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Final Regulation Agency Background Document

Agency name	State Board of Education
Virginia Administrative Code (VAC) Chapter citation(s)	8 VAC20-671
VAC Chapter title(s)	Regulations Governing the Operation of Private Schools for Students with Disabilities
Action title	Action to Align with Item 130.H of Chapter 2 of the Acts of the Assembly 2022 Special Session I
Date this document prepared	March 26, 2026

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 2023 Special Session I, the Virginia General Assembly enacted [Chapter 1](#) of the Acts of the Assembly, which amended and reenacted [Chapter 2](#) of the Acts of Assembly of 2022, Special Session I, as amended by [Chapter 769](#) of the Acts of Assembly of 2023, which appropriated the public revenues for 2022-2024 biennium.

Item 130.H of Chapter 1 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.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

“Board” means the Virginia Board of Education.
“Department” means the Virginia Department of Education.

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) that the agency has “adopted final amendments” to the regulation; 3) the name of the agency taking the action; and 4) the title of the regulation. A suggested statement is, “On [insert date] the Board/Department of [insert name] adopted final amendments to the [title of regulation(s)].”

On March 26, 2026, the State Board of Education adopted final amendments to the Regulations Governing the Operation of Private Schools for Students with Disabilities.

Mandate and Impetus

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.

The regulatory change is the result of a legislative mandate. The change is to enact the General Assembly’s directive to the Board. The Board expects that this action will be noncontroversial because it has exercised minimal discretion in effectuating the legislative mandate.

Legal Basis

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

Item [130.H](#) of Chapter 1 directed the Board 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 Board’s overall regulatory authority is found in § [22.1-16](#) of the Code of Virginia, which states that “[t]he 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.”

The Board’s regulatory authority over private schools for students with disabilities is found in § [22.1-321](#), which states that “[t]he Board of Education shall make regulations not inconsistent with law for the management and conduct of [schools for students with disabilities]. The regulations may include standards for programs offered by the schools.”

Purpose

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 is intended to solve.

The rationale or justification for this regulatory action is that it is the result of a legislative mandate.

The action will help protect the health, safety, and welfare of special education students by ensuring that adequate standards are in place for the use of seclusion and restraint in private special education day schools.

The goal of this regulatory action is to establish the same requirements on restraint and seclusion for private special education day schools as those for public schools. Currently, the requirements for restraint and seclusion differ between the public and private school contexts.

Substance

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.

The changes are limited to those necessary to effectuate the legislative mandate.

The changes to [8VAC20-671-10](#) add definitions that are in [8VAC20-750](#) (Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia) or conform current definitions to those in [8VAC20-750](#). The action modifies the following definitions in [8VAC20-671-10](#):

- aversive stimuli;
- behavioral intervention plan;
- consent;
- education records;
- mechanical constraint;
- physical restraint;
- seclusion;
- Section 504 plan, which eliminates the need for a definition of 504 plan); and
- time-out.

The action adds definitions for the following terms to [8VAC20-671-10](#):

- child with a disability;

- corporal punishment;
- day;
- evaluation;
- functional behavioral assessment;
- individualized education program team;
- restraint;
- school day;
- school personnel; and
- student

The changes to [8VAC20-671-650](#) align this section with the parallel requirement for public schools in [8VAC20-750-30](#).

The changes to [8VAC20-671-660](#) strike all the current requirements regarding restraint and seclusion for private schools for students with disabilities.

A new section sets the same requirements for restraint and seclusion for private special education day schools as those for public schools:

- Subsection A corresponds to [8VAC20-750-40](#) A;
- Subsection B corresponds to [8VAC20-750-40](#) B through F;
- Subsection C corresponds to [8VAC20-750-50](#);
- Subsection D corresponds to [8VAC20-750-60](#);
- Subsection E corresponds to [8VAC20-750-70](#);
- Subsection F corresponds to [8VAC20-750-80](#);
- Subsection G corresponds to [8VAC20-750-90](#);
- Subsection H corresponds to [8VAC20-750-100](#); and
- Subsection I corresponds to [8VAC20-750-110](#)

Issues

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 of this action to the public is that this action effectuates the legislative intent of Item [Chapter 1](#) of the Acts of the Assembly of 2023 Special Session and of [Chapter 769](#) of the Acts of Assembly of 2023. The action has no disadvantages to the public. There are no advantages or disadvantages to the agency or the Commonwealth, nor are there other pertinent matters of interest to the regulated community, government officials, or the public.

