

Virginia Board of Education Agenda Item



Agenda Item: A

Date: March 23, 2017

Title	Final Review of Proposed <i>Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia</i> (Proposed Stage)		
Presenter	John M. Eisenberg, Assistant Superintendent for Special Education and Student Services		
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Purpose of Presentation:

Action required by state or federal law or regulation.

Previous Review or Action:

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

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)

Date: February 23, 2017

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

Action Requested:

Final review: Action requested at this meeting.

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*.

At a February 22, 2017, work session, Staff presented the Board with twelve decision points on issues where public comment revealed significant differences of opinion among stakeholders. Based upon the additional information provided to it at its February 23, 2017, meeting, the Board provided staff with guidance for further revision of the draft regulations with regard to the twelve decision points, and several additional matters identified by the Board.

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.

Attachment A is a summary of the changes made based upon the Board’s February 23, 2017, guidance.

Attachment B is a line numbered current draft of the proposed regulations, reflecting changes made since the initial draft.

Attachment C is a clean copy of the draft regulations.

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:

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

Superintendent's Recommendation:

The Superintendent of Public Instruction recommends that the Board of Education approve the proposed draft of the *Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia* for final review and for further action as governed by the requirements of the Administrative Process Act.

Rationale: The draft *Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia* represents the careful review and consideration current needs, *Code of Virginia* requirements, and stakeholder participation.

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

Section	Issue	Options (Selected Option Highlighted)	Discussion	Staff Recommendation/Changes Made
<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> <p>Attachment B Page 5 Lines 15-30</p> <p>Attachment C Pages 4-5 Lines 25-31; 1-9</p> <p>No changes</p>

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

Section	Issue	Options (Selected Option Highlighted)	Discussion	Staff Recommendation/Changes Made
<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> <p>Attachment B Page 5 Lines 24-30</p> <p>Attachment C Pages 5 Lines 4-9</p> <p>Modified to indicate that seclusion in this instance should be restricted to events such as those involving altercations, drugs, weapons</p>

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

Section	Issue	Options (Selected Option Highlighted)	Discussion	Staff Recommendation/Changes Made
<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> <p>Attachment B Page 5 Line 15-30</p> <p>Attachment C Pages 4-5 Lines 25-31; 1-9</p> <p>Exceptions to the definition of seclusion apply so long as the room is not locked.</p>

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

Section	Issue	Options (Selected Option Highlighted)	Discussion	Staff Recommendation/Changes Made
<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>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 1</u></p> <p>Retain current language.</p> <hr/> <p><u>Option 2</u></p> <p>Eliminate specifications.</p> <hr/> <p><u>Option 3</u></p> <p>Modify specifications.</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>Attachment B Pages 13-15 Lines 17-31; 1-31; 1-4</p> <p>Attachment C Pages 10-11 Lines 25-30; 1-22</p> <p>Eliminated the detailed specifications, but retained the concept of safety and dignity</p>

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

Section	Issue	Options (Selected Option Highlighted)	Discussion	Staff Recommendation/Changes Made
<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> <p>Attachment B Page 11 Lines 8-12</p> <p>Attachment C Page 8 Lines 23-24</p> <p>Language from 15 Principles Included</p>

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

Section	Issue	Options (Selected Option Highlighted)	Discussion	Staff Recommendation/Changes Made
<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><u>Option 1</u></p> <p>Retain current language.</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> <p>Attachment B Page 15 Lines 14-19</p> <p>Attachment C Page 12 Lines 1-5</p> <p>Provided for reasonable effort to notify parent on the day of the incident</p>
	<p>School organizations believed that the requirement was too onerous and ought to be changed to one school day.</p>	<p><u>Option 2</u></p> <p>Provide for same day notification.</p>		
		<p><u>Option 3</u></p> <p>Provide for one school day notification.</p>		

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

Section	Issue	Options (Selected Option Highlighted)	Discussion	Staff Recommendation/Changes Made
<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> <p>Attachment B Page 15 Line 26</p> <p>Attachment C Page 12 Line 12</p> <p>No changes</p>

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

Section	Issue	Options (Selected Option Highlighted)	Discussion	Staff Recommendation/Changes Made
<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> <p>Attachment B Page 16 Lines 5-7</p> <p>Attachment C Page 12 Lines 19-20</p> <p>Items are included as examples, but are not mandated</p>

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

Section	Issue	Options (Selected Option Highlighted)	Discussion	Staff Recommendation/Changes Made
<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> <p>Attachment B Pages 17-18 Lines 28-31; 1-4</p> <p>Attachment C Page 14 Lines 6-9</p> <p>No changes</p>

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

Section	Issue	Options (Selected Option Highlighted)	Discussion	Staff Recommendation/Changes Made
<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> <p>Attachment B Page 21 Lines 14-23</p> <p>Attachment C Page 17 Lines 12-21</p> <p>No changes</p>

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

Section	Issue	Options (Selected Option Highlighted)	Discussion	Staff Recommendation/Changes Made
<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> <p>Attachment B Page 21 Lines 5-23</p> <p>Attachment C Page 17 Lines 4-21</p> <p>Provided that the review occurs after the second school day on which restraint or seclusion occurs</p>

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

Section	Issue	Options (Selected Option Highlighted)	Discussion	Staff Recommendation/Changes Made
<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 tier one 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> <p>Attachment B Page 22 Lines 22-29</p> <p>Attachment C Page 18 Lines 15-20</p> <p>Change made to clarify that there must be <u>initial training</u></p>

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

Additional Changes of Significance	Location	Rationale
<p>Added additional clarification to section on Applicability.</p>	<p>Attachment B Pages 1-2 Lines 26-31; 1-17</p> <p>Attachment C Pages 1-2 Lines 26-30;1-9</p>	<p>Change provides additional clarity as to the intended scope of the regulation</p>
<p>Moved definitions of permitted and prohibited actions to a single section</p>	<p>Attachment B Pages 2-6 Lines – beginning on 19; ending on 2</p> <p>Attachment C Pages 2-5 Lines – beginning on 11; ending on 12</p>	<p>Grouping the definitions in this manner may assist with clarity</p>
<p>Added definition of corporal punishment</p>	<p>Attachment B Page 3 Lines 23-24</p> <p>Attachment C Page 3 Lines 15-16</p>	<p>Previous draft cross-referenced the applicable code section, but did not include the wording from the statute</p>
<p>Clarified that restraint and seclusion may be used, but only in accordance with the regulations</p>	<p>Attachment B Page 12 Lines 1-2</p> <p>Attachment C Page 9 Lines 9-10</p>	<p>Intended to provide greater clarity</p>

