



COMMONWEALTH of VIRGINIA

Office of the Attorney General

MEMORANDUM

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To: Emily V. Webb, Director
Office of Board Relations
Virginia Department of Education

From: Susan B. Williams
Senior Assistant Attorney General

A handwritten signature in blue ink that reads "Susan B. Williams".

Date: October 10, 2019

Re: *Final Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia* [8 VAC 20 - 750] (Action 4336 /Stage 8705)

I have reviewed the version of regulation identified above that was submitted to the Virginia Regulatory Town Hall on August 27, 2019 at 5:12 PM in order to determine whether the State Board of Education (Board) has the authority to promulgate the regulation and if the regulation comports with applicable state law.

Pursuant to the § 22.1-16 of the *Code of Virginia*, the Board has authority to promulgate regulations to carry out its statutory powers and duties. In addition, § 22.1-279.1:1 of the *Code of Virginia*, which was enacted by the 2015 General Assembly, specifically requires the Board to promulgate regulations on the use of seclusion and restraint in public elementary and secondary schools in the Commonwealth that are consistent with the Board'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 Seclusion: Resource Document*. Further, § 22.1-279.1:1 of the *Code of Virginia* was amended by the 2019 Virginia General Assembly to specifically require that the Board "(1) identify and prohibit the use of any method of restraint or seclusion that it determines poses a significant danger to the student, and (2) establish safety standards for seclusion."

It is the view of this Office that the Board has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act and Virginia Office of the Governor Executive Order 14 (2018), and that the Board has not exceeded that authority.

If you have any questions or concerns, please feel free to contact me at the address above, by telephone at (804) 371-8721 or by electronic mail at swilliams@oag.state.va.us. Thank you.

cc: Deborah A. Love, Senior Assistant Attorney General/Acting Section Chief