

Virginia Board of Education Agenda Item



Agenda Item: G

Date: October 27, 2016

Title	Second Review of Proposed <i>Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia</i> (Proposed Stage)		
Presenter	John M. Eisenberg, Assistant Superintendent for Special Education and Student Services		
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Purpose of Presentation:

Action required by state or federal law or regulation.

Previous Review or Action:

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

March 26, 2015: 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*

February 25, 2016: First Review of Proposed *Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia* (Proposed Stage)

Action Requested:

Other. Specify below:

Alignment with Board of Education Goals: Please indicate (X) all that apply:

	Goal 1: Accountability for Student Learning
	Goal 2: Rigorous Standards to Promote College and Career Readiness
	Goal 3: Expanded Opportunities to Learn
	Goal 4: Nurturing Young Learners
	Goal 5: Highly Qualified and Effective Educators
	Goal 6: Sound Policies for Student Success
x	Goal 7: Safe and Secure Schools
	Other Priority or Initiative. Specify:

Background Information and Statutory Authority:

The Virginia General Assembly has enacted HB 1443 (2014), 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.

Summary of Important Issues:

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; (v) obtain possession of controlled substances or paraphernalia which are upon the person of the student or within the student's control; (vi) 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 has made changes to its initial draft based on comments that were common, shared, and uncontroversial. Staff requests that the Board provide guidance on certain other areas that were the subject of significant disagreement.

These 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. The proposed regulations attempt to reconcile the two opposing statutes.

The following is a brief summary of the proposed regulations:

1. Permit, but do not require, school divisions to implement physical restraint and seclusion in public schools. School divisions electing to use physical restraint and seclusion must follow regulations.
2. Preclude the use of seclusion cells; aversive stimuli; and prone, pharmacological, and mechanical restraints. **Based upon public comment, we have added a prohibition on supine restraint to the proposed regulations.**
3. Prohibit the use of physical restraint and seclusion as (i) punishment or discipline; (ii) means of coercion or retaliation; or (iii) convenience.
4. Exclude from physical restraint: (i) briefly holding student to calm or comfort the student; (ii) holding student's hand or arm to escort the student safely from one area to another; or (iii) use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control.
5. Create reporting and notification standards for incidents of physical restraint and seclusion.

1. By the end of the school day, school staff must report incident and first aid to school principal/designee.
2. Within one calendar day, school principal/designee, other school personnel, or volunteers organized by school administration for this purpose must make reasonable effort to ensure that direct contact is made with parent, either in person or through telephone conversation, to notify parent of incident and any related first aid.
3. If any pupil has been physically restrained or secluded outside regular school day, notifications shall be made as soon as practicable pursuant to school division's school crisis/emergency management plan.

Based upon comment received by VDOE, reference to volunteers providing the notice was stricken from the proposed regulations. In addition, based on discussions at all three roundtable sessions, the requirement to issue incident reports has been broadened to include all students, not just those in a self-contained or other special education setting.

Parents, advocacy groups and school personnel disagreed sharply on the timelines for notification of the incident. As a result, staff requests guidance from the Board.

6. Establish specifications for seclusion rooms based on Department of Behavioral Health and Developmental Services Regulations for Children's Residential Facilities 12 VAC 35-46-960. Discussion addressed the specifications for seclusion rooms and the use of sensory objects. VDOE staff also received strong recommendations in favor of banning seclusion altogether. As seclusion is permitted in emergency circumstances under the *15 Principles* and the *VDOE Guidelines*, staff requests guidance from the Board.
7. Provide for continuous visual monitoring of seclusion and physical restraint.
8. Require all school personnel to have initial evidence-based training in physical restraint and seclusion. Commenters were virtually unanimous that initial training should focus on de-escalation and positive behavior supports, with less emphasis on when restraint and seclusion may be used. Staff has revised the proposed regulations to incorporate these suggestions.
9. Require, when physical restraint and seclusion are used in a self-contained classroom or other special education setting:
 1. Advanced evidence-based training for school personnel assigned to that self-contained classroom.
 2. Debriefing of staff and, where appropriate, students.
 3. Incident reporting to principals, division superintendents, and the Superintendent of Public Instruction.
 4. Copies of incident reports to parents.

