



# VIRGINIA DEPARTMENT OF EDUCATION

## General Procedures for the Licensure of Child Day Programs and Family Day Systems and Background Checks (8VAC20-821)

Effective February 1, 2026  
Frequently Asked Questions

### 8VAC20-821 General

**Question:** Which programs does 8VAC20-821 apply to?

*Response:* The entire chapter applies to licensed child day programs, licensed family day systems, and applicants for licensure. Part V, which includes requirements for background checks, applies to voluntarily registered family day homes.

### 8VAC20-821-30. License

**Question:** Standard 8VAC20-821-30 F states that any administrative sanction imposed by a special order or any sanction imposed by a final order shall be considered a term of the license. What does this mean?

*Response:* The terms of the license granted by the superintendent are enumerated in 8VAC20-821-30 E. Standard 8VAC20-821-270.3 prohibits applicants or licensees from failing to operate within the terms of the license, and 270.14 prohibits licensees from failing to comply with the terms of a special or final order and permits the superintendent to impose an additional adverse action for noncompliance.

### 8VAC20-821-70. Variances.

**Question:** Will programs be able to request a variance for multiple locations in one request?

*Response:* The superintendent may review all submissions of a demonstration of hardship or requests for a variance and make a determination based on the information provided. Applicants or licensees may request a variance for a standard that presents a hardship across multiple programs as long as the request includes the information required in 8VAC20-821-70 A for each location. Variances requested for corporate or franchise programs must be submitted separately if the licensee differs for each location.

### 8VAC20-821-140. Application fees are non-refundable; application date.

**Question:** When is the earliest a program can apply for an initial license?

*Response:* Programs may apply for licensure at any time, but the application must be complete within six months of the date the application was received.

**8VAC20-821-170. Background checks required.**

**Question:** Are facilities responsible for paying for employee background checks now? If so, how much do background checks cost?

*Response:* Effective January 1, 2026, providers are responsible for all background check fees, even for new employees. As of January 1, the processing fee for Virginia Central Registry Search Requests is \$12, portability requests are now \$17, and national criminal fingerprint background requests are \$43.23 for volunteers and \$63.23 for all others. Note that these costs are subject to change in the future, and the cost for out-of-state checks varies by state. Please check the [OBI website](#) for the most up-to-date information on fees.

**Question:** Is a search of the Virginia Child Abuse and Neglect Registry required within seven days for all 14-year-olds?

*Response:* A Virginia child protective services central registry check must be requested for any person 14 years of age or older living in the home of a licensed or registered family day home within seven days of reaching 14 years of age or beginning to live in the home. A sworn disclosure, fingerprint check, sex-offender registry check and out-of-state checks are only required for adults that live in the home and all caregivers.

**Question:** What date is used to determine compliance with requesting background checks within the required timeframe? For example, does the date the request was created in the CPS portal or the submission date on the application determine the request date?

*Response:* A request for the required background check component is considered complete once a request has been submitted through the CPS portal for a Virginia Child Abuse and Neglect Registry check or by means required by the applicable state (s) for out-of-state checks for criminal background or child abuse registry checks. Documentation must be available for inspection to confirm the requests for the Virginia Child Abuse and Neglect Registry Check, and all applicable out-of-state checks were made prior to the individual beginning employment if provisionally hired. Note: In order for an employee to be provisionally hired, a result of ‘eligible’ must have been received as a result of the fingerprint check and a complete sworn statement or affirmation must be on file.

**Question:** If an owner has two schools with the same name, but they are technically two different LLCs, can the background checks be shared?

*Response:* No. Background checks are not transferrable between persons, which is defined as “any individual; corporation; partnership; association; limited liability company; local government; state agency, including any department, institution, authority, instrumentality, board, or other administrative agency of the Commonwealth; or other legal or commercial entity that operates or maintains a child day program or family day system.”

