

Virginia Board of Education Agenda Item



Agenda Item: B **Date:** February 23, 2017

Title	Third 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		
E-mail	John.Eisenberg@doe.virginia.gov	Phone	(804) 225-2711

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:

Date: March 26, 2015

Action: 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*

Date: February 25, 2016

Action: First Review of Proposed *Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia* (Proposed Stage)

Date: October 27, 2016

Action: Second Review of Proposed *Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia* (Proposed Stage)

Action Requested:

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

March 23, 2017

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 (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 50-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, the 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 Educational Advocacy Training Center
Partnership for People with Disabilities
Virginia Association of Elementary School Principals
Virginia Association of Secondary School Principals

On February 25, 2016, the Board accepted the proposed regulations for first review, but requested guidance from the Office of the Attorney General (OAG) due to the issue discussed below.

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* and VDOE's *Guidelines for the Development of Policies and Procedures for Managing Student Behavior in Emergency Situations*.

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; (iv) obtain possession of controlled substances or paraphernalia which are upon the person of the student or within the student’s control; (v) 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.

In July of 2016, the OAG advised the Board that the statutory directive that the VDOE develop regulations consistent with the *15 Principles* did not irreconcilably conflict with the existing permitted practices, and, further, that the proposed regulations appropriately reconciled the two statutes.

Following receipt of this advice, the VDOE staff conducted three public forums in October of 2016, in Stafford County, Botetourt County and Hampton City, respectively, consisting of a facilitated roundtable discussion, followed by an opportunity for public input. Participants and commenters included school personnel, advocacy groups, and parents. Based upon input from stakeholders, the VDOE made changes to its initial draft based on comments that were common, shared, and uncontroversial. At the October 27, 2016 meeting, the Board asked Staff to provide additional information to the Board at a November 16, 2016 working lunch. The purpose of this presentation was to provide the Board with additional background so that the Board could direct Staff regarding matters where public comment revealed significant differences of opinion.

However, on January 27, 2017, the OAG reversed its guidance on the use of physical restraint or seclusion to protect property, finding that the use of physical restraint or seclusion, as permitted in the exceptions to the corporal punishment statute, is inconsistent with the *15 Principles* and violates the statutory mandate directing the development of these regulations. The OAG advised that other actions permitted by the corporal punishment statute, e.g., use of physical restraint or seclusion to obtain controlled substances or weapons, may be reasonably construed to be actions intended to address imminent risk of serious bodily harm, and thus, their inclusion was consistent with the *15 Principles*.

We note that 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. We note that, in the vast majority of cases, instances of serious property destruction would also pose an imminent danger of serious physical harm. For instance, throwing a computer or destroying laboratory equipment may pose an imminent danger to the student or others, and we believe that restraint or seclusion could be appropriate in those instances.

Staff, however, requests guidance from the Board on certain matters of controversy. These issues are outlined in Attachment A.

Based on public comment received to date, staff has made certain changes to the proposed regulations that are merely clarifying in nature, and on which commenters from both the parent and advocacy community and the school community were in consensus. Attachment B is a line numbered current draft of the proposed regulations.

Attachment C is a detailed summary of public comment received to date, including staff response.

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. In addition, local school divisions and the Virginia Department of Education will incur significant costs in terms of training and reporting.

Timetable for Further Review/Action:

VDOE continues to receive public input on the proposed regulations. Based upon the Board's guidance, intend to present regulations for Final Review on March 23, 2017.

Superintendent's Recommendation:

The Superintendent of Public Instruction recommends that the Board receive the proposed *Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia* for third review.

Attachment A: Request for Guidance – Key Decision Points for Restraint and Seclusion Regulations

Section	Issue	Options	Discussion	Staff Recommendation
<p><u>Decision Point 1</u></p> <p>Prohibitions – Should Seclusion be Banned?</p> <p>“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.</p>	<p>Parent and advocacy groups have urged that seclusion is so dangerous that it should never be used.</p>	<p><u>Option 1</u></p> <p>Retain draft language.</p> <hr/> <p><u>Option 2</u></p> <p>Ban seclusion.</p>	<ul style="list-style-type: none"> ➤ Seclusion can be an effective technique that allows physical restraint to be avoided. However, there have been incidents of serious injury to students while they were secluded. ➤ Two states currently ban seclusion for all students, while three ban seclusion for students with disabilities. ➤ The 15 Principles permit seclusion in circumstances where the student’s behavior poses an imminent threat to self or others. 	<p>Allow seclusion as per the draft language, as other provisions discussed below provide safeguards.</p>

Attachment A: Request for Guidance – Key Decision Points for Restraint and Seclusion Regulations

Section	Issue	Options	Discussion	Staff Recommendation
<p><u>Decision Point 2</u></p> <p>Definition of Seclusion:</p> <p>“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.</p>	<p>Currently drafted option includes an exception from the definition of seclusion for confinement of a student in a room where the student is not free to leave during the investigation by school officials of a violation of the Code of Student Conduct.</p> <p>Reason the exception was included: School representatives did not want to be hamstrung in an instance where there is a drug deal or a fight, students involved are placed in separate rooms and the principal goes back and forth to investigate the incident.</p>	<p><u>Option 1</u></p> <p>Retain draft language.</p> <hr/> <p><u>Option 2</u></p> <p>Eliminate draft language.</p> <hr/> <p><u>Option 3</u></p> <p>Modify draft language to more specifically define instances in which this exception applies.</p>	<ul style="list-style-type: none"> ➤ Drafted language allows school staff to address disciplinary issues in the principal’s office or conference room. ➤ However, incidents are not reported and are not subject to protections that seclusion room would have (visual monitoring, size, construction materials, safety standards). ➤ Note that no one has offered any compromise language. 	<p>Eliminate draft language as students should not be left without adult supervision.</p>

Attachment A: Request for Guidance – Key Decision Points for Restraint and Seclusion Regulations

Section	Issue	Options	Discussion	Staff Recommendation
<p><u>Decision Point 3</u></p> <p>Definition of Seclusion:</p> <p>Contains certain exceptions to the definition of seclusion; one of the exceptions contains the caveat “so long as the student is not physically prevented from leaving.”</p>	<p>Parent and Advocacy groups believe that all the exceptions to the definition should incorporate the concept that the student must be “free to leave”.</p>	<p><u>Option 1</u></p> <p>Incorporate “free to leave” standard.</p> <hr/> <p><u>Option 2</u></p> <p>Retain current language.</p> <hr/> <p><u>Option 3</u></p> <p>Expand the “so long as the student is not physically prevented from leaving”.</p>	<p>The current language was drafted to ensure that students were not locked in a room or that doors were not held shut. The phrase “free to leave” seems to imply that a student cannot be told to “stay here.”</p>	<p>Expand the concept of “not physically prevented from leaving” to all exceptions.</p>

Attachment A: Request for Guidance – Key Decision Points for Restraint and Seclusion Regulations

Section	Issue	Options	Discussion	Staff Recommendation
<p><u>Decision Point 4</u></p> <p>Standards for Seclusion Rooms:</p> <p>Draft regulation includes specifications on size of room, ability to monitor space, light fixtures and controls, materials, contents, etc.</p>	<p>Superintendents from Region 7 requested that schools be allowed to determine their own specifications.</p>	<p><u>Option 1</u></p> <p>Retain current language.</p>	<p>Region 7 Superintendents were concerned that each building has its own physical layout, and that such prescriptive measures might be cost-prohibitive. We note that the current specifications were developed based on the Department of Behavioral Health and Developmental Services’ Regulations for Children’s Residential Facilities.</p>	<p>Maintain current language, but modify to allow flexibility with regard to contents, so long as the items do not pose a danger to the student.</p>
	<p>Other groups asked for flexibility on what types of items could be in the room, e.g., sensory items, and to eliminate the reference to a mattress being the only thing permitted in the room.</p>	<p><u>Option 2</u></p> <p>Eliminate specifications.</p>		
		<p><u>Option 3</u></p> <p>Modify specifications.</p>		

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<p><u>Decision Point 5</u></p> <p>Prone and supine restraints:</p> <p>Current draft bans both techniques.</p>	<p>School representatives and representatives from one of the training organizations involved in restraint and seclusion expressed concern that there may be instances in emergencies when such restraints are unavoidable.</p> <p>Alternatively, they urge that restraints that restrict the airway be banned.</p>	<p><u>Option 1</u></p> <p>Retain ban on prone and supine restraints.</p> <hr/> <p><u>Option 2</u></p> <p>Modify the language to simply ban restraints that restrict the airway.</p>	<p>15 Principles state that “Restraint or seclusion should never be used in a manner that restricts a child’s breathing or harms the child.”</p>	<p>Adopt language from the 15 Principles.</p>

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Section	Issue	Options	Discussion	Staff Recommendation
<p><u>Decision Point 6</u></p> <p>Notification and Reporting – Parent:</p> <p>Current draft requires that reasonable efforts be made to notify parents of an incident involving restraint or seclusion within one calendar day of the incident.</p>	<p>Parents and Advocacy groups argued for same day notification.</p> <p>School organizations believed that the requirement was too onerous and ought to be changed to one school day.</p>	<p><u>Option 1</u></p> <p>Retain current language.</p> <hr/> <p><u>Option 2</u></p> <p>Provide for same day notification.</p> <hr/> <p><u>Option 3</u></p> <p>Provide for one school day notification.</p>	<ul style="list-style-type: none"> ➤ Parent and advocacy groups argued that parents needed to be aware of the event in case there was hidden injury, such as head trauma. ➤ In light of recent studies of traumatic brain injury in children and youth, this seems a reasonable position to take. ➤ Draft requires only that “reasonable efforts” be made to notify the parent. 	<p>Modify to include same day notification.</p>

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<p><u>Decision Point 7</u></p> <p>Notification and Reporting – Incident Report Timing:</p> <p>Draft requires written report within two school days.</p>	<p>Superintendents’ groups indicated that the timeline was impractical.</p> <p>Special Education administrators urged changing the time to five school days.</p> <p>Some parents wanted written reports within one calendar day.</p>	<p><u>Option 1</u></p> <p>Retain current language.</p> <hr/> <p><u>Option 2</u></p> <p>Shorten time line.</p> <hr/> <p><u>Option 3</u></p> <p>Lengthen time line.</p>	<p>Original language was drafted as a compromise between the practicality of completing the report and the risk of fading memory of the incident.</p>	<p>Retain current language.</p>

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<p><u>Decision Point 8</u></p> <p>Notification and Reporting – Content:</p> <p>Draft requires that the incident report address fifteen items.</p>	<p>Special education administrators urged that the following items be deleted as not necessary for thorough reporting:</p> <p>A detailed description of the physical restraint or seclusion method used; The student behavior that justified the use of restraint or seclusion; Description of prior events prompting the behavior, if known; Description of any less restrictive interventions attempted; when the student has an IEP, a Section 504 plan, a behavior intervention plan or other plan.</p>	<p><u>Option 1</u></p> <p>Retain current language.</p> <hr/> <p><u>Option 2</u></p> <p>Delete requested items.</p> <hr/> <p><u>Option 3</u></p> <p>Delete some of the requested items.</p>	<p>While a more general question about the incident might, in some cases, elicit the information contained in these items, staff believes that it often would not, as specific prompts are often needed.</p> <p>This information is also critical in terms of engaging in a process of providing a tiered system of behavioral supports.</p>	<p>Retain current language.</p>

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<p><u>Decision Point 9</u></p> <p>Notification and Reporting – Student Debriefing:</p> <p>Draft regulations require that the student and principal or designee meet to debrief about the incident.</p>	<p>Parent and advocacy groups have requested that the debriefing include individuals other than the student and principal or designee. More specifically a number of groups and individuals requested regulations require that the parent be invited.</p>	<p><u>Option 1</u></p> <p>Retain current language.</p> <hr/> <p><u>Option 2</u></p> <p>Expand the meeting to include parents and other individuals.</p>	<p>The purpose of the student debriefing is to allow the student and school personnel to discuss the incident and talk about ways similar incidents might be avoided in the future.</p>	<p>Retain current language.</p>

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Section	Issue	Options	Discussion	Staff Recommendation
<p><u>Decision Point 10</u></p> <p>Prevention; Use of Multiple Instances of Restraint and Seclusion – Non IEP/504 Students:</p> <p>Requires that a school team convene after two incidents to consider, among other things, behavioral supports and the possibility of a referral for evaluation.</p>	<p>Parent and advocacy groups have requested that, for students without IEPs or Section 504 plans, automatically trigger an evaluation.</p>	<p><u>Option 1</u></p> <p>Retain current language.</p> <hr/> <p><u>Option 2</u></p> <p>Require referral.</p>	<p>Existing law already provides for requirements that a child should be evaluated if the eligibility team suspects a disability. This would create a duplicative and possibly conflicting process.</p>	<p>Retain current language.</p>

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Section	Issue	Options	Discussion	Staff Recommendation
<p><u>Decision Point 11</u></p> <p>Prevention; Use of Multiple Instances of Restraint and Seclusion – Trigger:</p> <p>Current language requires debriefing after two instances of restraint and seclusion.</p>	<p>School commenters believed that there should be more flexibility with regard to when a review would be triggered, noting that students with the most challenging behaviors might be restrained multiple times in a day.</p>	<p><u>Option 1</u></p> <p>Retain current language.</p> <hr/> <p><u>Option 2</u></p> <p>Change language to provide school division with discretion.</p> <hr/> <p><u>Option 3</u></p> <p>Provide a trigger point that captures two or more days in which restraint or seclusion is used.</p>	<p>An early review point serves the purpose of encouraging the use of evidenced-based, positive behavioral interventions.</p>	<p>Retain current language.</p>

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<p><u>Decision Point 12</u></p> <p>Training:</p> <p>Requires training for all school personnel in de-escalation, and the restraint and seclusion regulations;</p> <p>Requires advanced training for personnel employed in self-contained special education settings.</p>	<p>One advocacy group proposed replacing advanced training for personnel in self-contained settings with advanced training for a school-based crisis team.</p> <p>School groups expressed concerns about the lack of specificity regarding the training, and about the cost.</p>	<p><u>Option 1</u></p> <p>Retain current language.</p> <hr/> <p><u>Option 2</u></p> <p>Create a mandate for a crisis team.</p> <hr/> <p><u>Option 3</u></p> <p>Provide that VDOE will provide training.</p> <hr/> <p><u>Option 4</u></p> <p>Provide school divisions with funding.</p>	<ul style="list-style-type: none"> ➤ Research shows that the majority of incidents of restraint and seclusion involve special education students. As a result, staff elected to provide for advanced training for personnel in those settings. ➤ Staff wished to provide school divisions with flexibility with regard to choice and type of training, with the knowledge that school divisions throughout the Commonwealth use a number of different programs currently. ➤ While the provision of funding is a General Assembly matter, VDOE has discussed developing and providing the training module that is used for all personnel. 	<p>Retain current language, but provide that VDOE will develop and provide the tier one training module.</p>

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

3
4 **Foreword**

5
6 The 2015 Session of the General Assembly adopted legislation directing the Virginia Board of
7 Education (BOE) to adopt regulations addressing the use of seclusion and restraint in public
8 elementary and secondary schools in the Commonwealth. Pursuant to § 22.1-279.1:1 of the
9 Code of Virginia, the Board was charged to adopt regulations consistent with the Virginia
10 Department of Education’s (VDOE) 2009 *Guidelines for the Development of Policies and*
11 *Procedures for Managing Student Behavior in Emergency Situations* as well as the Fifteen
12 Principles set forth in the U.S. Department of Education's 2012 *Restraint and Seclusion:*
13 *Resource Document.*

14
15 Additionally, the Board was statutorily charged to ensure that these regulations included
16 definitions as well as criteria and restrictions for the use of restraint and seclusion in Virginia’s
17 public schools. Further, these regulations were to include requirements for staff training,
18 parental notification, reporting, and follow-up. Finally, the regulations were to address
19 distinctions—specifically in emotional and physical development—between the general and
20 special education student populations and between elementary and secondary school students.
21 These regulations are based on two foundational—and consonant—principles: that schools must
22 be safe for all children and that school personnel must be equipped to address emergencies and
23 disruptions effectively, while protecting the dignity of all students, the integrity of the classroom,
24 and the safety of all persons in our public schools.

25
26 **8 VAC 20-750-5. Application.**

27
28 These regulations are applicable to all students and school personnel in the public elementary
29 and secondary schools of the Commonwealth of Virginia, all as defined 8 VAC 20-750-10.

1 **8 VAC 20-750-10. Definitions.**

2

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

5

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

9

10 1. Noxious odors and tastes.

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12 2. Water and other mists or sprays.

13

14 3. Blasts of air.

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16 4. Corporal punishment as defined in Va. Code § 22.1-279.1.

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18 5. Verbal and mental abuse.

19

20 6. Forced exercise when:

21

22 a. The student’s behavior is related to his disability;

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24 b. The exercise would have a harmful effect on the student’s health; or

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26 c. The student’s disability prevents participation in such activities.

