



Final Regulation Agency Background Document

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) citation(s)	8 VAC 20-750
Regulation title(s)	Regulations Governing the Use of Seclusion and Restraint in the Public Elementary and Secondary Schools in Virginia
Action title	New regulations to Govern the Use of Seclusion and Restraint in the Public Elementary and Secondary Schools in Virginia, as required by HB 1443, which was approved by the 2015 Virginia General Assembly and which became effective on July 1, 2015. The statute was amended by HB 2599, enacted by the 2019 Virginia General Assembly.
Date this document prepared	June 21, 2019 - Updated July 29, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please 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.

The 2015 Virginia General Assembly enacted HB 1443, amending the *Code of Virginia* by adding Section 22.1-279.1:1 relating to the use of seclusion and restraint in public schools. The bill, which became effective on July 1, 2015, 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 populations and the special education student population and (b) elementary school students and secondary school students. HB 2599, enacted by the 2019 General Assembly requires the Board to specifically (i) 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.

The proposed regulations define what constitutes seclusion and physical restraint, as well as mechanical restraint, pharmacological restraint and adverse stimuli, and describe the conditions under which it is permissible for a student to be restrained or secluded. The regulations also provide for notification and reporting to parents, debriefing with staff and the student following incidents and for follow-up when the student has been restrained or secluded more than twice during the course of a school year. In addition, the regulations also provide for reporting to the Virginia Department of Education. The regulations also require local school divisions to adopt policies and procedures regarding the use of seclusion and restraint. The regulations require that all school personnel be trained in techniques for avoiding the use of seclusion and restraint, and that school personnel who work with students who are likely to be restrained or secluded must receive additional training on safe methods for restraining or secluding a student.

Finally, the proposed regulations set forth the types of dangerous restraints, including prone restraints, that are banned, and establish safety standards for seclusion rooms.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

No terms are used in the Agency Background Document that are not also defined in the “Definition” section of the regulations.

Statement of Final Agency Action

Please 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.

The Board of Education adopted the Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia on July 25, 2019.

Mandate and Impetus

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously-reported information, include a specific statement to that effect.

As stated above, HB 2599, enacted by the 2019 General Assembly requires the Board to specifically (i) 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. While staff recommended that, because the previously presented regulations included the foregoing information, no additional changes were necessary. However, at its meeting on July 25, 2019, the Board determined, based on public comment, that it was appropriate to prohibit “prone restraints, (i.e., lying face down) or any other restraints that restrict a student’s breathing or that harm the student.”

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

The Virginia Board of Education is the promulgating entity for these regulations. As noted above, the 2015 Virginia General Assembly enacted HB 1443, amending the *Code of Virginia* by adding Section 22.1-279.1:1 relating to the use of seclusion and restraint in public schools. The bill, which became effective on July 1, 2015, 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 populations and the special education student population and (b) elementary school students and secondary school students. HB 2599, enacted by the 2019 General Assembly requires the Board to specifically (i) 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.

The Board of Education's authority for promulgating regulations governing standards for accrediting public schools may be found in Section 22.1-253.13:3 of the *Code of Virginia*:

"The Board of Education shall promulgate regulations establishing standard for accreditation pursuant to the Administrative Process Act (Section 2.2-4000 et seq.), which shall include, but not be limited to, student outcome measures, requirements and guidelines for instructional programs and for the integration of educational technology into such instructional programs, administrative and instructional staffing levels and positions, including such staff positions for supporting educational technology, student services, auxiliary education programs such as library and media services, course and credit requirements for graduation from high school, community relations, and the philosophy, goals and objectives of public education in Virginia."

The Board of Education's overall regulatory authority may be found in Section 22.1-16 of the *Code of Virginia*: "The Board of Education may adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title.

