

# Virginia Board of Education Agenda Item



Agenda Item: G

Date: July 23, 2015

<b>Title</b>	Report on the Timeline for the Development of <i>Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia</i>		
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**Purpose of Presentation:**

For information only. No action required.

**Previous Review or Action:**

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

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

**Action Requested:**

No action requested.

**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 enacted HB 1443, amending the *Code of Virginia* by adding section 22.1-279.1:1, relating to the use of seclusion and restraint in public schools. The bill requires the Board of Education (BOE) 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:**

Pursuant to 22.1-279.1:1 of the *Code*, the proposed regulations must address the following key components:

- Definitions of restraint and seclusion
- Criteria for use
- Restrictions for use
- Training requirements for staff and administrators
- Notification requirements to parents and families
- Reporting requirements to the Virginia Department of Education
- Follow-up requirements to positively address future behavioral concerns with students involved

It is important to note that the *Regulations Governing the Operation of Private Day Schools for Students with Disabilities and Educational Programs Offered in Group Homes and Residential Facilities in the Commonwealth*, which the BOE adopted on June 27, 2013, were approved by the Governor and will be published in the Virginia Register of Regulations on July 27, 2015. These regulations will become effective August 26, 2015. These regulations also contain requirements governing the practice of restraint and seclusion in private special education schools and may serve as a beginning model for the development of the *Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia*.

**Impact on Fiscal and Human Resources:**

These regulations will have significant fiscal and human resource costs. Training requirements and reporting requirements will be the two areas of both significant fiscal and human resource costs. Staff will work closely with stakeholders to develop these two areas to minimize potential impact. Additional funding will be needed by the General Assembly to assist local school divisions and the Virginia Department of Education (VDOE) to implement these regulations.

**Timetable for Further Review/Action:**

Virginia Department of Education staff is currently conducting internal workgroups to review other states' regulations related to the use of seclusion and restraint, as well as analyzing ways to use the *Regulations Governing the Operation of Private Day Schools for Students with Disabilities and Educational Programs Offered in Group Homes and Residential Facilities in the Commonwealth* to draft recommended components for stakeholder review. Tentative dates in August have been scheduled to bring a wide variety of external stakeholders together to explore ideas and recommendations. Additional stakeholder meetings will be scheduled in September and October to develop a draft of the proposed regulations. The proposed *Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia* will be presented to the Board of Education for first review in November 2015.

As stated in the Notice of Intended Regulatory Action (NOIRA), the BOE will conduct at least two public hearings situated in geographically centralized locations. These hearings are recommended to be scheduled in December 2015, before the January 2016 BOE meeting. Public comment will be collected via email, mail, fax and phone. A summary of those public comments will be provided to the BOE at the January meeting. Depending upon the level of public comment and reaction to the draft regulations, a second review might need to be completed before final review of the proposed stage by the Board.

Once the BOE accepts the proposed stage regulations in either January or February, the process will be governed by the Administrative Process Act (see attachment A). The proposed stage will be submitted for Executive Branch Review which includes the Attorney General's Office, Department of Planning and Budget, Cabinet Secretary and the Governor. Upon approval of the proposed stage, and publication in the Register, there will be a 60 day public comment period and a public hearing. Upon the ending of the public comment period, VDOE staff will review all public comments submitted to determine if revisions are needed. The final stage of the regulations will be presented to the Board, followed by Executive Branch Review. Once approved by the Governor they will be published in the Register. After a 30 day final adoption period, the final regulations become effective.

In summary, the following timeline for the development of the regulations is proposed:

- July 2015 – Internal working groups to review other states' regulations and the *Regulations Governing the Operation of Private Day Schools for Students with Disabilities and Educational Programs Offered in Group Homes and Residential Facilities in the Commonwealth*
- August – October 2015 – External stakeholders begin drafting proposed regulations
- November 2015 – Board receives first review of proposed regulations
- December 2015 – Public comment on proposed regulations is collected via hearings and writing
- January or February 2016 – Board receives final review of proposed regulations
- Upon Board approval of proposed regulations, the Administrative Process Act will guide the process for review and approval of the proposed stage, public comment, submission of the final stage, review and approval of the final stage, and final adoption.

**Superintendent's Recommendation:**

The Superintendent of Public Instruction recommends that the Board of Education receive the report.

# Standard regulatory process: Guide for state agencies