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28 7. Deprivation of necessities, including:

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30 a. Food and liquid at a time it is customarily served;

31

1 b. Medication; or

2

3 c. Use of restroom.

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

8

9 **“Board”** means the Virginia Board of Education.

10

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

13

14 **“Chapter”** means these regulations.

15

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

20

21 **“Child with a disability”** or **“student with a disability”** means a public elementary or
22 secondary school student evaluated in accordance with the provisions of 8 VAC 20-81 as having
23 an intellectual disability, a hearing impairment (including deafness), a speech or language
24 impairment, a visual impairment (including blindness), a serious emotional disability (referred to
25 in 8 VAC 20-81 as an emotional disability), an orthopedic impairment, autism, traumatic brain
26 injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple
27 disabilities who, by reason thereof, requires special education and related services. This also
28 includes developmental delay if the school division recognizes this category as a disability under
29 8 VAC 20-81-80.M.3. If it is determined through an appropriate evaluation that a child has one
30 of the disabilities identified but only needs related services, and not special education, the child
31 is not a child with a disability under 8 VAC 20-81. If the related service required by the child is

1 considered special education rather than a related service under Virginia standards, the child
2 would be determined to be a child with a disability. As used in this chapter, the disability
3 categories set forth in this definition and the terms “special education” and “related services”
4 shall have the meanings set forth in 8 VAC 20-81-10.

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

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

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

13

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

18

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

25

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

29

30 **“Mechanical restraint”** means the use of any material, device or equipment to restrict a
31 student’s freedom of movement. This term does not include devices implemented by trained

1 school personnel or used by a student that have been prescribed by an appropriate medical or
2 related services professional and are used with parental consent and for the specific and approved
3 purposes for which such devices were designed, such as:

- 4
5 1. Adaptive devices or mechanical supports used to achieve proper body position, balance
6 or alignment to allow greater freedom of mobility than would be possible without the use
7 of such devices or mechanical supports;
- 8
9 2. Vehicle restraints when used as intended during the transport of a student in a moving
10 vehicle;
- 11
12 3. Restraints for medical immobilization; or
- 13
14 4. Orthopedically prescribed devices that permit a student to participate in activities without
15 risk of harm.

16 In addition, high chairs and feeding stations used for age appropriate students do not constitute
17 mechanical restraints. Furthermore this provision is not intended to include the use of vehicle
18 seat belts.

19
20 **“Pharmacological restraint”** means a drug or medication used on a student to control behavior
21 or restrict freedom of movement that is not (i) prescribed by a licensed physician or other
22 qualified health professional under the scope of the professional’s authority for the standard
23 treatment of a student’s medical or psychiatric condition and (ii) administered as prescribed by a
24 licensed physician or other qualified health professional acting under the scope of the
25 professional’s authority.

26
27 **“Physical restraint”** means a personal restriction that immobilizes or reduces the ability of a
28 student to move freely. The term “physical restraint” does not include: (i) briefly holding a
29 student in order to calm or comfort the student; (ii) holding a student’s hand or arm to escort the
30 student safely from one area to another; or (iii) the use of incidental, minor or reasonable
31 physical contact or other actions designed to maintain order and control.

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“**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.

1 **“Student”** means any student, with or without a disability, enrolled in a public elementary or
2 secondary school as defined in Va. Code § 22.1-1. For purposes of these regulations, the term
3 “student” shall also include those students (i) attending a public school on a less-than-full time
4 basis, such as those students identified in § 22.1-253.13:2.N; (ii) receiving homebound
5 instruction pursuant to 8 VAC 20-131-180 and as defined in 8 VAC 20-81-10, without regard to
6 special education status; (iii) receiving home-based instruction pursuant to 8 VAC 20-81-10; and
7 (iv) pre-school students enrolled in a program operated by a school division or receiving services
8 from school division personnel.

9
10 As used in these regulations, “student” or “students” shall not include children meeting
11 compulsory attendance requirements of § 22.1-254 by (i) enrollment in private, denominational,
12 or parochial schools; (ii) receipt of instruction by a tutor or teacher of qualifications prescribed
13 by the Board of Education and approved by the relevant division superintendent; or (iii) receipt
14 of home instruction pursuant to § 22.1-254. With regard to restraint and seclusion, students
15 placed through public or private means in a private day or residential school for students with
16 disabilities shall be afforded the protections set forth in 8 VAC 20-671 et seq.

17
18 **“Time-out”** means a behavioral intervention in which the student is temporarily removed from
19 the learning activity but in which the student is not confined.

20
21 ***8 VAC 20-750-20. Prohibitions.***

22
23 The following actions are prohibited in the public elementary and secondary schools in the
24 Commonwealth of Virginia:

- 25
26 1. Use of mechanical restraints;
27
28 2. Use of pharmacological restraints;
29
30 3. Use of aversive stimuli;

31

1 | 4. Prone ~~“face-down”~~ and supine restraints or any other restraint that restricts breathing,
2 | harms the student, or interferes with the student’s ability to communicate.

3 |
4 | 5. Use of physical restraint or seclusion as (a) punishment or discipline; (b) a means of
5 | coercion or retaliation; or (c) a convenience, or in any manner other than as provided
6 | in 8 VAC 20-750-40 and 8 VAC 20-750-50, below.

7 |
8 | 6. Corporal punishment, as defined in Va. Code § 22.1-279.1.

9 |
10 | 7. Use of seclusion rooms or freestanding units not meeting the standards set forth in
11 | these regulations.

12 |
13 | 7.8. Use of restraint or seclusion when medically or psychologically contraindicated as
14 | stated in documentation by the IEP team, 504 team, school professionals, or by a
15 | licensed physician, psychologist or other qualified health professional under the scope
16 | of the professional’s authority.

17 |
18 | **8 VAC 20-750-30. Use of physical restraint and seclusion.**

19 |
20 | A. Nothing in this chapter shall be construed to require a school division to employ physical
21 | restraint or seclusion in its schools. School divisions electing to use physical restraint
22 | and seclusion shall comply with the requirements of these regulations.

23 |
24 | B. School personnel may implement physical restraint or seclusion only when other
25 | interventions are, or would be, in the reasonable judgment of the particular school
26 | personnel implementing physical restraint or seclusion in an emergency situation,
27 | ineffective and only to :

28 |
29 | (i) prevent a student from inflicting serious physical harm or injury to self or others;
30 |

1 | (ii) quell a disturbance that threatens serious physical harm or injury to persons ~~or~~
2 | ~~damage to property~~;

3 |
4 | (iii) remove a student from the scene of a disturbance that threatens physical injury to
5 | ~~persons or damage to property~~;

6 |
7 | (iv) defend self or others;

8 |
9 | (v) obtain possession of controlled substances or paraphernalia which are upon the
10 | person of the student or within the student's control; or

11 |
12 | (vi) obtain possession of weapons or other dangerous objects that are upon the person of
13 | the student or within the student's control.

14 |
15 | C. Physical restraint and seclusion shall be discontinued as soon as the conduct or situations
16 | set forth in items (i) through (vi) in Subsection A, above, prompting the use of physical
17 | restraint or seclusion have ceased, dissipated, or been resolved.

18 |
19 | D. Nothing in this section shall be construed to require school personnel to attempt to
20 | implement a less restrictive intervention prior to using physical restraint or seclusion
21 | when, in the reasonable judgment of the school personnel in an emergency situation, a
22 | less restrictive intervention would be ineffective.

23 |
24 | **8 VAC 20-750-40. Seclusion; Standards for Use.**

25 |
26 | A. School divisions electing to use physical restraint and seclusion as permitted by this
27 | chapter shall meet the following structural and physical standards for rooms designated
28 | by the school to be used for seclusion:

- 29 |
30 | 1. The room used for seclusion shall meet the design requirements for buildings used for
31 | detention or seclusion of persons.

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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.

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

- A. When any student~~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, or 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 student~~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:

Attachment B
February 2016

- 1
- 2 1. Student name, age, gender, grade, ethnicity;
- 3
- 4 2. Location of the incident;
- 5
- 6 3. Date, time, and total duration of incident, including documentation of the beginning
- 7 and ending time of each application of physical restraint or seclusion;
- 8
- 9 4. Date of report;
- 10
- 11 5. Name of person completing the report;
- 12
- 13 6. The school personnel involved in the incident, their roles in the use of physical
- 14 restraint or seclusion, and their completion of the division's training program;
- 15
- 16 7. Description of the incident, including the resolution and process of return of the
- 17 student to his educational setting, if appropriate;
- 18
- 19 8. A detailed description of the physical restraint or seclusion method used;
- 20
- 21 9. The student behavior that justified the use of physical restraint or seclusion;
- 22
- 23 10. Description of prior events and circumstances prompting the student's behavior, to
- 24 the extent known;
- 25
- 26 11. Less restrictive interventions attempted prior to the use of physical restraint or
- 27 seclusion, and an explanation if no such interventions were employed.
- 28
- 29 12. Whether the student has an IEP, a Section 504 plan, a BIP, or other plan;
- 30

1 13. If a student, staff or any other individual sustained bodily injury, the date and time of
2 nurse or response personnel notification and the treatment administered, if any;

3
4 14. Date, time, and method of parental notification of the incident, as required by this
5 section; and

6
7 15. Date, time of staff debriefing.

8
9 D. Following an incident of physical restraint or seclusion ~~in a self-contained classroom or~~
10 ~~other special education setting in which a majority of the students in regular attendance~~
11 ~~are (i) provided special education and related services and (ii) assigned to a self-~~
12 ~~contained classroom or other special education setting for at least 50 percent of the~~
13 ~~instructional day~~, the school division shall ensure that, within two (2) school days, the
14 principal or designee reviews the incident with all staff persons who implemented the use
15 of physical restraint or seclusion to discuss:

16
17 1. Whether the use of restraint or seclusion was implemented in compliance with this
18 chapter and local policies; and

19
20 2. How to prevent or reduce the future need for physical restraint and/or seclusion.

21
22 E. As appropriate depending on the student's age and developmental level, following each
23 incident of physical restraint or seclusion ~~in a self-contained classroom or other special~~
24 ~~education setting in which a majority of the students in regular attendance are (i)~~
25 ~~provided special education and related services and (ii) assigned to a self-contained~~
26 ~~classroom or other special education setting for at least 50 percent of the instructional~~
27 ~~day~~, the school division shall ensure that, as soon as practicable, but no later than two (2)
28 school days or upon the student's return to school, the principal or designee shall review
29 the incident with the student(s) involved to discuss:

30

- 1 1. Details of the incident in an effort to assist the student and school personnel in
2 identifying patterns of behaviors, triggers or antecedents.
3
- 4 2. Alternative positive behaviors or coping skills the student may utilize to prevent or
5 reduce behaviors that may result in the application of physical restraint or seclusion.
6
- 7 F. The principal or designee shall regularly review the use of physical restraint or seclusion
8 to ensure compliance with school division policy and procedures, and, when there are
9 multiple incidents within the same classroom or by the same individual, the principal or
10 designee shall take appropriate steps to address the frequency of use.
11
- 12 G. Nothing in these regulations shall be construed to require school divisions to develop and
13 implement notification and reporting requirements for incidents involving (i) briefly
14 holding a student in order to calm or comfort the student; (ii) holding a student's hand or
15 arm to escort the student safely from one area to another; (iii) the use of incidental, minor
16 or reasonable physical contact or other actions designed to maintain order and control.
17

18 **8 VAC 20-750-60. Policies and procedures.**
19

- 20 A. Each school division that elects to use physical restraint or seclusion shall develop and
21 implement written policies and procedures that meet or exceed the requirements of this
22 chapter and that include, at a minimum, the following:
23
- 24 1. A statement of intention that the school division will encourage the use of positive
25 behavioral interventions and supports to reduce and prevent the need for the use of
26 physical restraint and seclusion.
27
- 28 2. Examples of the positive behavioral interventions and support strategies consistent
29 with the student's rights to be treated with dignity and to be free from abuse the
30 school division uses to address student behavior, including the appropriate use of
31 effective alternatives to physical restraint and seclusion

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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

1 appropriate. In developing, reviewing, and revising its policies, school divisions shall
2 consider the distinctions in emotional and physical development between elementary and
3 secondary students and between students with and without disabilities.

4
5 C. Consistent with § 22.1-253.13:1.D, a current copy of a school division's policies and
6 procedures regarding restraint and seclusion shall be posted on the school division's Web
7 site and shall be available to employees and to the public. School boards shall ensure that
8 printed copies of such policies and procedures are available as needed to citizens who do
9 not have online access.

10
11 **8 VAC 20-750-70. Prevention; multiple uses of restraint or seclusion.**

12
13 A. In the initial development and subsequent review and revision of a student's IEP or
14 Section 504 plan, the student's IEP or Section 504 team shall consider whether the
15 student displays behaviors that are likely to result in the use of physical restraint or
16 seclusion. If the IEP or Section 504 team determines that a future use is likely, the team
17 shall consider, among other things, the need for (i) an FBA; (ii) a new or revised BIP that
18 addresses the underlying causes or purposes of the behaviors as well as de-escalation
19 strategies, conflict prevention, and positive behavioral interventions; ~~and~~ (iii) ~~and~~ any
20 new or revised behavioral goals; and (iv) any additional evaluations or reevaluations.

21
22 Within 10 school days following the ~~third-second~~ incident in which involving the use of
23 physical restraint or seclusion in a single school year, the student's IEP or 504 team shall
24 meet to discuss the incident and to consider, among other things, the need for (i) an FBA;
25 (ii) a new or revised BIP that addresses the underlying causes or purposes of the
26 behaviors as well as de-escalation strategies, conflict prevention, and positive behavioral
27 interventions; ~~and~~ (iii) ~~and~~ any new or revised behavioral goals; and (iv) any additional
28 evaluations or reevaluations.

29
30 B. For students not described in Subsection A, within 10 school days of the ~~third-second~~
31 incident involving the use of physical restraint or seclusion, a team consisting of the

1 parent, the principal or designee, a teacher of the student, a staff member involved in the
2 incident (if not the teacher or administrator already invited), and other appropriate staff
3 members, such as a school psychologist, school guidance office, or school resource
4 officer, as determined by the school division, shall meet to discuss the incident and to
5 consider, among other things, the need for (i) an FBA; (ii) a new or revised BIP that
6 addresses the underlying causes or purposes of the behaviors as well as de-escalation
7 strategies, conflict prevention, and positive behavioral interventions; and (iii) a referral
8 for evaluation.

9
10 C. Nothing in this section shall be construed to (i) excuse the team or its individual members
11 from the obligation to refer the student for evaluation if the team or members have reason
12 to suspect that the student may be a student with a disability; or (ii) prohibit the
13 completion of an FBA or BIP for any student, with or without a disability, who might
14 benefit from these measures but whose behavior has resulted in fewer than three-two
15 incidents of physical restraint or seclusion in a single school year.

16
17 **8 VAC 20-750-80. Annual Reporting.**

18
19 ~~The requirements of this section shall only apply to instances in which physical restraint~~
20 ~~and seclusion are employed in a self-contained classroom or other special education~~
21 ~~setting in which a majority of the students in regular attendance are (i) provided special~~
22 ~~education and related services and (ii) assigned to a self-contained classroom or other~~
23 ~~special education setting for at least 50 percent of the instructional day.~~

24
25 The principal or his designee shall submit to the division superintendent a report on the
26 use of physical restraint and seclusion in the school based on the individual incident
27 reports completed and submitted to the principal or designee by school personnel
28 pursuant to 8 VAC 20-750-40.D, above. The division superintendent shall annually
29 report the frequency of such incidents to the Superintendent of Public Instruction on
30 forms that shall be provided by the Department of Education and shall make such
31 information available to the public.

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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; include all school personnel~~ receive initial training that ~~shall~~ focuses on skills related to positive behavior support, conflict prevention, de-escalation, and crisis response;
- (ii) ensure that all school personnel ~~are periodically trained~~ receive periodic training regarding the regulations, policies, and procedures governing the use of physical restraint and seclusion;
- (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 (a) provided special education and related services and (b) assigned to a self-contained classroom or other special education setting for at least 50 percent of the instructional day; and
- (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;

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(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.

