

Background Information:

Chapter 16, *Schools for Students with Disabilities*, of the *Code of Virginia* at §§ 22.1-214 – 319-22.1-332, outlines the provisions to establish and operate a school for the purpose of providing educational services to students with disabilities. Section 22.1-321 of the *Code* 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. The Board may authorize the Superintendent of Public Instruction to issue licenses to operate schools.” *The Code of Virginia*, at § 22.1-323, 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.” The Board has authorized the Superintendent of Public Instruction to grant such licenses.

Prior to July 1, 2008, educational programs in residential facilities for children, including group homes, were regulated by the *Standards for Interdepartmental Regulation of Children’s Residential Facilities*, 22 VAC 42-11-10 et seq. Those regulations were promulgated by the Boards of Education; Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS), (Department of Behavioral Health and Developmental Services, effective July 1, 2009); Social Services (DSS); and Juvenile Justice (DJJ). During the 2008 General Assembly, SB 472, patroned by Delegate Emmett W. Hanger, was passed that eliminated the interdepartmental regulation of children’s residential facilities and group homes and provided that DMHMRSAS, DSS, and DJJ shall regulate and license residential facilities and group homes for which they are the primary licensing agency.

On April 23, 2008, the General Assembly of Virginia, amended and reenacted §§ 22.1-323.2, 37.2-408, and 66-24 of the *Code of Virginia* and added 37.2-408.1, relating to the regulation of group homes and residential facilities for children. The *Code of Virginia*, at 22.1-323.2, Licensing of services delivered in group homes and residential facilities for children, 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 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 2008 General Assembly provided that the *Standards for Interdepartmental Regulation of Children’s Residential Facilities* (VAC 42-11-10 et seq.) shall remain in full force and effect until such time as each Board promulgates regulations as required by this act. Upon promulgation of regulations by a Board, the *Standards for Interdepartmental Regulation of Children’s Residential Facilities* shall cease to apply to facilities licensed and regulated by that Board.

The Department of Education’s Office of Federal Program Monitoring, which is responsible for monitoring and licensing private schools for students with disabilities, held six stakeholder meetings to discuss and draft the proposed regulations. The stakeholders included owners and program administrators of private day schools and residential facilities with schools for students with disabilities, parents, administrators of special education from school divisions, and representatives from private school accrediting agencies. The stakeholders represented a cross-section of constituencies impacted by

current applicable regulations. In addition, the proposed regulations were drafted in consultation with the Departments of Social Services and Behavioral Health and Developmental Services (DBHDS).

These proposed regulations were drafted to govern the operation of both schools for students with disabilities in private residential facilities, including group homes, and the operation of private day schools for students with disabilities. With the promulgation of new regulations, the Board of Education’s *Regulations Governing the Operation of Private Day Schools for Students with Disabilities*, VAC 20-670-10 et. seq., effective September 10, 2004, will be repealed.

These proposed regulations are essential to protect the health, safety, and welfare of students with disabilities in Virginia who receive their education in private schools licensed by the Department of Education. These proposed regulations are designed to ensure students with disabilities who cannot be served in public schools can receive a free appropriate education as required by federal law, the *Individuals with Disabilities Education Improvement Act (IDEA '04)* and its implementing federal regulations, and the *Code of Virginia* at § 22.1-214 and § 22.1-319. The *Code of Virginia* at § 22.1-321 authorizes the Board of Education to make regulations for the management and conduct of schools. That section of the *Code* also permits the Board to promulgate regulations to include standards for programs offered by the schools. The proposed regulations allow the licensing agency to make exception to the requirements for good cause.

Summary of Major Elements

The chart provides a summary of major elements.

PART I -- DEFINITIONS	
8 VAC 20-671-10. Definitions, p. 10	Provides definitions for the following terms to comply with state requirements or to provide clarity: Applicant, Autism, Behavioral intervention plan, Behavioral support, Board, Business day, Calendar days, Complaint, Consent, Controlled substance, Corrective action plan, Deaf-blindness, Deafness, Department, Developmental delay, Disability category, Education records, Eligible student, Emotional disability, Guaranty instrument, Hearing impairment, Illegal drug, Individualized Education Program, Individualized Instruction Plan, Intellectual disability, Licensee, License to operate, Licensing agency, Multiple disabilities, Orthopedic impairment, Other health impairment, Paraprofessional, Parent, Personally-identifiable information, Physical restraint, Privately-placed student, Publicly-placed student, Qualified personnel, Related services, Regulations, Section 504, School, School for students with disabilities, Specially-designed instruction, Specific-learning disability, Speech or language impairment, Standard precautions, Standards of Learning, Strip search, Superintendent, Teacher of record, Time out, Traumatic brain injury, Visual impairment, Volunteer, Virtual learning
PART II – GENERAL PROVISIONS AND REQUIREMENTS	
8 VAC 20-671-20. Exemptions, p. 26	Exempts any privately owned preschool, elementary, middle or secondary school whose primary purpose is to provide educational services to students without disabilities as required by the § 22.1-320 of the <i>Code of Virginia</i>
8 VAC 20-671-30. Licenses generally, p. 27	Provides general requirements for a license to operate a private school for students with disabilities. Clarifies that no person shall open, operate, or conduct any school for students with disabilities in this

	Commonwealth without a License to Operate. Restricts a license to the disability categories specifically indicated on the license to comply with § 22.1-323 of the <i>Code of Virginia</i> . Grants the provision to make exception to the requirements of these regulations for good cause
8 VAC 20-671-40. Advertising, 28	Outlines provisions for advertising a school to the public consistent with the requirements of § 22.1-325 of the <i>Code of Virginia</i> . Requires that the licensee advertise the school at all times in a manner that will be free from misrepresentation, deception or fraud and to conform to regulations of the Board governing such advertising
8 VAC 20-671-50. Types of licenses, p. 29	Names the types of licenses that may be offered and the terms of the licenses consistent with § 22.1-323.1 of the <i>Code of Virginia</i> . Permits the Board or designee to issue licenses for periods of up to three successive years
8 VAC 20-671-60. Change in condition(s), p. 30	Outlines the conditions for which a License to Operate may be modified, i.e., change in location, services, ownership, merger of schools, capacity of the school, and disability categories served
8 VAC 20-671-70. License to Operate is nontransferable, p. 31	Clarifies § 22.1-323 of the <i>Code of Virginia</i> that a License to Operate a school for students with disabilities cannot be transferred
8 VAC 20-671-80. Penalty for noncompliance in obtaining a license, p. 31	Identifies the penalties allowed in § 22.1-331 of the <i>Code of Virginia</i> for conducting a school without first obtaining a License to Operate
8 VAC 20-671-90. Directory of private schools for children with disabilities, p. 32	Requires the Department of Education to maintain a directory of schools holding valid licenses to operate that is available to the public
PART III – SCHOOL LICENSING PROCESS	
8 VAC 20-671-100. Initial application, p. 32	Outlines the requirements for an initial application for a license to comply with § 22.1-324 of the <i>Code of Virginia</i> . To obtain a License to Operate a school, an application, certified as true and correct, shall be filed with the Board
8 VAC 20-671-110. Applicant commitments, p. 34	Requires a commitment to conduct the school in an ethical manner and in accordance with the regulations consistent with § 22.1-324 of the <i>Code of Virginia</i>
8 VAC 20-671-120. Assessment of application, p. 35	Requires the Department of Education to receive and evaluate each application to operate a school within 60 calendar days. Requires that any application that has not been approved due to the applicant's failure to submit a completed application within six months be denied and returned to the applicant. The licensing agency may require the applicant to appear before a review committee.
8 VAC 20-671-130. On-site inspection, p. 35	Permits the Department of Education to make announced or unannounced inspections before issuing a licensee as required by the <i>Code of Virginia</i> at § 22.1-323
8 VAC 20-671-140. Renewal of licenses p. 35	Requires a licensee to submit an updated application to include any new or modifications in policies and procedures and any other updates upon the expiration of a current license
PART IV – OVERSIGHT RESPONSIBILITY	
8 VAC 20-671-150. Monitoring, p. 36	Requires the Department of Education (licensing agency) to make at least one announced or unannounced visit during the effective dates of the license for the purpose of monitoring compliance with regulations
8 VAC 20-671-160. Complaint resolution procedures, p. 36	Requires the Department of Education to investigate complaints against a school by any individual, organization, or individual from another state and to address an action that occurred not more than one year prior to the date the complaint is received
8 VAC 20-671-170. Denial, revocation or suspension of license. p. 39	Outlines the provisions for which the Department of Education may refuse to issue or renew a license or may revoke or suspend the license of any school issued pursuant to these requirements or any regulation of the Board consistent with § 22.1-329 of the <i>Code of Virginia</i>
8 VAC 20-671-180. Summary of suspension. p. 40	Outlines the provisions under the Administrative Process Act for the Superintendent of Public Instruction to issue a summary order of

	suspension a license of a residential or day school when conditions or practices exist in the school that pose an immediate and substantial threat to the health, safety, and welfare of the students who are residing or attending the school as required by § 22.1-329
8 VAC 20-671-190. Timeline for correction of unsatisfactory conditions. p. 42	Grants the Board or Department the authority to grant a period of time as it deems reasonable for a school to correct any unsatisfactory conditions before refusing to renew, revoke or suspend any license as authorized by § 22.1-329 of the <i>Code of Virginia</i>
PART V – ADMINISTRATION OF THE SCHOOL	
8 VAC 20-671-200. Governing body, p. 42	Requires that the licensee clearly identify the governing body of the school for all publicity
8 VAC 20-671-210. Responsibilities of the licensee, p. 42	Requires several responsibilities of the licensee, including (1) appointment of an individual(s) to whom it delegates the authority and responsibility to assume the administrative direction of the school; (2) staff positions and responsibilities shall meet the needs of the population served; (3) as a condition of employment, each employee shall submit to fingerprinting, required by § 22.1-296.3 of the <i>Code of Virginia</i> and to provide necessary personal information for the school to obtain a search of the registry of founded complaints of child abuse and neglect required by § 63.2-1515 of the <i>Code of Virginia</i> ; (4) report to the Department of Education (licensing agency) within 10 business days lawsuits, settlements, or criminal charges relating to the operation of the school
8 VAC 20-671-220. Fiscal accountability, p. 44	Requires the licensee to prepare at the end of each fiscal year, a month-to-month accounting of revenue and expenses and a balance sheet showing assets and liabilities for the fiscal year
8 VAC 20-671-230. Protection of contractual rights, p. 45	Requires an applicant to obtain a guaranty instrument to protect the contractual rights of parents and students to comply with § 22.1-324 of the <i>Code of Virginia</i> . Requires a minimum guaranty of \$10,000 for up to 25 students and \$5,000 for each additional 25 students. If a school collects no advance tuition other than equal monthly installments or receives payment after services have been rendered, the school may apply to the licensing agency for exemption from the guaranty requirements.
8 VAC 20-671-240. Insurance, p. 46	Requires the licensee to maintain liability insurance covering the premises and the school's operation; requires liability insurance coverage on all vehicles used to transport students
8 VAC 20-671-250. Fundraising, p. 46	Requires the school to have a written policy to obtain written permission of the parent and student, age 14 or older, for participation in fundraising activities
8 VAC 20-671-260. Relationship to the licensing agency. p. 46	Requires the licensee to make information available to the licensing agency within reporting timelines established by the licensing agency for determination of compliance with regulations
PART VI – SCHOOL PERSONNEL	
8 VAC 20-671-270. Personnel policies and procedures, p. 47	Requires the licensee to have written personnel policies and procedures to include: job qualifications, job descriptions, staff supervision, evaluation, grievance, and termination
8 VAC 20-671-280. Job qualifications, p. 47	Requires that a person who assumes or is designated to assume the responsibilities of a position meet the qualifications of the position and to comply with all applicable requirements
8 VAC 20-671-290. Job descriptions, p. 47	Requires schools to have written job descriptions for each position and provide a copy to each person assigned at the time of employment
8 VAC 20-671-300. School administrators, p. 48	Outlines the requirements of the instructional leader; Requires a valid five-year renewable postgraduate professional licensee with an endorsement in school administration and supervision or special education and experience working with students with disabilities
8 VAC 20-671-310. Teachers and staffing, p. 49	Requires that staffing be in accordance with the <i>Regulations Governing</i>

	<i>Special Education Programs for Children with Disabilities in Virginia, 8 VAC 20-81-10, et seq.</i>
8 VAC 20-671-320. Substitute teachers, p. 51	Requires a substitute teacher be at least 18 years old, hold a high school diploma or a general educational diploma (GED); have acquired two years of full-time postsecondary education or two years of successful work experience with children with disabilities or equivalent. Requires orientation to the school's policies and procedures. Requires that no substitute teacher be used to fill a vacant teaching position for more than 90 teaching days in such vacancy during one school year, consistent with the public school
8 VAC 20-671-330. Support staff, p. 51	Requires support staff to meet the same standards as personnel providing services in the public schools as required by the <i>Regulations Governing Special Education Programs for Children with Disabilities in Virginia</i>
8 VAC 20-671-340 Staff supervision, p. 52	Requires written policies and procedures regarding the supervision of individuals working with students, including volunteers and interns
8 VAC 20-671-350. Staff development. p. 52	Outlines required professional development for all staff working with students; including emergency preparedness and response training; child abuse/neglect; and mandatory reporting
8 VAC 20-671-360. Personnel records, p. 53	Requires separate up-to-date personnel records of employment and health records and management in a confidential manner
PART VII – S CHOO L FACILITIES AND SAFETY	
8 VAC 20-671-370. School facilities and safety, p. 55	Requires the licensee to maintain a school that is accessible, barrier free, safe, and clean. Requires suitable space for classrooms; adequate, safe, and properly-equipped classrooms, laboratories, and dining areas that meet the needs of students and instruction. Prohibits smoking on school grounds. Requires electronic two-way communication system available to staff at all times
8 VAC 20-671-380. Contingency plans, p. 56	Requires contingency plans for emergencies that include certification of 1:10 teacher-student ratio for training/certification in CPR and abdominal thrust. Requires development of contingency plans with the assistance of state or local public safety authorities. Requires evacuation drills for the school and buses; and documentation of drills
8 VAC 20-671-390. Weapons, p. 60	Requires a written policy governing prohibition of the possession and use of firearms, pellet guns, air guns, and other weapons on the school's premises and during school-related activities
8 VAC 20-671-400. Strip searches. p. 61	Prohibits strip searches and body cavity searches
PART VIII -- SCHOOL INSTRUCTIONAL PROGRAM	
8 VAC 20-671-410. Student application and admission, p. 62	Outlines the requirements for a student application and admission. Requires an admission policy that includes a description of the population to be served and types of services offered
8 VAC 20-671-420. Standard school year and school day, p. 63	Requires a standard school year and school day consistent with public schools for all students unless prescribed otherwise on a student's IEP, 504 Plan, or IIP
8 VAC 20-671-430. School and community communications, p. 64	Requires schools to promote communications and foster mutual understanding with parents and the community
8 VAC 20-671-440. Philosophy, goals, and objectives, p. 64	Requires schools to have current philosophy, goals, and objectives that serve as the basis for all policies and practices
8 VAC 20-671-450. Student achievement expectations, p. 65	Requires schools to have a process to identify and recommend strategies to address the learning, behavior, communication, or development of individual students who are having difficulty in the educational setting. Requires cooperation with the public school in the administration of SOL tests
8 VAC 20-671-460. Program of instruction and learning objectives, p. 66	Outlines requirements of a school's program of instruction and learning objectives. Requires that the instructional program meets the needs of all students enrolled and educate students with age-appropriate peers.

	Requires schools to provide a program of instruction that supports the Virginia Standards of Learning for the core subjects: English, mathematics, science, and history/social science. Requires that students have opportunities to gain appreciation for art and music. Requires an instructional program that promotes the individual student's developmental growth and academic achievement at successive grade levels, as appropriate
8 VAC 20-671-470. Individualized Education Program (IEP), p. 67	Requires that a representative of the private school attend IEP meetings upon the request of the student's public school or participate by other means
8 VAC 20-671-480. Individualized Instruction Program (IIP), p. 68	Requires development of an Individualized Instruction Program (IIP) for all students without disabilities within 30 days of admission
8 VAC 20-671-490. 504 Plans, p. 68	Requires schools to implement 504 Plans and cooperate with the child's public school in reviewing the plan
8 VAC 20-671-500. Instructional program for elementary school grades, p. 69	Outlines the requirements for an instructional program for elementary grades. Requires that 75 percent of the annual instructional time of 990 hours be given to instruction in English, mathematics, science, and history/social science. Requires schools to provide additional instructional time in reading to students who are unable to read with comprehension. Reading, writing, spelling, and mathematics are required as the focus of instruction for kindergarten through grade 3
8 VAC 20-671-510. Instructional program for middle school grades, p. 69	Outlines the requirements for an instructional program for middle school grades. Requires an instructional program that supports the Standards of Learning for English, mathematics, science, and history/social science and 140 clock hours per year of instruction for each student. Requires schools to provide opportunities for appreciation of art and music and an introduction to career and technical exploration. Requires students to participate in a program of health and physical fitness during the regular school day. Requires schools to provide students who are unable to read with comprehension with additional instructional time in reading
8 VAC 20-671-520. Instructional program for secondary school grades, p. 70	Outlines the requirements for an instructional program for secondary school grades. Requires schools to provide a program of instruction in the academic areas of English, mathematics, science, and history/social science. Requires 140 clock hours per year of instruction in each of the four disciplines. Requires schools to provide students who are unable to read with comprehension additional instructional time in reading. Requires guidance counseling be provided to ensure that a program of studies contributing to the student's academic achievement and meeting graduation requirements is being followed
8 VAC 20-671-530. Alternative education, p. 71	Provides secondary schools the option to provide students, ages 16 to 18, an Individualized Student Alternative Education Plan (ISAEP) program. Requires filing an application and approval by the Department of Education
8 VAC 20-671-540. Transition services, p. 71	Requires schools to cooperate with the public schools to ensure that the transition plans for students with disabilities are implemented according to their IEPs
8 VAC 20-671-550. Extracurricular and other school activities, including recess, p. 71	Requires that school sponsored extracurricular activities be under direct supervision of the staff and contribute to the educational objectives of the school
8 VAC 20-671-560. Family life. p. 72	Requires schools to obtain written consent from the parent before enrolling a student in a family life education program
8 VAC 20-671-570. Student work-study or on-the-job training, p. 72	Provides protection for students on work-study, on-the-job training, or other forms of employment
8 VAC 20-671-580. Virtual learning, p. 72	Permits the use of alternative means to deliver instruction to accommodate student needs through technologies. Requires supervision by a licensed teacher or person eligible to hold a Virginia license to teach. Requires comparable in rigor and breadth to the course that is traditionally delivered. Requires accreditation by a nationally recognized accrediting body or authorized by a public school or school