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

Additional Changes of Significance	Location	Rationale
<p>Provided that school divisions must include within their policies provisions relating to the appropriate use of seclusion with regard to the student’s age and development</p>	<p>Attachment B Page 15 Lines 1-4</p> <p>Attachment C Page 11 Lines 19-21</p>	<p>Change is intended to allow some local flexibility, but to address concerns over issues such as differentiation among student groups as to the appropriate use and duration of seclusion</p>
<p>Provided for additional means of parent notification, such as email</p>	<p>Attachment B Page 15 Lines 14-19</p> <p>Attachment C Page 12 Lines 1-5</p>	<p>Added to recognize that in person or telephonic notification may not always be possible</p>
<p>Provided that local policies and procedures must include standards for Memoranda of Understanding with local law enforcement related to the SRO’s use of restraint or seclusion</p>	<p>Attachment B Page 20 Lines 6-7</p> <p>Attachment C Page 16 Lines 4-5</p>	<p>Added to allow local flexibility, but to indicate the need that the issue should be addressed</p>
<p>Provided that, in developing policies and procedures, school division must give due consideration to parent involvement</p>	<p>Attachment B Page 20 Lines 21-23</p> <p>Attachment C Page 16 Lines 19-21</p>	<p>Intended to suggest that best practices include parental involvement</p>

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

Additional Changes of Significance	Location	Rationale
<p>Provided that one administrator and any other personnel providing services to students likely to be restrained or secluded must receive tier 2 training</p>	<p>Attachment B Page 23 Lines 1-5</p> <p>Attachment C Page 18 Lines 21-25</p>	<p>Intended to more appropriately address the issue of which personnel should be required to receive advanced training</p>
<p>Excluded applicability of the regulations to the Department of Juvenile Justice</p>	<p>Attachment B Page 23 Lines 23-24</p> <p>Attachment C Page 19 Lines 8-9</p>	<p>Intended to recognize the agency’s unique circumstances</p>

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

3
4 **Foreword**

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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-~~2010~~.

30 They are intended to (i) define what constitutes an incident of restraint or seclusion; (ii) limit the
31 use of restraint or seclusion to certain emergency circumstances; (iii) clarify that certain actions

~~by school personnel do not constitute restraint and seclusion, and that, accordingly, are not limited by or subject to the other requirements of these regulations; and (iv) to identify certain practices that constitute restraint or seclusion that may be detrimental to the health, safety and dignity of the student, and that are, thus, entirely impermissible. Furthermore, these regulations describe other administrative requirements that apply in the event restraint or seclusion occurs.~~

Substitute the following:

To comply with these regulations, school personnel must first determine whether the action constitutes restraint or seclusion, as defined in 8 VAC 20-750-10. If it the action does not meet the definition, or if the action falls under the any of the “does not include” portions of the definitions in 8 VAC 20-750-10, then school personnel may act within their reasonable discretion. If the action falls within the definition of restraint or seclusion, it may be used, but only under the circumstances described in 8 VAC 20-750-40 and 8 VAC 2-750-50, and is subject to the other requirements of this chapter. In addition, 8 VAC 20-750-30 identifies certain practices that constitute restraint or seclusion that may be detrimental to the health, safety or dignity of the student and that may never be used by school personnel.

8 VAC 20-750-10. Definitions related to permitted and prohibited actions.

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

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

1. Noxious odors and tastes.
2. Water and other mists or sprays.

Attachment B
March 2017

- 1 3. Blasts of air.
- 2
- 3 4. Corporal punishment as defined in Va. Code § 22.1-279.1.
- 4
- 5 5. Verbal and mental abuse.
- 6
- 7 6. Forced exercise when:
- 8
- 9 a. The student’s behavior is related to his disability;
- 10
- 11 b. The exercise would have a harmful effect on the student’s health; or
- 12
- 13 c. The student’s disability prevents participation in such activities.
- 14
- 15 7. Deprivation of necessities, including:
- 16
- 17 a. Food and liquid at a time it is customarily served;
- 18
- 19 b. Medication; or
- 20
- 21 c. Use of restroom.

22

23 “Corporal punishment” means the infliction of, or causing the infliction of, physical pain on a
24 student as a means of discipline.

25

26 “Mechanical restraint” means the use of any material, device or equipment to restrict a
27 student’s freedom of movement.

28

29 The term “mechanical restraint” does not include the ~~This term does not include devices~~
30 implemented by trained school personnel or used by a student that have been prescribed by an

1 appropriate medical or related services professional and are used with parental consent and for
2 the specific and approved purposes for which such devices were designed, such as:

3
4 1. Adaptive devices or mechanical supports used to achieve proper body position, balance
5 or alignment to allow greater freedom of mobility than would be possible without the use
6 of such devices or mechanical supports;

7
8 2. Vehicle restraints, including seat belts, -when used as intended during the transport of a
9 student in a moving vehicle;

10
11 3. Restraints for medical immobilization; ~~or~~

12
13 4. Orthopedically prescribed devices that permit a student to participate in activities without
14 risk of harm; ~~or~~

15
16 4.5. High chairs and feeding stations used for age and/or developmentally appropriate
17 students.

18
19 In addition, high chairs and feeding stations used for age appropriate students do no constitute
20 mechanical restraints. Furthermore this provision is not intended to include the use of vehicle
21 seat belts.

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

1 ~~The term “pharmacological restraint” does not include the use of a drug or medication by a~~
2 ~~student that is (i) prescribed by a licensed physician or other qualified health professional under~~
3 ~~the scope of the professional’s authority for the standard treatment of a student’s medical or~~
4 ~~psychiatric condition and (ii) administered as prescribed by a licensed physician or other~~
5 ~~qualified health professional acting under the scope of the professional’s authority.~~

6
7 “Physical restraint” means a personal restriction that immobilizes or reduces the ability of a
8 student to move freely.

9
10 The term “physical restraint” does not include: (i) briefly holding a student in order to calm or
11 comfort the student; (ii) holding a student’s hand or arm to escort the student safely from one
12 area to another; or (iii) the use of incidental, minor or reasonable physical contact or other
13 actions designed to maintain order and control.

14
15 “Seclusion” means the involuntary confinement of a student alone in a room or area from which
16 the student is physically prevented from leaving until the student no longer presents an
17 immediate danger to self or others. ~~or poses an immediate threat of damage to property.~~

18
19 Provided that no such room or space is locked, the term ~~“S”~~seclusion” does not include (i) time
20 out, as defined in these regulations; (ii) in-school suspension; (iii) detention; (iv) student-
21 requested breaks in a different location in the room or in a separate room; (v) removal of a
22 student for a short period of time from the room or a separate area of the room to provide the
23 student with an opportunity to regain self-control, so long as the student is in a setting from
24 which he is not physically prevented from leaving; (vi) the removal of a student for disruptive
25 behavior from a classroom by the teacher, as provided in Va. Code § 22.1-276.2; and (vii)
26 confinement of a student alone is a room or area from which the student is physically prevented
27 from leaving during the investigation and questioning of the student by school employees
28 regarding the student’s knowledge of or participation in events constituting a ~~serious~~ violation of
29 the code of student conduct, such as a physical altercation, or an incident involving drugs or
30 weapons. ~~student conduct code.~~

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

3
4 8 VAC 20-750-20. Other definitions.

