

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 63.2-1715 and 63.2-1717 of the Code of Virginia, relating to licensure*  
3 *exemptions; private preschool programs.*

4 [H 1837]  
5 Approved

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That §§ 63.2-1715 and 63.2-1717 of the Code of Virginia are amended and reenacted as follows:**  
8 **§ 63.2-1715. Exemptions from licensure.**

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

10 1. A child day center that has obtained an exemption pursuant to § 63.2-1716.

11 2. A program where, by written policy given to and signed by a parent or guardian, school-aged  
12 children are free to enter and leave the premises without permission or supervision, regardless of (i)  
13 such program's location or the number of days per week of its operation; (ii) the provision of  
14 transportation services, including drop-off and pick-up times; or (iii) the scheduling of breaks for snacks,  
15 homework, or other activities. A program that would qualify for this exemption except that it assumes  
16 responsibility for the supervision, protection and well-being of several children with disabilities who are  
17 mainstreamed shall not be subject to licensure.

18 3. A program of instructional experience in a single focus, such as, but not limited to, computer  
19 science, archaeology, sport clinics, or music, if children under the age of six do not attend at all and if  
20 no child is allowed to attend for more than 25 days in any three-month period commencing with  
21 enrollment. This exemption does not apply if children merely change their enrollment to a different  
22 focus area at a site offering a variety of activities and such children's attendance exceeds 25 days in a  
23 three-month period.

24 4. Programs of instructional or recreational activities wherein no child under age six attends for more  
25 than six hours weekly with no class or activity period to exceed one and one-half hours, and no child  
26 six years of age or above attends for more than six hours weekly when school is in session or 12 hours  
27 weekly when school is not in session. Competition, performances and exhibitions related to the  
28 instructional or recreational activity shall be excluded when determining the hours of program operation.

29 5. A program that operates no more than a total of 20 program days in the course of a calendar year  
30 provided that programs serving children under age six operate no more than two consecutive weeks  
31 without a break of at least a week.

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

36 7. Instructional programs offered by public schools that serve preschool-age children or that satisfy  
37 compulsory attendance laws or the Individuals with Disabilities Education Act, as amended, and  
38 programs of school-sponsored extracurricular activities that are focused on single interests such as, but  
39 not limited to, music, sports, drama, civic service, or foreign language.

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

42 9. Practice or competition in organized competitive sports leagues.

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

46 11. Child-minding services that are not available for more than three hours per day for any individual  
47 child offered on site in commercial or recreational establishments if the parent or guardian (i) is not an  
48 on-duty employee, except for part-time employees working less than two hours per day, (ii) can be  
49 contacted and can resume responsibility for the child's supervision within 30 minutes, and (iii) is  
50 receiving or providing services or participating in activities offered by the establishment.

51 12. A certified preschool or nursery school program operated by a private school that is accredited  
52 by a statewide *an* accrediting organization recognized by the State Board of Education ~~or accredited by~~  
53 ~~the National Association for the Education of Young Children's National Academy of Early Childhood~~  
54 ~~Programs; the Association of Christian Schools International; the American Association of Christian~~  
55 ~~Schools; the National Early Childhood Program Accreditation; the National Accreditation Council for~~  
56 ~~Early Childhood Professional Personnel and Programs; the International Academy for Private Education;~~

57 the American Montessori Society; the International Accreditation and Certification of Childhood  
58 Educators, Programs, and Trainers; or the National Accreditation Commission that pursuant to § 22.1-19  
59 and complies with the provisions of § 63.2-1717.

60 13. A program of recreational activities offered by local governments, staffed by local government  
61 employees, and attended by school-age children. Such programs shall be subject to safety and  
62 supervisory standards established by local governments.

63 14. A program of instructional or athletic experience operated during the summer months by, and as  
64 an extension of, an accredited private elementary, middle, or high school program as set forth in  
65 § 22.1-19 and administered by the Virginia Council for Private Education.

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

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

71 **§ 63.2-1717. Certification of preschool or nursery school programs operated by accredited**  
72 **private schools; provisional certification; annual statement and documentary evidence required;**  
73 **enforcement; injunctive relief.**

74 A. A preschool or nursery school program operated by a private school accredited by a statewide *an*  
75 accrediting organization recognized by the Board of Education ~~or a private school or preschool that~~  
76 offers to preschool-aged children a program accredited by the National Association for the Education of  
77 Young Children's National Academy of Early Childhood Programs; the Association of Christian Schools  
78 International; the American Association of Christian Schools; the National Early Childhood Program  
79 Accreditation; the National Accreditation Council for Early Childhood Professional Personnel and  
80 Programs; the International Academy for Private Education; the American Montessori Society; the  
81 International Accreditation and Certification of Childhood Educators, Programs, and Trainers; or the  
82 National Accreditation Commission and is recognized by the Board of Education, pursuant to § 22.1-19  
83 shall be exempt from licensure under this subtitle if it complies with the provisions of this section and  
84 meets the requirements of subsection B, C or D.

