



VIRGINIA BOARD OF EDUCATION

AGENDA ITEM

Agenda Item: K

Date: January 27, 2022

Title: **First Review of Fast-Track Action for Legislative Mandate to the Regulations Governing the Operation of Private Schools for Students with Disabilities (8VAC20-671)**

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Purpose of Presentation:

Action required by state or federal law or regulation.

Executive Summary

During the 2021 Special Session I, the Virginia General Assembly enacted [Chapter 552](#) of the Acts of the Assembly, which amended and reenacted Chapter 1289 of the 2020 Acts of the Assembly, Special Session I, which appropriated funds for the 2020-2022 Biennium. [Item 138.I](#) of Chapter 552 directed the Virginia Board of Education (Board) to “develop and promulgate regulations for private special education day schools on restraint and seclusion that establish the same requirements for restraint and seclusion as those for public schools.”

On September 23, 2021, the Board approved the exempt action “Legislative mandate to establish the same requirements on restraint and seclusion for private special education day schools as for public schools.” However, in consultation with the Office of the Attorney General, it was determined that the intended action was not narrowly tailored to effectuate the legislative mandate. As a result, the action was withdrawn. The present action has been developed by Virginia Department of Education (VDOE) staff in consultation with the Office of the Attorney General and properly effectuates the legislative mandate. Since the changes from the previous iteration are substantial, the item is being represented to the Board for approval as a fast-track regulatory action.

The *Regulations Governing the Operation of Private Schools for Students with Disabilities* (8VAC20-671) are already in close alignment to the *Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia* (8VAC20-750). The amendments to the *Regulations Governing the Operation of Private Schools for Students with Disabilities* adds definitions, adds requirements associated with the development of policies and procedures related to the use of seclusion and application of restraints, and alters the requirements for reporting the use of seclusion and application of restraints.

All regulatory changes are necessary to “establish the same requirements for restraint and seclusion [for private special education day schools] as those for public schools”—as directed by the General Assembly—with minimal, technical modifications to account for the differences between private day schools and public schools.

Action Requested:

Other. Specify below:

The Board is requested to waive first review and approve this fast-track regulatory action.

Rationale for Action:

The regulatory change is the result of a legislative mandate. The change is to enact the General Assembly’s directive to the Board. Board staff expects that this action will be noncontroversial because the agency is exercising minimal discretion in effectuating the legislative mandate.

Previous Review or Action:

Date: September 23, 2021

Action: First and Final Review of the exempt action “Legislative mandate to establish the same requirements on restraint and seclusion for private special education day schools as those for public schools.”

Background Information and Statutory Authority:

[Item 138.I](#) of Chapter 552 directed the Board of Education to “develop and promulgate regulations for private special education day schools on restraint and seclusion that establish the same requirements for restraint and seclusion as those for public schools.”

The Board’s overall regulatory authority is found in § [22.1-16](#) of the *Code of Virginia*, which states that “[t]he Board of Education may adopt bylaws for its own government and promulgate

such regulations as may be necessary to carry out its powers and duties and the provisions of this title.”

The Board’s regulatory authority over private schools for students with disabilities is found in § [22.1-321](#), which states that “[t]he Board of Education shall make regulations not inconsistent with law for the management and conduct of [schools for students with disabilities]. The regulations may include standards for programs offered by the schools.”

Timetable for Further Review/Action:

Following Board approval, this fast-track regulatory action will be submitted to Town Hall pursuant to the Administrative Process Act for executive branch review.

Impact on Fiscal and Human Resources:

This action will not impact VDOE resources, nor will there be an impact on local school divisions. The action will have an impact on special education day schools, but it is anticipated that any costs associated with implementation will be absorbed within existing operational resources.

Chapter 671. Regulations Governing the Operation of Private Schools for Students with Disabilities

8VAC20-671-10. Definitions.

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

~~"504 Plan" means a written plan required under § 504 of the Rehabilitation Act of 1973 (29 USC § 701 et seq.), as amended. A student's 504 Plan details modifications, accommodations, and services that are needed for the student with a disability to participate in and enjoy the benefits of school programs at the same level as his peers without disabilities.~~

"Applicant" means the person, partnership, corporation, or association that has completed and submitted an application to the department for approval for a license to operate a school for students with disabilities in Virginia.

"Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance. A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in this definition are satisfied.

~~"Aversive stimuli" means any action used to punish a student or to eliminate, reduce, or discourage the problem behavior by use of any of the following or any other actions that are painful, humiliating, degrading, or abusive interventions that are intended to induce pain or discomfort to a student for the purposes of punishing the student or eliminating or reducing maladaptive behaviors, such as:~~

1. Noxious odors and tastes.
2. Water and other mists or sprays.
3. Blasts of air.
4. Corporal punishment as defined in § 22.1-279.1 of the Code of Virginia.
5. Verbal and mental abuse.
- ~~6. Placement of a student alone in a room, where the door is locked or held shut and the student is prevented from leaving the room.~~

~~7~~ 6. Forced exercise where:

- a. The student's behavior is related to ~~his~~ the student's disability;

- b. The exercise would have a harmful effect on the student's health; or
- c. The student's disability prevents participation in activities.

§ 7. Deprivation of necessities, including:

- a. Food ~~or~~ and liquid at a time when it is customarily served;
- b. Medication; or
- c. Use of the restroom.

"Behavioral intervention plan" or "BIP" means a plan that utilizes positive behavioral interventions and supports to address (i) behaviors that interfere with ~~the a student's~~ learning ~~of students with disabilities~~ or ~~with the learning that~~ of others or (ii) behaviors that require disciplinary action.

"Board" means the State Board of Education.

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

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

"Child with a disability" or "student with a disability" means an elementary or secondary school student evaluated in accordance with the provisions of Regulations Governing Special Education Programs for Children with Disabilities in Virginia (the Virginia Regulations), at 8VAC20-81, as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disability (referred to in the Virginia Regulations, at 8VAC20-81, as an emotional disability), an orthopedic impairment, autism, traumatic brain injury, other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities who, by reason thereof, requires special education and related services. This also includes developmental delay if the sending school division recognizes this category as a disability under the Virginia Regulations, at 8VAC20-81-80 M 3. If it is determined through an appropriate evaluation that a child has one of the disabilities identified but only needs related services and not special education, the child is not a child with a disability under the Virginia Regulations, at 8VAC20-81. If the related service required by the child is considered special education rather than a related service under Virginia standards, the child would be determined to be a child with a disability. As used in this chapter, the disability categories set forth in this definition and the terms "special education" and "related services" shall have the meanings set forth in the Virginia Regulations, at 8VAC20-81-10.