5
6 The following words and terms when used in this chapter shall have the following meanings
7 unless the context clearly indicates otherwise:

8
9 **“Behavioral Intervention Plan”** or **“BIP”** means a plan that utilizes positive behavioral
10 interventions and supports to address: (i) behaviors that interfere with a student’s learning or
11 that of others; or (ii) behaviors that require disciplinary action.

12
13 **“Board”** means the Virginia Board of Education.

14
15 **“Business day”** means Monday through Friday, twelve months of the year, exclusive of federal
16 and state holidays (unless holidays are specifically included in the designation of business days).

17
18 **“Chapter”** means these regulations.

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

24
25 **“Child with a disability”** or **“student with a disability”** means a public elementary or
26 secondary school student evaluated in accordance with the provisions of 8 VAC 20-81 as having
27 an intellectual disability, a hearing impairment (including deafness), a speech or language
28 impairment, a visual impairment (including blindness), a serious emotional disability (referred to
29 in 8 VAC 20-81 as an emotional disability), an orthopedic impairment, autism, traumatic brain
30 injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple
31 disabilities who, by reason thereof, requires special education and related services. This also

1 includes developmental delay if the school division recognizes this category as a disability under
2 8 VAC 20-81-80.M.3. If it is determined through an appropriate evaluation that a child has one
3 of the disabilities identified but only needs related services, and not special education, the child
4 is not a child with a disability under 8 VAC 20-81. If the related service required by the child is
5 considered special education rather than a related service under Virginia standards, the child
6 would be determined to be a child with a disability. As used in this chapter, the disability
7 categories set forth in this definition and the terms “special education” and “related services”
8 shall have the meanings set forth in 8 VAC 20-81-10.

9
10 **“Day”** means calendar day unless otherwise designated business day or school day.

11
12 **“Department”** means the Virginia Department of Education.

13
14 **“Evaluation”** means procedures used in accordance with 8 VAC 20-81 to determine whether a
15 child has a disability and the nature and extent of the special education and related services the
16 child needs.

17
18 **“Functional behavioral assessment”** or **“FBA”** means a process to determine the underlying
19 cause or functions of a student’s behavior that impede the learning of the student or the learning
20 of the student’s peers. A functional behavioral assessment may include a review of existing data
21 or new testing data or evaluation as determined as set forth in 8 VAC 20-750-~~7060~~.

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

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

4
5 ~~“Mechanical restraint” means the use of any material, device or equipment to restrict a~~
6 ~~student’s freedom of movement. This term does not include devices implemented by trained~~
7 ~~school personnel or used by a student that have been prescribed by an appropriate medical or~~
8 ~~related services professional and are used with parental consent and for the specific and approved~~
9 ~~purposes for which such devices were designed, such as:~~

10
11 ~~Adaptive devices or mechanical supports used to achieve proper body position, balance or~~
12 ~~alignment to allow greater freedom of mobility than would be possible without the use of such~~
13 ~~devices or mechanical supports;~~

14
15 ~~Vehicle restraints when used as intended during the transport of a student in a moving vehicle;~~

16
17 ~~Restraints for medical immobilization; or~~

18
19 ~~Orthopedically prescribed devices that permit a student to participate in activities without risk of~~
20 ~~harm.~~

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

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

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

6
7 **“School day”** means any day, including a partial day, that students are in attendance at school
8 for instructional purposes. The term has the same meaning for all students in school, including
9 students with and without disabilities.

10
11 **“School employee”** and **“school personnel”** means individual(s) employed by the school
12 division on a full- or part-time basis or as independent contractors or subcontractors as
13 instructional, administrative, and support personnel, and includes individuals serving as a student
14 teacher or intern under the supervision of appropriate school personnel.

15
16 ~~“Seclusion” means the involuntary confinement of a student alone in a room or area from which~~
17 ~~the student is physically prevented from leaving until the student no longer presents an~~
18 ~~immediate danger to self or others or poses an immediate threat of damage to property.~~
19 ~~“Seclusion” does not include (i) time out, as defined in these regulations; (ii) in-school~~
20 ~~suspension; (iii) detention; (iv) student-requested breaks in a different location in the room or in~~
21 ~~a separate room; (v) removal of a student for a short period of time from the room or a separate~~
22 ~~area of the room to provide the student with an opportunity to regain self-control, so long as the~~
23 ~~student is in a setting from which he is not physically prevented from leaving; (vi) the removal of~~
24 ~~a student for disruptive behavior from a classroom by the teacher, as provided in Va. Code §~~
25 ~~22.1-276.2; and (vii) confinement of a student alone in a room or area from which the student is~~
26 ~~physically prevented from leaving during the investigation and questioning of the student by~~
27 ~~school employees regarding the student’s knowledge of or participation in events constituting a~~
28 ~~violation of the student conduct code.~~

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

4
5 **“Section 504 plan”** means a written plan of modifications and accommodations under Section
6 504 of the Rehabilitation Act of 1974.

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

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

24
25 ~~“Time out” means a behavioral intervention in which the student is temporarily removed from~~
26 ~~the learning activity but in which the student is not confined.~~

27
28 **8 VAC 20-750-~~23~~0. Prohibitions.**

29
30 The following actions are prohibited in the public elementary and secondary schools in the
31 Commonwealth of Virginia:

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1. Use of mechanical restraints;
2. Use of pharmacological restraints;
3. Use of aversive stimuli;
4. Use of restraint or seclusion in any manner that restricts a student's breathing of harms the student.. Prone "face down" and supine restraints or any other restraint that restricts breathing, harms the student, or interferes with the student's ability to communicate.
5. Use of physical restraint or seclusion as (a) punishment or discipline; (b) a means of coercion or retaliation; or (c) a convenience, or in any manner other than as provided in 8 VAC 20-750-40 and 8 VAC 20-750-50, below.
6. Use of Corporal punishment, as defined in Va. Code § 22.1-279.1.
7. Use of seclusion rooms or freestanding units not meeting the standards set forth in these regulations.cells
8. Use of restraint or seclusion when medically or psychologically contraindicated as stated in documentation by the IEP team, 504 team, school professionals, or by a licensed physician, psychologist or other qualified health professional under the scope of the professional's authority.

Nothing in this section shall be construed to prohibit any actions not included within the definition of "mechanical restraint," "pharmacological restraint," "aversive stimuli," "physical restraint" or "seclusion."

1 | ~~In addition, n~~Nothing in this section shall be construed to prohibit physical restraint or seclusion
2 | under the emergency conditions outlined in 8 VAC 20-750-40 and 8 VAC 20-750-50.