Commenters agreed that debriefing should occur and incident reports issued regardless of the setting of the restraint or seclusion. Staff has modified the proposed regulations to incorporate these suggestions.

Stakeholders and commenters were divided on the issue of the level of training required of personnel who do not serve in a self-contained classroom or other special education setting. Accordingly, staff requests guidance on this issue.

10. Establishes follow-up/review following three (3) incidents of physical restraint or seclusion for student in special and general education. IEP/504 team or other school team is to consider need for an FBA and a new or revised BIP that addresses underlying causes or purposes of the behaviors. In response to public comment, staff has revised this section to provide that follow-up occur after two incidents of physical restraint or seclusion, the team may consider other actions, including a referral for special education evaluation or reevaluation. Commenters differed about the triggers, in terms of definition of an incident, and timelines for such review, and accordingly, staff requests guidance from the Board.
11. Requires school divisions to adopt policies/procedures.
12. Cannot be construed to restrict (i) initial authority of teachers to remove students from a classroom; (ii) authority and duties of SROs and SSOs; or (iii) civil immunity afforded teachers employed by local school boards for any acts or omissions resulting from the supervision, care or discipline of students.

VDOE also notes that it heard strong support for eliminating the distinction between incidents occurring in general education setting and self-contained special education settings in all areas except the requirement for advanced training, and we have modified the draft regulations accordingly, as stated above. Participation in these focus groups was heavily weighted toward special educators, parents of students with disabilities, and advocacy groups, and thus we ask the Board for direction regarding the advisability of maintaining such distinctions.

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 as it is anticipated that a high volume of public comment will be received. Staff will be required to collect and compile this information in a summary for the Board. In addition, local school divisions and the Virginia Department of Education will incur significant costs in terms of training and reporting.

Timetable for Further Review/Action:

VDOE continues to receive public input on the proposed regulations. We expect to provide a detailed summary of comments at the Board's November meeting, and, based upon the Board's guidance, intend to present regulations for Final Review in January 2017.

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* for second review.

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

3
4 **Foreword**

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6 The 2015 Session of the General Assembly adopted legislation directing the Virginia Board of
7 Education (BOE) to adopt regulations addressing the use of seclusion and restraint in public
8 elementary and secondary schools in the Commonwealth. Pursuant to § 22.1-279.1:1 of the
9 Code of Virginia, the Board was charged to adopt regulations consistent with the Virginia
10 Department of Education’s (VDOE) 2009 *Guidelines for the Development of Policies and*
11 *Procedures for Managing Student Behavior in Emergency Situations* as well as the Fifteen
12 Principles set forth in the U.S. Department of Education's 2012 *Restraint and Seclusion:*
13 *Resource Document.*

14
15 Additionally, the Board was statutorily charged to ensure that these regulations included
16 definitions as well as criteria and restrictions for the use of restraint and seclusion in Virginia’s
17 public schools. Further, these regulations were to include requirements for staff training,
18 parental notification, reporting, and follow-up. Finally, the regulations were to address
19 distinctions—specifically in emotional and physical development—between the general and
20 special education student populations and between elementary and secondary school students.
21 These regulations are based on two foundational—and consonant—principles: that schools must
22 be safe for all children and that school personnel must be equipped to address emergencies and
23 disruptions effectively, while protecting the dignity of all students, the integrity of the classroom,
24 and the safety of all persons in our public schools.

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26 **8 VAC 20-750-5. Application.**

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28 These regulations are applicable to all students and school personnel in the public elementary
29 and secondary schools of the Commonwealth of Virginia, all as defined 8 VAC 20-750-10.

