

Virginia Board of Education Agenda Item



Agenda Item: G

Date: February 25, 2016

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| Title | First Review of Proposed <i>Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia</i> (Proposed Stage) | | |
| Presenter | 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:

Previous review and action. Specify date and action taken below:

March 26, 2015: First Review of Notice of Intended Regulatory Action (NOIRA) for Proposed *Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia*

Action Requested:

Action will be requested at a future meeting. Specify anticipated date below:

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

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|---|--|
| | 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 (2014), 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 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:

Staff in the Virginia Department of Education’s (VDOE) Division of Special Education and Student Services conducted a fifty-state survey of legislation and regulations addressing the use of restraint and seclusion in public schools. In addition, staff held several internal meetings to begin to identify key issues for inclusion into these proposed regulations.

In August, September and October of 2015, VDOE hosted three informal stakeholder meetings. Each meeting lasted for three hours. Representatives of the following organizations were invited to attend:

- Virginia ARC
- Virginia Board for People with Disabilities
- Virginia Commission on Youth
- Family Members
- Virginia Education Association
- disAbility Law Center
- JustChildren
- Virginia School Boards Association
- Virginia Association of School Superintendents
- Virginia Council of Administrators of Special Education
- Higher Education Representatives
- Virginia Association of PTAs
- Parent Education and Training Center
- Partnership for People with Disabilities
- Virginia Association of Elementary School Principals
- Virginia Association of Secondary School Principals

Summary of Significant Areas of Disagreement:

The 2015 statute (HB 1443/SB 782) directs the Board to develop regulations that are consistent with the *15 Principles* articulated in the United States Department of Education’s (USDOE) 2012 Restraint and Seclusion Resource document.

The stakeholder groups listed above had lively debates concerning the very definition of restraint and seclusion. The third Principle of the USDOE document states that “physical restraint or seclusion should not be used except in situations where the child’s behavior poses imminent danger of serious physical harm to self or others.”

Longstanding law in Virginia—§ 22.1-279.1—provides that the prohibition on the use of corporal punishment in public schools DOES NOT preclude reasonable force to (i) quell a disturbance that threatens serious physical harm or injury to persons or damage to property; (ii) remove a student from the scene of a disturbance that threatens serious physical injury to persons or damage to property; (iii) defend self or others; (v) obtain possession of controlled substances or paraphernalia which are upon the person of the student or within the student’s control; (vi) to obtain possession of weapons or other dangerous objects that are upon the person of the student or within the student’s control.

Nowhere do the *15 Principles* address the use of restraint or “reasonable force” regarding damage to property or obtaining drugs, etc. from students—scenarios which, in some cases, may not clearly meet the “imminent danger of serious physical harm to self or others” standard articulated by the *15 Principles*. Parties expressed sharp disagreement as to how the regulations should reconcile current

permitted practices with the new statutory mandate. The Board may wish to consider seeking an opinion from the Office of the Attorney General (OAG) regarding the reconciliation of these principles prior to moving forward with public comment on the regulations.

Another concern involves training and follow-up requirements. The *15 Principles* clearly contemplate that staff receive training in the proper use of restraint and seclusion. Opinion varied as to whether all or some staff must have extensive training to intervene in common situations, such as student altercations. In addition, parties differed regarding the timing and need for parental, division and state notification and reporting, given current crime and violence reporting requirements that do not set a time frame. Also, opinion diverged considerably about the timing, scope and nature of debriefing and student and staff follow-up.

These proposed regulations are based on two foundational—and consonant—principles: that schools must be safe for all children and that school personnel must be equipped to address emergencies and disruptions effectively, while protecting the dignity of all students, the integrity of the classroom, and the safety of all persons in our public schools. The proposed regulations attempt to reconcile the two opposing statutes.

The following is brief summary of the proposed regulations:

1. Permit, but do not require, school divisions to implement physical restraint and seclusion in public schools. School divisions electing to use physical restraint and seclusion must follow regulations.
2. Preclude the use of seclusion cells; aversive stimuli; and prone, pharmacological, and mechanical restraints.
3. Prohibit the use of physical restraint and seclusion as (i) punishment or discipline; (ii) means of coercion or retaliation; or (iii) convenience.
4. Exclude from physical restraint: (i) briefly holding student to calm or comfort the student; (ii) holding student's hand or arm to escort the student safely from one area to another; or (iii) use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control.
5. Create reporting and notification standards for incidents of physical restraint and seclusion.
 - a. By end of school day, school staff must report incident and first aid to school principal/designee.
 - b. Within one calendar day, school principal/designee, other school personnel, or volunteers organized by school administration for this purpose must make reasonable effort to ensure that direct contact is made with parent, either in person or through telephone conversation, to notify parent of incident and any related first aid.
 - c. If any pupil has been physically restrained or secluded outside regular school day, notifications shall be made as soon as practicable pursuant to school division's school crisis/emergency management plan.
6. Establish specifications for seclusion rooms based on Department of Behavioral Health and Developmental Services Regulations for Children's Residential Facilities 12VAC35-46-960.

7. Provide for continuous visual monitoring of seclusion.
8. Require all school personnel to have initial evidence-based training in physical restraint and seclusion.
9. Require, when physical restraint and seclusion are used in a self-contained classroom or other special education setting:
 - a. Advanced evidence-based training for school personnel assigned to that self-contained classroom.
 - b. Incident reporting to principals, division superintendents, and Superintendent of Public Instruction.
 - c. Copies of incident reports to parents.
10. Establishes follow-up/review following three (3) incidents of physical restraint or seclusion for student in special and general education. IEP/504 team or other school team is to consider need for an FBA and a new or revised BIP that addresses underlying causes or purposes of the behaviors.
11. Requires school divisions to adopt policies/procedures.
12. Cannot be construed to restrict (i) initial authority of teachers to remove students from a classroom; (ii) authority and duties of SROs and SSOs; or (iii) civil immunity afforded teachers employed by local school boards for any acts or omissions resulting from the supervision, care or discipline of students.

