



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

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## MEMORANDUM

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

**From:** Susan B. Williams  
Assistant Attorney General

A handwritten signature in black ink, appearing to read "Susan B. Williams".

**Date:** May 16, 2018

**Re:** Proposed *Regulations Governing the Designation of School Divisions of Innovation* [8 VAC 20 - 760]  
(Action 4940 /Stage 8289)

I have reviewed the version of proposed regulation identified above that was submitted to the Virginia Regulatory Town Hall on May 15, 2018 at 9:31 AM in order to determine whether the State Board of Education (Board) has the authority to promulgate the regulation and if the regulation comports with applicable state law.

Pursuant to the *Code of Virginia* § 22.1-16, the Board has authority to promulgate regulations to carry out its statutory powers and duties. In addition, § 22.1-212.29 of the *Code of Virginia*, which was enacted by the 2017 General Assembly, specifically requires the Board to “promulgate regulations for the designation of School Divisions of Innovation in which the local school board in the local school division so designated shall, pursuant to a plan of innovation, be exempted from selected regulatory provisions and be permitted to adopt alternative policies for school administrators, teachers, and staff to meet the diverse needs of students.”

It is the view of this Office that the Board has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act and Virginia Office of the Governor Executive Order 17 (2014), and that the Board has not exceeded that authority.

If you have any questions or concerns, please feel free to contact me at the address above, by telephone at (804) 371-8721 or by electronic mail at [swilliams@oag.state.va.us](mailto:swilliams@oag.state.va.us). Thank you.

cc: Carrie S. Nee, Senior Assistant Attorney General/Section Chief