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The proposed regulatory action is necessary to fulfill the General Assembly's directive that regulations be developed in accordance with the 2014 recommendations of the Virginia Commission on Youth that certain principles contained in existing state and federal guidance documents have regulatory effect. The bill and the proposed regulations are intended to ensure that school personnel are properly trained to understand the circumstances in which seclusion or restraint may be used and on appropriate methods

for secluding or restraining students, in the interest of protecting both students and school personnel from harm.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

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

To comply with these regulations, school personnel must first determine whether the action constitutes restraint or seclusion, as defined in 8 VAC 20-750-10. If the action does not meet the definition, or if the action falls under any of the “does not include” portions of the definitions in 8 VAC 20-750-10, then school personnel may act within their reasonable discretion. If the action falls within the definition of restraint or seclusion, it may be used, but only under the circumstances described in 8 VAC 20-750-40 and 8 VAC 20-750-50, and is subject to the other requirements of this chapter. In addition, 8 VAC 20-750-30 identifies certain practices that constitute restraint or seclusion that may be detrimental to the health, safety or dignity of the student and that may never be used by school personnel.

Issues

Please identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The primary advantage to the public, specifically students and parents, will be a lessened risk or injury or other trauma, increased communication with parents, and more proactive consideration and implementation of positive behavioral interventions.

The primary advantage to the agency is the ability to collect additional data regarding behavioral interventions in school settings.

The primary disadvantage to the regulated community, school divisions within the Commonwealth, is the cost of providing training and the time required to report and debrief. School divisions should benefit from having trained personnel and from evidence-based positive behavioral interventions.

Staff has identified no other disadvantage to the proposed regulations.

Requirements More Restrictive than Federal

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously-reported information, include a specific statement to that effect.

Neither federal law nor regulations address the use of seclusion or restraint in public schools.

Agencies, Localities, and Other Entities Particularly Affected

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously-reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected

The Department of Juvenile Justice and the Department of Behavioral Health are affected as they operate school programs within their facilities. We have included language in the final draft of the proposed regulations to deal with their particular circumstances.

Localities Particularly Affected

All school division in the Commonwealth will be subject to the proposed regulations.

Other Entities Particularly Affected

Staff has not identified any other entities particularly affected.

Public Comment

Please summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.

General			
	Commenter	Comment	Agency Response
1	Virginia Board for People with Disabilities, 3/21/2019	<ol style="list-style-type: none"> 1. Supports the existing notification requirement. 2. Suggests requiring positive behavioral interventions. 3. Opposes carve-outs to the definition of restraint and seclusion, preferring it to be limited solely to incidents involving imminent threat of serious bodily harm to self or others. Specific exclusions include use of restraint or seclusion for property damage, investigation of a violation of the code of student conduct and incident physical contact to maintain order. 4. Supports adding an explicit provision banning prone restraint. <p>Note: These are the provisions supported by the Coalition for Improvement of School Safety (CISS).</p>	<ol style="list-style-type: none"> 1. No change recommended. 2. No change recommended. 3. No change recommended. 4. Change incorporated..
2	Cheryl Poe, 3/21/2019	Encouraged the inclusion of culturally competent, trauma-informed components in training and practices.	No changes recommended.
3	Christine Germeyer, Chair, State Special Education Advisory Committee, 3/21/20109	<ol style="list-style-type: none"> 1. Supports existing carve-outs. 2. Questions when visual monitoring of a student might be permitted. 3. Supports advanced training for all administrators, but acknowledges the fiscal impact. 	No changes recommended.
4	Catherine Lavarius, 3/13/2019	Opposes the provision requiring IEP meetings to be held after two incidents.	No changes recommended.
5	Mary Malina, 3/16/2019	Supports the Coalition for Improvement of School Safety Platform (CISS).	See Comment 1.
6	Riham Mahfouz, 3/16/19	Supports the CISS Platform	See Comment 1.
7	Ann W. Worley, 3/17/19	<ol style="list-style-type: none"> 1. Comment reflects items in the CISS Platform. 2. Believes bus drivers should be trained. 3. Encourages more robust debriefing. 	<ol style="list-style-type: none"> 1. See Comment 1 2. All employees are covered by training requirements. 3. No changes recommended.
8	Alexa Zagorites, 3/18/2019	Supports banning restraint and seclusion.	No changes recommended.
9	Dena Rosenkrantz, Virginia Education Association, 3/20/19	Supports conforming regulations to clarify that actions permitted by existing statutes and the exercise of professional judgement are not restricted.	No changes recommended.
10	Janet Lilly, 3/20/2019	Supports strengthened restrictions and training.	No changes recommended.
11	Amy Baldwin, 3/24/2019	Supports banning restraint and seclusion	No changes recommended
12	Kristen, 3/30/2019	Is concerned about the definition of parent and requests that the data submission be under oath.	No changes recommended.