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31 **8 VAC 20-750-10. Definitions.**

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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 Va. Code § 22.1-279.1.
5. Verbal and mental abuse.
6. Forced exercise when:
 - a. The student’s behavior is related to his disability;
 - b. The exercise would have a harmful effect on the student’s health; or
 - c. The student’s disability prevents participation in such activities.
7. Deprivation of necessities, including:
 - a. Food and liquid at a time it is customarily served;
 - b. Medication; or

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c. Use of restroom.

“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, twelve 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.

“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

1 would be determined to be a child with a disability. As used in this chapter, the disability
2 categories set forth in this definition and the terms “special education” and “related services”
3 shall have the meanings set forth in 8 VAC 20-81-10.

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

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

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9 **“Evaluation”** means procedures used in accordance with 8 VAC 20-81 to determine whether a
10 child has a disability and the nature and extent of the special education and related services the
11 child needs.

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13 **“Functional behavioral assessment”** or **“FBA”** means a process to determine the underlying
14 cause or functions of a student’s behavior that impede the learning of the student or the learning
15 of the student’s peers. A functional behavioral assessment a review of existing data or new
16 testing data or evaluation as determined as set forth in 8 VAC 20-750-60.

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

24
25 **“Individualized education program team”** or **“IEP team”** means a group of individuals
26 described in 8 VAC 20-81-110 that is responsible for developing, reviewing or revising an IEP
27 for a child with a disability.

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29 **“Mechanical restraint”** means the use of any material, device or equipment to restrict a
30 student’s freedom of movement. This term does not include devices implemented by trained
31 school personnel or used by a student that have been prescribed by an appropriate medical or

1 related services professional and are used with parental consent and for the specific and approved
2 purposes for which such devices were designed, such as:

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4 1. Adaptive devices or mechanical supports used to achieve proper body position, balance
5 or alignment to allow greater freedom of mobility than would be possible without the use
6 of such devices or mechanical supports;

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8 2. Vehicle restraints when used as intended during the transport of a student in a moving
9 vehicle;

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11 3. Restraints for medical immobilization; or

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13 4. Orthopedically prescribed devices that permit a student to participate in activities without
14 risk of harm.

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

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23 **“Physical restraint”** means a personal restriction that immobilizes or reduces the ability of a
24 student to move freely. The term “physical restraint” does not include: (i) briefly holding a
25 student in order to calm or comfort the student; (ii) holding a student’s hand or arm to escort the
26 student safely from one area to another; or (iii) the use of incidental, minor or reasonable
27 physical contact or other actions designed to maintain order and control.

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

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“**School employee**” and “**school personnel**” means individual(s) employed by the school division on a full- 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.

“**Seclusion**” means the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving until the student no longer presents an immediate danger to self or others or poses an immediate threat of damage to property. “Seclusion” does not include (i) time out, as defined in these regulations; (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 Va. Code § 22.1-276.2; and (vii) confinement of a student alone in 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 student conduct code.

“**Seclusion cell**” means a freestanding, self-contained unit that is used to (i) isolate a student from other students; or (ii) physically prevent a student from leaving the unit or cause the student to believe that the student is physically prevented from leaving the unit.

“**Section 504 plan**” means a written plan of modifications and accommodations under Section 504 of the Rehabilitation Act of 1974.

“**Student**” means any student, with or without a disability, enrolled in a public elementary or secondary school as defined in Va. Code § 22.1-1. 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; (ii) receiving homebound

1 instruction pursuant to 8 VAC 20-131-180 and as defined in 8 VAC 20-81-10, without regard to
2 special education status; (iii) receiving home-based instruction pursuant to 8 VAC 20-81-10; and
3 (iv) pre-school students enrolled in a program operated by a school division or receiving services
4 from school division personnel.

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6 As used in these regulations, “student” or “students” shall not include children meeting
7 compulsory attendance requirements of § 22.1-254 by (i) enrollment in private, denominational,
8 or parochial schools; (ii) receipt of instruction by a tutor or teacher of qualifications prescribed
9 by the Board of Education and approved by the relevant division superintendent; or (iii) receipt
10 of home instruction pursuant to § 22.1-254. With regard to restraint and seclusion, students
11 placed through public or private means in a private day or residential school for students with
12 disabilities shall be afforded the protections set forth in 8 VAC 20-671 et seq.

