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

# Agenda Item: I

## Date: June 20, 2019

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

#### Presenter: Dr. Samantha M. Hollins, Assistant Superintendent for Special Education and Student Services

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## Purpose of Presentation:

Action required by state or federal law or regulation.

## Executive Summary:

## Virginia Code §22.1-279.1:1 was enacted by the Virginia General Assembly in 2014, requiring the Virginia Board of Education to adopt regulations on the use of seclusion and restraint in public elementary and secondary schools in the Commonwealth that (i) are consistent with its *Guidelines for the Development of Policies and Procedures for Managing Student Behavior in Emergency Situations* and the *Fifteen Principles* contained in the U.S. Department of Education’s *Restraint and Seclusion: Resource Document*; (ii) include definitions, criteria for use, restrictions for use, training requirements, notification requirements, reporting requirements, and follow-up requirements; and (iii) address distinctions, including distinctions in emotional and physical development, between (a) the general student population and the special education student population and (b) elementary school students and secondary school students.

The Virginia Department of Education sought extensive stakeholder input, involving at least five separate meetings prior to drafting the proposed regulations, and received extensive public comment. Stakeholders held sharply divided views on the proposed regulations, and, as a result, the Board considered the proposed regulations at length in five meetings and a Board work session. Final review of the proposed stage of the regulations was completed on March 23, 2017. Following that action, the proposed regulations were reviewed by the Office of the Attorney General, the Secretary of Education, the Department of Planning and Budget, receiving the Governor’s approval in February2019. The proposed regulations were published in the Virginia Register of Regulations on February 18, 2019 with a 60-day public comment period, which expired on April 19, 2019. Following its meeting on March 21, 2019, the Board held a public hearing on the proposed regulations.

Additionally, the 2019 Virginia General Assembly passed House Bill 2599, requiring the Board to specifically, “(1) identify and prohibit the use of any method of restraint or seclusion that it determines poses a significant danger to the student, and (2) establish safety standards for seclusion.” VDOE staff believes that the proposed regulations currently express the Board’s determinations on these matters

## After almost five years of study, constituent input, debate and progress through Virginia’s Administrative Procedures Act, the Board of Education conducted a final public hearing on March 21, 2019 on the Proposed *Regulations Governing the Use of Seclusion and Restraint in Public* Elementary *and Secondary Schools in Virginia* (Proposed Stage). The Department of Special Education and Student Services has complied and analyzed the comments received at the public hearing and through the public comment process in Attachment B.

Significant issues raised during the public comment period include: (i) the definition of restraint; (ii) exclusions from the definitions of seclusion and restraint; (iii) concerns over the cost of training for school personnel; and (iv) requests that prone restraint be banned. All of the issues raised during the public comment period had be raised and debated in previous hearings and Board of Education meetings, and staff recommends that no additional changes be made at this time. Of particular note, following concerns expressed by both the Board and the public, the language regarding banned methods of restraint was broadened to capture all forms of restraint that restricts breathing and that are otherwise dangerous. The removal of explicit mention of prone restraints was not intended to sanction such practices.

The Department received one comment from the Department of Juvenile Justice, requesting that the language be modified concerning use of seclusion and restraint to accommodate the unique circumstances of their facilities. Staff has made the changes requested by the Department of Juvenile Justice and has expanded those changes to students receiving instruction in facilities operated by the Virginia Department of Behavioral Health and Developmental Services. Those changes are highlighted in yellow. Otherwise, no further changes have been made to the proposed regulation since March 2017.

The proposed regulations align with the Board’s 2018-2023 Comprehensive Plan priority for providing high-quality, effective learning environments for all students.

## Action Requested:

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

## July 25, 2019

## Superintendent’s Recommendation:

The Superintendent of Public Instruction recommends that the Board receive the Proposed *Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia* (Final Stage) for first review.

## Previous Review or Action:

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

**Date**: March 26, 2015

**Action**: First Review of Notice of Intended Regulatory Action (NOIRA) for Proposed *Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia*

**Date**: February 25, 2016

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

**Date**: October 27, 2016

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

**Date**: February 23, 2017 *Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia* (Proposed Stage)

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

**Date:** March 23, 2017

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

**Date:** March 21, 2019

**Action:** Board of Education Public Hearing on the Proposed Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia

**Background Information and Statutory Authority:**

The Virginia General Assembly enacted House Bill 1443 (2014), amending the *Code of Virginia* by adding section number §22.1-279.1:1, related to the use of seclusion and restraint in public schools. The bill requires the Board of Education to adopt regulations on the use of seclusion and restraint in public elementary and secondary schools in the Commonwealth that (i) are consistent with its *Guidelines for the Development of Policies and Procedures for Managing Student Behavior in Emergency Situations* and the *Fifteen Principles* contained in the U.S. Department of Education’s *Restraint and Seclusion: Resource Document*; (ii) include definitions, criteria for use, restrictions for use, training requirements, notification requirements, reporting requirements, and follow-up requirements; and (iii) address distinctions, including distinctions in emotional and physical development, between (a) the general student population and the special education student population and (b) elementary school students and secondary school students.

Staff in the Virginia Department of Education’s (VDOE) Division of Special Education and Student Services conducted a 50-state survey of legislation and regulations addressing the use of restraint and seclusion in public schools. In addition, staff held several internal meetings to begin to identify key issues for inclusion into these proposed regulations. Staff in the Virginia Department of Education’s (VDOE) Division of Special Education and Student Services conducted a 50-state survey of legislation and regulations addressing the use of restraint and seclusion in public schools. In addition, staff held several internal meetings to begin to identify key issues for inclusion into these proposed regulations.

In August, September and October of 2015, the VDOE hosted three informal stakeholder meetings. Each meeting lasted for three hours. Representatives of the following organizations were invited to attend:

* Virginia ARC
* Virginia Board for People with Disabilities
* Virginia Commission on Youth
* Family Members
* Virginia Education Association
* disAbility Law Center
* JustChildren
* Virginia School Boards Association
* Virginia Association of School Superintendents
* Virginia Council of Administrators of Special Education
* Higher Education Representatives
* Virginia Association of PTAs
* Parent Educational Advocacy Training Center
* Partnership for People with Disabilities
* Virginia Association of Elementary School Principals
* Virginia Association of Secondary School Principals

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

The 2015 statute (HB 1443/SB 782) directs the Board to develop regulations that are consistent with the *15 Principles* articulated in the United States Department of Education’s (USDOE) 2012 Restraint and Seclusion Resource Document and VDOE’s Guidelines for the Development of Policies and Procedures for Managing Student Behavior in Emergency Situations.

The stakeholder groups listed above had lively debates concerning the very definition of restraint and seclusion. The third Principle of the USDOE document states that “physical restraint or seclusion should not be used except in situations where the child’s behavior poses imminent danger of serious physical harm to self or others.”

Longstanding law in Virginia—§ 22.1-279.1—provides that the prohibition on the use of corporal punishment in public schools DOES NOT preclude reasonable force to (i) quell a disturbance that threatens serious physical harm or injury to persons or damage to property; (ii) remove a student from the scene of a disturbance that threatens serious physical injury to persons or damage to property; (iii) defend self or others; (iv) obtain possession of controlled substances or paraphernalia which are upon the person of the student or within the student’s control; (v) to obtain possession of weapons or other dangerous objects that are upon the person of the student or within the student’s control.

Nowhere do the *15 Principles* address the use of restraint or “reasonable force” regarding damage to property or obtaining drugs, etc., from students—scenarios which, in some cases, may not clearly meet the “imminent danger of serious physical harm to self or others” standard articulated by the *15 Principles*. Parties expressed sharp disagreement as to how the regulations should reconcile current permitted practices with the new statutory mandate.

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

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

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

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

The Board conducted its Final Review of the proposed stage on March 23, 2017. The proposed regulations then entered the executive review process. Based on feedback from the Office of the Attorney General, changes were made to the language surrounding property damage. These changes do not materially alter the original intent specified above. During the executive review process, no other changes were requested, or made, other than certain technical amendments requested by the Registrar of Virginia

Additionally, the 2019 Virginia General Assembly passed House Bill 2599, requiring the Board to specifically, “(1) identify and prohibit the use of any method of restraint or seclusion that it determines poses a significant danger to the student, and (2) establish safety standards for seclusion. Staff believes that the proposed regulations currently express the Board’s determinations on these matters.

## After almost five years of study, constituent input, debate and progress through Virginia’s Administrative Procedures Act, the Board of Education conducted a final public hearing on March 21, 2019 on the Proposed *Regulations Governing the Use of Seclusion and Restraint in Public* Elementary *and Secondary Schools in Virginia* (Proposed Stage). The Department of Special Education and Student Services has complied and analyzed the comments received at the public hearing and through the public comment process in Attachment B.

