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## Proposed Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Education
<b>Virginia Administrative Code (VAC) citation(s)</b>	8 VAC 20-750
<b>Regulation title(s)</b>	Regulations Governing the Use of Seclusion and Restraint in the Public Elementary and Secondary Schools in Virginia
<b>Action title</b>	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 General Assembly and which became effective on July 1, 2015
<b>Date this document prepared</b>	May 23, 2017

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the *Virginia Administrative Process Act (APA)*, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The 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, and 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 population and the special education student population and (b) elementary school students and secondary school students.

The proposed regulations define what constitutes seclusion and physical restraint, as well as mechanical restraint, pharmacological restraint and aversive stimuli. The proposed regulations ban 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 regulations also provide 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 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. Finally, 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.

### 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 this Agency Background Document that are not also defined in the "Definition" section of the regulations.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

The Board of Education's authority for promulgating regulations governing the use of seclusion and restraint is as follows:

As noted above, the 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 population and the special education student population and (b) elementary school students and secondary school students.

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

"The Board of Education shall promulgate regulations establishing standards for accreditation pursuant to the *Administrative Process Act* (§ 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 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 § 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 new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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The proposed regulatory action is necessary to fulfill the General Assembly's directive that regulations be developed in accordance with the 2014 recommendation of the Virginia Commission on Youth that certain principles contained in certain existing guidance documents have regulatory effect. The bill is 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.*

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These regulations govern the use of seclusion and restraint utilized for the purpose of behavioral intervention in the schools of 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 proposed regulatory action, 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, please indicate.*

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The primary advantage to the public, specifically students and parents, will be a lessened risk of 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 identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

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

### Localities particularly affected

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

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

### Public participation

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

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In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include 1) projected reporting, recordkeeping and other administrative costs,

2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Patricia Haymes, Director, Office of Dispute Resolution, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23218-2120; Telephone: (804) 225-2013, Fax: (804)786-8520, Email: [patricia.haymes@doe.virginia.gov](mailto:patricia.haymes@doe.virginia.gov). Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall website at <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 p.m. on the last day of the public comment period.

A public hearing will be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may also be submitted at that time.

### Economic impact

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including:</b>  <b>a) fund source / fund detail; and</b>  <b>b) a delineation of one-time versus on-going expenditures</b></p>	<p>Cost to the state might be extensive, including the procurement and/or internal development of a data collection system; additional staff to provide oversight of the data system; additional staff to provide training and technical assistance to school divisions on the data reporting requirements; additional staff to provide training and technical assistance on the regulation requirements; additional staff to provide enforcement of the regulations when violations occur. State funds will need to be appropriated by the General Assembly for these efforts. All these efforts will be ongoing costs. To date no funds have been appropriated to implement these regulations.</p>
<p><b>Projected cost of the new regulations or changes to existing regulations on localities.</b></p>	<p>Because of the flexibility and options available to localities for providing training to staff, the agency is unable to estimate the projected cost.</p>
<p><b>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</b></p>	<p>School divisions, including all staff, parents and students are likely to be affected by the new regulations. In addition, school resource officers may be affected under memoranda of understanding between school divisions and staff.</p>
<p><b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</b>  <b>a) is independently owned and operated and;</b>  <b>b) employs fewer than 500 full-time employees or</b></p>	<p>All 132 school divisions in the Commonwealth will be affected.</p>

has gross annual sales of less than \$6 million.	
<b>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including:</b> a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	Not applicable
<b>Beneficial impact the regulation is designed to produce.</b>	The regulations are designed to create safer schools and a more effective management of student behavior.

### Alternatives

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

There are no viable alternatives to the proposed regulations.

### Regulatory flexibility analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

The proposed regulations will have no impact on small business.

### Periodic review and small business impact review report of findings

*If you are using this form to report the result of a periodic review/small business impact review that was announced during the NOIRA stage, please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to the which the regulation overlaps, duplicates, or conflicts with federal or*

state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

Not applicable.

**Public comment**

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response

**January 26, 2017, Comments (October 2016 Roundtable Sessions; e-mail submissions)  
SUMMARY**

Definitions			
	Commenter	Comment	Agency Response
1	B. Roberts (Bedford) 10/5/16	Questioned definition of physical restraint	No change required, as the definition is consistent with the advice of the Office of the Attorney General.
2	Loomis 10/5/16	Questioned definition of school day	No change required, as the definition is consistent with other Virginia Department of Education (VDOE) regulations.
3	V. Gobeyn 10/5/16 J. Liban 10/11/16	Only wants restraint for serious physical harm	No change required, as the definition is in accordance with the advice of the Office of the



			Attorney General.
4	J. Cimino 10/11/16	Eliminate exceptions from physical restraint definition (briefly holding to calm; hand/arm to escort; incidental/minor contact to maintain order/control)	See comment 1
5	J. Liban 10/11/16	Eliminate exception in seclusion definition for investigation/interrogation of students	Language modified to provide examples of the types of situations in which such seclusion is permitted.
6	D. Feltman 10/11/16 M. Mathews 10/11/16	Remove definition of “seclusion cell” as definition of seclusion should address what is permitted	Change made in accordance with comment.
7	Kevin Koziol Megan Watkins, JustChildren Jamie Liban, Virginia ARC Heather Luke 10/27/16 BOE meeting	Support for CISS comments regarding restraint and seclusion regulations	<ul style="list-style-type: none"> <li>• See comment 1</li> </ul>
8	Megan Lisa Watkins, Esq. Legal Aid Justice Center/JustChildren Written comments 10/27/16 BOE meeting	<ul style="list-style-type: none"> <li>• urged BOE to be “assertive” in protecting children; wants to limit to the threat of serious physical harm, citing 15 Principles; noted lifelong trauma of students experiencing restraint and seclusion; read a grandmother’s statement regarding preschooler (age 4) being placed in closet for throwing a crayon. Teacher: “done as a punishment;” student is on psychiatric medication due in part to lasting trauma. Grandmother wants to ban restraint and seclusion. Need for clarity and strength in regulations.</li> <li>• <b>Limit use to “threat of serious physical harm</b></li> </ul>	<ul style="list-style-type: none"> <li>• See comment 1</li> <li>• See comment 1</li> </ul>
9	Marie Tucker 10/27/16 BOE	<ul style="list-style-type: none"> <li>• parent; cited military experience—concerned about deference to staff judgment; questioned property damage as situation that</li> </ul>	<ul style="list-style-type: none"> <li>• See comment 1 and comment 5</li> </ul>



	meeting	may prompt restraint or seclusion; concern about remote locks/monitoring—“are we talking about a prison?”—requested change to these provisions—cited students’ civil and human rights	
10	Kevin Koziol Disability Resource Center—member CISS—former sped administrator 10/27/16 BOE meeting	<ul style="list-style-type: none"> <li>cited statutory linkage to 15 Principles; opposes “broad” use he believes is permitted in draft—cited “minor” disruptions, minor property damage, etc. Wants to limit to “imminent danger” of physical harm to self/others in 15 Principles—concerned re potential broad application—need “clear standards” for personnel; requests revision to definitions of PR and seclusion—wants “more robust” emphasis on evidence-based positive behavioral supports; wants sensory objects in seclusion room—</li> </ul>	<ul style="list-style-type: none"> <li>See comment 1</li> </ul>
11	Shelley Montante 10/27/16 BOE meeting	<ul style="list-style-type: none"> <li>personal experience of R &amp; S applied to her son, then age 4; son has Down Syndrome; saw son tied to chair at John B. Cary ES in Richmond; aide: “it’s easier to watch them that way;” then moved to Goochland and showed great improvement. Then to Henrico in MS—one-on-one behavioral assistant—Finger nail gouges in torso—student had been lifted out of bus seat when he refused to leave. Criticized aide for “judgment call”—noted her own experience and training as nurse; use of restraints in health facilities; and regulations. Cited consideration of alternative measures before implementing restraint and seclusion. Noted her friend’s son was also tied in a chair the day before.</li> </ul>	<ul style="list-style-type: none"> <li>Concerns for student safety have been the primary driver of these regulations.</li> </ul>
12	Jamie Liban Director, Virginia ARC 10/27/16 BOE meeting	<ul style="list-style-type: none"> <li>believes regulations need to align with 15 Principles; cited harm and death due to restraint and seclusion; disproportionate effect on students with disabilities and students of color; wants limit to instances of physical harm; concerned that “breaking a pencil” will result in restraint/seclusion; associated self with Kevin Koziol; believes General Assembly intended to limit restraint and seclusion to physical harm only; cited data collection; need for same-day notification; wants “feedback loop” to improve practices; wants data collection to</li> </ul>	<ul style="list-style-type: none"> <li>See comment 1</li> <li>Draft modified to provide for same day notification.</li> </ul>

		address incidents that may be beyond definitions	
13	Katherine Olson Voices of Virginia/People First 10/27/16 BOE meeting	<ul style="list-style-type: none"> <li>“seclusion and restraints are very bad...feel like being in prison....” Cited civil rights issue; disproportionate impact on students with disabilities; “malicious and discriminatory acts;” noted nonverbal students may be especially affected; limit use to physical harm; urges alignment with 15 Principles</li> </ul>	<ul style="list-style-type: none"> <li>See comment 1 and comment 11</li> </ul>
14	Kandise Lucas 10/27/16 BOE meeting	<ul style="list-style-type: none"> <li>use of restraint/seclusion is not evidence-based; cited trauma for students; believes restraint and seclusion will produce bullies and violence in students later; restraint and seclusion are not consistent with statute; if parent engaged in these activities, parent would be incarcerated; in fundamental form, is “abuse” and a “traumatic system” permitted by state; has seen students tied or duct-taped to seats; “state-sanctioned child abuse.”</li> </ul>	<ul style="list-style-type: none"> <li>See comment 1</li> </ul>
15	Lori P. Buckingham, Behavior Specialist, Spotsylvania County Schools 10/27/2016 via email <b>Also provided resources</b>	<ul style="list-style-type: none"> <li>Restraint and seclusion are used only for the purpose of protection and not for the purpose of changing behavior where no protective need is present.</li> </ul>	<ul style="list-style-type: none"> <li>See comment 1</li> </ul>
16	Handle With Care Bruce Chapman, President Hilary Adler, VP 184 McKinstry Road Gardiner, NY 12525 10/5/16 via email	<ul style="list-style-type: none"> <li><b>Summary of proposed changes to VBOE Restraint Regulation:</b> <ol style="list-style-type: none"> <li>Use the language of <i>VA Code</i> 22.1-279.1</li> <li>Remove the ban on prone restraint</li> <li>Remove the term serious physical harm</li> <li>Restraint should also be allowed as part of an IEP or BP</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>See comment 1</li> <li>Language modified to prohibit restraints that constrict the student’s airway</li> <li>Allowing restraint to be included within an IEP would be inconsistent with the 15 Principles</li> </ul>
17	COPAA 11/1/16 email	<ul style="list-style-type: none"> <li>Eliminate statutorily permitted actions from physical restraint—limit to physical harm only</li> <li>“The only allowable reason for use of restraint</li> </ul>	<ul style="list-style-type: none"> <li>See comment 1</li> </ul>