13	Elizabeth Shatzer, 4/3/2019	Supports banning restraint and seclusion.	No changes recommended.
14	Amy Trail, 4/5/2019	Supports explicit ban on prone restraints.	See comment 1.
15	Angela Neeley, President, Virginia Council of Special Education Administrators (VCASE), 4/15/2019	Supports the regulations generally. Urges that school personnel who do not come into contact with students be exempted from training requirements. Expresses concern about the cost burden. Expresses concern about the implementation timeline.	No changes recommended
16	Eli Newcombe, The Faison Center, 4/16/2019	Questions whether additional IEP meetings following the first mandated by the regulations will be required. Supports clarifying that advanced training be evidence-based.	We believe these questions are already addressed in the proposed regulations. As a result, no changes recommended.
17	Poquoson City Public Schools, 4/16/2019	See comment 15.	See comment 15.
18	Michael Asip, VCASE, 4/17/2019, and via email 4/17/19	See comment 15.	See comment 15.
19	Kim Sanders, Ukuru Systems, 4/17/2019	Supports explicitly banning prone restraints, emphasizes de-escalation and training.	Explicit ban on prone restraints incorporated..
20	Jennifer Tidd, 4/17/2019	Supports banning restraint and seclusion.	No changes recommended.
21	Jennifer Cullifer, 4/17/2019	Supports CISS Platform.	See comment 1.
22	Rachel McLaughlin, Charlottesville City Public Schools, 4/18/2019	See comment 15.	See comment 15.
23	Jane Strong, Ph.D., 4/18/2019	See comment 15.	See comment 15.
24	Lisa Ownby, MSW, 4/18/2019	Supports CISS Platform.	See comment 1.
25	Teresa Champion, Virginia Autism Project, 4/18/2019	Supports banning restraint and seclusion, but short of that, supports CISS Platform.	See comment 1.
26	Heather Luke, 4/18/2019	Supports banning all seclusion and prone restraint.	Ban on prone restraints incorporated.
27	Cathy Wolfe-Heberle, Blue Ridge Opportunity Services, 4/18/2019	Supports banning restraint and seclusion.	No changes recommended.
28	Marissa Mancini, 4/18/2019	Supports banning restraint and seclusion.	No changes recommended.
29	Melissa, 4/18/2019	Restraint that harms a child should never be used.	Ban on prone restraints incorporated.
30	Guy Stephens, 4/18/2019	Supports banning all seclusion and prone restraint.	Ban on prone restraints incorporated.