Significant issues raised during the public hearing and public comment process include: (i) the definition of restraint; (ii) exclusions from the definitions of seclusion and restraint; (iii) concerns over the cost of training for school personnel; and (iv) requests that prone restraint be banned. All of these issues had be raised and debated in previous hearings and Board of Education meetings, and staff recommends that no additional changes be made at this time. Of particular note, following concerns expressed by both the Board and the public, the language regarding banned methods of restraint was broadened to capture all forms of restraint that restricts breathing and that are otherwise dangerous. The removal of explicit mention of prone restraints was not intended to sanction such practices.

The Department received one comment from the Department of Juvenile Justice, requesting that the language be modified concerning use of seclusion and restraint to accommodate the unique circumstances of their facilities. Staff has included their requested change, and has expanded the language to include students receiving instruction in facilities operated by the Department of Behavioral Health and Developmental Services. Those modifications are highlighted in yellow in Attachment A. Otherwise, no further changes have been made to the proposed regulation since March 2017.

The proposed regulations are based on two foundational—and consonant—principles: that schools must be safe for all children and that school personnel must be equipped to address emergencies and disruptions effectively, while protecting the dignity of all students, the integrity of the classroom, and the safety of all persons in our public schools. In the vast majority of cases, instances of serious property destruction would also pose an imminent danger of serious physical harm.

**Impact on Fiscal and Human Resources**: There will be a significant administrative impact on the Virginia Department of Education’s Office of Special Education and Student Services in terms of data collection and analysis. In addition, local school divisions and the Virginia Department of Education will incur significant costs due to required training and reporting requirements. The Virginia General Assembly appropriated $497,755 for training, which is far less than the estimated cost.

**ATTACHMENT A**

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

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

1. This chapter is applicable to all students and school personnel in the public elementary and secondary schools of the Commonwealth of Virginia, as defined in 8 VAC 20-750-20. These regulations govern the use of seclusion and restraint utilized for the purpose of behavioral intervention. This chapter does not to any secure facility or detention home as defined in §16.1-288 of the Code of Virginia, or to any facility operated by the Virginia Department of Behavioral Health and Developmental Services.
2. To comply with this chapter, school personnel must first determine whether the action constitutes restraint or seclusion, as defined in 8 VAC 20-750-10. If the action does not meet the definition, or if the action falls under any of the “does not include” portions of the definitions in 8 VAC 20-750-10, then school personnel may act within their reasonable discretion. If the action falls within the definition of restraint or seclusion, it may be used, but only under the circumstances described in 8 VAC 20-750-40 and 8 VAC 20-750-50, and is subject to the other requirements of this chapter.
3. In addition, 8 VAC 20-750-30 identifies certain practices that constitute restraint or seclusion that may be detrimental to the health, safety or dignity of the student and that may never be used by school personnel.

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

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

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

1. Noxious odors and tastes;
2. Water and other mists or sprays;
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. Forced exercise when:
7. The student’s behavior is related to his disability;
8. The exercise would have a harmful effect on the student’s health; or
9. The student’s disability prevents participation in such activities.
10. Deprivation of necessities, including:
11. Food and liquid at a time it is customarily served;
12. Medication; or
13. Use of restroom.

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

**“Mechanical restraint”** means the use of any material, device or equipment to restrict a student’s freedom of movement. The term “mechanical restraint” does not include the devices implemented by trained school personnel or used by a student that have been prescribed by an appropriate medical or related service professional and are used with parental consent and 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 restraints, including seat belts, when used as intended during the transport of a student in a moving vehicle;
3. Restraints for medical immobilization;
4. Orthopedically prescribed devices that permit a student to participate in activities without risk of harm; or
5. High chairs and feeding stations used for age and/or developmentally appropriate students.

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

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

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

**“Restraint”** means mechanical restraint, physical restraint, or pharmacological restraint.

**“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 he is not physically prevented from leaving; (vi) the removal of a student for disruptive behavior from a classroom by the teacher, as provided in **§** 22.1-276.2 of the Code of Virginia; and (vii) confinement of a student alone is a room or area from which the student is physically prevented from leaving during the investigation and questioning of the student by school employees regarding the student’s knowledge of or participation in events constituting a violation of the code of student conduct, such as a physical altercation, or an incident involving drugs or weapons.

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

***8 VAC 20-750-20. General definitions.***

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

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

**“Board”** means the Virginia 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).

**“Chapter”** means these regulations, that is Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia, 8 VAC 20-750.

**“Calendar days”** means consecutive days, inclusive of Saturdays and Sundays. Whenever any period of time fixed by this chapter expires on a Saturday, Sunday, or federal or state holiday, the period of time for taking such action 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 a public elementary or secondary school student evaluated in accordance with the provisions of 8 VAC 20-81 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 8 VAC 20-81 as an emotional disability), an orthopedic impairment, autism, traumatic brain injury, an 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 school division recognizes this category as a disability under 8 VAC 20-81-80.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 8 VAC 20-81. 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 8 VAC 20-81-10.

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

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

**“Evaluation”** means procedures used in accordance with 8 VAC 20-81 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 8 VAC 20-750-70.

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

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

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

**“School personnel”** means individual(s) employed by the school division 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.

**“Section 504 plan”** means a written plan of modifications and accommodations under Section 504 of the *Rehabilitation Act of 1974* (29 USC § 794).

**“Student”** means any student, with or without a disability, enrolled in a public elementary or secondary school as defined in § 22.1-1 of the Code of Virginia.

1. For purposes of these regulations, the term “student” shall also include those students (i) attending a public school on a less-than-full-time basis, such as those students identified in § 22.1-253.13:2.N of the Code of Virginia; (ii) receiving homebound instruction pursuant to 8 VAC 20-131-180 and as defined in 8 VAC 20-81-10, without regard to special education status; (iii) receiving home-based instruction pursuant to 8 VAC 20-81-10; and (iv) pre-school students enrolled in a program operated by a school division or receiving services from school division personnel.
2. As used in this chapter, “student” or “students” shall not include children meeting compulsory attendance requirements of § 22.1-254 of the Code of Virginia by: (i) enrollment in private, denominational, or parochial schools; (ii) receipt of instruction by a tutor or teacher of qualifications prescribed by the Board of Education and approved by the relevant division superintendent; (iii) receipt of home instruction pursuant to § 22.1-254 of the Code of Virginia or (iv) receipt of instruction in a secure facility or detention home as defined in §16.1-288 of the Code of Virginia or in a facility operated by the Virginia Department of Behavioral Health and Developmental Services. 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 8 VAC 20-671.

***8 VAC 20-750-30. Prohibited actions.***

1. The following actions are prohibited in the public elementary and secondary schools in the Commonwealth of Virginia:
2. Use of mechanical restraints.
3. Use of pharmacological restraints.
4. Use of aversive stimuli.
5. Use of restraint or seclusion in any manner that restricts a student’s breathing or harms the student.
6. Use of physical restraint or seclusion as: (i) punishment or discipline; (ii) a means of coercion or retaliation; or (iii) a convenience; (iv) to prevent property damage, or in any manner other than as provided in 8 VAC 20-750-40 and 8 VAC 20-750-50.
7. Use of corporal punishment.
8. Use of seclusion rooms or freestanding units not meeting the standards set forth in these regulations.
9. Use of restraint or seclusion when medically or psychologically contraindicated as stated in documentation by the IEP team, 504 team, school professionals, or by a licensed physician, psychologist or other qualified health professional under the scope of the professional’s authority.
10. Nothing in this section shall be construed to prohibit physical restraint or seclusion under the conditions outlined in 8 VAC 20-750-40 and 8 VAC 20-750-50.

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

1. Nothing in this chapter shall be construed to require a school division to employ physical restraint or seclusion in its schools. School divisions electing to use physical restraint and seclusion shall comply with the requirements of these regulations.
2. 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:
3. Prevent a student from inflicting serious physical harm or injury to self or others;
4. 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.
5. Defend self or others from serious physical harm or injury;
6. Obtain possession of controlled substances or paraphernalia which are upon the person of the student or within the student’s control; or
7. Obtain possession of weapons or other dangerous objects that are upon the person of the student or within the student’s control.
8. 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. .
9. 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.
10. 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.
11. Any incident involving physical restraint or seclusion in any of the circumstances described above shall be subject to the requirements of 8 VAC 20-750-50 through 8 VAC 20.

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

1. School divisions 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:
2. Any seclusion room or area shall be free of any objects or physical features that may cause injury to the student.
3. 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.
4. Windows in the seclusion room shall be constructed to minimize breakage and otherwise prevent the occupant from harming himself.
5. All space in the seclusion room shall be visible through the door, either directly or by mirrors.
6. School divisions electing to use seclusion as authorized by this chapter shall provide for the continuous visual monitoring of any seclusion, either by the presence of school personnel in the seclusion room or area or observation by school personnel through a window, viewing panel, or half-door.
7. School divisions electing to use seclusion as authorized by this chapter shall include within its local policies and procedures provisions that address the appropriate use and duration of seclusion based upon the age and development of the student.