Requirements More Restrictive than Federal

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.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

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

There are no other state agencies that will be particularly affected by this regulatory action.

Localities Particularly Affected

There are no localities that will be particularly affected by this regulatory action.

Other Entities Particularly Affected

This action will affect child day centers, family day homes, and family day systems. However, it is not clear that there will be a “material impact” sufficient to meet the definition of “particularly affected.”

Public Comment

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

Commenter	Comment	Agency response
Anonymous Parent Who's Child Has Been ABUSED	<p>DOES IT EVEN MATTER? NOT THE MOST IMPORTANT, POLICIES APPARENTLY!</p> <p>VDOE and VBOE have repeatedly been on warning regarding multiple Special Education Requirements and Regulations and have NOT resolved them despite 'feigning' compliance. All the 'policy' in the world does NO GOOD for those SUBJECTED to policy (i.e., Abused Students and even Parents subjected to abuses by School Divisions and/or the Virginia Department of Education ITSELF) when VDOE maintains 'alt' records such as: A. Burying Special Education Directives and Compliance Mandates</p>	<p>VDOE thanks the commenter for the feedback.</p> <p>This comment falls outside of the scope of the regulatory action.</p> <p>Item 130.H of Chapter 2 of the Acts of the Assembly 2022 Special Session I directed the Board of Education to make this regulatory change.</p>

	<p>B. Maintaining a SEPARATE Licensure Revocations File for HEINOUS Crimes vs. INNOCENT CHILDREN under the CARE of LEAs and the VDOE/VBOE - wherein 'arrangements' are made to MINIMIZE crimes against CHILDREN to NOT Revoke Licensures as appropriate, but instead allow convicted abusers of children to continue in a School Division profession such as teachers, aides, coaches, etc. It is wholly UNCONSCIONABLE how Virginia PUBLIC EDUCATION has devolved into such an ABUSIVE entity over the past decades. WHY should anyone PAY Taxes for Government Sanctioned ABUSE and CORRUPTION Vehicles. You are a PUBLIC Taxpayer Funded ENTITY. You owe your allegiance to Students and Parents, not LOBBY GROUPS and Policy 'help' by INTERFERING Organizations like Hunt Institute, Elevating Educators, Educators Rising, PDK INTERNATIONAL and other NGO Bureaucracies ALSO taking advantage of Tax Payer \$\$\$\$ AGAINST the Best Interests and Well-Being of Virginia's American Citizens.</p>	
<p>Fed Auditor Retired</p>	<p>VBOE is meeting today. It appears the VBOE *thinks* it is legally authorized to create laws....</p> <p>The Authority of Law comes from the General Assembly by direct representation of THE PEOPLE. VDOE and VBOE are NOT authorized entities to Create nor Modify Virginia Law/Code. Clarification is needed as to whether VDOE/VBOE is over-reaching its desires to bypass the proper approval and will of THE PEOPLE, who pay THE TAXES for all components including COMPLIANCE required of Public Education. 'Frameworks' and 'School Support' 'Supporting Schools' are language</p>	<p>VDOE thanks the commenter for the feedback. This comment falls outside of the scope of the regulatory action, but the agency offers the following brief explanation of its regulatory authority.</p> <p>Item 130.H of Chapter 2 of the Acts of the Assembly 2022 Special Session I directed the Board of Education to make this regulatory change.</p>

	omitting the COMPLIANCE Requirements. This is not accidental messaging.	
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Detail of Changes Made Since the Previous Stage

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. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. ** 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
n/a	n/a	n/a	n/a	n/a

Detail of All Changes Proposed in this Regulatory Action

List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. ** Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
8VAC20-671-10		<p>Definitions.</p> <p>The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:</p> <p>"504 Plan" means a written plan required under § 504 of the Rehabilitation Act of 1973 (29 USC § 701 et seq.), as amended. A student's 504 Plan details modifications, accommodations, and services that are needed for the student with a disability to participate in and enjoy the benefits of school programs at the same level as his peers without disabilities.</p> <p>...</p> <p>"Aversive stimuli" means any</p>	<p>Change: The definition of "504 Plan" will be removed. The definition of "aversive stimuli" will be changed. The definition of "behavioral intervention plan" will be changed. The definition of "consent" will be changed. The definition of "education records" will be changed. The definition of "mechanical restraint" will be changed. The definition of "physical restraint" will be changed. The definition of "seclusion" will be changed. The definition of "time-out" will be changed.</p> <p>The new text of the defined terms will be: "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</p>