13

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

16

17 **8 VAC 20-750-20. Prohibitions.**

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19 The following actions are prohibited in the public elementary and secondary schools in the
20 Commonwealth of Virginia:

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22 1. Use of mechanical restraints;

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24 2. Use of pharmacological restraints;

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26 3. Use of aversive stimuli;

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28 4. Prone ~~“face-down”~~ and supine restraints or any other restraint that restricts breathing,
29 harms the student, or interferes with the student’s ability to communicate.

30

1 5. Use of physical restraint or seclusion as (a) punishment or discipline; (b) a means of
2 coercion or retaliation; or (c) a convenience, or in any manner other than as provided
3 in 8 VAC 20-750-40 and 8 VAC 20-750-50, below.

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5 6. Corporal punishment, as defined in Va. Code § 22.1-279.1.

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7 7. Use of seclusion cells.

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9 **8 VAC 20-750-30. Use of physical restraint and seclusion.**

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11 A. Nothing in this chapter shall be construed to require a school division to employ physical
12 restraint or seclusion in its schools. School divisions electing to use physical restraint
13 and seclusion shall comply with the requirements of these regulations.

14
15 B. School personnel may implement physical restraint or seclusion only when other
16 interventions are, or would be, in the reasonable judgment of the particular school
17 personnel implementing physical restraint or seclusion in an emergency situation,
18 ineffective and only to :

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20 (i) prevent a student from inflicting serious physical harm or injury to self or others;

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22 (ii) quell a disturbance that threatens serious physical harm or injury to persons or
23 damage to property;

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25 (iii) remove a student from the scene of a disturbance that threatens physical injury to
26 persons or damage to property;

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28 (iv) defend self or others;

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30 (v) obtain possession of controlled substances or paraphernalia which are upon the
31 person of the student or within the student's control; or

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(vi) obtain possession of weapons or other dangerous objects that are upon the person of the student or within the student’s control.

C. Physical restraint and seclusion shall be discontinued as soon as the conduct or situations set forth in items (i) through (vi) in Subsection A, above, prompting the use of physical restraint or seclusion have ceased, dissipated, or been resolved.

D. 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.

8 VAC 20-750-40. Seclusion; Standards for Use.

A. School divisions electing to use physical restraint and 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:

1. The room used for seclusion shall meet the design requirements for buildings used for detention or seclusion of persons.
2. The seclusion room shall be at least six feet wide and six feet long with a minimum ceiling height of eight feet.
3. The seclusion room shall be free of all protrusions, sharp corners, hardware, fixtures, or other devices, that may cause injury to the occupant.
4. Windows in the seclusion room shall be constructed to minimize breakage and otherwise prevent the occupant from harming himself.

1 5. Light fixtures and other electrical receptacles in the seclusion room shall be recessed
2 or so constructed as to prevent the occupant from harming himself. Light controls
3 shall be located outside the seclusion room.

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5 6. Doors to the seclusion room shall be at least 32 inches wide, shall open outward and
6 shall contain observation view panels of transparent wire glass or its approved
7 equivalent, not exceeding 120 square inches but of sufficient size for someone outside
8 the door to see into all corners of the room.

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10 7. The seclusion room shall contain only a mattress with a washable mattress covering
11 designed to avoid damage by tearing.

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13 8. The seclusion room shall maintain temperatures appropriate for the season.

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15 9. All space in the seclusion room shall be visible through the locked door, either
16 directly or by mirrors.

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18 B. School divisions electing to use seclusion as authorized by this chapter shall provide for
19 the continuous visual monitoring of any seclusion, either by the presence of school
20 personnel in the seclusion room or area or observation by school personnel through a
21 window, viewing panel, or half-door meeting the specifications set forth in this section.