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

1. When any student has been physically restrained or secluded:
2. The school personnel involved shall report the incident and the use of any related first aid to the school principal or the principal’s designee as soon as possible by the end of the school day of in which the incident occurred; and
3. The school principal or the principal’s designee, or other school personnel shall make a reasonable effort to ensure that direct contact is made with the 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.
4. When any student has been physically restrained or secluded after the regular school day, the notifications required by Subsection A of this Section shall be made as soon as practicable in compliance with the school division’s school crisis, emergency management, and medical emergency response plan required by § 22.1-279.8 of the Code of Virginia.
5. 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 principal, shall complete and provide to the principal or the principal’s designee, a written incident report. The school division 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:

1. Student name, age, gender, grade, ethnicity;
2. Location of the incident;
3. Date, time, and total duration of incident, including documentation of the beginning and ending time of each application of physical restraint or seclusion;
4. Date of report;
5. Name of person completing the report;
6. The school personnel involved in the incident, their roles in the use of physical restraint or seclusion, and their completion of the division’s training program;
7. Description of the incident, including the resolution and process of return of the student to his educational setting, if appropriate;
8. A detailed description of the physical restraint or seclusion method used;
9. Student behavior that justified the use of physical restraint or seclusion;
10. Description of prior events and circumstances prompting the student’s behavior, to the extent known;
11. Less restrictive interventions attempted prior to the use of physical restraint or seclusion, and an explanation if no such interventions were employed;
12. Whether the student has an IEP, a Section 504 plan, a BIP, or other plan;
13. If a student, school personnel or any other individual sustained bodily injury, the date and time of nurse or response personnel notification and the treatment administered, if any;
14. Date, time, and method of parental notification of the incident, as required by this section; and
15. Date, time of school personnel debriefing.
16. Following an incident of physical restraint or seclusion, the school division shall ensure that, within two school days, the principal or designee reviews the incident with all school personnel who implemented the use of physical restraint or seclusion to discuss:
17. Whether the use of restraint or seclusion was implemented in compliance with this chapter and local policies; and
18. How to prevent or reduce the future need for physical restraint and/or seclusion.
19. As appropriate depending on the student’s age and developmental level, following each incident of physical restraint or seclusion, the school division shall ensure that, as soon as practicable, but no later than two school days or upon the student’s return to school, the principal or designee shall review the incident with the student(s) involved to discuss:
20. Details of the incident in an effort to assist the student and school personnel in identifying patterns of behaviors, triggers or antecedents.
21. 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.
22. The principal or the principal’s designee shall regularly review the use of physical restraint or seclusion to ensure compliance with school division policy and procedures, and, when there are multiple incidents within the same classroom or by the same individual, the principal or the principal’s shall take appropriate steps to address the frequency of use.

***8 VAC 20-750-70. School division policies and procedures.***

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

1. 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 division uses to address student behavior, including the appropriate use of effective alternatives to physical restraint and seclusion.
2. 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.
3. A statement of the circumstances in which physical restraint and seclusion may be employed, which shall be no less restrictive than that set forth in 8 VAC 20-750-40 and 8 VAC 20-750-50.
4. Provisions addressing the:
5. Notification of parents regarding incidents of physical restraint or seclusion, including the manner of such notification;
6. Documentation of the use of physical restraint and seclusion;
7. 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 employee implementing the physical restraint or seclusion, result in serious physical harm or injury to persons; and
8. 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.
9. School divisions utilizing school resource officers shall enter into a Memorandum of Understanding with local law enforcement addressing the use of seclusion and restraint by law enforcement personnel in school settings.
10. Each school division shall review its policies and procedures regarding physical restraint and seclusion at least annually, and shall update these policies and procedures as appropriate. In developing, reviewing, and revising its policies, school divisions shall consider the distinctions in emotional and physical development between elementary and secondary students and between students with and without disabilities.
11. Consistent with § 22.1-253.13:1.D of the Code of Virginia, a current copy of a school division’s policies and procedures regarding restraint and seclusion shall be posted on the school division’s website and shall be available to employees and to the public. School boards shall ensure that printed copies of such policies and procedures are available as needed to citizens who do not have online access.
12. In developing its policies and procedures, school divisions shall give due consideration to practices that encourage parent involvement and collaboration with regard to these matters.

***8 VAC 20-750-80. Prevention; multiple uses of restraint or 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 a 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 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.

1. For students not described in subsection A, 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, the principal or the principal’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 resource officer, as determined by the school division, 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.
2. Nothing in this section shall be construed to (i) excuse the team 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.
3. ***VAC 20-750-90. Annual Reporting.***

The principal or the principal’s designee shall submit to the division superintendent a report on the use of physical restraint and seclusion in the school based on the individual incident reports completed and submitted to the principal or designee by school personnel pursuant to 8 VAC 20-750-60.Ce. The division superintendent shall annually report the frequency of such incidents to the Superintendent of Public Instruction on forms that shall be provided by the Department of Education and shall make such information available to the public.

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

School divisions that employ physical restraint or seclusion shall:

1. Ensure that all school personnel receive initial training that focuses on skills related to positive behavior support, conflict prevention, de-escalation, and crisis response;
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 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.

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

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

1. The initial authority of teachers to remove students from a classroom pursuant to § 22.1-276.2 of the Code of Virginia;
2. The authority and duties of school resource officers and school security officers, as defined in § 9.1-101 of the Code of Virginia, except to the extent governed by a Memorandum of Understanding between the local law enforcement agency and the school division;
3. The authority of the Virginia Department of Juvenile Justice with regard to students in its custody at any of its sites or in any of its programs;
4. The civil immunity afforded teachers employed by local school boards for any acts or omissions resulting from the supervision, care or discipline of students when such acts or omissions are within such teacher’s scope of employment and are taken in good faith in the course of supervision, care, or discipline of students, unless such acts or omissions were the result of gross negligence or willful misconduct, as provided in § 8.01-220.1:2 of the Code of Virginia.