Attachment C

January 26, 2017, Comments (October 2016 Roundtable Sessions; e-mail submissions)

SUMMARY

Definitions			
Number	Commenter	Comment	Staff Response
1	B. Roberts (Bedford) 10/5/16	Questioned definition of physical restraint	No change required: See below.
2	Loomis 10/5/16	Questioned definition of school day	No change required, as the definition is consistent with other VDOE regulations.
3	V. Gobeyn 10/5/16 J. Liban 10/11/16	Only wants restraint for serious physical harm	Definition as modified is in accordance with advice of the Office of the Attorney General.
4	J. Cimino 10/11/16	Eliminate exceptions from physical restraint definition (briefly holding to calm; hand/arm to escort; incidental/minor contact to maintain order/control)	See comment 3
5	J. Liban 10/11/16	Eliminate exception in seclusion definition for investigation/interrogation of students	See Decision Point 2
6	D. Feltman 10/11/16 M. Mathews 10/11/16	Remove definition of “seclusion cell” as definition of seclusion should address what is permitted	Change made
7	Kevin Koziol Megan Watkins, JustChildren Jamie Liban, Virginia ARC Heather Luke 10/27/16 BOE meeting	Support for CISS comments regarding restraint and seclusion regulations	See comment 3
8	Megan Lisa Watkins, Esq. Legal Aid Justice Center/JustChildren Written comments 10/27/16 BOE meeting	<ul style="list-style-type: none"> urged BOE to be “assertive” in protecting children; wants to limit to threat of serious physical harm, citing 15 Principles; noted lifelong trauma of students experiencing restraint and seclusion; read a grandmother’s statement regarding preschooler (age 4) being placed in closet for throwing a crayon. Teacher: “done as a punishment”; student is on psychiatric medication due in part to lasting trauma. Grandmother wants to ban restraint and seclusion. Need for clarity and strength in regulations. 	<ul style="list-style-type: none"> See comment 3

		<ul style="list-style-type: none"> • Limit use to “threat of serious physical harm 	<ul style="list-style-type: none"> • See comment 3
9	Marie Tucker 10/27/16 BOE meeting	<ul style="list-style-type: none"> • parent; cited military experience—concerned about deference to staff judgment; questioned property damage as situation that may prompt restraint or seclusion; concern about remote locks/monitoring—“are we talking about a prison?”—requested change to these provisions—cited students’ civil and human rights 	<ul style="list-style-type: none"> • See comment 3 and Decision Points 1, 2, 3, and 4
10	Kevin Koziol Disability Resource Center— member CISS—former sped administrator 10/27/16 BOE meeting	<ul style="list-style-type: none"> • cited statutory linkage to 15 Principles; opposes “broad” use he believes is permitted in draft—cited “minor” disruptions, minor property damage, etc. Wants to limit to “imminent danger” of physical harm to self/others in 15 Principles—concerned re potential broad application—need “clear standards” for personnel; requests revision to definitions of PR and seclusion—wants “more robust” emphasis on evidence-based positive behavioral supports; wants sensory objects in seclusion room— 	<ul style="list-style-type: none"> • See comment 3 and Decision Point 4
11	Shelley Montante 10/27/16 BOE meeting	<ul style="list-style-type: none"> • personal experience of R & S applied to her son, then age 4; son has Down Syndrome; saw son tied to chair at John B. Cary ES in Richmond; aide: “it’s easier to watch them that way”; then moved to Goochland and showed great improvement. Then to Henrico in MS—one-on-one behavioral assistant— Finger nail gouges in torso—student had been lifted out of bus seat when he refused to leave. Criticized aide for “judgment call”—noted her own experience and training as nurse; use of restraints in health facilities; and regulations. Cited consideration of alternative measures before implementing restraint and seclusion. Noted her friend’s son was also tied in a chair the day before. 	<ul style="list-style-type: none"> • See Decision Points 1, 2, 3 and 4
12	Jamie Liban Director, Virginia ARC 10/27/16 BOE meeting	<ul style="list-style-type: none"> • believes regs need to align with 15 Principles; cited harm and death due to restraint and seclusion; disproportionate effect on students with disabilities and students of color; wants limit to instances of physical harm; concerned that “breaking a pencil” will result in restraint/seclusion; associated self with Kevin Koziol; believes General Assembly intended to limit restraint and seclusion to physical harm only; cited data collection; need for same-day notification; wants “feedback loop” to improve practices; wants data collection to address incidents that may be beyond definitions 	<ul style="list-style-type: none"> • See comment 3 and Decision Points 1, 2, 3 and 4
13	Katherine Olson Voices of Virginia/People First 10/27/16 BOE meeting	<ul style="list-style-type: none"> • “seclusion and restraints are very bad...feel like being in prison...” Cited civil rights issue; disproportionate impact on students with disabilities; “malicious and discriminatory acts”; noted nonverbal 	<ul style="list-style-type: none"> • See comment 3 and Decision Points 1, 2, 3 and 4

		students may be especially affected; limit use to physical harm; urges alignment with 15 Principles	
14	Kandise Lucas 10/27/16 BOE meeting	<ul style="list-style-type: none"> • use of restraint/seclusion is not evidence-based; cited trauma for students; believes restraint and seclusion will produce bullies and violence in students later; restraint and seclusion are not consistent with statute; if parent engaged in these activities, parent would be incarcerated; in fundamental form, is “abuse” and a “traumatic system” permitted by state; has seen students tied or duct-taped to seats; “state-sanctioned child abuse.” 	<ul style="list-style-type: none"> • See comment 3
15	Lori P. Buckingham, Behavior Specialist, Spotsylvania County Schools 10/27/2016 via email Also provided resources	<ul style="list-style-type: none"> • Restraint and seclusion are used only for the purpose of protection and not for the purpose of changing behavior where no protective need is present. 	<ul style="list-style-type: none"> • See comment 3
16	Handle With Care Bruce Chapman, President Hilary Adler, VP 184 McKinstry Road Gardiner, NY 12525 10/5/16 via email	<ul style="list-style-type: none"> • Summary of proposed changes to VBOE Restraint Regulation: <ol style="list-style-type: none"> 1. Use the language of VA Code 22.1-279.1 2. Remove the ban on prone restraint. 3. Remove the term serious physical harm 4. Restraint should also be allowed as part of an IEP or BP. 	<ul style="list-style-type: none"> • See comment 3 • See Decision Point 5 • Allowing restraint to be included within an IEP would be inconsistent with the 15 Principles
17	COPAA 11/1/16 email	<ul style="list-style-type: none"> • Eliminate statutorily permitted actions from physical restraint—limit to physical harm only • “The only allowable reason for use of restraint or seclusion as outlined by ED in its Principle Document, and in line with best practice and to protect everyone involved and to reduce use, is to restrict use to situations in which there is an emergency and imminent danger of harm to the student or others.” • “Data must be transparent and inform actions of the district to reduce the use of restraint or seclusion and identify overuse or abuse. To avoid any confusion, the regulations must include definitions that are consistent with the Office for Civil Rights who began collecting data on the use of restraint and seclusion in schools as part of the Department’s 2009-2010 Civil Rights Data Collection and defined key terms related to restraint and seclusion.” (see also Data Collection section) 	<ul style="list-style-type: none"> • See comment 3
18	Coalition for Improving	Revise definition of “Physical restraint” —would essentially <u>include</u>	See comment 3

<p>School Safety (CISS)* Jamie Liban 10/17/16 email Line-by-line edits</p>		<p>“the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control” as <u>physical restraint</u>.</p> <p><i>CISS: Rationale: ... The law does not support the view that the corporal punishment statute allows restraint to maintain order or respond to educational disruptions, like tantrums. The General Assembly and Governor adopted a law that requires adherence to the 15 Principles which clearly limits restraint and seclusion to emergencies threatening serious physical harm only. <u>But even if the corporal punishment statute somehow allows restraint for educational disruption, it in no way supports defining it out of the regulations entirely. It would instead be listed as a permitted use. The effect of defining it out is to fail to keep data, fail to notify parents, fail to provide safeguards (e.g., use less dangerous methods), and thus, enable schools to conceal its use...</u> Every use of restraint must be counted; every parent notified. Again, we believe strongly that allowing restraint for education disruption is not permitted by the 2015 restraint and seclusion statute.</i></p> <ol style="list-style-type: none"><i>1. Our changes remove language that is contrary to the statute adopted by the General Assembly and Governor, §22.1-279.1:1 (2015 Statute). The 2015 statute requires the regulations to be consistent with the Fifteen Principles in the 2012 United States Department of Education’s Restraint and Seclusion: Resource Document and Virginia’s 2009 Guidelines. Those limit the use of restraint and seclusion to situations where the child’s behavior poses imminent danger of serious physical harm to self or others and other interventions are ineffective. They do not permit it for maintaining order or control. Restraint and seclusion are too injurious and potentially life-threatening to allow them for maintaining order, which can include a response to a tantrum, inability to stand in line, repeating bad words, or otherwise acting out that threatens no one. Such actions may be a manifestation of the child’s disability. See CISS 3/23/16 Comments, p. 2-7, CISS Comments 8/18/15, p.1, 25, 27 for more explanation.</i><i>2. The corporal punishment statute does not mandate that restraint to maintain order be excluded from the definition of restraint. Instead, in defining corporal punishment, that law lists several acts that are not corporal punishment. The corporal punishment statute does not contain language creating a right to use them against students (i.e. it does not say “the following acts are permitted....”). The 2015 statute, adopted after the corporal</i>	
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punishment statute, requires the Board to adopt regulations consistent with the Fifteen Principles, and that means defining restraint as we propose. This 15 Principles' definition does not conflict with the corporal punishment statute, and in any event, as the later-adopted statute, controls any division. See CISS 3/23/16 Comments, p. 2-7, CISS Comments 8/18/15, p.1, 25, 27 for more explanation. The Fifteen Principles are not "silent" about the use of restraint for educational disruption; they very clearly limit it to emergencies threatening serious physical harm. "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 and other interventions are ineffective and should be discontinued as soon as imminent danger of serious physical harm to self or others has dissipated." Principle 3 and Resource Document, p. 2. The 15 Principles Document (p.10) clearly defines restraint and does not include the use to maintain order. These draft regulations must be changed to be consistent with the 15 Principles.

- 3. The proposed definition is also contrary to the Civil Rights Data Collection definition, which is the same as the Fifteen Principles Document, see www2.ed.gov/about/offices/list/ocr/docs/crdc-2011-12-p1-p2.doc. Virginia School Divisions must report data every 2 years under the CRDC definition. The highly different Virginia definition is likely to confuse school staff and cause very inaccurate reporting either in the CRDC collection or in the Virginia data.*
- 4. Even if the corporal punishment statute somehow explicitly permits restraint to be used to maintain order, it should not be defined out of the regulations. **Any permitted use of restraint must be included in the regulation so that Virginia has accurate data, and parents are notified that restraint was used. Narrowing the definition as the proposed regulation does enables schools to conceal that information—from the data and from parents.** All uses of restraint must be subject to the protections in the regulations, must be included in the data, and must be reported to parents. We respect very much the VDOE and its staff and their work. No one may have intended concealment. But adopting a very narrow definition like this has the effect of concealing information that should never be hidden. Every use of restraint must be counted; every parent must be notified. ... This*

		<p><i>loophole would permit school staff to describe incidents of restraint so as to avoid the regulations (simply by classifying the use of restraint as maintaining order). Virginia statute requires compliance with the 15 Principles and the definitions there. There is nothing in the restraint/seclusion statute or the corporal punishment statute to support concealment by definition, which is unfortunately what this draft would do. See CISS 3/23/16 Comments, p. 2-7, CISS Comments 8/18/15, p.1, 25, 27 for more explanation. Finally, the proposed definitional loopholes are reminiscent of the Virginia School Board Association policy on restraint and seclusion, which used definitions to exclude much restraint and seclusion from coverage. That concept was rejected by the Commission on Youth, and then by the General Assembly and the Governor in adopting the 2015 statute.”</i></p>	
19	<p>Coalition for Improving School Safety (CISS)* 10/17/16 email Line-by-line edits</p>	<ul style="list-style-type: none"> • Revise definition of “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. • “No person employed by a School Division should use restraint or seclusion improperly. Virginia’s 2015 Statute and the 15 Principles do not include this exception. This provision appears to inappropriately exempt other school personnel, including bus drivers and aides, and others working at the school with children. The media nationwide has reported on the use of restraint and seclusion by other personnel, including school bus incidents. When a parent puts their child on the school bus, the parent expects that child to be protected until the child comes home.” 	<ul style="list-style-type: none"> • Staff believes that all school staff are covered the definition.
20	<p>Coalition for Improving School Safety (CISS)* 10/17/16 email Line-by-line edits</p>	<ul style="list-style-type: none"> • Revise “seclusion” definition to preclude use for threat of property damage; corresponding edits throughout. • “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. • <i>“This allows the use of seclusion for property destruction, even</i> 	<ul style="list-style-type: none"> • See comment 3 • See Decision Point 2 • See Decision Point 3

tearing paper or breaking a pencil. Seclusion must be restricted to emergencies posing an imminent threat of serious physical harm, for the same reasons we point out under the physical restraint definitions. The 2015 statute requires the Board to adopt regulations consistent with the Fifteen Principles, which state 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 and other interventions are ineffective and should be discontinued as soon as imminent danger of serious physical harm to self or others has dissipated.” Principle 3 and Resource Document, p. 2. The 15 Principles Document (p.10) clearly defines seclusion and does not include the use to prevent property destruction. These draft regulations must be changed to be consistent with the 15 Principles. The corporal punishment statute also does not require this definition. Instead, it simply lists several acts that are not corporal punishment. The corporal punishment statute does not contain language creating a right to seclude students (i.e. it does not say “the following acts are permitted...”). The definition we propose and in the 15 Principles does not conflict with the corporal punishment statute. See CISS 3/23/16 Comments, p. 2-7, CISS Comments 8/18/15, p.1, 25, 27 for more explanation. These include that the 2015 Virginia Statute requires that seclusion be limited to situations where the child’s behavior poses imminent danger of serious physical harm to self or others and other interventions are ineffective. The corporal punishment statute does not require allowing seclusion for property damage, for the reasons we explained in our earlier comments. The proposed definition is also markedly different from the Civil Rights Data Collection definitions that Virginia schools should have been using since 2009 for that collection. It will lead to much confusion and inaccurate data collection.

- **Revise “seclusion” to ensure student is “free to leave”**
- “Seclusion” does not include (i) time out, as defined in these regulations; (ii) in-school suspension; (iii) detention. This definition makes clear that seclusion does not include (iv) student-requested breaks in a different location in the room or in a separate room as long as the student is free to leave; (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 free to leave; (viii) the removal of a student for disruptive behavior from a classroom by the teacher, as provided in Va. Code §22.1-276.2 as long as the student is not involuntarily confined alone in a room or other area from which the student is prevented from leaving~~

- *“Rationale: These 3 provisions appear to describe activities that are not seclusion, e.g., a child asking for a break or a teacher removing a child from the classroom. But without the limiting language we propose, these appear to allow putting children into seclusion (alone in a room they cannot exit) if they ask for a break or when they are first removed from the classroom for disruptive behavior. And once in seclusion, the regulations would not apply. That would violate the 2015 statute. We do not think this is what VDOE staff meant to do. We believe that what you meant was to clarify that seclusion, as you have defined it, does not include these three things. In addition, we add the “as long as...” language at the end for the following reason. The first place a child may be taken when put into seclusion may be the seclusion room. Under the Fifteen Principles, seclusion must be limited to emergencies threatening serious physical harm when less restrictive measures cannot prevent the danger. For these reasons, the regulations must distinguish between moving a child into seclusion (permitted only for emergencies threatening physical harm and governed by the regulations) and simply removing a child from the classroom to a non-seclusion setting (e.g., taking the student from the classroom to principal’s office or to calm down in a hallway). Any use of seclusion must be under the regulations, including parental notice, data collection, reporting to administration, and receive regulatory protection: including requirements to use safer seclusion rooms and provide continuous visual monitoring. We do not believe that staff meant that putting children in darkened closets or rooms unmonitored, with unsafe conditions, is what VDOE staff meant to allow in wording the regulation this way.”*
- **Preclude use for investigation of conduct code violation.**
- 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.~~
1. This proposal would permit seclusion for any investigation of a

conduct code violation. A simple internet search shows that School Division Conduct Codes include prohibitions on horseplay, rudeness, being tardy, dressing immodestly, wearing slippers, minor insubordination, being disrespectful, failing to identify oneself, carrying food without authorization, and the like. Students with disabilities in particular may engage in many of these actions as manifestations of their disabilities and be secluded or restrained as a result. Regulations that exclude what would otherwise be seclusion because it is done while investigating these kinds of violations are not consistent with the Fifteen Principles or the Virginia Guidelines, which limit seclusion to emergencies threatening physical danger. Accordingly, complying with the 2015 statute requires that this section be stricken. See CISS Comments, 3/23/16 p. 2-7; CISS Comments 8/18/15, p.1, 25, 27; Principle 3 and Principles Document p.3, CRDC Data Collection requirements.

2. Data demonstrates that children with disabilities and minority children are already subjected to disproportionate discipline. Permitting seclusion for conduct code violations would only increase the disproportionate use of seclusion against minority children and children with disabilities.