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23 **8 VAC 20-750-50. Notification and reporting.**

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25 A. When any pupil has been physically restrained or secluded:

26
27 (i) the staff member involved shall report the incident and the use of any related first aid
28 to the school principal or designee soon as possible by the end of the school day of in
29 which the incident occurred; and

1 (ii) the school principal or his designee, or other school personnel, ~~or volunteers~~
2 ~~organized by the school administration for this purpose~~ shall make a reasonable effort
3 to ensure that direct contact is made with the parent, either in person or through
4 telephone conversation, to notify the parent of the incident and any related first aid
5 within one calendar day of the date the incident occurred.
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7 B. When any pupil has been physically restrained or secluded outside the regular school day,
8 the notifications required by Subsection A shall be made as soon as practicable in
9 compliance with the school division's school crisis, emergency management, and medical
10 emergency response plan required by Va. Code § 22.1-279.8.
11

12 C. As soon as practicable and within two school days after an incident in which physical
13 restraint or seclusion has been implemented ~~in a self-contained classroom or other special~~
14 ~~education setting in which a majority of the students in regular attendance are (i)~~
15 ~~provided special education and related services and (ii) assigned to a self-contained~~
16 ~~classroom or other special education setting for at least 50 percent of the instructional~~
17 ~~day~~, the school employee involved in the incident or other school personnel, as may be
18 designated by the principal, shall complete and provide to the principal or designee, a
19 written incident report. The school division shall provide the parent with a copy of the
20 incident report within seven (7) calendar days of the incident.
21

22 The written incident report shall include, at a minimum:

- 23 1. Student name, age, gender, grade, ethnicity;
- 24 2. Location of the incident;
- 25 3. Date, time, and total duration of incident, including documentation of the beginning
26 and ending time of each application of physical restraint or seclusion;
- 27 4. Date of report;
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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. The 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, staff 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 staff debriefing.

D. Following an incident of physical restraint or seclusion ~~in a self-contained classroom or other special education setting in which a majority of the students in regular attendance~~

1 | ~~are (i) provided special education and related services and (ii) assigned to a self-~~
2 | ~~contained classroom or other special education setting for at least 50 percent of the~~
3 | ~~instructional day~~, the school division shall ensure that, within two (2) school days, the
4 | principal or designee reviews the incident with all staff persons who implemented the use
5 | of physical restraint or seclusion to discuss:

- 6 |
- 7 | 1. Whether the use of restraint or seclusion was implemented in compliance with this
 - 8 | chapter and local policies; and
 - 9 |
 - 10 | 2. How to prevent or reduce the future need for physical restraint and/or seclusion.

11 |

12 | E. As appropriate depending on the student's age and developmental level, following each
13 | incident of physical restraint or seclusion ~~in a self-contained classroom or other special~~
14 | ~~education setting in which a majority of the students in regular attendance are (i)~~
15 | ~~provided special education and related services and (ii) assigned to a self-contained~~
16 | ~~classroom or other special education setting for at least 50 percent of the instructional~~
17 | ~~day~~, the school division shall ensure that, as soon as practicable, but no later than two (2)
18 | school days or upon the student's return to school, the principal or designee shall review
19 | the incident with the student(s) involved to discuss:

- 20 |
- 21 | 1. Details of the incident in an effort to assist the student and school personnel in
 - 22 | identifying patterns of behaviors, triggers or antecedents.
 - 23 |
 - 24 | 2. Alternative positive behaviors or coping skills the student may utilize to prevent or
 - 25 | reduce behaviors that may result in the application of physical restraint or seclusion.

26 |

27 | F. The principal or designee shall regularly review the use of physical restraint or seclusion
28 | to ensure compliance with school division policy and procedures, and, when there are
29 | multiple incidents within the same classroom or by the same individual, the principal or
30 | designee shall take appropriate steps to address the frequency of use.

