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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	State Board of Education
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	8VAC20-671
<b>VAC Chapter title(s)</b>	Regulations Governing the Operation of Private Schools for Students with Disabilities
<b>Action title</b>	Regulatory Changes to Align with Chapter 172 of the 2024 Acts of the Assembly
<b>Date this document prepared</b>	7/25/24

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

The Regulations Governing the Operation of Private Schools for Students with Disabilities provide the requirements which private schools for students with disabilities must adhere to. Pursuant to [Chapter 172](#) of the 2024 Acts of the Assembly Special Session 1, this action will amend 8VAC20-671 to require any private school for students with disabilities that is licensed by the Board, as a condition for renewal of its initial license to operate, to obtain accreditation from an accrediting agency recognized by the Virginia Council for Private Education within three years of the issuance of its initial triennial license by the Board. The bill provides that, notwithstanding the foregoing requirement, any private school for students with disabilities that is licensed to operate by the Board as of July 1, 2021, shall obtain accreditation from an accrediting agency recognized by the Virginia Council for Private Education no later than July 1, 2024.

## Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.*

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“Board” means the State Board of Education  
“VAC” means the Virginia Administrative Code  
“VDOE” means the Virginia Department of Education

## Statement of Final Agency Action

*Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

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On July 25, 2024, the Board authorized the VDOE to proceed with the fast-track revision to the regulation.

## Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

*Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.*

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Chapter 172 directs the Board, via regulation, to require that any private school for students with disabilities that is licensed by the Board, as a condition for renewal of its initial license to operate, to obtain accreditation from an accrediting agency recognized by the Virginia Council for Private Education within three years of the issuance of its initial triennial license by the Board. The bill provides that, notwithstanding the foregoing requirement, any private school for students with disabilities that is licensed to operate by the Board as of July 1, 2021, shall obtain accreditation from an accrediting agency recognized by the Virginia Council for Private Education no later than July 1, 2024.

This regulatory change is expected to be noncontroversial because it is necessary to keep VDOE’s regulations in line with the Commonwealth’s statutory law.

## Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.*

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The Board's overall regulatory authority is found in § [22.1-16](#) of the Code of Virginia, which states that "[t]he Board of Education may adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title."

The Board's specific regulatory authority over schools for students with disabilities is found in § [22.1-321](#) of the Code of Virginia, and specific requirements as to licenses are found in § [22.1-323](#).

## Purpose

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.*

The purpose of this regulatory change is to conform with a directive from the General Assembly.

## Substance

*Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.*

The regulatory change will add a definition for "accredited status," provide that a school must obtain accredited status within three years from the date of issuance reflected on the school's first triennial license to operate as a school for students with disabilities as issued by the Board, as well as provide that upon renewal of a first triennial license, a school must thereafter maintain an accredited status. Next, the regulation will be amended to provide that the Board may refuse to issue or renew a license to operate or may revoke or suspend a license issued to any school pursuant to this chapter for failing to obtain accredited status within three years of the receipt of the school's first triennial license to operate as a school for student or for failing to maintain an accredited status after the renewal of a school's first triennial license.

## Issues

*Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.*

The advantage to this regulatory change is that it ensures that the VDOE's regulations stay in conformity with the Code of Virginia. There are no disadvantages to the regulatory change.

## Requirements More Restrictive than Federal

*Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.*

The requirements at issue do not exceed the applicable federal requirements.

**Agencies, Localities, and Other Entities Particularly Affected**

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

There are no other state agencies who are particularly affected.

Localities Particularly Affected

There are no localities which are particularly affected.

Other Entities Particularly Affected

Entities that operate private schools for students with disabilities will have to maintain accredited status.

**Economic Impact**

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

**Impact on State Agencies**

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:                  a) fund source / fund detail;                  b) delineation of one-time versus on-going expenditures; and                  c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>There are no projected economic impacts from the regulatory change on the VDOE.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no projected economic impacts from the regulatory change on other state agencies.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The regulatory change ensures that the regulation stays in conformity with the law.</p>

**Impact on Localities**

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees or revenues resulting from the regulatory change.	There are no projected costs, savings, fees, or revenues resulting from the regulatory change.
Benefits the regulatory change is designed to produce.	The regulatory change ensures that the regulation stays in conformity with the law.

**Impact on Other Entities**

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.*

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	Private day schools for students with disabilities who are required to maintain accredited status will be affected by the regulatory change, which itself is required by legislation.
Agency’s best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There are 109 private day schools for students with disabilities in Virginia.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	Any costs are the result of the underlying statutory change and are not directly attributable to the regulatory change.
Benefits the regulatory change is designed to produce.	The regulatory change ensures that VDOE’s regulations remain in conformity with Virginia law.

**Alternatives to Regulation**

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.*

No alternatives to this regulation were considered. The regulatory change is the result of a change in the Code of Virginia.

## Regulatory Flexibility Analysis

*Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.*

No alternative regulatory methods were considered. The regulatory change is the result of a legislative mandate.

## Public Participation

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.*

*Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Virginia Department of Education is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency’s regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by email to Jim Chapman, Director of Board Relations, at [jim.chapman@doe.virginia.gov](mailto:jim.chapman@doe.virginia.gov). In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

## Detail of Changes

*List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.*

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

**Table 1: Changes to Existing VAC Chapter(s)**

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
8VAC20-671-10		Definitions as used in the chapter.	A definition for “Accredited status” was added to the section. The intent of this change is to clarify revisions made in other sections. The rationale behind the regulatory change is to conform with changes in Virginia law, specifically Chapter 172.
8VAC20-671-30		General requirements for a license to operate a private school for students with disabilities in accordance with § 22.1-323 of the Code of Virginia	<p>Added part C which reads, “A school must obtain accredited status within three years from the date of issuance reflected on the school’s first triennial license to operate as a school for students with disabilities issued by the Board.</p> <p>Added part D which reads, “Upon renewal of a triennial license, a school must thereafter maintain an accredited status.”</p>
8VAC20-671-170		Causes for which the Board may refuse to issue or renew a license or may revoke or suspend a license issued to any private school for students with disabilities.	<p>Added item 13 which reads, “Failing to obtain accredited status within three years of the receipt of the school’s first triennial license to operate as a school for students with disabilities as issued by the Board.”</p> <p>Added item 14 which reads, “Failing to maintain accredited status after the renewal of a school’s first triennial license.”</p>