



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', written over the printed name.

Date: December 3, 2018

Re: *Final Regulations Governing Pupil Transportation* [8VAC 70-350] (*Exempt Action*) (Action 5145 /Stage 8475)

I have reviewed the version of the final regulation identified above that was submitted to the Virginia Regulatory Town Hall on November 29, 2019 at 11:50 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, § 22.1-176 of the *Code of Virginia* directs the Board to promulgate regulations related to the transportation of pupils, and §§ 22.1-181 and 22.1-298.3 of the *Code of Virginia*, which were amended by the 2018 General Assembly, specifically require the Board to establish training programs and standards related to such transportation.

It is the view of this Office that the Board has the authority to promulgate this final regulation, subject to compliance with Virginia Office of the Governor Executive Order 14 (2018), and that the Board has not exceeded that authority. It is also this Office's view that this regulatory action is exempt from Article 2 of the Administrative Process Act. In accordance with the provisions of §2.2-4006(A)(4)(a), the proposed amendments to these regulations are necessary to conform the regulations to changes in Virginia statutory law, and such amendments only align the regulations with the changes made by the 2018 General Assembly through the adoption of identical HB 810 and SB 557 and SB 229. Moreover, the Virginia Board of Education had no discretion.

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. Thank you.

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