	division
8 VAC 20-671-590. Equipment, materials, and library media, p. 73	Requires schools to provide a variety of grade-level materials and equipment to support the instructional program, including functional life skills programs. Requires access to computers and library media. Requires schools to adopt a system for updating textbooks, comparable to public schools in Virginia. This requirement is consistent with other states.
8 VAC 20-671-600. School records, p. 73	Requires an academic calendar, class roster, class schedule, course descriptions, course curriculum, and student progress reports
8 VAC 20-671-610. Diplomas, p. 73	Prohibits schools from using the Seal of Virginia in its diploma designs. Requires written policy for awarding diplomas
8 VAC 20-671-620. Student conduct, p. 74	Requires written policy and procedures that address standards of conduct, attendance, truancy, suspension, expulsion, alcohol and drugs, weapons, fighting, bullying, sexual and disability harassment, and pornography
8 VAC 20-671-630. Behavior intervention, p. 74	Requires written policy and procedures that emphasize positive behavior interventions that focus on teaching and supporting students to practice methods to manage their own behavior
8 VAC 20-671-640. Time-out, p. 75	Requires written policy and procedures governing the conditions under which a student may be placed in timeout. Each student shall be free from any unnecessary timeout. Requires staff checks at least every 15 minutes and more often depending on the nature of the student's disability, condition, and behavior. Requires schools to document use of timeout and staff checks
8 VAC 20-671-650. Prohibitions, p. 75	Identifies prohibitions to include: restraint and seclusion; deprivation of drinking water or food; any action that is humiliating, degrading, or abusive; corporal punishment; deprivation of approved prescription medication or treatment; denial of access to toilet facilities; application of aversive stimuli; use of mechanical or pharmacological restraints; and strip searches
8 VAC 20-671-660. Managing student behavior in emergency situations, p. 76	Requires written policy and procedures on behavior management techniques. Prohibits the use of physical restraint or seclusion for any behavioral or protective purpose unless other less restrictive techniques have been tried. Requires documentation in the student's record that less restrictive techniques did not or would not succeed in reducing or eliminating behaviors that are self-injurious or dangerous to other people or that no less restrictive measure was possible in the event of a sudden emergency. Requires documentation of each application of restraint or seclusion and notification to the parent(s) and placing agency. Requires notification to the licensing agency upon request
8 VAC 20-671-670. Videotaping, p.79	Requires written policy and procedures that address videotaping students while in school and during any school sponsored activity
8 VAC 20-671-680. Referral for evaluation, p. 79	Requires schools to refer a student who has not been found eligible for special education and related services to the public school for evaluation when the student is suspected of having a disability and to cooperate with the school division on how to implement the child find and evaluation activities
8 VAC 20-671-690. Suspected child abuse and neglect, p. 79	Requires schools to comply with § 63.2-1509 of the <i>Code of Virginia</i> regarding child abuse and neglect
8 VAC 20-671-700. Serious incident reports, p. 80	Requires schools to report serious incidents immediately, no later than the end of the school day, to the parent, placing agency, the student's public school, and the licensing agency
PART IX -- STUDENT SERVICES	
8 VAC 20-671-710. Medication and health, p. 81	Provides safeguard for medical emergencies. Outlines minimum requirements for school health programs. Requires staff training in medication management of all staff members who handle students'

	medicine
8 VAC 20-671-720. School nutrition, p. 84	Ensures students are provided with nutritionally balanced meals that meet the minimum requirements of the U.S. Dietary Guidelines
8 VAC 20-671-730. Transportation, p. 85	Requires that any transportation provided for or used by students be in compliance with local, state, and federal laws
8 VAC 20-671-740. Treatment services, p. 85	Provides protection of the instructional program and required hours of instruction to the extent possible
8 VAC 20-671-750. Student discharge, p. 85	Requires written policy and procedures for student discharge
8 VAC 20-671-760. Maintenance of student records p. 86	Outlines requirements for protecting student education records from unauthorized disclosure. Provides parents and eligible students the right to written consent for disclosure of personally identifiable information; right to access their child's records; right to obtain copies of their child's education records if failure to provide copies would effectively prevent the parent from exercising the right to inspect and review the records
8 VAC 20-671-770. Participation of students in human research, p.89	Protects students from being subjects of human research without prior consent of the parent and eligible student. Requires the school to have approval from an institutional review board or research review committee prior to participating in a human research protocol. Requires compliance with the <i>Code of Virginia</i>
PART X – SCHOOL CLOSING	
8 VAC 20-671-780. School closing procedures, p. 90	Outlines procedures for a school that ceases to operate. Requires the school to provide written notice as early as possible to all students, their parents, placing agencies, each child's public school, and the licensing agency. Requires the school to provide all education records of privately placed students to the parent(s) and education records of publicly placed students to the school division of the parent's residence and acknowledgement to the parent or student who has reached age 18 and to the licensing agency

Superintendent's Recommendation:

The Superintendent of Public Instruction recommends that the Board of Education accept for first review these proposed regulations and authorize the Department of Education to proceed with the next steps of the regulatory process under the Administrative Process Act and to make any minor technical or typographic changes that do not affect the substance of the regulations.

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 local school divisions. It is anticipated that the implementation of the regulation will have minimal fiscal or administrative impact on existing private schools licensed by the Board.

Each school would be required to maintain liability insurance on all vehicles used to transport students. To comply with § 22.1-324 of the *Code of Virginia*, the proposed regulations require schools to submit and maintain a guaranty instrument payable to the Commonwealth of Virginia, conditioned to protect the contractual rights of students and other contracting parties. The guaranty instrument shall be based on the school's approved capacity. The current minimum guaranty is for up to 50 students at \$5,000. The proposed regulation requires a minimum guaranty of \$10,000 for up to 25 students and \$5,000 for each additional 25 students. In the event a guaranty instrument is terminated, the license to operate will terminate within 30 calendar days if a replacement bond or other instrument is not filed with the Department of Education. If a school collects no advance tuition other than equal monthly installments

or receives payment after services have been rendered, the school may apply to the licensing agency for exemption from the guaranty requirements.

Timetable for Further Review/Action:

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

DRAFT

REGULATIONS GOVERNING THE OPERATION OF

PRIVATE SCHOOLS FOR STUDENTS WITH

DISABILITIES IN THE COMMONWEALTH

First Review with Board of Education

November 2010

FOREWORD

The provisions for the operation of schools for students with disabilities are outlined in the *Code of Virginia*. The Board of Education shall make regulations not inconsistent with law for the management and conduct of schools (§ 22.1-321). No person shall open, operate, or conduct any school for students with disabilities in this Commonwealth without a License to Operate such school (§ 22.1-323). Interested parties are encouraged to consult with the Virginia Department of Education (VDOE), the licensing agency, throughout the application process.

These regulations govern the operation of education programs for students with disabilities in private day schools and children's residential facilities. They are designed to make the operation of these educational programs more closely aligned with the Board of Education's *Regulations Establishing Standards for Accrediting Public Schools in Virginia*. These regulations were drafted in collaboration with stakeholders, including administrators and parents of students enrolled in private schools for students with disabilities, representatives of public placing agencies, (school divisions, Department of Social Services, and the Department of Behavioral Health and Developmental Services), and private school accrediting agencies. With final adoption of these regulations by the Board of Education, the *Regulations Governing the Operation of Private Day Schools for Students with Disabilities, 8 VAC 20-670-10 et seq.*, were repealed.

These regulations were promulgated following the 2008 General Assembly of Virginia's amendment and reenactment of §§ 22.1-323.2, 37.2-408, and 66-24 of the *Code of Virginia* and the addition of § 37.2-408.1 of the *Code of Virginia*, relating to the regulations of group homes

and residential facilities for children. The change eliminated the interdepartmental regulation of children's residential facilities and requires the Department of Mental Health, Mental Retardation, and Substance Abuse Services, (Department of Behavioral Health and Developmental Services, effective July 1, 2009), the Department of Social Services and the Department of Juvenile Justice to regulate and license children's residential facilities. The bill requires that the Board of Education and the VDOE continue with oversight responsibility of the educational programs of children's residential facilities. In response to SB 472 of the 2008 General Assembly of Virginia, the Board of Education, promulgated new regulations for the operation of educational programs in private schools for children with disabilities, including education programs in children's residential and group homes. The VDOE is the licensing agency over all schools for students with disabilities.

In addition to these regulations, the following statutes and regulations are applicable to children with disabilities placed in private schools by public agencies: *Regulations Governing Special Education Programs for Children with Disabilities in Virginia, Code of Virginia, Section 504 of the Rehabilitation Act of 1973, Comprehensive Services Act for Risk Youth and Families of 1993, Americans with Disabilities Act, and the Virginians with Disabilities Act.*

PREAPPLICATION CONSULTATION SERVICES

Education specialists for private schools for students with disabilities in the Virginia Department of Education's (VDOE) Division of Special Education and Student Services provide consultation to interested parties in establishing a private school for students with disabilities. They make a preliminary review to determine whether the prospective school will be able to meet minimum requirements regarding building specifications, staff qualifications, educational program and services, and length of school day and school year. Applicants are encouraged to seek the need for a school for students with disabilities in the prospective area before submitting an application. It is also important that prospective applicants understand that they may need to seek licensure from other licensing agencies when they plan to offer noneducational services such as therapeutic treatment. In this case, a school for students with disabilities shall have a License to Operate issued by the Board of Education and a license issued by the Board of Behavioral Health and Developmental Services. Each licensing agency is required to issue a license or certificate to operate under the authority of the applicable section of the Code of Virginia.

Education specialists for private schools for students with disabilities are available to answer questions about the licensure process. They cannot provide consultation on which disability category to be served by the school, the location of the school, or how to market the school or educational program or services. A directory of licensed schools for students with disabilities, a survey form to determine the need for a school, application for a License to Operate a new school, the VDOE contact information, and other information are available on the VDOE's Web site at <http://www.doe.virginia.gov/> under Special Education.

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PART I.**DEFINITIONS****8VAC-20-671-10. Definitions.**

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

“Applicant” means the person, partnership, corporation, or association that has completed and submitted an application to the licensing agency for approval for a *License to Operate* a school for students with disabilities in Virginia.

“Autism” means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance. A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in this definition are satisfied. (34 CFR 300.8(c) (1))

“Behavioral intervention plan” means a plan that utilizes positive behavioral interventions and supports to address behaviors that interfere with the learning of students with disabilities or with the learning of others or behaviors that require disciplinary action.

“Behavioral support” means those principles and methods employed by a school to help a student achieve positive behavior and to address and correct a student’s behavior in a

constructive and safe manner in accordance with written policies and procedures governing program expectations, educational and treatment goals, safety and security, and the student's Individualized Education Program (IEP) or Individual Instruction Plan (IIP).

"Board" means the State Board of Education which has general supervision of the public school system.

"Business day" means Monday through Friday, 12 months of the year, exclusive of federal and state holidays (unless holidays are specifically included in the designation of business days.)

"Calendar days" means consecutive days, inclusive of Saturdays and Sundays. Whenever any period of time fixed by this chapter shall expire on a Saturday, Sunday, or federal or state holiday, the period of time for taking such action under this chapter shall be extended to the next day, not a Saturday, Sunday, or federal or state holiday.

"Complaint" means an accusation that a school has violated one or more of the requirements of this chapter or other applicable regulation(s).

"Consent" means:

1. The parent(s) or eligible student has been fully informed of all information relevant to the activity for which consent is sought in the parent's(s') or eligible student's native language, or other mode of communication;
2. The parent(s) or eligible student understands and agrees, in writing, to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

3. The parent(s) or eligible student understands that the granting of consent is voluntary on the part of the parent(s) or eligible student and may be revoked any time.

If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked. Revocation ceases to be relevant after the activity for which consent was obtained was completed.).

The meaning of the term “consent” is not the same as the meaning of the term “agree” or “agreement.” “Agree” or “agreement” refers to an understanding between the parent and the school about a particular matter and as required in this chapter. There is no requirement that an agreement be in writing, unless stated in this chapter. The school should document their agreement.

“Controlled substance” means a drug or other substance identified under schedules I, II, or III, IV, or V in § 202(c) of the Controlled Substances Act, 21 USC § 812(c). (34 CFR 300.530 (i)(1))

“Corrective action plan” means the school’s plan of action to correct finding(s) of noncompliance. The plan must identify specific timelines and person(s) responsible for implementation.

“Deaf-blindness” means simultaneous hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness. (34 CFR 300.8(c)(3))

“Deafness” means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects the child's educational performance. (34 CFR 300.8(c)(3))

“Department” means the Virginia Department of Education.

“Developmental delay” means a disability affecting a child age two by September 30 through six, inclusive: (34 CFR 300.8(b); [34 CFR 300.306(b))

1. (i) Who is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development, or (ii) who has an established physical or mental condition that has a high probability of resulting in developmental delay;
2. The delay(s) is not primarily a result of cultural factors, environmental or economic disadvantage, or limited English proficiency; and
3. The presence of one or more documented characteristics of the delay has an adverse effect on educational performance and makes it necessary for the student to have specially designed instruction to access and make progress in the general educational activities for this age group.

“Disability category” means a listing of special education eligibility classifications for students served including: autism, deaf-blindness, developmental delay, emotional disability, hearing impairment, (including deafness), intellectual disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment (including

blindness). § 22.1-213 of the Code of Virginia; 34 CFR 300.8(a)(1) and 34 CFR 300.8(a)(2)(i) and (ii).

“Education records,” also known as scholastic records, mean those records that are directly related to a student, and maintained by the school or by a party acting for the school.

Education records may be recorded in any manner, including, but not limited to, handwriting, print, computer media, video or audiotape, film, microfilm, or microfiche.

Education records include discipline and medical records. Education records include electronic exchanges between school personnel and parent(s) regarding matters associated with the child’s educational program.

“Eligible student” means a student who has reached 18 years of age.

“Emotional disability” means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: (34 CFR 300.8(c)(4))

1. An inability to learn that cannot be explained by intellectual, sensory, or health factors;
2. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
3. Inappropriate types of behavior or feelings under normal circumstances;
4. A general pervasive mood of unhappiness or depression; or
5. A tendency to develop physical symptoms or fears associated with personal or school problems.

Emotional disability includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disability as

defined by the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia, 8 VAC 20-80-10 seq.*

“Guaranty instrument” means a surety bond, irrevocable letter of credit or certificate of deposit.

“Hearing impairment” means an impairment in hearing in one or both ears, with or without amplification, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in the *Regulations Governing Special Education Programs for Children with Disabilities.*
(34 CFR 300.8(c)(5))

“Illegal drug” means a controlled substance, but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act, 21 USC §812(c), or under any other provision of federal law.

“Individualized Education Program” or “IEP” means a written statement for a child with a disability that is developed, reviewed, and revised at least annually in a team meeting in accordance with the *Regulations Governing Special Education for Children with Disabilities in Virginia.* The IEP specifies the individual educational needs of the child and what special education and related services are necessary to meet the child's educational needs. (34 CFR 300.22)

“Individualized Instruction Plan” or “IIP” means a written statement (plan) for a child who is privately placed or for a child that has not been determined eligible for special education services that is developed, reviewed, and revised at least annually in a team meeting that

includes the parent. The IIP specifies the student's academic level, course of study,

individual educational needs, and the educational services the child will receive.

"Intellectual disability" means the definition formerly known as "mental retardation" and means

significantly subaverage general intellectual functioning, existing concurrently with

deficits in adaptive behavior and manifested during the developmental period that

adversely affects a child's educational performance. (34 CFR 300.8(c)(6))

"Licensee" also known as the sponsor, means the person, partnership, corporation, or association

to whom a license is issued and who is legally responsible for compliance with this

chapter.

"License to Operate" or "license" means a document issued by the State Superintendent of

Public Instruction, verifying approval to operate a school for students with disabilities

and that indicates the status of the school regarding compliance with applicable

regulations.

"Licensing agency" means the Virginia Department of Education.

"Multiple disabilities" mean simultaneous impairments (such as intellectual disability with

blindness, intellectual disability, with orthopedic impairment), the combination of which

causes such severe educational needs that they cannot be accommodated in special

education programs solely for one of the impairments. The term does not include deaf-

blindness. (34 CFR 300.8(c)(7))

"Orthopedic impairment" means a severe orthopedic impairment that adversely affects a child's

educational performance. The term includes impairments caused by congenital anomaly,

impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and

impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures). (34 CFR 300.8(c)(8))

“Other health impairment” means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome that adversely affects a child’s educational performance. (34 CFR 300.8(c)(9))

“Paraprofessional,” also known as paraeducator, means an appropriately-trained employee who assists and is supervised by qualified professional staff in meeting the requirements of this chapter.

“Parent” means (§ 22.1-213.1 of the *Code of Virginia*)

A. For purposes of these regulations:

1. A biological or adoptive parent of a child;
2. A foster parent, even if the biological or adoptive parent's rights have not been terminated, but subject to subsection B;
3. A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child, (but not the Commonwealth if the child is a ward of the Commonwealth);

4. An individual acting in the place of a biological or adoptive parent (including grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

5. If no party qualified under subdivisions 1 through 4 can be identified, or those parties are unwilling to act as parent, a surrogate parent who has been appointed in accordance with 8 VAC 20-80-80.

B. The biological or adoptive parent, when attempting to act as the parent pursuant to this section and when more than one party is qualified under subsection A to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent has had their residual parental rights and responsibilities terminated pursuant to § [16.1-277.01](#), [16.1-277.02](#), [16.1-283](#) or a comparable law in another state.

C. The local school division shall provide written notice to the biological or adoptive parents at their last known address that a foster parent is acting as the parent pursuant to this section, and the local school division is entitled to rely upon the actions of the foster parent pursuant to this section until such time that the biological or adoptive parent attempts to act as the parent.

D. If a judicial decree or order identifies a specific person or persons among subdivisions A 1 through A 5 to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of the special education identification, evaluation, and placement of a child and the provision of a free appropriate public education to a child.

“Personally-identifiable information” means information that includes, but is not limited to:

- (1) the student’s name, the child’s parent, or other family member;
- (2) the address of the child;
- (3) A personal identifier, such as the child’s social security number or student number; or
- (4) A list of personal characteristics that would make the student’s identity easily traceable.

“Physical restraint,” means the use of approved physical interventions or “hands-on” holds by trained staff to prevent a student from moving his/her body to engage in a behavior that places him/her or others at risk of physical harm. Physical restraint does not include:

1. briefly holding a student in order to calm or comfort the student; or
2. holding a student’s hand or arm to escort the student safely from one area to another.

(Board of Education’s *Guidelines for the Development of Policies and Procedures for Managing Student Behaviors in Emergency Situations*)

“Privately-placed student” means a student placed in a private school for students with disabilities by their parent or parents.

“Publicly-placed student” means a student placed in a private school for students with disabilities by a local school division or Comprehensive Services Act team or by Court Order.

“Qualified personnel” or “qualified staff” means personnel who have met Virginia Department of Education approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individual is providing special education or related services. In addition, the professional must meet other state

agency requirements for such professional service and Virginia licensure requirements as designated by Virginia law or regulations.

“Related services” mean transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education and includes speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services; medical services for diagnostic or evaluation purposes. Related services also includes school health services and school nurse services; social work services in schools; and parent counseling and training. Related services do not include a medical device that is surgically implanted including cochlear implants, the optimization of device functioning (e.g., mapping), maintenance of the device, or the replacement of that device. The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music and dance therapy), if they are required to assist a child with a disability to benefit from special education. (§ 22.2-213 of the *Code of Virginia*; 34 CFR 300.34(a) and (b))

“Regulations” means this document in its entirety (8 VAC 20-671).

“School” means a school for students with disabilities that has a *License to Operate* issued by the Superintendent of Public Instruction.

“School for students with disabilities” or “school” or “schools” means a privately owned and operated preschool, school or educational organization, no matter how titled, maintained,

or conducting classes for the purpose of offering instruction, for a consideration, profit or tuition, to persons determined to have autism, deaf-blindness, developmental delay, a hearing impairment including deafness, multiple disabilities, orthopedic impairment, other health impairment, an emotional disturbance, a severe disability, a specific learning disability, a speech or language impairment, a traumatic brain injury, or a visual impairment including blindness. (§ 22.1-319 of the Code of Virginia)

“Seclusion” means the confinement of a student alone in a room from which the student is physically prevented from leaving. (Board of Education’s Guidelines for the Development of Policies and Procedures for Managing Student Behaviors in Emergency Situations)

“Section 504” means that section of the Rehabilitation Act of 1973 (8 VAC 20-671), as amended, which is designed to eliminate discrimination on the basis of disability in any program or activity receiving federal financial assistance. (29 USC § 701 et seq.)

