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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Board of Education
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	8 VAC 20-671-10, 630, 650, 660
<b>VAC Chapter title(s)</b>	<i>Regulations Governing the Operation of Private Schools for Students with Disabilities</i>
<b>Action title</b>	Legislative mandate to establish the same requirements on restraint and seclusion for private special education day schools as those for public schools
<b>Final agency action date</b>	September 23, 2021
<b>Date this document prepared</b>	September 16, 2021

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), 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 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.*

During the 2021 Special Session I, the Virginia General Assembly enacted [Chapter 552](#) of the Acts of the Assembly, which amended and reenacted Chapter 1289 of the 2020 Acts of the Assembly, Special Session I, which appropriated funds for the 2020-2022 Biennium.

[Item 138.I](#) of Chapter 552 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.

### **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, internal staff review, petition for rulemaking, periodic review, or board decision). “Mandate” is defined as “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.”*

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The regulatory change is the result of a legislative mandate. The change is enact the General Assembly’s directive to the Board, and the Board has no discretion in the change. Accordingly, the regulatory action is exempt from the operation of the Administrative Process Act under § 2.2-4006.A.4.a of the Code of Virginia.

### **Statement of Final Agency Action**

*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.*

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The Board of Education reviewed and adopted the final regulation, entitled “Legislative mandate to establish the same requirements on restraint and seclusion for private special education day schools as those for public schools,” on September 23, 2021.