



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action
Agency Background Document

Agency Name:	Department of Education
VAC Chapter Number:	8 VAC 20-650-10 et. Seq.
Regulation Title:	Regulations Governing the Operation of Private Day Schools for Students with Disabilities
Action Title:	NOIRA
Date:	September 26, 2001

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

Private day schools for students with disabilities are currently regulated by *The Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits* which also covers private career schools. The purpose of these planned regulations is to separate the current complex and intertwined regulations. It is intended that revised regulations for the career schools and new regulations for the private day schools for students with disabilities be promulgated to provide clarity and specificity for each type of school. This would remove questions about applicability and ensure that both schools are licensed and operated in accordance with § 22.1-16 and 22.1-321 of the *Code of Virginia*.

The goal of the new regulations for private day schools for students with disabilities is to give clear, orderly requirements for the establishment and conduct of such schools. There have been several changes in the Code and in applicable standards that need to be updated in the regulations. Additionally, the changes will reorganize, renumber, and simplify the regulations. There are inconsistencies that need to be addressed including academic standards, behavior management and the elimination of fees for such schools.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

The scope of legal authority is defined by §22.1-16 of the Code of Virginia which states that “The Board of Education may adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title.” Chapter 16 of the *Code of Virginia* §22.1-319 through 22.1-335 provides the legal requirements for Private Trade, Technical, Business and Correspondence Schools; Schools for Students with Disabilities. The Board of Education is charged in §22.1-321 with promulgation of regulations for the management and conduct of the schools. <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod=TOC220100000160000000000000> The schools for students with disabilities must also comply with federal special education law, 20 U.S. C. §1400-1485 the *Individuals with Disabilities Education Act and Regulations Governing Special Education Programs for Children with Disabilities in Virginia*.
<http://www.pen.k12va.us/VADOE/Instruction/Sped/varegs.pdf>

Substance

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

These regulations set forth requirements addressing the management and conduct of the schools including staff qualifications, physical facilities, instructional programs, student services, records and contracts, and cancellation and refund policies. They provide schools the guidance necessary to implement programs that are in compliance with the law and that protect both the students' and the proprietors' interest. The regulations provide a clear process by which a school receives and maintains a license or a certificate to operate. Types of approval, advertising, student guaranty provisions, denial, revocation, suspension or refusal to renew certificates to operate or licenses are detailed in the document. Specific requirements clarify academic standards and educational programs, administrative, instructional, and support personnel, behavior management, accessibility, provisions for health care, and safety.

Key changes include:

- Fees are eliminated to conform to a previous Department position to eliminate collection of fees from private day schools.
- On-site visits currently required by regulation every two years will be aligned with the Code which allows the issuing of certificates to operate for up to three years. The regulations will require visits every three years and allow unannounced visits during the three-year time period.
- Language regarding teacher licensure is outdated. It is changed from certified to licensed.
- The Code of Virginia requires criminal checks including fingerprinting of full or part-time, permanent or temporary employees of schools whose accreditation is recognized by the State Board of Education. Regulations for these schools must reflect this requirement.
- Specificity is added to the regulation of areas used for seclusion or secured time out. Current regulations only provide reference to use DMHMRSAS standards and then only in the definitions.
- A regulation is added to hold day schools to the same standard required of public schools in regards to accessibility, safety, and cleanliness. It includes a statement that compliance with the *Americans With Disabilities Act* is required. Also added is the establishment of procedures to deal with emergencies including hostage situations, bomb threats, power outages, fires and inclement weather.
- Medication management including the transportation and dispensing of medications is addressed.
- Schools serving privately placed students are required to offer access to a tuition insurance plan if they financially obligate students for more than quarterly increments of the annual tuition.
- Compliance with the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* will be addressed.

Alternatives

Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.

Private trade, technical, business and correspondence schools and schools for students with disabilities are required by state law to be regulated. Those regulations must be current and provide schools the guidance necessary to provide programs that are in compliance with the law and that protect both the students' and the proprietors' interest. The regulations provide a clear process by which a school receives and maintains a license or a certificate to operate. Two alternatives have been considered. First considered and attempted was revisions to *Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits* continuing to have the proprietary career schools and the private special education day schools under the same regulations. This has been determined to be most confusing to both types of schools. The other alternative considered is to provide to the schools updates to their requirements based on statutory and other regulatory changes. This piece meal approach is not efficient and gives a

disjointed view of the requirements that places both the students and the schools in potential jeopardy.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The positive family impact of these proposed regulations comes from the clear articulation of what families can expect of and from private day schools for students with disabilities in the way of staff qualifications, physical facilities, instructional programs, student services, records and contracts, cancellation and refunds including their contractual rights and school closings. The regulations also provide a tool for families to use should they have a complaint.

The availability of private special education day schools provides families and placing school divisions with viable, generally less restrictive, alternatives to residential school services. The child continues to live in the home with his family and be part of the community. The schools generally list among their goals the promotion of self-sufficiency and self-pride. The special education day schools give students whose educational needs cannot be met in the public sector an opportunity for both academic and personal success. Many of the day school students gain the skills necessary to reenter the public education system.

The fiscal impact on the families would be a discretionary one which cannot be determined as local schools divisions are required to provide a free appropriate education for students identified as eligible for special education services. If the local school cannot provide the needed services themselves, they are, by law, required to fund the provision of education services elsewhere which may be at a private special education day school. Parents who unilaterally place their children would have to pay for the services just as would a parent who places a child in a regular private school.