		<p>or seclusion as outlined by ED in its Principle Document, and in line with best practice and to protect everyone involved and to reduce use, is to restrict use to situations in which there is an emergency and imminent danger of harm to the student or others.”</p> <ul style="list-style-type: none"> <li>• “Data must be transparent and inform actions of the district to reduce the use of restraint or seclusion and identify overuse or abuse. To avoid any confusion, the regulations must include definitions that are consistent with the Office for Civil Rights who began collecting data on the use of restraint and seclusion in schools as part of the Department’s 2009-2010 Civil Rights Data Collection and defined key terms related to restraint and seclusion.” (see also Data Collection section)</li> </ul>	
18	<p>Coalition for Improving School Safety (CISS)*                  Jamie Liban                  10/17/16 email                  Line-by-line edits</p>	<p><b>Revise definition of “Physical restraint”</b> — would essentially <u>include</u> “the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control” as <u>physical restraint</u>.</p> <p><i>CISS: Rationale: ... The law does not support the view that the corporal punishment statute allows restraint to maintain order or respond to educational disruptions, like tantrums. The General Assembly and Governor adopted a law that requires adherence to the 15 Principles which clearly limits restraint and seclusion to emergencies threatening serious physical harm only. <u>But even if the corporal punishment statute somehow allows restraint for educational disruption, it in no way supports defining it out of the regulations entirely. It would instead be listed as a permitted use. The effect of defining it out is to fail to keep data, fail to notify parents, fail to provide safeguards (e.g., use less dangerous methods), and thus, enable schools to conceal its use.... Every use of restraint must be counted; every parent notified. Again, we believe strongly that allowing restraint for</u></i></p>	<ul style="list-style-type: none"> <li>• See comment 1</li> </ul>

		<p><i>education disruption is not permitted by the 2015 restraint and seclusion statute.</i></p> <ol style="list-style-type: none"> <li><i>1. Our changes remove language that is contrary to the statute adopted by the General Assembly and Governor, §22.1-279.1:1 (2015 Statute). The 2015 statute requires the regulations to be consistent with the Fifteen Principles in the 2012 United States Department of Education’s Restraint and Seclusion: Resource Document and Virginia’s 2009 Guidelines. Those limit the use of restraint and seclusion to situations where the child’s behavior poses imminent danger of serious physical harm to self or others and other interventions are ineffective. They do not permit it for maintaining order or control. Restraint and seclusion are too injurious and potentially life-threatening to allow them for maintaining order, which can include a response to a tantrum, inability to stand in line, repeating bad words, or otherwise acting out that threatens no one. Such actions may be a manifestation of the child’s disability. See CISS 3/23/16 Comments, pp. 2-7, CISS Comments 8/18/15, pp. 1, 25, 27 for more explanation.</i></li> <li><i>2. The corporal punishment statute does not mandate that restraint to maintain order be excluded from the definition of restraint. Instead, in defining corporal punishment, that law lists several acts that are not corporal punishment. The corporal punishment statute does not contain language creating a right to use them against students (i.e., it does not say “the following acts are permitted....”). The 2015 statute, adopted after the corporal punishment statute, requires the Board to adopt regulations consistent with the Fifteen Principles, and that means defining restraint as we propose. This 15 Principles’ definition does not conflict with the corporal punishment statute, and in any event, as the later-adopted statute, controls any division. See CISS 3/23/16 Comments, pp. 2-7, CISS Comments 8/18/15, pp.1, 25, 27 for more explanation. The Fifteen Principles are not “silent” about the use of restraint for educational disruption; they very</i></li> </ol>	
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		<p><i>clearly limit it to emergencies threatening serious physical harm. “Physical restraint or seclusion should not be used except in situations where the child’s behavior poses imminent danger of serious physical harm to self or others and other interventions are ineffective and should be discontinued as soon as imminent danger of serious physical harm to self or others has dissipated.”</i></p> <p><i>Principle 3 and Resource Document, p. 2. The 15 Principles Document (p.10) clearly defines restraint and does not include the use to maintain order. These draft regulations must be changed to be consistent with the 15 Principles.</i></p> <p><i>3. The proposed definition is also contrary to the Civil Rights Data Collection definition, which is the same as the Fifteen Principles Document, see <a href="http://www2.ed.gov/about/offices/list/ocr/docs/crdc-2011-12-p1-p2.doc">www2.ed.gov/about/offices/list/ocr/docs/crdc-2011-12-p1-p2.doc</a>. Virginia School Divisions must report data every 2 years under the CRDC definition. The highly different Virginia definition is likely to confuse school staff and cause very inaccurate reporting either in the CRDC collection or in the Virginia data.</i></p> <p><i>4. Even if the corporal punishment statute somehow explicitly permits restraint to be used to maintain order, it should not be defined out of the regulations. <b><u>Any permitted use of restraint must be included in the regulation so that Virginia has accurate data, and parents are notified that restraint was used. Narrowing the definition as the proposed regulation does enables schools to conceal that information—from the data and from parents.</u></b> All uses of restraint must be subject to the protections in the regulations, must be included in the data, and must be reported to parents. We respect very much the VDOE and its staff and their work. No one may have intended concealment. But adopting a very narrow definition like this has the effect of concealing information that should never be hidden. Every use of restraint must be counted; every parent must be notified. This</i></p>	
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19	Coalition for Improving School Safety (CISS)* 10/17/16 email Line-by-line edits	<ul style="list-style-type: none"> <li>• <b>Revise definition of “School employee” and “school personnel”</b> means individual(s) employed by the school division on a full- or part-time basis or as independent contractors or subcontractors <del>as instructional, administrative, and support personnel</del>, and includes individuals serving as a student teacher or intern under the supervision of appropriate school personnel.</li> <li>• “No person employed by a School Division should use restraint or seclusion improperly. Virginia’s 2015 Statute and the 15 Principles do not include this exception. This provision appears to inappropriately exempt other school personnel, including bus drivers and aides, and others working at the school with children. The media nationwide has reported on the use of restraint and seclusion by other personnel, including school bus incidents. When a parent puts their child on the school bus, the parent expects that child to be protected until the child comes home.”</li> </ul>	<ul style="list-style-type: none"> <li>• Staff believes that all school staff are covered the definition.</li> </ul>
20	Coalition for Improving School	<ul style="list-style-type: none"> <li>• <b>Revise “seclusion” definition to preclude use for threat of property damage;</b></li> </ul>	<ul style="list-style-type: none"> <li>• See comment 1</li> </ul>