“Serious incident” means:

1. Any accident or injury requiring medical attention by a physician;
2. Any illness that requires hospitalization;
3. Any runaway, or
4. Any event that affects, or potentially may affect, the health, safety, or welfare of any student being served at the school or school-related activity.

“Serious injury” means any injury resulting in bodily hurt, damage, harm, or loss that requires medical attention by a licensed physician.

“Special education” means specially-designed instruction to meet the unique needs of a child

with a disability. There is no cost to the parent(s) for special education for a child who is placed in a school for students with disabilities by a school division, Department of Social Services, or court order. (§ 22.1-213 of the Code of Virginia; 34 CFR 300.39)

1. Speech-language pathology services or any other related service, if the service is considered special education rather than a related service under state standards;
2. Vocational education; and
3. Travel training.

“Specially-designed instruction” means adapting, as appropriate to the needs of an eligible child

under this chapter, the content, methodology, or delivery of instruction: (34 CFR 300.39(b)(3))

1. To address the unique needs of the child that result from the child’s disability; and
2. To ensure access of the child to the general curriculum, so that the child can meet the educational standards that apply to all children within the jurisdiction of the local educational agency.

“Specific learning disability” means a disorder in one or more of the basic psychological

processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; of intellectual disabilities; of emotional

disabilities; of environmental, cultural, or economic disadvantage. (§ 22.1-213 of the Code of Virginia; 34 CFR 300.8(c)(10))

Dyslexia is distinguished from other learning disabilities due to its weakness occurring at the phonological level. Dyslexia is a specific learning disability that is neurobiological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge.

“Speech or language impairment” means a communication disorder, such as stuttering, impaired articulation, expressive or receptive language impairment, or voice impairment that adversely affects a child's educational performance. (34 CFR 300.8(c)(11))

“Standard precautions” mean precautions designed to prevent transmission of HIV, hepatitis B virus (HBV), and other bloodborne pathogens when providing first aid or health care. Standard cautions apply to blood, all body fluids, secretions, and excretions except sweat, regardless of whether or not they contain blood, nonintact skin; and mucous membranes. The precautions are designed to reduce the risk of transmission of microorganisms from both recognized and unrecognized sources of infection when providing first aid or health care. Standard precautions include protective barriers such as gloves, gowns, aprons, mask or protective eye wear which can reduce the risk of exposure with materials that may contain infectious microorganisms.

“Standards of Learning” or “SOL” means Virginia’s rigorous academic standards established by the Board of Education.

“Strip search” means a visual inspection of the body of a student when that student’s outer clothing or total clothing is removed, and there is an inspection of the removed clothing.
Strip searches are conducted for the detection of contraband.

“Superintendent” means the State Superintendent of Public Instruction.

“Teacher of record” means the teacher who is responsible for the delivery of instruction. The teacher of record shall hold a license issued by the State Board of Education.

“Time-out” means assisting a student to regain control by removing the student from his immediate environment to a different open location until the student is calm or the problem behavior has subsided. (Board of Education’s *Guidelines for the Development of Policies and Procedures for Managing Student Behaviors in Emergency Situations*)

“Traumatic brain injury” means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child’s educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma. (34 CFR 300.8(c)(12))

“Visual impairment including blindness” means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness. (34 CFR 300.8(c)(13))

“Volunteer” means any individual who of his own free will, and without compensation, provides goods or services to the school.

“Virtual learning” means the delivery of instruction through emerging technologies such as satellite, streaming video, or the Internet.

PART II.**GENERAL PROVISIONS AND REQUIREMENTS****8 VAC 20-671-20. Exemptions.**

These regulations shall not apply to any of the following at § 22.1-320 of the *Code of Virginia*:

1. Any school that is licensed or approved pursuant to other statutes of the Commonwealth;
2. Any public or private high school accredited or recognized by the Board of Education that has offered or may offer programs for students with disabilities covered in these regulations, if any tuition, fees, and charges made by the school are collected in accordance with the regulations prescribed by the governing body of such school;
3. Tutorial instruction given in a private home or elsewhere as supplemental to regular classes for students enrolled in any public or private school or in preparation of an individual for an examination for professional practice or higher education;
4. A program through which persons with disabilities are provided employment and training primarily in simple skills in a sheltered or protective environment;
5. Any privately owned or operated preschool, elementary, middle or secondary school that operates primarily to provide educational services to students without disabilities, although the school may serve children with disabilities in a regular academic setting; or
6. Any private school for students with disabilities that operates in or on the premises of an elementary, middle, or secondary public school in a regular school setting during a typical school day.

8 VAC 20-671-30. Licenses generally.

A. The Board of Education has established general requirements for a *License to Operate* a private school for students with disabilities and has authorized the Superintendent of Public Instruction to issue licenses. The following applies in accordance with § 22.1-323 of the *Code of Virginia*:

1. No person shall open, operate, or conduct any school for students with disabilities in this Commonwealth without a *License to Operate*.
2. A *License to Operate* shall be restricted to the disability categories specifically indicated on the license, which may include one or more of the disability categories in the definition of a school for students with disabilities in this chapter.
3. A *License to Operate* may be issued for a period of up to three successive years.
4. The term of a school's license may be reduced at any time during the licensure period based on a change in the school's compliance with these requirements.
5. A *License to Operate* shall be prominently displayed on the premises of the school in a place open for inspection by any interested person during the hours of operation.
6. A *License to Operate* shall be restricted to the approved conditions as printed on the license. Such conditions include, but are not limited to, the maximum number of students that can be enrolled, the disability category or categories of students that can be served, and the age range and gender.

B. An individual seeking to operate a school for students with disabilities shall file an application with the licensing agency. Applications may be retrieved from the Department of Education's Web site at <http://www.doe.virginia.gov/>.

C. A license to operate shall be restricted to the approved conditions as printed on the license.

Such conditions include, but are not limited to, the maximum number of students that can be enrolled, the disability category or categories of students that can be served, and the age range and gender.

D. The licensing agency may make exception to the requirements of this chapter for good cause.

8 VAC 20-671-40. Advertising.

The following provisions consistent with § 22.1-323 of the *Code of Virginia* regarding advertisement of a school shall apply:

A. No school may use the seal of the Commonwealth in any advertisement, publication, or document, including diplomas, certificates, and other awards.

B. The advertisement of a school shall be in a form and manner that is free from misrepresentation, deception, or fraud and shall conform to the following:

1. The complete school name as listed on the *License to Operate* shall be used in all publicity, publications, promotions, or marketing purposes.

2. Advertisement shall not expressly, or by implication, indicate by any means that the *License to Operate* represents an endorsement by the Virginia Department of Education or the Board of Education.

3. No fraudulent or misleading statement shall be in print or nonprint about the school's admission policy, tuition and fees; programs and services; size and location; or any other information concerning the school.

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4. Endorsements, commendations, or recommendations by students, individuals, manufacturers, business establishments, or organizations are prohibited except with their written consent and without any offer of financial compensation.
5. The accrediting agency shall be named, if accreditation is used, as part of a school's promotional materials.

C. Prospective applicants may advertise projected services and staff positions while in the application process but shall not misrepresent licensure status and shall not enroll students prior to receiving a *License to Operate* from the Superintendent of Public Instruction.

8 VAC 20-671-50. Types of licenses.

The following shall apply consistent with § 22.1-323.1 of the *Code of Virginia*:

A. A conditional license shall be issued to a new school that demonstrates compliance with administrative and policy requirements but has not demonstrated compliance with all requirements of these regulations.

1. A conditional license may be renewed.
2. The issuance of a conditional license and any renewals thereof shall be for no longer a period than six successive months.

B. A provisional license may be issued to a school that has demonstrated an inability to maintain compliance with these regulations or other applicable regulations.

1. A provisional license may be issued at any time.
2. A provisional license may be renewed.
3. The issuance of a provisional license and any renewal thereof shall be for no longer a period than six successive months.

8 VAC 20-671, Regulations Governing the Operation of Private Schools for Students with Disabilities (Proposed)

C. An annual license may be issued under the following conditions and may be extended for a

period not to exceed six successive months:

1. A school applies for renewal while holding a conditional or provisional license substantially meets the requirements of these regulations;
2. The licensing agency determines that a major violation has occurred that impacts the overall operation of the school; or
3. The school makes significant changes in its operation.

D. A triennial license shall be issued when a school:

1. Applies for renewal while holding an annual or triennial license; and
2. Substantially meets or exceeds the requirements of these and other applicable regulations.

E. The term of a school's license may be modified at any time during the licensure period based

on a change in the school's compliance with these regulations and other applicable regulations.

8 VAC 20-671-60. Change in condition(s).

A. The condition(s) of a license may be modified during the term of the license with respect to:

capacity of the school or classrooms; disability category or categories of students served; age range of students; change in location; change in services; change in ownership; merger of schools; and enrollment of day student(s) in a residential setting.

B. A change in condition(s) shall not be implemented prior to approval by the licensing agency.

The licensing agency shall respond to the request and provide approval or denial in 10 calendar days following the date the request was received.

C. Change in condition(s) may not be approved during a provisional or conditional licensure period.

8 VAC 20-671-70. License to Operate is nontransferable.

A change of ownership occurs when control of a school changes from one owner to another. If

there is a change in ownership, the following shall apply:

1. The licensee shall notify the licensing agency at least 30 calendar days prior to the proposed change.
2. The new owner shall submit an initial application for a License to Operate to the licensing agency within 30 calendar days following the effective date of the change in ownership.
3. The school may operate under the existing license for 60 calendar days from the effective date of the change in ownership at which time a conditional license may be issued.

8 VAC 20-671-80. Penalty for noncompliance in obtaining a License to Operate.

Failure to obtain a License to Operate a school for students with disabilities shall result in the following penalties allowed in § 22.1-331 of the Code of Virginia:

- A. Any person who opens, operates, or conducts a school without first obtaining a license to operate may be found guilty of a Class 2 Misdemeanor.
- B. Each day the school remains open without a License to Operate, the owner or board of directors shall incur a separate offense.
- C. The licensing agency shall refer to the Office of the Attorney General any alleged or known violation of these provisions. The Office of the Attorney General shall refer the

matter to the Commonwealth Attorney of proper jurisdiction.

8 VAC 20-671-90. Directory of private schools for students with disabilities.

The licensing agency shall maintain a directory of schools holding valid licenses to operate which shall be available to the public (§ 22.1-332 of the Code of Virginia). The directory shall identify other applicable state licensing agencies over the school and may include additional information to inform the public about the school's operation.

PART III.

SCHOOL LICENSING PROCESS

8 VAC 20-671-100. Initial application.

To obtain a License to Operate a school for students with disability, an application shall be filed with the Department of Education. A completed initial application shall include the following:

1. Complete name and physical address of the school;
2. Name(s) and address(es) of owner(s), controlling official(s), and managing employee(s);
3. Evidence that the applicant has conducted a needs assessment;
4. Evidence of the applicant's compliance with the applicable regulations of the State Corporation Commission when the school is owned by a partnership or corporation;
5. Narrative description of building and scale drawing or copy of the floor plan(s) including room use and dimensions;
6. Certificate of occupancy with educational use group or other report(s) from the appropriate government agency or agencies indicating that the location(s) meet

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- applicable zoning, building code, use permit, business license, fire safety, and sanitation requirements;
7. Copy of the deed, lease, or other legal instrument authorizing the school to occupy such location;
 8. Proposed working budget for the year showing projected revenue and expenses for the first year of operation and a balance sheet showing assets and liabilities; a three-year financial plan, and documentation of sufficient operating capital or line of credit to carry the school through the first year of operation;
 9. Original signed surety bond, irrevocable letter of credit, or certificate of deposit to protect the contractual rights of parents and students;
 10. Schedule of tuition and other fees and the procedure for collecting and refunding tuition;
 11. Copies of all proposed advertisements;
 12. Description of the education program to include disability category or categories to be served, enrollment capacity, age range, gender, and course offerings;
 13. Listing of instructional resources and equipment;
 14. Description of related services;
 15. School's policy manual;
 16. Proposed staffing and organizational chart;
 17. Job description for each position;
 18. Parent/student handbook;
 19. Statement of transportation services if the school provides transportation for

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students;

20. Statement regarding provision of student lunches; and

21. Any other information necessary to complete the application process.

8 VAC 20-671-110. Applicant commitments.

Each application for a *License to Operate* a school for students with disabilities shall contain the following commitments:

1. To conduct the school in accordance with all applicable regulations of the Board;
2. To permit the Board or Department to inspect the school or classes being conducted therein at any time and to make available to the Board or Department, when requested to do so, all information pertaining to the activities of the school required for the administration of these regulations, including its financial condition;
3. To advertise the school at all times in a form and manner that is free from misrepresentation, deception, or fraud and to conform to provisions of the Board governing such advertising;
4. To ensure that all representations made by an agent of the school are free from misrepresentation, deception, or fraud and to conform to provisions of the Board governing such advertising;
5. To display the current *License to Operate* prominently where it may be inspected by students, visitors, and the Board or Department; and
6. To maintain all premises, equipment, and facilities of the school in an adequate, safe and sanitary condition.

8 VAC 20-671-120. Assessment of application.

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- A. The licensing agency shall evaluate each application within 60 calendar days from the date received and advise the applicant in writing of approval or deficiencies.
- B. The applicant shall correct all deficiencies within 30 calendar days from the date of the written assessment of the application. The licensing agency may grant an extension for a reasonable period of time.
- C. Any application that has not been approved within the allotted time period shall be denied and returned to the applicant. The applicant may reapply for a license 90 calendar days following the date of the returned application.
- D. The licensing agency may require the applicant to appear before a review committee for final approval of the application.

8 VAC 20-671-130. On-site inspection.

Before a license can be issued, the licensing agency shall conduct an on-site inspection or equivalent virtual inspection of the school building and grounds to determine its suitability for the operation of a school for students with disabilities.

8 VAC 20-671-140. Renewal of licenses.

- A. Sixty calendar days prior to the expiration of a *License to Operate*, the licensee shall submit to the licensing agency notification of intent for continued operation of the school.
- B. The license of each school that continues to operate as such shall be renewed on or before the anniversary date set by the licensing agency.
- C. Each license that has not been renewed in accordance with these provisions shall expire and a new license shall be obtained from the Board before such school may continue to operate. A new application must be submitted to the licensing agency.

PART IV.**OVERSIGHT RESPONSIBILITY****8 VAC 20-671-150. Monitoring.**

The licensing agency shall:

- A. Make at least one announced or unannounced visit during the effective dates of the *License to Operate* for the purpose of monitoring the school's compliance with this chapter;
- B. Notify relevant local government, placing and funding agencies of health and safety or human rights violations.
- C. Cooperate with other licensing agencies; specifically, the Department of Social Services and the Department of Behavioral Health and Developmental Services, in fulfilling licensing responsibilities. The licensing agency shall notify relevant local governments and placing and funding agencies when a school's licensure status is lowered to provisional.

8 VAC 20-671-160. Complaint resolution procedures.

- A. A complaint may be filed with the licensing agency by any individual or organization and shall address an action that occurred not more than one year prior to the date the complaint is received by the licensing agency.
- B. A complaint must provide a statement of some disagreement with procedures or process regarding any matter relative to these regulations or other applicable regulations.
- C. Upon receipt of a complaint, the licensing agency shall initiate an investigation to determine whether the school is in compliance with applicable laws and regulations in accordance with the following procedures:
 - 1. Within seven business days of the receipt of a complaint, the licensing agency

shall provide written notification to each complainant and the private school.

a. The notification sent to the school shall include:

(1) A copy of the complaint;

(2) An offer of technical assistance in resolving the complaint;

(3) A statement that the school has the opportunity to propose a resolution of the complaint;

(4) A request that the school submit within 10 business days of receipt of the letter of notification either:

(a) written documentation that the complaint has been resolved; or

(b) if the complaint was not resolved, a written response including all requested documentation.

2. The licensing agency shall review the complaint and the school's response and determine the need for any further investigation or corrections.

3. The licensing agency shall notify appropriate agencies of serious violations.

4. During the course of the investigation, the licensing agency shall:

(a) Conduct an investigation of the complaint that shall include a complete

review of all relevant documentation and may include interviews with appropriate individuals, and an independent on-site investigation, if necessary.

(b) Consider all facts and issues presented and the applicable requirements specified in these regulations or other applicable regulations.

(c) Make a determination of compliance or noncompliance on each issue in the complaint based upon the facts and applicable regulations and notify the

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parties in writing of the findings and the bases for such findings.

The licensing agency has 60 calendar days after the written complaint is received to carry out the investigation and to resolve the complaint. An extension of the 60 calendar day time limit may occur if exceptional circumstances exist with respect to a particular complaint.

(d) Ensure that the final decision is effectively implemented, if needed, through technical assistance activities, negotiations, and corrective actions to achieve compliance.

(e) Notify the parties in writing of any needed corrective actions and the specific steps that shall be taken by the school to bring it into compliance with applicable timelines.

E. Parties to the complaint procedures shall have the right to appeal the final decision to the licensing agency within 30 calendar days of the issuance of the decision.

F. When the school develops a plan of action to correct the violations, such plan shall include timelines to correct violations not to exceed 30 business days unless circumstances warrant otherwise. The plan of action shall include a description of all changes contemplated and shall be subject to approval of the licensing agency.

G. If the school does not come into compliance within the period of time set forth in the notification, the licensing agency may reduce or revoke the school's *License to Operate*.

8 VAC 20-671-170. Denial, revocation, or suspension of license.

A. The Superintendent may refuse to issue or renew a *License to Operate* or may revoke or suspend a license issued to any school pursuant to these regulations for the following causes (§ 22.1-329 of the *Code of Virginia*):

1. Violating any provision of these regulations or regulation of the Board;

2. Furnishing false, misleading, or incomplete information to the Board or Department or failure to furnish information requested by the Board or Department;
3. Violating any commitment made in an application for a license;
4. Presenting either by the school or by any agent of the school to prospective students information relating to the school which is false, misleading, or fraudulent;
5. Failing to provide or maintain premises or equipment in a safe and sanitary condition as required by law;
6. Making any false promises through agents or by advertising or otherwise of a character likely to influence, persuade, or induce enrollments;
7. Paying a commission or valuable consideration to any person for any act of service performed in willful violation of this chapter;
8. Failing to maintain financial resources adequate for the satisfactory conduct of courses of instruction offered or to retain a sufficient or qualified instructional staff;
9. Demonstrating unworthiness or incompetency to conduct the school in a manner calculated to safeguard the interests of the public;
10. Failing within a reasonable time to provide information requested by the Board or Department as a result of a formal or informal complaint to or by the Board or Department which would indicate a violation of these requirements;
11. Attempting to use or employ any enrolled students in any commercial activity whereby the school receives any compensation whatsoever without reasonable remuneration to the student, except to the extent that employment of students in such activities is necessary or essential to their training and is permitted and authorized by the Board; or

12. Engaging in or authorizing any other conduct whether of the same or of a different character from that herein specified which constitutes fraudulent or dishonest dealings.