Impact on Fiscal and Human Resources:

There will be a significant administrative impact on the Virginia Department of Education’s Office of Special Education and Student Services as it is anticipated that a high volume of public comment will be received. Staff will be required to collect and compile this information in a summary for the Board.

Timetable for Further Review/Action:

The timetable for further review is contingent on the Board’s decision regarding seeking an opinion from the Office of the Attorney General.

Superintendent's Recommendation:

The Superintendent of Public Instruction recommends that the Board of Education receive for first review the Proposed *Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia*. In addition, the Superintendent of Public Instruction recommends that the Board request an opinion from the Office of the Attorney General regarding the issues outlined above.

REGULATIONS GOVERNING THE USE OF SECLUSION AND RESTRAINT IN PUBLIC ELEMENTARY AND SECONDARY SCHOOLS IN VIRGINIA

Foreword

The 2015 Session of the General Assembly adopted legislation directing the Virginia Board of Education (BOE) to adopt regulations addressing the use of seclusion and restraint in public elementary and secondary schools in the Commonwealth. Pursuant to § 22.1-279.1:1 of the Code of Virginia, the Board was charged to adopt regulations consistent with the Virginia Department of Education's (VDOE) 2009 *Guidelines for the Development of Policies and Procedures for Managing Student Behavior in Emergency Situations* as well as the Fifteen Principles set forth in the U.S. Department of Education's 2012 *Restraint and Seclusion: Resource Document*.

Additionally, the Board was statutorily charged to ensure that these regulations included definitions as well as criteria and restrictions for the use of restraint and seclusion in Virginia's public schools. Further, these regulations were to include requirements for staff training, parental notification, reporting, and follow-up. Finally, the regulations were to address distinctions—specifically in emotional and physical development—between the general and special education student populations and between elementary and secondary school students. These regulations are based on two foundational—and consonant—principles: that schools must be safe for all children and that school personnel must be equipped to address emergencies and disruptions effectively, while protecting the dignity of all students, the integrity of the classroom, and the safety of all persons in our public schools.

8 VAC 20-750-5. Application.

These regulations are applicable to all students and school personnel in the public elementary and secondary schools of the Commonwealth of Virginia, all as defined 8 VAC 20-750-10.

8 VAC 20-750-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

“**Aversive stimuli**” means interventions that are intended to induce pain or discomfort to a student for the purposes of punishing the student or eliminating or reducing maladaptive behaviors, such as:

1. Noxious odors and tastes.
2. Water and other mists or sprays.
3. Blasts of air.
4. Corporal punishment as defined in Va. Code § 22.1-279.1.

5. Verbal and mental abuse.
6. Forced exercise when:
 - a. The student's behavior is related to his disability;
 - b. The exercise would have a harmful effect on the student's health; or
 - c. The student's disability prevents participation in such activities.
7. Deprivation of necessities, including:
 - a. Food and liquid at a time it is customarily served;
 - b. Medication; or
 - c. Use of restroom.

“Behavioral Intervention Plan” or **“BIP”** means a plan that utilizes positive behavioral interventions and supports to address: (i) behaviors that interfere with a student's learning or that of others; or (ii) behaviors that require disciplinary action.

“Board” means the Virginia Board of Education.

“Business day” means Monday through Friday, twelve months of the year, exclusive of federal and state holidays (unless holidays are specifically included in the designation of business days).

“Chapter” means these regulations.

“Calendar days” means consecutive days, inclusive of Saturdays and Sundays. Whenever any period of time fixed by this chapter expires on a Saturday, Sunday, or federal or state holiday, the period of time for taking such action shall be extended to the next day that is not a Saturday, Sunday, or federal or state holiday.

“Child with a disability” or **“student with a disability”** means a public elementary or secondary school student evaluated in accordance with the provisions of 8 VAC 20-81 as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disability (referred to in 8 VAC 20-81 as an emotional disability), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities who, by reason thereof, requires special education and related services. This also includes developmental delay if the school division recognizes this category as a disability under 8 VAC 20-81-80.M.3. If it is determined through an appropriate evaluation that a child has one of the disabilities identified but only needs related services, and not special education, the child is not a child with a disability under 8 VAC 20-81. If the related service required by the child is considered special education rather than a related service under Virginia standards, the child

would be determined to be a child with a disability. As used in this chapter, the disability categories set forth in this definition and the terms “special education” and “related services” shall have the meanings set forth in 8 VAC 20-81-10.

“**Day**” means calendar day unless otherwise designated business day or school day.

“**Department**” means the Virginia Department of Education.

“**Evaluation**” means procedures used in accordance with 8 VAC 20-81 to determine whether a child has a disability and the nature and extent of the special education and related services the child needs.

“**Functional behavioral assessment**” or “**FBA**” means a process to determine the underlying cause or functions of a student’s behavior that impede the learning of the student or the learning of the student’s peers. A functional behavioral assessment a review of existing data or new testing data or evaluation as determined as set forth in 8 VAC 20-750-60.

“**Individualized Education Program**” or “**IEP**” means a written statement for a child with a disability that is developed, reviewed and revised at least annually in a team meeting in accordance with the Regulations Governing Special Education Programs for Children with Disabilities in Virginia (8 VAC 20-81). The IEP specifies the individual educational needs of the child and what special education and related services are necessary to meet the child’s educational needs.