**ATTACHMENT B**

**SUMMARY OF PUBLIC COMMENT**

|  |  |  |  |
| --- | --- | --- | --- |
| **General** | | | |
|  | Commenter | Comment | Agency Response |
| 1 | Virginia Board for People with Disabilities,  3/21/2019 | 1. Supports the existing notification requirement. 2. Suggests requiring positive behavioral interventions. 3. Opposes carve-outs to the definition of restraint and seclusion, preferring it to be limited solely to incidents involving imminent threat of serious bodily harm to self or others. Specific exclusions include use of restraint or seclusion for property damage, investigation of a violation of the code of student conduct and incident physical contact to maintain order. 4. Supports adding an explicit provision banning prone restraint.   Note: These are the provisions supported by the Coalition for Improvement of School Safety (CISS). | 1. No change recommended. 2. No change recommended. 3. No change recommended. 4. We believe that the existing language covers prone restraints, as well as other dangerous holds. No change recommended. |
| 2 | Cheryl Poe,  3/21/2019 | Encouraged the inclusion of culturally competent, trauma-informed components in training and practices. | No changes recommended. |
| 3 | Christine Germeyer, Chair, State Special Education Advisory Committee, 3/21/20109 | 1. Supports existing carve-outs. 2. Questions when visual monitoring of a student might be permitted. 3. Supports advanced training for all administrators, but acknowledges the fiscal impact. | No changes recommended. |
| 4 | Catherine Lavarius, 3/13/2019 | Opposes the provision requiring IEP meetings to be held after two incidents. | No changes recommended. |
| 5 | Mary Malina, 3/16/2019 | Supports the Coalition for Improvement of School Safety Platform (CISS). | See Comment 1. |
| 6 | Riham Mahfouz, 3/16/19 | Supports the CISS Platform | See Comment 1. |
| 7 | Ann W. Worley, 3/17/19 | 1. Comment reflects items in the CISS Platform.  2. Believes bus drivers should be trained.  3. Encourages more robust debriefing. | 1. See Comment 1  2. All employees are covered by training requirements.  3. No changes recommended. |
| 8 | Alexa Zagorites, 3/18/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 9 | Dena Rosenkrantz, Virginia Education Association, 3/20/19 | Supports conforming regulations to clarify that actions permitted by existing statutes and the exercise of professional judgement are not restricted. | No changes recommended. |
| 10 | Janet Lilly, 3/20/2019 | Supports strengthened restrictions and training. | No changes recommended. |
| 11 | Amy Baldwin, 3/24/2019 | Supports banning restraint and seclusion | No changes recommended |
| 12 | Kristen, 3/30/2019 | Is concerned about the definition of parent and requests that the data submission be under oath. | No changes recommended. |
| 13 | Elizabeth Shatzer, 4/3/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 14 | Amy Trail, 4/5/2019 | Supports explicit ban on prone restraints. | See comment 1. |
| 15 | Angela Neeley, President, Virginia Council of Special Education Administrators (VCASE), 4/15/2019 | Supports the regulations generally.  Urges that school personnel who do not come into contact with students be exempted from training requirements.  Expresses concern about the cost burden.  Expresses concern about the implementation timeline. | No changes recommended |
| 16 | Eli Newcombe, The Faison Center, 4/16/2019 | Questions whether additional IEP meetings following the first mandated by the regulations will be required.  Supports clarifying that advanced training be evidence-based. | We believe these questions are already addressed in the proposed regulations. As a result, no changes recommended. |
| 17 | Poquoson City Public Schools, 4/16/2019 | See comment 15. | See comment 15. |
| 18 | Michael Asip, VCASE, 4/17/2019, and via email 4/17/19 | See comment 15. | See comment 15. |
| 19 | Kim Sanders, Ukuru Systems, 4/17/2019 | Supports explicitly banning prone restraints, emphasizes de-escalation and training. | No changes recommended. |
| 20 | Jennifer Tidd, 4/17/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 21 | Jennifer Cullifer, 4/17/2019 | Supports CISS Platform. | See comment 1. |
| 22 | Rachel McLaughlin, Charlottesville City Public Schools, 4/18/2019 | See comment 15. | See comment 15. |
| 23 | Jane Strong, Ph.D., 4/18/2019 | See comment 15. | See comment 15. |
| 24 | Lisa Ownby, MSW, 4/18/2019 | Supports CISS Platform. | See comment 1. |
| 25 | Teresa Champion, Virginia Autism Project, 4/18/2019 | Supports banning restraint and seclusion, but short of that, supports CISS Platform. | See comment 1. |
| 26 | Heather Luke, 4/18/2019 | Supports banning all seclusion and prone restraint. | No changes recommended. |
| 27 | Cathy Wolfe-Heberle, Blue Ridge Opportunity Services, 4/18/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 28 | Marissa Mancini, 4/18/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 29 | Melissa, 4/18/2019 | Restraint that harms a child should never be used. | No changes recommended. |
| 30 | Guy Stephens, 4/18/2019 | Supports banning all seclusion and prone restraint. | No changes recommended. |
| 31 | Linda Cunningham, 4/18/2019 | Supports frequent training for school staff. | No changes recommended. |
| 32 | Georgean Welichko, 4/18/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 33 | Lauren Ochalek, Education Team Allies, 4/18/2019 | Supports banning all seclusion and prone restraint. | No changes recommended. |
| 34 | KH, 4/18/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 35 | Julia Ward, 4/18/2019 | Believes that the exceptions to the definitions of seclusion and restraint are unduly vague. | No changes recommended. |
| 36 | Kris Walker, 4/18/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 37 | Melanie Worrall, 4/18/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 38 | Pat Young, 4/18/2019 | Expresses that her grandson was traumatized by being secluded. | No changes recommended. |
| 39 | Mai Hall, 4/18/2019 | Supports banning seclusion and restraint. | No changes recommended. |
| 40 | Karen, 4/18/2019 | Supports banning seclusion and restraint. | No changes recommended. |
| 41 | Michelle DeCarlo, 4/19/2019 | Supports banning seclusion and restraint. | No changes recommended, |
| 42 | Joy Eason, 4/19/2019 | Supports banning seclusion. | No changes recommended. |
| 43 | Mary, 4/19/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 44 | Kristen Barber, 4/19/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 45 | Melanie Lickenfelt, 4/19/2019 | Shared story of her child. Supports strong regulation. | No changes recommended. |
| 46 | Amanda Henderson, 4/19/2019 | Shared story of her child. | No changes recommended. |
| 47 | Jessica Vermillion, 4/19/2019 | Supports banning seclusion and restraint. | No changes recommended. |
| 48 | Carla Luck, 4/19/2019 | Shared story of her child. | No changes recommended. |
| 49 | Sada, 4/19/2019 | Supports banning seclusion and restraint. | No changes recommended. |
| 50 | Rhonda Broughton Hobson, 4/19/2019 | Acknowledges that restraint and seclusion are sometimes necessary, but supports reporting, review and other strong standards. | No changes recommended. |
| 51 | Daniella Howard, 4/19/2019 | Supports banning seclusion. | No changes recommended. |
| 52 | Danyel Brown, 4/19/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 53 | Danielle Adams, 4/19/2019 | Supports banning restraint and seclusion | No changes recommended. |
| 54 | Sydney Jillson, 4/19/2019 | Shared story of her child. | No changes recommended. |
| 55 | Troy W. Hawkins, 4/19/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 56 | Erika Sandy, 4/19/2019 | Shared story of her child. | No changes recommended. |
| 57 | Betsey Mitchem, 4/19/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 58 | Zoey Read, 4/19/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 59 | Jennifer Mejri, 4/19/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 60 | Amanda Wampler, 4/19/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 61 | Rikke Cale, 4/19/2019 | See comment 15. | See comment 15. |
| 62 | The Advocacy Institute, 4/19/2019 | Supports CISS Platform. | See comment 1. |
| 63 | Heidi Bunkua, 4/19/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 64 | Anonymous, 4/19/2019 | Supports banning seclusion and prone restraints. | No changes recommended. |
| 65 | Beth Tolley, 4/19/2019 | Supports banning seclusion and restraint. | No changes recommended. |
| 66 | Holly, 4/19/2019 | Supports banning seclusion and restraint. | No changes recommended. |
| 67 | Leah Geeston-Enum, RN, 4/19/2019 | Supports use of restraints only in emergency situations with trained personnel. | No changes recommended. |
| 68 | Dr. Mona Delahooke, Profectum Institute, 4/19/2019 | Supports banning seclusion and restraint. | No changes recommended. |
| 69 | Dee Sulenski, PA-C emeritus | Supports banning seclusion and restraint. | No changes recommended. |
| 70 | Jason Bennett, 4/19/2019 | See comment 15. | See comment 15. |
| 71 | Maureen Hollowell, Virginia Association of Centers for Independent Living, 4/19/2019 | 1. Prefers that restraint and seclusion be banned, but offers the following comments. 2. Remove exemptions from the definition of seclusion. 3. Add seclusion to banned “aversive stimuli” and require seclusion rooms to comply with building and fire codes. 4. Remove exemptions from the definition of restraint. 5. Provide a clear statement that seclusion cannot be used except in an emergency situation. 6. Retain ban on mechanical and pharmacological restraints. 7. Expressly ban prone restraints. 8. Limit restraints and seclusion in situations where students cannot communicate medical distress or other needs, and where they are otherwise medically contraindicated. 9. Supports retaining the requirement that the restraint or seclusion be ended when the emergency has dissipated. 10. Supports requiring school divisions to implement PBIS. 11. Supports retaining continuous visual monitoring requirement. 12. Supports generally the notification and debriefing requirements, except for required student debriefing. | 1. See comment 1. 2. No changes recommended. |
| 72 | Courtney Pugh, 4/19/2019 | Supports use of positive behavioral interventions, restraint and seclusion only as a last resort, and prompt parental notification. | No changes recommended. |
| 73 | Dave, 4/19/2019 | “This is the reality of how Applied Behavior Analysis operates.” | No changes recommended. |
| 74 | Jazmine Kase, 4/19/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 75 | Charles E. Swadley, 4/19/2019 | Recited personal experience witnessing restraint and seclusion. Supports training and data collection. | No changes recommended. |
| 76 | Dwight Godwin, Jr., 4/19/2019 | Supports more inclusive practices. | No changes recommended. |
| 77 | Cheryl Simpson, Endependence Center, Inc., 4/19/2019 | Joins in comment 71. | No changes recommended. |
| 78 | Elizabeth Mitchell, 4/19/2019 | Urges that resources go toward caring for people. | No changes recommended. |
| 79 | Aurora Hurtado, 4/19/2019 | Urges that school environments be nurturing. | No changes recommended. |
| 80 | S. Albert, 4/19/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 81 | Neurodiverse rep, 4/19/2019 | Shared personal story. | No changes recommended. |
| 82 | H.K., 4/19/2019 | Urges positive interventions. | No changes recommended. |
| 83 | Billie Jo Bevan, 4/19/2019 | Supports banning seclusion and restraint. | No changes recommended. |
| 84 | Jane Zagorites, 4/19/2019 | Shared her grandchild’s story. | No changes recommended. |
| 85 | Lisa Stephens, 4/19/2019 | Shared her child’s story. | No changes recommended. |
| 86 | Katrina Lee, Member of VCASE Legislative Committee, 4/19/2019 | See comment 15. | See comment 15. |
| 87 | Monica Lara Lima, 4/19/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 88 | Kathy Hoback, 4/19/2019 | Urges that teacher safety not be forgotten. | No changes recommended. |
| 89 | TLC, 4/19/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 90 | Advocating 4 Kids, Inc. and NAPSE, 4/19/2019 | 1. Supports restoring language banning prone restraints. 2. Supports eliminating exceptions from the definition of restraint and seclusion. 3. Supports requiring that a mental health professional be present at any student debriefing. 4. Supports culturally informed training. | No changes recommended. |
| 91 | Sharon R. Tropf, 4/19/2019 | Supports CISS Platform. | See comment 1. |
| 92 | Mary Scopin, MCF, 4/19/2019 | Supports banning seclusion. | No changes recommended. |
| 93 | Amanda Campbell, 4/19/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 94 | Allison Bowles, 4/19/2019 | Supports banning restraints. | No changes recommended. |
| 95 | Norfolk Commission on Persons with Disabilities, 4/19/2019 | Echoes comment 71. | See comment 71. |
| 96 | Carter Melin, 4/19/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 97 | Pamela Ononiwu, Candidate, Fairfax County School Board | Supports CISS Platform. | See comment 1. |
| 98 | Pamela Thurman, 3/15/2019 | Supports CISS Platform. | See comment 1. |
| 99 | Constituent, 3/15/2019 | Supports CISS Platform. | See comment 1. |
| 100 | Parent, 3/18/2019 | Believes that the regulations do not contain sufficiently clear definitions. | No changes recommended. |
| 101 | Parent, 3/19/2019 | Supports CISS Platform. | See comment 1. |
| 102 | Parent, 3/19/2019 | Supports banning seclusion | No changes recommended. |
| 103 | Megan Harris, 3/20/2019 | Supports CISS Platform. | See comment 1. |
| 104 | Parent, 3/21/2019 | Supports CISS Platform. | See comment 1. |
| 105 | Parent, 3/28/2019 | Supports CISS Platform. | See comment 1. |
| 106 | Parent, 4/1/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 107 | Elizabeth Haught, 4/8/2019 | See comment 15. | See comment 15. |
| 108 | Kristina Williams, 4/16/2019 | See comment 15. | See comment 15. |
| 109 | Legal Services of Northern Virginia, 3/29/2019 | Calls Fairfax County reporting situation involving OCR data to the Board’s attention. | No changes recommended. |
| 110 | Ahnjayla Hunter, 4/16/2019 | See comment 15. | See comment 15. |
| 111 | Connie Phillips, 4/15/2019 | See comment 15. | See comment 15. |
| 112 | Craig Pinello, 4/16/2019 | See comment 15. | See comment 15. |
| 113 | disAbility Law Center, 4/16/2019 | Supports CISS Platform. | See comment 1. |
| 114 | Ellen Bauserman, 4/2019 | See comment 15. | See comment 15. |
| 115 | Fairfax County Public Schools, 4/19/2019 | See comment 15. | See comment 15. |
| 116 | Del. Richard P. Bell, 4/10/2019 and 3/29/2019 | Urged the prompt enactment of regulations. | No changes recommended. |
| 117 | Lisa McCoy, 4/15/2019 | See comment 15. | See comment 15. |
| 118 | CISS, 3/29/2019 | See comment 1. | See comment 1. |
| 119 | Melinda Smith, 4/2019 | See comment 15. | See comment 15. |
| 120 | Paige Bradford, 4/2019 | Supports VEA comments. | See comment 9. |
| 121 | Patricia Nelson, 4/2019 | See comment 15. | See comment 15. |
| 122 | VCU Partnership for People with Disabilities, 4/19/2019 | Supports CISS Platform.  Believes that regulations should affirmatively state that restraint and seclusion must not be used to address behavior that does not cause imminent threat of serious bodily injury.  Supports the use of positive behavioral interventions. | No changes recommended. |
| 123 | Virginia Board for People with Disabilities, 4/10/2019 | Supports CISS Platform. | See comment 1. |
| 124 | Wendy Martin-Johnson, 4/12/2019 | See comment 15. | See comment 15. |
| 125 | Department of Juvenile Justice, 4/19/2019 | Requested that their facilities be excluded from the regulations, as their circumstances are unique and the have existing crisis management plans. | Change made. |

