

COMMONWEALTH OF VIRGINIA
BOARD OF EDUCATION
RICHMOND, VIRGINIA

MINUTES

March 23, 2017

The Board of Education met at the James Monroe State Office Building, Jefferson Conference Room, 22nd Floor, Richmond, with the following members present:

Dr. Billy K. Cannaday, Jr., President
Mrs. Diane T. Atkinson
Mr. James Dillard
Ms. Anne Holton

Mr. Daniel Gecker, Vice President
Mrs. Elizabeth Lodal
Mr. Sal Romero, Jr.

Dr. Steven R. Staples, Superintendent of
Public Instruction

Dr. Cannaday called the meeting to order at 9:02 a.m.

MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE

Dr. Cannaday asked for a moment of silence and led the Pledge of Allegiance.

APPROVAL OF MINUTES

Mr. Gecker made a motion to approve the minutes of the February 23, 2017, meeting of the Board. The motion was seconded by Mrs. Atkinson, and all members were in favor. The approval motion carried. Copies of the minutes were distributed in advance of the meeting.

RESOLUTIONS OF RECOGNITIONS

A Resolution of Recognition was presented to Commemorate April 2017 as the Month of the Military Child. Ms. Chaundra Taswell, School Liaison Officer for Fort Lee, accepted the recognition on behalf of military children across the Commonwealth. Dr. Cannaday stated that throughout April, the Department will be honoring military children, including "Purple Up Day" on April 21.

Mr. Dillard made a motion to adopt the Resolution to Commemorate April 2017 as the Month of the Military Child. The motion was seconded by Mrs. Lodal, and the motion carried unanimously.

PUBLIC COMMENT

The following persons spoke during the public comment period:

- Dr. Barbara Laws spoke on the *Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia*.
- Dr. Jane Strong spoke on the *Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia*.
- Angela Neely, Executive Director of Special Education, Culpeper Co. Public Schools, spoke on the *Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia*.
- Amy Woolard, Attorney & Policy Coordinator, JustChildren program spoke on the *Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia*.
- Lorraine Wright, advocate for students with disabilities, spoke on the denial of required services and accommodations for students with individual education plans.
- Kandise Lucas, advocate, spoke on the relationship between the Virginia Department of Education and local school divisions as it relates to special education.
- Jamie Liban, Executive Director of The Arc of Virginia, spoke on the *Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia*.
- Zaib Lakhani and Zahra Lakhani spoke on equity in schools.

ACTION/DISCUSSION ITEMS

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

Mr. John Eisenberg, Assistant Superintendent for Special Education and Student Services, presented for final review the *Proposed Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia*. Ms. Patricia Haymes, Director of the Office of Dispute Resolution and Administrative Services, assisted with the presentation. Their presentation included the following information:

In 2014, the Virginia General Assembly enacted HB 1443, amending the *Code of Virginia* by adding Section number 22.1-279.1:1, relating 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.

In July of 2016, the Office of the Attorney General (OAG) advised the Board that the statutory directive that the VDOE develop regulations consistent with the *Fifteen 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 participation. Participants and commenters included school personnel, advocacy groups, and parents. Based upon information 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 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 *Fifteen 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 *Fifteen 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.

Staff noted that 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.

The Superintendent of Public Instruction recommended that the Board of Education approve the proposed draft of the *Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia* for final review and for further action as governed by the requirements of the Administrative Process Act and directed staff of the Department of Education to make technical edits as needed.

Mrs. Atkinson made motion to approve the proposed draft regulations. It was seconded by Mr. Dillard. Before the final vote was taken, Board members held a discussion on additional edits that needed to be made on Attachment B prior to Board approval.

The Board discussion of Attachment B included the following:

On Page 1, after line 29, Mr. Gecker recommended the addition of the following language beginning on line 30:

The regulations are promulgated pursuant to the legislative mandate contained in *Code of Virginia* 22.1-279-1:1 and should be interpreted so as to be consistent with the Virginia Department of Education's *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 seclusions resource document. These regulations govern the use of seclusion and restraint utilized for the purpose of behavioral control.

Mr. Gecker made a motion to accept this amended language and delete the language on page 2, lines 9-17. Mrs. Atkinson seconded the motion.