“**Individualized education program team**” or “**IEP team**” means a group of individuals described in 8 VAC 20-81-110 that is responsible for developing, reviewing or revising an IEP for a child with a disability.

“**Mechanical restraint**” means the use of any material, device or equipment to restrict a student’s freedom of movement. This term does not include devices implemented by trained school personnel or used by a student that have been prescribed by an appropriate medical or related services professional and are used with parental consent and for the specific and approved purposes for which such devices were designed, such as:

1. Adaptive devices or mechanical supports used to achieve proper body position, balance or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports;
2. Vehicle restraints when used as intended during the transport of a student in a moving vehicle;
3. Restraints for medical immobilization; or
4. Orthopedically prescribed devices that permit a student to participate in activities without risk of harm.

“Pharmacological restraint” means a drug or medication used on a student to control behavior or restrict freedom of movement that is not (i) prescribed by a licensed physician or other qualified health professional under the scope of the professional’s authority for the standard treatment of a student’s medical or psychiatric condition and (ii) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional’s authority.

Physical restraint” means a personal restriction that immobilizes or reduces the ability of a student to move freely. The term “physical restraint” does not include: (i) briefly holding a student in order to calm or comfort the student; (ii) holding a student’s hand or arm to escort the student safely from one area to another; or (iii) the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control.

“School day” means any day, including a partial day, that students are in attendance at school for instructional purposes. The term has the same meaning for all students in school, including students with and without disabilities.

“School employee” and **“school personnel”** means individual(s) employed by the school division on a full- or part-time basis or as independent contractors or subcontractors as instructional, administrative, and support personnel, and includes individuals serving as a student teacher or intern under the supervision of appropriate school personnel.

“Seclusion” means the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving until the student no longer presents an immediate danger to self or others or poses an immediate threat of damage to property. “Seclusion” does not include (i) time out, as defined in these regulations; ; (ii) in-school suspension; (iii) detention; (iv) student-requested breaks in a different location in the room or in a separate room; (v) removal of a student for a short period of time from the room or a separate area of the room to provide the student with an opportunity to regain self-control, so long as the student is in a setting from which he is not physically prevented from leaving; (vi) the removal of a student for disruptive behavior from a classroom by the teacher, as provided in Va. Code § 22.1-276.2; and (vii) confinement of a student alone in a room or area from which the student is physically prevented from leaving during the investigation and questioning of the student by school employees regarding the student’s knowledge of or participation in events constituting a violation of the student conduct code.

“Seclusion cell” means a freestanding, self-contained unit that is used to (i) isolate a student from other students; or (ii) physically prevent a student from leaving the unit or cause the student to believe that the student is physically prevented from leaving the unit.

“Section 504 plan” means a written plan of modifications and accommodations under Section 504 of the Rehabilitation Act of 1974.

“Student” means any student, with or without a disability, enrolled in a public elementary or secondary school as defined in Va. Code § 22.1-1. For purposes of these regulations, the term “student” shall also include those students (i) attending a public school on a less-than-full time

basis, such as those students identified in § 22.1-253.13:2.N; (ii) receiving homebound instruction pursuant to 8 VAC 20-131-180 and as defined in 8 VAC 20-81-10, without regard to special education status; (iii) receiving home-based instruction pursuant to 8 VAC 20-81-10; and (iv) pre-school students enrolled in a program operated by a school division or receiving services from school division personnel.

As used in these regulations, “student” or “students” shall not include children meeting compulsory attendance requirements of § 22.1-254 by (i) enrollment in private, denominational, or parochial schools; (ii) receipt of instruction by a tutor or teacher of qualifications prescribed by the Board of Education and approved by the relevant division superintendent; or (iii) receipt of home instruction pursuant to § 22.1-254. With regard to restraint and seclusion, students placed through public or private means in a private day or residential school for students with disabilities shall be afforded the protections set forth in 8 VAC 20-671 et seq.

“**Time-out**” means a behavioral intervention in which the student is temporarily removed from the learning activity but in which the student is not confined.

8 VAC 20-750-20. Prohibitions.

- A. The following actions are prohibited in the public elementary and secondary schools in the Commonwealth of Virginia:
 - 1. Use of mechanical restraints;
 - 2. Use of pharmacological restraints;
 - 3. Use of aversive stimuli;
 - 4. Prone “face down” restraints or any other restraint that restricts breathing, harms the student, or interferes with the student’s ability to communicate.
 - 5. Use of physical restraint or seclusion as (a) punishment or discipline; (b) a means of coercion or retaliation; or (c) a convenience, or in any manner other than as provided in 8 VAC 20-750-40 and 8 VAC 20-750-50, below.
 - 6. Corporal punishment, as defined in Va. Code § 22.1-279.1.
 - 7. Use of seclusion cells.

8 VAC 20-750-30. Use of physical restraint and seclusion.

- A. Nothing in this chapter shall be construed to require a school division to employ physical restraint or seclusion in its schools. School divisions electing to use physical restraint and seclusion shall comply with the requirements of these regulations.

B. School personnel may implement physical restraint or seclusion only when other interventions are, or would be, in the reasonable judgment of the particular school personnel implementing physical restraint or seclusion in an emergency situation, ineffective and only to :

- (i) prevent a student from inflicting serious physical harm or injury to self or others;
- (ii) quell a disturbance that threatens serious physical harm or injury to persons or damage to property;
- (iii) remove a student from the scene of a disturbance that threatens physical injury to persons or damage to property;
- (iv) defend self or others;
- (v) obtain possession of controlled substances or paraphernalia which are upon the person of the student or within the student's control; or
- (vi) obtain possession of weapons or other dangerous objects that are upon the person of the student or within the student's control.