3 |
4 | **8 VAC 20-750-~~340~~. Use of physical restraint and seclusion.**

5 |
6 | A. Nothing in this chapter shall be construed to require a school division to employ physical
7 | restraint or seclusion in its schools. School divisions electing to use physical restraint
8 | and seclusion shall comply with the requirements of these regulations.

9 |
10 | B. School personnel may implement physical restraint or seclusion only when other
11 | interventions are, or would be, in the reasonable judgment of the particular school
12 | personnel implementing physical restraint or seclusion in an emergency situation,
13 | ineffective and only to:
14 |

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

16 |
17 | (ii) quell a disturbance that threatens serious physical harm or injury to persons or
18 | damage to property where such damage to property also, in the reasonable judgment
19 | of school personnel, would threaten serious physical harm or injury to persons.~~or~~
20 | ~~damage to property;~~

21 |
22 | (iii) remove a student from the scene of a disturbance that threatens physical injury to
23 | persons or damage to property where such damage to property also, in the reasonable
24 | judgment of school personnel, would threaten serious physical harm or injury to
25 | persons.~~or damage to property;~~

26 |
27 | (iv) defend self or others;

28 |
29 | (v) obtain possession of controlled substances or paraphernalia which are upon the
30 | person of the student or within the student's control; or
31 |

1 (vi) obtain possession of weapons or other dangerous objects that are upon the person of
2 the student or within the student's control.

3
4 C. Physical restraint and seclusion shall be discontinued as soon as the conduct or situations
5 set forth in items (i) through (vi) in Subsection A, above, prompting the use of physical
6 restraint or seclusion have ceased, dissipated, or been resolved.

7
8 D. Nothing in this section shall be construed to require school personnel to attempt to
9 implement a less restrictive intervention prior to using physical restraint or seclusion
10 when, in the reasonable judgment of the school personnel in an emergency situation, a
11 less restrictive intervention would be ineffective.

12
13 D.E. Any incident involving physical restraint or seclusion in any of the circumstances
14 described above shall be subject to the requirements of 8 VAC 20-750-50 through 8 VAC
15 20-750-100, inclusive.

16
17 ***8 VAC 20-750-~~4~~50. Seclusion; Standards for Use.***

18
19 A. School divisions electing to use ~~physical restraint and~~ seclusion as permitted by this
20 chapter shall meet the following structural and physical standards for rooms designated
21 by the school to be used for seclusion:

22
23 1. Any seclusion room or area shall be free of any objects or physical features that may
24 cause injury to the student.

25
26 2. Any seclusion room or area shall be of sufficient dimensions, and shall have
27 sufficient lighting, heating, cooling and ventilation to comport with the dignity and
28 safety of the student.

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

31 ~~2.—~~

~~The seclusion room shall be at least six feet wide and six feet long with a minimum ceiling height of eight feet.~~

~~The seclusion room shall be free of all protrusions, sharp corners, hardware, fixtures, or other devices, that may cause injury to the occupant.~~

3. Windows in the seclusion room shall be constructed to minimize breakage and otherwise prevent the occupant from harming himself.

~~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.~~

~~4.—~~

~~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.~~

~~5.—~~

~~The seclusion room shall contain only a mattress with a washable mattress covering designed to avoid damage by tearing.~~

~~6.—~~

~~The seclusion room shall maintain temperatures appropriate for the season.~~

- ~~7.4.~~ 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.

1 | C. School divisions electing to use seclusion as authorized by this chapter shall include
2 | within its local policies and procedures provisions that address the appropriate use and
3 | duration of seclusion based upon the age and development of the student.
4 | ~~meeting the specifications set forth in this section.~~

5 |
6 | **8 VAC 20-750-~~560~~. Notification and reporting.**
7 |

8 | A. When any student~~pupil~~ has been physically restrained or secluded:

9 |
10 | (i) the staff member involved shall report the incident and the use of any related first aid
11 | to the school principal or designee soon as possible by the end of the school day of in
12 | which the incident occurred; and

13 |
14 | (ii) the school principal or his designee, or other school personnel, ~~or volunteers~~
15 | ~~organized by the school administration for this purpose~~ shall make a reasonable effort
16 | to ensure that direct contact is made with the parent, either in person or through
17 | telephone conversation, or other means of communication authorized by the parent,
18 | such as email, to notify the parent of the incident and any related first aid on the day
19 | ~~within one calendar day of the date~~ the incident occurred.
20 |

21 | B. When any student~~pupil~~ has been physically restrained or secluded after ~~outside~~ the
22 | regular school day, the notifications required by Subsection A shall be made as soon as
23 | practicable in compliance with the school division's school crisis, emergency
24 | management, and medical emergency response plan required by Va. Code § 22.1-279.8.
25 |

26 | C. As soon as practicable and, but no later than ~~within~~ two school days after an incident in
27 | which physical restraint or seclusion has been implemented ~~in a self-contained classroom~~
28 | ~~or other special education setting in which a majority of the students in regular attendance~~
29 | ~~are (i) provided special education and related services and (ii) assigned to a self-~~
30 | ~~contained classroom or other special education setting for at least 50 percent of the~~
31 | instructional day, the school employee involved in the incident or other school personnel,

1 as may be designated by the principal, shall complete and provide to the principal or
2 designee, a written incident report. The school division shall provide the parent with a
3 copy of the incident report within seven (7) calendar days of the incident.
4

5 The written incident report shall contain information sufficient to inform the parent about
6 the incident. –Such information would typically include the following:include, at a
7 minimum:
8

- 9 1. Student name, age, gender, grade, ethnicity;
- 10
- 11 2. Location of the incident;
- 12
- 13 3. Date, time, and total duration of incident, including documentation of the beginning
14 and ending time of each application of physical restraint or seclusion;
- 15
- 16 4. Date of report;
- 17
- 18 5. Name of person completing the report;
- 19
- 20 6. The school personnel involved in the incident, their roles in the use of physical
21 restraint or seclusion, and their completion of the division’s training program;
- 22
- 23 7. Description of the incident, including the resolution and process of return of the
24 student to his educational setting, if appropriate;
- 25
- 26 8. A detailed description of the physical restraint or seclusion method used;
- 27
- 28 9. The student behavior that justified the use of physical restraint or seclusion;
- 29
- 30 10. Description of prior events and circumstances prompting the student’s behavior, to
31 the extent known;

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11. Less restrictive interventions attempted prior to the use of physical restraint or seclusion, and an explanation if no such interventions were employed.

12. Whether the student has an IEP, a Section 504 plan, a BIP, or other plan;

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

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

15. Date, time of staff debriefing.

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

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

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

E. As appropriate depending on the student's age and developmental level, following each incident of physical restraint or seclusion ~~in a self-contained classroom or other special education setting in which a majority of the students in regular attendance are (i) provided special education and related services and (ii) assigned to a self-contained~~

~~classroom or other special education setting for at least 50 percent of the instructional day~~, the school division shall ensure that, as soon as practicable, but no later than two (2) school days or upon the student's return to school, the principal or designee shall review the incident with the student(s) involved to discuss:

1. Details of the incident in an effort to assist the student and school personnel in identifying patterns of behaviors, triggers or antecedents.
2. Alternative positive behaviors or coping skills the student may utilize to prevent or reduce behaviors that may result in the application of physical restraint or seclusion.