31	Linda Cunningham, 4/18/2019	Supports frequent training for school staff.	No changes recommended.
32	Georgean Welichko, 4/18/2019	Supports banning restraint and seclusion.	No changes recommended.
33	Lauren Ochalek, Education Team Allies, 4/18/2019	Supports banning all seclusion and prone restraint.	Ban on prone restraints incorporated.
34	KH, 4/18/2019	Supports banning restraint and seclusion.	No changes recommended.
35	Julia Ward, 4/18/2019	Believes that the exceptions to the definitions of seclusion and restraint are unduly vague.	Ban on prone restraints incorporated.
36	Kris Walker, 4/18/2019	Supports banning restraint and seclusion.	No changes recommended.
37	Melanie Worrall, 4/18/2019	Supports banning restraint and seclusion.	No changes recommended.
38	Pat Young, 4/18/2019	Expresses that her grandson was traumatized by being secluded.	No changes recommended.
39	Mai Hall, 4/18/2019	Supports banning seclusion and restraint.	No changes recommended.
40	Karen, 4/18/2019	Supports banning seclusion and restraint.	No changes recommended.
41	Michelle DeCarlo, 4/19/2019	Supports banning seclusion and restraint.	No changes recommended,
42	Joy Eason, 4/19/2019	Supports banning seclusion.	No changes recommended.
43	Mary, 4/19/2019	Supports banning restraint and seclusion.	No changes recommended.
44	Kristen Barber, 4/19/2019	Supports banning restraint and seclusion.	No changes recommended.
45	Melanie Lickenfelt, 4/19/2019	Shared story of her child. Supports strong regulation.	No changes recommended.
46	Amanda Henderson, 4/19/2019	Shared story of her child.	No changes recommended.
47	Jessica Vermillion, 4/19/2019	Supports banning seclusion and restraint.	No changes recommended.
48	Carla Luck, 4/19/2019	Shared story of her child.	No changes recommended.
49	Sada, 4/19/2019	Supports banning seclusion and restraint.	No changes recommended.
50	Rhonda Broughton Hobson, 4/19/2019	Acknowledges that restraint and seclusion are sometimes necessary, but supports reporting, review and other strong standards.	No changes recommended.
51	Daniella Howard, 4/19/2019	Supports banning seclusion.	No changes recommended.
52	Danyel Brown, 4/19/2019	Supports banning restraint and seclusion.	No changes recommended.
53	Danielle Adams, 4/19/2019	Supports banning restraint and seclusion	No changes recommended.
54	Sydney Jillson, 4/19/2019	Shared story of her child.	No changes recommended.
55	Troy W. Hawkins, 4/19/2019	Supports banning restraint and seclusion.	No changes recommended.
56	Erika Sandy, 4/19/2019	Shared story of her child.	No changes recommended.

57	Betsey Mitchem, 4/19/2019	Supports banning restraint and seclusion.	No changes recommended.
58	Zoey Read, 4/19/2019	Supports banning restraint and seclusion.	No changes recommended.
59	Jennifer Mejri, 4/19/2019	Supports banning restraint and seclusion.	No changes recommended.
60	Amanda Wampler, 4/19/2019	Supports banning restraint and seclusion.	No changes recommended.
61	Rikke Cale, 4/19/2019	See comment 15.	See comment 15.
62	The Advocacy Institute, 4/19/2019	Supports CISS Platform.	See comment 1.
63	Heidi Bunkua, 4/19/2019	Supports banning restraint and seclusion.	No changes recommended.
64	Anonymous, 4/19/2019	Supports banning seclusion and prone restraints.	Ban on prone restraints incorporated.
65	Beth Tolley, 4/19/2019	Supports banning seclusion and restraint.	No changes recommended.
66	Holly, 4/19/2019	Supports banning seclusion and restraint.	No changes recommended.
67	Leah Geeston-Enum, RN, 4/19/2019	Supports use of restraints only in emergency situations with trained personnel.	No changes recommended.
68	Dr. Mona Delahooke, Profectum Institute, 4/19/2019	Supports banning seclusion and restraint.	No changes recommended.
69	Dee Sulenski, PA-C emeritus	Supports banning seclusion and restraint.	No changes recommended.
70	Jason Bennett, 4/19/2019	See comment 15.	See comment 15.
71	Maureen Hollowell, Virginia Association of Centers for Independent Living, 4/19/2019	<ol style="list-style-type: none"> 1. Prefers that restraint and seclusion be banned, but offers the following comments. 2. Remove exemptions from the definition of seclusion. 3. Add seclusion to banned "aversive stimuli" and require seclusion rooms to comply with building and fire codes. 4. Remove exemptions from the definition of restraint. 5. Provide a clear statement that seclusion cannot be used except in an emergency situation. 6. Retain ban on mechanical and pharmacological restraints. 7. Expressly ban prone restraints. 8. Limit restraints and seclusion in situations where students cannot communicate medical distress or other needs, and where they are otherwise medically contraindicated. 9. Supports retaining the requirement that the restraint or seclusion be ended when the emergency has dissipated. 10. Supports requiring school divisions to implement PBIS. 11. Supports retaining continuous visual monitoring requirement. 	<ol style="list-style-type: none"> 1. See comment 1. 2. No changes other recommended.