"Complaint" means an accusation that a school has violated one or more of the requirements of this chapter or other applicable regulation.

"Consent" means:

1. The parent(s) parent or eligible student has been fully informed of all information relevant to the activity for which consent is sought in the parent's or eligible student's native language or other mode of communication;
2. The parent(s) parent or eligible student understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
3. The parent(s) parent or eligible student understands that the granting of consent is voluntary on the part of the parent(s) parent or eligible student and may be revoked any time.

If a parent or eligible student revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked.) Revocation ceases to be relevant after the activity for which consent was obtained was completed.

The meaning of the term "consent" is not the same as the meaning of the term "agree" or "agreement." "Agree" or "agreement" refers to an understanding between the parent or eligible student and the school about a particular matter and as required in this chapter. There is no requirement that an agreement be in writing, unless stated in this chapter. The school should document its agreement.

"Controlled substance" means a drug or other substance identified under Schedules I, II, III, IV, or V of the Controlled Substances Act, 21 USC § 812(c).

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

"Corrective action plan" means the school's plan of action to correct a finding of noncompliance applicable to this chapter or other applicable regulations. The plan must identify specific timelines and the person(s) responsible for implementation.

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

"Deaf-blindness" means simultaneous hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

"Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects the child's educational performance.

"Department" means the Virginia Department of Education.

"Developmental delay" means a disability affecting a child age two by September 30 through six, inclusive:

1. Who (i) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development,

cognitive development, communication development, social or emotional development, or adaptive development or (ii) has an established physical or mental condition that has a high probability of resulting in developmental delay;

2. The delay is not primarily a result of cultural factors, environmental or economic disadvantage, or limited English proficiency; and
3. The presence of one or more documented characteristics of the delay has an adverse effect on educational performance and makes it necessary for the student to have specially designed instruction to access and make progress in the general educational activities for this age group.

"Disability category" means a listing of special education eligibility classifications for students served including: autism, deaf-blindness, developmental delay, emotional disability, hearing impairment (including deafness), intellectual disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment (including blindness).

"Education records" means those records that are directly related to a student and maintained by the school or by a party acting for the school. Education records may be recorded in any manner including, but not limited to, handwriting, print, computer media, video or audiotape, film, microfilm, or microfiche. Education records include discipline and medical records. Education records include electronic exchanges between school personnel and ~~parent(s)~~ parent regarding matters associated with the child's educational program.

"Eligible student" means a student who has reached 18 years of age.

"Emotional disability" or "emotional disturbance" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

1. An inability to learn that cannot be explained by intellectual, sensory, or health factors;
2. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
3. Inappropriate types of behavior or feelings under normal circumstances;
4. A general pervasive mood of unhappiness or depression; or
5. A tendency to develop physical symptoms or fears associated with personal or school problems.

Emotional disability or emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance or emotional disability as defined in this section.

"Evaluation" means procedures used in accordance with 8VAC20-81 to determine whether a child has a disability and the nature and extent of the special education and related services the child needs.

“Functional behavioral assessment” or “FBA” means a process to determine the underlying cause or functions of a student's behavior that impede the learning of the student or the learning of the student's peers. A functional behavioral assessment may include a review of existing data or new testing data or evaluation as determined as set forth in subsection A of 8VAC20-671-790..

"Funding agency" means a community policy and management team under the Children's Services Act, Chapter 52 (§ 2.2-5200 et seq.) of Title 2.2 of the Code of Virginia; local school division; or local department of social services.

"Guaranty instrument" means a surety bond, irrevocable letter of credit, or certificate of deposit.

"Hearing impairment" means an impairment in hearing in one or both ears, with or without amplification, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in the Regulations Governing Special Education Programs for Children with Disabilities in Virginia (8VAC20-81).

"Illegal drug" means a controlled substance or a prescription drug not prescribed for the person but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health care professional or that is legally possessed or used under any other authority under the Controlled Substances Act, 21 USC § 812(c), or under any other provision of federal law.

"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 for Children with Disabilities in Virginia (8VAC20-81). 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 Instruction Plan" or "IIP" means a written statement for a child who is privately placed or for a child who has not been determined eligible for special education services that is developed, reviewed, and revised at least annually in a team meeting that includes the parent and student when appropriate. The IIP specifies the student's academic level, course of study, individual educational needs, and the educational services the child will receive.

"Individualized education program team" or "IEP team" means a group of individuals described in 8VAC20-81-110 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

"Intellectual disability" means the definition formerly known as "mental retardation" and means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

"Licensee," also known as the sponsor, means the person, partnership, corporation, or association to whom a license is issued and who is legally responsible for compliance with this chapter.

"License to operate" or "license" means a document issued by the state Superintendent of Public Instruction that authorizes approval to operate a school for students with disabilities.

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

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

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

"Multiple disabilities" mean simultaneous impairments (such as intellectual disability with blindness or intellectual disability with orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

"Orthopedic impairment" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

"Other health impairment" means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome, and that adversely affects a child's educational performance.

"Paraprofessional," also known as paraeducator, means an appropriately trained employee who assists and is supervised by qualified professional staff in meeting the requirements of this chapter.

"Parent" means:

1. A person who is:
 - a. A biological or adoptive parent of a child;
 - b. A foster parent, even if the biological or adoptive parent's rights have not been terminated, but subject to subdivision 3 of this definition;

c. A guardian generally authorized to act as the child's parent or make educational decisions for the child (but not the Commonwealth if the child is a ward of the Commonwealth);

d. An individual acting in the place of a biological or adoptive parent (including grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

e. If no party qualified under subdivisions 1 a through 1 d of this definition can be identified, or those parties are unwilling to act as parent, a surrogate parent who has been appointed in accordance with 8VAC20-81-220.