F. 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.

~~Nothing in these regulations shall be construed to require school divisions to develop and implement notification and reporting requirements for incidents involving (i) briefly holding a student in order to calm or comfort the student; (ii) holding a student's hand or arm to escort the student safely from one area to another; (iii) the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control.~~

8 VAC 20-750-~~670~~. Policies and procedures.

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

1. A statement of intention that the school division will encourage the use of positive behavioral interventions and supports to reduce and prevent the need for the use of physical restraint and seclusion.

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2. Examples of the positive behavioral interventions and support strategies consistent with the student’s rights to be treated with dignity and to be free from abuse the school division uses to address student behavior, including the appropriate use of effective alternatives to physical restraint and seclusion
3. A description of initial and advanced training for school personnel that addresses (a) appropriate use of effective alternatives to physical restraint and seclusion; and (b) the proper use of restraint and seclusion.
4. A statement of the circumstances in which physical restraint and seclusion may be employed, which shall be no less restrictive than that set forth in [8 VAC 20-750-40](#) and [8 VAC 20-750-50](#).
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

1 | (d) securing of any room in which a student is placed in seclusion. These provisions
2 | shall ensure that any seclusion room or area meet specifications for size and
3 | viewing panels that ensure the student’s safety at all times, including during a fire
4 | or other emergency, as required by this chapter.

5 |
6 | ~~(d)~~(e) the actions of school resource officers under any Memorandum of
7 | Understanding between the school division and local law enforcement.
8 |

9 | B. Each school division shall review its policies and procedures regarding physical restraint
10 | and seclusion at least annually, and shall update these policies and procedures as
11 | appropriate. In developing, reviewing, and revising its policies, school divisions shall
12 | consider the distinctions in emotional and physical development between elementary and
13 | secondary students and between students with and without disabilities.

14 |
15 | C. Consistent with § 22.1-253.13:1.D, a current copy of a school division’s policies and
16 | procedures regarding restraint and seclusion shall be posted on the school division’s Web
17 | site and shall be available to employees and to the public. School boards shall ensure that
18 | printed copies of such policies and procedures are available as needed to citizens who do
19 | not have online access.

20 |
21 | ~~C.D.~~ In developing its policies and procedures, school divisions shall give due
22 | consideration to practices that encourage parent involvement and collaboration with
23 | regard to these matters.
24 |

25 | **8 VAC 20-750-~~780~~. Prevention; multiple uses of restraint or seclusion.**
26 |

27 | A. In the initial development and subsequent review and revision of a student’s IEP or
28 | Section 504 plan, the student’s IEP or Section 504 team shall consider whether the
29 | student displays behaviors that are likely to result in the use of physical restraint or
30 | seclusion. If the IEP or Section 504 team determines that a future use is likely, the team
31 | shall consider, among other things, the need for (i) an FBA; (ii) a new or revised BIP that

1 | addresses the underlying causes or purposes of the behaviors as well as de-escalation
2 | strategies, conflict prevention, and positive behavioral interventions; ~~and~~ (iii) ~~and~~ any
3 | new or revised behavioral goals; and (iv) any additional evaluations or reevaluations.

4 |
5 | Within 10 school days following the ~~third~~ second school day in a single school year on
6 | which an incident of incident in which involving the use of physical restraint or seclusion
7 | has occurred in a single school year, the student's IEP or 504 team shall meet to discuss
8 | the incident and to consider, among other things, the need for (i) an FBA; (ii) a new or
9 | revised BIP that addresses the underlying causes or purposes of the behaviors as well as
10 | de-escalation strategies, conflict prevention, and positive behavioral interventions; ~~and~~
11 | (iii) ~~and~~ any new or revised behavioral goals; and (iv) any additional evaluations or
12 | reevaluations.

13 |
14 | B. For students not described in Subsection A, within 10 school days of the ~~third~~ second
15 | school day in a single school year on which an incident of incident involving the use of
16 | physical restraint or seclusion has occurred, a team consisting of the parent, the principal
17 | or designee, a teacher of the student, a staff member involved in the incident (if not the
18 | teacher or administrator already invited), and other appropriate staff members, such as a
19 | school psychologist, school guidance office, or school resource officer, as determined by
20 | the school division, shall meet to discuss the incident and to consider, among other
21 | things, the need for (i) an FBA; (ii) a new or revised BIP that addresses the underlying
22 | causes or purposes of the behaviors as well as de-escalation strategies, conflict
23 | prevention, and positive behavioral interventions; and (iii) a referral for evaluation.

24 |
25 | C. Nothing in this section shall be construed to (i) excuse the team or its individual members
26 | from the obligation to refer the student for evaluation if the team or members have reason
27 | to suspect that the student may be a student with a disability; or (ii) prohibit the
28 | completion of an FBA or BIP for any student, with or without a disability, who might
29 | benefit from these measures but whose behavior has resulted in fewer than ~~three~~ two
30 | incidents of physical restraint or seclusion in a single school year.

1 | 8 VAC 20-750-~~890~~. Annual Reporting.

2
3 | ~~The requirements of this section shall only apply to instances in which physical restraint~~
4 | ~~and seclusion are employed in a self-contained classroom or other special education~~
5 | ~~setting in which a majority of the students in regular attendance are (i) provided special~~
6 | ~~education and related services and (ii) assigned to a self-contained classroom or other~~
7 | ~~special education setting for at least 50 percent of the instructional day.~~

8
9 The principal or his designee shall submit to the division superintendent a report on the
10 use of physical restraint and seclusion in the school based on the individual incident
11 reports completed and submitted to the principal or designee by school personnel
12 pursuant to 8 VAC 20-750-40.D, above. The division superintendent shall annually
13 report the frequency of such incidents to the Superintendent of Public Instruction on
14 forms that shall be provided by the Department of Education and shall make such
15 information available to the public.

16 |
17 |
18 | 8 VAC 20-750-~~10090~~. Training.

19
20 School divisions that employ physical restraint or seclusion shall:

21
22 | (i) ensure that all school personnel ~~are periodically trained in the use of physical restraint~~
23 | ~~and seclusion; include all school personnel~~ receive initial training that ~~shall focus~~es on
24 | skills related to positive behavior support, conflict prevention, de-escalation, and crisis
25 | response;

26
27 | (ii) ensure that all school personnel ~~are periodically trained~~ receive initial periodic training
28 | regarding the regulations, policies, and procedures governing the use of physical
29 | restraint and seclusion;

1 (iii) provide advanced training in the use of physical restraint and seclusion for at least one
2 administrator in every school building, and for personnel assigned to work with any
3 student whose IEP or Section 504 team determines is likely to be physically restrained or
4 secluded, or for any other student, who the principal determines is likely to be physically
5 restrained or secluded; school personnel assigned to a self-contained classroom or other
6 special education setting in which a majority of the students in regular attendance are (a)
7 provided special education and related services and (b) assigned to a self-contained
8 classroom or other special education setting for at least 50 percent of the instructional
9 day; and

10
11 (iv) ensure that any initial or advanced training is evidence-based.