8 VAC 20-671-180. Summary of suspension.

The provisions of the Administrative Process Act at § 2.2-4000 et seq. of the Code of Virginia shall be applicable to proceedings under this section. In compliance with § 22.1-329 of the Code of Virginia, the following shall apply:

- A. In addition to the authority for other disciplinary actions provided in this chapter, the Superintendent of Public Instruction may issue a summary order of suspension of a license of a residential or day school for students with disabilities in conjunction with any proceeding for revocation, denial, or other action when conditions or practices exist in the school that pose an immediate and substantial threat to the health, safety, and welfare of the students who are residing or attending the school and the Superintendent of Public Instruction believes the operation of the school should be suspended during the pendency of such proceeding.
- B. The summary order of suspension shall take effect upon its issuance and shall be served on the licensee or its designee as soon as practicable thereafter by personal service and certified mail, return receipt requested, to the address of record of the licensee. The order shall state the time, date, and location of a hearing to determine whether the suspension is appropriate. Such hearing shall be held no later than three business days after the issuance of the summary order of suspension and shall be convened by the Superintendent of Public Instruction or designee.

C. After such hearing, the Superintendent of Public Instruction may issue a final order of summary suspension or may find that such summary suspension is not warranted by the facts and circumstances presented. A final order of summary suspension shall include notice that the licensee may appeal the Superintendent of Public Instruction's decision to the appropriate circuit court no later than 10 days following issuance of the order. The sole issue before the court shall be whether the Superintendent of Public Instruction had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. The concurrent revocation denial or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary suspension.

D. The willful and material failure to comply with the summary order of suspension or final order of summary suspension shall be punishable as a Class 2 misdemeanor. The Superintendent of Public Instruction may require the cooperation of any other agency or subdivision of the Commonwealth in the relocation of students who are residents of a home or facility whose license has been summarily suspended pursuant to this section and in any other actions necessary to reduce the risk of further harm to students.

8 VAC 20-671-190. Timeline for correction of unsatisfactory conditions.

In compliance with § 22.1-330 of the *Code of Virginia*, the Board or Department may:

A. Upon its own motion, and shall, upon the verified complaint in writing of any person setting forth facts which, if proved, would constitute grounds for refusal, suspension, or revocation of a license, investigate the actions of any applicant for or any person or persons holding or claiming to hold a *License to Operate*.

B. Before refusing to renew, revoking, or suspending any license, the Board may grant such period of time as it deems reasonable to correct any unsatisfactory condition.

PART V

ADMINISTRATION OF THE SCHOOL

8 VAC 20-671-200. Governing body.

A. Each school shall use its complete name as listed on the *License to Operate* for all publicity, publications, promotions, or marketing purposes.

B. Any governing board, body, entity, or person to whom it delegates the legal responsibilities and duties of the licensee shall be clearly identified.

8 VAC 20-671-210. Responsibilities of the licensee.

The licensee shall:

A. Appoint an individual(s) to whom it delegates the authority and responsibility to assume the administrative direction of the school. The appointment shall be in writing.

B. Develop and implement a written decision-making plan that shall include provision for a staff person with the qualifications of the school administrator or education program director to be designated to assume the temporary responsibility for the operation of the school in the absence of the school administrator. The plan shall include a current organizational chart.

C. Ensure that staff positions and responsibilities meet the needs of the population served.

D. Develop a written statement of the objectives of the school including a description of the target population and the program offerings.

- E. Develop and implement written policies and procedures to monitor and evaluate the effectiveness of the education program on a systematic and ongoing basis and implement improvements when the need is determined.
- F. Ensure compliance with applicable child-labor laws.
- G. Develop a written policy prohibiting the consumption of tobacco products, drugs, and alcohol or being under the influence of intoxicating and or hallucinogenic agents while on campus and at school-sponsored activities.
- H. Require as a condition of employment that any applicant who accepts employment full-time or part-time, permanent or temporary, including interns and volunteers, to submit to fingerprinting and to provide personal descriptive information to be forwarded along with the applicant's fingerprints through *Virginia's Central Criminal Records Exchange to the Federal Bureau of Investigation* for the purpose of obtaining criminal history record information regarding such applicant. In addition, where the applicant has resided in another state within the last five years, the school shall as a condition of employment determine if there are any founded complaints of child abuse or neglect in such state(s) pursuant to § 22.1-296.3 and 22.1-296.4 of the *Code of Virginia*.
- I. Require as a condition of employment that any applicant who accepts employment requiring direct contact with students whether full-time or part-time, permanent or temporary, including interns and volunteers, provide written consent and necessary personal information for the school to obtain a search of the registry of founded complaints of child abuse and neglect maintained by the Department of Social Services pursuant to § 63.2-1515 of the *Code of Virginia*.

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- J. Notify the licensing agency within five calendar days of any change in administration or newly appointed individual responsible for the day-to-day administration or operation of the school.
- K. Ensure that all staff members receive annual professional development related to their job responsibilities.
- L. Report to the licensing agency within 10 business days lawsuits, settlements, or criminal charges relating to the operation of the school.
- M. Develop and implement an accessible policy and procedures to handle grievances from students, parents, and employees.

8 VAC 20-671-220. Fiscal accountability.

- A. The licensee shall prepare at the end of each fiscal year:
1. An operating statement to include a month-to-month accounting of revenue and expenses for the fiscal year just ended;
 2. A working budget showing projected revenue and expenses for the next fiscal year that gives evidence of sufficient funds to operate; and
 3. A balance sheet showing assets and liabilities for the fiscal year just ended.
- B. There shall be a system of financial recordkeeping that shows a separation of the school's accounts from all other records.
- C. There shall be written policies and procedures that address the day-to-day handling of the school's funds.
- D. The licensing agency reserves the right to call for one of these two types of statements:
1. An audited financial statement certified by an outside independent certified public

accountant in accordance with standards established by the American Institute of Certified

Public Accountants; or

2. A financial statement that has been reviewed by an outside independent certified public

accountant in accordance with principles established for reviews by the American Institute of Certified Public Accountants.

8 VAC 20-671-230. Protection of contractual rights.

In compliance with § 22.1-324 of the *Code of Virginia*, provisions for the protection of contractual rights shall include the following:

A. With each application, the applicant shall submit and maintain a guaranty instrument payable

to the Commonwealth of Virginia to protect the contractual rights of students and other contracting parties.

B. The guaranty instrument shall be based on the school's approved capacity. A minimum guaranty of \$10,000 for up to 25 students and \$5,000 for each additional 25 students shall apply.

C. In the event a guaranty instrument is terminated, the *License to Operate* will terminate within 30 calendar days if a replacement bond or other instrument is not filed with the licensing agency.

D. If a school collects no advance tuition other than equal monthly installments or receives payment after services have been rendered, the school may apply to the licensing agency for exemption from the guaranty requirements.

8 VAC 20-671-240. Insurance.

A. The licensee shall maintain liability insurance covering the premises and the school's operation.

B. The licensee shall maintain liability insurance on all vehicles used to transport students, including vehicles owned by staff.

C. The members of the governing body and staff who are authorized to handle school or students' funds shall be bonded.

8 VAC 20-671-250. Fundraising.

Written consent of the parent(s) or legal guardian and of a child age 14 or older shall be obtained before participating in any school fundraising activity.

8 VAC 20-271-260. Relationship to the licensing agency.

The licensee shall make information available to the licensing agency upon the requested due date in order to make a timely determination of compliance with these regulations and other applicable regulations and statutes. The licensing agency may alter the term of a license if the school fails to comply in a reasonable time period.

PART VI**SCHOOL PERSONNEL****8 VAC 20-671-270. Personnel policies and procedures.**

A. The licensee shall have written personnel policies and procedures that include, but not limited to, job qualifications, job descriptions, staff supervision, evaluation, grievance, and termination.

1. The licensee shall develop and implement written policies and procedures that persons appointed or designated to assume the responsibilities of each position possess the education, experience, knowledge, skills, and abilities specified in the job description.

2. The licensee shall make written personnel policies and procedures accessible to each employee.

B. The licensee shall maintain a current organizational chart of all full-time and part-time positions.

8 VAC 20-671-280. Job qualifications.

A person who assumes or is designated to assume the responsibilities of a position or any combination of positions described in these regulations shall meet the qualifications of the position, comply with all applicable regulations for each function, and demonstrate a working knowledge of the policies and procedures applicable to the position.

8 VAC 20-671-290. Job descriptions.

A. There shall be a written job description for each position that includes job title; duties and responsibilities; job title of the immediate supervisor; and minimum education, experience, knowledge, skills, and abilities required for entry-level performance of the job.

B. A copy of the job description shall be given to each person assigned to a position at the time of employment or assignment.

8 VAC 20-671-300. School administrators.

A. The licensee shall designate one or more individuals responsible for the administrative operation of the school who serves as the instructional leader and is responsible for effective school management that promotes positive student achievement, and a safe and secure environment in which to teach and learn.

B. As the instructional leader, the school administrator is responsible for ensuring that students are provided an opportunity to learn and shall:

1. Protect the academic instructional time from unnecessary interruptions and disruptions and enable the professional teaching staff to spend the maximum time possible in the teaching/learning process by keeping to a minimum clerical responsibility and the time students are out of class;
2. Seek to maintain a safe and secure school environment;
3. Involve the staff of the school in identifying the types of staff development needed to improve student achievement and ensure that the staff participate in those activities;
4. Analyze classroom practices and methods for improvement of instruction;
5. Ensure that students' education records are maintained and that criteria used in making placement and promotion decisions, as well as any instructional interventions used to improve the student's performance, are included in the record; and
6. Monitor and evaluate the quality of instruction, provide staff development, and provide support that is designed to improve instruction.

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- C. The instructional leader shall hold a valid five-year renewable postgraduate professional license issued by the Board with an endorsement in school administration and supervision or special education and have at least three years of experience working with students with disabilities.
- D. The instructional leader or designee shall at all times be on the premises of the school while the school is in operation.
- E. All staff on duty must know who is responsible for the administration of the school at any given time.

8 VAC 20-671-310. Teachers and staffing.

- A. Each teacher shall meet the requirements of the *Licensure Regulations for School Personnel*, 8 VAC 20-22-10 et. seq.
- B. Staffing shall be in accordance with the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* in the following settings:
1. A student with an Individualized Education Program (IEP) may be instructed with students without disabilities, as appropriate, and in accordance with the IEP.
 2. A student with an IEP may receive services with children with the same disability or with children with different disabilities.
- C. Teacher personnel assignments shall be in accordance with *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*.
1. General education qualified personnel who are knowledgeable about the students and their special education may implement special services in collaboration with special education personnel.

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2. Special education services include those services provided directly to the student and those provided indirectly.

D. Teacher caseloads shall be assigned in accordance with the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*.

1. If children with disabilities in a single building receive academic content area instruction from multiple special education teachers, the teachers' caseloads shall be determined by using a building average.

2. When special education personnel are assigned to provide services for students who do not have a disability under this chapter or are assigned to administrative duties, there shall be a reduction in the caseload specified in proportion to the percentage of school time on such assignment.

3. Special education personnel may be assigned to serve children who are not eligible for special education and related services as long as they hold appropriate licenses and endorsements for such assignments.

E. Staffing for early childhood special education shall be in accordance with the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*.

1. Children of preschool ages (two to five, inclusive) who are eligible for special education may receive early childhood special education.

2. Students receiving early childhood special education may receive services together with other preschool-aged children with the same or with different disabilities.

F. A school may offer for consideration of approval an alternative staffing plan in accordance with the Department's procedures. The Department may grant approval for alternative

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staffing levels upon request from private schools for students with disabilities seeking to implement innovative programs that are not consistent with the staffing levels outlined in the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia.*

8 VAC 20-671-320. Substitute teachers.

- A. No substitute teacher shall be used to fill a vacant teaching position for more than 90 teaching days in such vacancy during one school year.
- B. Substitute teachers shall be at least 18 years of age; hold a high school diploma or a general educational diploma (GED); have two years of full-time postsecondary education or two years of successful work experience with children with disabilities or equivalent; and attend orientation to the school's policies and procedures.

8 VAC 20-671-330. Support staff.

- A. School support personnel, including contractual service providers, shall meet the Board of Education's *Licensure Regulations for School Personnel* (VAC 20-22-10 et. seq.) or the requirements of other state or national accrediting agency.
- B. Paraprofessionals and other ancillary staff shall be at least 18 years of age (21 years of age preferred); hold a high school diploma or a general educational diploma (GED); have two years of full-time successful work experience with children or completed two years of coursework in a related field; complete orientation conducted by the school administrator or designee regarding school policies and procedures and characteristics of students served; and work under the supervision of qualified staff.
- C. No support staff shall be used as replacement for teachers or related service staff

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unless they meet the qualifications of the position.

D. Support staff that do not meet licensure or certification requirements shall not be given misleading work titles or titles that infer that they meet required credentials.

8 VAC 20-671-340. Staff supervision.

The licensee shall develop and implement written policies and procedures regarding the supervision of employees and all other individuals working with children, including volunteers and interns.

8 VAC 20-671-350. Staff development.

A. Within seven calendar days following their begin date, each staff member responsible for working with students shall receive orientation of the school's philosophy, goals and objectives, duties and responsibilities of their position, and the school's policy and procedures for behavior intervention.

B. Within 14 calendar days following their begin date, staff shall receive emergency preparedness and response training that shall include: alerting emergency personnel and sounding alarms; implementing evacuation procedures with particular attention to students with special needs; using, maintaining and operating emergency equipment; accessing emergency information for students including medical information; and utilizing community support services.

C. Within 14 calendar days following their begin date, staff shall receive professional development on confidentiality; the school's administrative decision-making plan; and policies and procedures that are applicable to their positions, duties, and responsibilities.

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D. Within 30 calendar days following their begin date, all staff shall receive training on the school's policy and procedures, including standard precautions, child abuse and neglect, and mandatory reporting.

E. Within 30 calendar days following their begin date, all staff responsible for medication administration shall have successfully completed an approved medication-training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medications. Staff shall meet this requirement before administering any medication to students and shall receive annual retraining.

F. All staff shall receive annual professional development and refresher in emergency preparedness and response to include alerting emergency personnel and sounding alarms; implementing evacuation procedures with particular attention to students with special needs; and using, maintaining, and operating emergency equipment.

G. All staff shall receive annual professional development and refresher on behavior supports; child abuse and neglect, and mandatory reporting.

H. Each full-time staff person shall complete an additional 15 hours of annual training applicable to their job duties.

8 VAC 20-671-360. Personnel records.

A. Separate up-to-date personnel records shall be maintained for each full- and part-time employee, student intern, and volunteer for whom background investigations are required by Virginia statute. Content of personnel records of volunteers, student interns, and contractual service providers shall include at minimum documentation of compliance with requirements

of Virginia laws regarding child protective services and criminal history background investigations.

B. A record shall be maintained for each staff to include:

1. A completed employment application or other documentation providing the individual's name, address, and telephone number;
2. Documentation of qualifications;
3. Employment history;
4. Written references or notations of oral references;
5. Reports of required health examinations;
6. Annual performance evaluations;
7. Date of employment for each position held and date of separation;
8. Documentation of compliance with requirements of Virginia laws regarding child protective services and criminal history background investigations;
9. Documentation of Department of Motor Vehicles checks and a current copy of the driver's license for all staff who transport students;
10. Documentation of all training required by these regulations and any other training or professional development received by individual staff; and
11. A current job description.

C. All personnel records shall be maintained confidentially and retained in their entirety for a minimum of three years after staff's separation from the school.

PART VII**SCHOOL FACILITIES AND SAFETY****8 VAC 20-671-370. School facilities and safety.**

A. Each school shall be maintained in a manner ensuring compliance with the *Virginia Uniform*

Statewide Building Code (13 VAC 5-61-10 et seq.) Each school shall:

1. Maintain a physical plant that is accessible, barrier free, safe, and clean;
2. Provide 50 net square feet per occupant space for classrooms and suitable space for administrative staff, pupil personnel services, library and media services, and physical education with consideration given to safety;
3. Provide adequate, safe, and properly-equipped classrooms, laboratories, play and dining areas that meet the needs of students and instruction; and
4. Provide space for safe storage of items such as first-aid equipment, medication, household supplies, school supplies, and equipment.

B. After the initial application, the school shall document annually that buildings and equipment are maintained in accordance with the *Virginia Statewide Fire Prevention Code* and maintain records of regular safety, health, and fire inspections conducted and certified by local health and fire departments.

C. Building plans and specifications for new construction, change in use of existing buildings, and any structural modifications or additions to existing buildings shall be submitted in advance to the licensing agency for approval.

D. Animals allowed on the premises shall be tested, inoculated, and licensed as required by law.

E. Smoking shall be prohibited at all times and in all school buildings, school grounds, and

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during off campus school-sponsored activities.

F. Swimming pools shall be inspected annually by the state or local health authorities or by a swimming pool business.

G. There shall be a written policy concerning safeguards for aquatic-related activities to include supervision by a certified lifeguard.

H. There shall be a written policy regarding safeguards for school sponsored activities including adventure and wilderness activities.

I. There shall be an electronic two-way communication system available to staff at all times in the classroom and during school-sponsored activities.

8 VAC 20-671-380. Contingency plans.

A. A school shall have contingency plans for emergencies that include staff certification in cardiopulmonary resuscitation (CPR), abdominal thrust (Heimlich maneuver), and emergency first aid.

B. The school administration shall ensure that the school has:

1. Written procedures to follow in emergencies such as fire, injury, illness, and violent or threatening behavior. Contingency plans should be developed with the assistance of state or local public safety authorities. Such plans shall be outlined in the student handbook and discussed with staff and students during the first week of each school year.
2. Space for the proper care of students who become ill; and
3. A written procedure for responding to violent, disruptive, or illegal activities by students on school property or during a school-sponsored activity.

C. Each school shall have at least three tornado drills every school year in order that students may be practiced in such drills.

D. The school shall have a written emergency preparedness and response plan for all locations that addresses:

1. Documentation of contact with the local emergency coordinator to determine (i) local disaster risks (ii) communitywide plans to address different disasters and emergency situations, and (iii) assistance, if any, that the local emergency management office will provide to the school in an emergency.
2. Analysis of the school's capabilities and potential hazards, including natural disasters, severe weather, fire, flooding, workplace violence or terrorism, missing persons, riot, severe injuries, or other emergencies that would disrupt the normal course of service delivery.
3. Written emergency management policies outlining specific responsibilities for provision of administrative direction and management of response activities; coordination of logistics during the emergency; communications; life safety of students, employees, contractors, student interns, volunteers, and visitors; property protection; community outreach; recovery and restoration.
4. Written emergency response procedures for assessing the situation; protecting students, employees, contractors, student interns, volunteers, and visitors; equipment and education records; and restoring services.
5. Emergency procedures shall address:

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- a. Communicating with employees, contractors, and community responders;
 - b. Warning and notification of students;
 - c. Providing emergency access to secure areas and opening locked doors;
 - d. Conducting evacuations to emergency shelters or alternative sites and accounting for all students;
 - e. Relocating students and staff, if necessary;
 - f. Notifying family members and legal guardians;
 - g. Alerting emergency personnel and sounding alarms; and
 - h. Locating and shutting off utilities when necessary.
6. Supporting documents that would be needed in an emergency, including emergency call lists, building and site maps necessary to shut off utilities, designated escape routes, and list of major resources such as local emergency shelters;
7. Schedule for testing the implementation of the plan and conducting emergency preparedness drills; and
8. Children who use wheelchairs, crutches, canes, or other mechanical devices for assistance in walking shall be provided with a planned, personalized means of effective egress for use in emergencies.
- E. The school shall have emergency preparedness and response training for all employees, contractors, student interns, and volunteers that shall include responsibilities for:
1. Alerting emergency personnel and sounding alarms;
 2. Implementing evacuation procedures including evacuation of students with special needs

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(i.e., deaf, blind, non-ambulatory);

3. Using, maintaining, and operating emergency equipment;

4. Accessing emergency information for students including medical information; and

5. Utilizing community support services.

F. There shall be documented review of the emergency preparedness plan annually and revisions made if necessary.

G. Employees, contractors, student interns, and volunteers shall be prepared to implement the emergency preparedness plan in the event of an emergency.