C. Physical restraint and seclusion shall be discontinued as soon as the conduct or situations set forth in items (i) through (vi) in Subsection A, above, prompting the use of physical restraint or seclusion have ceased, dissipated, or been resolved.

D. Nothing in this section shall be construed to require school personnel to attempt to implement a less restrictive intervention prior to using physical restraint or seclusion when, in the reasonable judgment of the school personnel in an emergency situation, a less restrictive intervention would be ineffective.

8 VAC 20-750-40. Seclusion; Standards for Use.

A. School divisions electing to use physical restraint and seclusion as permitted by this chapter shall meet the following structural and physical standards for rooms designated by the school to be used for seclusion:

1. The room used for seclusion shall meet the design requirements for buildings used for detention or seclusion of persons.
2. The seclusion room shall be at least six feet wide and six feet long with a minimum ceiling height of eight feet.
3. The seclusion room shall be free of all protrusions, sharp corners, hardware, fixtures, or other devices, that may cause injury to the occupant.

4. Windows in the seclusion room shall be constructed to minimize breakage and otherwise prevent the occupant from harming himself.
 5. Light fixtures and other electrical receptacles in the seclusion room shall be recessed or so constructed as to prevent the occupant from harming himself. Light controls shall be located outside the seclusion room.
 6. Doors to the seclusion room shall be at least 32 inches wide, shall open outward and shall contain observation view panels of transparent wire glass or its approved equivalent, not exceeding 120 square inches but of sufficient size for someone outside the door to see into all corners of the room.
 7. The seclusion room shall contain only a mattress with a washable mattress covering designed to avoid damage by tearing.
 8. The seclusion room shall maintain temperatures appropriate for the season.
 9. All space in the seclusion room shall be visible through the locked door, either directly or by mirrors.
- B. School divisions electing to use seclusion as authorized by this chapter shall provide for the continuous visual monitoring of any seclusion, either by the presence of school personnel in the seclusion room or area or observation by school personnel through a window, viewing panel, or half-door meeting the specifications set forth in this section.

8 VAC 20-750-50. Notification and reporting.

- A. When any pupil has been physically restrained or secluded:
- (i) the staff member involved shall report the incident and the use of any related first aid to the school principal or designee soon as possible by the end of the school day of in which the incident occurred; and
 - (ii) the school principal or his designee, other school personnel, or volunteers organized by the school administration for this purpose shall make a reasonable effort to ensure that direct contact is made with the parent, either in person or through telephone conversation, to notify the parent of the incident and any related first aid within one calendar day of the date the incident occurred.
- B. When any pupil has been physically restrained or secluded outside the regular school day, the notifications required by Subsection A shall be made as soon as practicable in compliance with the school division's school crisis, emergency management, and medical emergency response plan required by Va. Code § 22.1-279.8.
- C. As soon as practicable and within two school days after an incident in which physical restraint or seclusion has been implemented in a self-contained classroom or other special

education setting in which a majority of the students in regular attendance are (i) provided special education and related services and (ii) assigned to a self-contained classroom or other special education setting for at least 50 percent of the instructional day, the school employee involved in the incident or other school personnel, as may be designated by the principal, shall complete and provide to the principal or designee, a written incident report. The school division shall provide the parent with a copy of the incident report within seven (7) calendar days of the incident.

The written incident report shall include, at a minimum:

1. Student name, age, gender, grade, ethnicity;
2. Location of the incident;
3. Date, time, and total duration of incident, including documentation of the beginning and ending time of each application of physical restraint or seclusion;
4. Date of report;
5. Name of person completing the report;
6. The school personnel involved in the incident, their roles in the use of physical restraint or seclusion, and their completion of the division's training program;
7. Description of the incident, including the resolution and process of return of the student to his educational setting, if appropriate;
8. A detailed description of the physical restraint or seclusion method used;
9. The student behavior that justified the use of physical restraint or seclusion;
10. Description of prior events and circumstances prompting the student's behavior, to the extent known;
11. Less restrictive interventions attempted prior to the use of physical restraint or seclusion, and an explanation if no such interventions were employed.
12. Whether the student has an IEP, a Section 504 plan, a BIP, or other plan;
13. If a student, staff or any other individual sustained bodily injury, the date and time of nurse or response personnel notification and the treatment administered, if any;
14. Date, time, and method of parental notification of the incident, as required by this section; and
15. Date, time of staff debriefing.

- E. Following an incident of physical restraint or seclusion in a self-contained classroom or other special education setting in which a majority of the students in regular attendance are (i) provided special education and related services and (ii) assigned to a self-contained classroom or other special education setting for at least 50 percent of the instructional day, the school division shall ensure that, within two (2) school days, the principal or designee reviews the incident with all staff persons who implemented the use of physical restraint or seclusion to discuss:
 - 1. Whether the use of restraint or seclusion was implemented in compliance with this chapter and local policies; and
 - 2. How to prevent or reduce the future need for physical restraint and/or seclusion.
- F. As appropriate depending on the student's age and developmental level, following each incident of physical restraint or seclusion in a self-contained classroom or other special education setting in which a majority of the students in regular attendance are (i) provided special education and related services and (ii) assigned to a self-contained classroom or other special education setting for at least 50 percent of the instructional day, the school division shall ensure that, as soon as practicable, but no later than two (2) school days or upon the student's return to school, the principal or designee shall review the incident with the student(s) involved to discuss:
 - 1. Details of the incident in an effort to assist the student and school personnel in identifying patterns of behaviors, triggers or antecedents.
 - 2. Alternative positive behaviors or coping skills the student may utilize to prevent or reduce behaviors that may result in the application of physical restraint or seclusion.
- G. The principal or designee shall regularly review the use of physical restraint or seclusion to ensure compliance with school division policy and procedures, and, when there are multiple incidents within the same classroom or by the same individual, the principal or designee shall take appropriate steps to address the frequency of use.
- H. Nothing in these regulations shall be construed to require school divisions to develop and implement notification and reporting requirements for incidents involving (i) briefly holding a student in order to calm or comfort the student; (ii) holding a student's hand or arm to escort the student safely from one area to another; (iii) the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control.