However, portability is available if an “eligible” determination was received within the last five years, and the individual is currently employed or has been employed or a volunteer within the previous 180 days at a child day program in subsection A of § 22.1-289.035 or a family day system. Portability must be requested through the [OBI portal](#).

**Question:** Are background checks pursuant to § 22.1-289.035 or § 22.1-289.036 applicable to independent contractors working in the program before, during, or after hours? If an independent contractor is employed by the program but is also required to obtain a background check outside of the program, can the program use that background check information?

*Response:* Background check requirements are applicable to volunteers, employees, applicants, agents, and household members.

Background check requirements pursuant to § 22.1-289.035 apply to all volunteers who will be alone with, in control of, or supervising children and all individuals employed by the facility. Requirements pursuant to § 22.1-289.036 apply to all applicants, agents, and household members. Background check requirements apply without regard to when individuals subject to background check requirements may be physically present at the facility or home.

Independent contractors not employed by the program are not subject to background check requirements. However, the program should have documentation on file that provides permission from the child’s parent for the child to be in the care of the specialist or the program must have an employee or volunteer with the required background checks completed present during the session.

### **8VAC20-821-180. Disqualifying background checks; prohibitions.**

**Question:** Is it permissible for an unofficial network of providers to ‘share’ employees and use the same background check information?

*Response:* No. Each provider must independently submit background check information for employees. Portability is available if an “eligible” determination was received within the last five years, and the individual is currently employed or has been employed or a volunteer within the previous 180 days at a child day program in subsection A of § 22.1-289.035 or a family day system. Portability must be requested through the [OBI portal](#).

### **8VAC20-821-190. Out-of-state background checks.**

**Question:** Does the updated Code indicate when and how often we need to follow up on out of state background checks?

*Response:* Out-of-State checks need to be completed when an employee or volunteer as described in § 22.1-289.035 has lived outside of the state within the past five years; or when an applicant, agent, or adult household member has lived outside of the state within the past five years pursuant to § 22.1-289.036.

The out-of-state check only needs to be repeated if the individual has maintained an out of state residence within the past five years once all background checks are due to be repeated. When

out-of-state background checks are requested, the facility or home must maintain documentation from the state on or after the date of the request if the state to which the request was made refuses to provide background check information due to the state's procedures for processing; or documentation showing that the person responsible for obtaining the background check contacted the state in writing to obtain the results of the background check at least 45 days after the first request.

#### **8VAC20-821-210. Maintenance of background check records.**

**Question:** Is the time frame for keeping records the same for subsidy providers?

*Response:* No. Chapter 821 describes requirements for access to records by the Department and requirements for the maintenance of background check records. Notwithstanding requirements for record retention in the Child Care Subsidy Program regulation (8VAC20-790), all child day programs and family day systems must keep background check records for at least two years after termination of duties or residence. Licensed programs that participate in the Child Care Subsidy program must also adhere to requirements for records in 8VAC20-790.

#### **8VAC20-821-280. Review process.**

**Question:** What is the process for the review of appeals?

*Response:* When a provider seeks to appeal a violation, the Department encourages an informal review with the licensing administrator which must be received in writing within the required five business day timeframe. The provider must include in the request for review:

- The inspection date that the violation of the licensing standard that is being challenged occurred;
- The reasons why the provider believes that the application of the licensing standard was arbitrary or capricious; and
- All relevant documentation supporting the rationale that the application of the licensing standard was arbitrary or capricious.

If there is not a consensus on the outcome, the provider may request a formal review which would be completed by program supervisory personnel.

#### **8VAC20-821-320. Consent agreements.**

**Question:** If a consent agreement is used in lieu of a sanction, will that become part of the terms of a license?

*Response:* Since a consent agreement takes place in lieu of adverse action issued in a special or final order which would be considered a term of the license, the consent agreement does not automatically become a term of the license. However, if the provider is in breach of the agreement, the superintendent reserves the right to impose an administrative sanction related to violations of standards associated with the consent agreement.