12
13 **8 VAC 20-750-1010. Construction and Interpretation.**

14
15 Nothing in this chapter shall be construed to modify or restrict:

16
17 (i) the initial authority of teachers to remove students from a classroom pursuant to Va.
18 Code § 22.1-276.2;

19
20 (ii) the authority and duties of school resource officers and school security officers, as
21 defined in Va. Code § 9.1-101;

22
23 ~~(ii)~~(iii) the authority of the Virginia Department of Juvenile Justice with regard to
24 students in its custody at any of its sites or in any of its programs;

25
26 (iv) the civil immunity afforded teachers employed by local school boards for any acts or
27 omissions resulting from the supervision, care or discipline of students when such acts or
28 omissions are within such teacher's scope of employment and are taken in good faith in
29 the course of supervision, care, or discipline of students, unless such acts or omissions
30 were the result of gross negligence or willful misconduct, as provided in Va. Code §
31 8.01-220.1:2.

Attachment B
March 2017

1 |
2 | (iii)(v) _____

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, as defined in 8 VAC 20-750-20.

1 To comply with these regulations, school personnel must first determine whether the action
2 constitutes restraint or seclusion, as defined in 8 VAC 20-750-10. If the action does not meet the
3 definition, or if the action falls under any of the “does not include” portions of the definitions in
4 8 VAC 20-750-10, then school personnel may act within their reasonable discretion. If the
5 action falls within the definition of restraint or seclusion, it may be used, but only under the
6 circumstances described in 8 VAC 20-750-40 and 8 VAC 2-750-50, and is subject to the other
7 requirements of this chapter. In addition, 8 VAC 20-750-30 identifies certain practices that
8 constitute restraint or seclusion that may be detrimental to the health, safety or dignity of the
9 student and that may never be used by school personnel.

10

11 ***8 VAC 20-750-10. Definitions related to permitted and prohibited actions.***

12

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

15

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

19

20 1. Noxious odors and tastes.

21

22 2. Water and other mists or sprays.

23

24 3. Blasts of air.

25

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

27

28 5. Verbal and mental abuse.

29

30 6. Forced exercise when:

31

- 1 a. The student’s behavior is related to his disability;
- 2
- 3 b. The exercise would have a harmful effect on the student’s health; or
- 4
- 5 c. The student’s disability prevents participation in such activities.
- 6
- 7 7. Deprivation of necessities, including:
- 8
- 9 a. Food and liquid at a time it is customarily served;
- 10
- 11 b. Medication; or
- 12
- 13 c. Use of restroom.
- 14

15 **“Corporal punishment”** means the infliction of, or causing the infliction of, physical pain on a
16 student as a means of discipline.

17

18 **“Mechanical restraint”** means the use of any material, device or equipment to restrict a
19 student’s freedom of movement.

20

21 The term “mechanical restraint” **does not include** the devices implemented by trained school
22 personnel or used by a student that have been prescribed by an appropriate medical or related
23 services professional and are used with parental consent and for the specific and approved
24 purposes for which such devices were designed, such as:

- 25
- 26 1. Adaptive devices or mechanical supports used to achieve proper body position, balance
27 or alignment to allow greater freedom of mobility than would be possible without the use
28 of such devices or mechanical supports;
- 29
- 30 2. Vehicle restraints, including seat belts, when used as intended during the transport of a
31 student in a moving vehicle;

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3. Restraints for medical immobilization;

4. Orthopedically prescribed devices that permit a student to participate in activities without risk of harm; or

5. High chairs and feeding stations used for age and/or developmentally appropriate students.

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

“Physical restraint” means a personal restriction that immobilizes or reduces the ability of a student to move freely.

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

“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..

Provided that no such room or space is locked, the term “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

1 student for a short period of time from the room or a separate area of the room to provide the
2 student with an opportunity to regain self-control, so long as the student is in a setting from
3 which he is not physically prevented from leaving; (vi) the removal of a student for disruptive
4 behavior from a classroom by the teacher, as provided in Va. Code § 22.1-276.2; and (vii)
5 confinement of a student alone in a room or area from which the student is physically prevented
6 from leaving during the investigation and questioning of the student by school employees
7 regarding the student's knowledge of or participation in events constituting a violation of the
8 code of student conduct, such as a physical altercation, or an incident involving drugs or
9 weapons. .

10

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

13

14 **8 VAC 20-750-20. Other definitions.**

15

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

18

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

22

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

24

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

27

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

29

30 **“Calendar days”** means consecutive days, inclusive of Saturdays and Sundays. Whenever any
31 period of time fixed by this chapter expires on a Saturday, Sunday, or federal or state holiday, the

1 period of time for taking such action shall be extended to the next day that is not a Saturday,
2 Sunday, or federal or state holiday.

3

4 **“Child with a disability” or “student with a disability”** means a public elementary or
5 secondary school student evaluated in accordance with the provisions of 8 VAC 20-81 as having
6 an intellectual disability, a hearing impairment (including deafness), a speech or language
7 impairment, a visual impairment (including blindness), a serious emotional disability (referred to
8 in 8 VAC 20-81 as an emotional disability), an orthopedic impairment, autism, traumatic brain
9 injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple
10 disabilities who, by reason thereof, requires special education and related services. This also
11 includes developmental delay if the school division recognizes this category as a disability under
12 8 VAC 20-81-80.M.3. If it is determined through an appropriate evaluation that a child has one
13 of the disabilities identified but only needs related services, and not special education, the child
14 is not a child with a disability under 8 VAC 20-81. If the related service required by the child is
15 considered special education rather than a related service under Virginia standards, the child
16 would be determined to be a child with a disability. As used in this chapter, the disability
17 categories set forth in this definition and the terms “special education” and “related services”
18 shall have the meanings set forth in 8 VAC 20-81-10.

19

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

21

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

23

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

27

28 **“Functional behavioral assessment” or “FBA”** means a process to determine the underlying
29 cause or functions of a student’s behavior that impede the learning of the student or the learning
30 of the student’s peers. A functional behavioral assessment may include a review of existing data
31 or new testing data or evaluation as determined as set forth in 8 VAC 20-750-70.

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

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

“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.

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

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

1 (iv) pre-school students enrolled in a program operated by a school division or receiving services
2 from school division personnel.