8 VAC 20-750-60. Policies and procedures.

- A. Each school division that elects to use physical restraint or seclusion shall develop and implement written policies and procedures that meet or exceed the requirements of this chapter and that include, at a minimum, the following:

1. A statement of intention that the school division will encourage the use of positive behavioral interventions and supports to reduce and prevent the need for the use of physical restraint and seclusion.
 2. Examples of the positive behavioral interventions and support strategies consistent with the student's rights to be treated with dignity and to be free from abuse the school division uses to address student behavior, including the appropriate use of effective alternatives to physical restraint and seclusion
 3. A description of initial and advanced training for school personnel that addresses (a) appropriate use of effective alternatives to physical restraint and seclusion; and (b) the proper use of restraint and seclusion.
 4. A statement of the circumstances in which physical restraint and seclusion may be employed, which shall be no less restrictive than that set forth in 8 VAC 20-750-40.
 5. Provisions addressing the:
 - (a) notification of parents regarding incidents of physical restraint or seclusion, including the manner of such notification;
 - (b) documentation of the use of physical restraint and seclusion;
 - (c) continuous visual monitoring of the use any physical restraint or seclusion, to ensure the appropriateness of such use and the safety of the student being physically restrained or secluded, other students, school personnel, and others. These provisions shall include exceptions for emergency situations in which securing visual monitoring before implementing the physical restraint or seclusion would, in the reasonable judgment of the school employee implementing the physical restraint or seclusion, result in serious physical harm or injury to persons or damage to property; and
 - (d) securing of any room in which a student is placed in seclusion. These provisions shall ensure that any seclusion room or area meet specifications for size and viewing panels that ensure the student's safety at all times, including during a fire or other emergency, as required by this chapter.
- B. Each school division shall review its policies and procedures regarding physical restraint and seclusion at least annually, and shall update these policies and procedures as appropriate. In developing, reviewing, and revising its policies, school divisions shall consider the distinctions in emotional and physical development between elementary and secondary students and between students with and without disabilities.
- C. Consistent with § 22.1-253.13:1.D, a current copy of a school division's policies and procedures regarding restraint and seclusion shall be posted on the school division's Web site and shall be available to employees and to the public. School boards shall ensure that

printed copies of such policies and procedures are available as needed to citizens who do not have online access.

8 VAC 20-750-70. *Prevention; multiple uses of restraint or seclusion.*

- A. In the initial development and subsequent review and revision of a student's IEP or Section 504 plan, the student's IEP or Section 504 team shall consider whether the student displays behaviors that are likely to result in the use of physical restraint or seclusion. If the IEP or Section 504 team determines that a future use is likely, the team shall consider the need for (i) an FBA; (ii) a new or revised BIP that addresses the underlying causes or purposes of the behaviors; and (iii) any new or revised behavioral goals.

Within 10 school days following the third incident in which physical restraint or seclusion in a single school year, the student's IEP or 504 team shall meet to discuss the incident and to consider the need for (i) an FBA; (ii) a new or revised BIP that addresses the underlying causes or purposes of the behaviors; and (iii) any new or revised behavioral goals.

- B. For students not described in Subsection A, within 10 school days of the third incident, a team consisting of the parent, the principal or designee, a teacher of the student, a staff member involved in the incident (if not the teacher or administrator already invited), and other appropriate staff members, such as a school psychologist, school guidance office, or school resource officer, as determined by the school division, shall meet to discuss the incident and to consider the need for (i) an FBA; (ii) a new or revised BIP that addresses the underlying causes or purposes of the behaviors.
- C. Nothing in this section shall be construed to (i) excuse the team or its individual members from the obligation to refer the student for evaluation if the team or members have reason to suspect that the student may be a student with a disability; or (ii) prohibit the completion of an FBA or BIP for any student, with or without a disability, who might benefit from these measures but whose behavior has resulted in fewer than three incidents of physical restraint or seclusion in a single school year.

8 VAC 20-750-80. *Reporting.*

- A. The requirements of this section shall only apply to instances in which physical restraint and seclusion are employed in a self-contained classroom or other special education setting in which a majority of the students in regular attendance are (i) provided special education and related services and (ii) assigned to a self-contained classroom or other special education setting for at least 50 percent of the instructional day.
- B. The principal or his designee shall submit to the division superintendent a report on the use of physical restraint and seclusion in the school based on the individual incident reports completed and submitted to the principal or designee by school personnel pursuant to 8 VAC 20-750-40.D, above. The division superintendent shall annually

report the frequency of such incidents to the Superintendent of Public Instruction on forms that shall be provided by the Department of Education and shall make such information available to the public.

