

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 837

An Act to amend and reenact §§ 63.1-196.001 and 63.1-196.3:1 of the Code of Virginia, relating to licensure of child day centers.

[S 265]

Approved April 20, 1994

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.1-196.001 and 63.1-196.3:1 of the Code of Virginia are amended and reenacted as follows:

§ 63.1-196.001. Exemptions from licensure.

A. The following child day programs shall not be required to be licensed:

1. A child day center that has obtained an exemption pursuant to § 63.1-196.3.

2. A program where, by written policy given to and signed by a parent or guardian, children are free to enter and leave the premises without permission or supervision. A program that would qualify for this exemption except that it assumes responsibility for the supervision, protection and well-being of several children with disabilities who are mainstreamed shall not be subject to licensure.

3. A program of instructional experience in a single focus, such as, but not limited to, computer science, archaeology, sport clinics, or music, if children under the age of six do not attend at all and if no child is allowed to attend for more than twenty-five days in any three-month period commencing with enrollment. This exemption does not apply if children merely change their enrollment to a different focus area at a site offering a variety of activities and such children's attendance exceeds twenty-five days in a three-month period.

4. Programs of instructional or recreational activities wherein no child under age six attends for more than six hours weekly with no class or activity period to exceed one and one-half hours, and no child six years of age or above attends for more than six hours weekly when school is in session or twelve hours weekly when school is not in session. Competition, performances and exhibitions related to the instructional or recreational activity shall be excluded when determining the hours of program operation.

5. A program that operates no more than a total of twenty program days in the course of a calendar year provided that programs serving children under age six operate no more than two consecutive weeks without a break of at least a week.

6. Instructional programs offered by public and private schools that satisfy compulsory attendance laws or the Individuals with Disabilities Education Act and programs of school-sponsored extracurricular activities that are focused on single interests such as, but not limited to, music, sports, drama, civic service, or foreign language.

7. Education and care programs provided by public schools which are not exempt pursuant to subdivision A 6 of this section shall be regulated by the State Board of Education using regulations that incorporate, but may exceed, the regulations for child day centers licensed by the Commissioner.

8. Early intervention programs for children eligible under Part H of the Individuals with Disabilities Education Act wherein no child attends for more than a total of six hours per week.

9. Practice or competition in organized competitive sports leagues.

10. Programs of religious instruction, such as Sunday schools, vacation Bible schools, and Bar Mitzvah or Bat Mitzvah classes, and child-minding services provided to allow parents or guardians who are on site to attend religious worship or instructional services.

11. Child-minding services which are not available for more than three hours per day for any individual child offered on site in commercial or recreational establishments if the parent or guardian (i) is not an on-duty employee, (ii) can be contacted and can resume responsibility for the child's supervision within thirty minutes, and (iii) is receiving services or participating in activities offered by the establishment.

12. A certified preschool or nursery school program operated by a private school which is accredited by a statewide ~~accreditation~~ accrediting organization recognized by the State Board of Education or accredited by the National Association for the Education of Young Children's National Academy of Early Childhood Programs which complies with the provisions of § 63.1-196.3:1. ~~The provisions of this subdivision shall expire on July 1, 1994.~~

B. Family day homes that are members of a licensed family day system shall not be required to obtain a license from the Commissioner.

C. Officers, employees, or agents of the Commonwealth, or of any county, city, or town acting within the scope of their authority as such, who serve as or maintain a child-placing agency shall not be required to be licensed.

D. Prescribed therapeutic recreation programs provided for children with disabilities in programs that meet the child day center definition shall not be subject to licensure under this chapter until the

appropriate regulations are promulgated.

§ 63.1-196.3:1. Certification of preschool or nursery school programs operated by accredited private schools; provisional certification; annual statement and documentary evidence required; enforcement; injunctive relief.

A. A ~~certified~~ preschool or nursery school program operated by a private school, which is accredited by a statewide ~~accreditation~~ accrediting organization recognized by the Board of Education *or a private school or preschool that offers to preschool-aged children a program accredited by the National Association for the Education of Young Children's National Academy of Early Childhood Programs*, shall be exempt from licensure if it complies with the provisions of this section and meets the requirements of either subsection B or subsection C *or subsection D*.