H. Floor plans showing primary and secondary means of egress shall be posted on each floor in locations where they can easily be seen by staff and students.

I. The procedures and responsibilities reflected in the emergency procedures shall be communicated to all students within seven days following admission or a substantive change in the procedures.

J. At least one evacuation drill (the simulation of the school's emergency procedures) shall be conducted each week during the first month of school and one each month thereafter in each building occupied by students.

K. Evacuation drills shall include, at a minimum:

1. Sounding of emergency alarms;

2. Practice in evacuating buildings and buses or vans;

3. Practice in alerting emergency authorities;

4. Simulated use of emergency equipment; and

5. Practice in securing student emergency information.L. A record shall be maintained for each evacuation drill and shall include the following:

1. Buildings and buses or vans in which the drill was conducted;
2. Date and time of drill;
3. Amount of time to evacuate the buildings;
4. Specific problems encountered;
5. Staff tasks completed including head count and practice in notifying emergency authorities; and
6. The name of the staff members responsible for conducting and documenting the drill and preparing the record.

M. The record for each evacuation drill shall be retained for three years after the drill.N. At least one staff member shall be assigned the responsibility for ensuring that all requirements regarding the emergency preparedness and response plan and the evacuation drill program are met.O. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety, and welfare of students, the school shall notify the parent(s), the student's public school, placing agency, and licensing agency as soon as possible, but no later than 24 hours after the incident occurs.**8 VAC 20-671-390. Weapons.**

The licensee shall develop written policies and procedures governing prohibition of the possession and use of firearms, pellet guns, air guns, and other weapons on the school's premises

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and during school-related activities unless the weapons are in the possession of licensed security personnel or law enforcement officers.

8 VAC 20-671-400. Strip searches.

A. Strip searches and body cavity searches are prohibited.

B. A school that does not conduct pat downs shall have a written policy prohibiting them.

C. A school that conducts pat downs shall develop and implement written policies and procedures that shall provide the following:

1. Pat downs shall be limited to instances where they are necessary to prohibit contraband;

2. Pat downs shall be conducted by personnel of the same gender as the student being searched;

3. Pat downs shall be conducted only by personnel who are specifically authorized to conduct searches by the school's written policies and procedures; and

4. Pat downs shall be conducted in such a way as to protect the subject's dignity and in the presence of one or more witnesses.

PART VIII.**SCHOOL INSTRUCTIONAL PROGRAM****8 VAC 20-261-410. Student application and admission.**

A. The school's written admission policy shall include:

1. A description of the population to be served;
2. A description of the types of services offered;
3. Admission procedures;
4. Exclusion criteria that identify behaviors or conditions the school will not accept; and
5. A description of how educational services will be delivered.

B. A summary of each school's admissions policy, course offerings at each grade level, and behavioral management program shall be made available to students, parents, and placing and licensing agencies.

C. Each school's admissions process shall be designed to determine the suitability of enrolling a student. The school shall accept and serve only those students whose needs are compatible with the services provided by the school.

D. The school shall provide written notification for a student's education records in five business days of the student's enrollment. Notification shall be made to the superintendent of the school division where the student last attended. The school shall request current information pertinent to the student's educational growth to include, but not limited to the IEP, 504 Plan, or career development plan; plan of study; assessments; grades or transcript; discipline records; and health records.

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- E. An application for admission is not to be construed as a binding instrument on the part of the student or the school.
- F. A school may require the payment of a reasonable nonrefundable initial application fee to cover expenses in connection with processing a student's application provided it retains a signed statement in which the parties acknowledge their understanding that the fee is nonrefundable. No other nonrefundable fees shall be allowed prior to enrollment.
- G. Any contract or enrollment agreement used by the school shall be in writing and clearly specify the following:
1. Complete name and physical address of the school;
 2. Itemized cost of the program to include tuition, scholarships, and all other charges; and
 3. The school's contingency, cancellation, and refund policies.
- H. Any contract or enrollment agreement used by the school becomes a legally binding instrument upon the school's written acceptance.
- I. Each school that serves privately placed students shall offer access to a tuition insurance plan if the school financially obligates students for more than quarterly increments of annual tuition.

8 VAC 20-671-420. Standard school year and school day.

- A. Each school shall have a standard school year of at least 180 instructional days. The standard school day for students in grades one through 12 shall average at least 5-1/2 instructional hours (990 hours annual instructional time), excluding breaks for meals and recess, and a minimum of three hours for kindergarten.

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B. All students in grades one through 12 shall maintain a full day schedule of classes (5-1/2 hours), unless otherwise stated in the child's Individualized Education Program (IEP), Individualized Instruction Plan (IIP), 504 Plan, or other documentation.

C. Each school shall have policies and procedures that address make-up days when the school is unable to meet the required instructional time.

8 VAC 20-671-430. School and community communications.

A. Each school shall promote communications and foster mutual understanding with parents and the community and use information from parents, citizens, and business and industry in evaluating the educational program.

B. At the beginning of each school year, the school shall provide to parents or guardians information on the availability of and source for receiving the curriculum for their child's core subjects and a copy of the school's promotion and retention policies and access to the school's policies and procedures.

8 VAC 20-671-440. Philosophy, goals, and objectives.

A. Each school shall have a current philosophy, goals, and objectives that serve as the basis for all policies and practices and shall be developed using the following criteria:

1. The philosophy, goals, and objectives shall be developed with the advice of professional and lay people who represent the various populations served by the school and in consideration of the needs of the community and shall serve as a basis for an annual self-evaluation of the school.
2. The goals and objectives shall be (i) written in plain language so as to be understandable to noneducators, including parents, (ii) to the extent possible, be stated in measurable

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terms; and (iii) consist primarily of measurable objectives to raise student and school achievement in the core academic areas, to increase graduation rates, and to increase the quality of instruction through professional staff development and licensure.

B. Copies of the school's philosophy, goals, and objectives shall be available upon request.

8 VAC 20-671-450. Student achievement expectations.

A. A process to identify and recommend strategies to address the learning, behavior,

communication, or development of individual students who are having difficulty in the educational setting shall be developed at each school.

B. Participation in the Virginia assessment program by students with disabilities shall be prescribed by provisions of their IEPs or 504 Plans. All students with disabilities shall be assessed with appropriate accommodations and alternate assessments when required.

C. Each school that serves students who anticipate earning a diploma and graduating from a Virginia high school must follow the requirements for graduation outlined in the *Regulations Establishing Standards for Accrediting Public Schools in Virginia* (8 VAC 20-131).

D. The school shall cooperate with the public school in the administration of SOL tests to students with disabilities, students who need verified credits to graduate from a public high school in Virginia, and the administration of any other SOL tests.

E. The school shall use testing and evaluation materials that are not racially or culturally discriminatory and do take into consideration the student's disabling condition(s), racial and cultural background.

8 VAC 20-671-460. Program of instruction and learning objectives.

- A. Each school's instructional program shall reflect the written philosophy of the school. The methods, procedures, and practices shall reflect an understanding of and meet the applicable academic, vocational, therapeutic, recreational, and socialization needs of the students served.
- B. The instructional program shall be designed to meet the needs of all students enrolled and shall educate students with age-appropriate peers.
- C. Services shall be delivered in accordance with the student's IEP, IIP, or 504 Plan.
- D. Each school serving students age 14 and older shall provide opportunities for students to gain knowledge and occupational readiness skills necessary for successful transition to training, employment, and independent living, as appropriate.
- E. Each school shall provide opportunities for students to gain knowledge and occupational readiness skills necessary for successful transition to post-secondary training, education, employment and independent living skills, as appropriate.
- F. Each school shall provide a program of instruction that supports the SOL for the core subjects: English, mathematics, science, and history/social science.
- G. Each school shall require students to participate in a program of health and physical fitness during the regular school year unless the student is unable to participate due to a medical condition.
- H. Each school shall provide students with opportunities to gain appreciation for art and music.

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- I. Each school shall provide an instructional program that promotes the individual student's developmental growth and academic achievement at successive grade levels, as appropriate.
- J. The services provided by a private school shall be provided by personnel meeting the same licensure requirements as personnel providing services in the public school, outlined in *Licensure Regulations for School Personnel* (8 VAC 20-22).
- K. The school shall equitably serve the needs and interests of all students, taking into consideration age appropriateness, cultural norms, physical, and cognitive abilities.

8 VAC 20-671-470. Individualized Education Program (IEP).

- A. When a child is presently receiving the services of a private school, a representative of the private school shall attend IEP meetings upon the request of the student's school division. If a representative is not able to attend, the school shall use other methods to ensure participation by the private school including individual or conference telephone calls.
- B. After a child with a disability enters a private school, any meetings to review and revise the child's IEP may be initiated and conducted by the private school at the discretion of the student's school division.
- C. If the private school initiates and conducts these meetings, the student's school division and the parent or parents shall:
1. Be involved in any decision affecting the child's IEP;
 2. Agree to any proposed changes in the program before those changes are implemented; and
 3. Be involved in any meetings that are held regarding reevaluation.

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D. A parent(s) does not include local or state agencies or their agents, including local

departments of social services, if the child is in the custody of such an agency.

E. When a child with a disability is placed by a local school division or a Comprehensive

Services Act team in a private school, all rights and protections under state and federal regulations shall be extended to the child.

8 VAC 20-671-480. Individualized Instruction Program (IIP).

A. Students without disabilities and those placed by parents for educational reasons shall have

an Individualized Instruction Program (IIP) developed within 30 days of admission that describes: strengths and needs of the student, current level of functioning, goals and objectives, timelines, course of study, and post-secondary goals for age 14 and older students.

B. Each school shall request with consent of the parent(s) the student's education records from

the last school attended, and information from other agencies as appropriate. This information should be used in developing the student's IIP.

C. The IIP shall provide a beginning and ending date of services.

D. The IIP shall be reviewed at least annually by a team that includes the student and the parent.

E. Student progress reports shall be provided to the parent or guardian at least quarterly.

8 VAC 20-671-490. 504 Plans.

Each school admitting students with 504 Plans shall implement the plan and cooperate with the school division in its annual review.

8 VAC 20-671-500. Instructional program for elementary school grades.

- A. The elementary school grades shall provide each student a program of instruction that supports the SOL for English, mathematics, science, and history/social science. In addition, each school shall provide opportunities for students to gain an appreciation for art and music. Students shall be required to participate in a program of health and physical fitness during the regular school year.
- B. In kindergarten through grade three, reading, writing, spelling, and mathematics shall be the focus of the instructional program.
- C. To provide students with sufficient opportunity to learn, a minimum of 75 percent of the annual instructional time of 990 hours shall be given to instruction in the disciplines of English, mathematics, science, and history/social science. Students who are not successfully progressing in early reading proficiency, or who are unable to read with comprehension the materials used for instruction, shall receive additional instructional time in reading.

8 VAC 20-671-510. Instructional program for middle school grades.

- A. The middle school grades shall provide each student a program of instruction that supports the SOL for English, mathematics, science, and history/social science. Each school shall provide opportunities for appreciation of art and music and an introduction to career and technical exploration and require students to participate in a program of health and physical fitness during the regular school year.
- B. English, mathematics, science, and history/social science shall be required.

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C. To provide students a sufficient opportunity to learn, each student shall be provided 140 clock hours per year of instruction in each of the four disciplines of English, mathematics, science, and history/social science.

D. Each school shall ensure that students who are unable to read with comprehension the materials used for instruction receive additional instruction in reading.

VAC 20-671-520. Instructional program for secondary school grades.

A. The secondary school grades shall provide each student a program of instruction that supports the SOL in English, mathematics, science, and history/social science.

B. To provide students a sufficient opportunity to learn, each student shall be provided 140 clock hours per year of instruction in each of the four disciplines.

C. Students in secondary education programs who plan to graduate with a standard or advanced diploma from a Virginia public high school should have the opportunity to complete credits in foreign languages, fine arts, and career and technical training.

D. Classroom driver education may count for 36 class periods of health education. Students shall not be removed from classes other than health and physical education for the in-car phase of driver education.

E. Each school shall ensure that students who are unable to read with comprehension the materials used for instruction receive additional instruction in reading,

F. Guidance and counseling shall be provided for students to ensure that a program of studies contributing to the student's academic achievement and meeting graduation requirements is being followed.

8 VAC 20-671, Regulations Governing the Operation of Private Schools for Students with Disabilities (Proposed)**8 VAC 20-671-530. Alternative education.**

Schools may provide students, ages 16 to 18, an *Individualized Student Alternative Education Plan* (ISAEP), a program that includes career guidance counseling; mandatory enrollment in a GED preparation program; and career and technical education. Implementation of the ISAEP requires submission of an application and approval by the Department of Education.

8 VAC 20-671-540. Transition services.

- A. Schools shall cooperate with the public schools to ensure that the transition plan for each student with a disability, beginning at age 14, (or younger), is implemented according to the child's IEP.
- B. Schools shall provide evidence of transition services designed within an outcome-oriented process for all students, as appropriate, that promotes movement from the private school to a public school the child would normally attend; movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

8 VAC 20-671-550. Extracurricular and other school activities, and recess.

- A. School-sponsored extracurricular activities shall be under direct supervision of the staff and shall contribute to the educational objectives of the school. Extracurricular activities must be organized to avoid interrupting the instructional program.
- B. School-sponsored extracurricular activities shall have at least one person certified in CPR for every 10 students.
- C. Schools that take students on adventure activities shall develop policies and procedures to

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ensure supervision, health and safety, and medical management.

8 VAC 20-671-560. Family life.

A. Schools may use the Standards of Learning for the Family Life Education program or other education program, which shall have the goals of reducing the incidence of pregnancy and sexually-transmitted diseases and substance abuse.

B. Schools offering family life shall obtain written consent from the parent or guardian for the child's enrollment in the course.

8 VAC 20-671-570. Student work-study or on-the-job training.

A. Each school that places students on work-study, on-the-job training, or any other form of employment shall ensure compliance with the applicable laws governing the employment of children.

B. Work assignments that are paid or unpaid shall be in accordance with the age, health, ability, and education program of the student.

C. Work assignments or employment outside the school, including reasonable rates of pay, shall be approved by the school administrator with the knowledge and consent of the parent or legal guardian.

8 VAC-20-671-580. Virtual learning.

A. Schools are encouraged to pursue alternative means to deliver instruction to accommodate student needs through virtual learning. A school shall ensure that each virtual education course is provided by an institution accredited by a nationally recognized accrediting body or is authorized by a public school or school division.

B. A school shall ensure that virtual learning courses meet the following requirements:

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1. The content, instruction, and assessment of each course is comparable in rigor and breadth to the course that is traditionally delivered;
2. The course content is appropriate for the school's grade levels and age range; and
3. The virtual learning shall be supervised by a licensed teacher or a person eligible to hold a Virginia teaching license. The individual shall be available to the student.

8 VAC 20-671-590. Equipment, instructional materials, and library media.

- A. Each school shall provide a variety of current grade-level materials and equipment to support the instructional program, including functional life skills programs.
- B. Each school shall provide access to computers and library media necessary to meet research inquiry and reading requirements of the instructional program and general student interest.
- C. Each student, as appropriate, shall be provided instruction on the use of instructional equipment and shall demonstrate understanding before access to laboratories.
- D. Each school shall provide textbooks and instructional materials that support Virginia's Standards of Learning.
- E. Each school shall establish written policy on the use of computers, including the use of the Internet and e-mail.

8 VAC 20-671-600. School records.

Each school shall maintain up-to-date records to include the school's academic calendar, class roster, class schedule, course descriptions, course curriculum, individual student schedules, student progress reports, and student transcript or other documentation of grades.

8 VAC 20-671-610. Diplomas.

- A. No school shall use the Seal of Virginia in its diploma design.

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B. Each school that offers a diploma upon graduation shall have written policy and procedures

that address the following:

1. The requirements for a diploma shall be those in effect when the student enters the ninth grade for the first time.
2. The requirements for a diploma shall be based upon completion of program requirements that demonstrate academic rigor.

8 VAC 20-671-620. Student conduct.

A. Each school shall have written policies and procedures that address standards of student conduct and procedures for enforcement to include attendance, truancy, suspension, expulsion, alcohol, drugs, weapons, fighting, bullying, sexual and disability harassment, pornography, and other areas as appropriate.

B. When a student is suspended, including in-school suspension, or expelled, the school shall notify the student's home school division within 24 hours.

8 VAC 20-671-630. Behavior intervention.

A. Each school shall develop and implement written policies and procedures that emphasize positive behavior interventions that focus on teaching and supporting students to practice methods to manage their own behavior.

B. Behavior techniques that are used or available for use shall be listed in the order of their relative degree of restrictiveness and specify the staff members who may authorize the use of each technique.

C. Staff shall consider behavior management data in their annual review of the school's policies and procedures.

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D. When substantive revisions are made to policies and procedures governing management of student behavior, written information concerning the revisions shall be provided to students, parents, placing agencies, and the licensing agency prior to implementation.

8 VAC 20-671-640. Time-out.

A. The school shall have written policy and procedures governing the conditions under which a student may use time-out and the maximum period of time-out not to exceed 30 minutes per episode. The conditions and maximum period of time-out shall be based on the student's chronological and developmental level. The school's policy and procedures shall include provisions that address the following:

1. Each student is entitled to be completely free from any unnecessary use of time-out.
2. The areas in which a student is placed shall not be locked nor the door secured in a manner that prevents the student from opening it.
3. A student in time-out shall be able to communicate with staff.
4. Staff shall check on the student in the time-out area at least every 15 minutes and more often depending on the nature of the student's disability, condition, and behavior.
5. Procedures shall be implemented for documenting the use of time-out and staff checks on the student.
6. Staff shall review procedures when a student consistently chooses to stay in time-out beyond the determined time limit to determine that it has not become reinforcement.

8 VAC 20-671-650. Prohibitions.

A. The following actions are prohibited:

1. Restraint and seclusion, except when it is necessary to protect the student or others from

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personal harm, injury, or death and other less restrictive interventions were unsuccessful;

2. Prone “face down” restraints, mechanical restraints, and pharmacological restraints;

3. Deprivation of drinking water or food;

4. Limitation on contacts and visits with the student’s probation officer, regulators, or placing agency representative;

5. Any action that is humiliating, degrading, or abusive;

6. Corporal punishment;

7. Deprivation of approved prescription medication or other necessary services and treatment;

8. Denial of access to toilet facilities;

9. Application of aversive stimuli;

10. Strip and body cavity searches; and

11. Discipline, restraint, or implementation of behavior management plans by other students.

8 VAC 20-671-660. Managing student behavior in emergency situations.

A. Application of a formal behavior management program designed to reduce or eliminate severely maladaptive, violent, or self-injurious behavior contingent upon the exhibition of such behaviors is allowed only as part of an individually approved time specific plan that is consistent with sound therapeutic practice. Written consent of the student, parent or guardian, and the student’s school division is required.

B. Each school shall have written policies and procedures that include, but are not limited to:

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1. Methods for preventing student violence, self-injurious behavior, and suicide, including de-escalation of potentially dangerous behavior occurring among groups of students or with an individual student.

2. A policy stating that corporal punishment and abusive techniques and interventions are not authorized, permitted, or condoned.

C. Each school shall develop and implement behavior management techniques in order of their relative degree of intrusiveness or restrictiveness and the conditions under which they may be used by trained school personnel.