		12. Supports generally the notification and debriefing requirements, except for required student debriefing.	
72	Courtney Pugh, 4/19/2019	Supports use of positive behavioral interventions, restraint and seclusion only as a last resort, and prompt parental notification.	No changes recommended.
73	Dave, 4/19/2019	"This is the reality of how Applied Behavior Analysis operates."	No changes recommended.
74	Jazmine Kase, 4/19/2019	Supports banning restraint and seclusion.	No changes recommended.
75	Charles E. Swadley, 4/19/2019	Recited personal experience witnessing restraint and seclusion. Supports training and data collection.	No changes recommended.
76	Dwight Godwin, Jr., 4/19/2019	Supports more inclusive practices.	No changes recommended.
77	Cheryl Simpson, Endependence Center, Inc., 4/19/2019	Joins in comment 71.	No changes recommended.
78	Elizabeth Mitchell, 4/19/2019	Urges that resources go toward caring for people.	No changes recommended.
79	Aurora Hurtado, 4/19/2019	Urges that school environments be nurturing.	No changes recommended.
80	S. Albert, 4/19/2019	Supports banning restraint and seclusion.	No changes recommended.
81	Neurodiverse rep, 4/19/2019	Shared personal story.	No changes recommended.
82	H.K., 4/19/2019	Urges positive interventions.	No changes recommended.
83	Billie Jo Bevan, 4/19/2019	Supports banning seclusion and restraint.	No changes recommended.
84	Jane Zagorites, 4/19/2019	Shared her grandchild's story.	No changes recommended.
85	Lisa Stephens, 4/19/2019	Shared her child's story.	No changes recommended.
86	Katrina Lee, Member of VCASE Legislative Committee, 4/19/2019	See comment 15.	See comment 15.
87	Monica Lara Lima, 4/19/2019	Supports banning restraint and seclusion.	No changes recommended.
88	Kathy Hoback, 4/19/2019	Urges that teacher safety not be forgotten.	No changes recommended.
89	TLC, 4/19/2019	Supports banning restraint and seclusion.	No changes recommended.
90	Advocating 4 Kids, Inc. and NAPSE, 4/19/2019	<ol style="list-style-type: none"> 1. Supports restoring language banning prone restraints. 2. Supports eliminating exceptions from the definition of restraint and seclusion. 3. Supports requiring that a mental health professional be present at any student debriefing. 4. Supports culturally informed training. 	Ban on prone restraint incorporated..
91	Sharon R. Tروف, 4/19/2019	Supports CISS Platform.	See comment 1.

