

Virginia Board of Education Agenda Item



Agenda Item: F

Date: April 25, 2013

Title	First Review of Proposed <i>Regulations Governing the Operation of Private Schools for Students with Disabilities</i> (8VAC20-670-10 et seq.) (Final Stage)		
Presenter	Dr. Sandra E. Ruffin		
E-mail	Sandra.Ruffin@doe.virginia.gov	Phone	(804) 225-2768

Purpose of Presentation:

Action required by Board of Education regulation.

Previous Review or Action:

Previous review and action. Specify date and action taken below:

NOIRA: July 22, 2010

Proposed Stage: January 13, 2011

Public hearing – November 29, 2012

Action Requested:

Action will be requested at a future meeting. Specify anticipated date below:

May 23, 2013

Alignment with Board of Education Goals: Please indicate (X) all that apply:

	Goal 1: Accountability for Student Learning
	Goal 2: Rigorous Standards to Promote College and Career Readiness
	Goal 3: Expanded Opportunities to Learn
	Goal 4: Nurturing Young Learners
	Goal 5: Highly Qualified and Effective Educators
	Goal 6: Sound Policies for Student Success
	Goal 7: Safe and Secure Schools
X	Other Priority or Initiative. Specify: Proposed regulations for the management and conduct of private schools for students with disabilities

Background Information and Statutory Authority:

There are 123 private schools for students with disabilities that are licensed by the Board of Education. These schools are serving 2,819 public pay students, 1,121 private pay students, and 317 students placed by other states.

The revised proposed regulations provide standards for quality specialized education and services for students enrolled in private schools. The new regulations provide clarity to provisions for the management and conduct of schools and standards for programs offered by the schools to include

policies and procedures to ensure safe learning environments and the protection of children in their care. The regulations require a standard school day and school year consistent with that of the public school and an instructional program offering the core subjects -- English, mathematics, science, and history/social science.

With repeal of the *Standards for Interdepartmental Regulation of Children's Residential Facilities*, 22 VAC 42-11-10 et seq., and outdated information in the Board's *Regulations Governing the Operation of Private Day Schools*, one set of regulations for both private day and residential schools would be beneficial for the private school providers, public schools, licensing agencies, and families of students served in the schools.

Authority – *Code of Virginia, Chapter 16. Schools for Students with Disabilities.*

Title 22.1. Education, Chapter 16 of the Code of Virginia outlines the provisions for schools for students with disabilities. 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 to issue licenses to operate schools.

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

Section 22.1-323.2. Licensure of services delivered in group homes and residential facilities for children
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.

Summary of Important Issues:

The Virginia Department of Education (VDOE) staff held a meeting with stakeholders on February 6, 2013, and on March 27, 2013. The February 6 meeting provided the VDOE's response to each of the 111 comments received during the public comment period. The meeting provided collaborative exchange of views that helped to clarify and reconstruct sections of the proposed regulations for improved consistency with the requirements of public schools and other state licensing agencies – the Departments of Social Services (DSS) and Behavioral Health and Developmental Services (DBHDS).

The stakeholders represented the Virginia Council of Private Education (VCPE), Virginia Association of Independent Special Education Facilities (VAISEF), an association of Virginia private providers of specialized educational services for children and youth with special needs and their families, and program administrators from private day and residential schools. Of the 123 private schools for students with disabilities licensed by the Board, 105 schools (85 percent) were represented at one or both meetings. Eighty-two (82) schools are members of the VAISEF.

The meeting on March 27, 2013, provided a review of the changes made to the proposed regulations following the stakeholder meeting held on February 6, 2013. The meeting resulted with some technical changes and minor revision to the section concerning maintenance of student records.

The VDOE has received a letter from the VAISEF and several private school providers in support of the revised proposed regulations. Letters from stakeholders are included in this agenda packet.

Substantive Provisions to the Proposed Regulations

There were nine substantive provisions to the revised proposed regulations. Several other revisions were made with assistance from stakeholders to provide clarification and consistency with language used by the DSS and DBHDS. A copy of the revised proposed *Regulations for the Operation of Private Schools for Students with Disabilities*, 8 VAC20-670-10 et seq., is included in this agenda packet.