3
4 As used in these regulations, “student” or “students” shall not include children meeting
5 compulsory attendance requirements of § 22.1-254 by (i) enrollment in private, denominational,
6 or parochial schools; (ii) receipt of instruction by a tutor or teacher of qualifications prescribed
7 by the Board of Education and approved by the relevant division superintendent; or (iii) receipt
8 of home instruction pursuant to § 22.1-254. With regard to restraint and seclusion, students
9 placed through public or private means in a private day or residential school for students with
10 disabilities shall be afforded the protections set forth in 8 VAC 20-671 et seq.

11
12 **8 VAC 20-750-30. Prohibitions.**

13
14 The following actions are prohibited in the public elementary and secondary schools in the
15 Commonwealth of Virginia:

- 16
17 1. Use of mechanical restraints.
18
19 2. Use of pharmacological restraints.
20
21 3. Use of aversive stimuli.
22
23 4. Use of restraint or seclusion in any manner that restricts a student’s breathing or harms
24 the student.
25
26 5. Use of physical restraint or seclusion as (a) punishment or discipline; (b) a means of
27 coercion or retaliation; or (c) a convenience, or in any manner other than as provided in 8
28 VAC 20-750-40 and 8 VAC 20-750-50, below.
29
30 6. Use of corporal punishment.
31

1 7. Use of seclusion rooms or freestanding units not meeting the standards set forth in these
2 regulations.

3
4 8. Use of restraint or seclusion when medically or psychologically contraindicated as stated
5 in documentation by the IEP team, 504 team, school professionals, or by a licensed
6 physician, psychologist or other qualified health professional under the scope of the
7 professional's authority.

8
9 Nothing in this section shall be construed to prohibit physical restraint or seclusion under the
10 conditions outlined in 8 VAC 20-750-40 and 8 VAC 20-750-50.

11
12 **8 VAC 20-750-40. Use of physical restraint and seclusion.**

13
14 A. Nothing in this chapter shall be construed to require a school division to employ physical
15 restraint or seclusion in its schools. School divisions electing to use physical restraint
16 and seclusion shall comply with the requirements of these regulations.

17
18 B. School personnel may implement physical restraint or seclusion only when other
19 interventions are, or would be, in the reasonable judgment of the particular school
20 personnel implementing physical restraint or seclusion in an emergency situation,
21 ineffective and only to:

22
23 (i) prevent a student from inflicting serious physical harm or injury to self or others;

24
25 (ii) quell a disturbance that threatens serious physical harm or injury to persons or
26 damage to property where such damage to property also, in the reasonable judgment
27 of school personnel, would threaten serious physical harm or injury to persons;

28
29 (iii) remove a student from the scene of a disturbance that threatens physical injury to
30 persons or damage to property where such damage to property also, in the reasonable

1 judgment of school personnel, would threaten serious physical harm or injury to
2 persons;

3

4 (iv) defend self or others;

5

6 (v) obtain possession of controlled substances or paraphernalia which are upon the
7 person of the student or within the student's control; or

8

9 (vi) obtain possession of weapons or other dangerous objects that are upon the person of
10 the student or within the student's control.

11

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

15

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

20

21 E. Any incident involving physical restraint or seclusion in any of the circumstances
22 described above shall be subject to the requirements of 8 VAC 20-750-50 through 8 VAC
23 20-750-100, inclusive.

24

25 ***8 VAC 20-750-50. Seclusion; Standards for Use.***

26

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

30

- 1 1. Any seclusion room or area shall be free of any objects or physical features that may
2 cause injury to the student.
3
 - 4 2. Any seclusion room or area shall be of sufficient dimensions, and shall have
5 sufficient lighting, heating, cooling and ventilation to comport with the dignity and
6 safety of the student.
7
 - 8 3. Windows in the seclusion room shall be constructed to minimize breakage and
9 otherwise prevent the occupant from harming himself.
10
 - 11 4. All space in the seclusion room shall be visible through the door, either directly or by
12 mirrors.
13
- 14 B. School divisions electing to use seclusion as authorized by this chapter shall provide for
15 the continuous visual monitoring of any seclusion, either by the presence of school
16 personnel in the seclusion room or area or observation by school personnel through a
17 window, viewing panel, or half-door.
18
- 19 C. School divisions electing to use seclusion as authorized by this chapter shall include
20 within its local policies and procedures provisions that address the appropriate use and
21 duration of seclusion based upon the age and development of the student.
22

23 **8 VAC 20-750-60. Notification and reporting.**
24

- 25 A. When any student has been physically restrained or secluded:
26
- 27 (i) the staff member involved shall report the incident and the use of any related first aid
28 to the school principal or designee as soon as possible by the end of the school day of
29 in which the incident occurred; and
30

1 (ii) the school principal or his designee, or other school personnel shall make a
2 reasonable effort to ensure that direct contact is made with the parent, either in person
3 or through telephone conversation, or other means of communication authorized by
4 the parent, such as email, to notify the parent of the incident and any related first aid
5 on the day the incident occurred.

6
7 B. When any student has been physically restrained or secluded after the regular school
8 day, the notifications required by Subsection A shall be made as soon as practicable in
9 compliance with the school division's school crisis, emergency management, and medical
10 emergency response plan required by Va. Code § 22.1-279.8.

11
12 C. As soon as practicable, but no later than two school days after an incident in which
13 physical restraint or seclusion has been implemented, the school employee involved in
14 the incident or other school personnel, as may be designated by the principal, shall
15 complete and provide to the principal or designee, a written incident report. The school
16 division shall provide the parent with a copy of the incident report within seven (7)
17 calendar days of the incident.

18
19 The written incident report shall contain information sufficient to inform the parent about
20 the incident. Such information would typically include the following::

- 21
22 1. Student name, age, gender, grade, ethnicity;
23
24 2. Location of the incident;
25
26 3. Date, time, and total duration of incident, including documentation of the beginning
27 and ending time of each application of physical restraint or seclusion;
28
29 4. Date of report;
30
31 5. Name of person completing the report;

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

D. Following an incident of physical restraint or seclusion, the school division shall ensure that, within two (2) school days, the principal or designee reviews the incident with all staff persons who implemented the use of physical restraint or seclusion to discuss:

- 1 1. Whether the use of restraint or seclusion was implemented in compliance with this
- 2 chapter and local policies; and
- 3
- 4 2. How to prevent or reduce the future need for physical restraint and/or seclusion.
- 5
- 6 E. As appropriate depending on the student’s age and developmental level, following each
- 7 incident of physical restraint or seclusion, the school division shall ensure that, as soon as
- 8 practicable, but no later than two (2) school days or upon the student’s return to school,
- 9 the principal or designee shall review the incident with the student(s) involved to discuss:
- 10
- 11 1. Details of the incident in an effort to assist the student and school personnel in
- 12 identifying patterns of behaviors, triggers or antecedents.
- 13
- 14 2. Alternative positive behaviors or coping skills the student may utilize to prevent or
- 15 reduce behaviors that may result in the application of physical restraint or seclusion.
- 16
- 17 F. The principal or designee shall regularly review the use of physical restraint or seclusion
- 18 to ensure compliance with school division policy and procedures, and, when there are
- 19 multiple incidents within the same classroom or by the same individual, the principal or
- 20 designee shall take appropriate steps to address the frequency of use.

