



# **VIRGINIA BOARD OF EDUCATION**

# **AGENDA ITEM**

**Agenda Item:** J

**Date:** March 28, 2024

**Title:** First and Final Review of Notice of Intended Regulatory Action to Align with Item 130.H of Chapter 2 of the Acts of the Assembly 2022 Special Session I

**Presenter:** Jim Chapman, Director of Board Relations

## **Purpose of Presentation**

Action required by state or federal law or regulation.

## **Executive Summary**

On January 27, 2022, the Board approved the fast-track action "Fast-Track Action for Legislative Mandate to the *Regulations Governing the Operation of Private Schools for Students with Disabilities*." This action was approved to comply with [Chapter 552](#) of the Acts of the Assembly 2021 Special Session I ("Chapter 552"), which also directed the Virginia Board of Education ("Board") to "develop and promulgate regulations for private special education day schools on restraint and seclusion that establish the same requirements for restraint and seclusion as those for public schools." See [Item 138.I](#).

During the 2023 Special Session I, the Virginia General Assembly enacted Chapter 1 of the Acts of Assembly 2023 Special Session I ("Chapter 1") again directed the Board to "develop and promulgate regulations for private special education day schools on restraint and seclusion that establish the same requirements for restraint and seclusion as those for public schools." See [Item 130.H](#).

On December 8, 2023, the Office of Attorney General completed its review of the fast-track action. During further review, it was determined that the action was inappropriate for the fast-track process because the subject matter was likely to generate significant public comment. On March 6, 2024, the fast-track action was withdrawn.

The regulatory text is being re-presented to the Board in the same form as the previous action along with a Notice of Intended Regulatory Action (“NOIRA”) and will follow the standard regulatory process. The regulatory text was developed in consultation with the Office of the Attorney General and still properly effectuates the legislative mandate.

The Regulations Governing the Operation of Private Schools for Students with Disabilities ([8VAC20-671](#)) are already in close alignment to the Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia ([8VAC20-750](#)). The amendments to the Regulations Governing the Operation of Private Schools for Students with Disabilities adds definitions, adds requirements associated with the development of policies and procedures related to the use of seclusion and application of restraints, and alters the requirements for reporting the use of seclusion and application of restraints. All regulatory changes are necessary to “establish the same requirements for restraint and seclusion [for private special education day schools] as those for public schools”—as directed by the General Assembly—with minimal, technical modifications to account for the differences between private day schools and public schools.

#### **Action Requested**

The Board is requested to waive first review and approve the NOIRA regulatory action.

#### **Superintendent’s Recommendation**

The Superintendent of Public Instruction recommends that the Board of Education waive first review and approve the NOIRA.

#### **Rationale for Action**

The regulatory change is the result of a legislative mandate. The change is to enact the General Assembly’s directive to the Board. Board staff expects that this action will not be controversial because the agency is exercising minimal discretion in effectuating the legislative mandate.

#### **Previous Review or Action**

**Date:** January 27, 2022

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

#### **Background Information and Statutory Authority**

[Item 138.I](#) of Chapter 552 (Acts of Assembly, 2021 SSI) directed the Board of Education to “develop and promulgate regulations for private special education day schools on restraint and seclusion that establish the same requirements for restraint and seclusion as those for public schools.”

[Item 130.H](#) of Chapter 1 (Acts of Assembly, 2023 SSI) again directed the Board of Education to “develop and promulgate regulations for private special education day schools on restraint and seclusion that establish the same requirements for restraint and seclusion as those for public schools.”

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

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

### **Stakeholder Engagement**

VDOE staff has consulted with the OAG to ensure the proposed regulatory text will properly effectuate the legislative mandate.

### **Implementation and Communication**

Once approved by this Board, VDOE staff will initiate the NOIRA process on Town Hall. After public comment has ended, VDOE staff will compile comments and return text to the Board for the proposed stage of the regulatory action.

### **Impact on Fiscal and Human Resources**

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