		<p>action used to punish a student or to eliminate, reduce, or discourage the problem behavior by use of any of the following or any other actions that are painful, humiliating, degrading, or abusive:</p> <ol style="list-style-type: none"> 1. Noxious odors and tastes. 2. Water and other mists or sprays. 3. Blasts of air. 4. Corporal punishment as defined in § 22.1-279.1 of the Code of Virginia. 5. Verbal and mental abuse. 6. Placement of a student alone in a room, where the door is locked or held shut and the student is prevented from leaving the room. 7. Forced exercise where: <ol style="list-style-type: none"> 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 activities. 8. Deprivation of necessities, including: <ol style="list-style-type: none"> a. Food or liquid at a time when it is customarily served; b. Medication; or c. Use of restroom. <p>...</p> <p>"Behavioral intervention plan" means a plan that utilizes positive behavioral interventions and supports to address (i) behaviors that interfere with the learning of students with disabilities or with the learning of others or (ii) behaviors that require disciplinary action.</p> <p>...</p> <p>"Consent" means:</p> <ol style="list-style-type: none"> 1. The parent or eligible student has been fully informed of all information relevant to the activity for which consent is sought in the parent's or eligible student's native language or other mode of communication; 2. The parent or eligible student understands and agrees in writing 	<p>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 § 22.1-279.1 of the Code of Virginia. 5. Verbal and mental abuse. 6. Forced exercise where: a. The student's behavior is related to the student's disability; b. The exercise would have a harmful effect on the student's health; or c. The student's disability prevents participation in activities. 7. Deprivation of necessities, including: a. Food and liquid at a time when it is customarily served; b. Medication; or c. Use of the restroom.</p> <p>"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.</p> <p>"Child with a disability" or "student with a disability" means an elementary or secondary school student evaluated in accordance with the provisions of Regulations Governing Special Education Programs for Children with Disabilities in Virginia (the Virginia Regulations), at 8VAC20-81, 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 the Virginia Regulations, at 8VAC20-81, as an emotional disability), an orthopedic impairment, autism, traumatic brain injury, 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 sending school division recognizes this category as a disability under the Virginia Regulations, at 8VAC20-81-80 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</p>
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		<p>to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and</p> <p>3. The parent or eligible student understands that the granting of consent is voluntary on the part of the parent or eligible student and may be revoked any time. If a parent or eligible student revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked.) Revocation ceases to be relevant after the activity for which consent was obtained was completed.</p> <p>The meaning of the term "consent" is not the same as the meaning of the term "agree" or "agreement." "Agree" or "agreement" refers to an understanding between the parent or eligible student and the school about a particular matter and as required in this chapter. There is no requirement that an agreement be in writing, unless stated in this chapter. The school should document its agreement.</p> <p>...</p> <p>"Mechanical restraint" means the use of any device or equipment to restrict a student's freedom of movement. This term does not include devices implemented by trained school personnel or utilized by a student that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were designed, such as:</p> <p>1. Adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use</p>	<p>special education, the child is not a child with a disability under the Virginia Regulations, at 8VAC20-81. If the related service required by the child is considered special education rather than a related service under Virginia standards, the child would be determined to be a child with a disability. As used in this chapter, the disability categories set forth in this definition and the terms "special education" and "related services" shall have the meanings set forth in the Virginia Regulations, at 8VAC20-81-10.</p> <p>"Consent" means: 1. The parent or eligible student has been fully informed of all information relevant to the activity for which consent is sought in the parent's or eligible student's native language or other mode of communication; 2. The parent or eligible student understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and 3. The parent or eligible student understands that the granting of consent is voluntary on the part of the parent or eligible student and may be revoked any time.</p> <p>"Corporal punishment" means the infliction of or causing the infliction of, physical pain on a student as a means of discipline.</p> <p>"Day" means calendar day unless otherwise designated as business day or school day.</p> <p>"Education records" means those records that are directly related to a student and maintained by the school or by a party acting for the school. Education records may be recorded in any manner including, but not limited to, handwriting, print, computer media, video or audiotape, film, microfilm, or microfiche. Education records include discipline and medical records.</p>