21

22 **8 VAC 20-750-70. Policies and procedures.**

23

- 24 A. Each school division that elects to use physical restraint or seclusion shall develop and
- 25 implement written policies and procedures that meet or exceed the requirements of this
- 26 chapter and that include, at a minimum, the following:
- 27
- 28 1. A statement of intention that the school division will encourage the use of positive
- 29 behavioral interventions and supports to reduce and prevent the need for the use of
- 30 physical restraint and seclusion.
- 31

- 1 2. Examples of the positive behavioral interventions and support strategies consistent
2 with the student’s rights to be treated with dignity and to be free from abuse the
3 school division uses to address student behavior, including the appropriate use of
4 effective alternatives to physical restraint and seclusion
5
- 6 3. A description of initial and advanced training for school personnel that addresses (a)
7 appropriate use of effective alternatives to physical restraint and seclusion; and (b) the
8 proper use of restraint and seclusion.
9
- 10 4. A statement of the circumstances in which physical restraint and seclusion may be
11 employed, which shall be no less restrictive than that set forth in 8 VAC 20-750-40
12 and 8 VAC 20-750-50.
13
- 14 5. Provisions addressing the:
15
- 16 (a) notification of parents regarding incidents of physical restraint or seclusion,
17 including the manner of such notification;
18
- 19 (b) documentation of the use of physical restraint and seclusion;
20
- 21 (c) continuous visual monitoring of the use of any physical restraint or seclusion to
22 ensure the appropriateness of such use and the safety of the student being
23 physically restrained or secluded, other students, school personnel, and others.
24 These provisions shall include exceptions for emergency situations in which
25 securing visual monitoring before implementing the physical restraint or seclusion
26 would, in the reasonable judgment of the school employee implementing the
27 physical restraint or seclusion, result in serious physical harm or injury to persons
28 or damage to property; and
29
- 30 (d) securing of any room in which a student is placed in seclusion. These provisions
31 shall ensure that any seclusion room or area meet specifications for size and

1 viewing panels that ensure the student's safety at all times, including during a fire
2 or other emergency, as required by this chapter.

3
4 (e) the actions of school resource officers under any Memorandum of Understanding
5 between the school division and local law enforcement.
6

7 B. Each school division shall review its policies and procedures regarding physical restraint
8 and seclusion at least annually, and shall update these policies and procedures as
9 appropriate. In developing, reviewing, and revising its policies, school divisions shall
10 consider the distinctions in emotional and physical development between elementary and
11 secondary students and between students with and without disabilities.
12

13 C. Consistent with § 22.1-253.13:1.D, a current copy of a school division's policies and
14 procedures regarding restraint and seclusion shall be posted on the school division's Web
15 site and shall be available to employees and to the public. School boards shall ensure that
16 printed copies of such policies and procedures are available as needed to citizens who do
17 not have online access.
18

19 D. In developing its policies and procedures, school divisions shall give due consideration to
20 practices that encourage parent involvement and collaboration with regard to these
21 matters.
22

23 **8 VAC 20-750-80. Prevention; multiple uses of restraint or seclusion.**
24

25 A. In the initial development and subsequent review and revision of a student's IEP or
26 Section 504 plan, the student's IEP or Section 504 team shall consider whether the
27 student displays behaviors that are likely to result in the use of physical restraint or
28 seclusion. If the IEP or Section 504 team determines that a future use is likely, the team
29 shall consider, among other things, the need for (i) an FBA; (ii) a new or revised BIP that
30 addresses the underlying causes or purposes of the behaviors as well as de-escalation

1 strategies, conflict prevention, and positive behavioral interventions; (iii) any new or
2 revised behavioral goals; and (iv) any additional evaluations or reevaluations.

3
4 Within 10 school days following the second school day in a single school year on which
5 an incident of physical restraint or seclusion has occurred, the student's IEP or 504 team
6 shall meet to discuss the incident and to consider, among other things, the need for (i) an
7 FBA; (ii) a new or revised BIP that addresses the underlying causes or purposes of the
8 behaviors as well as de-escalation strategies, conflict prevention, and positive behavioral
9 interventions; (iii) any new or revised behavioral goals; and (iv) any additional
10 evaluations or reevaluations.

11
12 B. For students not described in Subsection A, within 10 school days of the second school
13 day in a single school year on which an incident of physical restraint or seclusion has
14 occurred, a team consisting of the parent, the principal or designee, a teacher of the
15 student, a staff member involved in the incident (if not the teacher or administrator
16 already invited), and other appropriate staff members, such as a school psychologist,
17 school guidance office, or school resource officer, as determined by the school division,
18 shall meet to discuss the incident and to consider, among other things, the need for (i) an
19 FBA; (ii) a new or revised BIP that addresses the underlying causes or purposes of the
20 behaviors as well as de-escalation strategies, conflict prevention, and positive behavioral
21 interventions; and (iii) a referral for evaluation.

22
23 C. Nothing in this section shall be construed to (i) excuse the team or its individual members
24 from the obligation to refer the student for evaluation if the team or members have reason
25 to suspect that the student may be a student with a disability; or (ii) prohibit the
26 completion of an FBA or BIP for any student, with or without a disability, who might
27 benefit from these measures but whose behavior has resulted in fewer than two incidents
28 of physical restraint or seclusion in a single school year.

1 **8 VAC 20-750-90. Annual Reporting.**

2

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

10

11 **8 VAC 20-750-100. Training.**

12

13 School divisions that employ physical restraint or seclusion shall:

14

15 (i) ensure that all school personnel receive initial training that focuses on skills related
16 to positive behavior support, conflict prevention, de-escalation, and crisis response;

17

18 (ii) ensure that all school personnel receive initial training regarding the regulations,
19 policies, and procedures governing the use of physical restraint and seclusion;

20

21 (iii) provide advanced training in the use of physical restraint and seclusion for at least
22 one administrator in every school building, and for personnel assigned to work with
23 any student whose IEP or Section 504 team determines the student is likely to be
24 physically restrained or secluded, or for any other student, who the principal
25 determines is likely to be physically restrained or secluded; and

26

27 (iv) ensure that any initial or advanced training is evidence-based.

28

29 **8 VAC 20-750-101. Construction and Interpretation.**

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

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- (i) the initial authority of teachers to remove students from a classroom pursuant to Va. Code § 22.1-276.2;
- (ii) the authority and duties of school resource officers and school security officers, as defined in Va. Code § 9.1-101;
- (iii) the authority of the Virginia Department of Juvenile Justice with regard to students in its custody at any of its sites or in any of its programs;
- (iv) 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.