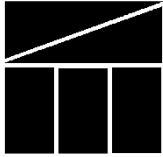


Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



Virginia Department of Planning and Budget Economic Impact Analysis

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: 4336 / 7894
April 12, 2018

Summary of the Proposed Amendments to Regulation

Pursuant to Chapter 142 of the 2015 Acts of the General Assembly,¹ the Board of Education (Board) proposes to promulgate regulations on the use of seclusion and restraint in public elementary and secondary schools in the Commonwealth. Seclusion and restraint are not currently addressed in Board regulations.

Result of Analysis

The benefits likely exceed the costs for most proposed amendments.

Estimated Economic Impact

Legislation and Regulation

The legislation specifies that:

The Board shall 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 Situations² and the Fifteen Principles contained

¹ See <http://townhall.virginia.gov/l/viewmandate.cfm?mandateid=615>

² See http://www.doe.virginia.gov/support/student_conduct/guidelines_managing_behaviors_emergency.pdf

*in the U.S. Department of Education's Restraint and Seclusion: Resource Document*³; (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 population and the special education student population and (b) elementary school students and secondary school students.

In order to address the requirements of the legislation, the Board's proposed regulation defines what constitutes seclusion and physical restraint, as well as mechanical restraint, pharmacological restraint and aversive stimuli. The proposed regulation bans the use of mechanical restraints, pharmacological restraints, and aversive stimuli, and describe the conditions under which it is permissible for a student to be restrained or secluded. The regulation also provides for notification and reporting to parents, debriefing with staff and the student following incidents and for follow-up when a student has been restrained or secluded more than twice during the course of a school year. In addition, the regulation also provides for reporting to the Virginia Department of Education (VDOE). The regulation also requires local school divisions to adopt policies and procedures regarding the use of seclusion and restraint. Finally, the regulation requires 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.

Benefits

In a 2009 report⁴ prepared for presentation to the U.S. House of Representatives' Committee on Education and Labor, the U.S. Government Accountability Office (GAO) identified several hundred cases of alleged abuse, including deaths that were related to the use of restraint or seclusion of children in public and private schools. The GAO observed that problems with untrained or poorly trained staff were often related to many instances of alleged abuse. The proposed required training and the banning of the use of mechanical restraints, pharmacological restraints, and aversive stimuli should help reduce the frequency and the magnitude of harm to students from seclusion and restraint. The proposed requirements for notification and reporting

³ See <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>

⁴ See <https://www.gao.gov/assets/130/122526.pdf>

to parents and VDOE should help parents and state authorities be better informed. Better data may help state authorities make better-informed policy decisions.

Costs

The primary costs associated with the proposed regulation are associated with the training requirements. Through contact with training programs, VDOE has estimated that the average training program lasts three days and charges \$2,328 per person. The requirements would apply to 2,112 public schools, and assuming that there would be three employees to be trained at each school, the estimated direct cost for training statewide would be \$14,748,941. During the three days away for training, the schools would need to employ substitutes. The estimated statewide cost for substitutes is \$601,920. Beyond training, the proposed regulation also requires that additional staff time be spent on notifications, reporting and debriefing.

Businesses and Entities Affected

The proposed amendments potentially affect the more than 1,286,000 students in the Commonwealth's K-12 public schools, the 132 local school divisions, and the Virginia Department of Education.

Localities Particularly Affected

The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment

The proposed requirements 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, may increase employment at firms that supply such training.

Effects on the Use and Value of Private Property

The proposed training requirements may increase the value of firms that provide such training.

Real Estate Development Costs

The proposed amendments do not affect real estate development costs.

Small Businesses:**Definition**

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.”

Costs and Other Effects

The proposed regulation does not introduce costs for small businesses. Small firms that provide training on safe methods for restraining or secluding a student would benefit from the proposed regulation.

Alternative Method that Minimizes Adverse Impact

The proposed amendments do not adversely affect small businesses.

Adverse Impacts:**Businesses:**

The proposed amendments do not adversely affect businesses.

Localities:

The proposed training requirements increase costs for local school divisions.

Other Entities:

The proposed amendments do not adversely affect other entities.

Legal Mandates

General: The Department of Planning and Budget 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 Number 17 (2014). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report 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.

Adverse impacts: Pursuant to Code § 2.2-4007.04(C): 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 Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

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.