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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Education
Virginia Administrative Code (VAC) Chapter citation(s)	8 VAC20-671
VAC Chapter title(s)	Regulations Governing the Operation of Private Schools for Students with Disabilities
Action title	Action to Align with Item 130.H of Chapter 2 of the Acts of the Assembly 2022 Special Session I
Date this document prepared	March 12, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

During the 2023 Special Session I, the Virginia General Assembly enacted [Chapter 1](#) of the Acts of the Assembly, which amended and reenacted Chapter 2 of the Acts of Assembly of 2022, Special Session I, as amended by Chapter 769 of the Acts of Assembly of 2023, which appropriated the public revenues for 2022-2024 biennium.

Item 130.H of Chapter 1 directed the Board of Education to “develop and promulgate regulations for private special education day schools on restraint and seclusion that establish the same requirements for restraint and seclusion as those for public schools.”

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

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

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

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

“Board” means the Virginia Board of Education.

Mandate and Impetus

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

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

Legal Basis

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

[Item 130](#).H of Chapter 1 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.”

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

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

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The rationale or justification for this regulatory action is that it is the result of a legislative mandate.

The action will help protect the health, safety, and welfare of special education students by ensuring that adequate standards are in place for the use of seclusion and restraint in private special education day schools.

The goal of this regulatory action is to establish the same requirements on restraint and seclusion for private special education day schools as those for public schools. Currently, the requirements for restraint and seclusion differ between the public and private school contexts.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

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

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

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

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

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

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

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

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

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

Alternatives to Regulation

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

There are no alternatives to the regulatory change.

Periodic Review and Small Business Impact Review Announcement

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

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

Joe Crook
James Monroe Bldg.

101 N. 14th St, 25th Floor
Richmond, VA 23219.

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

A public hearing will not be held following the publication of the proposed stage of this regulatory action.