2. The biological or adoptive parent, when attempting to act as the parent pursuant to this section and when more than one party is qualified under subdivision 1 of this definition to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent has had his residual parental rights and responsibilities terminated pursuant to § 16.1-277.01, 16.1-277.02, or 16.1-283 of the Code of Virginia or a comparable law in another state.

3. The local school division shall provide written notice to the biological or adoptive parents at their last known address that a foster parent is acting as the parent pursuant to this section, and the local school division is entitled to rely upon the actions of the foster parent pursuant to this section until such time that the biological or adoptive parent attempts to act as the parent.

4. If a judicial decree or order identifies a specific person or persons among subdivisions 1 a through 1 e of this definition to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of the special education identification, evaluation, and placement of a child and the provision of a free appropriate public education to a child.

"Pat down" means a thorough external body search of a clothed student.

"Personally identifiable information" means information that includes, but is not limited to:

1. The student's name, the child's parent, or other family member;
2. The address of the child;
3. A personal identifier, such as the child's social security number or student number; or
4. A list of personal characteristics that would make the student's identity easily traceable.

"Pharmacological restraints" 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 acting under the scope of the professional's authority for the standard treatment of a student's medical or psychiatric condition and (ii) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional's authority.

"Physical restraint" means ~~the use of approved physical interventions or "hands-on" holds by trained staff to prevent a student from moving his body to engage in a behavior that places him or others at risk of physical harm. a personal restriction that immobilizes or reduces the ability of a student to move freely. The term~~ "Physical physical restraint" does not include:

1. Briefly holding a student in order to calm or comfort the student; ~~or~~
2. Holding a student's hand or arm to escort the student safely from one area to another; or
3. The use of incidental, minor, or reasonable physical contact or other actions designed to maintain order and control.

"Placing agency" means the community policy and management team under the Children's Services Act, Chapter 52 (§ 2.2-5200 et seq.) of Title 2.2 of the Code of Virginia; the local school division; or the local department of social services.

"Privately placed student" means a student placed in a private school for students with disabilities by the parent.

"Publicly placed student" means a student placed in a private school for students with disabilities by a local school division, family assessment and planning team under the Children's Services Act, or court order.

"Qualified personnel" or "qualified staff" means personnel who have met the state-approved or state-recognized certification, licensing, or other comparable requirement applicable to a specific discipline.

"Regular basis" means more than twice a month.

"Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education and includes speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services; social work services in schools; and parent counseling and training. Related services do not include a medical device that is surgically implanted including cochlear implants, the optimization of device functioning (e.g., mapping), maintenance of the device, or the replacement of that device. The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music and dance therapy, if they are required to assist a child with a disability to benefit from special education).

"Restraint" means mechanical restraint, physical restraint, or pharmacological restraint.

"School" means a school for students with disabilities that has a license to operate issued by the Superintendent of Public Instruction.

"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 for students with disabilities " or "schools" means a privately owned and operated preschool, school or educational organization, no matter how titled, maintained, or conducting classes for the purpose of offering instruction, for a consideration, profit or tuition, to persons determined to have autism, deaf-blindness, developmental delay, a hearing impairment including deafness, intellectual disability, multiple disabilities, orthopedic impairment, other health impairment, an emotional disturbance, a specific learning disability, a speech or language impairment, a traumatic brain injury, or a visual impairment including blindness.

"School personnel" means individuals employed by the school on a full-time or part-time basis or as independent contractors or subcontractors as instructional, administrative, and support personnel and includes individuals serving as a student teacher or intern under the supervision of appropriate school personnel.

"Seclusion" means the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. Provided that no such room or space is locked, the term "seclusion" does not include (i) time-out, as defined in this chapter; (ii) in-school suspension; (iii) detention; (iv) student-requested breaks in a different location in the room or in a separate room; (v) removal of a student for a short period of time from the room or a separate area of the room to provide the student with an opportunity to regain self-control, so long as the student is in a setting from which the student is not physically prevented from leaving; (vi) removal of a student for disruptive behavior from a classroom by the teacher; or (vii) confinement of a student alone in a room or area from which the student is physically prevented from leaving during the investigation and questioning of the student by school personnel regarding the student's knowledge of or participation in events constituting a violation of the code of student conduct, such as a physical altercation, or an incident involving drugs or weapons.

"Section 504 plan" means a written plan of modifications and accommodations under Section 504 of the Rehabilitation Act of 1973 (29 USC § 794).

"Serious incident" means:

1. Any accident or injury requiring medical attention by a licensed physician;
2. Any illness that requires hospitalization;
3. Any runaway; or
4. Any event that affects, or potentially may affect, the health, safety, or welfare of any student being served at the school or school-related activity.

"Serious injury" means any injury resulting in bodily hurt, damage, harm, or loss that requires medical attention by a licensed physician.

"Special education" means specially designed instruction to meet the unique needs of a child with a disability.

The term includes:

1. Speech-language pathology services or any other related service, if the service is considered special education rather than a related service under state standards;
2. Vocational education; and
3. Travel training.

"Specially designed instruction" means adapting, as appropriate, to the needs of an eligible child under this chapter, the content, methodology, or delivery of instruction to:

1. Address the unique needs of the child that result from the child's disability; and
2. Ensure access of the child to the general curriculum so that the child can meet the educational standards that apply to all children within the jurisdiction of the local educational agency.

"Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of (i) visual, hearing, or motor disabilities; (ii) intellectual disabilities; (iii) emotional disabilities; or (iv) environmental, cultural, or economic disadvantage.

Dyslexia is distinguished from other learning disabilities due to its weakness occurring at the phonological level. Dyslexia is a specific learning disability that is neurobiological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge.

"Speech or language impairment" means a communication disorder, such as stuttering, impaired articulation, expressive or receptive language impairment, or voice impairment, that adversely affects a child's educational performance.

