

§ 63.2-1717. 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 preschool or nursery school program operated by a private school accredited by an accrediting organization recognized by the Board of Education pursuant to § 22.1-19 shall be exempt from licensure under this subtitle if it complies with the provisions of this section and meets the requirements of subsection B.

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 number of pupils in the preschool program does not exceed 12 pupils for each instructional adult, or if operated as a Montessori program with mixed age groups of three-year-old to six-year-old children, the number of pupils in the preschool program does not exceed 15 pupils for each instructional adult;
3. The school (i) maintains an average enrollment ratio during the current school year of five children age five or above to one four-year-old child, and no child in attendance is under age four, or (ii) does not allow children below the age of eligibility for kindergarten attendance to attend the preschool program for more than five hours per day, of which no more than four hours of instructional classes may be provided per day, and no child in attendance is under age three;
4. The preschool offers instructional classes and does not hold itself out as a child care center, child day center, or child day program;
5. Children enrolled in the preschool do not attend more than five days per week; and
6. The school maintains a certificate or permit issued pursuant to a local government ordinance that addresses health, safety, and welfare of the children.

C. The school shall file with the Commissioner, 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 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 program and has posted in a visible location on the premises the fact of the program's exemption from licensure;

4. Documentary evidence that the physical facility in which the preschool program will be conducted has been inspected (i) before initial certification by the local building official and (ii) within the 12-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 an inspection report that 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 school has disclosed the following in writing to the parents, guardians, or persons having charge of a child enrolled in the school's preschool program, and in a written statement available to the general public: (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; (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 school personnel who work in the preschool program;
7. Certification that the school will report to the Commissioner all incidents involving serious injury to or death of children attending the preschool program. Reports of serious injuries, which shall include any injuries that require an emergency referral to an offsite health care professional or treatment in a hospital, shall be submitted annually. Reports of deaths shall be submitted no later than one business day after the death occurred; and
8. Documentary evidence that the private school requires all employees of the preschool and other school employees who have contact with the children enrolled in the preschool program to obtain a criminal record check as provided in § 63.2-1720.1 to meet the requirements of § 22.1-296.3 as a condition of initial or continued employment.

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

D. A preschool program of a private school that has not been accredited as provided in subsection A shall be subject to licensure.

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

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

G. 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, the local department, 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 program.

H. Upon receipt of a complaint concerning a certified preschool program of an accredited private school, 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 preschool program. The school shall afford the Commissioner reasonable opportunity to inspect the school's preschool 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 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 program.

I. 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 program are in clear and substantial danger upon the completion of an investigation, shall be grounds for revocation of the certification issued pursuant to this section.

J. If 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 under the regulations adopted pursuant to § [63.2-1734](#).

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

1993, cc. 730, 742, § 63.1-196.3:1; 1994, cc. [837](#), [940](#);1999, c. [454](#);2002, c. [747](#);2003, c. [467](#);2017, cc. [748](#), [809](#);2018, cc. [99](#), [107](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.