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| **Virginia Board of Education Agenda Item** | **Seal of the Commonwealth of Virginia** |

# Agenda Item: H

## Date: October 21, 2021

### Title: First Review of Fast Track Regulatory Action to Conform Definitions of “Traumatic Brain Injury”

#### Presenter: Dr. Samantha Hollins, Assistant Superintendent, Department of Special Education and Student Services

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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 170](https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0170) of the Acts of the Assembly, which directed the Board of Education (“Board”) to amend the definition of “traumatic brain injury” in 8VAC20-81-10. At its meeting on September 23, 2021, the Board approved an exempt action (“Legislative Amendments to Regulations Governing Special Education Programs for Children with Disabilities in Virginia”) to conform the definition as required by the legislation.

However, the legislation left the definition of “traumatic brain injury” in 8VAC20-671-10 untouched. There does not appear to be a reason for the definitions to differ across chapters. Further, there is not currently a definition of “traumatic brain injury” in 8VAC20-750-20. These changes were beyond the scope of the legislation that required the Board to amend the definition in 8VAC20-81-10 and were inappropriate for the exempt action.

## Action Requested:

Other: The Board is requested to waive first review and approve the fast-track action to conform the definition of “Traumatic Brain Injury” in 8VAC20-671-10 and add a definition of “Traumatic Brain Injury” to 8VAC20-750-20.

## Superintendent’s Recommendation: The Superintendent of Public Instruction recommends that the Board of Education waive first review and approve the fast-track action to ensure alignment in regulatory language and guidance.

## Rationale for Action:

## This action will maintain the internal coherence of the Board’s regulatory scheme. The item is proposed as a fast-track regulation, as there is no expected disagreement to arise over the action.

## Previous Review or Action:

## No previous review or action.

**Background Information and Statutory Authority:**
The Board’s *Regulations Governing the Operation of Private Schools for Students with Disabilities* includes a definition of “traumatic brain injury” as “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. (34 CFR 300.8(c)(12)).” This definition aligns with language set out in the *Individuals with Disabilities Education Act* (IDEA).

The 2021 General Assembly passed [House Bill 2182](https://lis.virginia.gov/cgi-bin/legp604.exe?ses=211&typ=bil&val=HB2182) requiring the Board of Education to amend the regulatory definition of “traumatic brain injury” in 8VAC20-81-10 to read as follows:

“Traumatic brain injury” means an acquired injury to the brain caused by an external physical force or by other medical conditions, including stroke, anoxia, infectious disease, aneurysm, brain tumors, and neurological insults resulting from medical or surgical treatments, 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 (34 CFR 300.8(c)(12)).” The expansion of the traumatic brain injury definition may allow more students to be identified under the traumatic brain injury category for special education services.

However, the legislation left the definition of “traumatic brain injury” in 8VAC20-671-10 untouched. There is not a reason for the definitions to differ across chapters. Further, there is not currently a definition of “traumatic brain injury” in 8VAC20-750-20.

**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. No further action will be required by the Board.

## Impact on Fiscal and Human Resources:

This action has no projected impact on either the Department of Education’s resources or local school divisions’ resources.