	<p>Safety (CISS)* 10/17/16 email Line-by-line edits</p>	<p><b>corresponding edits throughout.</b></p> <ul style="list-style-type: none"> <li>• <b>“Seclusion”</b> means the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving until the student no longer presents an immediate danger to self or others <del>or poses an immediate threat of damage to property.</del></li> <li>• <i>“This allows the use of seclusion for property destruction, even tearing paper or breaking a pencil. Seclusion must be restricted to emergencies posing an imminent threat of serious physical harm, for the same reasons we point out under the physical restraint definitions. The 2015 statute requires the Board to adopt regulations consistent with the Fifteen Principles, which state that “Physical restraint or seclusion should not be used except in situations where the child’s behavior poses imminent danger of serious physical harm to self or others and other interventions are ineffective and should be discontinued as soon as imminent danger of serious physical harm to self or others has dissipated.” Principle 3 and Resource Document, p. 2. The 15 Principles Document (p.10) clearly defines seclusion and does not include the use to prevent property destruction. These draft regulations must be changed to be consistent with the 15 Principles. The corporal punishment statute also does not require this definition. Instead, it simply lists several acts that are not corporal punishment. The corporal punishment statute does not contain language creating a right to seclude students (i.e. it does not say “the following acts are permitted....”). The definition we propose and in the 15 Principles does not conflict with the corporal punishment statute. See CISS 3/23/16 Comments, pp. 2-7, CISS Comments 8/18/15, pp.1, 25, 27 for more explanation. These include that the 2015 Virginia Statute requires that seclusion be limited to situations where the child’s behavior poses imminent danger of serious physical harm to self or others and other interventions are ineffective. The corporal punishment statute does not require allowing seclusion for property</i></li> </ul>	
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		<p><i>damage, for the reasons we explained in our earlier comments. The proposed definition is also markedly different from the Civil Rights Data Collection definitions that Virginia schools should have been using since 2009 for that collection. It will lead to much confusion and inaccurate data collection.</i></p> <ul style="list-style-type: none"> <li>• <b>Revise “seclusion” to ensure student is “free to leave”</b></li> <li>• “Seclusion” does not include (i) time out, as defined in these regulations; (ii) in-school suspension; (iii) detention. <u>This definition makes clear that seclusion does not include</u> (iv) student-requested breaks in a different location in the room or in a separate room <u>as long as the student is free to leave;</u> (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 he is <del>not physically prevented from leaving free to leave;</del> (vi) the removal of a student for disruptive behavior from a classroom by the teacher, as provided in Va. Code §22.1-276.2 <u>as long as the student is not involuntarily confined alone in a room or other area from which the student is prevented from leaving.</u></li> <li>• <i>“Rationale: These 3 provisions appear to describe activities that are not seclusion, e.g., a child asking for a break or a teacher removing a child from the classroom. But without the limiting language we propose, these appear to allow putting children into seclusion (alone in a room they cannot exit) if they ask for a break or when they are first removed from the classroom for disruptive behavior. And once in seclusion, the regulations would not apply. That would violate the 2015 statute. We do not think this is what VDOE staff meant to do. We believe that what you meant was to clarify that seclusion, as you have defined it, does not include these three things. In addition, we add the “as long as....” language at the end for the following reason. The first place a child may be taken when put into seclusion</i></li> </ul>	
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		<p><i>may be the seclusion room. Under the Fifteen Principles, seclusion must be limited to emergencies threatening serious physical harm when less restrictive measures cannot prevent the danger. For these reasons, the regulations must distinguish between moving a child into seclusion (permitted only for emergencies threatening physical harm and governed by the regulations) and simply removing a child from the classroom to a non-seclusion setting (e.g., taking the student from the classroom to principal’s office or to calm down in a hallway). Any use of seclusion must be under the regulations, including parental notice, data collection, reporting to administration, and receive regulatory protection: including requirements to use safer seclusion rooms and provide continuous visual monitoring. We do not believe that staff meant that putting children in darkened closets or rooms unmonitored, with unsafe conditions, is what VDOE staff meant to allow in wording the regulation this way.”</i></p> <ul style="list-style-type: none"> <li>• <b>Preclude use for investigation of conduct code violation.</b></li> <li>• <del>and (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 employees regarding the student’s knowledge of or participation in events constituting a violation of the student conduct code.</del></li> </ul> <p><i>1. This proposal would permit seclusion for any investigation of a conduct code violation. A simple internet search shows that School Division Conduct Codes include prohibitions on horseplay, rudeness, being tardy, dressing immodestly, wearing slippers, minor insubordination, being disrespectful, failing to identify oneself, carrying food without authorization, and the like. Students with disabilities in particular may engage in many of these actions as manifestations of their disabilities and be secluded or restrained as a result. Regulations that exclude what would otherwise be seclusion because it is done</i></p>	
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		<p><i>while investigating these kinds of violations are not consistent with the Fifteen Principles or the Virginia Guidelines, which limit seclusion to emergencies threatening physical danger. Accordingly, complying with the 2015 statute requires that this section be stricken. See CISS Comments, 3/23/16 p. 2-7; CISS Comments 8/18/15, p.1, 25, 27; Principle 3 and Principles Document p.3, CRDC Data Collection requirements.</i></p> <p><i>2. Data demonstrates that children with disabilities and minority children are already subjected to disproportionate discipline. Permitting seclusion for conduct code violations would only increase the disproportionate use of seclusion against minority children and children with disabilities.</i></p> <p><i>3. Again, as stated in the suggested change to the restraint definition in 8 VAC 20-750-10, even if one believes there is a statutory basis for permitting seclusion for this reason, those uses cannot be defined out of the regulations. This definition means parents will not be notified, the incidents will not be counted in the data, and the other regulatory protections will not apply. In short the use of seclusion will be concealed from parents and from the data, and a loophole will be created that school staff can use to avoid the regulations, even if no one meant to do that in drafting the regulation this way.... A student with a significant disability may engage in horseplay or be rude and putting that child in seclusion for 30 minutes or an hour while one "investigates" the conduct code violation is the same as secluding that child for 30 minutes or an hour. Any permitted use of seclusion must be included in the regulations, so that parents are notified and the events are counted in the data, and children receive regulatory protections, including the use of rooms that meet safety requirements and the requirement for continual visual monitoring. Again, the 2015 statute does not allow such exceptions for student codes of conduct; it requires</i></p>	
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		<p><i>conforming to the 15 Principles which do not contain this exception. Nor is an exception for horseplay or being rude good public policy. Putting children in closets and unsafe rooms should never be permitted on the basis that one is investigating conduct code violations, as this exception would allow. See CISS Comments, 3/23/16 p. 2-7; CISS Comments 8/18/15, pp.1, 25, 27; Principle 3 and Principles Document p.3, CRDC Data Collection requirements.</i></p> <p><i>4. The vast majority of states with restraint and seclusion laws or regulations do not use definitions like this. Most simply limit seclusion to a space from which a child is involuntarily confined and physically prevented from leaving."</i></p>	
21	<p>Coalition for Improving School Safety (CISS)* 10/17/16 email Line-by-line edits</p>	<ul style="list-style-type: none"> <li>• <b>Revise definition of "seclusion cell"</b> to permit freestanding unit.</li> <li>• <b>"Seclusion cell"</b> means a <del>freestanding, small</del> self-contained unit that is used to (i) isolate a student from other students; or (ii) physically prevent a student from leaving the unit or cause the student to believe that the student is physically prevented from leaving the unit.</li> <li>• <b>"Rationale:</b> <i>The issue with seclusion cells is not their freestanding nature but their size. Attaching a tiny cell to a school wall does not make it permissible. Another distinction between the cells and seclusion rooms is that they typically do not comply with fire or building codes."</i></li> </ul>	<ul style="list-style-type: none"> <li>• Staff has removed the reference to "Seclusion cells" and prohibited seclusion in a space, whether a room or a freestanding unit, that does not meet the standards for seclusion cells</li> </ul>
22	<p>(Each email based on Nov. 15, 2016, form letter from Emily Dreyfus, Justice4All)</p> <p>1. Wayne &amp; JoAnne Groover Nov. 18, 2016, email to VBOE</p> <p>2. Janet Lilly</p>	<ul style="list-style-type: none"> <li>• Contend draft regulations are "contrary" to "The Fifteen Principles [which] limit restraint and seclusion to emergencies to protect someone from serious physical harm; require 24-hour parental notice; emphasize positive behavioral supports; and more."</li> <li>• "regulations were drafted that would allow schools to use restraint and seclusion for tantrums, not obeying instructions or paying attention, violating any student conduct codes, breaking pencils, tearing paper, and other behaviors that endanger no one. The regulations define restraint and seclusion in</li> </ul>	<ul style="list-style-type: none"> <li>• See comment 1</li> </ul>

	<p>Nov. 16, 2016, email to VBOE</p> <p>3. Jill Buzby, Arlington, VA Nov. 15, 2016, email to VBOE</p> <p>4. Angela Stevens PBS Coordinator Nov. 15, 2016, email to VBOE</p> <p>5. Pat Hommel Charlottesville, VA Nov. 15, 2016, email to VBOE</p>	<p>very narrow strained ways so much restraint and seclusion won't even be regulated or monitored at all. No one will be accountable. Restraint and seclusion that happens in the regular classroom won't be counted in the data and parents won't get written notification."</p> <ul style="list-style-type: none"> <li>• <b>Change definition of restraint;</b> e.g., reasonable force to maintain order should constitute restraint.</li> <li>• <b>Revise definition/use of seclusion:</b></li> <li>• <b>"1. Close the loopholes and comply with the law.</b> The draft requires absolutely no regulation for:             <ul style="list-style-type: none"> <li>a. restraint or seclusion to maintain order (like if a child has a tantrum, can't pay attention, or follow instructions)</li> <li>b. putting a child in a seclusion confinement room when they are first taken out of the classroom for disruptive behavior, or</li> <li>c. secluding a child to investigate a conduct code violation (school conduct codes ban horseplay, rudeness, being tardy, dressing immodestly, being disrespectful, carrying food without authorization, failing to identify oneself, etc.)</li> </ul> <p>Students with disabilities may do these things as a manifestation of their disability and be restrained or secluded. <b>Because restraint and seclusion for these things are defined out of the regulations, there will be no regulation, no parental notification, no monitoring or accountability, and no data collection. No limits. Schools may even have incentives to use these reasons for restraint and seclusion to avoid the regulations. These exemptions are not required by the corporal punishment statute.</b> The corporal punishment statute bans corporal punishment. It says that some things are not corporal punishment, including reasonable actions to maintain order and</p> </li> </ul>	
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		<p>control. But it does not say that schools staff must be allowed to do them.”</p> <ul style="list-style-type: none"> <li>• <b>“2. Limit the use of restraint and seclusion to prevent serious physical harm, as required by law. Revise the regulations to forbid the use of restraint and seclusion for property destruction, like tearing paper or breaking a pencil.”</b></li> </ul>	
23	<p>Juliet Hiznay, Esq. Arlington, VA 11/15/16 email to VBOE</p>	<ul style="list-style-type: none"> <li>• <b>Supports CISS revisions</b></li> <li>• <b>Limit restraint/seclusion to “imminent risk of physical bodily harm”</b></li> <li>• “Schools in Virginia are rife with examples of restraint and seclusion being used where there is no imminent risk of physical bodily harm. Therefore, it is imperative that the Board of Education issue regulations that comply with the plain language of <i>Virginia Code</i> §22.1-279.1:1. The General Assembly has directed the Board of Education to draft regulations consistent with the U.S. Department of Education’s Fifteen Principles and Virginia’s 2009 Guidelines for the Development of Policies and Procedures for Managing Student Behavior in Emergency Situations. (Attached). The Fifteen Principles limit restraint and seclusion to emergencies to protect someone from serious physical harm; require 24-hour parental notice; emphasize positive behavioral supports; and more.”</li> <li>• “Allowing schools to use restraint and seclusion for tantrums, not obeying instructions or paying attention, violating any student conduct codes, breaking pencils, tearing paper, and other behaviors that endanger no one, as the current proposed regulations do, would be contrary to <i>Virginia Code</i> section §22.1-279.1:1. Further, the regulations define restraint and seclusion in very narrow strained ways. The provisions as currently drafted could result in restraint and seclusion not being regulated or monitored at all, and then no one will be accountable for the harm being done to our children or the associated poor outcomes.”</li> </ul>	<ul style="list-style-type: none"> <li>• See comment 1</li> </ul>
24	<p>VCASE</p>	<ul style="list-style-type: none"> <li>• <b>Consistency with the Fifteen Principles....”</b></li> </ul>	<ul style="list-style-type: none"> <li>• See comment 1</li> </ul>

