

# Virginia Board of Education Agenda Item



**Agenda Item:** B

**Date:** March 26, 2015

<b>Title</b>	First Review of Notice of Intended Regulatory Action (NOIRA) for Proposed <i>Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia</i>		
<b>Presenter</b>	John M. Eisenberg – Assistant Superintendent for Special Education and Student Services		
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**Purpose of Presentation:**

Action required by state or federal law or regulation.

**Previous Review or Action:**

No previous review or action.

**Action Requested:**

Final review: Action requested at this meeting.

**Alignment with Board of Education Goals: Please indicate (X) all that apply:**

	Goal 1: Accountability for Student Learning
	Goal 2: Rigorous Standards to Promote College and Career Readiness
	Goal 3: Expanded Opportunities to Learn
	Goal 4: Nurturing Young Learners
	Goal 5: Highly Qualified and Effective Educators
	Goal 6: Sound Policies for Student Success
x	Goal 7: Safe and Secure Schools
	Other Priority or Initiative. Specify:

**Background Information and Statutory Authority:**

The Virginia General Assembly has enacted HB 1443, amending the *Code of Virginia* by adding section number 22.1-279.1:1, relating to the use of seclusion and restraint in public schools. The bill, which has been signed by the Governor, becomes effective July 1, 2015, and requires the Board of Education to adopt regulations on the use of seclusion and restraint in public elementary and secondary schools in the Commonwealth that (i) are consistent with its *Guidelines for the Development of Policies and Procedures for Managing Student Behavior in Emergency Situations* and the *Fifteen Principles* contained in the U.S. Department of Education’s *Restraint and Seclusion: Resource Document*; (ii) include definitions, criteria for use, restrictions for use, training requirements, notification requirements, reporting requirements, and follow-up requirements; and (iii) address distinctions, including distinctions in emotional and physical development, between (a) the general student population and the special education student population and (b) elementary school students and secondary school students.

**Summary of Important Issues:**

The attached “Notice of Intended Regulatory Action (NOIRA) Background Document” summarizes the major elements of this proposal to create regulations governing restraint and seclusion policies and practices in Virginia’s public schools.

**Impact on Fiscal and Human Resources:**

There may be administrative, human resource and fiscal impacts on many school divisions, depending upon current practice.

**Timetable for Further Review/Action:**

The timetable for further action will be governed by the requirements of the Administrative Process Act.

**Superintendent's Recommendation:**

The Superintendent of Public Instruction recommends that the Board of Education waive first review and authorize the Virginia Department of Education staff to proceed with the requirements of the Administrative Process Act.

**Rationale for Action:**

This NOIRA initiates the beginning of the Administrative Process Act to put the general public on notice that the Virginia Department of Education will begin working with a wide variety of stakeholders to draft a set of regulations that will be brought to the Board of Education for first review. The NOIRA is required after the Governor signed HB 1443, amending the *Code of Virginia*.



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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Virginia Department of Education
<b>Virginia Administrative Code (VAC) citation(s)</b>	8 VAC 20 - ____
<b>Regulation title(s)</b>	Regulations Governing the Use of Seclusion and Restraint in Public Schools in Virginia
<b>Action title</b>	New regulations to govern the use of seclusion and restraint in public schools in Virginia, as required by HB 1443, which was approved by the 2015 General Assembly and will become effective on July 1, 2015.
<b>Date this document prepared</b>	March 18, 2015

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Subject matter and intent

*Please describe briefly the subject matter, intent, and goals of the planned regulatory action.*

The Virginia General Assembly has enacted HB 1443, amending the Code of Virginia by adding a section number 22.1-279.1:1, relating to the use of seclusion and restraint in public schools. The bill, which has been signed by the Governor, becomes effective on July 1, 2015, and requires the Board of Education to adopt regulations on the use of seclusion and restraint in public elementary and secondary schools in the Commonwealth that (i) are consistent with its *Guidelines for the Development of Policies and Procedures for Managing Student Behavior in Emergency Situations* and the *Fifteen Principles* contained in the U.S. Department of Education's *Restraint and Seclusion: Resource Document*; (ii) include definitions, criteria for use, restrictions for use, training requirements, notification requirements, reporting requirements, and follow-up requirements; and (iii) address distinctions, including distinctions in emotional and physical

development, between (a) the general student population and the special education student population and (b) elementary school students and secondary school students.

### Legal basis

*Please identify the (1) the agency (includes any type of promulgating entity) and(2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.*

The Board of Education’s authority for promulgating regulations governing standards for accrediting public schools may be found in § 22.1-253.13:3 of the *Code of Virginia*:

“The Board of Education shall promulgate regulations establishing standards for accreditation pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), which shall include, but not be limited to, student outcome measures, requirements and guidelines for instructional programs and for the integration of educational technology into such instructional programs, administrative and instructional staffing levels and positions, including staff positions for supporting educational technology, student services, auxiliary education programs such as library and media services, course and credit requirements for graduation from high school, community relations, and the philosophy, goals, and objectives of public education in Virginia.”

The Board of Education’s overall regulatory authority may be found in § 22.1-16 of the *Code of Virginia*:

“The 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.”

### Purpose

*Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.*

The proposed regulatory action is necessary to fulfill the General Assembly’s directive that regulations be developed in accordance with the recommendation of the Virginia Commission on Youth, that certain principles contained in certain existing guidance documents have regulatory effect. The bill is intended to ensure that school personnel are properly trained to understand the circumstances in which seclusion or restraint may be warranted and on appropriate methods for secluding or restraining students, in the interest of protecting both students and school personnel from harm.

### Substance

*Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

The proposed substantive provisions must be consistent with the VDOE’s *Guidelines for the Development of Policies and Procedures for Managing Student Behavior in Emergency Situations* and with the United States Department of Education’s *Restraint and Seclusion: Resource Document*. New substantive provisions are being contemplated that would include definitions, criteria for use, restrictions for use, training requirements, notification requirements, reporting requirements, and follow-up requirements.

Furthermore, new provisions are being contemplated to address distinctions, including those in physical and emotional development, between general education and special education populations, and between elementary and secondary students.

## Alternatives

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.*

There are no viable alternatives to revisions of the regulations.

## Public participation

*Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is \_\_\_\_\_; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.*

The agency is seeking comments on this regulatory action, including, but not limited to 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to **Patricia Haymes, Director of Dispute Resolution and Administrative Services, Virginia Department of Education, P.O. Box 2120, Richmond VA 23218-2120, telephone (804) 225-2013, fax (804) 786-8520, e-mail ODRAS@doe.virginia.gov**. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

Staff from the Virginia Department of Education will conduct a series of meetings with representation from a wide variety of stakeholders to assist in developing draft restraint and seclusion regulations that will be delivered to the Board of Education for first review in November 2015. The Virginia Board of Education will propose to hold a minimum of two public hearings situated in geographically centralized locations once draft regulations have been presented for first review. The Board of Education will also have public comment opportunities at its regularly scheduled monthly meetings before final review.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website

(<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.