92	Mary Scopin, MCF, 4/19/2019	Supports banning seclusion.	No changes recommended.
93	Amanda Campbell, 4/19/2019	Supports banning restraint and seclusion.	No changes recommended.
94	Allison Bowles, 4/19/2019	Supports banning restraints.	No changes recommended.
95	Norfolk Commission on Persons with Disabilities, 4/19/2019	Echoes comment 71.	See comment 71.
96	Carter Melin, 4/19/2019	Supports banning restraint and seclusion.	No changes recommended.
97	Pamela Ononiwu, Candidate, Fairfax County School Board	Supports CISS Platform.	See comment 1.
98	Pamela Thurman, 3/15/2019	Supports CISS Platform.	See comment 1.
99	Constituent, 3/15/2019	Supports CISS Platform.	See comment 1.
100	Parent, 3/18/2019	Believes that the regulations do not contain sufficiently clear definitions.	No changes recommended.
101	Parent, 3/19/2019	Supports CISS Platform.	See comment 1.
102	Parent, 3/19/2019	Supports banning seclusion	No changes recommended.
103	Megan Harris, 3/20/2019	Supports CISS Platform.	See comment 1.
104	Parent, 3/21/2019	Supports CISS Platform.	See comment 1.
105	Parent, 3/28/2019	Supports CISS Platform.	See comment 1.
106	Parent, 4/1/2019	Supports banning restraint and seclusion.	No changes recommended.
107	Elizabeth Haught, 4/8/2019	See comment 15.	See comment 15.
108	Kristina Williams, 4/16/2019	See comment 15.	See comment 15.
109	Legal Services of Northern Virginia, 3/29/2019	Calls Fairfax County reporting situation involving OCR data to the Board's attention.	No changes recommended.
110	Ahnjayla Hunter, 4/16/2019	See comment 15.	See comment 15.
111	Connie Phillips, 4/15/2019	See comment 15.	See comment 15.
112	Craig Pinello, 4/16/2019	See comment 15.	See comment 15.
113	disAbility Law Center, 4/16/2019	Supports CISS Platform.	See comment 1.
114	Ellen Bauserman, 4/2019	See comment 15.	See comment 15.
115	Fairfax County Public Schools, 4/19/2019	See comment 15.	See comment 15.
116	Del. Richard P. Bell, 4/10/2019 and 3/29/2019	Urged the prompt enactment of regulations.	No changes recommended.
117	Lisa McCoy, 4/15/2019	See comment 15.	See comment 15.

118	CISS, 3/29/2019	See comment 1.	See comment 1.
119	Melinda Smith, 4/2019	See comment 15.	See comment 15.
120	Paige Bradford, 4/2019	Supports VEA comments.	See comment 9.
121	Patricia Nelson, 4/2019	See comment 15.	See comment 15.
122	VCU Partnership for People with Disabilities, 4/19/2019	Supports CISS Platform. Believes that regulations should affirmatively state that restraint and seclusion must not be used to address behavior that does not cause imminent threat of serious bodily injury. Supports the use of positive behavioral interventions.	No changes recommended.
123	Virginia Board for People with Disabilities, 4/10/2019	Supports CISS Platform.	See comment 1.
124	Wendy Martin-Johnson, 4/12/2019	See comment 15.	See comment 15.
125	Department of Juvenile Justice, 4/19/2019	Requested that their facilities be excluded from the regulations, as their circumstances are unique and the have existing crisis management plans.	Change made.

Detail of Changes Made Since the Previous Stage

*Please list all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Please put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
8 VAC 20-750-5, 8 VAC-750-20			Excluded students receiving instruction in secure facilities and detention homes as defined in Section 16.1 of the Code of Virginia and in facilities operated by the Virginia Department of Behavioral Health and Developmental Services.	These facilities have unique circumstances and already have their own policies and procedures regarding emergency situations.
8 VAC 20-750-			Added an explicit prohibition on the use of prone restraints, i.e., lying face down.	Public comment supported such a ban.

Detail of All Changes Proposed in this Regulatory Action

Please list all changes proposed in this action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Please put an asterisk next to any substantive changes.