D. While the use of restraint and seclusion are prohibited, a school that finds it absolutely necessary can only do so under the following conditions:

1. Physical restraint or seclusion are allowed only in an emergency situation for a time period that is necessary to contain the behavior of the student so that the student no longer presents an immediate threat of causing physical injury to self or others or causing severe property damage.

2. Physical restraint or seclusion shall not be used as a punishment, retaliation, or for staff's convenience.

3. The school shall have written policies and procedures governing use of physical restraint and seclusion incidents that shall include the following:

(a) Each student is entitled to be completely free from any unnecessary use of physical restraint or seclusion. Physical restraint and seclusion are allowed only in an emergency situation for a time period that is necessary to contain the behavior of the

- student so that the student no longer presents an immediate threat of causing physical injury to self or others or causing severe property damage.
- (b) The school shall provide written notice of its behavior management program to students, parent(s) and placing agency at the time of the student's enrollment.
- (c) Staff shall monitor the use of restraint and seclusion through continuous face-to-face observation, not solely by an electronic surveillance device.
- (d) Restraints may only be implemented, monitored, and discontinued by staff who have been trained in the proper and safe use of restraint, including hands-on techniques.
- (e) Students must be supervised by staff members trained in behavior intervention.
- (f) Schools shall inform the parent and placing agency of each incident of physical restraint or seclusion on the day of the occurrence and make available to the licensing agency upon request.
- (g) Each application of physical restraint or seclusion shall be fully documented in the student's record including: date, time, staff involved, justification for the restraint or seclusion, less restrictive interventions that were unsuccessfully attempted prior to using physical restraint or seclusion, duration, description of method or methods of physical restraint techniques used, signature of the person completing the report and date; and reviewer's signature and date.

8 VAC 20-671, Regulations Governing the Operation of Private Schools for Students with Disabilities (Proposed)**8 VAC 20-671-670. Videotaping.**

- A. Schools shall have written policy and procedures regarding videotaping students while in school and any school-sponsored activity, including those used for staff training.
- B. No student shall be videotaped without written consent of the parent and eligible student.
- C. Any videotaping of students shall be maintained confidentially unless there is explicit written permission to release or disclose from the parent(s) and eligible student.
- D. Buildings and grounds surveillance is not considered videotaping for the purpose of these regulations.

8 VAC 20-671-680. Referral for evaluation.

- A. When a student, including those placed by their parent(s) or from out-of-state, is suspected of having a disability, the school shall make a referral to the division superintendent of the school division where the private school is located. Documentation of the referral notice shall be maintained in the student's record.
- B. The school shall cooperate with the school division on child find activities.

8 VAC 20-671-690. Suspected child abuse and neglect.

- A. Written policies and procedures related to child abuse and neglect shall comply with the requirements of § 63.2-1509 of the *Code of Virginia* and distributed to all staff members. Policies and procedures shall include:
 - 1. Handling accusations against staff; and
 - 2. Promptly referring suspected cases of child abuse and neglect to the local child protective services unit and for cooperating with the unit during any investigation.

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B. Any case of suspected child abuse or neglect occurring at the school, on a school-sponsored event or excursion shall be reported immediately to the student's parent, guardian, or both if appropriate, the placing and licensing agencies.

C. When a case of suspected child abuse or neglect is reported to child protective services, the school shall document the following:

1. The date and time the suspected abuse or neglect occurred;
2. A description of the suspected abuse or neglect;
3. Action taken as a result of the suspected abuse or neglect;
4. The name of the person who made the report to child protective services; and
5. The name of the person to whom the report was made at the local child protective services unit.

D. Suspected child abuse shall be handled and reported as a serious incident.

8 VAC 20-671-700. Serious incident reports.

A. Any serious incident, accident or injury to a student or medication error that occurs at the school or school-sponsored activity shall be reported immediately, no later than the end of the school day, to the parent, the student's public school, placing agency, and licensing agency.

B. The school shall document the following:

1. The date and time the incident occurred;
2. A brief description of the incident;
3. The action taken as a result of the incident;
4. The name of the person who completed the incident report; and

5. The date and name of the person who made the report to the proper authorities.

C. The licensing agency shall review all reports of serious incidents and investigate as appropriate using the complaint resolution procedures of this chapter.

Part IX.

STUDENT SERVICES

8 VAC 20-671-710. Medication and health.

A. Each student shall have on file evidence of a comprehensive physical examination prescribed by the State Health Commissioner from a qualified licensed physician or a licensed nurse practitioner or licensed physician assistant acting under the supervision of a licensed physician. The examination must contain, at a minimum, information required on the *Commonwealth of Virginia School Entrance Health Form.*

B. Each student shall have an up-to-date certificate of immunization documenting the immunizations required by the *Code of Virginia* and State Board of Health's *Regulations for Immunization of School Children.*

C. Any student or staff with a disease or medical condition that is contagious or infectious shall be excluded from school while in that condition unless attendance is approved by a qualified healthcare provider. Conditions meeting this requirement must be provided in the parent/student handbook or other print materials.

D. A first-aid kit shall be maintained and readily accessible for minor injuries and medical emergencies in each building used for instruction or other school activity.

- E. All medications shall be accepted only in the original container with written permission signed and dated by the parent to administer to his child. The use of all prescriptive medication must be authorized in writing by a licensed prescriber.
- F. All medication and medical paraphernalia shall be securely locked and properly labeled.
- G. A program of medication administration shall be initiated for a student only when prescribed in writing by a person authorized by law to prescribe medication and written consent from the parent is obtained to administer.
- H. An individual medication administration record shall be maintained for each medication a student receives and shall include: student name, date the medication is to begin, drug name, schedule for administration, strength, route, identification of the individual who administered the medication; and dates the medication was discontinued or changed.
- I. The provider shall develop and implement written policies and procedures regarding:
1. Managing medication error(s) to include the following: administering first aid; contacting the poison control center; notifying the prescribing physician; taking action as directed; documenting the incident; reviewing medication errors and staff responses; and reporting errors to the parent and placing agency.
 2. Handling adverse drug reactions;
 3. Revising procedures as events may warrant;
 4. Disposing of medication and medical supplies such as needles, syringes, lancets, etc.;
 5. Storing of controlled substances;
 6. Distributing medication off campus; and

7. Medication refusal to include who is responsible for documentation, where it will be documented and action taken by staff.

J. The telephone number of a regional poison control center and other emergency numbers shall be posted on or near the phone.

K. Medication training

1. All staff responsible for medication administration shall have successfully completed a medication training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia before they can administer medication.

2. Training shall be provided to all staff in medication procedures and effects and infection control measures, including the use of standard precautions.

3. There shall be a ratio of one staff member to 10 students certified in first-aid and CPR and available at all times on the school grounds and during any school-sponsored activity.

4. Documentation of medication training must be maintained in personnel files.

5. Staff authorized to administer medication shall be informed of any known side effects of the medication and the symptoms of the effects.

L. Monitoring the supply of medications.

1. Upon receiving any medication, staff members handling medication shall count individual tablets and measure the level of liquid medicine in the presence of the parent or parents or another staff member and record the count on the medication log.

2. The medication log shall include the signature or initials of the staff member who counted the medication and the parent or staff that witnessed the occurrence. When initials are

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used, the medication administration record must contain the full name of the staff with corresponding initials for identification purposes.

3. Students shall be prohibited from transporting medication.

8 VAC 20-671-720. School nutrition.

A. Schools with internal food service shall serve on a daily basis, each student a daily diet that (i) consists of nutritionally balanced meals, (ii) includes an adequate variety and quantity of food for the age of students, and (iii) meets the minimum requirements and the *U.S. Dietary Guidelines*.

B. Schools with internal food service shall ensure that all food safety and sanitation procedures are followed in accordance with state and federal regulations.

C. Records of menus for all meals served shall be kept on file for six months.

D. Special diets shall be provided when prescribed by a physician or is requested by the student or parent because of the student's established religion.

E. In schools where students are required to bring their own lunch, provisions shall be made to ensure a meal for all students.

8 VAC 20-671-730. Transportation.

A. Each school shall have on file evidence that any vehicles used for the purpose of transporting students to and from school and school-related activities meet federal and state regulations,

including:

1. Vehicle safety and maintenance;

2. Licensure of vehicles;

3. Licensure of drivers;

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4. Vehicle liability insurance;

5. Child passenger safety, including requiring students to wear seat belts or restraints; and

6. Safety measures that take into consideration the age and disabling conditions of students.

B. All vehicles used to transport students to school activities shall be equipped with first-aid kits, fire extinguisher, and two-way communication devices.

C. Individual student emergency information including currently prescribed and over-the-counter medications, significant medical problems, and any allergies shall accompany students when they are being transported.

8 VAC 20-671-740. Treatment services.

Licensed providers of treatment services shall coordinate those services to allow students to receive the required hours of instruction to the extent possible. When treatment services are not prescribed by a licensed mental health professional, the student shall receive the required number of hours of instruction.

8 VAC 20-671-750. Student discharge.

A. Each school shall have a policy and procedures that address conditions for which a student may be discharged from the school.

B. The school's criteria for discharge shall be made available to prospective students, parents, and placing agencies before their enrollment.

C. The student's education record shall be documented with the date of discharge and reason for discharge.

D. Students shall be discharged only to the parent or legally-authorized representative.

8 VAC 20-671-760. Maintenance of student records.

- A. The school shall have written policy and procedures for the management of all records, print and nonprint, regarding confidentiality, accessibility, security, and retention.
- B. Student education records shall be maintained in fire-proof cabinets and protected from unauthorized disclosure.
- C. Each student's education record shall contain information pertinent to the educational growth and development to include a completed enrollment sheet, a current IEP, 504 Plan, or IIP; student transcript; course of studies; and progress reports. Other information should include disciplinary records, health records, and achievement and test data.
- D. A school shall obtain written consent from the child's parent before disclosure of information from a student's education record to unauthorized parties. Authorized parties shall be limited to school employees, including contracted employees, representatives of state licensing agencies who need access to the student's records to carry out their work responsibilities.
- E. A school may disclose information in an emergency to any person who needs that particular information for the purpose of preventing injury to a student or staff. The school shall not disclose any information that is not needed for this specific purpose. The school may disclose any records if they are properly subpoenaed, if a court orders them to be produced, to the school's own legal counsel, or to anyone working on behalf of their legal counsel in providing representation to the school.
- F. The school shall permit a parent or parents to inspect and review any education records relating to their child that are collected, maintained, or used by the school. The school shall comply with a request without unnecessary delay and before any meeting regarding an IEP or

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504 Plan or in no case more than 14 calendar days after the request has been made. The right to inspect and review education records under this section includes:

1. The right to a response from the school to reasonable requests for explanations and interpretations of the records;
2. The right to request that the school provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records;
3. The right to have a representative of the parent inspect and review the records; and
4. A school may presume that a parent has authority to inspect and review records relating to his child unless the school has been advised that the parent does not have the authority under applicable Virginia law governing such matters as guardianship, separation, and divorce.

G. Each school shall keep a record of parties, except parents and authorized employees of the school, obtaining access to education records collected or maintained, including the name of the party, the date of access, and the purpose of the access.

H. If any education record includes information on more than one child, the parent or parents of those children have the right to inspect and review only the information relating to their child or to be informed of the specific information requested.

I. Schools may charge a fee for copies of records that are made for a parent or parents under this chapter if the fee does not effectively prevent the parent or parents from exercising their right to inspect and review those records. A school may not charge a fee to search for or to retrieve information under this section.

J. A parent or parents who believe that information in the education records collected,

maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the child may request the school that maintains the information to amend the information.

1. The school shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

2. If the school decides to refuse to amend the information in accordance with the request, it shall inform the parent or parents of the refusal and inform the parent of the right to place in the child's education records a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the school.

3. Any explanation placed in the records of the child under this section must:

a. Be maintained by the school as part of the records of the child as long as the record or contested portion is maintained by the school; and

b. If the records of the child or the contested portion is disclosed by the school to any party, the explanation must also be disclosed to the party.

K. Records retention

1. Each school shall maintain all education records, including discipline and medical records for as long as the student continues enrollment at the school.

2. When a student transfers to another school, the student's complete education record shall be transferred within five business days from the date of request and notification of the transfer to the parent, guardian, and placing agency.

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3. When a student graduates or leaves school, the school shall offer all records to the eligible student or parent(s). The records of a publicly-placed student who graduates or leaves school shall be transferred to the child's public school.
4. Each school shall maintain a permanent record of attendance to include the following:
 - a. Name and address of school;
 - b. Name, address, and birth date of student;
 - c. Name and address of parent or parents;
 - d. Student ID;
 - e. Dates of attendance;
 - f. Verification of immunizations;
 - g. Scholastic work completed; and
 - h. Academic transcript.

8 VAC 20-671-770. Participation of students in human research.

- A. No human research involving students shall be conducted or authorized by any school unless in compliance with the Board of Education's regulation, 8 VAC 20-565-20, or other applicable law, including 45 CFR 46.
- B. No such research shall be conducted or authorized unless the student and the student's legally authorized representative give their informed consent. Such informed consent shall be by a signed and witnessed informed consent form. Such form shall comply with § 32.1-162 of the Code of Virginia.
- C. Any such research shall be approved and conducted under the review of a human research committee, which shall be established by the school conducting or authorizing the research.

Any such committee shall comply with the provisions of § 32.1-162.19 of the Code of Virginia. The committee shall submit to the Governor, the General Assembly, and the Superintendent of Public Instruction or designee at least annually a report on the student projects reviewed and approved by the committee, which shall state significant deviations from the proposals as approved.

D. There shall be excluded from the operation of this chapter those categories of research as § 32.1-162.17 of the Code of Virginia which exempts research or student learning outcomes as conducted in educational settings involving regular or special education instructional strategies, the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods, or the use of educational tests, whether cognitive, diagnostic, aptitude, or achievement, if the data from such tests are recorded in a manner so that subjects cannot be identified, directly or through identifiers linked to the subjects.

Part X.

SCHOOL CLOSING

8 VAC 20-671-780. Procedures for school closing.

- A. A school that ceases operation shall provide written notice as early as possible to all enrolled students, the parent(s), the student's public school, and licensing agencies.
- B. All advertisements of the school's operation shall cease immediately, and the current License to Operate shall be returned promptly to the licensing agency.

C. If privately-placed students are unable to complete the academic year due to the school's

closing, the school's guaranty instrument shall be used for tuition reimbursement to the

fullest extent allowable.

D. All education records of privately-placed students shall be provided to the parent or

student who has reached age 18 and acknowledgement of such to the licensing agency.

E. All education records of publicly-placed students shall be returned to the school division of

the parent's residence and acknowledgement of such to the parent or student who has

reached age 18, and the licensing agency.



~~REGULATIONS GOVERNING
THE OPERATION OF
PRIVATE DAY SCHOOLS
FOR STUDENTS WITH DISABILITIES~~

~~8 VAC 20-670-10 ET. SEQ.~~

~~Effective September 10, 2004~~

~~REGULATIONS GOVERNING
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PRIVATE DAY SCHOOLS
FOR STUDENTS WITH DISABILITIES~~
~~8 VAC 20-670-10 ET. SEQ.~~

Effective September 10, 2004

Division for Educational Accountability
Virginia Department of Education
P. O. Box 2120
Richmond, Virginia 23218-2120

<http://www.pen.k12.va.us>

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PRELUDE

STATEMENT

~~These regulations supersede the provisions of Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits that were applicable to private day schools for students with disabilities.~~

PART I
DEFINITIONS, EXEMPTION

~~8 VAC 20-670-10. — Definitions~~

~~8 VAC 20-670-15. — Exemption~~

~~8 VAC 20-670-10. — Definitions.~~

~~“Behavioral intervention plan” means a plan that utilizes positive behavioral interventions and supports to address behaviors that interfere with learning of students with disabilities or with the learning of others or behaviors that require disciplinary action.~~

~~"Behavior management program" means those principles and methods employed by a school to help an individual student achieve a positive outcome and to address and correct inappropriate behavior in a constructive and safe manner. Behavior management principles and methods must be employed in accordance with the individualized education program or individualized instructional plan and written policies and procedures governing service expectation, educational and treatment goals, and safety and security.~~

~~"Board" means the Virginia Board of Education.~~

~~"Branch campus" means any multi-site location in the same town, city, county where the school is offered on a regular continuing basis.~~

~~“Consent” means the voluntary and revocable agreement of the parent or parents or eligible student who has been fully informed of all information relevant to the activity including which records, if any, will be released for which consent is sought in the parent’s, parents’ or eligible student’s native language, or other mode of communication, and understands and agrees, in writing, to the carrying out of the activity for which consent is sought.~~

~~“Department” means the Virginia department of Education.~~

~~“Disability category” means a listing of special education eligibility classifications for students served.~~

~~"Extension classroom" means a location away from but in close proximity to the main campus where only classes are offered.~~

PART I

DEFINITIONS, EXEMPTION

~~"Guaranty Instrument" means a surety bond, irrevocable letter of credit or certificate of deposit.~~

~~"License to Operate" means the legal document issued by the Board of Education that provides institutional and programmatic authority to operate a school as further defined in these regulations.~~

~~"Paraprofessional" means an appropriately trained employee who assists and is supervised by qualified professional staff.~~

~~"Physical restraint" (also referred to as "manual hold") means the use of approved physical interventions or "hands-on" holds to prevent a student from moving his body to engage in behavior that places himself or others at risk of physical harm. Physical restraint does **not** include the use of "hands on" approaches that occur for extremely brief periods of time and never exceed more than a few seconds duration and are used for the following purposes:~~

- ~~a. To intervene in or redirect a potentially dangerous encounter in which the student may voluntarily move away from the situation or hands-on approach; or~~
- ~~b. To quickly deescalate a dangerous situation that could cause harm to the individual or others.~~

~~"Regulations" means this document in its entirety.~~

~~"Rules of conduct" means a listing of rules that is maintained to inform students and others about behaviors that are not permitted and the consequences applied when the behaviors occur.~~

~~"School for students with disabilities" means a privately owned and/or operated preschool, school or educational organization, no matter how titled, maintained or conducting classes for the purpose of offering instruction, for a consideration, profit or tuition, to persons determined to have autism, deaf-blindness, a developmental delay, a hearing impairment, including deafness, mental retardation, multiple disabilities, an orthopedic impairment, other health impairment, an emotional disturbance, a severe disability, a specific learning disability, a speech or language impairment, a traumatic brain injury, or a visual impairment including blindness.~~

~~"Time out" means removing the individual from his immediate environment to a different, open location until the student is calm or the problem behavior has subsided.~~

PART I

DEFINITIONS, EXEMPTION

~~8 VAC 20-670-15. Exemption.~~

~~Any privately owned or operated preschool, elementary, middle, or secondary school whose primary purpose is to provide educational services to students without disabilities, even though the school may serve children with disabilities in a regular academic setting, is exempt from this chapter.~~

PART II
GENERAL REQUIREMENTS

~~8 VAC 20-670-20. — License to operate~~

~~8 VAC 20-670-30. — Initial application~~

~~8 VAC 20-670-40. — Assessment of application~~

~~8 VAC 20-670-50. — Advertising and enrolling restrictions~~

~~8 VAC 20-670-60. — Certification, licensing of branch campus/extension classroom~~

~~8 VAC 20-670-70. — Penalty for non-compliance~~

~~8 VAC 20-670-20. — License to operate.~~

~~A. — Any school defined in the Code of Virginia as a school for students with disabilities shall receive a license to operate from the board prior to operation.~~

~~B. — A license to operate shall be prominently displayed on the premises of the school.~~