3. Again, as stated in the suggested change to the restraint definition in 8 VAC 20-750-10, even if one believes there is a statutory basis for permitting seclusion for this reason, those uses cannot be defined out of the regulations. This definition means parents will not be notified, the incidents will not be counted in the data, and the other regulatory protections will not apply. In short the use of seclusion will be concealed from parents and from the data, and a loophole will be created that school staff can use to avoid the regulations, even if no one meant to do that in drafting the regulation this way.... A student with a significant disability may engage in horseplay or be rude and putting that child in seclusion for 30 minutes or an hour while one "investigates" the conduct code violation is the same as secluding that child for 30 minutes or an hour. Any permitted use of seclusion must be included in the regulations, so that parents are notified and the events are counted in the data, and children receive regulatory protections, including the use of rooms that meet safety requirements and the requirement for continual visual monitoring. Again, the 2015 statute does not allow such exceptions for student codes of conduct; it requires conforming to

		<p><i>the 15 Principles which do not contain this exception. Nor is an exception for horseplay or being rude good public policy. Putting children in closets and unsafe rooms should never be permitted on the basis that one is investigating conduct code violations, as this exception would allow. See CISS Comments, 3/23/16 p. 2-7; CISS Comments 8/18/15, p.1, 25, 27; Principle 3 and Principles Document p.3, CRDC Data Collection requirements.</i></p> <p><i>4. The vast majority of states with restraint and seclusion laws or regulations do not use definitions like this. Most simply limit seclusion to a space from which a child is involuntarily confined and physically prevented from leaving.”</i></p>	
21	<p>Coalition for Improving School Safety (CISS)* 10/17/16 email Line-by-line edits</p>	<ul style="list-style-type: none"> • Revise definition of “seclusion cell” to permit freestanding unit. • “Seclusion cell” means a freestanding, small 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. • “Rationale: <i>The issue with seclusion cells is not their freestanding nature but their size. Attaching a tiny cell to a school wall does not make it permissible. Another distinction between the cells and seclusion rooms is that they typically do not comply with fire or building codes.”</i> 	<ul style="list-style-type: none"> • Staff has removed the reference to “Seclusion cells” and prohibited seclusion in a space, whether a room or a freestanding unit, that does not meet the standards for seclusion cells
22	<p>(Each email based on Nov.15, 2016, form letter from Emily Dreyfus, Justice4All)</p> <ol style="list-style-type: none"> 1. Wayne & JoAnne Groover Nov. 18, 2016, email to VBOE 2. Janet Lilly Nov. 16, 2016, email to VBOE 3. Jill Buzby, Arlington, VA Nov. 15, 2016, email to VBOE 4. Angela Stevens PBS Coordinator Nov. 15, 2016, email to VBOE 	<ul style="list-style-type: none"> • Contend draft regs are “contrary” to “The Fifteen Principles [which] limit restraint and seclusion to emergencies to protect someone from serious physical harm; require 24-hour parental notice; emphasize positive behavioral supports; and more.” • “ regulations were drafted that would allow schools to use restraint and seclusion for tantrums, not obeying instructions or paying attention, violating any student conduct codes, breaking pencils, tearing paper, and other behaviors that endanger no one. The regulations define restraint and seclusion in very narrow strained ways so much restraint and seclusion won’t even be regulated or monitored at all. No one will be accountable. Restraint and seclusion that happens in the regular classroom won’t be counted in the data and parents won’t get written notification.” • Change definition of restraint; e.g., reasonable force to maintain order should constitute restraint. 	<ul style="list-style-type: none"> • See comment 3

	<p>5. Pat Hommel Charlottesville, VA Nov. 15, 2016, email to VBOE</p>	<ul style="list-style-type: none"> • Revise definition/use of seclusion: • “1. Close the loopholes and comply with the law. The draft requires absolutely no regulation for: <ul style="list-style-type: none"> a. restraint or seclusion to maintain order (like if a child has a tantrum, can’t pay attention, or follow instructions) b. putting a child in a seclusion confinement room when they are first taken out of the classroom for disruptive behavior, or c. secluding a child to investigate a conduct code violation (school conduct codes ban horseplay, rudeness, being tardy, dressing immodestly, being disrespectful, carrying food without authorization, failing to identify oneself, etc.) <p>Students with disabilities may do these things as a manifestation of their disability and be restrained or secluded. Because restraint and seclusion for these things are defined out of the regulations, there will be no regulation, no parental notification, no monitoring or accountability, and no data collection. No limits. Schools may even have incentives to use these reasons for restraint and seclusion to avoid the regulations. These exemptions are not required by the corporal punishment statute. The corporal punishment statute bans corporal punishment. It says that some things are not corporal punishment, including reasonable actions to maintain order and control. But it does not say that schools staff must be allowed to do them.”</p> • “2. Limit the use of restraint and seclusion to prevent serious physical harm, as required by law. Revise the regulations to forbid the use of restraint and seclusion for property destruction, like tearing paper or breaking a pencil.” 	
<p>23</p>	<p>Juliet Hiznay, Esq. Arlington, VA 11/15/16 email to VBOE</p>	<ul style="list-style-type: none"> • Supports CISS revisions • Limit restraint/seclusion to “imminent risk of physical bodily harm” • “Schools in Virginia are rife with examples of restraint and seclusion being used where there is no imminent risk of physical bodily harm. Therefore, it is imperative that the Board of Education issue regulations that comply with the plain language of Virginia Code §22.1-279.1:1. The General Assembly has directed the Board of Education to draft regulations consistent with the U.S. Department of Education’s Fifteen Principles and Virginia’s 2009 Guidelines for the Development of Policies and Procedures for 	<ul style="list-style-type: none"> • See comment 3

		<p>Managing Student Behavior in Emergency Situations. (Attached). The Fifteen Principles limit restraint and seclusion to emergencies to protect someone from serious physical harm; require 24-hour parental notice; emphasize positive behavioral supports; and more.”</p> <ul style="list-style-type: none"> • “Allowing schools to use restraint and seclusion for tantrums, not obeying instructions or paying attention, violating any student conduct codes, breaking pencils, tearing paper, and other behaviors that endanger no one, as the current proposed regulations do, would be contrary to Virginia Code section §22.1-279.1:1. Further, the regulations define restraint and seclusion in very narrow strained ways. The provisions as currently drafted could result in restraint and seclusion not being regulated or monitored at all, and then no one will be accountable for the harm being done to our children or the associated poor outcomes.” 	
24	VCASE Feb. 25, 2016, comments to VBOE	<ul style="list-style-type: none"> • Consistency with the Fifteen Principles....” The draft regulations are consistent with the fifteen principles outlined in the document, but the law does not require that regulations are identical with every component of the federal resource document. The draft regulations correctly balance existing law and effective practice with consistent application of the federal guidelines. The draft regulations correctly balance existing law and effective practice with consistent application of the federal guidelines.” • Consistency with Corporal Punishment Law. “The draft regulations properly seek the balance between the safety of every student and reality that school personnel must be able 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. Existing corporal punishment law, as well as laws prohibiting child abuse, negligence, and assault, currently protects students and hold educators and caregivers accountable. VCASE does support the initiative in the draft regulations that promote effective practices, such as Positive Behavioral Interventions and Supports (PBIS), Functional Behavioral Assessments (FBA) and Behavioral Intervention Plans (BIP) that may preclude or reduce the need for restraint and seclusion.” 	<ul style="list-style-type: none"> • See comment 3

		<ul style="list-style-type: none"> • VAC 20-75-30 Use of Physical Restraint and Seclusion. VCASE supports the draft regulations pertaining to the use of physical restraint and seclusion as this permits staff who are preventing a student from inflicting serious physical harm or injury to self or others to use reasonable judgment in emergency situations. The other 5 listed conditions permitting this reasonable professional judgment stem from existing corporal punishment law, not overly restricting staff from actions they may take as professionals to protect students and maintain a safe school environment. While this differs from the USDOE guidance document that recommends the standard that restraint and seclusion are appropriate only with “imminent danger of serious physical harm to self or others,” we believe that this standard is unrealistic in the daily student disturbances where reasonable professional judgement may be exercised under existing law to maintain safe environments for students. Because the regulations will apply to all students and all educators, it is critical that they do not have the unintended consequence of deterring educators from reasonable interventions to protect students. If staff are reluctant to intervene due to overly-restrictive regulations, the potential for dangerous situations to escalate and require police intervention could actually increase. We support this essential language that promotes student safety and supports the reasonable judgment of school personnel to intervene physically in an emergency situation as outlined in this provision.” 	
25	Kathleen Smith, Director AdvancED 11/7/16 email to J. Eisenberg	<ul style="list-style-type: none"> • Supports VCASE comments from February 2016 • “These specifications are consistent the Fifteen Principles in the USDOE Restraint and Seclusion Resource Document as required.” • “These requirements are also consistent with Virginia's Corporal Punishment Statues per an opinion by the Virginia Attorney General's Office. These draft regulations properly seek the balance between the safety of every student and reality that school personnel must be able 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.” • “These draft regulations speak to the use of physical restraint and seclusion as this permits staff that are preventing a student from inflicting serious physical harm or injury to self or others to use reasonable judgment in emergency situations. The other 5 listed 	<ul style="list-style-type: none"> • See comment 3

		conditions permitting this reasonable professional judgment stem from existing corporal punishment law, not overly restricting staff from actions they may take as professionals to protect students and maintain a safe school environment.”	
Data collection generally			
26	Loomis 10/5/16	Disaggregate by disability, race, age, etc.	Draft has been clarified
27	A. Trail 10/5/16	Collect data for “all classes”	See comment 26
28	J. Markum 10/5/16	Collect as much data as possible	See comment 26
29	C. Poe 10/5/16	Collect data re race	See comment 26
30	Lori P. Buckingham, Behavior Specialist, Spotsylvania County Schools 10/27/2016 via email Also provided resources	<ul style="list-style-type: none"> Data collection using the SSWS system should be implemented- use of seclusion and restrain should be reported on a quarterly basis. Division should develop plans to reduce rates of restrain and seclusion by 50% annually. 	<ul style="list-style-type: none"> This will be addressed operationally. Staff and school divisions need flexibility with regard to reporting. Authorizing statute does not include requiring goals for reduction, however laudable that might be.
31	COPAA 11/1/16 email	<ul style="list-style-type: none"> “Data must be transparent and inform actions of the district to reduce the use of restraint or seclusion and identify overuse or abuse. To avoid any confusion, the regulations must include definitions that are consistent with the Office for Civil Rights who began collecting data on the use of restraint and seclusion in schools as part of the Department’s 2009-2010 Civil Rights Data Collection and defined key terms related to restraint and seclusion.” (see also DEFINITIONS section) 	<ul style="list-style-type: none"> See comment 3 Details of data collection can be established as internal processes are developed.
32	Jamie Liban Director, Virginia ARC 10/27/16 BOE meeting	<ul style="list-style-type: none"> disproportionate effect on students with disabilities and students of color; cited data collection; wants “feedback loop” to improve practices; wants data collection to address incidents that may be beyond definitions 	<ul style="list-style-type: none"> See comment 26

Debriefing			
33	J. Liban 10/11/16	INVITE parent to debriefing session	See Decision Point 9
34	C. Poe 10/11/16	Include parent in debriefing session; “restore to justice” model	See Decision Point 9
35	J. Cimino 10/11/16 L. Gehring 10/11/16 K. Kirst 10/11/16	Debriefing for ALL students, not just self-contained (Consensus; changed in updated draft)	Changed
36	J. Cimino 10/11/16	Recommends separate debriefing for staff and then student	See Decision Point 9
37	C. Pinello 10/11/16	May not be able to get parent to attend debriefing (currently parent is not required member)	See Decision Point 9
38	M. Mathews 10/11/16	Bring parent to subsequent debriefing but not initial Supports debriefing Concept of R & S is not new but regs give parameters to ensure safety and accountability	See Decision Point 9
39	Coalition for Improving School Safety (CISS)* 10/17/16 email Line-by-line edits	<ul style="list-style-type: none"> • Invite parent to “debriefing” • the school principal or his designee, <u>or...other school personnel, or volunteers organized by the school administration for this purpose</u> shall make a reasonable effort to ensure that direct contact is made with the parent, either in person or through telephone conversation <u>or...by electronic mail as designated by the parent,</u> to notify the parent of the incident and any related first aid within one calendar on the same day of the date the incident occurred, <u>and invite the parent to be part of the debriefing described below.</u> • Rationale: <i>The regulations should be changed so they do not dangerously allow unaccountable volunteers to make some kind of “reasonable effort” to notify parents—rather than requiring school division employees to act promptly. Volunteers lack the accountability school division employees have. A volunteer’s definition of reasonable efforts, when balancing lives, jobs, and other responsibilities, may be fairly low, even if the volunteer has the best intentions. No other state’s restraint and seclusion law allows volunteers to undertake parental notification duties when restraint and seclusion are used. Virginia should not either. The risks to the students are</i> 	<ul style="list-style-type: none"> • See Decision Points 6, 7, 8 and 9 • Requirements for FBA, BIP, referral for evaluation, review of IEP are already addressed in the section on multiple incidents.

too high; parents must be informed so they can assess their child for injury or trauma. No school should be engaged in so much restraint and seclusion that school personnel cannot call or email parents. Restraint and seclusion are emergency protective measures, to be used when nothing else will prevent a risk of serious physical harm. ...Parents should be part of debriefing meetings. These meetings concern their child and the use of a dangerous practice on their child. Parents can help the school plan to prevent restraint and seclusion and to provide positive and preventative behavioral supports to their children. Parents are part of the IEP team for this reason; they should likewise be part of the debriefing team.

- **Require debriefing within 5 days**
- **Require debriefing for ALL students** (Consensus; distinction removed in October 27, 2016, version)
- C. As soon as practicable and within ~~two five~~ 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.
- **Explanation of failure of interventions** 11. Less restrictive interventions attempted prior to the use of physical restraint or seclusion, and an explanation if no such interventions were employed, ~~including a description of the immediate emergency that made them ineffective.~~
- **“Rationale:** *Severely limiting reporting requirements like this is wholly contrary to the Fifteen Principles, and thus, the statute adopted by the General Assembly and approved by the Governor. We are deeply concerned that if children in the regular classroom are restrained or secluded, their parents and school administrators would not get written documentation. One purpose of the documentation is so that everyone can work together to prevent the use of restraint and seclusion and to improve positive and preventative supports...Every child deserves to be counted in the data, regardless of their age, or the setting in which restraint or seclusion occurred, or whether or not the child has a disability...”.* (Consensus; distinction removed in October 27, 2016,

version)

- *Finally, we would be willing to extend the period for the detailed written notification to five days, premised on including all children. We believe this is will enable schools to properly complete the written notification so that parents have all of the necessary information. ... We are not willing to extend the time period to five days if the written notification continues to exclude children in the regular classroom or non-majority special education classrooms, as the draft regulation proposes.” (Consensus; distinction removed in October 27, 2016, version)*

- **Require discussion of supports and interventions, BIP, FBA at debriefing**
- **Collapse follow-up session that follows multiple incidents to occur at 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)~~ five (5) 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
- ~~3. The use of evidence-based preventative and positive behavioral interventions and supports to reduce challenging behaviors, including developing a Functional Behavioral Assessment and Behavioral Intervention Plan;~~
- ~~4. Consider changes to the child’s IEP or 504 plan to provide needed supports and services if the child has a disability;~~
- ~~5. Verify that the IEP or 504 plan, including any behavioral support plan, was followed with fidelity, and that personnel were informed of the IEP and behavioral support plan requirements, and if not, document the situation and immediately take corrective action;~~
- ~~6. If a nondisabled student has experienced excessive restraint or seclusion, consider the need to initiate a referral to determine if the student has a disability that may require the provision of special education and related services.~~

- **Rationale:** *The rationale for including all children is the same as the rationale in the immediately preceding section. Again, our willingness to extend this to five days is premised on this including all students, as we believe to be required by the law and also by sound public policy. The rationale for 3-6 is to make the debriefing into a preventative meeting, that has as its main focus implementing positive behavioral supports and interventions; determining the child's developmental, learning, and behavioral needs so as to prevent challenging behavior; and ensuring that an IEP or 504 plan was implemented properly"* (Consensus; distinction removed in October 27, 2016, version)
- **DEBRIEFING with student to include parent, staff involved; include discussion of effect of incident on student.**
 - . 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, a mental health professional if appropriate, and other school personnel involved in the restraint or seclusion as appropriate, shall review the incident with the student(s) involved. The student(s) parent or guardian shall be informed of this meeting and shall be invited to attend it. This meeting should include discussion of the following: to discuss:
 1. The effects of the restraint or seclusion on the student, including any emotional, psychological or physical harm or consequences;
 2. Details of the incident in an effort to assist the student and school personnel in identifying patterns of behaviors, triggers or antecedents so as to prevent such incidents from arising in the future:
 3. 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.
- **"Rationale:** *This kind of meeting with a child should not occur without the child's parent being part of the meeting. This appears to be a meeting at which the blame for the use of restraint or seclusion is placed on the child. Children may not be able to effectively advocate for themselves in such a meeting or to explain why things happened. The requirement for children*