"Standard precautions" mean universal precautions designed to prevent transmission of HIV, hepatitis B virus (HBV), and other bloodborne pathogens when providing first aid or health care. Standard precautions apply to blood; all body fluids, secretions, and excretions except sweat, regardless of whether or not they contain blood; nonintact skin; and mucous membranes. The precautions are designed to reduce the risk of transmission of microorganisms from both recognized and unrecognized sources of infection when providing first aid or health care. Standard precautions include protective barriers such as gloves, gowns, aprons, masks, or protective eye wear that can reduce the risk of exposure with materials that may contain infectious microorganisms.

"Standards of Learning" or "SOL" means Virginia's rigorous academic standards established by the Board of Education.

"Strip search" means a visual inspection of the body of a student when that student's outer clothing or total clothing is removed, and there is an inspection of the removed clothing. Strip searches are conducted for the detection of contraband.

"Student" means any student, with or without a disability, enrolled in a private school for students with a disability. With regard to restraint and seclusion, students placed through public or private means in a private day or residential school for students with disabilities shall be afforded the protections set forth in this chapter.

"Substantial compliance" means that while there may be noncompliance with one or more regulations that represent minimum risk, compliance clearly and obviously exists with most of the regulations as a whole.

"Superintendent" means the state Superintendent of Public Instruction.

"Teacher of record" means the teacher who is responsible for the delivery of instruction. The teacher of record shall hold a license issued by the Virginia Board of Education.

"Time-out" means ~~assisting a student to regain control by removing the student from his immediate environment to a different open location until the student is calm or the problem behavior has subsided~~ a behavioral intervention in which the student is temporarily removed from the learning activity but in which the student is not confined.

"Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative or to brain injuries induced by birth trauma.

"Visual impairment including blindness" means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

"Volunteer" means any individual who of his own free will and without compensation provides goods or services to the school.

"Virtual learning" means the delivery of instruction through emerging technologies such as satellite, streaming video, or the Internet.

8VAC20-671-650. Prohibitions.

A. The following actions are prohibited:

- ~~1. Restraint and seclusion, except when it is necessary to protect the student or others from personal harm, injury, or death and other less restrictive interventions were unsuccessful~~ Use of mechanical restraints;
- ~~2. Prone "face down" restraints, mechanical restraints, pharmacological restraints, and any other restraint that restricts breathing or harms the child or interferes with the child's ability to communicate~~ Use of prone restraints (i.e., lying face down) or any other restraints that restrict a student's breathing or harm the student;
- ~~3. Deprivation of drinking water or food;~~
- ~~4~~ 3. Limitation on contacts and visits from the student's probation officer, social worker, placing agency representative, or other service provider as appropriate;
- ~~5~~ 4. Any action that is humiliating, degrading, or abusive;
- ~~6~~ 5. ~~Corporal~~ Use of corporal punishment;
- ~~7. Deprivation of approved prescription medication or other necessary services;~~
- ~~8. Denial of access to toilet facilities;~~
- ~~9~~ 6. ~~Application~~ Use of aversive stimuli;
- ~~10~~ 7. Strip and body cavity searches; ~~and~~
- ~~11~~ 8. Discipline, restraint, or implementation of behavior management plans by other students.;
9. Use of pharmacological restraints;
10. Use of seclusion that restricts a student's breathing or harms the student;
11. Use of physical restraint or seclusion as (i) punishment or discipline; (ii) a means of coercion or retaliation; (iii) a convenience; or (iv) to prevent property damage, or in any manner other than as provided in 8VAC20-671-790;
12. Use of seclusion rooms or freestanding units not meeting the standards set forth in this chapter; and
13. Use of restraint or seclusion when medically or psychologically contraindicated as stated in documentation by the IEP team, the student's Section 504 team, school professionals, or by a

licensed physician, psychologist, or other qualified health professional under the scope of the professional's authority.

B. Nothing in this section shall be construed to prohibit physical restraint or seclusion under the conditions outlined in 8VAC20-671-790.

8VAC20-671-660. Managing student behavior in emergency situations.

~~A.~~ Each school shall have written policies and procedures made available annually to students, parents, and placing agencies that include, but are not limited to:

1. Methods for preventing student violence, self-injurious behavior, and suicide, including de-escalation of potentially dangerous behavior occurring among groups of students or with an individual student.
2. A statement that corporal punishment and abusive techniques and interventions are not authorized, permitted, or condoned.
3. A statement that behavior management techniques are applied in order of their degree of intrusiveness or restrictiveness and the conditions under which they may be used by trained personnel.

~~B. Physical restraint or seclusion is allowed only in an emergency situation and only when it is necessary to protect the student or another person from imminent danger of serious physical harm after less intrusive interventions have been attempted and failed to manage that particular behavior and there is a substantial explanation for why other interventions were deemed inadequate or inappropriate.~~

- ~~1. The use of restraint or seclusion, particularly when there is repeated use for an individual child, multiple uses within the same classroom, or multiple uses by the same individual, shall trigger a review and, if appropriate, a revision of behavioral strategies currently in place to address dangerous behavior. If positive behavioral strategies are not in place, staff shall develop them.~~
- ~~2. In cases where a student has a history of dangerous behavior for which restraint or seclusion was considered or used, a school shall have a plan developed in consultation with the parent for (i) teaching and supporting more appropriate behavior and (ii) determining positive methods to prevent behavioral escalations that have previously resulted in the use of restraint or seclusion.~~
- ~~3. Physical restraint or seclusion shall not be used for disciplinary reasons, as a punishment, or retaliation, or for staff's convenience.~~
- ~~4. Each student is entitled to be completely free from any unnecessary use of physical restraint or seclusion.~~
- ~~5. Staff shall continuously monitor the use of physical restraint and seclusion and shall not rely on an electronic surveillance device.~~
- ~~6. Physical restraint may only be implemented, monitored, or discontinued by staff who have received proper training.~~

~~7. The door to any room in which a student is secluded may be held shut only when a staff member is personally securing it. The door must immediately disengage when the staff member steps away from it. The room must meet specification including size and viewing panels that ensure the student's safety at all times including during a fire or other emergency.~~

~~8. Schools shall permit parents to inspect any area used during an emergency for the purpose of seclusion.~~

~~9. The parent shall be informed on the day of each incident of physical restraint or seclusion. The student's home school division and placing agency shall be informed as soon as possible but within 24 hours of the occurrence.~~

~~10. Each application of physical restraint or seclusion shall be fully documented in the student's record including date, time, staff involved, justification for the physical restraint or seclusion, behavior antecedents, less restrictive interventions that were unsuccessfully attempted prior to using physical restraint or seclusion, duration, description of method or methods of physical restraint techniques used, signature of the person completing the report and date, and reviewer's signature and date. The written report shall be made available to the parent within two business days of the occurrence and opportunity given for the parent and student, as appropriate, to discuss the matter with school staff.~~

~~11. Schools shall collect and annually report to the department the number of times restraint and seclusion were used during the school year. The data shall be disaggregated by students and number of occurrences.~~

8VAC20-671-790. Restraint and Seclusion.

