollment date. For all publicly placed students, this list shall include the student's local school division. The information shall be current as of the date the student enrolls and shall be available for inspection by or submission to the board or department upon request.
- B. Records of student counseling sessions for academic or disciplinary reasons must be maintained in the student's permanent record if termination, dismissal, or withdrawal is the basis for the counseling. The student, parent/guardian, or local school division shall receive a copy of the report upon written request if the action resulted in dismissal or termination.
- C. Schools shall develop, publish, and provide to students clearly written policies governing conduct, attendance, academic progress necessary to matriculate to the next grade or level, and other matters relative to encouraging

responsible student behavior.

- D. Each school shall develop, publish, and make available to parents and students a procedure for resolving complaints which shall include information on reporting such complaints to the department. The department may utilize outside services to investigate and resolve complaints.

8 VAC 20-670-260. Applications and enrollment agreements for students privately placed.

- A. An application for admission is not to be construed as a binding instrument on the part of the student or the school.
- B. Any contract between a student, parent or guardian and a school, certified or licensed by the board shall be separate from the application for admission and must clearly outline the obligations of both parties.
- C. Any contract or enrollment agreement used by the school shall comply with the following provisions:
1. The name and address of the school shall be clearly stated;
  2. The total cost of the program, including tuition and all other charges, shall be clearly stated;
  3. A disclosure that such agreement becomes a legally binding instrument upon the school's written

acceptance of the student;

4. The school's cancellation and refund policy, shall be clearly stated.
- D. Each school that serves privately placed students shall offer access to a tuition insurance plan if they financially obligate students for more than quarterly increments of the annual tuition.
- E. A school may require the payment of a reasonable non-refundable initial fee, to cover expenses in connection with processing a student's application, provided it retains a signed statement in which the parties acknowledge their understanding that the fee is non-refundable. No other non-refundable fees shall be allowed prior to enrollment.
- F. Schools which charge or are paid on a "services-rendered" basis may be exempted from the provisions of this Part upon written request to the department.

8 VAC 20-670-270. Application and enrollment agreements for students publicly placed.

- A. An application for admission is not to be construed as a binding instrument on the part of the student or the school.
- B. Any contract between a local school division or any other

public agency or agencies financially responsible for the student's placement and a school, certified or licensed by the board shall be separate from the application for admission and must clearly outline the obligations of both parties.

- C. Any contract or enrollment agreement used by the school shall comply with the following provisions:
1. The name and address of the school must be clearly stated;
  2. The total cost of the program, including tuition and all other charges, shall be clearly stated; and
  3. A disclosure that such agreement becomes a legally binding instrument upon the school's written acceptance of the student.

## **PART IX**

### **ADVERTISING, PUBLICATIONS**

8 VAC 20-670-280. Advertising and publications

8 VAC 20-670-280. Advertising and publications.

- A. Each school shall use its complete name as listed on its license to operate for all publicity, publications, promotions or marketing purposes.

- B. With respect to its status with the board, the school may advertise only that it has a "License to Operate, from the Virginia Board of Education." No other wording is acceptable to the board.  
A school holding a license to operate issued by the board shall not expressly or by implication indicate by any means that the license to operate represents an endorsement offered by the school.
- C. ~~[Each school shall develop and publish a handbook describing the school's programs and policies which shall be submitted to the department for review and approval prior to final printing.]~~ All printed materials, shall be accurate concerning the school's requirements for admission, curricula, programs and services, graduation requirements, tuition and other fees or charges, and terms for payment of tuition and other fees. Copies shall be filed with the board or department.
- D. A school or its representatives shall not make any fraudulent or misleading statement about any phase of its operation in published or distributed materials.
- E. Printed or electronic representations shall not be used by a school in such a manner as to convey a false impression about the size, importance, or location of the

school's facilities, or its equipment.

- F. Schools shall not use endorsements, commendations, or recommendations by students, individuals, manufacturers, business establishments or organizations except with their written consent and without any offer of financial compensation. Written evidence of compliance shall be maintained and available to the board or department.
- G. The accrediting agency must be named if accreditation is used as part of a school's promotional materials.
- H. No school may use the seal of the Commonwealth in any advertisement, publication or document.