	<p>Feb. 25, 2016, comments to VBOE</p>	<p>The draft regulations are consistent with the fifteen principles outlined in the document, but the law does not require that regulations are identical with every component of the federal resource document. The draft regulations correctly balance existing law and effective practice with consistent application of the federal guidelines. The draft regulations correctly balance existing law and effective practice with consistent application of the federal guidelines.”</p> <ul style="list-style-type: none"> <li>• <b>Consistency with Corporal Punishment Law.</b> “The draft regulations properly seek the balance between the safety of every student and reality that school personnel must be able to address emergencies and disruptions effectively, while protecting the dignity of all students, the integrity of the classroom, and the safety of all persons in our public schools. Existing corporal punishment law, as well as laws prohibiting child abuse, negligence, and assault, currently protects students and hold educators and caregivers accountable. VCASE does support the initiative in the draft regulations that promote effective practices, such as Positive Behavioral Interventions and Supports (PBIS), Functional Behavioral Assessments (FBA) and Behavioral Intervention Plans (BIP) that may preclude or reduce the need for restraint and seclusion.”</li> <li>• <b>VAC 20-75-30 Use of Physical Restraint and Seclusion.</b> VCASE supports the draft regulations pertaining to the use of physical restraint and seclusion as this permits staff who are preventing a student from inflicting serious physical harm or injury to self or others to use reasonable judgment in emergency situations. The other five listed conditions permitting this reasonable professional judgment stem from existing corporal punishment law, not overly restricting staff from actions they may take as professionals to protect students and maintain a safe school environment. While this differs from the USDOE guidance</li> </ul>	
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		<p>document that recommends the standard that restraint and seclusion are appropriate only with “imminent danger of serious physical harm to self or others,” we believe that this standard is unrealistic in the daily student disturbances where reasonable professional judgement may be exercised under existing law to maintain safe environments for students. Because the regulations will apply to all students and all educators, it is critical that they do not have the unintended consequence of deterring educators from reasonable interventions to protect students. If staff is reluctant to intervene due to overly-restrictive regulations, the potential for dangerous situations to escalate and require police intervention could actually increase. We support this essential language that promotes student safety and supports the reasonable judgment of school personnel to intervene physically in an emergency situation as outlined in this provision.”</p>	
<p>25</p>	<p>Kathleen Smith, Director AdvancED 11/7/16 email to J. Eisenberg</p>	<ul style="list-style-type: none"> <li>• Supports VCASE comments from February 2016</li> <li>• “These specifications are consistent the Fifteen Principles in the USDOE Restraint and Seclusion Resource Document as required.”</li> <li>• “These requirements are also consistent with Virginia's Corporal Punishment Statues per an opinion by the Virginia Attorney General's Office. These draft regulations properly seek the balance between the safety of every student and reality that school personnel must be able to address emergencies and disruptions effectively, while protecting the dignity of all students, the integrity of the classroom, and the safety of all persons in our public schools.”</li> <li>• “These draft regulations speak to the use of physical restraint and seclusion as this permits staff that are preventing a student from inflicting serious physical harm or injury to self or others to use reasonable judgment in emergency situations. The other 5 listed conditions permitting this reasonable professional judgment stem from existing corporal punishment law, not overly restricting staff from actions they may take as professionals to protect students and maintain</li> </ul>	<ul style="list-style-type: none"> <li>• See comment 3</li> </ul>

		a safe school environment.”	
<b>Data collection generally</b>			
26	Loomis 10/5/16	Disaggregate by disability, race, age, etc.	<ul style="list-style-type: none"> <li>• Draft has been clarified</li> </ul>
27	A. Trail 10/5/16	Collect data for “all classes”	<ul style="list-style-type: none"> <li>• See comment 26</li> </ul>
28	J. Markum 10/5/16	Collect as much data as possible	<ul style="list-style-type: none"> <li>• See comment 26</li> </ul>
29	C. Poe 10/5/16	Collect data on race	<ul style="list-style-type: none"> <li>• See comment 26</li> </ul>
30	Lori P. Buckingham, Behavior Specialist, Spotsylvania County Schools 10/27/2016 via email <b>Also provided resources</b>	<ul style="list-style-type: none"> <li>• Data collection using the SSWS system should be implemented- use of seclusion and restraint should be reported on a quarterly basis. Division should develop plans to reduce rates of restraint and seclusion by 50 percent annually.</li> </ul>	<ul style="list-style-type: none"> <li>• This will be addressed operationally. Staff and school divisions need flexibility with regard to reporting.</li> <li>• Authorizing statute does not include requiring goals for reduction, however laudable that might be.</li> </ul>
31	COPAA 11/1/16 email	<ul style="list-style-type: none"> <li>• “Data must be transparent and inform actions of the district to reduce the use of restraint or seclusion and identify overuse or abuse. To avoid any confusion, the regulations must include definitions that are consistent with the Office for Civil Rights who began collecting data on the use of restraint and seclusion in schools as part of the Department’s 2009-2010 Civil Rights Data Collection and defined key terms related to restraint and seclusion.” (see also DEFINITIONS section)</li> </ul>	<ul style="list-style-type: none"> <li>• See comment 26</li> </ul>
32	Jamie Liban Director, Virginia ARC 10/27/16 BOE meeting	<ul style="list-style-type: none"> <li>• disproportionate effect on students with disabilities and students of color; cited data collection; wants “feedback loop” to improve practices; wants data collection to address incidents that may be beyond definitions</li> </ul>	<ul style="list-style-type: none"> <li>• See comment 26</li> </ul>



Debriefing			
33	J. Liban 10/11/16	INVITE parent to debriefing session	<ul style="list-style-type: none"> <li>• Change rejected</li> </ul>
34	C. Poe 10/11/16	Include parent in debriefing session; “restore to justice” model	<ul style="list-style-type: none"> <li>• See comment 33</li> </ul>
35	J. Cimino 10/11/16 L. Gehring 10/11/16 K. Kirst 10/11/16	Debriefing for ALL students, not just self-contained ( <b>Consensus; changed in updated draft</b> )	<ul style="list-style-type: none"> <li>• Changed</li> </ul>
36	J. Cimino 10/11/16	Recommends separate debriefing for staff and then student	<ul style="list-style-type: none"> <li>• See comment 33</li> </ul>
37	C. Pinello 10/11/16	May not be able to get parent to attend debriefing (currently parent is not required member)	<ul style="list-style-type: none"> <li>• See comment 33</li> </ul>
38	M. Mathews 10/11/16	Bring parent to subsequent debriefing but not initial Supports debriefing Concept of R & S is not new but regulations give parameters to ensure safety and accountability	<ul style="list-style-type: none"> <li>• See Decision Point 9</li> </ul>
39	Coalition for Improving School Safety (CISS)* 10/17/16 email Line-by-line edits	<ul style="list-style-type: none"> <li>• <b>Invite parent to “debriefing”</b></li> <li>• the school principal or his designee, <u>or</u> other school personnel, <del>or</del> <u>volunteers organized by the school administration for this purpose</u> shall make a reasonable effort to ensure that direct contact is made with the parent, either in person or through telephone conversation <u>or by electronic mail as designated by the parent</u>, to notify the parent of the incident and any related first aid <del>within one calendar on the same</del> <u>on the same</u> day of the date the incident occurred, <u>and invite the parent to be part of the debriefing described below.</u></li> </ul>	<ul style="list-style-type: none"> <li>• See comment 33</li> <li>• Requirements for FBA, BIP, referral for evaluation, review of IEP are already addressed in the section on multiple incidents</li> </ul>

