



## Virginia Department of Planning and Budget **Economic Impact Analysis**

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### **8 VAC 20-671 Regulations Governing the Operation of Private Schools for Students with Disabilities**

### **8 VAC 20-750 Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia**

**Department of Education**

**Town Hall Action/Stage: 5871 / 9478**

December 13, 2021

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The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented below represents DPB's best estimate of these economic impacts.<sup>1</sup>

### **Summary of the Proposed Amendments to Regulation**

The Board of Education (Board) proposes to amend the definition of “traumatic brain injury” (TBI) in 8 VAC 20-671 *Regulations Governing the Operation of Private Schools for Students with Disabilities*, and create a definition of TBI in 8 VAC 20-750 *Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia*.

### **Background**

Chapter 170 of the 2021 Special Session I Acts of Assembly<sup>2</sup> directed the Board to amend the definition of TBI in 8 VAC 20-81 *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* to add new text (in bold) as follows:

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<sup>1</sup> Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup> See <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0170>

“Traumatic brain injury” means an acquired injury to the brain caused by an external physical force **or by other medical conditions, including stroke, anoxia, infectious disease, aneurysm, brain tumors, and neurological insults resulting from medical or surgical treatments**, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma. (34 CFR 300.8(c)(12)) [emphasis added].

The Board subsequently amended 8 VAC 20-81 in this manner via an exempt action to incorporate the new text.<sup>3</sup> Otherwise, the definition remained the same.

The current definition of TBI in 8 VAC 20-671 is the same as it was in 8 VAC 20-81 prior to the amendments directed by the legislative mandate.<sup>4</sup> The Board proposes to amend the definition in 8 VAC 20-671 so that it is identical to the newly-amended definition in 8 VAC 20-81.<sup>5</sup>

The current 8 VAC 20-750 does not have a definition of TBI. The Board proposes to add the post-mandate definition in 8 VAC 20-81 to 8 VAC 20-750.

### **Estimated Benefits and Costs**

The Department of Education (DOE) believes that the proposed change to the definition of TBI in 8 VAC 20-671 *Regulations Governing the Operation of Private Schools for Students with Disabilities* would result in more students being identified under the TBI category for special education services. Additionally, the agency believes that many of the students that would be identified under the new TBI definition are already receiving services under another classification (such as “other health impairment”). The nature of this disability often requires significant and customizable supports, and so it is thought that many students are already receiving them under a different classification. DOE believes this would result in the re-designation and classification of students already receiving services, and only a very small

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<sup>3</sup> See <https://townhall.virginia.gov/L/viewstage.cfm?StageID=9433>

<sup>4</sup> There is one exception. The definition in 8 VAC 20-81 ends with a federal citation, (34 CFR 300.8(c)(12)). The definition in 8 VAC 20-671 does not.

<sup>5</sup> Ibid.

number of students, if any, would be newly identified as needing services. The agency does not know if there would be a difference in costs of having students newly identified under the TBI category for special education services.

The proposed addition of the definition of TBI to 8 VAC 20-750 *Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia* provides information for the reader of the regulation, but DOE does not believe it otherwise would have a substantive impact.

The *Regulations Governing the Operation of Private Schools for Students with Disabilities* apply to both private day schools for students with disabilities and schools in private residential facilities for students with disabilities (including group homes). The costs for students at both the private day schools and the schools in private residential facilities are covered by the Children's Services Act (CSA). For the private day schools, approximately 63 percent of the CSA funds are provided by the Commonwealth; the remaining 37 percent are provided by local government. For the schools in private residential facilities, approximately 65 percent of the CSA funds are provided by the Commonwealth; the remaining 35 percent are provided by local government. If there are differences in costs for re-designation and classification of students due to the proposal, it would thus affect expenditures by the Commonwealth and local governments commensurately.

### **Businesses and Other Entities Affected**

The proposed amendments would affect the 87 private day schools for students with disabilities and the 31 schools in private residential facilities for students with disabilities (including group homes) in the Commonwealth that are licensed by DOE,<sup>6</sup> as well as students with an injury to the brain caused by medical conditions, including stroke, anoxia, infectious disease, aneurysm, brain tumors, and neurological insults resulting from medical or surgical treatments, resulting in total or partial functional disability or psychosocial impairment.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>7</sup> An adverse impact is indicated if there is any increase in net cost or

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<sup>6</sup> Data source: DOE

<sup>7</sup> Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint

reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted above, DOE does not know whether the proposal would affect cost (or in which direction). Thus, an adverse impact indication cannot be determined.

### **Small Businesses<sup>8</sup> Affected:<sup>9</sup>**

The proposed amendments do not appear to adversely affect small businesses.

### **Localities<sup>10</sup> Affected<sup>11</sup>**

Because local governments pay part of the cost for students to go to private day schools for students with disabilities and schools in private residential facilities for students with disabilities, local governments may be affected by the proposal. It would be the locality/public school district where the student's family resides, not the location of the private school, which would be paying. So, it could apply to any locality. Officially, the students are only supposed to be sent to the private schools when the public schools lack the resources to sufficiently serve the student's disability. Since DOE cannot determine whether the cost of paying for services would increase, decrease or stay the same, it cannot be determined whether there would be an adverse impact for local governments.

### **Projected Impact on Employment**

The proposal is unlikely to substantively affect total employment.

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Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>8</sup> Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

<sup>9</sup> If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>10</sup> "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>11</sup> § 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

**Effects on the Use and Value of Private Property**

Since DOE cannot determine how services would change under the proposal, it cannot be determined how demand for services from private day schools for students with disabilities and schools in private residential facilities would change. Thus, the effects on the use and value of these private entities cannot be determined.

The proposal does not affect real estate development costs.