8 VAC 20-750-90. Training.

School divisions that employ physical restraint or seclusion shall:

- (i) ensure that all school personnel are periodically trained in the use of physical restraint and seclusion;
- (ii) include all school personnel receive initial training that shall focus on skills related to positive behavior support, conflict prevention, de-escalation, and crisis response;
- (iii) provide advanced training in the use of physical restraint and seclusion for school personnel assigned to a self-contained classroom or other special education setting in which a majority of the students in regular attendance are (i) provided special education and related services and (ii) assigned to a self-contained classroom or other special education setting for at least 50 percent of the instructional day;
- (iv) ensure that any initial or advanced training is evidence-based.

8 VAC 20-750-100. Construction and Interpretation.

Nothing in this chapter shall be construed to modify or restrict:

- (i) the initial authority of teachers to remove students from a classroom pursuant to Va. Code § 22.1-276.2;
- (ii) the authority and duties of school resource officers and school security officers, as defined in Va. Code § 9.1-101;
- (iii) the civil immunity afforded teachers employed by local school boards for any acts or omissions resulting from the supervision, care or discipline of students when such acts or omissions are within such teacher's scope of employment and are taken in good faith in the course of supervision, care, or discipline of students, unless such acts or omissions were the result of gross negligence or willful misconduct, as provided in Va. Code § 8.01-220.1:2.



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Proposed Regulation Agency Background Document

| | |
|---|--|
| Agency name | Virginia Department of Education |
| Virginia Administrative Code (VAC) citation(s) | 8 VAC 20-750 |
| Regulation title(s) | Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia |
| Action title | 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 became effective on July 1, 2015 |
| Date this document prepared | February 2, 2016 |

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*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The 2015 Session of the General Assembly adopted legislation directing the Virginia Board of Education (BOE) to adopt regulations addressing the use of seclusion and restraint in public elementary and secondary schools in the Commonwealth. Pursuant to § 22.1-279.1:1 of the Code of Virginia, the Board was charged to adopt regulations consistent with the Virginia Department of Education's (VDOE) 2009 *Guidelines for the Development of Policies and Procedures for Managing Student Behavior in Emergency Situations* as well as the Fifteen Principles set forth in the U.S. Department of Education's 2012 *Restraint and Seclusion: Resource Document*.

Additionally, the Board was statutorily charged to ensure that these regulations included definitions as well as criteria and restrictions for the use of restraint and seclusion in Virginia’s public schools. Further these regulations were to include requirements for staff training, parental notification, reporting and follow-up. Finally, the regulations were to address distinctions – specifically in emotional and physical development – between general and special education student populations and between elementary and secondary school students. These regulations are based on two foundational – and consonant – principles: that schools must be safe for all children and that school personnel must be equipped to address emergencies and disruptions effectively, while protecting the dignity of all students, the integrity of the classroom, and the safety of all persons in our public schools.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

N/A

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

On July 1, 2015, Section 22.1-279.1:1 became effective. The statute 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.

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

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The proposed regulatory action is necessary to fulfill the 2015 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, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of changes” section below.

The Draft Restraint and Seclusion Regulations:

- Permit, but do not require, school divisions to implement physical restraint and seclusion in public schools. School divisions electing to use physical restraint and seclusion must follow the regulations.
- Preclude the use of (i) seclusion cells; (ii) aversive stimuli; and (iii) (a) prone, (b) pharmacological, and (c) mechanical restraints.
- Prohibit the use of physical restraint and seclusion as (i) punishment or discipline; (ii) means of coercion or retaliation; or (iii) convenience.
- Exclude from physical restraint: (i) briefly holding student to calm or comfort the student; (ii) holding student’s hand or arm to escort the student safely from one area to another; or (iii) use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control.
- Create reporting and notification standards for incidents of physical restraint and seclusion, including the following:
 - (i) By end of school day, school staff must report incident and first aid to school principal/designee.
 - (ii) Within one calendar day, school principal/designee, other school personnel, or volunteers organized by school administration for this purpose must make reasonable effort to

ensure that direct contact is made with parent, either in person or through telephone conversation, to notify parent of incident and any related first aid.

- (iii) If any pupil has been physically restrained or secluded outside regular school day, notifications shall be made as soon as practicable pursuant to school division's school crisis/emergency management plan.
- Establish specifications for seclusion rooms based on [Department of Behavioral Health and Developmental Services Regulations for Children's Residential Facilities](#) 12VAC35-46-960.
- Provide for continuous visual monitoring of seclusion.
- Require all school personnel to have initial evidence-based training in physical restraint and seclusion.
- Require, when physical restraint and seclusion are used in a self-contained classroom or other special education setting:
 - (i) Advanced evidence-based training for school personnel assigned to that self-contained classroom.
 - (ii) Incident reporting to principals, division superintendents, and Superintendent of Public Instruction.
 - (iii) Copies of incident reports to parents.
- Establishes follow-up/review following three (3) incidents of physical restraint or seclusion for student in special and general education. IEP/Section 504 team or other school team is to consider need for a Functional Behavioral Assessment (FBA) and a new or revised Behavioral Intervention Plan (BIP) that addresses underlying causes or purposes of the behaviors.
- Requires school divisions to adopt policies/procedures regarding the use of restraint and/or seclusion.
- Cannot be construed to restrict (i) initial authority of teachers to remove students from a classroom; (ii) authority and duties of School Resource Officers (SROs) and School Security Officers (SSOs); or (iii) civil immunity afforded teachers employed by local school boards for any acts or omissions resulting from the supervision, care or discipline of students.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

Issues surrounding the proposed regulatory action were discussed in the Virginia Commission on Youth's 2015 Final Report: Study of Seclusion and Restraint in Schools (House Document No. 2)

[http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/HD22015/\\$file/HD2.pdf](http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/HD22015/$file/HD2.pdf)

Background

According to the VDOE Guidelines issued in 2009, seclusion and restraint refer to safety procedures in which a student is isolated from others (seclusion) or physically held (restraint) in response to serious problem behavior that places the student or others at risk of injury or harm. There is no statute or regulation specifically governing the use of seclusion and restraint in Virginia's public schools.