As a result of Board discussion, Mr. Gecker amended his motion to delete the language on page 2, lines 9-17 and only add the following language on page 1, after line 29:

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

The motion was seconded by Mrs. Atkinson. Six members were in favor of the motion. One member was opposed to the motion. The motion carried.

On page 3, lines 23 – 24, Dr. Cannaday recommended that the regulations include the entire definition of “corporal punishment.”

After Board discussion and clarification from staff, Dr. Cannaday withdrew his motion from the table.

On page 5, lines 15 – 16, Board members recommended that the definition of seclusion be amended. The new language would read, “*Seclusion*” means the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving.

Mrs. Atkinson made motion to amend the definition of seclusion on page 5, line 15-16. The motion was seconded by Mr. Gecker. All members were in favor of the motion.

On page 11, lines 8 – 11 (Item 4), the Board discussed whether to ban all prone or supine restraints.

Mr. Romero made a motion to amend Item 4 on page 11 to unstrike the language on lines 9-11, banning the use of prone and supine restraints. There was no second to the motion. The proposed language will remain as stated in Attachment B.

On page 20, line 6-7, the Board discussed whether to require a local school board to have a Memorandum of Understanding specific to the use of seclusion and restraint by School Resource Officers.

Mrs. Atkinson made a motion to amend the language to require local school boards to have a Memorandum of Understanding regarding the use of seclusion and restraint by School Resource Officers. The motion was seconded by Mrs. Lodal.

Ms. Holton asked staff for recommended language. Staff proposed a new section as Item B, consequently changing the letters of the succeeding sections. The new language for Item B would state, "*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 a school setting.*"

All members were in favor of the motion to amend the language on page 20 as stated above.

On page 21, lines 5 – 7 and 14 – 16, the Board discussed the concept of a required meeting after the use of multiple restraint or seclusion incidents. No motion was made to amend the language.

On page 22, lines 22 – 23 and 27 – 28, the Board discussed replacing the term "all school personnel" with a more restrictive term. Dr. Staples clarified that "all school personnel" would encompass all personnel within and outside a school setting and would be required to receive initial training on restraint and seclusion.

Mrs. Lodal made motion to amend the language on line 22 and 27, to state "*all school-based personnel.*" Dr. Staples clarified that this amended language would only apply to personnel assigned to a specific school. The amended language would not require staff assigned to the central office to receive initial training.

Staff provided that there was a definition of "school employee" and "school personnel" already included in the regulations on page 9, lines 11-14. Given this information from staff, additional clarification about initial training, and Board discussion, Mrs. Lodal withdrew her motion to amend the language on line 22 and 27.

On page 23, the Board discussed striking the language after "secluded" on lines 4-5 in regards to who would receive advanced training.

Mrs. Local made a motion to strike lines 4-5 after "secluded" on page 23. The motion was seconded by Mr. Dillard. Five Board members were in favor of the amended language. Two Board members were opposed to the amended language.

Mrs. Atkinson stated that she had concerns about the striking of the word "serious" on page 5, line 28. Although she had concerns about the language, she stated that she did not have any language to address her concerns.

Dr. Cannaday circled back to the original motion, made by Mrs. Atkinson and seconded by Mr. Dillard, to approve the proposed draft recommendations as amended. The motion carried unanimously.

Dr. Cannaday thanked staff for all of their hard work over the past few years on these draft regulations.

B. Final Review of Recommendation of the Advisory Board on Teacher Education and Licensure (ABTEL) to Review the Definitions of At-Risk of Becoming Low-Performing and Low-Performing Institutions of Higher Education in Virginia as Required by Title II of the Higher Education Opportunity Act (HEOA)

Mrs. Patty Pitts, Assistant Superintendent for Teacher Education and Licensure, presented this item for final review. The presentation included the following information:

The United States Department of Education requires that states must report institutions of higher education “at-risk of becoming low performing” or “low performing” annually pursuant to the teacher preparation program accountability system under Title II of the Higher Education Opportunity Act. Title II federal reporting is required by states in October of each year.