31 |

1 G. Nothing in these regulations shall be construed to require school divisions to develop and
2 implement notification and reporting requirements for incidents involving (i) briefly
3 holding a student in order to calm or comfort the student; (ii) holding a student's hand or
4 arm to escort the student safely from one area to another; (iii) the use of incidental, minor
5 or reasonable physical contact or other actions designed to maintain order and control.

6
7 **8 VAC 20-750-60. Policies and procedures.**
8

9 A. Each school division that elects to use physical restraint or seclusion shall develop and
10 implement written policies and procedures that meet or exceed the requirements of this
11 chapter and that include, at a minimum, the following:
12

- 13 1. A statement of intention that the school division will encourage the use of positive
14 behavioral interventions and supports to reduce and prevent the need for the use of
15 physical restraint and seclusion.
16
- 17 2. Examples of the positive behavioral interventions and support strategies consistent
18 with the student's rights to be treated with dignity and to be free from abuse the
19 school division uses to address student behavior, including the appropriate use of
20 effective alternatives to physical restraint and seclusion
21
- 22 3. A description of initial and advanced training for school personnel that addresses (a)
23 appropriate use of effective alternatives to physical restraint and seclusion; and (b) the
24 proper use of restraint and seclusion.
25
- 26 4. A statement of the circumstances in which physical restraint and seclusion may be
27 employed, which shall be no less restrictive than that set forth in 8 VAC 20-750-40.
28
- 29 5. Provisions addressing the:
30

- 1 (a) notification of parents regarding incidents of physical restraint or seclusion,
2 including the manner of such notification;
3
4 (b) documentation of the use of physical restraint and seclusion;
5
6 (c) continuous visual monitoring of the use any physical restraint or seclusion, to
7 ensure the appropriateness of such use and the safety of the student being
8 physically restrained or secluded, other students, school personnel, and others.
9 These provisions shall include exceptions for emergency situations in which
10 securing visual monitoring before implementing the physical restraint or seclusion
11 would, in the reasonable judgment of the school employee implementing the
12 physical restraint or seclusion, result in serious physical harm or injury to persons
13 or damage to property; and
14
15 (d) securing of any room in which a student is placed in seclusion. These provisions
16 shall ensure that any seclusion room or area meet specifications for size and
17 viewing panels that ensure the student's safety at all times, including during a fire
18 or other emergency, as required by this chapter.
19
20 B. Each school division shall review its policies and procedures regarding physical restraint
21 and seclusion at least annually, and shall update these policies and procedures as
22 appropriate. In developing, reviewing, and revising its policies, school divisions shall
23 consider the distinctions in emotional and physical development between elementary and
24 secondary students and between students with and without disabilities.
25
26 C. Consistent with § 22.1-253.13:1.D, a current copy of a school division's policies and
27 procedures regarding restraint and seclusion shall be posted on the school division's Web
28 site and shall be available to employees and to the public. School boards shall ensure that
29 printed copies of such policies and procedures are available as needed to citizens who do
30 not have online access.
31

1 **8 VAC 20-750-70. Prevention; multiple uses of restraint or seclusion.**

2
3 A. In the initial development and subsequent review and revision of a student's IEP or
4 Section 504 plan, the student's IEP or Section 504 team shall consider whether the
5 student displays behaviors that are likely to result in the use of physical restraint or
6 seclusion. If the IEP or Section 504 team determines that a future use is likely, the team
7 shall consider, among other things, the need for (i) an FBA; (ii) a new or revised BIP that
8 addresses the underlying causes or purposes of the behaviors as well as de-escalation
9 strategies, conflict prevention, and positive behavioral interventions; ~~and~~ (iii) ~~and~~ any
10 new or revised behavioral goals; and (iv) any additional evaluations or reevaluations.

11
12 Within 10 school days following the ~~third-second~~ incident in which involving the use of
13 physical restraint or seclusion in a single school year, the student's IEP or 504 team shall
14 meet to discuss the incident and to consider, among other things, the need for (i) an FBA;
15 (ii) a new or revised BIP that addresses the underlying causes or purposes of the
16 behaviors as well as de-escalation strategies, conflict prevention, and positive behavioral
17 interventions; ~~and~~ (iii) ~~and~~ any new or revised behavioral goals; and (iv) any additional
18 evaluations or reevaluations.