#### **PART X**

##### **ELECTRONIC CAMPUS SCHOOLS**

8 VAC 20-670-290. Electronic campus schools

8 VAC 20-670-290. Electronic campus schools.

This section shall apply only to electronic campus schools.

- A. In addition to the general application requirements, considerable emphasis will be placed on the following components when reviewing documentation submitted with an application from an electronic campus school:
  - 1. Clearly defined education objectives, which

demonstrate they can be achieved through distance learning, must be included with any application.

2. Courses offered are sufficiently comprehensive, accurate, and up-to-date, and educationally sound instructional materials and methods are used to achieve the stated objectives.
3. The school provides adequate examination services, maintenance of records, encouragement to students, and attention to individual differences.

## PART XI

### CHANGE OF OWNERSHIP

8 VAC 20-670-300. A license to operate is not transferable

8 VAC 20-670-300. A license to operate is not transferable.

- A. A change of ownership occurs when control of a school changes from one owner to another. New owners of a school shall make an application for an original license to operate.
- B. If there is a change in ownership of a school, the current owner shall notify the department at least 30 days prior to the proposed date of sale and provide a copy of the agreement of sale. An application for an

original license to operate, [~~or Certificate of Program Compliance,~~] including all attachments listed in 8 VAC 20-670-30 of these regulations, shall be submitted to the department by the new owner within 30 days following the effective date of the change. The school may be operated on a temporary basis under the new ownership until an original license to operate has been issued by the board.

## **PART XII**

### **CONTRACTURAL RIGHTS OF STUDENTS**

8 VAC 20-670-310. Protection of contractual rights of students

8 VAC 20-670-320. Guaranty instrument requirements

8 VAC 20-670-310. Protection of contractual rights of students.

As required by §22.1-324 of the Code of Virginia, each school applying for a license to operate shall provide a certain guaranty to protect the contractual rights of students.

If the school holds a surety bond or other guaranty instrument as required by 8 VAC 20-670-320 of these regulations, the first priority shall be to file a claim against the guaranty instrument.

8 VAC 20-670-320. Guaranty instrument requirements.

A. All applicants for a new license to operate, including



those who have a change of ownership, shall provide a surety bond, irrevocable letter of credit or certificate of deposit as required by this section and maintain said guaranty instrument. Schools for students with disabilities shall maintain a guaranty instrument as required by this section as a condition of continued certification or licensing.

- B. The amount of the guaranty instrument shall be based on the total projected enrollments as follows:
1. The minimum guaranty for up to 50 students is \$5000.
  2. The minimum increases incrementally, by \$5000, for each additional 50 students or portion thereof.
- C. If the school shows that it collects no advance tuition other than equal monthly installments or is paid after services have been rendered the school may apply, after three full years of operation, on forms provided for that purpose, to the department for authority to be exempt from the guaranty requirements.
- D. For guaranty instrument purposes, the school shall count its total current enrollment as of the date of the application, or its largest enrollment as of the date of the application, or its largest enrollment in the

preceding 12 months, whichever is greater. A school being organized shall use the maximum projected enrollment which will be subject to revision based on the enrollment 60 days following the date classes start.

- E. In the event a guaranty instrument is terminated other than as allowed in C. above, the license to operate will automatically expire if a replacement bond is not provided.

### **PART XIII**

#### **RENEWAL**

8 VAC 20-670-330. Renewal of license to operate

8 VAC 20-670-330. Renewal of license to operate.

- A. Schools for students with disabilities may have their licenses to operate renewed for up to three years.
- B. The application for renewal shall include, in addition to other information:
1. A current fire inspection report.
  2. A current schedule of tuition and other fees.
  3. A copy of the financial statements of the school or owning entity to include, but not be limited to, the following:

- a. A balance sheet, reflecting assets, liabilities, equity, and retained earnings;
  - b. An income statement, reflecting revenues, expenses, and profits and losses;
  - c. A statement of increase or decrease in cash, reflecting the sources and uses of working capital; and
  - d. Explanatory notes, which reflect the disclosures required by generally accepted accounting principles. These statements must be as of the date of the school's most recently-ended fiscal year.
4. The department reserves the right to call for, if need be in specific cases, one of these two types of statements:
- a. An audited financial statement, certified by an outside, independent, certified public accountant in accordance with standards established by the American Institute of Certified Public Accountants; or
  - b. A financial statement which has been "reviewed" by an outside, independent, certified public accountant in accordance with prin-

principles established for reviews by the American  
Institute of Certified Public Accountants.