		<ul style="list-style-type: none"> <li>• <i><b>Rationale:</b> The regulations should be changed so they do not dangerously allow unaccountable volunteers to make some kind of “reasonable effort” to notify parents—rather than requiring school division employees to act promptly. Volunteers lack the accountability school division employees have. A volunteer’s definition of reasonable efforts, when balancing lives, jobs, and other responsibilities, may be fairly low, even if the volunteer has the best intentions. No other state’s restraint and seclusion law allows volunteers to undertake parental notification duties when restraint and seclusion are used. Virginia should not either. The risks to the students are too high; parents must be informed so they can assess their child for injury or trauma. No school should be engaged in so much restraint and seclusion that school personnel cannot call or email parents. Restraint and seclusion are emergency protective measures, to be used when nothing else will prevent a risk of serious physical harm. ...Parents should be part of debriefing meetings. These meetings concern their child and the use of a dangerous practice on their child. Parents can help the school plan to prevent restraint and seclusion and to provide positive and preventative behavioral supports to their children. Parents are part of the IEP team for this reason; they should likewise be part of the debriefing team.</i></li> <li>• <b>Require debriefing within 5 days</b></li> <li>• <b>Require debriefing for ALL students</b> (Consensus; distinction removed in October 27, 2016, version)</li> <li>• C. As soon as practicable and within <del>two</del> <u>five</u> school days after an incident in which physical restraint or seclusion has been implemented <del>in a self-contained classroom or other special education setting in which a majority of the students in regular attendance are (i)</del></li> </ul>	
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		<p><del>provided special education and related services and (ii) assigned to a self-contained classroom or other special education setting for at least 50 percent of the instructional day,</del> the school employee involved in the incident or other school personnel, as may be designated by the principal, shall complete and provide to the principal or designee, a written incident report. The school division shall provide the parent with a copy of the incident report within seven (7) calendar days of the incident.</p> <ul style="list-style-type: none"> <li>● <b>Explanation of failure of interventions</b> 11. Less restrictive interventions attempted prior to the use of physical restraint or seclusion, and an explanation if no such interventions were employed, <del>including a description of the immediate emergency that made them ineffective.</del></li> <li>● <i>“Rationale: Severely limiting reporting requirements like this is wholly contrary to the Fifteen Principles, and thus, the statute adopted by the General Assembly and approved by the Governor. We are deeply concerned that if children in the regular classroom are restrained or secluded, their parents and school administrators would not get written documentation. One purpose of the documentation is so that everyone can work together to prevent the use of restraint and seclusion and to improve positive and preventative supports.... Every child deserves to be counted in the data, regardless of their age, or the setting in which restraint or seclusion occurred, or whether or not the child has a disability...” (Consensus; distinction removed in October 27, 2016, version)</i></li> <li>● <i>Finally, we would be willing to extend the period for the detailed written notification to five days, premised on including all children. We believe this is</i></li> </ul>	
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		<p><i>will enable schools to properly complete the written notification so that parents have all of the necessary information. ... We are not willing to extend the time period to five days if the written notification continues to exclude children in the regular classroom or non-majority special education classrooms, as the draft regulation proposes.” (Consensus; distinction removed in October 27, 2016, version)</i></p> <ul style="list-style-type: none"> <li>• <b>Require discussion of supports and interventions, BIP, FBA at debriefing</b></li> <li>• <b>Collapse follow-up session that follows multiple incidents to occur at debriefing</b></li> </ul> <p>E. Following an incident of physical restraint or seclusion <del>in a self-contained classroom or other special education setting in which a majority of the students in regular attendance are (i) provided special education and related services and (ii) assigned to a self-contained classroom or other special education setting for at least 50 percent of the instructional day,</del> the school division shall ensure that, within <del>two (2)</del> <u>five (5)</u> school days, the principal or designee reviews the incident with all staff persons who implemented the use of physical restraint or seclusion to discuss:</p> <ol style="list-style-type: none"> <li>1. Whether the use of restraint or seclusion was implemented in compliance with this chapter and local policies; <del>and</del></li> <li>2. How to prevent or reduce the future need for physical restraint and/or seclusion</li> <li><u>3. The use of evidence-based preventative and positive behavioral interventions and</u></li> </ol>	
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		<p>supports to reduce challenging behaviors, including developing a Functional Behavioral Assessment and Behavioral Intervention Plan;</p> <p>4. Consider changes to the child’s IEP or 504 plan to provide needed supports and services if the child has a disability;</p> <p>5. Verify that the IEP or 504 plan, including any behavioral support plan, was followed with fidelity, and that personnel were informed of the IEP and behavioral support plan requirements, and if not, document the situation and immediately take corrective action;</p> <p>6. If a nondisabled student has experienced excessive restraint or seclusion, consider the need to initiate a referral to determine if the student has a disability that may require the provision of special education and related services.</p> <ul style="list-style-type: none"> <li>• <i>Rationale: The rationale for including all children is the same as the rationale in the immediately preceding section. Again, our willingness to extend this to five days is premised on this including all students, as we believe to be required by the law and also by sound public policy. The rationale for 3-6 is to make the debriefing into a preventative meeting, that has as its main focus implementing positive behavioral supports and interventions; determining the child’s developmental, learning, and behavioral needs so as to prevent challenging behavior; and ensuring that an IEP or 504 plan was implemented properly ....”</i>  <i>(Consensus; distinction removed in October 27, 2016, version)</i></li> </ul> <ul style="list-style-type: none"> <li>• <b>DEBRIEFING with student to include</b></li> </ul>	
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		<p><b>parent, staff involved; include discussion of effect of incident on student.</b></p> <ul style="list-style-type: none"> <li>. As appropriate depending on the student’s age and developmental level, following each incident of physical restraint or seclusion <del>in a self-contained classroom or other special education setting in which a majority of the students in regular attendance are (i) provided special education and related services and (ii) assigned to a self-contained classroom or other special education setting for at least 50 percent of the instructional day,</del> the school division shall ensure that, as soon as practicable, but no later than two (2) school days or upon the student’s return to school, the principal or designee, <u>a mental health professional if appropriate, and other school personnel involved in the restraint or seclusion as appropriate,</u> shall review the incident with the student(s) involved. <u>The student(s) parent or guardian shall be informed of this meeting and shall be invited to attend it. This meeting should include discussion of the following: to discuss:</u> <ol style="list-style-type: none"> <li>1. <u>The effects of the restraint or seclusion on the student, including any emotional, psychological or physical harm or consequences;</u></li> <li>2. Details of the incident in an effort to assist the student and school personnel in identifying patterns of behaviors, triggers</li> </ol> </li> </ul>	
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		<p>or antecedents <u>so as to prevent such incidents from arising in the future:</u></p> <p>3. <del>Alternative positive behaviors or coping skills the student may utilize to prevent or reduce behaviors that may result in the application of physical restraint or seclusion.</del></p> <ul style="list-style-type: none"> <li>• <i>“Rationale: This kind of meeting with a child should not occur without the child’s parent being part of the meeting. This appears to be a meeting at which the blame for the use of restraint or seclusion is placed on the child. Children may not be able to effectively advocate for themselves in such a meeting or to explain why things happened. The requirement for children to discuss “alternative positive behaviors or coping skills”... appears to ignore the IDEA’s requirements, including providing services to children. A child may need a Functional Behavioral Assessment, Behavioral Intervention Plan, including detailed positive and preventative supports. Perhaps the school failed to implement the child’s IEP properly or with fidelity. Perhaps a child was treated wrongly. There is evidence of teachers in America who have escalated children, abused them, or denied them necessary services or items, and then implemented restraint and seclusion. Although likely not intended, the effect of the proposed regulation is to ignore the requirements of the IDEA and Section 504 of the Rehabilitation Act and to instead place all the blame and responsibility for correction on the child.”</i></li> </ul>	
40	Kevin Koziol Disability Resource Center—	<ul style="list-style-type: none"> <li>• supported current debriefing and expanded incident reporting in draft; wants parents/IEP team in debriefing</li> </ul>	<ul style="list-style-type: none"> <li>• See comment 33</li> </ul>

	member CISS— former sped administrator 10/27/16 BOE meeting		
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Follow-up after multiple incidents			
41	Panel 10/5/16 M. Asip 10/4/16 D. Feltman 10/11/16	What if multiple incidents within same day? Within hours? What if transfer from another LEA—ensure documentation of incidents from prior LEA	<ul style="list-style-type: none"> <li>• Changed to provide for follow up after two (2) days on which restraint or seclusion is used</li> </ul>
42	J. Cimino 10/11/16	Supports the “shall” meet/consider	<ul style="list-style-type: none"> <li>• See comment 41</li> </ul>
43	A. Trail 10/5/16 L. Daniel 10/5/16	Follow up BEFORE 3 incidents ( <b>general consensus; revised in 10/27/16 version</b> )	<ul style="list-style-type: none"> <li>• Changed</li> </ul>
44	C. Pinello 10/11/16	Concern about FBA/BIP meeting—already required in sped regulations, etc. What if parent refuses to meet?	<ul style="list-style-type: none"> <li>• See comment 41</li> </ul>
45	K. Kirst 10/11/16	Broaden consideration to evaluations, referral, placement, etc.	<ul style="list-style-type: none"> <li>• Changed</li> </ul>
	D. Feltman 10/11/6	Requests flexibility in conducting meetings	<ul style="list-style-type: none"> <li>• Changed rejected.</li> </ul>
46	SECEP 10/11/16	Written statement—questions propriety of “multiple” IEP meeting to address three incidents	<ul style="list-style-type: none"> <li>• Change rejected</li> </ul>
47	Jeff Perry, Divisional Superintendent, Wythe Co. Public Schools; Chair for <b>Region VII</b> Superintendent’s Study Group: “this letter should be considered as a collective response	<ul style="list-style-type: none"> <li>• <b>Team Reviews</b> --We are concerned about the rigidity of the requirement for schools to have team reviews after every third restraint or seclusion incident. Each child and each situation are highly likely to be different. It is clear that no one team-review provision could adequately address all of these needs. We agree that appropriately staffed teams should meet and review multiple uses of restraint so that proper strategies</li> </ul>	<ul style="list-style-type: none"> <li>• See comment 46</li> </ul>

	from all corresponding school divisions. 10/31/16 via email	are employed to reduce the need for continued use of restraint and seclusion. However, it is important for schools to possess some flexibility in determining when and how to conduct such team meetings. Unfortunately, some students may experience multiple instances of restraint and seclusion within a short period of time but there may not be a need for a meeting. In this situation, a meeting after every three instances of restraint and seclusion would not be practical or effective. It is our concern that the day could easily be consumed by repetitive meetings which may have little, or no, impact on improving the school day for the child or staff.	
48	COPAA 11/1/16 email	<ul style="list-style-type: none"> <li>• “Instances in which there are repeat incidents of restraint or seclusion should <u>automatically trigger school officials to meet Child Find obligations</u> under the Individuals with Disabilities Education Act because students who are restrained/secluded repeatedly may have unaddressed emotional or learning challenges.”</li> </ul>	<ul style="list-style-type: none"> <li>• Change rejected</li> </ul>
49	Coalition for Improving School Safety (CISS)* 10/17/16 e-mail Line-by-line edits	<ul style="list-style-type: none"> <li>• B. For students not described in Subsection A, within 10 school days of the third incident, a team consisting of the parent, the principal or designee, a teacher of the student, a staff member involved in the incident (if not the teacher or administrator already invited), and other appropriate staff members, such as a school psychologist, school guidance office, or school resource officer, as determined by the school division, shall meet to discuss the incident and to consider the need for (i) an FBA; (ii) a new or revised BIP that addresses the underlying causes or purposes of the behaviors; (iii) <u>consider the need to initiate a referral to determine if the student has a</u></li> </ul>	<ul style="list-style-type: none"> <li>• Changed to include consideration of evaluation.</li> </ul>