The chart provides a summary of the substantive provisions and the Department’s actions.

Number of Comments	Recommendations/Concerns	VDOE’s Actions
VAISEF organization and 80 individuals who posted comments supporting the VAISEF’s recommendations	Recommended adding to Section 671-30 that the Department be allowed to grant exceptions for good cause.	Agree. Added to Section 671-30 C. The licensing agency may make exception to the requirements of this chapter for good cause.
VAISEF organization and 78 individuals who posted comments supporting the VAISEF’s recommendations	Section 671-330 B. Requiring two years of coursework or two years of full-time successful work with children may make it challenging for some programs to find qualified support staff. Recommended consistency with other licensing agency’s requirement for residential child care staff.	Agree. Changed Section 671-330 B. to: Paraprofessionals and other ancillary staff shall be at least 18 years of age (21 years of age preferred), at a minimum hold a high school diploma or General Educational Development (GED) certificate, have experience working with children or completed coursework in a related field and work under the supervision of qualified staff.
VAISEF plus 78 individuals who posted comments supporting the VAISEF’s recommendations	Section 671-350 H. Requirement for 15 additional hours of annual training is vague and creates time demands that may interfere with other necessary task. Teachers are required to engage in professional development to maintain their license.	Agree. Changed 671-350 H. to: Each full-time staff shall annually receive professional development applicable to their job duties.
VAISEF organization plus 79 individuals who posted comments supporting the VAISEF’s recommendations	The construction of Section 671-370. A. 1-4. seems to imply items 1. through 4. are from the Virginia Uniform Statewide Building Code which they are not. Request to make enumerated items new sections.	Agree. Changed 671-370. A. 1-4 to 370 A.-- E. Each provision to stand as an individual requirement.

VAISEF organization plus 78 individuals who posted comments supporting the VAISEF's recommendations and 32 additional stakeholders	671-370 A. 2. The 50 square feet per occupant requirement would adversely affect current schools. They would have to reduce their census to comply thereby losing revenue and having to reduce staff. Ask that current programs be grandfathered and that the requirement, if necessary, be set at 50 net per student not per occupant.	Agree. Changed Section 671-370 C. to 50 square feet per student and added clarification. Schools established after the effective date of these regulations and new classrooms added to existing buildings shall provide 50 square feet of classroom or instructional area per student excluding classroom fixtures.
VAISEF organization plus 78 individuals who posted comments supporting the VAISEF's recommendations	671-380 C. Recommend the number of required tornado drills be the same as required for public schools.	Agree. Changed Section 671-380. C. to require at least one tornado drill consistent with public schools. Also added is requirement for at least one earthquake drill annually.
VAISEF organization plus 78 individuals who posted comments supporting the VAISEF's recommendations	671-760 B. If fireproof file cabinets which are best practice are required, a grace period to allow programs to budget for expensive cabinets is recommended.	Agree. Changed Section 671-760 B. to require fire resistant file cabinets as required by other licensing agencies.

Changes from the proposed stage to the final stage are indicated by brackets in the attachment.

Impact on Fiscal and Human Resources:

There is no additional projected cost to the state or localities to implement and enforce the proposed regulations. Promulgation of these regulations would be an advantage for public schools that cannot serve students because of their disabilities. Parents who seek alternative education have the option of private school placement in schools licensed by the Board. The VDOE's licensing specialists and the private education providers will benefit from a single regulation for both day and residential schools. There will be minimum impact on the existing private schools for students with disabilities.

Timetable for Further Review/Action:

After Board's action on May 23, 2013, regulatory action will be governed by the *Administrative Process Act* (APA), including executive review and public comments.

Upon approval of the proposed *Regulations Governing the Operation of Private Schools for Students with Disabilities*, the VDOE will post the revised regulations on the agency's Web site and inform constituents through written communications, meetings with private and public stakeholders, and the VAISEF membership.

Superintendent's Recommendation:

The Superintendent of Public Instruction recommends that the Board of Education approve for first review the revisions to the final stage for the proposed *Regulations Governing the Operation of Private Schools for Students with Disabilities*.