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		<p>of such devices or mechanical supports;</p> <p>2. Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle;</p> <p>3. Restraints for medical immobilization; or</p> <p>4. Orthopedically prescribed devices that permit a student to participate in activities without risk of harm.</p> <p>...</p> <p>"Physical restraint" means the use of approved physical interventions or "hands-on" holds by trained staff to prevent a student from moving his body to engage in a behavior that places him or others at risk of physical harm. Physical restraint does not include:</p> <p>1. Briefly holding a student in order to calm or comfort the student; or</p> <p>2. Holding a student's hand or arm to escort the student safely from one area to another.</p> <p>...</p> <p>"Seclusion" means the confinement of a student alone in a room from which the student is physically prevented from leaving.</p> <p>...</p> <p>"Serious incident" means:</p> <p>1. Any accident or injury requiring medical attention by a licensed physician;</p> <p>2. Any illness that requires hospitalization;</p> <p>3. Any runaway; or</p> <p>4. Any event that affects, or potentially may affect, the health, safety, or welfare of any student being served at the school or school-related activity.</p> <p>...</p> <p>"Time-out" means assisting a student to regain control by removing the student from his immediate environment to a different open location until the student is calm or the problem behavior has subsided.</p>	<p>Education records include electronic exchanges between school personnel and parent regarding matters associated with the child's educational program.</p> <p>"Evaluation" means procedures used in accordance with 8VAC20-81 to determine whether a child has a disability and the nature and extent of the special education and related services the child needs.</p> <p>"Functional behavioral assessment" or "FBA" means a process to determine the underlying cause or functions of a student's behavior that impede the learning of the student or the learning of the student's peers. A functional behavioral assessment may include a review of existing data or new testing data or evaluation as determined as set forth in subsection A of 8VAC20-671-790.</p> <p>"Individualized education program team" or "IEP team" means a group of individuals described in 8VAC20-81-110 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.</p> <p>"Mechanical restraint" means the use of any material, device, or equipment to restrict a student's freedom of movement. The term "mechanical constraint" does not include devices implemented by trained school personnel or utilized by a student that have been prescribed by an appropriate medical or related services professional and are used with parental consent for the specific and approved purposes for which such devices were designed, such as: 1. Adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports; 2. Vehicle safety restraints, including seat belts, when used as intended during the transport of a student in a moving</p>
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			<p>vehicle; 3. Restraints for medical immobilization; 4. Orthopedically prescribed devices that permit a student to participate in activities without risk of harm; or 5. High chairs and feeding stations used for age or developmentally appropriate students.</p> <p>"Physical restraint" means a personal restriction that immobilizes or reduces the ability of a student to move freely. The term "physical restraint" does not include: 1. Briefly holding a student in order to calm or comfort the student; 2. Holding a student's hand or arm to escort the student safely from one area to another; or 3. The use of incidental, minor, or reasonable physical contact or other actions designed to maintain order and control.</p> <p>"Restraint" means mechanical restraint, physical restraint, or pharmacological restraint.</p> <p>"School day" means any day, including a partial day, that students are in attendance at school for instructional purposes. The term has the same meaning for all students in school, including students with and without disabilities.</p> <p>"School personnel" means individuals employed by the school on a full-time 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.</p> <p>"Seclusion" means the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. Provided that no such room or space is locked, the term "seclusion" does not include (i) time-out, as defined in this chapter; (ii) in-school suspension; (iii) detention; (iv) student-requested breaks in a different location in the</p>
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			<p>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 the student is not physically prevented from leaving; (vi) removal of a student for disruptive behavior from a classroom by the teacher; or (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 personnel regarding the student's knowledge of or participation in events constituting a violation of the code of student conduct, such as a physical altercation, or an incident involving drugs or weapons.</p> <p>"Section 504 plan" means a written plan of modifications and accommodations under Section 504 of the Rehabilitation Act of 1973 (29 USC § 794).</p> <p>"Student" means any student, with or without a disability, enrolled in a private school for students with a disability. With regard to restraint and seclusion, students placed through public or private means in a private day or residential school for students with disabilities shall be afforded the protections set forth in this chapter.</p> <p>"Time-out" means a behavioral intervention in which the student is temporarily removed from the learning activity but in which the student is not confined.</p> <p>Intent: The changes are limited to those necessary to effectuate the legislative mandate.</p> <p>Rationale: The changes to 8VAC20-671-10 add definitions that are in 8VAC20-750 (Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary</p>
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			<p>Schools in Virginia) or conform current definitions to those in 8VAC20-750.</p> <p>Likely Impact: The regulatory change will conform the regulations to the Code of Virginia and update regulations for clarity and readability.</p>
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