

# Board of Education Agenda Item

Item: \_\_\_\_\_ D. \_\_\_\_\_

Date: July 22, 2010

**Topic:** First Review of the Notice of Intended Regulatory Action (NOIRA) to Promulgate Regulations Governing the Operation of Private Day Schools for Students with Disabilities and Educational Programs Offered in Group Homes and Residential Facilities in the Commonwealth and to Repeal Regulations Governing the Operation of Private Day Schools for Students with Disabilities (8 VAC 20-670-10 et seq.)

**Presenter:** Dr. Sandra E. Ruffin, Director, Office of Federal Program Monitoring

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## Origin:

Topic presented for information only (no board action required)

Board review required by  
 State or federal law or regulation  
 Board of Education regulation  
 Other: \_\_\_\_\_

Action requested at this meeting  Action requested at future meeting: \_\_\_\_\_ (date)

## Previous Review/Action:

No previous board review/action  
 Previous review/action NOIRA submitted  
date July 17, 2008  
action Approved

## Background Information:

The 2008 General Assembly passed SB 472, licensure of group homes and residential facilities for children, patroned by Senator Hanger. The bill states; in part,

- A. The Department of Education shall cooperate with other state departments in fulfilling their respective licensing and certification responsibilities regarding educational programs offered in group homes and residential facilities in the Commonwealth. The Board shall promulgate regulations allowing the Department of Education to so assist and cooperate with other state departments.
- B. The Board's regulations shall address the educational services required to be provided in such group homes and residential facilities as it may deem appropriate to ensure the education and safety of the students.

The bill eliminates the interdepartmental regulation of children's residential facilities (CRF) and

requires the DMHMRSAS, DSS, and DJJ to regulate and license the facilities. The Board of Education and the Department of Education shall continue with oversight responsibility of the educational programs of CRFs.

**Title 22.1. Education,** Chapter 16 of the *Code of Virginia* outlines the provisions for schools for students with disabilities. Section 22.1-321. Regulations, states: The Board of Education shall make regulations not inconsistent with law for the management and conduct of schools. The regulations may include standards for programs offered by the schools.

Section 22.1-323. Licenses generally, states: No person shall open, operate or conduct any school for students with disabilities in this Commonwealth without a license to operate such school issued by the Board of Education. A license shall be issued for a school if it is in compliance with the regulations of the Board.

The Board of Education approved the NOIRA for the proposed *Regulations Governing the Operation of Private Schools for Students with Disabilities in Virginia* (8 VAC 20-671), and repeal of the *Regulations Governing the Operation of Private Day Schools for Students with Disabilities* (8 VAC 20-670-10 et seq.) on July 17, 2008. Subsequently, staff held six stakeholder meetings, representing a cross-section of constituencies, to draft and discuss the proposed regulations. Stakeholders included members of the Virginia Association of Independent Specialized Education (VAISEF), an association of Virginia private providers of specialized educational services for children and youth with special needs and their families. Many of the schools licensed by the Board are members of VAISEF or accredited by the organization.

On June 29, 2010, Executive Order 14 was issued, requiring that proposed regulations go forward by 180 days from the posting of the NOIRA on the Regulatory Town Hall. The NOIRA is being resubmitted to comply with new timelines of the Executive Order.

### **Summary of Major Elements**

The Board of Education regulates private day schools for students with disabilities (8 VAC 20-670-10 et seq.). It is proposed that the Board replace the current regulations with new regulations governing both private day schools for students with disabilities and the education programs in private children's residential facilities and group homes.

According to the December 1, 2009, Child Count report, 1,832 students with disabilities received their special education and related services in private day schools and 664 in private residential school programs. These numbers represent children with disabilities placed by public schools, DSS, and the courts. An additional 1,000 students without disabilities were enrolled in private residential schools that were placed by DSS, the courts, or by their parents or guardians. Generally, children in day schools are placed because of their disability. Children in residential school programs are largely placed by a Family Assessment and Planning Team (FAPT) under the Comprehensive Services Act or the courts for non-educational reasons.