~~8 VAC 20-670-30. — Initial application.~~

~~A. — The application forms and information regarding the application process shall be available from the department.~~

~~B. — Complete applications and other required documentation shall be received by the department at least 60 business days in advance of the school's planned opening date.~~

~~8 VAC 20-670-40. — Assessment of application.~~

~~A. — The department shall evaluate each completed application within 60 business days of its receipt for licensure and advise the school in writing of its approval or any deficiencies.~~

~~B. — All deficiencies shall be corrected within 100 calendar days from receipt of the department's written evaluation of the application. Any school not meeting this deadline shall submit to the department a written request for continued consideration.~~

PART II

~~GENERAL REQUIREMENTS~~

~~8 VAC 20-670-50. — Advertising and enrolling restrictions.~~

~~A. — A school shall not advertise or enroll students prior to receiving a license to operate.~~

~~B. — A license to operate shall be restricted to the disability categories specifically indicated.~~

~~C. — Authority is granted to the department to suspend enrollment in or withdraw approval of programs of holders of license to operate that do not continue to meet the requirements of these regulations. A school that has had enrollment suspended or approval withdrawn shall be notified by certified mail and shall not enroll new students in such programs.~~

~~8 VAC 20-670-60. — Certification, licensing of branch campus/extension classroom.~~

~~A school with a license to operate may open an additional facility in the same town, city or county under the same certificate or license. The school shall submit an application and secure authorization from the department.~~

~~8 VAC 20-670-70. — Penalty for non-compliance.~~

~~A. — Any person who opens, operates, or conducts a school without first obtaining a license to operate may be found guilty of a Class 2 Misdemeanor §22.1-331 Code of Virginia.~~

~~B. — Each day the school remains open without a license to operate the owner or board of directors shall incur a separate offense.~~

~~C. — The department shall refer to the Office of the Attorney General any alleged or known violation of these provisions. The Office of the Attorney General shall refer the matter to the Commonwealth Attorney of proper jurisdiction.~~

**PART III
APPLICATION**

~~8 VAC 20-670-80. Application requirements for schools seeking a license to operate~~

~~8 VAC 20-670-90. Applicant commitments~~

~~8 VAC 20-670-80. Application requirements for schools seeking a license to operate.~~

~~— The following information shall be submitted as part of the application:~~

- ~~1. Title or name of the school which is permanent and distinct and shall not be changed without first securing approval from the department.~~
- ~~2. Names and addresses of owners, controlling officials, and managing employees.~~
- ~~3. Evidence of compliance with applicable State Corporation Commission regulations when the school is owned by a partnership or corporation.~~
- ~~4. Curriculum information in department's required format.~~
- ~~5. A scale drawing or copy of the floor plan including room use and dimensions.~~
- ~~6. A certificate of occupancy or other report(s) from the appropriate government agency(ies) indicating that the location or locations meet applicable fire safety, building code, and sanitation requirements.~~
- ~~7. A copy of the deed, lease, or other legal instruments authorizing the school to occupy such locations.~~
- ~~8. A listing of the equipment, training aids, and textbooks used for instruction.~~
- ~~9. The maximum anticipated enrollment to be accommodated with the equipment available and the ratio of students to teachers and instructional aides.~~
- ~~10. A listing of the qualifications of the staff in the school.~~
- ~~11. A proposed budget, a three year financial plan, and documentation of sufficient operating capital to carry the school through its first year including proof of a guaranty instrument described in #13 below.~~

PART III
APPLICATION

~~12.— A copy of the student enrollment agreement, a current schedule of tuition and other fees, copies of all other forms used to keep student records, and the procedure for collecting and refunding tuition.~~

~~13.— A surety bond, irrevocable letter of credit or certificate of deposit as required by Section 8 VAC 20-670-320.~~

~~14.— Copies of all proposed advertising.~~

~~15.— A handbook describing the school's programs and policies.~~

~~16.— Any additional information as the board or department may deem necessary to carry out the provisions of the Code of Virginia.~~

~~**8 VAC 20-670-90.— Applicant commitments.**~~

~~Each applicant for a license to operate shall provide a notarized certificate of compliance form provided by the Department of Education, acknowledging their commitment to conduct the school in an ethical manner and in accordance with the provisions of state and federal laws and applicable regulations.~~

PART IV
PROGRAM REQUIREMENTS

~~8 VAC 20-670-100. — Statement of purpose, philosophy, and objectives~~

~~8 VAC 20-670-110. — Instructional program~~

~~8 VAC 20-670-120. — Intradepartmental cooperation~~

~~8 VAC 20-670-130. — Behavior management programs~~

~~8 VAC 20-670-140. — Equipment and instructional materials~~

~~8 VAC 20-670-150. — Provisions for health~~

~~8 VAC 20-670-160. — Transportation~~

~~8 VAC 20-670-100. — Statement of purpose, philosophy, and objectives.~~

~~Each school shall be responsible for formulating a written statement setting forth its purpose, philosophy, objectives, and admissions policies which shall be used for guidance concerning the character and number of students with disabilities to be served, the instructional program to be offered, the staff to be used, and the services to be provided.~~

~~8 VAC 20-670-110. — Instructional program.~~

~~A. — The instructional program of each school shall reflect the written philosophy of the school by implementing the stated objectives through methods, procedures, and practices which reflect an understanding of and meet the applicable academic, vocational, therapeutic, recreational, and socialization needs of the students served. Instructional programs for students with disabilities shall be conducted in accordance with appropriate regulations governing the education of children with disabilities approved and issued by the board 8 VAC 20-80-10 et. seq.~~

~~B. — Each school shall provide a program of instruction that promotes the individual student's developmental growth or academic achievement at successive grade levels. Instruction shall be designed to accommodate each student and meet the abilities, interest, educational and transitional needs of the students.~~

~~C. — Programs for students with disabilities shall also comply with the following requirements:~~

PART IV
PROGRAM REQUIREMENTS

1. ~~Each student identified by local education agency (LEA) as eligible for special education and related services and placed by a local school division or for non-educational reasons by a comprehensive services team shall have an individualized education program (IEP) on file with the school in accordance with regulations of the board governing the education of children with disabilities. Students not identified as such and those placed by parents shall have an individualized instruction program (IIP).~~
2. ~~Individualized education programs (IEPs) shall address participation in the general curriculum and acquisition of the knowledge and skills contained in the Virginia Standards of Learning for English, mathematics, science, and history/social science 8 VAC 20-80-62.F.~~
3. ~~Confidentiality of information including access rights, record of access, record on more than one child, list of types and location of information, fees, amendment of records at parent's request, consent, collection, storage, disclosure and destruction safeguards, and destruction of information shall be kept in accordance with regulations of the board 8 VAC 20-150-10 et. seq.~~
4. ~~The school shall use testing and evaluation materials that are not racially or culturally discriminatory and do take into consideration the student's disabling condition(s), racial and cultural background.~~
5. ~~The Virginia State Assessment Program shall be addressed in the student's individualized education program 8 VAC 20-80-62.F.5.~~
6. ~~Schools shall follow the Standards for Accrediting Public Schools in Virginia or standards approved by the Virginia Council of Private Education for conferring credit and diplomas 8 VAC 20-131-110.~~
7. ~~Records of current initial eligibility determinations or re-evaluations of eligible students with disabilities, conducted in accordance with board regulations, shall be on file 8 VAC 20-80-56.~~
8. ~~A planned program for personnel development shall be provided.~~
9. ~~A plan for and documentation of contact with parents, guardians, and local school division personnel shall be available.~~
10. ~~All procedural safeguards required by regulations governing the education of students with disabilities shall apply for eligible students 8 VAC 20-80-70.~~

PART IV
PROGRAM REQUIREMENTS

~~11. Instructional/training schedules shall be conducted in accordance with board regulations 8 VAC 20-131-150.~~

~~12. The school shall maintain pupil-teacher ratios in accordance with department regulations 8 VAC 20-80-45.~~

~~D.—A written agreement between the school and any third party organization shall be entered into for programs requiring an enrolled student internship or externship. A copy of the agreement shall be available for review by the board or department.~~

~~**8 VAC 20-670-120.—Intradepartmental cooperation.**~~

~~A.—Staff from the Department of Education will be available for consultation on educational programming.~~

~~**8 VAC 20-670-130.—Behavior management programs.**~~

~~A.—If a school has a program for behavior management or modification, the school shall develop, implement, and have on file written policies and procedures that describe the use of behavior management techniques approved by the governing body of the school. Positive approaches to behavior management shall be emphasized. The behavior management techniques used by the school shall be listed in order of their relative degree of intrusiveness or restrictiveness and the conditions under which they may be used by trained school personnel. The policies must protect the safety and well-being of the student at all times, including during fire and other emergencies. Policies must specify the mechanism for monitoring and methods of documenting the use of behavior management techniques.~~

~~B.—All interested parties, including students, their parents, guardians and local education agencies when the student is publicly placed, shall be informed of the policies and rules of conduct through written information contained in the school's handbooks, brochure, enrollment contract, and/or other publications. Informed consent shall be obtained before implementation of any behavior management program.~~

PART IV
PROGRAM REQUIREMENTS

~~C.— Schools may allow students to voluntarily take time outside the classroom or in a designated area of the classroom to regroup. If the student requires assistance to remove himself from the immediate environment, it must be done in accordance with the school's policies and procedures for the use of time out that comply with sound therapeutic practice. Staff must be available to students during this time in regaining emotional control.~~

~~D.— A school that uses physical restraints shall have and implement written policies and procedures governing their use. The procedures shall include methods to be followed should physical restraint, less intrusive interventions, or measures permitted by other applicable state regulations prove unsuccessful in calming and moderating the student's behavior. Use of physical restraints shall be limited to that which is minimally necessary to protect the student or others and may only be used by trained staff and only after less intrusive interventions have failed and when failure to restrain would result in harm to the student or others.~~

~~E.— The behavior management program shall be developed, implemented, and monitored by staff trained in behavior management programming. Staff shall review the training in physical restraints and less intrusive interventions at least annually.~~

~~F.— Application of a formal behavior management program designed to reduce or eliminate severely maladaptive, violent, or self injurious behavior contingent upon the exhibition of such behaviors is allowed only as part of an individually approved time specific plan that is consistent with sound therapeutic practice. Consent of the individual, parent or guardian, and the placing school division is required.~~

~~G.— Individual applications of formal behavior management techniques including use of physical restraints shall be reported to the parents and documented in the student's record and, at a minimum, include date and time; staff involved; circumstances and reasons for use, including other behavior management techniques attempted; duration; type of technique used, and outcomes.~~

~~H.— Injuries resulting from or occurring during the implementation of behavior management techniques shall be documented and appropriate health care shall be administered. The student's parents or legal guardian shall be notified.~~

PART IV
PROGRAM REQUIREMENTS

~~I. — Students shall not discipline, restrain or implement behavior management plans of other students.~~

~~J. — The following actions are prohibited:~~

- ~~1. — Any action which is humiliating, degrading, or abusive;~~
- ~~2. — Deprivation of drinking water or food necessary to meet a student's daily nutritional needs except as ordered by a licensed physician for a legitimate medical purpose and documented in the student's file;~~
- ~~3. — Denial of use of toilet facilities, or toileting assistance;~~
- ~~4. — Use of restraint as punishment, reprisal or for the convenience of staff;~~
- ~~5. — Corporal punishment;~~
- ~~6. — Deprivation of health care including counseling;~~
- ~~7. — Use of mechanical and chemical restraints.~~

~~**8 VAC 20-670-140. — Equipment and instructional materials.**~~

~~A. — Equipment and materials for instruction shall be provided in sufficient variety, quantity, and design to implement the educational program to meet the needs of the students with disabilities as identified in the individualized education program (IEP) or individualized instruction plan (IIP) as appropriate.~~

~~B. — There shall be a library adequately equipped or resource materials available on site to meet the needs of the students according to the types of training and/or educational programs offered by the school, if applicable. Depending upon the age and needs of the students with disabilities, reference materials should be available to the pre-academic, the academic, and the career education levels, if applicable.~~

~~**8 VAC 20-670-150. — Provisions for health.**~~

~~A. — A report of a comprehensive physical examination by a qualified healthcare provider and an up-to-date immunization record shall be on file for each student.~~

PART IV
PROGRAM REQUIREMENTS

~~B.—A student suffering with a contagious or infectious condition or disease shall be excluded from school while in that condition unless attendance is approved by a qualified healthcare provider.~~

~~C.—An adequate first-aid kit shall be provided for use in the case of accidents, minor injuries, and medical emergencies.~~

~~D.—All medications shall be accepted only in current original labeled prescription container with parental permission to administer.~~

~~E.—Transportation of medication shall be expressly covered in the school's policy manual. All interested parties shall be informed of the policy through written information.~~

~~F.—Training shall be provided to all staff in medication procedures and effects and in infection control measures including the use of universal precautions. All staff administering medication shall receive approved training for medication management. At least one person certified in first-aid and CPR shall be available at all times to the students at the school.~~

~~G.—In schools where meals are served on a daily basis, the school shall have the services of either a full-time or part-time dietitian or nutritionist, or consultative assistance to insure that a well-balanced nutritious daily menu is provided. Records of menus for all meals served shall be kept on file for six months.~~

~~H.—Any case of suspected child abuse or neglect shall be reported immediately to the local child protective services unit as required by the Code of Virginia §63.2-1509. Any case of suspected child abuse or neglect which is related to the facility shall be reported immediately to the department and placing agency, and to either the parent or legal guardian. When a case of suspected child abuse or neglect is reported to child protective services, the students records shall include: the date and time the suspected abuse or neglect occurred; a description of the incident; action taken as a result of the incident; and, the name of the person to whom the report was made at the local child protective services unit.~~

PART IV
PROGRAM REQUIREMENTS

~~8 VAC 20-670-160. —Transportation.~~

~~A.—All drivers of vehicles transporting students shall comply with the requirements of the applicable laws of Virginia. Appropriate safety measures which take into consideration the age range and disabling conditions of students served at the school shall be taken by staff members or other adults who may transport students to and from school or on school-sponsored activities.~~

~~B.—Evidence of vehicle liability insurance to protect those students transported to and from the school shall be submitted.~~

~~C.—All schools shall have on file evidence that school-owned vehicles used for the purpose of transporting students to and from school and school-related activities meet federal and state standards and are maintained in accordance with applicable state and federal laws 49 CFR 571.~~

~~D.—All vehicles used to transport students on school activities, shall be equipped with first-aid kits, fire extinguisher, and two-way communication devices.~~

~~E.—Individual student emergency information including currently prescribed and over the counter medications, significant medical problems, and any allergies shall accompany students when they are being transported.~~

~~PART V~~
~~DISABILITY CATEGORIES~~

~~8 VAC 20-670-170. — Disability categories~~

~~8 VAC 20-670-170. — Disability categories.~~

~~A. — The instructional program shall exist only for those students who have a disability listed in the categories posted on the school's current license to operate.~~

~~B. — Supplementary applications to serve additional categories of students may be submitted to the department for approval at any time. The information must be submitted in such form as prescribed by the department.~~

~~C. — Revisions to existing program services must be submitted to the department for approval prior to implementation.~~

PART VI
STAFF

- ~~8 VAC 20-670-180. Personnel policies~~
~~8 VAC 20-670-190. Administrative personnel~~
~~8 VAC 20-670-200. Teachers~~
~~8 VAC 20-670-210. Ancillary personnel~~
~~8 VAC 20-670-220. Personnel files~~

~~8 VAC 20-670-180. Personnel policies.~~

~~Each school shall develop written personnel policies for employees which shall include, but not be limited to, job descriptions, evaluation procedures, procedures for handling accusation against staff and termination policies and make them available to the board or department if requested.~~

~~Licensure Regulations for School Personnel issued by the board are to be used by the schools when hiring staff employed by another school.~~

~~8 VAC 20-670-190. Administrative personnel.~~

~~A.— Each school shall designate a person to be responsible for the administration of the school. This person shall be a graduate of an accredited college or university and shall have sufficient time, training, and ability to carry out effectively the duties involved.~~

~~B.— The individual responsible for the day-to-day operation of the educational program, no matter how titled, shall hold and maintain a valid five year renewable post graduate professional license issued by the board. This individual shall hold an endorsement in at least one appropriate area of disability served by the school 8 VAC 20-21-10 et. seq. The individual serving in this capacity could be the same person functioning as the administrator identified in Paragraph 1 above provided licensure requirements are met.~~

~~C.— The department may make exception to the above requirements for good cause upon application by the school.~~

PART VI
STAFF

~~8 VAC 20-670-200. — Teachers.~~

~~A. — Teachers of academic courses in elementary and non-departmentalized middle and high school programs shall hold a current Virginia teaching license, issued by the board, with endorsement in at least one of the specific areas of disability served by the school, or otherwise comply with the Licensure Regulations for School Personnel 8 VAC 20-21-10 et. seq.~~

~~B. — Teachers in middle and high schools that are departmentalized must hold a current Virginia teachers license with endorsement in the academic area they are instructing 8 VAC 20-21-10 et. seq. A sufficient number of appropriately endorsed special education teachers must be available to case manage Individualized Education Programs (IEPs) and to provide disability specific technical assistance and instruction. On-going staff development must include disability specific training.~~

~~C. — Teachers of specialized subjects such as music, art, physical education, health and vocational education must hold a valid teaching license with an endorsement in the teaching area of responsibility, and agree to complete course work and/or in-service training in working with the types of students served by the school.~~

~~D. — The board may make exception to the above requirements for good cause.~~

~~8 VAC 20-670-210. — Ancillary personnel.~~

~~A. — A therapist employed by a school shall be professionally trained in the area or areas of therapy in which he practices. If the school employs a therapist, this person shall be licensed or certified by the appropriate state and national authority or licensed eligible and currently working under the supervision of a licensed therapist. Documentation of continued progress toward licensure must be maintained.~~

~~B. — Audiologists or speech therapists employed by the school shall be licensed by the appropriate state authority or meet the requirements for licensure as outlined in Licensure Regulations for School Personnel (8 VAC 20-21).~~

PART VI
STAFF

~~C.— Psychologists employed by the school shall be licensed by the appropriate state authority, or meet the requirements for school psychologists, or both, as outlined in Virginia Licensure Regulations for School Personnel.~~

~~D.— Paraprofessionals employed by the school shall be, at a minimum, high school graduates or the equivalent and have in-service training or experience in working with the type of student served by the school.~~

~~E.— All support personnel such as librarians, guidance counselors, social workers, etc. shall have earned a bachelor's degree from an accredited institution and hold a valid license, where applicable, issued by the department or be licensed by the appropriate state authority.~~

~~F.— All medical personnel, including but not limited to nurses and physicians, shall hold all licenses required by the Commonwealth of Virginia.~~

~~G.— All volunteers and interns, or students who are receiving professional training shall be properly supervised.~~

~~H.— The department may make exception to the above for good cause upon application by the school.~~

8 VAC 20-670-220. — Personnel files.

~~A.— Personnel files for staff shall be maintained and shall include the following documentation:~~

- ~~1.— Academic preparation and past experience;~~
- ~~2.— Attendance records;~~
- ~~3.— Copies of contract(s) indicating dates and term(s) of employment;~~
- ~~4.— Results of a x-ray or tuberculin test and/or other health records required by §22.1-300 of the Code and applicable regulations of the Virginia Department of Health;~~

PART VI
STAFF

5. — ~~Evidence of child protective service and criminal records checks including finger printing. Additionally for all staff who may transport students, evidence of Department of Motor Vehicles checks and a current copy of the driver's license; and~~
6. — ~~Documentation of staff development.~~