		<p><i>to discuss “alternative positive behaviors or coping skills”... appears to ignore the IDEA’s requirements, including providing services to children. A child may need a Functional Behavioral Assessment, Behavioral Intervention Plan, including detailed positive and preventative supports. Perhaps the school failed to implement the child’s IEP properly or with fidelity. Perhaps a child was treated wrongly. There is evidence of teachers in America who have escalated children, abused them, or denied them necessary services or items, and then implemented restraint and seclusion. Although likely not intended, the effect of the proposed regulation is to ignore the requirements of the IDEA and Section 504 of the Rehabilitation Act and to instead place all the blame and responsibility for correction on the child.”</i></p>	
40	<p>Kevin Koziol Disability Resource Center—member CISS—former sped administrator 10/27/16 BOE meeting</p>	<ul style="list-style-type: none"> supported current debriefing and expanded incident reporting in draft; wants parents/IEP team in debriefing 	<ul style="list-style-type: none"> See Decision Point 9

Follow-up after multiple incidents			
41	<p>Panel 10/5/16 M. Asip 10/4/16 D. Feltman 10/11/16</p>	<p>What if multiple incidents within same day? Within hours? What if transfer from another LEA—ensure documentation of incidents from prior LEA</p>	See Decision Point 11
42	<p>J. Cimino 10/11/16</p>	<p>Supports the “shall” meet/consider</p>	See Decision Points 10 and 11
43	<p>A. Trail 10/5/16 L. Daniel 10/5/16</p>	<p>Follow up BEFORE 3 incidents (general consensus; revised in 10/27/16 version)</p>	Changed
44	<p>C. Pinello 10/11/16</p>	<p>Concern about FBA/BIP meeting—already required in sped regs, etc. What if parent refuses to meet?</p>	See Decision Points 10 and 11
45	<p>K. Kirst 10/11/16</p>	<p>Broaden consideration to evaluations, referral, placement, etc.</p>	Changed
	<p>D. Feltman 10/11/16</p>	<p>Requests flexibility in conducting meetings</p>	

46	SECEP 10/11/16	Written statement—questions propriety of “multiple” IEP meeting to address 3 incidents	See Decision Points 10 and 11
47	Jeff Perry, Divisional Superintendent, Wythe Co. Public Schools; Chair for Region VII Superintendent’s Study Group: “this letter should be considered as a collective response from all corresponding school divisions. 10/31/16 via email	<ul style="list-style-type: none"> • Team Reviews --We are concerned about the rigidity of the requirement for schools to have team reviews after every third restraint or seclusion incident. Each child and each situation are highly likely to be different. It is clear that no one team-review provision could adequately address all of these needs. We agree that appropriately staffed teams should meet and review multiple uses of restraint so that proper strategies are employed to reduce the need for continued use of restraint and seclusion. However, it is important for schools to possess some flexibility in determining when and how to conduct such team meetings. Unfortunately, some students may experience multiple instances of restraint and seclusion within a short period of time but there may not be a need for a meeting. In this situation, a meeting after every three instances of restraint and seclusion would not be practical or effective. It is our concern that the day could easily be consumed by repetitive meetings which may have little, or no, impact on improving the school day for the child or staff. 	<ul style="list-style-type: none"> • See Decision Points 10 and 11
48	COPAA 11/1/16 email	<ul style="list-style-type: none"> • “Instances in which there are repeat incidents of restraint or seclusion should <u>automatically trigger school officials to meet Child Find obligations</u> under the Individuals with Disabilities Education Act because students who are restrained/secluded repeatedly may have unaddressed emotional or learning challenges.” 	<ul style="list-style-type: none"> • See Decision Point 10
49	Coalition for Improving School Safety (CISS)* 10/17/16 e-mail Line-by-line edits	<ul style="list-style-type: none"> • 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; (iii) <u>consider the need to initiate a referral to determine if the student has a disability that may require the provision of special education and related services. (referral for evaluation added in revised draft)</u> 	<ul style="list-style-type: none"> • See Decision Points 10 and 11
50	VCASE	<ul style="list-style-type: none"> • “Multiple uses of restraint or seclusion 8 VAC20-750-70. VCASE 	<ul style="list-style-type: none"> • See Decision Points 10 and 11

	Feb. 25, 2016, comments to VBOE	<p>agrees that teams of school staff and parents, including IEP and Section 504 teams when applicable, should meet and review multiple uses of restraint so that proper strategies are employed to reduce the need for continued usage of restraint and seclusion. VCASE asks the board to provide some flexibility in the requirement to conduct such team meetings after every third restraint or seclusion incident. Unfortunately, some students may experience multiple instances of restraint and seclusion within a short period of time, where a meeting after every three instances of restraint and seclusion would not be practical or effective.”</p>	
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Notification generally			
51	Several panels H. Luke 10/5/16 L. Daniel 10/5/16 S. & A. Campbell 10/4/16 J. Liban 10/11/16	No use of volunteers to notify parents re use of R & S (Consensus; removed in October 27, 2016, version)	Changed
52	COPAA 11/1/16 email	No use of volunteers to notify parents re use of R & S (Consensus; removed in October 27, 2016, version) <ul style="list-style-type: none"> “Information of this nature needs to be confidential and needs to be communicated by administrators knowledgeable of the incident. It is completely inappropriate and a FERPA violation for volunteers to communicate incidents to parents.” Provide incident reports for ALL students, not just those in self-contained (Consensus; removed in October 27, 2016, version) <ul style="list-style-type: none"> “Any incident involving restraint or seclusion, for any student, by any personnel must be documented. Singling out the use of restraint and seclusion to students in a self-contained classrooms or special education settings runs the risk of discriminatory actions against students on the sole basis of disability label.” 	Changed
53	10/5/16 panel Disability Law Center 10/4/16 K. Koziol 10/4/16 A. Thurman 10/4/16 L. Pontebianco 10/4/16	Provide incident reports for ALL students, not just those in self-contained (Consensus; removed in October 27, 2016, version)	Changed
43	L. Altieri 10/5/16	Incident reports also protect teachers Incident reports for ALL students so that data is available to inform need for team follow-up after multiple incidents	Changed
44	E. Dreyfus 10/5/16	Distinction in reporting based on self-contained “inconsistent/contradictory”	Changed
45	H. Luke parent/adv. 10/5/16 J. Liban 10/11/16	Same-day parental notification (what if hidden injury, etc.)	See Decision Point 6

	L. Gehring 10/11/16 Spotsylvania 10/4/16 M. Asip 10/4/16 K. Lett 10/4/26		
46	V. Gobeyn 10/5/16	Wants "clear documentation"	See Decision Points 6 and 7
47	L. Gehring 10/11/16	5 days (not 7) written incident report for all students	See Decision Points 6 and 7
48	K. Goodlow 10/11/16	Immediate parental notification informally and in writing	See Decision Points 6 and 7
49	T. Champion 10/4/16	"immediate" incident report to parent/same day	See Decision Points 6 and 7
50	T. Smith 10/4/16	Supports reporting distinction between groups of students	See Decision Points 6 and 7
51	C. Pavlek 10/4/16	Wants informed consent to R & S	Because restraint and seclusion are by definition limited to emergency situations, informed consent is not appropriate.
52	W. Suggs 10/4/16	Wants specific explanation of "what happened"	See Decision Points 6 and 7
54	V. Campbell 10/11/16	May need immediate notification due to medical condition; incident report NEXT DAY	See Decision Points 6 and 7
55	Lori P. Buckingham, Behavior Specialist, Spotsylvania County Schools 10/27/2016 via email Also provided resources	<ul style="list-style-type: none"> • Page 11 (Line 4-5) Parent Notification: Same day verbal notification of the use of restraint and/or seclusion. • Page 11 (Line 20) Written incident reports should be completed and provided to administrator and parent within one business day. 	<ul style="list-style-type: none"> • See Decision Points 6, 7, 8 and 9
56	<p>(Each email based on Nov.15, 2016, form letter from Emily Dreyfus, Justice4All)</p> <p>1. Wayne & JoAnne Groover Nov. 18, 2016, email to</p>	<ul style="list-style-type: none"> • "4. Eliminate regulations that would require parental notification and data collection <u>only</u> for restraint and seclusion occurring in "majority special education classrooms," leaving schools unaccountable for all other students. (Consensus; removed in October 27, 2016, version) • "5. Require school staff to tell parents of restraint/seclusion on the same day it happens. Parents need to be told of restraint and seclusion on the same day it happens so they can watch for and address 	<p>Changed See Decision Points 6 and 7</p>

	<p>VBOE</p> <p>2. Janet Lilly Nov. 16, 2016, email to VBOE</p> <p>3. Jill Buzby, Arlington, VA Nov. 15, 2016, email to VBOE</p> <p>4. Angela Stevens PBS Coordinator Nov. 15, 2016, email to VBOE</p> <p>5. Pat Hommel Charlottesville, VA Nov. 15, 2016, email to VBOE</p>	<p>concussions, other injuries, and trauma.”</p>	
<p>57</p>	<p>VCASE February 25, 2016, comments to VBOE</p>	<ul style="list-style-type: none"> • Notification and reporting. 8 VAC 20-750-50. “VCASE believes that the notification requirements are onerous and should be streamlined. Timely, thorough, and proper notification of administrators and parents is important when there has been a use of seclusion or restraint.” • Change “pupil” to “student.” • Change all references from “calendar” days to “school” days • Change the requirement to provide parents a copy of the incident report from “seven (7) calendar days” to “five (5) school days.” • Delete items numbered 8, 9, 10, 11, and 12 from the requirements that they be included in a written incident report. These extensive requirements are not needed to provide a thorough and timely report of an incident involving restraint and seclusion. • 8, 9, 10, 11, and 12 : (i) detailed description of the physical restraint or 	<ul style="list-style-type: none"> • See Decision Points 6, 7, 8 and 9

		<p>seclusion method used; (ii) student behavior that justified the use of physical restraint or seclusion; (iii) description of prior events and circumstances prompting the student’s behavior, to the extent known; (iv) less restrictive interventions attempted prior to the use of physical restraint or seclusion, and an explanation if no such interventions were employed; (v) whether the student has an IEP, a Section 504 plan, a BIP, or other plan</p> <ul style="list-style-type: none"> • Delete sections E and F that differentiate required staff and student reviews of restraint and seclusion incidents involving students in self-contained special education settings. (Consensus; removed in October 27, 2016, version) 	
59	<p>Jeff Perry, Divisional Superintendent, Wythe Co. Public Schools; Chair for Region VII Superintendent’s Study Group: “this letter should be considered as a collective response from all corresponding school divisions. 10/31/16 via email</p>	<ul style="list-style-type: none"> • Notification and Reporting –“The current notifications and requirements are unpractical, unreasonable, and will be very difficult to implement in an effective manner. As a matter of fact, many of these notifications will not be sent out because staff and administration are already consumed with other requirements. This failure to provide required notifications and reports will only place our schools in greater peril. It would be reasonable to expect staff and administration to produce the necessary reports and documents if this was the only duty and responsibly assigned to them during the school day. Unfortunately, all of our school divisions have reduced staff at both the central office and building level. However, none of the reporting, documentation or other required paperwork have [sic] diminished. Less of us are doing more and the proposed requirements will simply be one more document we must produce and disseminate. We are spending more time on producing required documents than we are actually helping students. Many of these provisions are unpractical, unnecessary, and will do nothing to help children. Please eliminate or streamline these notifications as much as possible. Also, please remember that these regulations are only a small part of a host of other regulations that are being forced on us. Eventually the weight of these regulations will be so excessive that we are unable to comply. Please eliminate any specific time frames and specific reports whenever possible.” 	<ul style="list-style-type: none"> • See Decision Points 6, 7, 8 and 9
60	<p>Coalition for Improving School Safety (CISS)* 10/17/16 e-mail Line-by-line edits</p>	<ul style="list-style-type: none"> • Eliminate use of volunteers for reporting (Consensus; removed in October 27, 2016, version) • Permit email notification if parent has so designated • Require same day notification 	<ul style="list-style-type: none"> • See Decision Points 6, 7, 8 and 9

- *“In addition, the regulations could be improved to allow parents to opt into email notification, further speeding the process and improving efficiency for everyone. Prompt parental notification is vital. A Powhatan, Virginia nine-year-old, Alex Campbell, testified to the General Assembly and Board of Education about being forced into seclusion in an isolation room several times and being told not to tell his parents. See CISS Comments, 3/23/16 p. 11-12; CISS Comments, 8/18/16, p. 18-19. The proposed regulations provide for one calendar day notification. Same day notification is better and is the standard used in the body of the Fifteen Principles (p.21). The sooner parents are informed the better. Moreover, VDOE should resist any efforts to degrade the proposed regulations further to allow multiple days for notification. This would be very dangerous for Virginia’s children and families. The vast majority of states that have parental notification provisions do not allow multiple days for notification. Parents must be alerted to watch for concussions, hidden internal injuries, and trauma so they can get their children needed medical assistance. Delaying for even two days, not to mention a weekend or school break could result in harm to the child. There is no burden in making a phone call or sending an email message.”*
- **Notification in one calendar day if incident occurred outside regular school day**
- 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, as long as notification occurs within one calendar day.
- **“Rationale:** *The 15 Principles do not include this exception. Notification should not simply be a matter of a school’s response plan. Children restrained or secluded outside the regular school day experience the same risk of injury, death, and trauma as those restrained or secluded during the regular school day. But in recognition that it may take some time to notify a parent if restraint or seclusion occurs at night, a one calendar day limit should be imposed.”*
- Require reporting of *“the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control.”* 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

		<p>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.</p> <ul style="list-style-type: none"> • <i>“Rationale: Language should be eliminated for the reasons stated in the suggested change to the restraint definition in 8 VAC 20-750-10. This includes the requirement that all uses of restraint must be documented, counted in the data, and parents notified. It is not appropriate to allow the use of what would otherwise be restraint by saying it is to maintain order, and thus define it out of the regulations. Every incident must be in the data; every parent must be notified. Otherwise, the use of restraint and seclusion will be concealed, contrary to the 2015 statute. In addition, the regulation can cause immense confusion, as every 2 years, Virginia School Divisions must collect and report data using the Civil Rights Data Collection definition. See discussion above under 8 VAC 20-750-10 (definition of restraint). We do not repeat here in order to be concise.”</i> • Include whether student has disability in written incident report. <ol style="list-style-type: none"> 1. Student name, age, gender, grade, ethnicity, <u>and whether the student has a disability</u>; <ul style="list-style-type: none"> • CISS’ notes (but not line-by-line edits) suggest reporting race, due to disproportionate use for students of color and students with disabilities. 	
61	<p>Sue Nelson-Sargeant Speech pathologist 1318 William St Fred, VA. 22401 11/15/16 email to VBOE</p>	<ul style="list-style-type: none"> • “Timely parental notification” • “You need to state that parents are to be notified within the same time period as school supervisors are notified so a child won't be subject to further injury.... The Community Services Boards already have a policy in place that a client's parent/guardian is to be notified at the reasonable time when the incident is reported. The school systems should do the same. I was told that school systems do not want the parent to be informed at the same time because if the child is lying, the parent could harm the child before it is proven 'founded' or 'unfounded'. [T]hat is really stretching it. The reason school systems do not want parents notified is that they don't want parents to flare up and get the police/attorney involved before they get their attorney to look over the case. • “This is a matter of due process for these students, especially the ones who are nonverbal. You need to look at DSS CPS and see if they are still letting a LEA-employee be a CPS-designee. You will be part of the problem if you do not address ... timely parent notification....” 	<ul style="list-style-type: none"> • See Decision Points 6, 7, 9 and 9

62	Juliet Hiznay, Esq. Arlington, VA 11/15/16 email to VBOE	<ul style="list-style-type: none"> • Supports CISS revisions • “The Fifteen Principles limit restraint and seclusion... require 24-hour parental notice....” 	<ul style="list-style-type: none"> • See Decision Points 6 and 7
	Jamie Liban Director, Virginia ARC 10/27/16 BOE meeting	<ul style="list-style-type: none"> • need for same-day notification 	<ul style="list-style-type: none"> • See Decision Points 6 and 7