B. A school described in subsection A shall meet the following conditions in order to be exempt under this subsection:

1. The school offers *kindergarten or elementary school* instructional programs that satisfy compulsory school attendance laws, and children below the age of compulsory school attendance also participate in such instructional programs;

2. The instructional programs for children of and below the age of ~~compulsory~~ *eligibility for school attendance* share (i) a specific verifiable common pedagogy, (ii) ~~educational~~ *education* materials, (iii) methods of instruction, and (iv) professional training and individual teacher certification standards, all of which are required by a state-recognized accrediting ~~agency for accreditation purposes~~ *organization*;

3. The instructional programs described in subdivisions 1 and 2 ~~which have mixed age groups of three-year-old to six-year-old children have a pupil-teacher ratio that does not exceed fifteen pupils per teacher and the number of pupils in the preschool program does not exceed fifteen pupils for each instructional adult~~;

4. The instructional program contemplates a three-to-four-year learning cycle under a common pedagogy; and

5. Children below the age of ~~compulsory~~ *school eligibility for kindergarten* attendance do not attend the instructional program for more than four hours per day.

C. A school described in subsection A shall be exempt from licensure if it maintains a ~~an enrollment ratio at any one time during the current school year of six children of the age of compulsory school attendance to one child below the age of compulsory school attendance~~ *five children age five or above to one four-year old child* as long as no child in attendance is under age four *and the number of pupils in the preschool program does not exceed twelve pupils for each instructional adult*.

D. A *private school or preschool* described in subsection A shall meet the following conditions in order to be exempt under this subsection:

1. *The school offers instructional classes and has been in operation since January 1984.*

2. *The school does not hold itself out as a child care center, child day center, or child day program.*

3. *Children enrolled in the school are at least three years of age and do not attend more than (i) three hours per day and (ii) five days per week.*

4. *The enrolled children attend only one program offered by the school per day.*

5. *The school maintains a certificate or permit issued pursuant to a local government ordinance that addresses health, safety and welfare of the children, such as but not limited to space requirements, and requires annual inspections.*

E. ~~Such private~~ The school shall file with the Commissioner of Social Services, prior to the beginning of the school year or calendar year, as the case may be, and thereafter, annually, a statement which includes the following:

1. Intent to operate a ~~certified~~ preschool ~~or nursery school~~ program;

2. Documentary evidence that the school has been accredited as provided in subsection A;

3. Documentation that the school has disclosed in writing to the parents, guardians, or persons having charge of a child enrolled in the school's preschool ~~or nursery school~~ program the fact of the program's exemption from licensure;

4. Documentary evidence that the ~~physical facilities~~ *facility* in which the preschool ~~or nursery school~~ program will be conducted by the ~~private school~~ *have* has been inspected ~~within the prior calendar year~~ *(i) before initial certification by the local building official and (ii) within the twelve-month period prior to initial certification and at least annually thereafter* by the local health department, and local fire marshal or Office of the State Fire Marshal, whichever is appropriate, and ~~that such inspection has resulted in a finding~~ *an inspection report which documents* that the facility is in compliance with applicable laws and regulations pertaining to food services, health and sanitation, water supply, building codes, and the Statewide Fire Prevention Code or the Uniform Statewide Building Code;

5. Documentation that the ~~private~~ school has disclosed *the following* in writing to the parents, guardians, or persons having charge of a child enrolled in the school's preschool ~~or nursery school~~ program, and in a written statement ~~made~~ available to the general public, ~~that:~~ *(i) the school facility is in compliance with applicable laws and regulations pertaining to food services, health and sanitation, water supply, building codes, and the Statewide Fire Prevention Code or the Uniform Statewide Building Code, enrollment capacity, health requirements for the staff, and public liability insurance (ii)*

the preschool program's maximum capacity, (iii) the school's policy or practice for pupil-teacher ratio, staffing patterns and staff health requirements, and (iv) a description of the school's public liability insurance, if any;

6. Qualifications of ~~the school personnel employed by the school~~ who work in the preschool program; and

7. Documentary evidence that the private school requires all ~~prospective~~ employees of the preschool and other school employees who have contact with the children enrolled in the preschool program to obtain a criminal ~~records~~ record check as provided in subdivision A 11 of § 19.2-389 as a condition of initial or continued employment. The school shall ~~refuse not hire or continue~~ employment to of any such person who has been convicted of any offense specified in § 63.1-198.1.