**ATTACHMENT C**

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Final Regulation

Agency Background Document

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| --- | --- |
| **Agency name** | Virginia Department of Education |
| **Virginia Administrative Code (VAC) citation(s)** | 8 VAC 20-750 |
| **Regulation title(s)** | Regulations Governing the Use of Seclusion and Restraint in the Public Elementary and Secondary Schools in Virginia |
| **Action title** | New regulations to Govern the Use of Seclusion and Restraint in the Public Elementary and Secondary Schools in Virginia, as required by HB 1443, which was approved by the 2015 Virginia General Assembly and which became effective on July 1, 2015. The statute was amended by HB 2599, enacted by the 2019 Virginia General Assembly. |
| **Date this document prepared** | June 21, 2019 |

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 (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations.*

Brief Summary

*Please 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.*

The Virginia General Assembly enacted HB 1443, amending the *Code of Virginia* by adding Section 22.1-279.1:1 relating to the use of seclusion and restraint in public schools. The bill, which became effective on July 1, 2015, requires the Board of Education to adopt regulations on the use of seclusion and restraint in public elementary and secondary schools in the Commonwealth that (i) are consistent with its *Guidelines for the Development of Policies and Procedures for Managing Student Behavior in Emergency Situations* and the *Fifteen Principles* contained in the U.S. Department of Education’s *Restraint and Seclusion: Resource Document;* (ii) include definitions, criteria for use, restrictions for use, training requirements, notification requirements, reporting requirements, and follow-up requirements; and (iii) address distinctions, including distinctions in emotional and physical development, between (a) the general student populations and the special education student population and (b) elementary school students and secondary school students. HB 2599, enacted by the 2019 General Assembly requires the Board to specifically (i) identify and prohibit the use of any method of restraint or seclusion that it determines poses a significant danger to the student, and (2) establish safety standards for seclusion.

The proposed regulations define what constitutes seclusion and physical restraint, as well as mechanical restraint, pharmacological restraint and adversive stimuli, and describe the conditions under which is it is permissible for a student to be restrained or secluded. The regulations also provide for notification and reporting to parents, debriefing with staff and the student following incidents and for follow-up when the student has been restrained or secluded more than twice during the course of a school year. In addition, the regulations also provide for reporting to the Virginia Department of Education. The regulations also require local school divisions to adopt policies and procedures regarding the use of seclusion and restraint. The regulations require that all school personnel be trained in techniques for avoiding the use of seclusion and restraint, and that school personnel who work with students who are likely to be restrained or secluded must receive additional training on safe methods for restraining or secluding a student.

Finally, the proposed regulations set for the types of dangerous restraints that are banned, and establish safety standards for seclusion rooms.

Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.*

No terms are used in the Agency Background Document that are not also defined in the “Definition” section of the regulations.

Statement of Final Agency Action

*Please 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 adopted the Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia on July XX, 2019.

Mandate and Impetus

*Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously-reported information, include a specific statement to that effect.*

As stated above, HB 2599, enacted by the 2019 General Assembly requires the Board to specifically (i) identify and prohibit the use of any method of restraint or seclusion that it determines poses a significant danger to the student, and (2) establish safety standards for seclusion Because the previously presented regulations included the foregoing information, no additional changes were necessary.

Legal Basis

*Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity’s overall regulatory authority.*

The Virginia Board of Education is the promulgating entity for these regulations. As noted above, the Virginia General Assembly enacted HB 1443, amending the *Code of Virginia* by adding Section 22.1-279.1:1 relating to the use of seclusion and restraint in public schools. The bill, which became effective on July 1, 2015, requires the Board of Education to adopt regulations on the use of seclusion and restraint in public elementary and secondary schools in the Commonwealth that (i) are consistent with its *Guidelines for the Development of Policies and Procedures for Managing Student Behavior in Emergency Situations* and the *Fifteen Principles* contained in the U.S. Department of Education’s *Restraint and Seclusion: Resource Document;* (ii) include definitions, criteria for use, restrictions for use, training requirements, notification requirements, reporting requirements, and follow-up requirements; and (iii) address distinctions, including distinctions in emotional and physical development, between (a) the general student populations and the special education student population and (b) elementary school students and secondary school students. HB 2599, enacted by the 2019 General Assembly requires the Board to specifically (i) identify and prohibit the use of any method of restraint or seclusion that it determines poses a significant danger to the student, and (2) establish safety standards for seclusion.