- C. Every license to operate, which has not been renewed by  
the board on or before the renewal anniversary date,  
shall expire, and the school shall cease operation  
immediately. A new license to operate shall be obtained  
from the board before such school may resume operations.  
All of the requirements of Part III of these  
regulations shall be met.
- D. Any school not complying with the provisions of this  
section shall be deemed to be in violation of these  
regulations and shall be reported to the Office of the  
Attorney General for appropriate action.

#### **PART XIV**

#### **DENIAL, REVOCATION, SUSPENSION OR REFUSAL**

#### **TO RENEW [A CERTIFICATE], GROUNDS**

- 8 VAC 20-670-340. Board actions
- 8 VAC 20-670-350. Refusal, denial, revocation or suspension
- 8 VAC 20-670-360. Board investigation
- 8 VAC 20-670-370. Department investigation procedures
- 8 VAC 20-670-380. Corrective actions

8 VAC 20-670-390. Procedure for taking actions

8 VAC 20-670-400. Revocation or denial consequences

8 VAC 20-670-340. Board actions.

The license to operate shall not be denied, revoked or suspended or a request for renewal refused except upon the action of the board which shall be reported in writing. Records of the board's findings, recommendations, and actions shall be preserved in writing.

8 VAC 20-670-350. Refusal, denial, revocation, or suspension.

The board may refuse to renew or may deny, revoke or suspend the license to operate of a school for any one or combination of the following causes:

1. Violation of any provision of the Code or any board regulations;
2. Furnishing false, misleading, or incomplete information or failure to furnish information requested by the board or department;
3. Violation of any commitment made in an application for a license to operate[ ~~or Certificate of Program Compliance~~];
4. Failure to provide or maintain the premises or equipment

in a safe and sanitary condition as required by law, by state regulations or local ordinances;

5. Failure to maintain adequate financial resources to conduct the programs offered or to retain an adequate, qualified instructional staff;
6. Failure to safeguard the interests of the public; and
7. Failing within a reasonable time to provide information requested by the board or department as a result of a formal or informal complaint or as supplement to an application.

8 VAC 20-670-360. Board investigation.

The department may, upon its own motion, investigate the actions of any applicant or any persons holding or claiming to hold a license to operate. The department shall make such an investigation upon the written complaint of any individual setting forth facts which, if proved, would constitute grounds for denial, refusal, suspension, or revocation of ~~[a certificate or ]~~license.

8 VAC 20-670-370. Department investigation procedures.

Authority is granted to the department staff to investigate complaints from individuals and other sources concerning alleged violations of the Code or regulations by a school. Where the

finding(s) of the department is in favor of the complainant, the school shall abide by any recommendation(s) made or corrective action deemed necessary by the department. If the school disagrees with the recommendation(s) or corrective actions, the department shall hold an informal hearing to determine whether further action (i.e. revocation, suspension or refusal to renew a [certificate license]) is warranted. The Superintendent of Public Instruction or his designee shall chair the hearing.

8 VAC 20-670-380. Corrective actions.

Before proceeding to a hearing, as provided for in the Code, on the question of whether a license to operate shall be denied, refused, suspended, or revoked for any cause, the department may grant a reasonable period of time to correct any unsatisfactory condition to the holder of or applicant for a license to operate. If, within such time, the condition is corrected to the department's satisfaction, no further action leading to denial, refusal, suspension, or revocation shall be taken by the board.

8 VAC 20-670-390. Procedure for taking actions.

All actions taken under the provisions of this section in regard to denials, revocations, suspensions, or refusals to renew shall be taken in accordance with the provisions of the

Administrative Process Act (~~99-6.14:1~~ [2.2-4000]et seq.).