Current chapter-section number	New chapter-section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of updated requirements
	8VAC 20-750-5	None	<p><u>Application:</u> Recites that the proposed regulation is intended to govern the use of seclusion and restraint for the purpose of behavioral intervention, in the public elementary and secondary schools in the Commonwealth. It additionally sets forth the steps that must be taken to determine whether the action falls within the meaning of the regulations.</p> <p>Intent/rationale: To provide background and framework for the regulations.</p> <p>Impact: to lessen confusion about applicability.</p>
	8 VAC 20-750-10 “Aversive stimuli”	None	<p><u>Definitions</u></p> <p><u>Aversive stimuli</u> include interventions that are intended to induce pain or discomfort in a student as a means of discipline or to control behavior. It includes measures such as verbal and mental abuse and deprivation of necessities.</p> <p>Intent/rationale/impact: To set the framework for the remainder of the regulations</p>
	“Corporal Punishment”	None	<p><u>Corporal punishment</u> means the infliction of physical pain on a student for the purpose of discipline.</p> <p>Intent/rationale/impact: To set the framework for the remainder of the regulations</p>
	“Mechanical restraint”	None	<p><u>Mechanical restraint</u> means the use of device or equipment to restrict a student’s freedom of movement. It</p>

			<p>does not include items such as orthopedically prescribed devices, vehicle restraints and high chairs used for their intended purposes.</p> <p>Intent/rationale/impact: To set the framework for the remainder of the regulations</p>
	"Pharmacological restraint"	None	<p><u>Pharmacological restraint</u> means the use of a drug or medication that is not prescribed and administered in accordance with a qualified health professional's order, but that is administered in order to control behavior.</p> <p>Intent/rationale/impact: To set the framework for the remainder of the regulations</p>
	"Physical restraint"	None	<p><u>Physical restraint</u> means a personal restriction that immobilizes or restricts the ability of a student to move freely. It does not include briefly hold a student to calm or comfort the student, holding a student's hand or arm to provide a safe escort for the student, or the use of incidental, minor or reasonable contact to maintain order and control.</p> <p>Intent/rationale/impact: To set the framework for the remainder of the regulations</p>
	"Restraint"	None	<p><u>Restraint</u> includes physical restraint, mechanical restraint and pharmacological restraint.</p> <p>Intent/rationale/impact: To set the framework for the remainder of the regulations</p>
	"Seclusion"	None	<p><u>Seclusion</u> means the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. It does not include a time-out, in-school suspension, detention, a student requested break, removal for the student to regain self-control, removal of a student for disruptive behavior and confinement of a student during the investigation of a violation of the Code of Student Conduct.</p>

			Intent/rationale/impact: To set the framework for the remainder of the regulations
	"Time-out"	None	<p><u>Time-out</u> means a behavioral intervention in which a student is temporarily removed from the learning activity, but where the student is not confined.</p> <p>Intent/rationale/impact: To set the framework for the remainder of the regulations</p>
	8 VAC 20-750-20	None	<p><u>General definitions.</u> This section defines terms that are used in the proposed regulations that are generally noncontroversial and appear in other statutes or regulations. They include the following: behavioral intervention plan, Board, business day, chapter, calendar day, child with a disability, Department, evaluation, functional behavioral assessment, individualized education program, individualized education program team, school day, school personnel, Section 504 plan, and student.</p> <p>Intent/rationale/impact: To set the framework for the remainder of the regulations</p>
	8 VAC 20-750-30	None.	<p><u>Prohibited actions.</u> These regulations prohibit the use of the following in the Commonwealth: mechanical restraints, pharmacological restraints, aversive stimuli, corporal punishment, and use of prone restraint (i.e., lying face down) or any restraints that restrict a student's breathing or harms the student, and the use of seclusion that restricts a student's breathing or harms the student. The regulations also prohibit the use of physical restraint or seclusion as a punishment or discipline, as a means of coercion or retaliation, as a convenience, or to protect property. Furthermore, the regulations ban the use of seclusion rooms that do not meet the standards set forth in the regulations. Finally, it prohibits the use of restraint or seclusion when it is medically or psychologically contraindicated.</p>