Currently, there are 83 licensed private day schools for children with disabilities and 56 licensed private children's residential facilities that offer school programs. These schools are located across the Commonwealth, mainly northern Virginia, Richmond, Charlottesville, and the Tidewater area. The Board of Education and the Department of Education will continue to provide general supervision over these private schools and any new private schools for students with disabilities and issue certificates/licenses to operate. The Board and the Department of Education no longer have

responsibility over the residential environment of children's residential facilities and group homes. This change in responsibility will allow the Department of Education to focus on improving the quality of educational programs in private day schools for children with disabilities and children's residential facilities and group homes.

The attached *Notice of Intended Regulatory Action (NOIRA) Background Document* summarizes the major elements of this project. This proposal is to promulgate new regulations to govern the operation of private day schools for students with disabilities and educational programs offered in group homes and residential facilities. Concurrent action will repeal *Regulations Governing the Operation of Private Day Schools for Students with Disabilities* (8 VAC 20-670-10 et seq.).

The new regulations will provide provisions for the operation of private day schools for students with disabilities and residential schools for students with disabilities. It will provide provisions for school administration, including school and instructional leadership; a philosophy, goals, and objectives that serve as the basis for all policies and practices and student achievement expectations; a program of instruction that promotes individual student academic achievement in the essential academic disciplines, (English, mathematics, science, and history/social science); an organized library media center as the resource center of the school; licensure for school personnel; maintenance of student education records, and school facilities and safety.

The proposed regulations will outline provisions for obtaining a license to operate, denial, revocation or suspension of a license, and renewal of licenses; application fees; student guaranty; application commitments; license restrictions; monitoring and investigation of complaints.

The Board of Education has the option to promulgate two separate regulations, a regulation to govern the education programs in children's residential facilities and group homes and a regulation to govern the education programs in day schools for students with disabilities or a single regulation.

### **Superintendent's Recommendation:**

The Superintendent of Public Instruction recommends that the Board of Education waive first review and authorize the Department of Education staff to proceed with the requirements of the Administrative Process Act to promulgate regulations for a single regulation for the operation of education programs in private day schools for students with disabilities and children's residential facilities and group homes.

### **Impact on Resources:**

The administrative impact for the review and revision of this regulation is not expected to be unduly burdensome on the Department of Education and is expected to have no fiscal or administrative impact on the school divisions.

It is anticipated that the implementation of the regulation will have little impact on existing or new private schools licensed by the Board of Education.

### **Timetable for Further Review/Action:**

The timetable for further action will be governed by the requirements of the Administrative Process Act.



## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Virginia Department of Education
<b>Virginia Administrative Code (VAC) citation</b>	Promulgate New Regulation
<b>Regulation title</b>	Regulations Governing the Operation of Private Schools for Students with Disabilities
<b>Action title</b>	First Review of the Notice of Intended Regulatory Action (NOIRA) to Promulgate <i>Regulations Governing the Operation of Private Day Schools for Students with Disabilities and Educational Programs Offered in Group Homes and Residential Facilities in the Commonwealth</i> and to Repeal <i>Regulations Governing the Operation of Private Day Schools for Students with Disabilities</i> (8 VAC 20-670-10 et seq.)
<b>Date this document prepared</b>	July 7, 2010

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The 2008 General Assembly passed SB 472, licensure of group homes and residential facilities for children, patroned by Senator Hanger. The bill eliminates the interdepartmental regulation of children's residential facilities (CRFs) and requires the Departments of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS); Social Services (DSS) and Juvenile Justice (DJJ) to regulate and license CRFs. The bill stipulates that the DMHMRSAS (Department of Behavioral Health and Developmental Services (DBHDS), effective July 1, 2009) will license facilities providing mental health, mental retardation or substance abuse

services; the DSS will license facilities providing social services, and DJJ will license facilities providing care of juveniles in direct state care. The DSS and DBHDS are responsible for licensing the additional facilities that the Virginia Department of Education (VDOE) will no longer license. Each CRF will have one regulatory agency except those that operate education programs, in which case those facilities will have two regulatory agencies.