The Board of Education’s authority for promulgating regulations governing standards for accrediting public schools may be found in Section 22.1-253.13:3 of the *Code of Virginia*:

*“The Board of Education shall promulgate regulations establishing standard for accreditation pursuant to the Administrative Process Act* (Section 2.2-4000 et seq.), which shall include, but not be limited to, student outcome measures, requirements and guidelines for instructional programs and for the integration of educational technology into such instructional programs, administrative and instructional staffing levels and positions, including such staff positions for supporting educational technology, student services, auxiliary education programs such as library and media services, course and credit requirements for graduation from high school, community relations, and the philosophy, goals and objectives of public education in Virginia.”

The Board of Education’s overall regulatory authority may be found in Section 22.1-16 of the *Code of Virginia*: “The 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.

Purpose

*Please 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.*

The proposed regulatory action is necessary to fulfill the General Assembly’s directive that regulations be developed in accordance with the 2014 recommendations of the Virginia Commission on Youth that certain principles contained in existing state and federal guidance documents have regulatory effect. The bill and the proposed regulations are intended to ensure that school personnel are properly trained to understand the circumstances in which seclusion or restraint may be used and on appropriate methods for secluding or restraining students, in the interest of protecting both students and school personnel from harm.

Substance

Please 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.

These regulations govern the use of seclusion and restraint utilized for the purpose of behavioral intervention in the Commonwealth of Virginia.

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

Issues

Please 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 to the public, specifically students and parents, will be a lessened risk or injury or other trauma, increased communication with parents, and more proactive consideration and implementation of positive behavioral interventions.

The primary advantage to the agency is the ability to collect additional data regarding behavioral interventions in school settings.

The primary disadvantage to the regulated community, school divisions within the Commonwealth, is the cost of providing training and the time required to report and debrief. School divisions should benefit from having trained personnel and from evidence-based positive behavioral interventions.

Staff has identified no other disadvantage to the proposed regulations.

Requirements More Restrictive than Federal

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously-reported information, include a specific statement to that effect.

Neither federal law nor regulations address the use of seclusion or restraint in public schools.

Agencies, Localities, and Other Entities Particularly Affected

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously-reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected

The Department of Juvenile Justice and the Department of Behavioral Health are affected as they operate school programs within their facilities. We have included language in the most recent draft of the proposed regulations to deal with their particular circumstances.

Localities Particularly Affected

All school division in the Commonwealth will be subject to the proposed regulations.

Other Entities Particularly Affected

Staff has not identified any other entities particularly affected.