			<p>Intent/rationale/impact: These proposed regulations are designed to ensure the safety of students in the public schools in the Commonwealth, while balancing the ability of school personnel to deal with emergency situations.</p>
	8 VAC 20-750-40	None	<p><u>Use of physical restraint and seclusion.</u> Provides that school personnel are not required to use restraint or seclusion, but if they do, it must be used in the manner set forth in the regulations. School personnel may use physical restraint or seclusion only when, in the reasonable judgement of the school personnel, other interventions are or would be ineffective, and only for the following purposes: to prevent a student from inflicting serious physical harm or injury to self or others, to quell a disturbance that threatens such harm, to remove a student from the scene of a disturbance that threatens such harm, to defend self or others from such harm, to obtain possession of controlled substances, paraphernalia, a weapon, or other dangerous objects.</p> <p>The physical restraint or seclusion must be discontinued as soon as the circumstances causing it has dissipated.</p> <p>Intent/rationale/impact: These proposed regulations are designed to ensure the safety of students in the public schools in the Commonwealth, while balancing the ability of school personnel to deal with emergency situations.</p>
	8 VAC 20-750-50	None	<p><u>Seclusion; standards for use.</u> This section sets forth safety standards for seclusion rooms and the monitoring of students in seclusion rooms.</p> <p>Intent/rationale/impact: These proposed regulations are designed to ensure the safety of students in the public schools in the Commonwealth, while balancing the ability of school personnel to deal with emergency situations.</p>

	8 VAC 20-750-60	None	<p><u>Notification and reporting.</u> This section addresses notification of incidents of restraint and seclusion within the school and notification of parents, preparation and dissemination of incident reports, and debriefing with school personnel, and where appropriate, the student.</p> <p>Intent/rationale/impact: These proposed regulations are designed to ensure the safety of student in the public schools in the Commonwealth, while balancing the ability of school personnel to deal with emergency situations.</p> <p>Debriefing with staff and students is intended to promote the use of alternative methods of positive behavioral intervention.</p>
	8 VAC 20-750-70	None	<p><u>Policies and procedures.</u> Requires that school divisions adopt policies and procedures promoting the use of positive behavioral interventions and supports, describing staff training, interaction with law enforcement. The policies and procedures must be available to the public, and developed with consideration of factors that encourage parent involvement and collaboration.</p> <p>Intent/rationale/impact: These proposed regulations are designed to ensure the safety of student in the public schools in the Commonwealth, while balancing the ability of school personnel to deal with emergency situations.</p> <p>The regulations are also intended to promote the use of positive behavioral supports.</p>
	8 VAC 20-750-80	None	<p><u>Prevention; multiple uses of restraint or seclusion.</u> Requires that after the second day in a school year when a student is restrained or secluded, teams must convene to consider strategies to address the behavior, which may include conducting evaluations.</p> <p>Intent/rationale/impact: These proposed regulations are designed to ensure the safety of student in the</p>

			<p>public schools in the Commonwealth, while balancing the ability of school personnel to deal with emergency situations.</p> <p>The regulations are also intended to promote the use of positive behavioral supports.</p>
	8 VAC 20-750-90	None	<p><u>Annual reporting.</u> Provides that principals must report incidents to the division superintendent and that the superintendent must report data to the Virginia Department of Education on an annual basis.</p> <p>Intent/rationale/impact: Reporting will allow the school division and the VDOE to examine trends and effectiveness in the use of positive behavioral interventions.</p>
	8 VAC 20-750-100	None	<p><u>Training.</u> Provides for initial training for all school personnel that focuses on positive behavioral support and de-escalation. Provides that the school division must provide advanced training to at least one building administrator and for personnel assigned to work with students for whom the need for restraint and seclusion is determined to be likely. All training must be evidence-based.</p> <p>Intent/rationale/impact: These proposed regulations are designed to ensure the safety of student in the public schools in the Commonwealth, while balancing the ability of school personnel to deal with emergency situations.</p> <p>The regulations are also intended to promote the use of positive behavioral supports.</p>
	8 VAC 20-750-110		<p><u>Construction and interpretation.</u> Outlines how the regulations interact with other applicable law.</p> <p>Intent/rationale and impact: This section is intended to guide the applicability of the regulations.</p>