A. Nothing in this chapter shall be construed to require a school to employ physical restraint or seclusion. Schools electing to use physical restraint and seclusion shall comply with the requirements of this chapter.

B. Use of physical restraint and seclusion.

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

a. Prevent a student from inflicting serious physical harm or injury to self or others;

b. Quell a disturbance or remove a student from the scene of a disturbance in which such student's behavior or damage to property threatens serious physical harm or injury to persons;

c. Defend self or others from serious physical harm or injury;

d. Obtain possession of controlled substances or paraphernalia that are upon the person of the student or within the student's control; or

e. Obtain possession of weapons or other dangerous objects that are upon the person of the student or within the student's control.

2. Physical restraint and seclusion shall be discontinued as soon as the imminent risk of serious physical harm or injury to self or others presented by the emergency situation has dissipated.

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

4. Unless a student's damage to property creates an imminent risk of serious physical harm or injury to the student or others, the damage of property does not itself indicate an imminent risk of serious physical harm or injury and shall not be the justification for the restraint or seclusion of a student.

5. Any incident involving physical restraint or seclusion in any of the circumstances described in this section shall be subject to the requirements of subsection C through H of this section.

C. Seclusion; standards for use.

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

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

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

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

d. All space in the seclusion room shall be visible through the door, either directly or by mirrors.

2. Schools 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.

3. Schools electing to use seclusion as authorized by this chapter shall include within their policies and procedures provisions that address the appropriate use and duration of seclusion based upon the age and development of the student.

D. Notification and reporting.

1. When any student has been physically restrained or secluded:

a. The school personnel involved shall report the incident and the use of any related first aid to the school administrator or the school administrator's designee as soon as possible by the end of the school day in which the incident occurred;

b. The school administrator or the school administrator's designee, or other school personnel shall make a reasonable effort to ensure that direct contact is made with the student's parent, either in person or through telephone conversation, or other means of communication authorized by the parent, such as email, to notify the parent of the incident and any related first aid on the day the incident occurred; and

c. The student's home school division and placing agency shall be informed as soon as possible following the occurrence; but in no circumstances less than by close of business the next school day

2. When any student has been physically restrained or secluded after the regular school day, the notifications required by subsection 1 of this section shall be made as soon as practicable in compliance with the school's written policies required as part of the contingency plans outlined in 8VAC20-671-380.

3. As soon as practicable, but no later than two school days after an incident in which physical restraint or seclusion has been implemented, the school personnel involved in the incident or other school personnel, as may be designated by the school administrator, shall complete and provide to the administrator or the administrator's designee a written incident report. The school shall provide the parent with a copy of the incident report within seven calendar days of the incident.

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

- a. Student name, age, gender, grade, and ethnicity;
- b. Location of the incident;
- c. Date, time, and total duration of incident, including documentation of the beginning and ending time of each application of physical restraint or seclusion;
- d. Date of report;
- e. Name of person completing the report;
- f. School personnel involved in the incident, their roles in the use of physical restraint or seclusion, and documentation of their completion of the school's training program;
- g. Description of the incident, including the resolution and process of return of the student to the student's educational setting, if appropriate;
- h. Detailed description of the physical restraint or seclusion method used;
- i. Student behavior that justified the use of physical restraint or seclusion;
- j. Description of prior events and circumstances prompting the student's behavior, to the extent known;
- k. Less restrictive interventions attempted prior to the use of physical restraint or seclusion, and an explanation if no such interventions were employed;
- l. Whether the student has an IEP, a Section 504 plan, a BIP, or other plan;
- m. If a student, school personnel, or any other individual sustained bodily injury, the date and time of nurse or emergency response personnel notification and the treatment administered, if any;
- n. Date, time, and method of parental notification of the incident, as required by this section; and
- o. Date, time, and method of school personnel debriefing.

4. Following an incident of physical restraint or seclusion, the school shall ensure that, within two school days, the school administrator or the school administrator's designee

reviews the incident with all school personnel who implemented the use of physical restraint or seclusion to discuss:

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

b. How to prevent or reduce the future need for physical restraint or seclusion.

5. As appropriate, depending on the student's age and developmental level, following each incident of physical restraint or seclusion the school shall ensure that, as soon as practicable, but no later than two school days or upon the student's return to school, the school administrator or the school administrator's designee shall review the incident with the student involved to discuss:

a. Details of the incident in an effort to assist the student and school personnel in identifying patterns of behaviors, triggers, or antecedents; and

b. 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.

6. The school administrator or the school administrator's designee shall regularly review the use of physical restraint or seclusion to ensure compliance with school's policy and procedures. When there are multiple incidents within the same classroom or by the same individual, the school administrator or the school administrator's designee shall take appropriate steps to address the frequency of use.

E. School policies and procedures.

1. Each school 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:

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

b. 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 that the school uses to address student behavior, including the appropriate use of effective alternatives to physical restraint and seclusion.

c. A description of initial and advanced training for school personnel that addresses (i) appropriate use of effective alternatives to physical restraint and seclusion and (ii) the proper use of restraint and seclusion.

d. 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 subsections B and C of this section.

e. Provisions addressing the:

i. Notification of parents regarding incidents of physical restraint or seclusion, including the manner of such notification;

ii. Documentation of the use of physical restraint and seclusion;

iii. Continuous visual monitoring of the use of 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 personnel implementing the physical restraint or seclusion, result in serious physical harm or injury to persons; and

iv. Securing of any room in which a student is placed in seclusion. These provisions shall ensure that any seclusion room or area meet specifications for size and viewing panels that ensure the student's safety at all times, including during a fire or other emergency, as required by this chapter.