All accredited private schools seeking certification of preschool or ~~nursery school~~ programs shall file such information on such forms as may be prescribed by the Commissioner of Social Services. The Commissioner shall certify all preschool and ~~nursery school~~ programs of accredited private schools which comply with the provisions of subsection A.

E. F. The A preschool or ~~nursery school~~ program of a private school which has not been accredited as provided in subsection A, or a private school which has not provided documentation to the Commissioner that it has initiated the accreditation process, shall be subject to licensure ~~pursuant to the provisions of this chapter.~~

A private school which provides documentation to the Commissioner that it has initiated the accreditation process shall be eligible for provisional certification by the Commissioner. The Commissioner shall issue a provisional certificate to a private school which provides documentation to the Commissioner that it has initiated the accreditation process. The provisional certificate shall permit the school to operate its preschool program during the accreditation process period. The issuance of an initial provisional certificate shall be for a period not to exceed one year. A provisional certificate may be renewed up to an additional year if the accrediting organization provides a statement indicating it has visited the school within the previous six months and the school has made sufficient progress. Such programs shall not be subject to licensure during the ~~accreditation process~~ provisional certification period.

F. G. If a private school fails to complete the accreditation process or is denied accreditation, the Commissioner shall revoke the provisional certification and the program shall thereafter be subject to licensure ~~pursuant to the provisions of this chapter.~~

G. H. If an accredited private school which operates a ~~certified~~ the preschool or ~~nursery school~~ program of a private school which is accredited as provided in subsection A fails to file the statement and the required documentary evidence, the Commissioner shall give reasonable notice to such school of the nature ~~notify the school of its noncompliance and may thereafter take such action as he determines appropriate, including the issuance of provisional certification, or notice that the program shall comply with the licensure requirements of this chapter is required to be licensed.~~

H. I. The Commissioner shall issue a provisional certificate to permit a private school to operate its preschool or ~~nursery school~~ program during the accreditation process period. The issuance of a provisional certificate and the renewal thereof shall be for a period not to exceed one year. The revocation or denial of the certification of a preschool or ~~nursery school~~ program shall be subject to appeal pursuant to the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.). Judicial review of a final agency decision shall be in accordance with the provisions of the Administrative Process Act.

I. J. Any person who has reason to believe that a private school falling within the provisions of this section is in noncompliance with any applicable requirement of this section may report the same to the Department of Social Services, the local department of welfare or social services, the local health department, or the local fire marshal, each of which may inspect the school for noncompliance, give reasonable notice to the school of the nature of its noncompliance, and thereafter may take appropriate action as provided by law, including a suit to enjoin the operation of the preschool or ~~nursery school~~ program.

J. K. Upon receipt of a complaint concerning a certified preschool or ~~nursery school~~ program of an accredited private school, or of a private school to which provisional certification has been issued, if for good cause shown there is reason to suspect that the school is in noncompliance with any provision of this section or the health or safety of the children attending the preschool program is in danger, the Commissioner shall cause an investigation to be made, including on-site visits as he deems necessary of the services, personnel, and facilities of the school's program. The school shall afford the Commissioner or his agent reasonable opportunity to inspect the school's program, records, and facility, and to interview the employees and any child or parent or guardian of a child who is or has been enrolled in the preschool or ~~nursery school~~ program. If, upon completion of the investigation, it is determined that the school is in noncompliance with the provisions of this section, the Commissioner shall give reasonable notice to the school of the nature of its noncompliance and thereafter may take appropriate action as provided by law, including a suit to enjoin the operation of the preschool or ~~nursery school~~ program.

K. L. Failure of a private school to comply with the provisions of this section, or a finding that the

health and safety of the children attending the preschool ~~or nursery school~~ program is in clear and substantial danger upon the completion of an investigation, shall be grounds for revocation of the certification issued pursuant to this section.

~~L. M.~~ If ~~such~~ a private school operates a child day program outside the scope of its instructional classes *during the school year or operates a child day program during the summer*, the child day program shall be subject to licensure as a ~~child day program~~ and ~~subject to~~ *under* the regulations promulgated pursuant to § 63.1-202.

~~M. N.~~ Nothing in this section shall prohibit a preschool ~~or nursery school~~ operated by or conducted under the auspices of a private school from obtaining a license pursuant to this chapter.

~~N. The provisions of this section shall expire on July 1, 1994.~~