Prohibitions			
63	Consensus	Prohibit “supine” restraints (Consensus; added in October 27, 2016, version)	Changed
64	J. Cimino 10/11/16	Prohibit restraints that are medically/psychologically contraindicated/document in IEP or Section 504 plan? What if neither? Health plan?	Changed
65	M. Asip 10/11/16	Supports restrictions for medical/psychological contraindications	Changed
66	A. Thurman 10/4/16	Supports prohibitions but thinks not consistent with 15 Principles	See Decision Point 1
67	V. Campbell 10/11/16	Supports NO mechanical restraints	Draft contemplates no mechanical restraints
68	C. Pavlak 10/4/16	Prohibit R & S without parental consent	See comment 51
69	Jeff Perry, Divisional Superintendent, Wythe Co. Public Schools; Chair for Region VII Superintendent’s Study Group: “this letter should be considered as a collective response from all corresponding school divisions. 10/31/16 via email	<p>e. Face-Down Restraint-We recommend you revise the prohibition of “prone face down restraints” to include a definition of prone restraint as a physical restraint. We are concerned that a staff member, who may have physical contact with a student, may find himself or herself prone on the ground due to circumstances out of the control of the staff member. If this happens, the staff member may be wrongly found in violation of the regulation. This fear will prevent some staff members from taking the necessary actions to protect staff or students.</p> <p>h. Mechanical Restraint-We understand the concern about mechanical restraint and the potential for inappropriate use. However, there may be times where mechanical restraint is a safe and appropriate response. This provision could easily be used against us and have unintended consequences. Please consider that preschool teachers may use high-chairs or feeding stations which may be considered a mechanical restraint and would be eliminated. The current regulations may also be seen as a requirement to train all those staff members on how to use a high chair or feeding station. Additionally, staff should not be required to receive training, or require parental consent, to strap students in a bus seat belt. We completely understand that you may think that common sense would prevail in these situations. However, history has proven that interpretations of regulations tend to be extremely conservative to maintain an excessive margin of safety.</p> <p>i. Aversive Stimuli-We recommend you revise the definition of aversive stimuli and delete the reference to “forced exercise.” This activity is not closely related to restraint and seclusion and has no reason to be included in the provision. In addition, perceived restrictions on student exercise could be</p>	See Decision Point 5

		<p>misconstrued to prohibit movement. It may also impact sensory activities that could be prescribed in student IEPs or included in positive behavioral intervention and support plans for students. In addition, the determination that a student’s behavior is related to his disability is determined by members of the IEP team in a Manifestation Determination Review.</p>	
<p>70</p>	<p>Handle With Care Bruce Chapman, President Hilary Adler, VP 184 McKinstry Road Gardiner, NY 12525 10/5/16 via email</p>	<ul style="list-style-type: none"> • Prohibiting the use of prone restraint is illegal under Virginia Law. A teacher cannot be forced to surrender her lawful right to self-defense (or defense of others) when she walks onto school grounds. Virginia citizens have the unwaivable right to use “reasonable” force in accordance with a “reasonable person standard”. VBOE has absolutely no authority to enact any regulation banning the use of prone restraint. If prone restraint can be used by the general population in Virginia including, i.e. parents, law enforcement, social workers, average citizens, students, doctors, nurses, bus drivers et al., then it can be used by teachers and school personnel. VBOE has no authority to prohibit school personnel from using reasonable force including physical and prone (face down) restraint in the protection of self or others. She may lawfully use the least restrictive method including prone restraint to contain or stop an assault or battery pursuant to Virginia law. • VA Code 22.1-279.1 allows the use of restraint, including prone restraint for self-defense, defense of others and defense of property. Virginia already has a law regarding use of restraint in schools. VBOE cannot enact regulations that run counter to law. • <u>There is no science to support a ban on prone restraint.</u> This provision of the regulation is motivated by an unsubstantiated concern that there is something inherently and extraordinarily dangerous about prone restraint....The problem is not prone. The problem is the restriction of breathing by chest compression and not paying attention to the early physiological signs of cardiac or respiratory arrest brought on by the combination of chest compression with exertion. This is a training and, ultimately, a supervision issue. HWC's protocol demands that client-agencies and schools "continuously monitor the physical and emotional safety of the child (or adult)" and to use HWC's method for eliminating chest compression from the hold. • The reality is VBOE’s <u>ban on prone restraint will force school personnel to call security and law enforcement</u> who will then place the student in a prone hold while shuffling them off to the nearest precinct. So in reality, the regulation will do nothing except place the students and school 	<ul style="list-style-type: none"> • See Decision Point 5

		<p>personnel in more danger, while increasing the student’s chances of being involved with law enforcement. Schools that have implemented this policy of calling law enforcement have seen an average of a 22% increase in youth incarceration, an increase in the use of restraint and significantly higher use of force interventions.</p>	
71	<p>Coalition for Improving School Safety (CISS)* 10/17/16 e-mail Line-by-line edits</p>	<ul style="list-style-type: none"> • Prohibit use of supine restraint (Consensus; removed in October 27, 2016, version). • “Prone “face down” restraints, <u>supine restraint</u>, or any other restraint that restricts breathing, harms the student, or interferes with the student’s ability to communicate, <u>or restraint when medically or psychologically contraindicated as stated in documentation by the IEP team, 504 team, school professionals, or by licensed physician, psychologist, or other qualified health professional under the scope of the professional’s authority.</u> • Rationale: <i>Supine restraint, like prone restraint, is very dangerous and can kill or injure students, as discussed in the Round Table meetings. The regulation should also ban the use of restraint or seclusion when medically or psychologically contraindicated. In the 15 Principles, Principle 7 states, “Any restraint or seclusion technique should be consistent with known medical or other special needs of a child. School districts should be cognizant that certain restraint and seclusion techniques are more restrictive than others, and use the least restrictive technique necessary to end the threat of imminent danger of serious physical harm.” A number of disabilities and health conditions can heighten the risk of harm from restraint and seclusion, including, but not limited to health conditions or disabilities causing children to have weaker bones, enlarged hearts or other heart conditions, gastrointestinal conditions, obesity, asthma, and other medical issues. These are only examples. The 2015 restraint and seclusion statute §22.1-279.1:1, section iii makes clear that the regulations can address the special needs and issues confronted by students with disabilities.</i> 	<ul style="list-style-type: none"> • See Decision Point 5
72	<p>Coalition for Improving School Safety (CISS)* 10/17/16 e-mail Line-by-line edits</p>	<ul style="list-style-type: none"> • Prohibit use of restraint for damage to property; require “poses imminent threat” rather than “threatens” • Clarify that physical escort is not restraint. • ...“quell a disturbance that <u>threatens poses an imminent threat of serious physical harm or injury to persons</u> or damage to property; • “remove a student from the scene of a disturbance that <u>threatens</u> 	<ul style="list-style-type: none"> • See comment 3

~~poses an imminent threat of serious physical injury harm to that person or others to persons or damage to property; Physical Escort as defined above is not restraint.”~~

- ***“Rationale:*** *We removed language that is contrary to the statute adopted by the General Assembly and Governor, §22.1-279.1:1 (2015 Statute). This statute requires the regulations to be consistent with the Fifteen Principles in the 2012 United States Department of Education’s Restraint and Seclusion: Resource Document and Virginia’s 2009 Guidelines. Those limit the use of restraint and seclusion to situations where the child’s behavior poses imminent danger of serious physical harm to self or others and other interventions are ineffective. They do not permit restraint and seclusion for property destruction. No child should be restrained or secluded for tearing paper or breaking a pencil, or other destruction of property that does not threaten to physical danger. Restraint and seclusion are too injurious and potentially life-threatening to allow in these situations. See CISS 3/23/16 Comments, p. 2-7, CISS Comments 8/18/15, p.1, 25, 27 for more explanation.*
 1. *The change to (iii) is likewise to conform with the statute and 15 Principles, and to draw the distinction between removing someone because of the threat of danger to themselves or others, as opposed to simply being at the scene where someone is scraped or has a twisted ankle.*
 2. *The corporal punishment statute does not require the language VDOE had proposed in this section. That statute defines corporal punishment, and lists several actions that are not corporal punishment. The corporal punishment statute does not contain language creating a right to seclude students (i.e. it does not say “the following acts are permitted.” and it does not reference seclusion in any way, which is not using force, but involuntarily putting a child in a room from which they cannot exit). The 2015 statute requires the Board to adopt regulations consistent with the Fifteen Principles, and that means defining restraint in the manner above. See CISS 3/23/16 Comments, p. 2-7, CISS Comments 8/18/15, p.1, 25, 27 for more explanation. The Fifteen Principles state 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 and other interventions are ineffective and should be discontinued as soon as imminent danger of serious physical harm to self or others has dissipated.” Principle 3 and Resource Document, p. 2. The 15 Principles Document (p.10) clearly defines restraint and*

seclusion and does not include their use for these reasons.

- **Strengthen emphasis on alternative methods/interventions.**

- ~~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. Physical restraint or seclusion may not be used when less restrictive and harmful interventions would be effective to prevent threat of serious physical danger to self or others.~~

- (i) ~~When in the reasonable judgment of school personnel, there is an emergency in which the child's behavior poses an immediate threat of serious physical harm to self or others, and less restrictive measures would be ineffective, school staff need not use those measures but must document the threat, its immediacy, and why less restrictive measures would be ineffective in the notification and documentation required in Section 8 VAC 20-750-50.~~

- (ii) Every effort **should** be made to prevent the need for the use of restraint and for the use of seclusion.

- (iii) Behavioral strategies to address dangerous behavior that results in the use of restraint or seclusion **should** address the underlying cause or purpose of the dangerous behavior. School personnel **should** implement the use of evidence-based preventative and positive behavioral interventions and supports for children with behavioral needs, including the use of Functional Behavioral Assessments and Behavioral Intervention Plans. Any IEP, 504, behavioral meetings, or other plans about such needs should include a qualified mental health professional as appropriate. School personnel **should** ensure that the IEP or 504 plan, including any behavioral support plan, is followed with fidelity, and that personnel are informed of the IEP and behavioral support plan requirements.

- *“Rationale: The regulation as drafted appears to flip the 15 Principles on their head, perhaps inadvertently The 15 Principles emphasize the use of positive and preventative supports, and specify that restraint and seclusion should not be used unless less restrictive measures would be ineffective.... These include Principle 1 “Every effort should be made to prevent the need for the use of restraint and for the use of seclusion;” Principle 3 “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 and other interventions are ineffective and should be discontinued as soon as imminent danger of serious physical harm to self or others has dissipated;” Principle 9 “Behavioral strategies to address dangerous behavior that results in the use of restraint or seclusion should address the underlying cause or purpose of the dangerous behavior.” The 15 Principles document, in discussing Principles 8 and 9, states that schools should use behavioral strategies that address the underlying cause or purpose of any dangerous behavior. These include a Functional Behavioral Assessment (FBA), Positive Behavioral Supports and Interventions (PBS), and an appropriate positive and preventative Behavioral Intervention Plan (BIP). But the regulations as written do not accomplish this. Instead, they put the emphasis on using restraint and seclusion, making it the default treatment for students. While there is significant evidence and research demonstrating that positive and preventative supports prevent behaviors from developing into emergencies, the regulations mention positive behavioral supports in only two subparts scattered within (requiring district policies to have some examples of positive supports and requiring some training on positive supports). This is inconsistent with the Fifteen Principles and appears to disregard two of them. It is harmful to students in Virginia to emphasize dangerous restraint and seclusion over prevention. As CISS has explained before, in a true emergency, when a child is in immediate danger of physical harm (such as walking in front of a bus), staff should be able to immediately restrain the child without considering less restrictive measures.... Our revision preserves the ability of school staff to use their reasonable judgment while at the same time requiring the use of less restrictive measures when appropriate, as the 15 Principles require, and emphasizing positive and preventative supports. The proposed regulations should require that every effort be made to avoid the use of restraint and seclusion. These should include evidence-based behavioral accommodations, supports, and interventions to create a positive learning environment which improves both academic and social outcomes for students. Virginia should keep students and staff safe by prioritizing positive and preventative supports in these regulations and by strictly limiting restraint and seclusion to emergencies threatening serious physical harm when less restrictive alternatives would fail....”

73	VCASE Feb. 25, 2016, comments to VBOE	<ul style="list-style-type: none">• Revise Prohibitions (p. 5) pertaining to “Prone ‘face down’ restraints” to include a definition of prone restraint as a physical restraint. In addition, VCASE is concerned that a staff member who may have physical contact with a student, who may be prone on the ground due to circumstances out of the control of the teacher, may be incorrectly found in violation of the regulation.	<ul style="list-style-type: none">• See Decision Point 5
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Seclusion generally			
74	<p>Various commenters H. Luke 10/5/16; 10/27/16 A. Trail 10/5/16 J. Markum 10/5/16 L. Daniel 10/5/16 V. Gobeyn 10/5/16 C. Poe 10/11/16 T. Champion 10/4/16 S. Campbell 10/4/16 C. McGee 10/4/16</p>	Ban seclusion entirely	See Decision Point 1
75	<p>Juliet Hiznay, Esq. Arlington, VA 11/15/16 email to VBOE</p>	<ul style="list-style-type: none"> • Ban seclusion entirely. “Additionally, in my professional opinion, seclusion should not be permitted at all in the public school setting. My local school division, Arlington Public Schools, does not permit seclusion. There are no seclusion rooms in the district. Arlington Public Schools is able to function just fine and has better outcomes than many other school districts as a result of this very sound policy. In my practice, I have noticed that seclusion appears to have the most dangerous psychological impact on students, including the potential to cause psychiatric hospitalization in the short-term and Post Traumatic Stress Disorder in the long-term. ... Banning seclusion in public school would result in better problem solving at the school level.” 	<ul style="list-style-type: none"> • See Decision Point 1
76	L. Altieri 10/5/16	<p>Space should include sensory objects; “places to calm individuals, rather than places to detain” Emphasize de-escalation training</p>	See Decision Point 4
77	B. Greene 10/5/16	<p>Should not be part of any BIP Wants more than visual monitoring; what led to use? How often is data gathered? How often inspected, used, etc.?</p>	See Decision Points 1, 2, 3 and 4
78	<p>Heather Luke 10/5/16</p>	<p>Exclusion v. seclusion (Maryland model); Disagrees with R & S use for property damage “everyone will use seclusion if it is available”; Should not be first response to issue Wants parental right to issue “no R & S letter”</p>	<p>See comment 51 See Decision Points 1, 2, 3 and 4</p>
79	<p>Heather Luke 10/27/16 BOE meeting</p>	<p>described son’s experience with restraint and seclusion in Va. school; suggested looking at regulations through student lens; husband Navy captain, stationed in VBCPS; son Carson—autism, ADHD and anxiety; sometimes</p>	See Decision Points 1, 2, 3 and 4

		demonstrated aggressive behaviors against property and persons. Had aide in previous state, but in VA was placed in SECEP (Hampton). Aggression increased; at age 10, in 2011—forced into “quiet room.” Concrete, unpadded room; three large locks—very high window. Five trained professionals closed concrete door on son’s hand, resulting in serious injuries. Both son and mother suffer from lingering psychological effects (son has PTSD); supports CISS edits; wants to ban seclusion rooms; research indicates seclusion makes behaviors worse; seclusion is abusive. Noted 500+ instances of students entering seclusion; about 3 seclusions daily in one school year.	
80	L. Daniel 10/5/16	Include fidget toys in seclusion room	See Decision Point 4
81	M. Mathews 10/11/16	Ensure NO LOCKS Remove mattress from specifications; replace with bean bag chair or other item capable of being sanitized, etc.	See Decision Point 4
82	J. Liban 10/11/16	Eliminate exception in seclusion definition for investigation/interrogation of students	See Decision Point 2
83	C. Bethea parent 10/11/16	Concerns re seclusion room specifications (“Jail cell”); wants to “opt out”	See Decision Point 4 See comment 51
84	V. Campbell 10/11/16	If used for medically fragile, have medical personnel within arm’s length; higher standard for <u>restraint</u> if medically fragile Policies should advise of what types R & S used, etc.; used of MOU for medically fragile	Changed
85	K. Koziol 10/4/16	Include de-escalation protocols in seclusion; time-limited; attempts for staff to re-enter; use of sensory objects	See Decision Point 4
86	S. Campbell 10/4/16	Concerns re locks, specifications	See Decision Point 4
87	Lori P. Buckingham, Behavior Specialist, Spotsylvania Co. Schools 10/27/2016 via email Also provided resources	<ul style="list-style-type: none"> • Seclusion- recommend a limit time in seclusion of no more than 30 minutes. If a student cannot regulate within 30 minutes, an assessment should be made by the school social worker and a plan should be made for the immediate removal of the student from seclusion. The student might be sent home with the parent, or sent for assessment. • Prohibit the use of separate seclusion rooms with doors and/or doors that lock. Seclusion locations can be open time-out type areas in which staff remain with students at all times. 	<ul style="list-style-type: none"> • See Decision Points 2, 3 and 4
88	Jeff Perry, Divisional Superintendent, Wythe	g. Seclusion Rooms We recommend you provide flexibility in the definition and requirement for a seclusion room. It is extremely difficult for the	See Decision Point 4