		<p><del>disability that may require the provision of special education and related services. (referral for evaluation added in revised draft)</del></p>	
50	<p>VCASE Feb. 25, 2016, comments to VBOE</p>	<ul style="list-style-type: none"> <li>• <b>“Multiple uses of restraint or seclusion 8 VAC20-750-70.</b> VCASE agrees that teams of school staff and parents, including IEP and Section 504 teams when applicable, should meet and review multiple uses of restraint so that proper strategies are employed to reduce the need for continued usage of restraint and seclusion. VCASE asks the board to provide some flexibility in the requirement to conduct such team meetings after every third restraint or seclusion incident. Unfortunately, some students may experience multiple instances of restraint and seclusion within a short period of time, where a meeting after every three instances of restraint and seclusion would not be practical or effective.”</li> </ul>	<ul style="list-style-type: none"> <li>• Change rejected</li> </ul>

Notification generally			
51	Several panels H. Luke 10/5/16 L. Daniel 10/5/16 S. & A. Campbell 10/4/16 J. Liban 10/11/16	No use of volunteers to notify parents re use of R & S ( <b>Consensus; removed in October 27, 2016, version</b> )	• Changed
52	COPAA 11/1/16 email	No use of volunteers to notify parents re use of R & S ( <b>Consensus; removed in October 27, 2016, version</b> ) <ul style="list-style-type: none"> <li>• “Information of this nature needs to be confidential and needs to be communicated by administrators knowledgeable of the incident. It is completely inappropriate and a FERPA violation for volunteers to communicate incidents to parents.”</li> </ul> Provide incident reports for ALL students, not just those in self-contained ( <b>Consensus; removed in October 27, 2016, version</b> ) <ul style="list-style-type: none"> <li>• “Any incident involving restraint or seclusion, for any student, by any personnel must be documented. Singling out the use of restraint and seclusion to students in a self-contained classrooms or special education settings runs the risk of discriminatory actions against students on the sole basis of disability label.”</li> </ul>	• Changed
53	10/5/16 panel Disability Law Center 10/4/16 K. Koziol 10/4/16 A. Thurman 10/4/16 L. Pontebianco 10/4/16	Provide incident reports for ALL students, not just those in self-contained ( <b>Consensus; removed in October 27, 2016, version</b> )	• Changed
43	L. Altieri 10/5/16	Incident reports also protect teachers Incident reports for ALL students so that data is available to inform need for team follow-up after multiple incidents	• Changed
44	E. Dreyfus 10/5/16	Distinction in reporting based on self-contained “inconsistent/contradictory”	• Changed

45	H. Luke parent/adv. 10/5/16 J. Liban 10/11/16 L. Gehring 10/11/16 Spotsylvania 10/4/16 M. Asip 10/4/16 K. Lett 10/4/26	Same-day parental notification (what if hidden injury, etc.)	<ul style="list-style-type: none"> <li>• Changed</li> </ul>
46	V. Gobeyn 10/5/16	Wants “clear documentation”	<ul style="list-style-type: none"> <li>• Changed to provide flexibility</li> </ul>
47	L. Gehring 10/11/16	5 days (not 7) written incident report for all students	<ul style="list-style-type: none"> <li>• Change rejected</li> </ul>
48	K. Goodlow 10/11/16	Immediate parental notification informally and in writing	<ul style="list-style-type: none"> <li>• Changed to same day reporting to parent with two day follow up</li> </ul>
49	T. Champion 10/4/16	“immediate” incident report to parent/same day	<ul style="list-style-type: none"> <li>• See comment 48</li> </ul>
50	T. Smith 10/4/16	Supports reporting distinction between groups of students	<ul style="list-style-type: none"> <li>• See comment 48</li> </ul>
51	C. Pavlek 10/4/16	Wants informed consent to R & S	<ul style="list-style-type: none"> <li>• Because restraint and seclusion are by definition limited to emergency situations, informed consent is not appropriate</li> </ul>
52	W. Suggs 10/4/16	Wants specific explanation of “what happened”	<ul style="list-style-type: none"> <li>• See comment 46 and 48</li> </ul>
54	V. Campbell 10/11/16	May need immediate notification due to medical condition; incident report NEXT DAY	<ul style="list-style-type: none"> <li>• See comment 48</li> </ul>
55	Lori P. Buckingham,	<ul style="list-style-type: none"> <li>• Page 11 (Line 4-5) Parent Notification: Same day verbal notification of the use of</li> </ul>	<ul style="list-style-type: none"> <li>• See comment 48</li> </ul>



	<p>Behavior Specialist, Spotsylvania County Schools 10/27/2016 via email <b>Also provided resources</b></p>	<p>restraint and/or seclusion.</p> <ul style="list-style-type: none"> <li>Page 11 (Line 20) Written incident reports should be completed and provided to administrator and parent within one business day.</li> </ul>	
56	<p>(Each email based on Nov.15, 2016, form letter from Emily Dreyfus, Justice4All)</p> <ol style="list-style-type: none"> <li>Wayne &amp; JoAnne Groover Nov. 18, 2016, email to VBOE</li> <li>Janet Lilly Nov. 16, 2016, email to VBOE</li> <li>Jill Buzby, Arlington, VA Nov. 15, 2016, email to VBOE</li> <li>Angela Stevens PBS Coordinator Nov. 15, 2016, email to VBOE</li> <li>Pat Hommel Charlottesville, VA Nov. 15, 2016, email to VBOE</li> </ol>	<ul style="list-style-type: none"> <li><b>“4. Eliminate regulations that would require parental notification and data collection <u>only</u> for restraint and seclusion occurring in “majority special education classrooms,” leaving schools unaccountable for all other students. (Consensus; removed in October 27, 2016, version)</b></li> <li><b>“5. Require school staff to tell parents of restraint/seclusion on the same day it happens.</b> Parents need to be told of restraint and seclusion on the same day it happens so they can watch for and address concussions, other injuries, and trauma.”</li> </ul>	<ul style="list-style-type: none"> <li>Changed</li> <li>See comment 48</li> </ul>
57	<p>VCASE February 25, 2016, comments to VBOE</p>	<ul style="list-style-type: none"> <li><b>Notification and reporting. 8 VAC 20-750-50.</b> “VCASE believes that the <b>notification requirements are onerous and should be streamlined.</b> Timely, thorough, and proper notification of administrators and parents is important when there has been a use of</li> </ul>	<ul style="list-style-type: none"> <li>See comment 46 and 48</li> </ul>

		<p>seclusion or restraint.”</p> <ul style="list-style-type: none"> <li>• Change “pupil” to “student.”</li> <li>• Change all references from “calendar” days to “school” days.</li> <li>• Change the requirement to provide parents a copy of the incident report from “seven (7) calendar days” to “five (5) school days.”</li> <li>• Delete items numbered 8, 9, 10, 11, and 12 from the requirements that they be included in a written incident report. These extensive requirements are not needed to provide a thorough and timely report of an incident involving restraint and seclusion.</li> <li>• 8, 9, 10, 11, and 12 : (i) detailed description of the physical restraint or seclusion method used; (ii) student behavior that justified the use of physical restraint or seclusion; (iii) description of prior events and circumstances prompting the student’s behavior, to the extent known; (iv)less restrictive interventions attempted prior to the use of physical restraint or seclusion, and an explanation if no such interventions were employed; (v) whether the student has an IEP, a Section 504 plan, a BIP, or other plan</li> <li>• Delete sections E and F that differentiate required staff and student reviews of restraint and seclusion incidents involving students in self-contained special education settings. (Consensus; removed in October 27, 2016, version)</li> </ul>	
59	<p>Jeff Perry, Divisional Superintendent, Wythe Co. Public Schools; Chair for <b>Region VII</b> Superintendent’s</p>	<ul style="list-style-type: none"> <li>• <b>Notification and Reporting</b> – “The current notifications and requirements are unpractical, unreasonable, and will be very difficult to implement in an effective manner. As a matter of fact, many of these notifications will not be sent out because staff and administration are already</li> </ul>	<ul style="list-style-type: none"> <li>• <b>See comments 46 and 48</b></li> </ul>

	<p>Study Group:          “this letter should be considered as a collective response from all corresponding school divisions.          10/31/16 via email</p>	<p>consumed with other requirements. This failure to provide required notifications and reports will only place our schools in greater peril. It would be reasonable to expect staff and administration to produce the necessary reports and documents if this was the only duty and responsibly assigned to them during the school day. Unfortunately, all of our school divisions have reduced staff at both the central office and building level. However, none of the reporting, documentation or other required paperwork have [sic] diminished. Less of us are doing more and the proposed requirements will simply be one more document we must produce and disseminate. We are spending more time on producing required documents than we are actually helping students. Many of these provisions are unpractical, unnecessary, and will do nothing to help children. Please eliminate or streamline these notifications as much as possible. Also, please remember that these regulations are only a small part of a host of other regulations that are being forced on us. Eventually the weight of these regulations will be so excessive that we are unable to comply. Please eliminate any specific time frames and specific reports whenever possible.”</p>	
<p>60</p>	<p>Coalition for Improving School Safety (CISS)*          10/17/16 e-mail          Line-by-line edits</p>	<ul style="list-style-type: none"> <li>● <b>Eliminate use of volunteers for reporting (Consensus; removed in October 27, 2016, version)</b></li> <li>● <b>Permit email notification if parent has so designated</b></li> <li>● <b>Require same day notification</b></li> <li>● <i>“In addition, the regulations could be improved to allow parents to opt into email notification, further speeding the process and improving efficiency for everyone. Prompt parental notification is vital. A Powhatan, Virginia nine-year-old, Alex Campbell, testified to the General Assembly and Board of Education about being forced into seclusion in an isolation room several</i></li> </ul>	<ul style="list-style-type: none"> <li>● See comment 46 and 48. Included provision for email notification.</li> </ul>