8 VAC 20-670-400. Revocation or denial consequences.

Any owner of a school which has had a certificate or license revoked, denied or has been refused renewal, shall not be allowed to re-apply before at least 12 months have passed since the date the formal action was taken. In addition, this policy shall apply to any owner who fails to comply with the provisions of Part XVI of these regulations when closing a school.

#### PART XV

##### LISTING OF SCHOOLS

8 VAC 20-670-410. School listing

8 VAC 20-670-410. School listing.

The department shall maintain a list of schools holding valid licenses to operate under the provisions of the Code which shall be available for the information of the public.

#### PART XVI

##### SCHOOL CLOSINGS

8 VAC 20-670-420. Closing procedures



8 VAC 20-670-420. Closing procedures.

- A. A school which is closing shall notify its students of the closing in writing. Local school divisions of all publicly placed students will also be notified. Arrangements shall be made to assure that students are able to complete the school year or, if privately placed, are provided refunds. In the event such arrangements cannot be made, the department shall be available to assist in making special arrangements for students to complete that year's program or students will be advised of their rights.
- B. Each school which is closing shall notify the department in writing in advance of the anticipated closing date and provide the following information relative to the students currently enrolled:
1. A listing as described in subdivision A of Part VIII of these regulations;
  2. For privately placed students: academic records including credits, grades or courses completed, and grades for those courses; evidence of refunds made to students where applicable; a copy of each student's academic attendance and financial payment records; and a copy of the enrollment agreement;

3. Records for publicly placed students in schools for children with disabilities shall be returned to the student's home school division with verification of this transmittal to the department; and
  4. Students' records transmitted to the department shall be the originals or certified true copies.
- C. At the time of notification, the school shall submit a written plan detailing the process of closure which provides for the following:
1. The cessation of all recruitment activities and student enrollments as of the date of the notice;
  2. A description of the provisions made for the students to complete the academic year;
  3. Copies of all notices of the closing given to students, local school divisions, the general public, and/or other interested parties such as accrediting agencies, tuition insurers, etc.;
  4. Provisions for the transfer of all publicly placed students to their local school divisions and privately placed student records to the department within 30 days of the close and notification to all students of the location of their records; and
  5. Provisions for notifying students in writing of

their financial obligations.

- D. The cost of transferring the records to the department shall be borne by the school.
- E. In the event a school files a bankruptcy petition, a complete, certified true copy shall be filed with the department. If privately placed students are unable to complete the academic year, they shall be given the highest creditor status allowed by statute for refunds in the full amount of tuition and fees paid to the school.
- F. The board or department may request any additional information which is reasonable and necessary to carry out its responsibility.

#### PART XVII

##### TRANSMITTAL OF DOCUMENTS AND MATERIALS

8 VAC 20-670-430. Transmitting documents and other materials

8 VAC 20-670-430. Transmitting documents and other materials.

- A. The mailing of applications, forms, letters, or other papers shall not constitute receipt of the same by the department unless sent by registered mail, certified mail, express mail, or courier with return receipt requested.

- B. All materials sent should be addressed to the Private Day Schools for Students with Disabilities, Department of Education, Box 2120, Richmond, VA 23218-2120 or [Office of] Private Day Schools for Students with Disabilities, James Monroe Building, 24th Floor, 101 North 14th Street, Richmond, VA 23219.
- C. Materials submitted by electronic means (e.g. facsimile machine, computer, etc.) will be accepted contingent upon receipt of original documents sent in accordance with subsection A of this section.

#### PART XVIII

#### COMPLAINTS

8 VAC 20-670-440      Complaints

8 VAC 20-670-440      Complaints.

Schools are required to establish and provide to parents, students, and placing agencies an internal complaints resolution process. In the event that the complainant is not satisfied with the internal resolution or prefers, they may file a complaint with the Office [for of] Private [~~Special Education~~] Day Schools[ **for Students with Disabilities**], Virginia Department of Education, P.O. Box 2120, Richmond, Virginia 23218-2120.