2. Each school shall review its policies and procedures regarding physical restraint and seclusion at least annually and shall update these policies and procedures as appropriate. In developing, reviewing, and revising its policies, schools shall consider the distinctions in emotional and physical development between elementary and secondary students and between students with and without disabilities.

3. A current copy of a school's policies and procedures regarding restraint and seclusion shall be available to school personnel, students, parents, and placing and licensing agencies. Schools shall ensure that printed copies of such policies and procedures are available as needed to those who do not have online access.

4. In developing their policies and procedures, schools shall give due consideration to practices that encourage parent involvement and collaboration with regard to these matters.

F. Prevention; multiple uses of restraint and seclusion.

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

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

2. For students other than those described in subsection 1 of this section, within 10 school days of the second school day in a single school year on which an incident of physical restraint or seclusion has occurred, a team consisting of the parent, school administrator or the school administrator's designee, a teacher of the student, school personnel involved in the incident (if not the teacher or administrator already invited), and other appropriate school personnel, such as a school psychologist, school counselor, or school security officer, as determined by the school, shall meet to discuss the incident and to consider, among other things, the need for (i) an FBA; (ii) a new or revised BIP that addresses the underlying causes or purposes of the behaviors as well as de-escalation strategies, conflict prevention, and positive behavioral interventions; and (iii) a referral for evaluation.

3. Nothing in this section shall be construed to (i) excuse the team convened under subsection 2 of this section or its individual members from the obligation to refer the student for evaluation if the team or members have reason to suspect that the student may be a student with a disability; or (ii) prohibit the completion of an FBA or BIP for any student, with or without a disability, who might benefit from these measures but whose behavior has resulted in fewer than two incidents of physical restraint or seclusion in a single school year.

G. The school administrator or the school administrator's designee shall submit to the Superintendent of Public Instruction or the Superintendent's designee a report on the use of physical restraint and seclusion in the school based on the individual incident reports completed and submitted to the school administrator or the school administrator's designee by school personnel pursuant to subsection D 3.

H. Schools that employ physical restraint or seclusion shall:

1. Ensure that all school personnel receive training that focuses on skills related to positive behavior support, conflict prevention, de-escalation, and crisis response, including follow-up support and social-emotional strategy support for students, staff, and families;

2. Ensure that all school personnel receive initial training regarding the regulations, policies, and procedures governing the use of physical restraint and seclusion;

3. Provide advanced training in the use of physical restraint and seclusion for at least one administrator in every school building and for school personnel assigned to work with

any student whose IEP or Section 504 team determines the student is likely to be physically restrained or secluded; and

4. Ensure that any initial or advanced training is evidence-based.

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

1. The initial authority of teachers to remove students from a classroom; or

2. The authority and duties of school security officers as defined in § 9.1-101 of the Code of Virginia, if such officers are being utilized by a private school for students with disabilities



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Fast-Track Regulation Agency Background Document

Agency name	State Board of Education
Virginia Administrative Code (VAC) Chapter citation(s)	8VAC20-671-10, 650, 660 [amend] 8VAC20-671-XXX [new section]
VAC Chapter title(s)	Regulations Governing the Operation of Private Schools for Students with Disabilities
Action title	Legislative mandate to establish the same requirements on restraint and seclusion for private special education day schools as those for public schools
Date this document prepared	January 7, 2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

During the 2021 Special Session I, the Virginia General Assembly enacted [Chapter 552](#) of the Acts of the Assembly, which amended and reenacted Chapter 1289 of the 2020 Acts of the Assembly, Special Session I, which appropriated funds for the 2020-2022 Biennium.

[Item 138.I](#) of Chapter 552 directed the Board of Education to “develop and promulgate regulations for private special education day schools on restraint and seclusion that establish the same requirements for restraint and seclusion as those for public schools.”

The *Regulations Governing the Operation of Private Schools for Students with Disabilities* (8VAC20-671) are already in close alignment to the *Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia* (8VAC20-750). The amendments to the *Regulations*

Governing the Operation of Private Schools for Students with Disabilities adds definitions, adds requirements associated with the development of policies and procedures related to the use of seclusion and application of restraints, and alters the requirements for reporting the use of seclusion and application of restraints.

All regulatory changes are necessary to “establish the same requirements for restraint and seclusion [for private special education day schools] as those for public schools”—as directed by the General Assembly—with minimal, technical modifications to account for the differences between private day schools and public schools.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

“Board” means the Virginia Board of Education.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The Board of Education reviewed and adopted the action “Legislative mandate to establish the same requirements on restraint and seclusion for private special education day schools as those for public schools” on January 27, 2022.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

The regulatory change is the result of a legislative mandate. The change is to enact the General Assembly’s directive to the Board. The Board expects that this action will be noncontroversial because it has exercised minimal discretion in effectuating the legislative mandate.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the

promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

[Item 138.I](#) of Chapter 552 directed the Board of Education to “develop and promulgate regulations for private special education day schools on restraint and seclusion that establish the same requirements for restraint and seclusion as those for public schools.”

The Board's overall regulatory authority is found in § [22.1-16](#) of the *Code of Virginia*, which states that “[t]he Board of Education may adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title.”

The Board's regulatory authority over private schools for students with disabilities is found in § [22.1-321](#), which states that “[t]he Board of Education shall make regulations not inconsistent with law for the management and conduct of [schools for students with disabilities]. The regulations may include standards for programs offered by the schools.”

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

This regulatory action is the result of a legislative mandate. The action will help protect the health, safety, and welfare of special education students by ensuring that adequate standards are in place for the use of seclusion and restraint in private special education day schools. This regulatory action will establish the same requirements on restraint and seclusion for private special education day schools as those for public schools.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

The changes are limited to those necessary to effectuate the legislative mandate.

The changes to [8VAC20-671-10](#) add definitions that are in [8VAC20-750](#) (*Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia*) or conform current definitions to those in [8VAC20-750](#). The action modifies the following definitions in [8VAC20-671-10](#):

- aversive stimuli;
- behavioral intervention plan;
- consent;
- education records;
- mechanical constraint;
- physical restraint;
- seclusion;
- Section 504 plan, which eliminates the need for a definition of 504 plan); and
- time-out.