		<p><i>times and being told not to tell his parents. See CISS Comments, 3/23/16 p. 11-12; CISS Comments, 8/18/16, p. 18-19. The proposed regulations provide for one calendar day notification. Same day notification is better and is the standard used in the body of the Fifteen Principles (p.21). The sooner parents are informed the better. Moreover, VDOE should resist any efforts to degrade the proposed regulations further to allow multiple days for notification. This would be very dangerous for Virginia’s children and families. The vast majority of states that have parental notification provisions do not allow multiple days for notification. Parents must be alerted to watch for concussions, hidden internal injuries, and trauma so they can get their children needed medical assistance. Delaying for even two days, not to mention a weekend or school break could result in harm to the child. There is no burden in making a phone call or sending an email message.”</i></p> <ul style="list-style-type: none"> <li>• <b>Notification in one calendar day if incident occurred outside regular school day</b></li> <li>• B. When any pupil has been physically restrained or secluded outside the regular school day, the notifications required by Subsection A shall be made as soon as practicable in compliance with the school division’s school crisis, emergency management, and medical emergency response plan required by Va. Code § 22.1-279.8, <u>as long as notification occurs within one calendar day.</u></li> <li>• <b>“Rationale:</b> <i>The 15 Principles do not include this exception. Notification should not simply be a matter of a school’s response plan. Children restrained or secluded outside the regular school day experience the same risk of injury, death, and trauma as those restrained or secluded during the regular school day. But in recognition that it may take some time to notify a parent if restraint or seclusion occurs at night, a one calendar day limit should be imposed.”</i></li> </ul>	
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		<ul style="list-style-type: none"> <li>• Require reporting of <i>“the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control.”</i> H. Nothing in these regulations shall be construed to require school divisions to develop and implement notification and reporting requirements for incidents involving (i) briefly holding a student in order to calm or comfort the student; (ii) holding a student’s hand or arm to escort the student safely from one area to another; <del>(iii) the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control.</del></li> <li>• <i>“Rationale: Language should be eliminated for the reasons stated in the suggested change to the restraint definition in 8 VAC 20-750-10. This includes the requirement that all uses of restraint must be documented, counted in the data, and parents notified. It is not appropriate to allow the use of what would otherwise be restraint by saying it is to maintain order, and thus define it out of the regulations. Every incident must be in the data; every parent must be notified. Otherwise, the use of restraint and seclusion will be concealed, contrary to the 2015 statute. In addition, the regulation can cause immense confusion, as every 2 years, Virginia School Divisions must collect and report data using the Civil Rights Data Collection definition. See discussion above under 8 VAC 20-750-10 (definition of restraint). We do not repeat here in order to be concise.”</i></li> <li>• <b>Include whether student has disability in written incident report.</b> <ol style="list-style-type: none"> <li>1. Student name, age, gender, grade, ethnicity <del>and whether the student has a disability;</del> <ul style="list-style-type: none"> <li>• <b>CISS’ notes (but not line-by-line edits) suggest reporting race,</b> due to disproportionate use for students of color and students with disabilities.</li> </ul> </li> </ol> </li> </ul>	
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<p>61</p>	<p>Sue Nelson- Sargeant Speech pathologist 1318 William St Fred, VA. 22401 11/15/16 email to VBOE</p>	<ul style="list-style-type: none"> <li>• “Timely parental notification”</li> <li>• “You need to state that <b>parents are to be notified within the same time period as school supervisors are notified so a child won't be subject to further injury....</b> The Community Services Boards already have a policy in place that a client's parent/guardian is to be notified at the reasonable time when the incident is reported. The school systems should do the same. I was told that school systems do not want the parent to be informed at the same time because if the child is lying, the parent could harm the child before it is proven 'founded' or 'unfounded'. [T]hat is really stretching it. The reason school systems do not want parents notified is that they don't want parents to flare up and get the police/attorney involved before they get their attorney to look over the case.</li> <li>• “This is a matter of due process for these students, especially the ones who are nonverbal. You need to look at DSS CPS and see if they are still letting a LEA-employee be a CPS-designee. You will be part of the problem if you do not address ... timely parent notification....”</li> </ul>	<ul style="list-style-type: none"> <li>• See comments 48</li> </ul>
<p>62</p>	<p>Juliet Hiznay, Esq. Arlington, VA 11/15/16 email to VBOE</p>	<ul style="list-style-type: none"> <li>• <b>Supports CISS revisions</b></li> <li>• “The Fifteen Principles limit restraint and seclusion... require 24-hour parental notice....”</li> </ul>	<ul style="list-style-type: none"> <li>• See comment 48</li> </ul>
	<p>Jamie Liban Director, Virginia ARC 10/27/16 BOE meeting</p>	<ul style="list-style-type: none"> <li>• need for same-day notification</li> </ul>	<ul style="list-style-type: none"> <li>• See comment 48</li> </ul>

Prohibitions			
63	Consensus	Prohibit “supine” restraints ( <b>Consensus; added in October 27, 2016, version</b> )	<ul style="list-style-type: none"> <li>• See comment 46</li> </ul>
64	J. Cimino 10/11/16	Prohibit restraints that are medically/psychologically contraindicated/document in IEP or Section 504 plan? What if neither? Health plan?	<ul style="list-style-type: none"> <li>• Changed</li> </ul>
65	M. Asip 10/11/16	Supports restrictions for medical/psychological contraindications	<ul style="list-style-type: none"> <li>• Changed</li> </ul>
66	A. Thurman 10/4/16	Supports prohibitions but thinks not consistent with 15 Principles	<ul style="list-style-type: none"> <li>• See comment 1</li> </ul>
67	V. Campbell 10/11/16	Supports NO mechanical restraints	<ul style="list-style-type: none"> <li>• Draft contemplates no mechanical restraints</li> </ul>
68	C. Pavlak 10/4/16	Prohibit R & S without parental consent	<ul style="list-style-type: none"> <li>• See comment 51</li> </ul>
69	<p>Jeff Perry, Divisional Superintendent, Wythe Co. Public Schools; Chair for <b>Region VII</b> Superintendent’s Study Group: “this letter should be considered as a collective response from all corresponding school divisions. 10/31/16 via email</p>	<p><b>e. Face-Down Restraint-</b> We recommend you revise the prohibition of “prone face down restraints” to include a definition of prone restraint as a physical restraint. We are concerned that a staff member, who may have physical contact with a student, may find himself or herself prone on the ground due to circumstances out of the control of the staff member. If this happens, the staff member may be wrongly found in violation of the regulation. This fear will prevent some staff members from taking the necessary actions to protect staff or students.</p> <p><b>h. Mechanical Restraint-</b> We understand the concern about mechanical restraint and the potential for inappropriate use. However, there may be times where mechanical restraint is a safe and appropriate response. This provision could easily be used against us and have unintended consequences. Please consider that preschool teachers may use high-chairs or feeding stations which may be considered a mechanical restraint and would be eliminated. The current regulations may</p>	<ul style="list-style-type: none"> <li>• See comment 46</li> </ul>

		<p>also be seen as a requirement to train all those staff members on how to use a high chair or feeding station. Additionally, staff should not be required to receive training, or require parental consent, to strap students in a bus seat belt. We completely understand that you may think that common sense would prevail in these situations. However, history has proven that interpretations of regulations tend to be extremely conservative to maintain an excessive margin of safety.</p> <p><b>i. Aversive Stimuli-</b> We recommend you revise the definition of aversive stimuli and delete the reference to “forced exercise.” This activity is not closely related to restraint and seclusion and has no reason to be included in the provision. In addition, perceived restrictions on student exercise could be misconstrued to prohibit movement. It may also impact sensory activities that could be prescribed in student IEPs or included in positive behavioral intervention and support plans for students. In addition, the determination that a student’s behavior is related to his disability is determined by members of the IEP team in a Manifestation Determination Review.</p>	
<p>70</p>	<p>Handle With Care Bruce Chapman, President Hilary Adler, VP 184 McKinstry Road Gardiner, NY 12525 10/5/16 via email</p>	<ul style="list-style-type: none"> <li>• <b>Prohibiting the use of prone restraint is illegal under Virginia Law.</b> A teacher cannot be forced to surrender her lawful right to self-defense (or defense of others) when she walks onto school grounds. Virginia citizens have the unwaivable right to use “reasonable” force in accordance with a “reasonable person standard.” The VBOE has absolutely no authority to enact any regulation banning the use of prone restraint. If prone restraint can be used by the general population in Virginia including, i.e., parents, law enforcement, social workers, average citizens, students, doctors, nurses, bus drivers et al., then it can be used by teachers and school personnel. <b>The VBOE has no authority to prohibit school personnel from using reasonable force including physical and prone (face down) restraint in the</b></li> </ul>	<ul style="list-style-type: none"> <li>• See comment 46</li> </ul>