The Board of Education *Regulations Governing the Review and Approval of Education Program in Virginia* provided three options for the accreditation of professional education programs: (1) National Council for the Accreditation of Teacher Education (NCATE); (2) Teacher Education Accreditation Council (TEAC); and (3) Board of Education Approved Accreditation Process. On May 19, 2011, the Board of Education approved the Advisory Board on Teacher Education and Licensure’s recommendation and revised the following definitions of “at-risk of becoming low-performing” and “low-performing” institutions of higher education in Virginia to align with the accreditation decisions for professional education programs.

On July 1, 2013, the De Facto Consolidation of the National Council for the Accreditation of Teacher Education (NCATE) and the Teacher Education Accreditation Council (TEAC) created the Council for the Accreditation of Educator Preparation (CAEP). CAEP is now the unified national accrediting organization for educator preparation. Based on Virginia’s 2016 signed partnership agreement with CAEP and changes made to accreditation program review decision designations by CAEP, the definitions for “at-risk of becoming low-performing” and “low-performing” institutions of higher education in Virginia need to be realigned.

On January 23, 2017, the Advisory Board on Teacher Education and Licensure unanimously approved the recommendation to revise the definitions of “at-risk of becoming low-performing” and “low-performing” institutions of higher education in Virginia as required by Title II of the Higher Education Opportunity Act.

If an institution’s accreditation is **revoked or denied**, the State Council of Higher Education for Virginia (SCHEV) will be notified for appropriate action.

Title II federal reporting is required by states in October of each year. To comply with current reporting requirements, the definitions must be aligned with the accreditation option for CAEP. Institutions meeting these definitions at the end of the reporting year will be designated “at-risk of becoming a low-performing” or “low-performing” institution of higher education.

The Superintendent of Public Instruction recommended that the Board of Education approve the Advisory Board on Teacher Education and Licensure’s recommendation to revise the definitions of “at-risk of becoming low-performing” and “low-performing” institutions of higher education in Virginia as required by Title II of the Higher Education Opportunity Act (HEOA).

Mrs. Atkinson made a motion to approve the revise definitions. The motion was seconded by Mr. Romero and carried unanimously.

REPORTS

C. Report on Fine Arts Professional Development Initiatives

Mrs. Cheryle Gardner, Principal Specialist for Fine Arts, presented this report. The presentation included the following information:

The importance of fine arts education is celebrated each year during the month of March with Youth Art month, Music in our School month, Theatre in our School month, and Dance in the Schools month. Throughout the state, student presentations in local communities will showcase how the fine art infuses the five “C’s” and innovation into learning. The month also presents an opportunity to acknowledge the fine arts educators who assist students to reach high standards in the fine arts, while also serving their school communities as “fine arts educational leaders” who collaborate with classroom teachers to integrate the fine arts with core academic disciplines.

To better meet the needs of K-12 students in the Commonwealth, the Department offers high-quality, fine arts professional opportunities for K-12 fine arts educators. This has been achieved through collaboration with educators to provide statewide resources, such as curriculum guides, instructional strategies, and correlations aligned to the core academic Standards of Learning, best practices training, technical resources, and leadership development. Members from the fine arts educational community are selected based on expertise, experience, and balanced regional representation.

Since the revision and adoption of the 2013 *Fine Arts Standards of Learning*, 363 fine arts educators have participated in Department facilitated initiatives to create resources that benefit all teachers in the Commonwealth. These professional development opportunities are provided at no cost to participants or local school divisions and educators received licensure renewal points. As a result of the workshops, all fine arts educators across the state have access to online documents created by workshop participants in area of curriculum development, instructional support, assessment development, and health and safety in the classroom.

To date, the Department has implemented workshops for the development of sample curricula for K-12 music, 6-12 theatre arts, and K-12 visual arts. Also, workshops have been implemented to create K-8 music and visual arts instructional strategies and correlations to support cross-discipline and correlated instruction between the fine arts and core academic Standards of Learning.

During the summer of 2016, after 20 years, the Department again offered the Art Teachers Summer Workshop: *Teachers as Artists and Artists as Teachers*. This workshop served to promote current best practices, skills, techniques, and the safe use of visual arts materials. Because of the positive responses from the field and the workshop participants, the workshop will again be offered during the summer of 2017 in southwest Virginia.