The action adds definitions for the following terms to [8VAC20-671-10](#):

- child with a disability;

- corporal punishment;
- day;
- evaluation;
- functional behavioral assessment;
- individualized education program team;
- restraint;
- school day;
- school personnel; and
- student

The changes to [8VAC20-671-650](#) align this section with the parallel requirement for public schools in [8VAC20-750-30](#).

The changes to [8VAC20-671-660](#) strike all the current requirements regarding restraint and seclusion for private schools for students with disabilities.

A new section sets the same requirements for restraint and seclusion for private special education day schools as those for public schools:

- Subsection A corresponds to [8VAC20-750-40](#) A;
- Subsection B corresponds to [8VAC20-750-40](#) B through F;
- Subsection C corresponds to [8VAC20-750-50](#);
- Subsection D corresponds to [8VAC20-750-60](#);
- Subsection E corresponds to [8VAC20-750-70](#);
- Subsection F corresponds to [8VAC20-750-80](#);
- Subsection G corresponds to [8VAC20-750-90](#);
- Subsection H corresponds to [8VAC20-750-100](#); and
- Subsection I corresponds to [8VAC20-750-110](#)

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The primary advantage of this action to the public is that this action effectuates the legislative intent of [Item 138.I](#) of [Chapter 552](#). The action has no disadvantages to the public. There are no advantages or disadvantages to the agency or the Commonwealth, nor are there other pertinent matters of interest to the regulated community, government officials, or the public.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

There are no other state agencies that will be particularly affected by this action. There are no localities that will be particularly affected by this action. There are no other entities that will be particularly affected by this action.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

Impact on State Agencies

<i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	It is not anticipated that this regulatory change will affect agency operations or resources.
<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	It is not anticipated that this regulatory change will affect other state agencies.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	The primary advantage of this action to the public is that this action effectuates the legislative intent of Item 138.I of Chapter 552 .

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	It is not anticipated that this regulatory change will affect localities.
Benefits the regulatory change is designed to produce.	The primary advantage of this action to the public is that this action effectuates the legislative intent of Item 138.I of Chapter 552 .

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the	Private schools for students with disabilities.
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<p>regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	
<p>Agency’s best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are currently 118 private schools for students with disabilities in the Commonwealth licensed by the VDOE.</p> <p>This regulatory action will not affect small businesses.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.</p>	<p>It is anticipated that any costs associated with implementation would be absorbed within existing operational resources.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The primary advantage of this action to the public is that this action effectuates the legislative intent of Item 138.I of Chapter 552.</p>

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

There are no alternatives to the regulatory change.

Regulatory Flexibility Analysis

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

There are no alternatives to the regulatory change.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

As required by § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Board of Education is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted Jim Chapman by email to jim.chapman@doe.virginia.gov or by mail to the following address:

Jim Chapman
James Monroe Bldg.
101 N. 14th St, 25th Floor
Richmond, VA 23219

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-	New chapter-section	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
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section number	number, if applicable		
8VAC20-671-10		The definition of “504 Plan” will be removed.	This definition will be added as “Section 504 plan” to align with the terminology and definition in 8VAC20-750-20.
8VAC20-671-10		The definition of “aversive stimuli” will be changed.	The definition will be changed to align with the definition in 8VAC20-750-10. The new definition will not include “placement of a student alone in a room, where the door is locked or held shut and the student is prevented from leaving the room.” However, this aspect of the definition will be addressed through regulations regarding the use of seclusion.
8VAC20-671-10		The definition of “behavioral intervention plan” will be changed.	The definition will be changed to align with the definition in 8VAC20-750-20.
8VAC20-671-10			A definition of “child with a disability” or “student with a disability” will be added to align with the definition in 8VAC20-750-20.
8VAC20-671-10		The definition of “consent” will be changed.	These are technical edits to the definition to make the reference to “parent” consistent. There is no substantial difference between the current language and the proposed change.
8VAC20-671-10			A definition of “corporal punishment” will be added to align with the definition in 8VAC20-750-10.
8VAC20-671-10			A definition of “day” will be added to align with the definition in 8VAC20-750-20.
8VAC20-671-10		The definition of “education records” will be changed.	These are technical edits to the definition to make the reference to “parent” consistent. There is no substantial difference between the current language and the proposed change.
8VAC20-671-10			A definition of “evaluation” will be added to align with the definition in 8VAC20-750-20.
8VAC20-671-10			A definition of “functional behavioral assessment” will be added to align with the definition in 8VAC20-750-20.
8VAC20-671-10			A definition of “individualized education program team” will be added to align with the definition in 8VAC20-750-20.
8VAC20-671-10		The definition of “mechanical restraint” will be changed.	The definition of “mechanical restraint” will be changed to align with the definition in 8VAC20-750-10.
8VAC20-671-10		The definition of “physical restraint” will be changed.	The definition of “physical restraint” will be changed to align with the definition in 8VAC20-750-10. The new definition specifies that physical restraint does not include “the use of incidental, minor, or reasonable physical contact or other