	<p>Co. Public Schools; Chair for Region VII Superintendent’s Study Group: “this letter should be considered as a collective response from all corresponding school divisions. 10/31/16 via email</p>	<p>Commonwealth to accurately predetermine the need and physical structure of a seclusion room. It may be more practical and helpful to offer suggestions or recommendations but allow local school divisions to create seclusion rooms which meet their own needs. Also, it is important to provide flexibility so that rigid restraints on these rooms are not created which would practically prevent any facility from being an acceptable room. Also, we recommend you leave out any references to furniture such as the requirement to have a mattress.</p>	
89	<p>COPAA 11/1/16</p>	<ul style="list-style-type: none"> • “Staff must always supervise students and they should never be locked in a room alone.” • “COPAA believes there is never a reason to lock students in a room from which they cannot exit. The description of such a room in the draft regulations is sickening and more so because the intended use is for a child. Every effort should be made to reduce the number of students who are secluded and building rooms for its sole purpose cannot achieve the desired outcome. Just this year in January President Obama announced a ban on the use of solitary confinement for juveniles in prisons citing ‘the potential for "devastating, lasting psychological consequences" from the use of the isolation.’ Seclusion is a form of solitary confinement and has no place in schools.” 	<ul style="list-style-type: none"> • See Decision Points 2, 3, and 4
90	<p>Each email based on Nov.15, 2016, form letter from Emily Dreyfus, Justice4All)</p> <ol style="list-style-type: none"> 1. Wayne & JoAnne Groover Nov. 18, 2016, email to VBOE 2. Janet Lilly Nov. 16, 2016, email to VBOE 3. Jill Buzby, Arlington, VA Nov. 15, 2016, email to VBOE 	<ul style="list-style-type: none"> • “6. Ensure safe and humane treatment if seclusion is used. The seclusion room standards in the draft regulation are inadequate. There are good requirements that seclusion rooms to be safe, sizeable, ventilated, include viewing panels and other safety rules. However, the draft prohibits calming materials such as bean bag chairs or music, and does not require continued de-escalation, so the child is no longer a danger and can return to the classroom. This type of confinement is harmful to both students and the school environment and is completely inconsistent with the <i>Fifteen Principles. ...</i>” 	<ul style="list-style-type: none"> • See Decision Point 4

	<p>4. Angela Stevens PBS Coordinator Nov. 15, 2016, email to VBOE</p> <p>5. Pat Hommel Charlottesville, VA Nov. 15, 2016, email to VBOE</p>		
91	VCASE Feb. 25, 2016, comments to VBOE	<ul style="list-style-type: none"> • Delete the term “seclusion cell,” its definition, and its list of prohibitions (pp. 4, 5, 6, 7). The Section VAC 20-750-40 Seclusion; Standards of Use describes the appropriate standards for any seclusion rooms. In fact, prohibiting a seclusion cell as defined may also prohibit any seclusion space otherwise meeting specifications (Department of Behavioral Health and Developmental Services for Children’s Residential Facilities) • Remove the reference in #7 (p. 7) that requires a mattress in a seclusion room. A mattress should not be required. Suggested revision: “If a seclusion room includes any furniture or accessories, it shall contain only a mattress.....” 	<ul style="list-style-type: none"> • Changed • See Decision Point 4
92	Coalition for Improving School Safety (CISS)* 10/17/16 e-mail Line-by-line edits	<ul style="list-style-type: none"> • Seclusion rooms and use generally--“The room used for seclusion shall meet the design requirements for buildings used for detention or seclusion of persons. (CISS questions this as explained below in the Rationale because we do not know if this refers to prisons and jails, which would cause deep concern. CISS believes strongly that any seclusion rooms must meet state and municipal fire and building safety code requirements).” • Delete mattress in seclusion room.The seclusion room shall contain only a mattress with a washable mattress covering designed to avoid damage by tearing.Rationale: <i>...Seclusion is inherently traumatizing and dangerous. Seclusion and restraint must be used rarely, if at all. ... VDOE included very important requirements like those that rooms be sizeable, ventilated, without fixtures likely to cause injury, viewing panels, and other safety requirements... Still, the regulation -contains some extremely dangerous language. Seclusion rooms as described in the regulation appear to be solitary confinement prison cells, with only barren mattresses permitted. This does not permit calming materials such as</i> 	<ul style="list-style-type: none"> • See Decision Point 4

		<p><i>bean bag chairs or music, and does not require continued de-escalation, so the child is no longer a danger and can return to the classroom. This type of confinement will be harmful to both students and the school environment and is completely inconsistent with the Fifteen Principles. It is also not clear if the reference to buildings for detention of persons suggests subjecting students to jail or prison-like rooms. This also is inconsistent with the Fifteen Principles.”</i></p> <ul style="list-style-type: none"> • Require lighting in seclusion room. 8. The seclusion room shall maintain temperatures appropriate for the season. <u>The rooms shall not be dark and shall have appropriate lighting.</u> Rationale: <i>No child should be placed in a dark room without light. That is inherently unsafe. This is particularly true if the light switches are outside of the room, as in this proposal.”</i> 	
93	Sue Nelson-Sargeant Speech pathologist 1318 William St Fredericksburg, VA. 22401 11/15/16 email to VBOE	<ul style="list-style-type: none"> • Need for windows, data sheet for seclusion (“cinderblock [no mats] STOP [timeout] room”). Described specific incidents involving (i) securing door with rope; (ii) slapping of student; (iii) failure of local social services agency to open investigation; (iv) failure of school to contact parent regarding use of restraint; (v) use of LEA personnel as CPS “designee.” 	<ul style="list-style-type: none"> • See Decision Point 4
94	Marie Tucker 10/27/16 BOE meeting	<ul style="list-style-type: none"> • parent; cited military experience—questioned property damage as situation that may prompt restraint or seclusion; concern about remote locks/monitoring—“are we talking about a prison?”—requested change to these provisions—cited students’ civil and human rights 	<ul style="list-style-type: none"> • See comment 3 • See Decision Point 1, 2, 3 and 4
95	Kevin Koziol Disability Resource Center—member CISS—former sped administrator 10/27/16 BOE meeting	<ul style="list-style-type: none"> • need “clear standards” for personnel; requests revision to definitions of PR and seclusion— • wants sensory objects in seclusion room 	<ul style="list-style-type: none"> • See Decision Point 4
		<ul style="list-style-type: none"> • 	<ul style="list-style-type: none"> •

Training			
96	All panels Donna 10/4/16	Emphasize prevention, de-escalation, “evidence-based”	Changed
97	B. Roberts 10/5/16 M. Sainte 10/5/16	What if all staff cannot <u>physically</u> meet training standards?	See Decision Point 12
98	L. Altieri 10/5/16	Crisis response team should have training Training in “classroom management” at higher ed or prof. development level is not enough; teach HOW to conduct FBA	See Decision Point 12
99	A. Trainique 10/5/16	De-escalation; antecedents; what about persons ON THE SCENE of incident?	See Decision Point 12
100	Panel 10/5/16	Majority of training \$\$ should support prevention rather than implementation of restraints, etc. Costs for substitutes; turnover; tuition; re-training	See Decision Point 12
101	Heather Luke 10/27/16 written comments	Disagrees with information regarding training costs.	See Decision Point 12
102	E. Dreyfus 10/5/16 C. Poe 10/11/16	“trauma-informed” practices	See Decision Point 12
103	J. Baker 10/5/16	Address de-escalation, PBIS, etc. in teacher prep in higher education	Beyond the scope of the legislation.
104	C. Poe 10/4/16	“evidence-based practices” (already in regulations) “trauma-informed approaches”	See Decision Point 12
105	M. Asip 10/11/16	Concern re staff who want to intervene/respond but are not trained Staff want to feel protected if they need to intervene Data supports higher training for self-contained setting Grafton model Ukeru; Wants tiered-training but notes “teacher in the hallway”	See Decision Point 12
106	M. Bloom 10/4/16	Wants timeline for training; training in physical interaction techniques for ALL students Some schools do not have self-contained classrooms—thus might not have any adv. trained personnel Allow locally-developed training	See Decision Point 12

107	T. Champion 10/4/16	“highly trained” and “scientifically-based”; Wants training for ALL	See Decision Point 12
108	Spotsylvania 10/4/16	Unreasonable to expect all personnel to be trained	See Decision Point 12
109	T. Smith 10/4/16 D. Feltman 10/11/16	Concerns re \$\$\$ for training	See Decision Point 12
110	V. Campbell 10/11/16	Parents to be informed of level of training; train ALL so not applied in discriminatory fashion to sped students	See Decision Point 12 Non-discrimination subject of existing law
111	Stafford Co. Public Schools 10/18/16 via mail Signed by <ul style="list-style-type: none"> • Tom Nichols, chief secondary officer • 5 SCPS h.s. principals • Principal, Commonwealth Gov. School • Student Services officer • Dr. Bruce Benson, Supt. (duplicate letter) 	<ul style="list-style-type: none"> • “identified costs to meet the training requirements contained in the proposed policy would present an extreme undue burden to Stafford County Public Schools. For over ten (10) years we have been providing safe, research based de-escalation and restraint practices and ongoing training to our <u>key</u> staff members in each school.” 	<ul style="list-style-type: none"> • See Decision Point 12
112	Lori P. Buckingham, Behavior Specialist, Spotsylvania County Schools 10/27/2016 via email Also provided resources	<ul style="list-style-type: none"> • Page 18 (Lines 6-10) Training- not all staff require training in the use of restraint. Percentage of time in a special education setting or assignment to a self-contained setting is not an appropriate indicator of the need for training in the use of restraint and seclusion. Training in the use of restraint should be provided to staff in high-risk positions (i.e. staff working with students with emotional disabilities, and autism) and staff working with students who have a history of physically aggressive behavior. Administrators and school safety personnel should be trained in the use of restraint and seclusion. All staff would benefit from training in prevention, de-escalation, trauma informed care, and PBIS. Individuals should be trained or refreshed annually. • Capacity of individual staff members- consideration should be given to 	<ul style="list-style-type: none"> • See Decision Point 12

		<p>the appropriateness of employment of individuals in high-risk positions who do not possess the capacity to support challenging student behavior. This is a job requirement for some positions.</p> <ul style="list-style-type: none"> • Not all staff members trained in the use of restraint are required to use restraint- staff are only required to get help in a situation in which a student requires protection from hurting self or others- staff members must know their limitations and the limitations of their training. 	
113	<p>Jeff Perry, Divisional Superintendent, Wythe Co. Public Schools; Chair for Region VII Superintendent’s Study Group: “this letter should be considered as a collective response from all corresponding school divisions. 10/31/16 via email</p>	<ul style="list-style-type: none"> • Training Needs and Costs. As division superintendents, we are inundated with numerous unfunded and underfunded mandates. Already, we have been required to provide intense and costly training on restraint and seclusion. We have not received any specific funding to offset these expenditures. Clearly this provision will force us to train a significant number of professionals to effectively implement the new regulations. This type of training is highly expensive and time consuming. We will be forced to divert money and attention from other important safety, instructional, and curriculum projects to pay for this additional training. Each year, we have been flooded with the implementation of multiple requirements without any funding. This is placing an enormous strain on already devastated budgets. We are legitimately concerned about the cost and burden for localities to train thousands of staff members. It is also important to note that many school divisions consistently experience significant turnover each year - especially in areas dealing with children who demonstrate challenging behaviors. This turnover creates even more need for required training which consumes even more funding. We would ask the Board of Education to ensure sufficient funding is allocated to local school divisions to pay for this training if you proceed with its implementation. It is important to note that often, these mandates are declared to be funded and the revenue is said to be included in our basic aid. However, our basic aid has been consistently reduced and while there may be a line item for revenue associated with new projects – our overall amount of funding has been reduced. We can’t continue to add the cost of additional programming without receiving the appropriate funding. It is also important to understand that we will divert the attention, energy and focus of current staff members from other important programs and initiatives to support this training if implemented. We are drowning in a system which is already over regulated and underfunded. Please think carefully before adding yet another weight to our load. 	<ul style="list-style-type: none"> • See Decision Point 12

114	Jason Van Heukelum Superintendent Winchester City Public Schools 10/19/16 via email	<ul style="list-style-type: none"> • With the current proposal, we are concerned about the requirement to train all staff. The training we use includes a multi-day training protocol and requires recertification every 3 years. We have an internal practice of ensuring that all of our SPED teachers and teacher assistants who work with high probability cases, along with all administrators, are current in their training. We believe this practice has given us the necessary capacity to handle these isolated situations. As a counterpoint to the proposal, one of our fears is that by training all staff, some staff may be more emboldened to perform restraint, whereas now most of our staff do not consider restraint as part of their responsibility. My fear is that more training on restraint might actually increase the number of restraints performed on an annual basis. 	<ul style="list-style-type: none"> • See Decision Point 12
115	Eric Williams, Ed.D. Superintendent Loudoun Co. Public Schools 10/19/16 email	<ul style="list-style-type: none"> • “In sum, we agree and support the comments on the proposed regulations offered by VCASE including the expressed concern about the cost and burden for localities to train “all school personnel to have initial evidence-based training in physical restraint and seclusion.” 	<ul style="list-style-type: none"> • See Decision Point 12
116	COPAA 11/1/16 email	<ul style="list-style-type: none"> • “Training must be based on positive, evidence-based practices and include information on trauma informed care.” 	<ul style="list-style-type: none"> • See Decision Point 12
117	Coalition for Improving School Safety (CISS)* 10/17/16 e-mail Line-by-line edits	<ul style="list-style-type: none"> • Advanced training for crisis intervention team • All receive training in content and purpose of regulations • Emphasize “evidence-based positive and preventative supports” • School divisions that employ physical restraint or seclusion shall: <ul style="list-style-type: none"> (i) ensure that all school personnel are periodically trained in the use of physical restraint and seclusion; and trained about the content and purpose of these regulations and their legal obligations, including reporting and notification requirements; (ii) include all school personnel in receiving 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 a crisis intervention team in each school. 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; 	<ul style="list-style-type: none"> • See Decision Point 12

		<p>(iv) ensure that any initial or advanced training is evidence-based.</p> <ul style="list-style-type: none"> • <i>“Rationale: School Division training must emphasize and implement evidence-based positive and preventative supports to support children with behavioral needs and to keep schools safe for everyone. This is what the 15 Principles require, particularly Principles 1 and 9. Schools should focus heavily on evidence-based behavioral accommodations, supports, and interventions to create a positive learning environment which prevents difficult behaviors from arising. In addition, it makes little sense to have these legal requirements if staff are not trained in them. The national media has reported about several incidents of restraint and seclusion where school personnel either were not properly trained or ignored reporting requirements and concealed the use of restraint and seclusion.”</i> 	
118	<p>Juliet Hiznay, Esq. Arlington, VA 11/15/16 email to VBOE</p>	<ul style="list-style-type: none"> • Supports CISS revisions • “The Fifteen Principles ... emphasize positive behavioral supports; and more.” 	<ul style="list-style-type: none"> • See Decision Point 12
119	<p>(Each email based on Nov.15, 2016, form letter from Emily Dreyfus, Justice4All)</p> <ol style="list-style-type: none"> 1. Wayne & JoAnne Groover Nov. 18, 2016, email to VBOE 2. Janet Lilly Nov. 16, 2016, email to VBOE 3. Jill Buzby, Arlington, VA Nov. 15, 2016, email to VBOE 4. Angela Stevens PBS Coordinator 	<ul style="list-style-type: none"> • “7. Require schools to work with School Resource Officers (SROs) and School Security Officers (SSO) to implement positive and preventative supports, rather than dangerous restraint and seclusion. School staff, including SROs and SSOs, should receive training, including on the requirements to use positive behavioral supports and preventative measures, their role in decreasing, preventing, and de-escalating difficult behavior, and the requirements of the regulations. Moreover, schools or individuals should not be able to avoid the restraint and seclusion law by simply calling law enforcement and having SROs restrain or seclude the child. In Virginia, a four-year-old with ADHD in Greene County was shackled in 2015. Following seclusion and restraint, students are traumatized and may not be in a condition to effectively participate in learning. These practices potentially worsen the cycle of violence.” 	<p>See Decision Point 12</p>

	<p>Nov. 15, 2016, email to VBOE</p> <p>5. Pat Hommel Charlottesville, VA Nov. 15, 2016, email to VBOE</p>		
120	<p>Kathleen Smith, Director AdvancED 11/7/16 email to J. Eisenberg</p>	<ul style="list-style-type: none"> • Supports VCASE comments from February 2016 • “The identified costs to meet the training requirements contained in these proposed regulations would present an undue burden on localities.” 	<ul style="list-style-type: none"> • See Decision Point 12
112	<p>VCASE Feb. 25, 2016, comments to VBOE</p>	<ul style="list-style-type: none"> • Training Needs and Costs. “...we are concerned about the cost and burden for localities to train thousands more staff, some with a lower level of training and others with an undefined “Advanced” level of training. These training levels are not clearly defined and our school divisions are very concerned regarding the costs for such training. We would ask the Board of Education to ensure the provision of funding for local school divisions as a condition of final approval of these regulations that will affect every school division.” 	<ul style="list-style-type: none"> • See Decision Point 12