Last year, the Department developed the 6-12 Technical Theatre Guidelines, in consultation with CTE Resource Center staff, theatre arts educators, and technical theatre professionals. It is an in-depth safety and best practices document that serves to ensure both theatre arts and dance arts studio, and performance spaces are safe along with safe use and storage of all materials, equipment, and supplies.

Currently, the Department is developing 9-12 Sample Secondary Curriculum Units of Study that reflect Art I-Art IV of the *Visual Arts Standards of Learning*. These documents will serve as a guide for educators to create meaningful and creative units of study.

Planning is in progress to offer this summer 2017, “The Art of Vocal Music Institute” at VCU, at no cost to participating vocal music educators.

The Board accepted the report on Fine Arts Professional Development Initiatives and thanked Mrs. Gardener for her passion, enthusiasm and hard work in the area of fine arts education.

EXECUTIVE SESSION

Mr. Gecker made a motion to go into executive session under Virginia Code §2.2-3711(A) (41), for the purpose of discussion and consideration of records relating to denial, suspension, or revocation of teacher licenses, and that Susan Williams and Mona Siddiqui, legal counsel to the Virginia Board of Education; as well as staff members Dr. Steven Staples, Patty Pitts, Nancy Walsh, Vijay Ramnarain, Mark Saunders, and Kerry Miller, whose presence will aid in this matter, participate in the closed meeting. The motion was carried unanimously. The Board went into Executive Session at 12:45 p.m.

Mr. Gecker made a motion that the Board reconvene in open session at 1:15p.m.

Mr. Gecker made a motion that the Board certify by roll-call vote that to the best of each member’s knowledge: (1) only public business matters lawfully exempted from open meeting requirements under this chapter; and (2) only public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered.

Any member who believes there was a departure from these requirements shall so state prior to the vote, indicating the substance of the departure that, in his or her judgement, has taken place. The statement of the departure will be recorded in the minutes.

Board Roll call:

Mrs. Lodal – Yes
Mr. Dillard – Yes
Mr. Gecker - Yes
Dr. Cannaday – Yes
Mrs. Atkinson – Yes
Mr. Romero - Yes
Ms. Holton – Yes

The Board made the following motions:

Mr. Gecker made a motion to revoke the license of Crystal Sherman Koiner. The motion was seconded by Mr. Dillard and carried unanimously.

Ms. Holton made a motion to revoke the license of Leslie Emory Deane, Jr. The motion was seconded by Mrs. Atkinson and carried unanimously.

Mrs. Lodal made a motion to revoke the license of Kathleen Suzanne Barlow. The motion was seconded by Mr. Dillard and carried unanimously.

Mrs. Atkinson made a motion to revoke the license of Stephen B. Cason. The motion was seconded by Mrs. Lodal and carried unanimously.

Mrs. Atkinson made a motion to deny a license to William Carroll Fanning, III. The motion was seconded by Ms. Holton and carried unanimously.

Mrs. Atkinson made a motion to revoke the license of David James Fisher. The motion was seconded by Mrs. Lodal and carried unanimously.

Mrs. Atkinson made a motion to revoke the license of Amy Lynne Napierkowski. The motion was seconded by Mr. Dillard and carried unanimously.

Mrs. Atkinson made a motion to deny a license to Doreen Lorraine Thomas. The motion was seconded by Mr. Dillard and carried unanimously.

Mrs. Atkinson made a motion to deny a license renewal to Blake Edward Tippens. The motion was seconded by Mrs. Lodal and carried unanimously.

DINNER MEETING

The Board met for a public dinner on Wednesday, March 22, 2017 at 6:00 p.m., at the Berkley Hotel with the following members present: Mrs. Atkinson, Dr. Cannaday, Mr. Dillard, Mrs. Lodal, Ms. Holton, Mr. Gecker and Mr. Romero. The following department staff also attended: Dr. Steven Staples, Superintendent of Public Instructions, and Ms. Emily Webb, Director of Board Relations.

Members discussed pending Board agenda items. No votes were taken, and the dinner meeting ended at 7:10 p.m.

ADJOURNMENT OF THE BUSINESS SESSION

There being no further business of the Board of Education, Dr. Cannaday adjourned the meeting at 1:20 p.m.



President