In 2006, the VDOE issued Guidelines for the Development of Policies and Procedures for Managing Student Behaviors in Emergency Situations in Virginia Public Schools Focusing on Physical Restraint and Seclusion. These Guidelines were updated in 2009 and a Superintendent's Memorandum requesting that all school divisions review these Guidelines was distributed to local school divisions. The VDOE encouraged school divisions to adopt its guidelines or develop policy regarding physical restraints and seclusion. The Guidelines outline what school divisions should include in their policies such as training requirements, inclusion of methods for preventing violent behavior, informing parents of policies, notifying parents when seclusion/restraint is used, time limits for notification, monitoring requirements, follow-up procedures and reporting requirements.

In August 2010, the Virginia School Boards Association (VSBA), a voluntary and nonpartisan organization of school boards, adopted a policy regarding restraints and seclusion – Restraint and Seclusion of Students. The VSBA policy addresses criteria and restrictions for use and notification and monitoring requirements. The Virginia Commission on Youth (COY) interviewed family members, advocates, and school officials. Concerns expressed about the VSBA policy included:

- authorizing the use of seclusion/restraint as needed to quell a disturbance;
- authorizing the use of seclusion/restraint as reasonably needed to prevent imminent destruction to school or another person's property;
- lack of follow-up procedures; and
- lack of timely notification and/or lack of parental notification (parents are notified within 15 school days of a restraint incident, and if seclusion is used, only when a physical injury occurs in the seclusion room).

The Commission on Youth conducted a survey of Virginia's school divisions during the summer of 2014 to determine which divisions had adopted policies. As of October 13, 2014, 114 of 134 school divisions responded to the survey. The survey revealed that:

- 78 school divisions utilize the VSBA Policy on Restraint and Seclusion;
- 9 have a separate school policy (non-VSBA) on seclusion and restraint; and
- 27 school divisions have no policy on seclusion and restraint.

Of these 27, two divisions noted they were drafting a policy, one noted they had documented procedures in place, and three school divisions responded that seclusion and restraint were not utilized.

Family members and advocacy organizations noted that Virginia's reliance upon guidelines means that there is discretion in handling incidents pertaining to the use of seclusion and restraint. The Guidelines recommend training for staff and notifying parents after restraint or seclusion has been utilized, but there is no enforcement of these provisions.

It is important to note that seclusion and restraint are more likely to be used with students with disabilities. According to the U.S. Department of Education’s Office of Civil Rights, students with disabilities represent:

- 12% of students enrolled in public schools;
- 75% of the students who are subjected to physical restraint during school; and
- 58% of students subjected to seclusion in school.

During interviews with school officials, concerns were raised regarding the need for flexibility. The majority of students attending Virginia’s public schools are in the general education population and do not receive special education services pursuant to the Individuals with Disabilities Education Act (IDEA). Any recommendation adopted by the Commission should not be a “one-size-fits-all” approach. Moreover, the emotional and physical developmental differences of students attending primary versus secondary schools must also be considered.

School officials’ primary goal is to protect the safety of the students as well as that of educators/administrators/staff. Schools are becoming increasingly confronted with youth who exhibit challenging behaviors. For example, if it is mandated that training is required for all staff prior to use of restraint, school officials may hesitate intervening when there is a need to restrain a student for safety reasons (e.g., to break up a fight in the cafeteria).

Training is available for purposes of reducing the use of seclusion and restraint in schools. These training programs use positive interventions, conflict resolution, and de-escalation in an effort to prevent or limit the use of seclusion and restraint. The overall idea behind such training programs is that environments in which de-escalation or other positive means are used are healthier for students and employees alike. Furthermore, it is posited that the use of tactics such as the ones found in the training may reduce the number incidences. This training provides educators with a process to look at and treat the cause of behavioral issues rather than reacting to specific outbreaks.

Advantages, Disadvantages and Other Pertinent Information.

The proposed regulations provide for prompt notification of parents of all incidents of restraint or seclusion. This will enable parents to be aware if the student exhibits any unusual behaviors or symptoms. In addition, repeated patterns of behavior exhibited by both general and special education students to be addressed using evidence based practices.

The proposed regulations provide for differentiated approaches to training, follow-up and reporting depending on whether the incident of restraint or seclusion involves a self-contained special education setting or a general education setting. This should address school division concerns about burdensome regulations, while making sure that the students most at risk receive the most protection.

The most significant disadvantage for school divisions is in terms of training cost. The proposed regulations adopt a two-tiered approach that requires all school personnel to have baseline training on behavior management, but that reserves the costliest training for personnel dealing with students most at risk.