			actions designed to maintain order and control.”
8VAC20-671-10			A definition of “restraint” will be added to align with the definition in 8VAC20-750-10.
8VAC20-671-10			A definition of “school day” will be added to align with the definition in 8VAC20-750-20.
8VAC20-671-10			A definition of “school personnel” will be added to align with the definition in 8VAC20-750-20.
8VAC20-671-10		The definition of “seclusion” will be changed.	The definition of “seclusion” will be changed to align with the definition in 8VAC20-750-10.
8VAC20-671-10			A definition of “Section 504 plan” will be added to align with the definition in 8VAC20-750-20.
8VAC20-671-10			A definition of “student” will be added to align with the definition in 8VAC20-750-20.
8VAC20-671-10		The definition of “time-out” will be changed.	The definition of “time-out” will be changed to align with the definition in 8VAC20-750-10.
8VAC20-671-650		The current 8VAC20-671-650 1 prohibits the use of restraint and seclusion except in cases where necessary for student safety.	The action will add substantive provisions regarding the use of restraint and seclusion. The proposed 8VAC20-671-650 A 1 has been changed to prohibit the use of mechanical restraints, as in 8VAC20-750-30.
8VAC20-671-650		The current 8VAC20-671-650 2 prohibits the use of prone restraints, mechanical restraints, pharmacological restraints, restraints that restrict a student’s breathing, restraints that harm the child, and restraints that interfere with the child’s ability to communicate.	<p>The proposed 8VAC20-671-650 A 2 will narrow to prohibit prone restraints and other restraints that restrict the student’s breathing or harm the student.</p> <p>The prohibition on the use of mechanical restraints is addressed in the proposed 8VAC20-671-650 A 1. The prohibition on the use of pharmacological restraints is addressed in the proposed 8VAC20-671-650 A 9.</p> <p>The prohibition on restraints that interfere with the child’s ability to communicate will be removed, since there is no comparable prohibition in 8VAC20-750. To keep this prohibition would violate the legislative directive to “establish the same requirements for restraint and seclusion [for private special education day schools] as those for public schools.”</p>
8VAC20-671-650		The current 8VAC20-671-650 3 prohibits the deprivation of drinking water or food.	In the proposed action, this prohibition is already included in the definition of “aversive stimuli.” Therefore, the prohibition will be removed as redundant.

8VAC20-671-650			The current 8VAC20-671-650 4 will be renumbered as 8VAC20-671-650 A 3.
8VAC20-671-650			The current 8VAC20-671-650 5 will be renumbered as 8VAC20-671-650 A 4.
8VAC20-671-650			The current 8VAC20-671-650 6 will be aligned with the parallel requirement in 8VAC20-750-30 7 and renumbered as 8VAC20-671-650 A 5.
8VAC20-671-650		The current 8VAC20-671-650 7 prohibits the deprivation of approved prescription medication or other necessary services.	In the proposed action, this prohibition is already included in the definition of “aversive stimuli.” Therefore, the prohibition will be removed as redundant.
8VAC20-671-650		The current 8VAC20-671-650 8 prohibits against the denial of access to toilet facilities.	In the proposed action, this prohibition is already included in the definition of “aversive stimuli.” Therefore, the prohibition will be removed as redundant.
8VAC20-671-650			The current 8VAC20-671-650 9 will be aligned with the parallel requirement in 8VAC20-750-30 3 and renumbered as 8VAC20-671-650 A 6.
8VAC20-671-650			The current 8VAC20-671-650 10 and 11 will be renumbered as 8VAC20-671-650 A 7 and 8, respectively.
8VAC20-671-650			The prohibition on use of pharmacological restraints will be added to align with the parallel requirement in 8VAC20-750-30 A 2.
8VAC20-671-650			The prohibition on use of seclusion that restricts a student’s breathing or harms the student will be added to align with the parallel requirement in 8VAC20-750-30 A 5.
8VAC20-671-650			The prohibition on use of physical restraint or seclusion as (i) punishment or discipline; (ii) a means of coercion or retaliation; (iii) a convenience; (iv) to prevent property damage, or in other manner other than as provided by regulation will be added to align with the parallel requirement in 8VAC20-750-30 A 6.
8VAC20-671-650			The prohibition on use of seclusion rooms or freestanding units not meeting the standards set forth in regulation will be added to align with the parallel requirement in 8VAC20-750-30 A 8.
8VAC20-671-650			The prohibition on use of restraint or seclusion when medically or psychologically contraindicated as stated in documentation by the IEP team, the student’s Section 504 team, school professionals, or by a licensed physician, psychologist, or other qualified health professional under the scope of the

			professional's authority will be added to align with the parallel requirement in 8VAC20-750-30 A 9.
8VAC20-671-650			The proposed action will add the interpretive directive that nothing in the section shall be construed to prohibit physical restraint or seclusion under the conditions outlined in the regulation. This parallels the requirement in 8VAC20-750-30 B.
8VAC20-671-660		8VAC20-671-650 B includes the current substantive provisions regarding the circumstances under which restraint and seclusion are currently allowed in private special education day schools, parental notification, documentation of the application of physical restraint and seclusion, and reporting requirements.	These provisions will be removed and promulgated in a new section that parallels the requirements in 8VAC20-750 40 through 110. The requirements in 8VAC20-750-10 through 30 have already been made in the proposed changes to 8VAC20-671-10 and 8VAC20-671-650.
	8VAC20-671-790		<p>The proposed new section will add the substantive provisions regarding seclusion and restraint in order to realize the legislative directive to “establish the same requirements for restraint and seclusion [for private special education day schools] as those for public schools.”</p> <p>The proposed 8VAC20-671-790 A clarifies that the chapter shall not be construed to require a school to employ physical restraint or seclusion, in accordance with the parallel requirement in 8VAC20-750-40 A.</p> <p>The proposed 8VAC20-671-790 B includes provisions regarding the use of physical restraint and seclusion that parallel the requirements in 8VAC20-750-40 B through F.</p> <p>The proposed 8VAC20-671-790 C includes provisions regarding the standards for the use of seclusion that parallel the requirements in 8VAC20-750-50.</p> <p>The proposed 8VAC20-671-790 D includes provisions regarding the notification and reporting of instances of physical restraint and seclusion that parallel the requirements in 8VAC20-750-60.</p>

			<p>The proposed 8VAC20-671-790 E includes provisions that set standards for school policies and procedures that parallel the requirements in 8VAC20-750-70.</p> <p>The proposed 8VAC20-671-790 F includes provisions regarding multiple uses of restraint and seclusion that parallel the requirements in 8VAC20-750-80.</p> <p>The proposed 8VAC20-671-790 G includes provisions regarding annual reporting that parallel the requirements in 8VAC20-750-90.</p> <p>The proposed 8VAC20-671-790 H includes provisions regarding training of school personnel for schools that employ seclusion and restraint. These provisions parallel the requirements in 8VAC20-750-100.</p> <p>The proposed 8VAC20-671-790 I includes provisions governing the construction of the chapter that parallel the requirements in 8VAC20-750-110.</p>
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