Public Comment

*Please summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.*

|  |  |  |  |
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| **General** | | | |
|  | Commenter | Comment | Agency Response |
| 1 | Virginia Board for People with Disabilities,  3/21/2019 | 1. Supports the existing notification requirement. 2. Suggests requiring positive behavioral interventions. 3. Opposes carve-outs to the definition of restraint and seclusion, preferring it to be limited solely to incidents involving imminent threat of serious bodily harm to self or others. Specific exclusions include use of restraint or seclusion for property damage, investigation of a violation of the code of student conduct and incident physical contact to maintain order. 4. Supports adding an explicit provision banning prone restraint.   Note: These are the provisions supported by the Coalition for Improvement of School Safety (CISS). | 1. No change recommended. 2. No change recommended. 3. No change recommended. 4. We believe that the existing language covers prone restraints, as well as other dangerous holds. No change recommended. |
| 2 | Cheryl Poe,  3/21/2019 | Encouraged the inclusion of culturally competent, trauma-informed components in training and practices. | No changes recommended. |
| 3 | Christine Germeyer, Chair, State Special Education Advisory Committee, 3/21/20109 | 1. Supports existing carve-outs. 2. Questions when visual monitoring of a student might be permitted. 3. Supports advanced training for all administrators, but acknowledges the fiscal impact. | No changes recommended. |
| 4 | Catherine Lavarius, 3/13/2019 | Opposes the provision requiring IEP meetings to be held after two incidents. | No changes recommended. |
| 5 | Mary Malina, 3/16/2019 | Supports the Coalition for Improvement of School Safety Platform (CISS). | See Comment 1. |
| 6 | Riham Mahfouz, 3/16/19 | Supports the CISS Platform | See Comment 1. |
| 7 | Ann W. Worley, 3/17/19 | 1. Comment reflects items in the CISS Platform.  2. Believes bus drivers should be trained.  3. Encourages more robust debriefing. | 1. See Comment 1  2. All employees are covered by training requirements.  3. No changes recommended. |
| 8 | Alexa Zagorites, 3/18/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 9 | Dena Rosenkrantz, Virginia Education Association, 3/20/19 | Supports conforming regulations to clarify that actions permitted by existing statutes and the exercise of professional judgement are not restricted. | No changes recommended. |
| 10 | Janet Lilly, 3/20/2019 | Supports strengthened restrictions and training. | No changes recommended. |
| 11 | Amy Baldwin, 3/24/2019 | Supports banning restraint and seclusion | No changes recommended |
| 12 | Kristen, 3/30/2019 | Is concerned about the definition of parent and requests that the data submission be under oath. | No changes recommended. |
| 13 | Elizabeth Shatzer, 4/3/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 14 | Amy Trail, 4/5/2019 | Supports explicit ban on prone restraints. | See comment 1. |
| 15 | Angela Neeley, President, Virginia Council of Special Education Administrators (VCASE), 4/15/2019 | Supports the regulations generally.  Urges that school personnel who do not come into contact with students be exempted from training requirements.  Expresses concern about the cost burden.  Expresses concern about the implementation timeline. | No changes recommended |
| 16 | Eli Newcombe, The Faison Center, 4/16/2019 | Questions whether additional IEP meetings following the first mandated by the regulations will be required.  Supports clarifying that advanced training be evidence-based. | We believe these questions are already addressed in the proposed regulations. As a result, no changes recommended. |
| 17 | Poquoson City Public Schools, 4/16/2019 | See comment 15. | See comment 15. |
| 18 | Michael Asip, VCASE, 4/17/2019, and via email 4/17/19 | See comment 15. | See comment 15. |
| 19 | Kim Sanders, Ukuru Systems, 4/17/2019 | Supports explicitly banning prone restraints, emphasizes de-escalation and training. | No changes recommended. |
| 20 | Jennifer Tidd, 4/17/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 21 | Jennifer Cullifer, 4/17/2019 | Supports CISS Platform. | See comment 1. |
| 22 | Rachel McLaughlin, Charlottesville City Public Schools, 4/18/2019 | See comment 15. | See comment 15. |
| 23 | Jane Strong, Ph.D., 4/18/2019 | See comment 15. | See comment 15. |
| 24 | Lisa Ownby, MSW, 4/18/2019 | Supports CISS Platform. | See comment 1. |
| 25 | Teresa Champion, Virginia Autism Project, 4/18/2019 | Supports banning restraint and seclusion, but short of that, supports CISS Platform. | See comment 1. |
| 26 | Heather Luke, 4/18/2019 | Supports banning all seclusion and prone restraint. | No changes recommended. |
| 27 | Cathy Wolfe-Heberle, Blue Ridge Opportunity Services, 4/18/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 28 | Marissa Mancini, 4/18/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 29 | Melissa, 4/18/2019 | Restraint that harms a child should never be used. | No changes recommended. |
| 30 | Guy Stephens, 4/18/2019 | Supports banning all seclusion and prone restraint. | No changes recommended. |
| 31 | Linda Cunningham, 4/18/2019 | Supports frequent training for school staff. | No changes recommended. |
| 32 | Georgean Welichko, 4/18/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 33 | Lauren Ochalek, Education Team Allies, 4/18/2019 | Supports banning all seclusion and prone restraint. | No changes recommended. |
| 34 | KH, 4/18/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 35 | Julia Ward, 4/18/2019 | Believes that the exceptions to the definitions of seclusion and restraint are unduly vague. | No changes recommended. |
| 36 | Kris Walker, 4/18/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 37 | Melanie Worrall, 4/18/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 38 | Pat Young, 4/18/2019 | Expresses that her grandson was traumatized by being secluded. | No changes recommended. |
| 39 | Mai Hall, 4/18/2019 | Supports banning seclusion and restraint. | No changes recommended. |
| 40 | Karen, 4/18/2019 | Supports banning seclusion and restraint. | No changes recommended. |
| 41 | Michelle DeCarlo, 4/19/2019 | Supports banning seclusion and restraint. | No changes recommended, |
| 42 | Joy Eason, 4/19/2019 | Supports banning seclusion. | No changes recommended. |
| 43 | Mary, 4/19/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 44 | Kristen Barber, 4/19/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 45 | Melanie Lickenfelt, 4/19/2019 | Shared story of her child. Supports strong regulation. | No changes recommended. |
| 46 | Amanda Henderson, 4/19/2019 | Shared story of her child. | No changes recommended. |
| 47 | Jessica Vermillion, 4/19/2019 | Supports banning seclusion and restraint. | No changes recommended. |
| 48 | Carla Luck, 4/19/2019 | Shared story of her child. | No changes recommended. |
| 49 | Sada, 4/19/2019 | Supports banning seclusion and restraint. | No changes recommended. |
| 50 | Rhonda Broughton Hobson, 4/19/2019 | Acknowledges that restraint and seclusion are sometimes necessary, but supports reporting, review and other strong standards. | No changes recommended. |
| 51 | Daniella Howard, 4/19/2019 | Supports banning seclusion. | No changes recommended. |
| 52 | Danyel Brown, 4/19/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 53 | Danielle Adams, 4/19/2019 | Supports banning restraint and seclusion | No changes recommended. |
| 54 | Sydney Jillson, 4/19/2019 | Shared story of her child. | No changes recommended. |
| 55 | Troy W. Hawkins, 4/19/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 56 | Erika Sandy, 4/19/2019 | Shared story of her child. | No changes recommended. |
| 57 | Betsey Mitchem, 4/19/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 58 | Zoey Read, 4/19/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 59 | Jennifer Mejri, 4/19/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 60 | Amanda Wampler, 4/19/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 61 | Rikke Cale, 4/19/2019 | See comment 15. | See comment 15. |
| 62 | The Advocacy Institute, 4/19/2019 | Supports CISS Platform. | See comment 1. |
| 63 | Heidi Bunkua, 4/19/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 64 | Anonymous, 4/19/2019 | Supports banning seclusion and prone restraints. | No changes recommended. |
| 65 | Beth Tolley, 4/19/2019 | Supports banning seclusion and restraint. | No changes recommended. |
| 66 | Holly, 4/19/2019 | Supports banning seclusion and restraint. | No changes recommended. |
| 67 | Leah Geeston-Enum, RN, 4/19/2019 | Supports use of restraints only in emergency situations with trained personnel. | No changes recommended. |
| 68 | Dr. Mona Delahooke, Profectum Institute, 4/19/2019 | Supports banning seclusion and restraint. | No changes recommended. |
| 69 | Dee Sulenski, PA-C emeritus | Supports banning seclusion and restraint. | No changes recommended. |
| 70 | Jason Bennett, 4/19/2019 | See comment 15. | See comment 15. |
| 71 | Maureen Hollowell, Virginia Association of Centers for Independent Living, 4/19/2019 | 1. Prefers that restraint and seclusion be banned, but offers the following comments. 2. Remove exemptions from the definition of seclusion. 3. Add seclusion to banned “aversive stimuli” and require seclusion rooms to comply with building and fire codes. 4. Remove exemptions from the definition of restraint. 5. Provide a clear statement that seclusion cannot be used except in an emergency situation. 6. Retain ban on mechanical and pharmacological restraints. 7. Expressly ban prone restraints. 8. Limit restraints and seclusion in situations where students cannot communicate medical distress or other needs, and where they are otherwise medically contraindicated. 9. Supports retaining the requirement that the restraint or seclusion be ended when the emergency has dissipated. 10. Supports requiring school divisions to implement PBIS. 11. Supports retaining continuous visual monitoring requirement. 12. Supports generally the notification and debriefing requirements, except for required student debriefing. | 1. See comment 1. 2. No changes recommended. |
| 72 | Courtney Pugh, 4/19/2019 | Supports use of positive behavioral interventions, restraint and seclusion only as a last resort, and prompt parental notification. | No changes recommended. |
| 73 | Dave, 4/19/2019 | “This is the reality of how Applied Behavior Analysis operates.” | No changes recommended. |
| 74 | Jazmine Kase, 4/19/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 75 | Charles E. Swadley, 4/19/2019 | Recited personal experience witnessing restraint and seclusion. Supports training and data collection. | No changes recommended. |
| 76 | Dwight Godwin, Jr., 4/19/2019 | Supports more inclusive practices. | No changes recommended. |
| 77 | Cheryl Simpson, Endependence Center, Inc., 4/19/2019 | Joins in comment 71. | No changes recommended. |
| 78 | Elizabeth Mitchell, 4/19/2019 | Urges that resources go toward caring for people. | No changes recommended. |
| 79 | Aurora Hurtado, 4/19/2019 | Urges that school environments be nurturing. | No changes recommended. |
| 80 | S. Albert, 4/19/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 81 | Neurodiverse rep, 4/19/2019 | Shared personal story. | No changes recommended. |
| 82 | H.K., 4/19/2019 | Urges positive interventions. | No changes recommended. |
| 83 | Billie Jo Bevan, 4/19/2019 | Supports banning seclusion and restraint. | No changes recommended. |
| 84 | Jane Zagorites, 4/19/2019 | Shared her grandchild’s story. | No changes recommended. |
| 85 | Lisa Stephens, 4/19/2019 | Shared her child’s story. | No changes recommended. |
| 86 | Katrina Lee, Member of VCASE Legislative Committee, 4/19/2019 | See comment 15. | See comment 15. |
| 87 | Monica Lara Lima, 4/19/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 88 | Kathy Hoback, 4/19/2019 | Urges that teacher safety not be forgotten. | No changes recommended. |
| 89 | TLC, 4/19/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 90 | Advocating 4 Kids, Inc. and NAPSE, 4/19/2019 | 1. Supports restoring language banning prone restraints. 2. Supports eliminating exceptions from the definition of restraint and seclusion. 3. Supports requiring that a mental health professional be present at any student debriefing. 4. Supports culturally informed training. | No changes recommended. |
| 91 | Sharon R. Tropf, 4/19/2019 | Supports CISS Platform. | See comment 1. |
| 92 | Mary Scopin, MCF, 4/19/2019 | Supports banning seclusion. | No changes recommended. |
| 93 | Amanda Campbell, 4/19/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 94 | Allison Bowles, 4/19/2019 | Supports banning restraints. | No changes recommended. |
| 95 | Norfolk Commission on Persons with Disabilities, 4/19/2019 | Echoes comment 71. | See comment 71. |
| 96 | Carter Melin, 4/19/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 97 | Pamela Ononiwu, Candidate, Fairfax County School Board | Supports CISS Platform. | See comment 1. |
| 98 | Pamela Thurman, 3/15/2019 | Supports CISS Platform. | See comment 1. |
| 99 | Constituent, 3/15/2019 | Supports CISS Platform. | See comment 1. |
| 100 | Parent, 3/18/2019 | Believes that the regulations do not contain sufficiently clear definitions. | No changes recommended. |
| 101 | Parent, 3/19/2019 | Supports CISS Platform. | See comment 1. |
| 102 | Parent, 3/19/2019 | Supports banning seclusion | No changes recommended. |
| 103 | Megan Harris, 3/20/2019 | Supports CISS Platform. | See comment 1. |
| 104 | Parent, 3/21/2019 | Supports CISS Platform. | See comment 1. |
| 105 | Parent, 3/28/2019 | Supports CISS Platform. | See comment 1. |
| 106 | Parent, 4/1/2019 | Supports banning restraint and seclusion. | No changes recommended. |
| 107 | Elizabeth Haught, 4/8/2019 | See comment 15. | See comment 15. |
| 108 | Kristina Williams, 4/16/2019 | See comment 15. | See comment 15. |
| 109 | Legal Services of Northern Virginia, 3/29/2019 | Calls Fairfax County reporting situation involving OCR data to the Board’s attention. | No changes recommended. |
| 110 | Ahnjayla Hunter, 4/16/2019 | See comment 15. | See comment 15. |
| 111 | Connie Phillips, 4/15/2019 | See comment 15. | See comment 15. |
| 112 | Craig Pinello, 4/16/2019 | See comment 15. | See comment 15. |
| 113 | disAbility Law Center, 4/16/2019 | Supports CISS Platform. | See comment 1. |
| 114 | Ellen Bauserman, 4/2019 | See comment 15. | See comment 15. |
| 115 | Fairfax County Public Schools, 4/19/2019 | See comment 15. | See comment 15. |
| 116 | Del. Richard P. Bell, 4/10/2019 and 3/29/2019 | Urged the prompt enactment of regulations. | No changes recommended. |
| 117 | Lisa McCoy, 4/15/2019 | See comment 15. | See comment 15. |
| 118 | CISS, 3/29/2019 | See comment 1. | See comment 1. |
| 119 | Melinda Smith, 4/2019 | See comment 15. | See comment 15. |
| 120 | Paige Bradford, 4/2019 | Supports VEA comments. | See comment 9. |
| 121 | Patricia Nelson, 4/2019 | See comment 15. | See comment 15. |
| 122 | VCU Partnership for People with Disabilities, 4/19/2019 | Supports CISS Platform.  Believes that regulations should affirmatively state that restraint and seclusion must not be used to address behavior that does not cause imminent threat of serious bodily injury.  Supports the use of positive behavioral interventions. | No changes recommended. |
| 123 | Virginia Board for People with Disabilities, 4/10/2019 | Supports CISS Platform. | See comment 1. |
| 124 | Wendy Martin-Johnson, 4/12/2019 | See comment 15. | See comment 15. |
| 125 | Department of Juvenile Justice, 4/19/2019 | Requested that their facilities be excluded from the regulations, as their circumstances are unique and the have existing crisis management plans. | Change made. |

Detail of Changes Made Since the Previous Stage

Please list all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Please put an asterisk next to any substantive changes.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Current chapter-section number** | **New chapter-section number, if applicable** | **New requirement from previous stage** | **Updated new requirement since previous stage** | **Change, intent, rationale, and likely impact of updated requirements** |
| 8 VAC 20-750-5, 8 VAC-750-20 |  |  | Excluded students receiving instruction in secure facilities and detention homes as defined in Section 16.1 of the Code of Virginia and in facilities operated by the Virginia Department of Behavioral Health and Developmental Services. | These facilities have unique circumstances and already have their own policies and procedures regarding emergency situations. ice |

Detail of All Changes Proposed in this Regulatory Action

Please list all changes proposed in this action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Please put an asterisk next to any substantive changes.