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

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

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

94 3. The instructional programs described in subdivisions 1 and 2 have number of pupils in the  
95 preschool program does not exceed 12 pupils for each instructional adult, or if operated as a  
96 Montessori program with mixed age groups of three-year-old to six-year-old children and, the number of  
97 pupils in the preschool program does not exceed 15 pupils for each instructional adult;

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

100 5. 3. Children below the age of eligibility for kindergarten attendance do not attend the instructional  
101 preschool program for more than five hours per day, provided that no more than four hours of  
102 instructional classes is provided per day;

103 C. A school described in subsection A shall be exempt from licensure if it maintains an enrollment  
104 ratio at any one time during the current school year of five children age five or above to one  
105 four-year-old child as long as no

106 4. No child in attendance is under age four and the number of pupils in the preschool program does  
107 not exceed 12 pupils for each instructional adult. three;

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

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

111 2. 5. The school preschool offers instructional classes and does not hold itself out as a child care  
112 center, child day center, or child day program;

113 3. 6. Children enrolled in the school are at least three years of age and preschool do not attend more  
114 than (i) three hours per day and (ii) five days per week; and

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

116 5. 7. The school maintains a certificate or permit issued pursuant to a local government ordinance  
117 that addresses health, safety, and welfare of the children; such as but not limited to space requirements;

118 and requires annual inspections.

119 E. C. The school shall file with the Commissioner, prior to the beginning of the school year or  
120 calendar year, as the case may be, and thereafter, annually, a statement which includes the following:

121 1. Intent to operate a certified preschool program;

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

123 3. Documentation that the school has disclosed in writing to the parents, guardians, or persons having  
124 charge of a child enrolled in the school's preschool program *and has posted in a visible location on the*  
125 *premises* the fact of the program's exemption from licensure;

126 4. Documentary evidence that the physical facility in which the preschool program will be conducted  
127 has been inspected (i) before initial certification by the local building official and (ii) within the  
128 12-month period prior to initial certification and at least annually thereafter by the local health  
129 department, and local fire marshal or Office of the State Fire Marshal, whichever is appropriate, and an  
130 inspection report ~~which~~ *that* documents that the facility is in compliance with applicable laws and  
131 regulations pertaining to food services, health and sanitation, water supply, building codes, and the  
132 Statewide Fire Prevention Code or the Uniform Statewide Building Code;

133 5. Documentation that the school has disclosed the following in writing to the parents, guardians, or  
134 persons having charge of a child enrolled in the school's preschool program, and in a written statement  
135 available to the general public: (i) the school facility is in compliance with applicable laws and  
136 regulations pertaining to food services, health and sanitation, water supply, building codes, and the  
137 Statewide Fire Prevention Code or the Uniform Statewide Building Code;; (ii) the preschool program's  
138 maximum capacity;; (iii) the school's policy or practice for pupil-teacher ratio, staffing patterns, and staff  
139 health requirements;; and (iv) a description of the school's public liability insurance, if any;

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

141 7. *Certification that the school will report to the Commissioner all incidents involving serious injury*  
142 *or death to children attending the preschool program. Reports of serious injuries, which shall include*  
143 *any injuries that require an emergency referral to an offsite health care professional or treatment in a*  
144 *hospital, shall be submitted annually. Reports of deaths shall be submitted no later than one business*  
145 *day after the death occurred; and*

146 8. Documentary evidence that the private school requires all employees of the preschool and other  
147 school employees who have contact with the children enrolled in the preschool program to obtain a  
148 criminal record check as provided in ~~subdivision A 11 of § 19.2-389~~ § 63.2-1720.1 *to meet the*  
149 *requirements of § 22.1-296.3 as a condition of initial or continued employment. The school shall not*  
150 *hire or continue employment of any such person who has an offense specified in § 63.2-1719.*

151 All accredited private schools seeking certification of preschool programs shall file such information  
152 on forms prescribed by the Commissioner. The Commissioner shall certify all preschool programs of  
153 accredited private schools which comply with the provisions of subsection A. *The Commissioner may*  
154 *conduct an annual inspection of such preschool programs to ensure compliance with the provisions of*  
155 *this section and conduct inspections to investigate complaints alleging noncompliance.*

156 F. D. A preschool program of a private school that has not been accredited as provided in subsection  
157 A; or which has not provided documentation to the Commissioner that it has initiated the accreditation  
158 process; shall be subject to licensure.

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

167 G. If a school fails to complete the accreditation process or is denied accreditation, the Commissioner  
168 shall revoke the provisional certification and the program shall thereafter be subject to licensure.

169 H. E. If the preschool program of a private school ~~which~~ *that* is accredited as provided in subsection  
170 A fails to file the statement and the required documentary evidence, the Commissioner shall notify the  
171 school of its noncompliance and may thereafter take such action as he determines appropriate, including  
172 notice that the program is required to be licensed.

173 I. F. The revocation or denial of the certification of a preschool program shall be subject to appeal  
174 pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Judicial review of a  
175 final agency decision shall be in accordance with the provisions of the Administrative Process Act.

176 J. G. Any person who has reason to believe that a private school falling within the provisions of this  
177 section is in noncompliance with any applicable requirement of this section may report the same to the  
178 Department, the local department, the local health department, or the local fire marshal, each of which

179 may inspect the school for noncompliance, give reasonable notice to the school of the nature of its  
180 noncompliance, and thereafter may take appropriate action as provided by law, including a suit to enjoin  
181 the operation of the preschool program.

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

194 ~~L. I.~~ Failure of a private school to comply with the provisions of this section, or a finding that the  
195 health and safety of the children attending the preschool program are in clear and substantial danger  
196 upon the completion of an investigation, shall be grounds for revocation of the certification issued  
197 pursuant to this section.

198 ~~M. J.~~ If a private school operates a child day program outside the scope of its instructional classes  
199 during the school year or operates a child day program during the summer, the child day program shall  
200 be subject to licensure under the regulations adopted pursuant to § 63.2-1734.

201 ~~N. K.~~ Nothing in this section shall prohibit a preschool operated by or conducted under the auspices  
202 of a private school from obtaining a license pursuant to this subtitle.