SB 472 states:

- A. The Department of Education shall cooperate with other state departments in fulfilling their respective licensing and certification responsibilities regarding educational programs offered in group homes and residential facilities in the Commonwealth. The Board shall promulgate regulations allowing the Department of Education to so assist and cooperate with other state departments.
- B. The Board's regulations shall address the educational services required to be provided in such group homes and residential facilities as it may deem appropriate to ensure the education and safety of the students.

The Board of Education regulates private day schools for students with disabilities (8 VAC 20-670-10 et seq.). It is proposed that the Board replace the current regulations with new regulations governing both private day schools for students with disabilities and the education programs in private residential facilities and group homes.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

Bill Number SB 472, passed by the 2008 General Assembly, amended and re-enacted certain sections of the *Code of Virginia*, §§ 22.1-323.2, 37.2-408, 63.2-1737, and 66-24, concerning the interdepartmental regulation of children's residential facilities, thus, changing the interdepartmental licensing model.

**Title 22.1. Education**, Chapter 16 of the *Code of Virginia* outlines the provisions for schools for students with disabilities. Section 22.1-321. Regulations, states: The Board of Education shall make regulations not inconsistent with law for the management and conduct of schools. The regulations may include standards for programs offered by the schools.

Section 22.1-323. Licenses generally, states: No person shall open, operate or conduct any school for students with disabilities in this Commonwealth without a license to operate such school issued by the Board of Education. A license shall be issued for a school if it is in compliance with the regulations of the Board.

## Need

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

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These regulations are required by the *Code of Virginia*. Effective October 31, 2009, the provisions of the *Code* are revised pursuant to legislation passed by the 2008 General Assembly. SB 472 eliminates the interdepartmental regulation of children's residential facilities. Thus, new regulations are needed to govern the operation of educational programs and services in children's residential facilities and group homes. The new regulations will provide provisions for the operation of schools for students with disabilities and hold all private providers of special education to consistent standards. The new regulations will allow consistency in the operation and management of these education programs.

## Substance

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

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The new regulations will provide provisions for the operation of private schools for students with disabilities. It will provide provisions for school administration, including school and instructional leadership; a philosophy, goals, and objectives that will serve as the basis for all policies and practices and student achievement expectations; a program of instruction that promotes individual student academic achievement in the essential academic disciplines, (English, mathematics, science, and history/social science); an organized library media center as the resource center of the school; licensure for school personnel; maintenance of student education records, and school facilities and safety.

The proposed regulations will outline provisions for obtaining a license to operate, denial, revocation or suspension of a license, and renewal of licenses; application fees; student guaranty; application commitments; license restrictions; monitoring and investigation of complaints.

## Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

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The Board has the option to promulgate two separate regulations, a regulation to govern the education programs in children's residential facilities and group homes and a regulation to govern the education programs in day schools for students with disabilities or a single regulation governing both.

### Public participation

*Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.*

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Town Hall Web site, [www.townhall.virginia.gov](http://www.townhall.virginia.gov) or by mail to Dr. Sandra E. Ruffin, Director, Office of Federal Program Monitoring, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone: (804) 225-2768, e-mail: [sandra.ruffin@doe.virginia.gov](mailto:sandra.ruffin@doe.virginia.gov), or fax: (804) 371-8796. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

A public hearing will not be held to receive comments on this notice.

### Participatory approach

*Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.*

The agency is using the participatory approach in the development of the proposal.

### Family impact

*Assess 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.*

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The proposed regulatory action is not expected to have a negative impact on the institution of the family and family stability. It will provide parents assurance that their child is enrolled in an education program that meets at least minimum standards of the Board of Education.