The reporting requirement will assist VDOE and the Commonwealth to gather additional data regarding school climate in the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are

no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

The proposed regulations will not affect localities disproportionately.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the Board or agency] is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is 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) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Patricia Haymes, Director, Office of Dispute Resolution and Administrative Services, Virginia Department of Education P.O. Box 2120, Richmond, Virginia, 23218-2120; ODRAS@doe.virginia.gov, (804) 225-2013. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

One or more public hearings will be held following the publication of this stage 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.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

| | |
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| Projected cost to the state to implement and enforce the proposed regulation, including: | a) The proposed regulations do not identify a required training program. However, per person |
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| <p>a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p> | <p>costs among several identified providers range from \$3500 per person to \$1500. Training typically takes three days. If we assume that each of the 2112 schools in Virginia sends three staff members for training, the average cost for training ranges from \$22,176,000 to \$9,504,000. In addition, coverage by substitute teachers for the time in training would amount to \$601,920. VDOE has requested an appropriation from the 2016 General Assembly to cover the initial cost of training. If such funding is not forthcoming, the entire amount would be borne by the local school divisions. b) Ongoing expenditures are to be expected, as recertification on a periodic basis is required by the programs identified by VDOE, and due to staff turnover and attrition.</p> |
| <p>Projected cost of the new regulations or changes to existing regulations on localities.</p> | <p>\$22.8 million to \$10.1 million as a statewide total will be the cost of initial implementation borne by localities if state funding is not provided.</p> |
| <p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p> | <p>Local school divisions, state operated programs, Department of Juvenile Justice</p> |
| <p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p> | <p>132 local school divisions</p> |
| <p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p> | <p>N/A</p> |
| <p>Beneficial impact the regulation is designed to produce.</p> | <p>N/A</p> |

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 alternatives to the promulgation of regulations as they have been developed in accordance with the General Assembly's directive.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Regulations were drafted as required by statute and incorporate other provisions of existing law. No additional flexibility was available.

Periodic review and small business impact review report of findings

If you are using this form to report the result of a periodic review/small business impact review that was announced during the NOIRA stage, please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

N/A

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed regulations should encourage positive relationships between parents and schools and should provide for more effective use of disciplinary practices with regard to all students.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

If a new regulation is being promulgated, that is not replacing an existing regulation, please use this chart:

| Section number | Proposed requirements | Other regulations and law that apply | Intent and likely impact of proposed requirements |
|------------------------|---------------------------------|--|---|
| 8 VAC 20-750- 10 | Definitions of Terms | §22.1-279.1. Corporal punishment prohibited. Provides for actions deemed not be corporal punishment. See also: §§ 8.01-220.1:2; 9.1-101; 22.1-1; 22.1-253.13:1.D; 22.1-276.2; 22.1-279.1; 22.1-279.1:1; 22.1-279.8 | To assist readers in understanding the regulations and to ensure uniform application among school divisions. |
| 8 VAC 20-750- 20 | Prohibitions | §22.1-279.1. Corporal punishment prohibited. | Prohibits the use of mechanical restraints, aversive stimuli, pharmacological restraints, prone restraints, restraint or seclusion for purposes of punishment, corporal punishment and the use of seclusion cells. |
| 8 VAC 20-750- 30 | Use of Restraint and Seclusion. | §22.1-279.1. Corporal punishment prohibited. Provides for actions deemed not be corporal punishment. | Provides that school divisions are not required to use restraint or seclusion. States that restraint or seclusion shall not be utilized if less restrictive alternatives would be effective. Permissible to prevent imminent risk of serious bodily injury, to quell a disturbance that threatens serious bodily injury or damage to property, to remove a student from the scene of such a disturbance, to obtain drugs or a weapon from a student, for self-defense. Provides for cessation of restraint and seclusion when no longer necessary |
| 8 VAC | Standards for Seclusion | 12 VAC 35-46-950. | Requires seclusion rooms in |

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| 20-750-40 | Rooms | Standards for Seclusion Rooms in Children's Residential Facilities. | public schools to meet the same standards established by the Board of Behavioral Health and Children's Services for children's residential facilities. |
| 8 VAC 20-750-50 | Notification and Reporting | N/A | Requires that school divisions make reasonable attempts to notify parents of any incident of restraint or seclusion on the day of the incident. Requires written reports of incidents of restraint and seclusion in certain self-contained special education settings and review of incidents with staff and students. Requires periodic review by principals to identify patterns involving restraint and seclusion by particular students or staff members. |
| 8 VAC 20-750-60 | Local Policies and Procedures | § 22.1-253.13:1.D | Requires school divisions to develop and review annually local policies and procedures on the use of restraint and seclusion and to post copies of the same on the school division website. |
| 8 VAC 20-750-70 | Prevention, Multiple Uses of Restraint and Seclusion | 8 VAC 20-81-110 | Requires IEP teams to determine whether student is likely to be restrained or secluded and, if so, to include behavioral strategies in the IEP. After the third incident in a school year of restraint and seclusion, requires the student's IEP team, Section 504 team, or other school based team to meet to consider the need for a functional behavioral assessment and behavioral intervention plan. |
| 8 VAC 20-750-80 | Reporting | §§ 8.01-220.1:2; 9.1-101; 22.1-1; 22.1-253.13:1.D; 22.1-276.2; 22.1-279.1; 22.1-279.1:1; 22.1-279.8 | Requires school divisions to report to the Virginia Department of Education on incidents of restraint and seclusion in certain special education settings. |
| 8 VAC 20-750-90 | Training | N/A | Requires two tiered training for school personnel: all school personnel shall be trained on positive behavior support, conflict prevention, de- |

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| | | | escalation, and crisis response; personnel in certain special education settings required to receive advanced training. |
| 8 VAC 20-750- 100 | Construction and Interpretation | §§ 8.01-220.1:2; 9.1-101; 22.1-1; 22.1-253.13:1.D; 22.1-276.2; 22.1-279.1; 22.1-279.1:1; 22.1-279.8 | Provides that nothing in the proposed regulations limits certain other duties and rights of personnel contained elsewhere in the Code of Virginia. |