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| **Current chapter-section number** | **New chapter-section number, if applicable** | **Current requirement** | **Change, intent, rationale, and likely impact of updated requirements** |
|  | 8VAC 20-750-5 | None | Application:  Recites that the proposed regulation is intended to govern the use of seclusion and restraint for the purpose of behavioral intervention, in the public elementary and secondary schools in the Commonwealth. It additionally sets forth the steps that must be taken to determine whether the action falls within the meaning of the regulations.  Intent/rationale: To provide background and framework for the regulations.  Impact: to lessen confusion about applicability. |
|  | 8 VAC 20-750-10 | None | Definitions |
|  | “Aversive stimuli” |  | Aversive stimuli include interventions that are intended to induce pain or discomfort in a student as a means of discipline or to control behavior. It includes measures such as verbal and mental abuse and deprivation of necessities.  Intent/rationale/impact: To set the framework for the remainder of the regulations |
|  | “Corporal Punishment” | None | Corporal punishment means the infliction of physical pain on a student for the purpose of discipline.  Intent/rationale/impact: To set the framework for the remainder of the regulations |
|  | “Mechanical restraint” | None | Mechanical restraint means the use of device or equipment to restrict a student’s freedom of movement. It does not include items such as orthopedically prescribed devices, vehicle restraints and high chairs used for their intended purposes.  Intent/rationale/impact: To set the framework for the remainder of the regulations |
|  | “Pharmacological restraint” | None | Pharmacological restraint means the use of a drug or medication that is not prescribed and administered in accordance with a qualified health professional’s order, but that is administered in order to control behavior.  Intent/rationale/impact: To set the framework for the remainder of the regulations |
|  | “Physical restraint” | None | Physical restraint means a personal restriction that immobilizes or restricts the ability of a student to move freely. It does not include briefly hold a student to calm or comfort the student, holding a student’s hand or arm to provide a safe escort for the student, or the use of incidental, minor or reasonable contact to maintain order and control.  Intent/rationale/impact: To set the framework for the remainder of the regulations |
|  | “Restraint” | None | Restraint includes physical restraint, mechanical restraint and pharmacological restraint.  Intent/rationale/impact: To set the framework for the remainder of the regulations |
|  | “Seclusion” | None | Seclusion means the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. It does not include a time-out, in-school suspension, detention, a student requested break, removal for the student to regain self-control, removal of a student for disruptive behavior and confinement of a student during the investigation of a violation of the Code of Student Conduct.  Intent/rationale/impact: To set the framework for the remainder of the regulations |
|  | “Time-out” | None | Time-out means a behavioral intervention in which a student is temporarily removed from the learning activity, but where the student is not confined.  Intent/rationale/impact: To set the framework for the remainder of the regulations |
|  | 8 VAC 20-750-20 | None | General definitions. This section defines terms that are used in the proposed regulations that are generally noncontroversial and appear in other statutes or regulations. They include the following: behavioral intervention plan, Board, business day, chapter, calendar day, child with a disability, Department, evaluation, functional behavioral assessment, individualized education program, individualized education program team, school day, school personnel, Section 504 plan, and student.  Intent/rationale/impact: To set the framework for the remainder of the regulations |
|  | 8 VAC 20-750-30 | None. | Prohibited actions. These regulations prohibit the use of the following in the Commonwealth: mechanical restraints, pharmacological restraints, aversive stimuli, corporal punishment, and use of restraint or seclusion in any fashion that restricts a student’s breathing or harms the student. The regulations also prohibit the use of physical restraint or seclusion as a punishment or discipline, as a means of coercion or retaliation, as a convenience, or to protect property. Furthermore, the regulations ban the use of seclusion rooms that do not meet the standards set forth in the regulations. Finally, it prohibits the use of restraint or seclusion when it is medically or psychologically contraindicated.  Intent/rationale/impact: These proposed regulations are designed to ensure the safety of students in the public schools in the Commonwealth, while balancing the ability of school personnel to deal with emergency situations. |
|  | 8 VAC 20-750-40 | None | Use of physical restraint and seclusion. Provides that school personnel are not required to use restraint or seclusion, but if they do, it must be used in the manner set forth in the regulations. School personnel may use physical restraint or seclusion only when, in the reasonable judgement of the school personnel, other interventions are or would be ineffective, and only for the following purposes: to prevent a student from inflicting serious physical harm or injury to self or others, to quell a disturbance that threatens such harm, to remove a student from the scene of a disturbance that threatens such harm, to defend self or others from such harm, to obtain possession of controlled substances, paraphernalia, a weapon, or other dangerous objects.  The physical restraint or seclusion must be discontinued as soon as the circumstances causing it has dissipated.  Intent/rationale/impact: These proposed regulations are designed to ensure the safety of students in the public schools in the Commonwealth, while balancing the ability of school personnel to deal with emergency situations. |
|  | 8 VAC 20-750-50 | None | Seclusion; standards for use. This section sets forth safety standards for seclusion rooms and the monitoring of students in seclusion rooms.  Intent/rationale/impact: These proposed regulations are designed to ensure the safety of students in the public schools in the Commonwealth, while balancing the ability of school personnel to deal with emergency situations. |
|  | 8 VAC 20-750-60 | None | Notification and reporting. This section addresses notification of incidents of restraint and seclusion within the school and notification of parents, preparation and dissemination of incident reports, and debriefing with school personnel, and where appropriate, the student.  Intent/rationale/impact: These proposed regulations are designed to ensure the safety of student in the public schools in the Commonwealth, while balancing the ability of school personnel to deal with emergency situations.  Debriefing with staff and students is intended to promote the use of alternative methods of positive behavioral intervention. |
|  | 8 VAC 20-750-70 | None | Policies and procedures. Requires that school divisions adopt policies and procedures promoting the use of positive behavioral interventions and supports, describing staff training, interaction with law enforcement. The policies and procedures must be available to the public, and developed with consideration of factors that encourage parent involvement and collaboration.  Intent/rationale/impact: These proposed regulations are designed to ensure the safety of student in the public schools in the Commonwealth, while balancing the ability of school personnel to deal with emergency situations.  The regulations are also intended to promote the use of positive behavioral supports. |
|  | 8 VAC 20-750-80 | None | Prevention; multiple uses of restraint or seclusion. Requires that after the second day in a school year when a student is restrained or secluded, teams must convene to consider strategies to address the behavior, which may include conducting evaluations.  Intent/rationale/impact: These proposed regulations are designed to ensure the safety of student in the public schools in the Commonwealth, while balancing the ability of school personnel to deal with emergency situations.  The regulations are also intended to promote the use of positive behavioral supports. |
|  | 8 VAC 20-750-90 | None | Annual reporting. Provides that principals must report incidents to the division superintendent and that the superintendent must report data to the Virginia Department of Education on an annual basis.  Intent/rationale/impact: Reporting will allow the school division and the VDOE to examine trends and effectiveness in the use of positive behavioral interventions. |
|  | 8 VAC 20-750-100 | None | Training. Provides for initial training for all school personnel that focuses on positive behavioral support and de-escalation. Provides that the school division must provide advanced training to at least one building administrator and for personnel assigned to work with students for whom the need for restraint and seclusion is determined to be likely. All training must be evidence-based.  Intent/rationale/impact: These proposed regulations are designed to ensure the safety of student in the public schools in the Commonwealth, while balancing the ability of school personnel to deal with emergency situations.  The regulations are also intended to promote the use of positive behavioral supports. |
|  | 8 VAC 20-750-110 |  | Construction and interpretation. Outlines how the regulations interact with other applicable law.  Intent/rationale and impact: This section is intended to guide the applicability of the regulations. |