



# 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  
Senior Assistant Attorney General

*Susan B. Williams*

**Date:** November 16, 2020

**Re:** Proposed Amendments to the *Regulations Governing Educational Services for Gifted Students* [8 VAC 20 - 40] (Action 5325 /Stage 9104)

I have reviewed the version of the proposed amendments to the regulation identified above that were submitted to the Virginia Regulatory Town Hall on October 16, 2020 at 3:10 pm 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, Chapter 871 of the 2020 Acts of Assembly required the Board, as part of its comprehensive review of the *Regulations Governing Educational Services for Gifted Students*, to consider certain regulatory revisions relating to student populations that are underrepresented in gifted and talented programs.

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 14 (2018), 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: Deborah A. Love, Senior Assistant Attorney General/Section Chief