PART VII
PHYSICAL FACILITIES, INSPECTIONS

~~8 VAC 20-670-230. Facilities~~

~~8 VAC 20-670-240. The school plant~~

~~8 VAC 20-670-230. Facilities.~~

~~A.— Department staff shall inspect the school facilities and file a report which is available to the board for review as a prerequisite to certification or licensing. The department shall schedule periodic monitoring visits to each school for students with disabilities at least once every three years. Unannounced visits by department staff may be made during the three[-]year time period. All facilities in use must comply with appropriate state and local ordinances governing fire safety, sanitation, and health.~~

~~B.— A change in the location of a school shall be reported to the department at least 30 days before the move, on forms provided by the department. Documents required by 8 VAC 20-670-80(5), (6), and (7) of these regulations for the new location must be submitted to the department before the actual move takes place. An on-site visit must be made by department staff as soon as possible following notification of the pending change.~~

~~C.— Schools which find it necessary to utilize extension and branch facilities, must submit the information required by 8 VAC 20-670-80 (5), (6), and (7) of these regulations and have an on-site visit to the facilities conducted by department staff prior to utilizing the facilities.~~

~~D.— Schools which are modifying or expanding current facilities must submit the information required in 8 VAC 20-670-80 (5) and (6) of these regulations, and may have an on-site visit conducted by department staff.~~

~~E.— In the event of fire or other emergency situations, the school must notify the department as soon as possible of the conditions and status of the school.~~

PART VII
PHYSICAL FACILITIES, INSPECTIONS

~~8 VAC 20-670-240. The school plant.~~

~~A. Schools shall be in compliance with the Uniform Statewide Building Code and the Americans with Disabilities Act. They shall maintain a physical plant that is accessible, barrier-free, safe, and clean.~~

~~B. In the case of new construction, schools shall comply with § 2.1-514 of the Code with reference to architectural barriers.~~

~~C. Emergency procedures shall be established by the school for handling emergencies including hostage situations, bomb threats, power outages, fires, medical emergencies, and inclement weather.~~

PART VIII
STUDENT SERVICES, RECORDS, AND CONTRACTS

~~8 VAC 20-670-250. — Student services and records~~

~~8 VAC 20-670-260. — Applications and enrollment agreements for students privately placed~~

~~8 VAC 20-670-270. — Application and enrollment agreements for students publicly placed~~

~~8 VAC 20-670-250. — Student services and records.~~

~~A. — Each school shall maintain a listing of all students who enroll that includes, but is not limited to, the student's name, address, telephone number, social security number, disability, and enrollment date. For all publicly placed students, this list shall include the student's local school division. The information shall be current as of the date the student enrolls and shall be available for inspection by or submission to the board or department upon request.~~

~~B. — Records of student counseling sessions for academic or disciplinary reasons must be maintained in the student's permanent record if termination, dismissal, or withdrawal is the basis for the counseling. The student, parent/guardian, or local school division shall receive a copy of the report upon written request if the action resulted in dismissal or termination.~~

~~C. — Schools shall develop, publish, and provide to students clearly written policies governing conduct, attendance, academic progress necessary to matriculate to the next grade or level, and other matters relative to encouraging responsible student behavior.~~

~~D. — Each school shall develop, publish, and make available to parents and students a procedure for resolving complaints which shall include information on reporting such complaints to the department. The department may utilize outside services to investigate and resolve complaints.~~

~~8 VAC 20-670-260. — Applications and enrollment agreements for students privately placed.~~

~~A. — An application for admission is not to be construed as a binding instrument on the part of the student or the school.~~

PART VIII
STUDENT SERVICES, RECORDS, AND CONTRACTS

~~B.— Any contract between a student, parent or guardian and a school, certified or licensed by the board shall be separate from the application for admission and must clearly outline the obligations of both parties.~~

~~C.— Any contract or enrollment agreement used by the school shall comply with the following provisions:~~

- ~~1.— The name and address of the school shall be clearly stated;~~
- ~~2.— The total cost of the program, including tuition and all other charges, shall be clearly stated;~~
- ~~3.— A disclosure that such agreement becomes a legally binding instrument upon the school's written acceptance of the student;~~
- ~~4.— The school's cancellation and refund policy, shall be clearly stated.~~

~~D.— Each school that serves privately placed students shall offer access to a tuition insurance plan if they financially obligate students for more than quarterly increments of the annual tuition.~~

~~E.— A school may require the payment of a reasonable non-refundable initial fee, to cover expenses in connection with processing a student's application, provided it retains a signed statement in which the parties acknowledge their understanding that the fee is non-refundable. No other non-refundable fees shall be allowed prior to enrollment.~~

~~F.— Schools which charge or are paid on a "services-rendered" basis may be exempted from the provisions of this Part upon written request to the department.~~

~~**8 VAC 20-670-270.— Application and enrollment agreements for students publicly placed.**~~

~~A.— An application for admission is not to be construed as a binding instrument on the part of the student or the school.~~

~~B.— Any contract between a local school division or any other public agency or agencies financially responsible for the student's placement and a school, certified or licensed by the board shall be separate from the application for admission and must~~

~~clearly outline the obligations of both parties.~~

PART VIII
STUDENT SERVICES, RECORDS, AND CONTRACTS

~~C.—Any contract or enrollment agreement used by the school shall comply with the following provisions:~~

- ~~1.—The name and address of the school must be clearly stated;~~
- ~~2.—The total cost of the program, including tuition and all other charges, shall be clearly stated; and~~
- ~~3.—A disclosure that such agreement becomes a legally binding instrument upon the school's written acceptance of the student.~~

PART IX
ADVERTISING, PUBLICATIONS

~~8 VAC 20-670-280. — Advertising and publications~~

~~8 VAC 20-670-280. — Advertising and publications.~~

~~A. — Each school shall use its complete name as listed on its license to operate for all publicity, publications, promotions or marketing purposes.~~

~~B. — With respect to its status with the board, the school may advertise only that it has a "License to Operate, from the Virginia Board of Education." No other wording is acceptable to the board.~~

~~— A school holding a license to operate issued by the board shall not expressly or by implication indicate by any means that the license to operate represents an endorsement offered by the school.~~

~~C. — All printed materials, shall be accurate concerning the school's requirements for admission, curricula, programs and services, graduation requirements, tuition and other fees or charges, and terms for payment of tuition and other fees. Copies shall be filed with the board or department.~~

~~D. — A school or its representatives shall not make any fraudulent or misleading statement about any phase of its operation in published or distributed materials.~~

~~E. — Printed or electronic representations shall not be used by a school in such a manner as to convey a false impression about the size, importance, or location of the school's facilities, or its equipment.~~

~~F. — Schools shall not use endorsements, commendations, or recommendations by students, individuals, manufacturers, business establishments or organizations except with their written consent and without any offer of financial compensation. Written evidence of compliance shall be maintained and available to the board or department.~~

~~G. — The accrediting agency must be named if accreditation is used as part of a school's promotional materials.~~

~~H. — No school may use the seal of the Commonwealth in any advertisement, publication or document.~~

PART X
ELECTRONIC CAMPUS SCHOOLS

~~8 VAC 20-670-290. — Electronic campus schools~~

~~8 VAC 20-670-290. — Electronic campus schools.~~

~~This section shall apply only to electronic campus schools.~~

~~A. — In addition to the general application requirements, considerable emphasis will be placed on the following components when reviewing documentation submitted with an application from an electronic campus school:~~

- ~~1. — Clearly defined education objectives, which demonstrate they can be achieved through distance learning, must be included with any application.~~
- ~~2. — Courses offered are sufficiently comprehensive, accurate, and up-to-date, and educationally sound instructional materials and methods are used to achieve the stated objectives.~~
- ~~3. — The school provides adequate examination services, maintenance of records, encouragement to students, and attention to individual differences.~~

PART XI
CHANGE OF OWNERSHIP

~~8 VAC 20-670-300. — A license to operate is not transferable~~

~~8 VAC 20-670-300. — A license to operate is not transferable.~~

~~A. — A change of ownership occurs when control of a school changes from one owner to another. New owners of a school shall make an application for an original license to operate.~~

~~B. — If there is a change in ownership of a school, the current owner shall notify the department at least 30 days prior to the proposed date of sale and provide a copy of the agreement of sale. An application for an original license to operate, including all attachments listed in 8 VAC 20-670-30 of these regulations, shall be submitted to the department by the new owner within 30 days following the effective date of the change. The school may be operated on a temporary basis under the new ownership until an original license to operate has been issued by the board.~~

PART XII
CONTRACTUAL RIGHTS OF STUDENTS

~~8 VAC 20-670-310. Protection of contractual rights of students~~

~~8 VAC 20-670-320. Guaranty instrument requirements~~

~~8 VAC 20-670-310. Protection of contractual rights of students.~~

~~As required by §22.1-324 of the Code of Virginia, each school applying for a license to operate shall provide a certain guaranty to protect the contractual rights of students.~~

~~If the school holds a surety bond or other guaranty instrument as required by 8 VAC 20-670-320 of these regulations, the first priority shall be to file a claim against the guaranty instrument.~~

~~8 VAC 20-670-320. Guaranty instrument requirements.~~

~~A.— All applicants for a new license to operate, including those who have a change of ownership, shall provide a surety bond, irrevocable letter of credit or certificate of deposit as required by this section and maintain said guaranty instrument. Schools for students with disabilities shall maintain a guaranty instrument as required by this section as a condition of continued certification or licensing.~~

~~B.— The amount of the guaranty instrument shall be based on the total projected enrollments as follows:~~

~~The minimum guaranty for up to 50 students is \$5000.~~

~~The minimum increases incrementally, by \$5000, for each additional 50 students or portion thereof.~~

~~C.— If the school shows that it collects no advance tuition other than equal monthly installments or is paid after services have been rendered the school may apply, after three full years of operation, on forms provided for that purpose, to the department for authority to be exempt from the guaranty requirements.~~

PART XII
CONTRACTUAL RIGHTS OF STUDENTS

~~D.— For guaranty instrument purposes, the school shall count its total current enrollment as of the date of the application, or its largest enrollment as of the date of the application, or its largest enrollment in the preceding 12 months, whichever is greater. A school being organized shall use the maximum projected enrollment which will be subject to revision based on the enrollment 60 days following the date classes start.~~

~~E.— In the event a guaranty instrument is terminated other than as allowed in C. above, the license to operate will automatically expire if a replacement bond is not provided.~~

PART XIII
RENEWAL

~~8 VAC 20-670-330. — Renewal of license to operate~~

~~8 VAC 20-670-330. — Renewal of license to operate.~~

~~A. — Schools for students with disabilities may have their licenses to operate renewed for up to three years.~~

~~B. — The application for renewal shall include, in addition to other information:~~

~~1. — A current fire inspection report.~~

~~2. — A current schedule of tuition and other fees.~~

~~3. — A copy of the financial statements of the school or owning entity to include, but not be limited to, the following:~~

~~a. — A balance sheet, reflecting assets, liabilities, equity, and retained earnings;~~

~~b. — An income statement, reflecting revenues, expenses, and profits and losses;~~

~~c. — A statement of increase or decrease in cash, reflecting the sources and uses of working capital; and~~

~~d. — Explanatory notes, which reflect the disclosures required by generally accepted accounting principles. These statements must be as of the date of the school's most recently-ended fiscal year.~~

~~4. — The department reserves the right to call for, if need be in specific cases, one of these two types of statements:~~

~~a. — An audited financial statement, certified by an outside, independent, certified public accountant in accordance with standards established by the American Institute of Certified Public Accountants; or~~

~~b. — A financial statement which has been "reviewed" by an outside, independent, certified public accountant in accordance with principles established for reviews by the American Institute of Certified Public Accountants.~~

PART XIII
RENEWAL

~~C.— Every license to operate, which has not been renewed by the board on or before the renewal anniversary date, shall expire, and the school shall cease operation immediately. A new license to operate shall be obtained from the board before such school may resume operations. All of the requirements of Part III of these regulations shall be met.~~

~~D.— Any school not complying with the provisions of this section shall be deemed to be in violation of these regulations and shall be reported to the Office of the Attorney General for appropriate action.~~

PART XIV
DENIAL, REVOCATION, SUSPENSION OR REFUSAL TO RENEW, GROUNDS

- ~~8 VAC 20-670-340. Board actions~~
- ~~8 VAC 20-670-350. Refusal, denial, revocation or suspension~~
- ~~8 VAC 20-670-360. Board investigation~~
- ~~8 VAC 20-670-370. Department investigation procedures~~
- ~~8 VAC 20-670-380. Corrective actions~~
- ~~8 VAC 20-670-390. Procedure for taking actions~~
- ~~8 VAC 20-670-400. Revocation or denial consequences~~

~~8 VAC 20-670-340. Board actions.~~

~~The license to operate shall not be denied, revoked or suspended or a request for renewal refused except upon the action of the board which shall be reported in writing. Records of the board's findings, recommendations, and actions shall be preserved in writing.~~

~~8 VAC 20-670-350. Refusal, denial, revocation, or suspension.~~

~~The board may refuse to renew or may deny, revoke or suspend the license to operate of a school for any one or combination of the following causes:~~

- ~~1. Violation of any provision of the Code or any board regulations;~~
- ~~2. Furnishing false, misleading, or incomplete information or failure to furnish information requested by the board or department;~~
- ~~3. Violation of any commitment made in an application for a license to operate;~~
- ~~4. Failure to provide or maintain the premises or equipment in a safe and sanitary condition as required by law, by state regulations or local ordinances;~~
- ~~5. Failure to maintain adequate financial resources to conduct the programs offered or to retain an adequate, qualified instructional staff;~~
- ~~6. Failure to safeguard the interests of the public; and~~

PART XIV
DENIAL, REVOCATION, SUSPENSION OR REFUSAL TO RENEW, GROUNDS

~~7. Failing within a reasonable time to provide information requested by the board or department as a result of a formal or informal complaint or as supplement to an application.~~

~~**8 VAC 20-670-360. Board investigation.**~~

~~The department may, upon its own motion, investigate the actions of any applicant or any persons holding or claiming to hold a license to operate. The department shall make such an investigation upon the written complaint of any individual setting forth facts which, if proved, would constitute grounds for denial, refusal, suspension, or revocation of license.~~

~~**8 VAC 20-670-370. Department investigation procedures.**~~

~~Authority is granted to the department staff to investigate complaints from individuals and other sources concerning alleged violations of the Code or regulations by a school. Where the finding(s) of the department is in favor of the complainant, the school shall abide by any recommendation(s) made or corrective action deemed necessary by the department. If the school disagrees with the recommendation(s) or corrective actions, the department shall hold an informal hearing to determine whether further action (i.e. revocation, suspension or refusal to renew a license) is warranted. The Superintendent of Public Instruction or his designee shall chair the hearing.~~

~~**8 VAC 20-670-380. Corrective actions.**~~

~~Before proceeding to a hearing, as provided for in the Code, on the question of whether a license to operate shall be denied, refused, suspended, or revoked for any cause, the department may grant a reasonable period of time to correct any unsatisfactory condition to the holder of or applicant for a license to operate. If, within such time, the condition is corrected to the department's satisfaction, no further action leading to denial, refusal, suspension, or revocation shall be taken by the board.~~

PART XIV
DENIAL, REVOCATION, SUSPENSION OR REFUSAL TO RENEW, GROUNDS

~~8 VAC 20-670-390. — Procedure for taking actions.~~

~~All actions taken under the provisions of this section in regard to denials, revocations, suspensions, or refusals to renew shall be taken in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).~~

~~8 VAC 20-670-400. — Revocation or denial consequences.~~

~~Any owner of a school which has had a certificate or license revoked, denied or has been refused renewal, shall not be allowed to re-apply before at least 12 months have passed since the date the formal action was taken. In addition, this policy shall apply to any owner who fails to comply with the provisions of Part XVI of these regulations when closing a school.~~

PART XV
LISTING OF SCHOOLS

~~8 VAC 20-670-410. — School listing~~

~~8 VAC 20-670-410. — School listing.~~

~~The department shall maintain a list of schools holding valid licenses to operate under the provisions of the Code which shall be available for the information of the public.~~

PART XVI
SCHOOL CLOSINGS

~~8 VAC 20-670-420. — Closing procedures~~

~~8 VAC 20-670-420. — Closing procedures.~~

~~A. — A school which is closing shall notify its students of the closing in writing. Local school divisions of all publicly placed students will also be notified. Arrangements shall be made to assure that students are able to complete the school year or, if privately placed, are provided refunds. In the event such arrangements cannot be made, the department shall be available to assist in making special arrangements for students to complete that year's program or students will be advised of their rights.~~

~~B. — Each school which is closing shall notify the department in writing in advance of the anticipated closing date and provide the following information relative to the students currently enrolled:~~

- ~~1. — A listing as described in subdivision A of Part VIII of these regulations;~~
- ~~2. — For privately placed students: academic records including credits, grades or courses completed, and grades for those courses; evidence of refunds made to students where applicable; a copy of each student's academic attendance and financial payment records; and a copy of the enrollment agreement;~~
- ~~3. — Records for publicly placed students in schools for children with disabilities shall be returned to the student's home school division with verification of this transmittal to the department; and~~
- ~~4. — Students' records transmitted to the department shall be the originals or certified true copies.~~

~~C. — At the time of notification, the school shall submit a written plan detailing the process of closure which provides for the following:~~

- ~~1. — The cessation of all recruitment activities and student enrollments as of the date of the notice;~~
- ~~2. — A description of the provisions made for the students to complete the academic year;~~

PART XVI
SCHOOL CLOSINGS

~~3.—Copies of all notices of the closing given to students, local school divisions, the general public, and/or other interested parties such as accrediting agencies, tuition insurers, etc.;~~

~~4.—Provisions for the transfer of all publicly placed students to their local school divisions and privately placed student records to the department within 30 days of the close and notification to all students of the location of their records; and~~

~~5.—Provisions for notifying students in writing of their financial obligations.~~

~~D.—The cost of transferring the records to the department shall be borne by the school.~~

~~E.—In the event a school files a bankruptcy petition, a complete, certified true copy shall be filed with the department. If privately placed students are unable to complete the academic year, they shall be given the highest creditor status allowed by statute for refunds in the full amount of tuition and fees paid to the school.~~

~~F.—The board or department may request any additional information which is reasonable and necessary to carry out its responsibility.~~

PART XVII
TRANSMITTAL OF DOCUMENTS AND MATERIALS

~~8 VAC 20-670-430. — Transmitting documents and other materials~~

~~8 VAC 20-670-430. — Transmitting documents and other materials.~~

~~A. — The mailing of applications, forms, letters, or other papers shall not constitute receipt of the same by the department unless sent by registered mail, certified mail, express mail, or courier with return receipt requested.~~

~~B. — All materials sent should be addressed to the Private Day Schools for Students with Disabilities, Department of Education, Box 2120, Richmond, VA 23218-2120 or Office of Private Day Schools for Students with Disabilities, James Monroe Building, 24th Floor, 101 North 14th Street, Richmond, VA 23219.~~

~~C. — Materials submitted by electronic means (e.g. facsimile machine, computer, etc.) will be accepted contingent upon receipt of original documents sent in accordance with subsection A of this section.~~

**PART XVIII
COMPLAINTS**

~~8 VAC 20-670-440 — Complaints~~

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~~Schools are required to establish and provide to parents, students, and placing agencies an internal complaints resolution process. In the event that the complainant is not satisfied with the internal resolution or prefers, they may file a complaint with the Office of Private Day Schools for Students with Disabilities, Virginia Department of Education, P.O. Box 2120, Richmond, Virginia 23218-2120.~~