19
20 B. For students not described in Subsection A, within 10 school days of the ~~third-second~~
21 incident involving the use of physical restraint or seclusion, a team consisting of the
22 parent, the principal or designee, a teacher of the student, a staff member involved in the
23 incident (if not the teacher or administrator already invited), and other appropriate staff
24 members, such as a school psychologist, school guidance office, or school resource
25 officer, as determined by the school division, shall meet to discuss the incident and to
26 consider, among other things, the need for (i) an FBA; (ii) a new or revised BIP that
27 addresses the underlying causes or purposes of the behaviors as well as de-escalation
28 strategies, conflict prevention, and positive behavioral interventions; and (iii) a referral
29 for evaluation.

1 C. Nothing in this section shall be construed to (i) excuse the team or its individual members
2 from the obligation to refer the student for evaluation if the team or members have reason
3 to suspect that the student may be a student with a disability; or (ii) prohibit the
4 completion of an FBA or BIP for any student, with or without a disability, who might
5 benefit from these measures but whose behavior has resulted in fewer than ~~three-two~~
6 incidents of physical restraint or seclusion in a single school year.

7
8 **8 VAC 20-750-80. Annual Reporting.**

9
10 ~~The requirements of this section shall only apply to instances in which physical restraint~~
11 ~~and seclusion are employed in a self-contained classroom or other special education~~
12 ~~setting in which a majority of the students in regular attendance are (i) provided special~~
13 ~~education and related services and (ii) assigned to a self-contained classroom or other~~
14 ~~special education setting for at least 50 percent of the instructional day.~~

15
16 The principal or his designee shall submit to the division superintendent a report on the
17 use of physical restraint and seclusion in the school based on the individual incident
18 reports completed and submitted to the principal or designee by school personnel
19 pursuant to 8 VAC 20-750-40.D, above. The division superintendent shall annually
20 report the frequency of such incidents to the Superintendent of Public Instruction on
21 forms that shall be provided by the Department of Education and shall make such
22 information available to the public.

23
24 **8 VAC 20-750-90. *Training.***

25
26 School divisions that employ physical restraint or seclusion shall:

- 27
28 (i) ensure that all school personnel ~~are periodically trained in the use of physical restraint~~
29 ~~and seclusion; include all school personnel~~ receive initial training that ~~shall focus~~
30 skills related to positive behavior support, conflict prevention, de-escalation, and crisis
31 response;

1
2 (ii) ensure that all school personnel ~~are periodically trained~~ receive periodic training
3 regarding the regulations, policies, and procedures governing the use of physical
4 restraint and seclusion;

5
6 (iii) provide advanced training in the use of physical restraint and seclusion for school
7 personnel assigned to a self-contained classroom or other special education setting in
8 which a majority of the students in regular attendance are (a) provided special education
9 and related services and (b) assigned to a self-contained classroom or other special
10 education setting for at least 50 percent of the instructional day; and

11
12 (iv) ensure that any initial or advanced training is evidence-based.

13
14 **8 VAC 20-750-100. Construction and Interpretation.**

15
16 Nothing in this chapter shall be construed to modify or restrict:

17
18 (i) the initial authority of teachers to remove students from a classroom pursuant to Va.
19 Code § 22.1-276.2;

20
21 (ii) the authority and duties of school resource officers and school security officers, as
22 defined in Va. Code § 9.1-101;

23
24 (iii) the civil immunity afforded teachers employed by local school boards for any acts or
25 omissions resulting from the supervision, care or discipline of students when such acts or
26 omissions are within such teacher's scope of employment and are taken in good faith in
27 the course of supervision, care, or discipline of students, unless such acts or omissions
28 were the result of gross negligence or willful misconduct, as provided in Va. Code §
29 8.01-220.1:2.