Miscellaneous			
113	B. Greene 10/5/16	Encouraged use of FBA—"as kids fail, they want to get out of instruction"; students with ED may function poorly in academics	Included
114	C. Poe 10/5/16	"trauma-informed approaches" Panels did not include minority representation (10/5; 10/11) Disparate use for minorities	Data will be collected
115	S. Lawrence 10/5/16	Wants cameras in classrooms; no restraint needed	Beyond the scope of the statutory authorization
116	C. Pinello 10/11/16	"streamline" use of "calendar day" v. "school day"	Definitions are consistent with other regulatory definitions
117	Overall CONSENSUS J. Liban 10/11/16 C. Poe 10/11/16 M. Asip 10/11/16	Overall emphasis on prevention, de-escalation, use of less intrusive options –R & S as exception rather than primary/regular practice	Changed
118	(Each email based on Nov.15, 2016, form letter from Emily Dreyfus, Justice4All) 1. Wayne & JoAnne Groover Nov. 18, 2016, email to VBOE 2. Janet Lilly Nov. 16, 2016, email to VBOE 3. Jill Buzby, Arlington, VA Nov. 15, 2016, email to VBOE 4. Angela Stevens	<ul style="list-style-type: none"> • "3. Emphasize preventing problem behavior with de-escalation, conflict management and evidence-based positive and preventative behavioral supports, as specified by the Department of Education's Fifteen Principles and the 2009 Suggested Virginia Guidelines." 	<ul style="list-style-type: none"> • Changed

	<p>PBS Coordinator Nov. 15, 2016, email to VBOE</p> <p>5. Pat Hommel Charlottesville, VA Nov. 15, 2016, email to VBOE</p>		
119	J. Cimino 10/11/16	Use of SROs to be discouraged/prohibited	Beyond the scope of VDOE's authority
120	J. Liban 10/11/16	Have SROs and SSOs trained in PBIS	Beyond the scope of VDOE's authority
121	Ms. Campbell 10/11/16	Get copy of R & S policy upon enrollment; unique medical condition	Covered by existing statutes
122	J. Becker DJJ 10/11/16	Inquires about applicability to state-operated program/DJJ and unique requirements of DJJ	Carve out to be developed
123	Spotsylvania 10/4/16	Wants sample forms, etc.	Issue for operationalizing the regulations
124	<p>Stafford Co. Public Schools 10/18/16 via mail Signed by</p> <ul style="list-style-type: none"> • Tom Nichols, chief secondary officer • 5 SCPS h.s. principals • Principal, Commonwealth Gov. School • Student Services officer • Dr. Bruce Benson, Supt. (duplicate letter) 	<ul style="list-style-type: none"> • “policy is consistent with the Fifteen Principles in the USDOE Restraint and Seclusion Resource document as required.” • “requirements are consistent with Virginia’s Corporal Punishment Statute per an opinion by the Virginia Attorney General’s Office.” • “policy properly seeks the balance between the safety of every student and the reality that we as high school principals must 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.” • “policy speaks to the use of physical restraint and seclusion as this permits staff that are permitting a student from inflicting serious physical harm or injury to self or others to use reasonable judgment in emergency situations.” • Costs (see training section) 	<ul style="list-style-type: none"> • See comment 3
125	Jeff Perry, Divisional Superintendent, Wythe Co. Public Schools; Chair for Region VII	<ul style="list-style-type: none"> • Consistency with Corporal Punishment Law-We understand the Board is attempting to draft policy to ensure the safety of all students while balancing the need to prevent corporal punishment and reduce liability among educators while restraining or secluding a child. However, it is 	<ul style="list-style-type: none"> • See comment 3

<p>Superintendent's Study Group: "this letter should be considered as a collective response from all corresponding school divisions. 10/31/16 via email</p>	<p>critical we maintain a practical balance between the safety of every student and the reality that school personnel must be able to address emergencies and disruptions effectively. We deal with a wide range of issues already while protecting the dignity of all students, the integrity of the classroom, and the safety of all persons in our public schools. Existing corporal punishment law, as well as laws prohibiting child abuse, negligence, and assault, currently protect students and hold educators and caregivers accountable. There is no need to include additional language in these regulations which will only create more opportunities for confusion and potential inappropriate accusations.</p> <ul style="list-style-type: none">• Use of Support Programs -- We support the initiative in the draft regulations that promote effective practices and programs be implemented into the school day. These programs include programs such as Positive Behavioral Interventions and Supports (PBIS), Functional Behavioral Assessments (FBA), Virginia Tiered Systems of Support (VTSS), and Behavioral Intervention Plans (BIP) that may preclude or reduce the need for restraint and seclusion.• Use of Physical Restraint and Seclusion. --We support the draft regulations pertaining to the use of physical restraint and seclusion as an appropriate response by staff who are preventing a student from inflicting serious physical harm or injury to self or others when they use reasonable judgment in emergency situations. Because the regulations will apply to all students and all educators, it is critical that they do not have the unintended consequence of deterring educators from reasonable interventions to protect students. If staff are reluctant to intervene due to overly-restrictive regulations, the potential for dangerous situations to escalate and require police intervention could actually increase. We support this essential language that promotes student safety and supports the reasonable judgment of school personnel to intervene physically in an emergency situation as outlined in this provision.• Policy Motivation-Often these types of policies are created in response to extreme cases involving highly irresponsible and incompetent individuals. Other policies and regulations are already in place to deal with those extreme cases. The vast majority of educators throughout the Commonwealth deal with restraint and seclusion of students in an effective, efficient and appropriate manner. It is our hope that the Board doesn't create and adopt policy which may have positive intentions but which will result in serious and damaging consequences to staff and students in our school system. We agree and concur with many elements	
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		<p>of these new regulations and agree they are needed. However, there are a few provisions which we believe may not produce the desired effect. In fact, we believe some of these provisions may actually place staff and students in more danger. We highly recommend you should carefully consider unintended consequences before adoption.</p> <ul style="list-style-type: none"> • School Resource Officers--We have some type of permanent or occasional school resource officer presence in the majority of our schools. They have a specific duty and work closely with our school administration to maintain order and safety in our schools. It would appear the current regulations may restrict school resource officers and school security officers from using their authority and resources. This may have a devastating and unintended negative impact on the safety of students. Local law enforcement officials at the county and city level will read these regulations and direct their officers to withdraw support and assistance when needed the most. Please consider this provision and ensure we don't prevent our school resource officers from providing critical support in a highly volatile environment. • We appreciate your attention to our concerns and please contact me if you have any additional questions or concerns. We have dedicated our professional career to the care and wellbeing of children and staff under our control. We understand the need to protect children and to care for physically challenging students deserves careful attention and deliberate planning. We understand the Board is attempting to address some issues which have been created in a small number of our school divisions. Direction, support, guidance, and training are clearly needed to help school divisions deal with an ever changing clientele. Local school divisions are grossly underfunded, overregulated, short-staffed, and under tremendous pressure to perform academically. Many of these proposed provisions will be one more weight and burden we must place on staff members who are already fatigued. Please consider our thoughts and integrate them into the regulations so that we have the authority, ability, and motivation to effectively deal with students who are struggling. Thank you for your attention to this letter. 	
126	VCASE Feb. 25, 2016, comments to VBOE	<ul style="list-style-type: none"> • Revise Construction and Interpretation (p. 12) to include the following "(ii) the authority, <i>actions</i>, and duties of school resource officers and school security officers, as defined in Va. Code 9.1-101." VCASE does not believe that draft regulations should modify or restrict school resource officers and school security officers in their 	<ul style="list-style-type: none"> • Beyond the scope of VDOE's current authority

		authority, actions, and duties, even as we support efforts by the Governor’s “Classrooms not Courtrooms” initiative to reduce the criminalization of some school student conduct matters.”	
127	Karen Yedell, Asst. Principal Bethel Manor E.S. York Co. Public Schools 11/1/16 via email	<ul style="list-style-type: none"> • “I fully support the VCASE comments concerning Seclusion and Restraint guidelines. Thanks for listening to the perspectives shared by VAESP.” 	<ul style="list-style-type: none"> • See previous comments regarding VCASE
128	Handle With Care Bruce Chapman, President Hilary Adler, VP 184 McKinstry Road Gardiner, NY 12525 10/5/16 via email	<ul style="list-style-type: none"> • Supports VDOE current guidelines but not regulations • HWC does not support the proposed regulations. It is our position that the provisions contained in VBOE’s proposed restraint regulation is [sic] outside the scope of its authority. Specifically-- • Neither VBOE nor the Virginia legislature has the authority to restrict a person’s Constitutional right to self-defense. • The Virginia legislature does not have the authority to delegate lawmaking authority especially lawmaking authority concerning Constitutional right to an administrative agency employing an unelected bureaucracy accountable to no-one. • “unlawfully restricts school staff from exercising their Constitutional right to defend self and others.” • “The underlying purpose of this regulation is to disempower teachers, create unsafe schools and exponentially increase school violence and youth incarceration. The result will be increased incarceration, increased violence, increased restraint, unsafe schools and higher use of force interventions.” • “the 15 principles on restraint and seclusion is nothing more than a piece of political propaganda” • The “Imminent Danger of Serious Physical Harm” required by VBOE establishes an illegal standard and a threshold of injury that offends the sensibilities • The right to defend self, others and property in Virginia is based on a “Reasonable Person Standard” not “Serious Physical Harm Standard” • Summary of proposed changes to VBOE Restraint Regulation: <ul style="list-style-type: none"> • Use the language of VA Code 22.1-279.1 • Remove the ban on prone restraint. • Remove the term serious physical harm • Restraint should also be allowed as part of an IEP or BP. 	<ul style="list-style-type: none"> • Comments would require statutory changes

<p>129</p>	<p>COPAA 11/1/16 email</p>	<ul style="list-style-type: none"> • “Given the disproportionate impact of the use of restraint or seclusion on students of color it is urgent that there is representation on the panel reviewing the regulations and that meaningful parental and student engagement occur.” • “Final regulations must adhere to and follow the research-based provisions included in the U.S. Department of Education’s (ED) <i>Restraint and Seclusion: Resource Document</i>” • “Additionally, the Every Student Succeeds Act (ESSA) (cite) requires that States must also include new information in their Title I plan indicating how they will support districts <i>to improve school conditions for student learning, including through reducing—“(i) incidences of bullying and harassment;“(ii) the overuse of discipline practices that remove students from the classroom; and“(iii) <u>the use of aversive behavioral interventions that compromise student health and safety.</u> The ESSA conference report clarifies that the term <i>aversive</i> means seclusion and restraint.”</i> • “There is a clearly a need for the State to closely examine and respond to the intersection of both Federal and State law. The data from Virginia schools is alarming. According to the Civil Rights Data Collection (CDRC), hundreds of students have restraint or seclusion imposed upon them in school. Schools report that students who are Black experience restraint and seclusion at rates double that of their white peers. Given this well-known fact, it is very disconcerting that there were absolutely NO people of color included in panel presentations of educational stakeholders who worked on the regulations. It is imperative that the voices of ALL stakeholders whose lives are impacted by the practice of imposing restraint and seclusion be part of the discussion and decision making....“Disturbingly, the combination of the lack of appropriate and adequate community input combined with the current construct of the regulations are [sic] likely to result in an increase in the use of restraint and seclusion in Virginia schools without important changes. This is unconscionable.” 	<ul style="list-style-type: none"> • Noted
<p>130</p>	<p>Coalition for Improving School Safety (CISS)* 10/17/16 e-mail Line-by-line edits</p>	<ul style="list-style-type: none"> • Proposed new Preamble: <u>Virginia’s schools should foster learning in a safe and healthy environment for all children, teachers, and staff. All behavioral interventions must be consistent with the child’s rights to be treated with dignity and to be free from abuse. Because restraint and seclusion are dangerous, every effort should be made to prevent their use. They should be used only in emergencies threatening serious physical harm when less restrictive alternatives would not prevent the danger to self or others, and use must end when the emergency ends.</u> 	<ul style="list-style-type: none"> • Preamble is not regulatory

		<p><u>Parents must be informed and all students and all incidents, included in the data. School Division policies must emphasize and implement evidence-based positive and preventative supports to support children with behavioral needs and to keep schools safe for everyone.</u></p>	
131	<p>Coalition for Improving School Safety (CISS)* 10/17/16 e-mail Line-by-line edits</p>	<ul style="list-style-type: none"> • Emphasis on prevention; review of local policies • 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, including <u>a review and, if appropriate, revision of strategies currently in place to address dangerous behavior; if positive behavioral strategies are not in place, staff should develop them.</u> • <i>“Rationale: As worded, the regulation deviates sharply from Principle 8, and thus is contrary to Virginia’s 2015 statute. Principle 8 provides, ‘The use of restraint or seclusion, particularly when there is repeated use for an individual child, multiple uses within the same classroom, or multiple uses by the same individual, should trigger a review and, if appropriate, revision of strategies currently in place to address dangerous behavior; if positive behavioral strategies are not in place, staff should consider developing them.’ In addition, by failing to emphasize positive and preventative supports, the regulation continues to emphasize using restraint and seclusion. There is significant evidence and research demonstrating that positive and preventative supports prevent behaviors from developing into emergencies. The proposed regulations should require that every effort be made to avoid the use of restraint and seclusion. These should include evidence-based behavioral accommodations, supports, and interventions to create a positive learning environment which improves both academic and social outcomes for students.”</i> 	<ul style="list-style-type: none"> • See comment 3
132	<p>Sue Nelson-Sargeant Speech pathologist 1318 William St Fred, VA. 22401 11/15/16 email to VBOE</p>	<ul style="list-style-type: none"> • “This is a matter of due process for these students, especially the ones who are nonverbal. You need to look at DSS CPS and see if they are still letting a LEA-employee be a CPS-designee. You will be part of the problem if you do not address these safety concerns...and assurance of due process for the vulnerable ones in this Commonwealth. DO the right thing.” 	<ul style="list-style-type: none"> • Beyond the scope of the statute

133	Juliet Hiznay, Esq. Arlington, VA 11/15/16 email to VBOE	<ul style="list-style-type: none"> • Supports CISS revisions • “[I]t is apparent that the use of restraint and seclusion leads to children with disabilities requiring a more restrictive (and therefore a more expensive) placement in either private day school or in residential in order to receive the educational benefit mandated under IDEA.” • “...long-term outcomes associated with the unregulated use of restraint and seclusion are extremely poor. ... In my experience, when school staff find themselves at a loss for how to otherwise address a problem behavior it is typically the case that at least one, if not all, of the following factors are at play (1) school staff do not understand why the child is behaving as they are, or how their own conduct is contributing to the problem, (2) the school district has failed to address the child’s underlying educational needs, (3) children are experiencing a hostile school environment, (4) children lose significant instructional time as a result of parents picking them up from school regularly or seeking homebound services because of the unacceptable mental health impacts of exposing their children to these techniques, (5) use of the practices escalates the behavior of the child and the staff, leading to more dangerous conditions for staff and students, (6) children who observe the use of restraint and seclusion on students are fearful of it being used on themselves, (7) use of these practices has a negative impact on staff morale, (8) use of restraint and seclusion results in the child being socially ostracized by peers, and (9) children who have experienced restraint and seclusion lose trust in school staff and are unable to reintegrate back into the same public school setting, leading to administrative transfers and more restrictive special education placements. These more restrictive special education placements represent a significant drain on the budget of schools, Medicaid funds and funds available under the Virginia Children’s Services Act. Reducing the use of restraint and seclusion would permit those funds to be redirected, and therefore meet the needs of more children in the public school setting with better individual outcomes and lower dropout rates.” 	<ul style="list-style-type: none"> • Beyond the scope of the statute
134	Kevin Koziol Disability Resource Center—member CISS—former sped administrator 10/27/16 BOE meeting	<ul style="list-style-type: none"> • wants “more robust” emphasis on evidence-based positive behavioral supports 	<ul style="list-style-type: none"> • Beyond the scope of the statute

***NOTE: Coalition for Improving School Safety (CISS) includes:**

Autism Society Central VA
Autism Society, Tidewater Virginia
Blue Ridge Independent Living Center, Roanoke
DisAbility Law Center of Virginia
disAbility Resource Center of the Rappahannock Area, Inc.
Down Syndrome Association of Greater Richmond
Endeppendence Center, Inc.
Greater Richmond SCAN (Stop Child Abuse Now)
Independence Empowerment Center
Legal Aid Justice Center's JustChildren Program
Lynchburg Area Center for Independent Living Inc.
National Alliance on Mental Illness of Virginia
Parents of Autistic Children of Northern Virginia
Partnership with People with Disabilities at VCU
Prevent Child Abuse Virginia
The Advocacy Institute
The Arc of Augusta
The Arc of Eastern Shore

The Arc of Hanover
The Arc of Harrisonburg and Rockingham
The Arc of North Central Virginia
The Arc of Northern Virginia
The Arc of Southside
The Arc South of the James
The Arc of Virginia
The Autism Society of Central Virginia
The Autism Society of Northern Virginia
VersAbility Resources
Virginia Association of Community Services Boards (VACSB)
Virginia Association of Centers for Independent Living
Virginia Board for People with Disabilities
Virginia Autism Project
Virginia Coalition for Students with Disabilities
Virginia TASH
Wrightslaw