		<p><b>protection of self or others. She may lawfully use the least restrictive method including prone restraint to contain or stop an assault or battery pursuant to Virginia law.</b></p> <ul style="list-style-type: none"> <li>• <b>VA Code 22.1-279.1 allows the use of restraint, including prone restraint for self-defense, defense of others and defense of property.</b> Virginia already has a law regarding use of restraint in schools. The VBOE cannot enact regulations that run counter to law.</li> <li>• <b><u>There is no science to support a ban on prone restraint.</u></b> This provision of the regulation is motivated by an unsubstantiated concern that there is something inherently and extraordinarily dangerous about prone restraint.... The problem is not prone. The problem is the restriction of breathing by chest compression and not paying attention to the early physiological signs of cardiac or respiratory arrest brought on by the combination of chest compression with exertion. This is a training and, ultimately, a supervision issue. HWC's protocol demands that client-agencies and schools "continuously monitor the physical and emotional safety of the child (or adult)" and to use HWC's method for eliminating chest compression from the hold.</li> <li>• The reality is VBOE's <u>ban on prone restraint will force school personnel to call security and law enforcement</u> who will then place the student in a prone hold while shuffling them off to the nearest precinct. So in reality, the regulation will do nothing except place the students and school personnel in more danger, while increasing the student's chances of being involved with law enforcement. Schools that have implemented this policy of calling law enforcement have seen an average of a 22 percent increase in youth incarceration, an increase in the use of restraint and significantly higher use of force interventions.</li> </ul>	
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<p>71</p>	<p>Coalition for Improving School Safety (CISS)* 10/17/16 e-mail Line-by-line edits</p>	<ul style="list-style-type: none"> <li>• <b>Prohibit use of supine restraint</b> (Consensus; removed in October 27, 2016, version).</li> <li>• “Prone “face down” restraints, <u>supine restraint</u>, or any other restraint that restricts breathing, harms the student, or interferes with the student’s ability to communicate, <u>or restraint when medically or psychologically contraindicated as stated in documentation by the IEP team, 504 team, school professionals, or by licensed physician, psychologist, or other qualified health professional under the scope of the professional’s authority.</u></li> <li>• <b>Rationale:</b> <i>Supine restraint, like prone restraint, is very dangerous and can kill or injure students, as discussed in the Round Table meetings. The regulation should also ban the use of restraint or seclusion when medically or psychologically contraindicated. In the 15 Principles, Principle 7 states, “Any restraint or seclusion technique should be consistent with known medical or other special needs of a child. School districts should be cognizant that certain restraint and seclusion techniques are more restrictive than others, and use the least restrictive technique necessary to end the threat of imminent danger of serious physical harm.” A number of disabilities and health conditions can heighten the risk of harm from restraint and seclusion, including, but not limited to health conditions or disabilities causing children to have weaker bones, enlarged hearts or other heart conditions, gastrointestinal conditions, obesity, asthma, and other medical issues. These are only examples. The 2015 restraint and seclusion statute §22.1-279.1:1, section iii makes clear that the regulations can address the special needs and issues confronted by students with disabilities.</i></li> </ul>	<ul style="list-style-type: none"> <li>• See comment 46</li> </ul>
<p>72</p>	<p>Coalition for</p>	<ul style="list-style-type: none"> <li>• <b>Prohibit use of restraint for damage to</b></li> </ul>	<ul style="list-style-type: none"> <li>• See comment 1</li> </ul>

	<p>Improving School Safety (CISS)* 10/17/16 e-mail Line-by-line edits</p>	<p><b>property; require “poses imminent threat” rather than “threatens”</b></p> <ul style="list-style-type: none"> <li>• <b>Clarify that physical escort is not restraint.</b></li> <li>• “...quell a disturbance that <del>threatens</del> <u>poses an imminent threat of</u> serious physical harm or injury to persons <del>or damage to property;</del></li> <li>• “remove a student from the scene of a disturbance that <del>threatens</del> <u>poses an imminent threat of serious physical injury harm to that person or others to persons or damage to property; Physical Escort as defined above is not restraint.”</u></li> <li>• <b><i>Rationale:</i></b> <i>We removed language that is contrary to the statute adopted by the General Assembly and Governor, §22.1-279.1:1 (2015 Statute). This statute requires the regulations to be consistent with the Fifteen Principles in the 2012 United States Department of Education’s Restraint and Seclusion: Resource Document and Virginia’s 2009 Guidelines. Those limit the use of restraint and seclusion to situations where the child’s behavior poses imminent danger of serious physical harm to self or others and other interventions are ineffective. They do not permit restraint and seclusion for property destruction. No child should be restrained or secluded for tearing paper or breaking a pencil, or other destruction of property that does not threaten to physical danger. Restraint and seclusion are too injurious and potentially life-threatening to allow in these situations. See CISS 3/23/16 Comments, pp. 2-7, CISS Comments 8/18/15, pp.1, 25, 27 for more explanation.</i> <ol style="list-style-type: none"> <li>1. <i>The change to (iii) is likewise to conform with the statute and 15 Principles, and to draw the distinction between removing someone because of the threat of danger to themselves or others, as opposed to simply being at the scene where someone is scraped or has a twisted ankle.</i></li> <li>2. <i>The corporal punishment statute</i></li> </ol> </li> </ul>	
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		<p><i>does not require the language VDOE had proposed in this section. That statute defines corporal punishment, and lists several actions that are not corporal punishment. The corporal punishment statute does not contain language creating a right to seclude students (i.e., it does not say “the following acts are permitted.” and it does not reference seclusion in any way, which is not using force, but involuntarily putting a child in a room from which they cannot exit). The 2015 statute requires the Board to adopt regulations consistent with the Fifteen Principles, and that means defining restraint in the manner above. See CISS 3/23/16 Comments, p. 2-7, CISS Comments 8/18/15, p.1, 25, 27 for more explanation. The Fifteen Principles state that “Physical restraint or seclusion should not be used except in situations where the child’s behavior poses imminent danger of serious physical harm to self or others and other interventions are ineffective and should be discontinued as soon as imminent danger of serious physical harm to self or others has dissipated.” Principle 3 and Resource Document, p. 2. The 15 Principles Document (p.10) clearly defines restraint and seclusion and does not include their use for these reasons.</i></p> <ul style="list-style-type: none"> <li>• <b>Strengthen emphasis on alternative methods/interventions.</b></li> <li>• <u>D. Nothing in this section shall be construed to require school personnel to attempt to implement a less restrictive intervention prior to using physical restraint or seclusion when, in the reasonable judgment of the school personnel in an emergency situation, a less restrictive intervention would be ineffective. Physical restraint or seclusion may not be used when less restrictive and</u></li> </ul>	
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		<p>harmful interventions would be effective to prevent threat of serious physical danger to self or others.</p> <p>(i) When in the reasonable judgment of school personnel, there is an emergency in which the child's behavior poses an immediate threat of serious physical harm to self or others, and less restrictive measures would be ineffective, school staff need not use those measures but must document the threat, its immediacy, and why less restrictive measures would be ineffective in the notification and documentation required in Section 8.VAC.20-750-50.</p> <p>(ii) Every effort <b>should</b> be made to prevent the need for the use of restraint and for the use of seclusion.</p> <p>(iii) Behavioral strategies to address dangerous behavior that results in the use of restraint or seclusion <b>should</b> address the underlying cause or purpose of the dangerous behavior. School personnel <b>should</b> implement the use of evidence-based preventative and positive behavioral interventions and supports for children with behavioral needs, including the use of Functional Behavioral Assessments and Behavioral Intervention Plans. Any IEP, 504, behavioral meetings, or other plans about such needs should include a qualified mental health professional as appropriate. School personnel <b>should</b> ensure that the IEP or 504 plan, including any behavioral support plan, is followed with fidelity, and that personnel are informed of the IEP and behavioral support plan requirements.</p> <ul style="list-style-type: none"> <li>• <b><i>"Rationale:</i></b> The regulation as drafted appears to flip the 15 Principles on their</li> </ul>	
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		<p><i>head, perhaps inadvertently .... The 15 Principles emphasize the use of positive and preventative supports, and specify that restraint and seclusion should not be used unless less restrictive measures would be ineffective.... These include Principle 1 "Every effort should be made to prevent the need for the use of restraint and for the use of seclusion;" Principle 3 "Physical restraint or seclusion should not be used except in situations where the child's behavior poses imminent danger of serious physical harm to self or others and other interventions are ineffective and should be discontinued as soon as imminent danger of serious physical harm to self or others has dissipated;" Principle 9 "Behavioral strategies to address dangerous behavior that results in the use of restraint or seclusion should address the underlying cause or purpose of the dangerous behavior." The 15 Principles document, in discussing Principles 8 and 9, states that schools should use behavioral strategies that address the underlying cause or purpose of any dangerous behavior. These include a Functional Behavioral Assessment (FBA), Positive Behavioral Supports and Interventions (PBS), and an appropriate positive and preventative Behavioral Intervention Plan (BIP). But the regulations as written do not accomplish this. Instead, they put the emphasis on using restraint and seclusion, making it the default treatment for students. While there is significant evidence and research demonstrating that positive and preventative supports prevent behaviors from developing into emergencies, the regulations mention positive behavioral supports in only two subparts scattered within (requiring district policies to have some examples of positive supports and requiring some training on positive supports). This is</i></p>	
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		<p><i>inconsistent with the Fifteen Principles and appears to disregard two of them. It is harmful to students in Virginia to emphasize dangerous restraint and seclusion over prevention. As CISS has explained before, in a true emergency, when a child is in immediate danger of physical harm (such as walking in front of a bus), staff should be able to immediately restrain the child without considering less restrictive measures.... Our revision preserves the ability of school staff to use their reasonable judgment while at the same time requiring the use of less restrictive measures when appropriate, as the 15 Principles require, and emphasizing positive and preventative supports. The proposed regulations should require that every effort be made to avoid the use of restraint and seclusion. These should include evidence-based behavioral accommodations, supports, and interventions to create a positive learning environment which improves both academic and social outcomes for students. Virginia should keep students and staff safe by prioritizing positive and preventative supports in these regulations and by strictly limiting restraint and seclusion to emergencies threatening serious physical harm when less restrictive alternatives would fail....”</i></p>	
73	VCASE Feb. 25, 2016, comments to VBOE	<ul style="list-style-type: none"> <li>• <b>Revise Prohibitions (p. 5) pertaining to “Prone ‘face down’ restraints”</b> to include a definition of prone restraint as a physical restraint. In addition, VCASE is concerned that a staff member who may have physical contact with a student, who may be prone on the ground due to circumstances out of the control of the teacher, may be incorrectly found in violation of the regulation.</li> </ul>	<ul style="list-style-type: none"> <li>• See comment 46</li> </ul>

Seclusion generally			
74	<p>Various commenters                      H. Luke 10/5/16;                      10/27/16                      A. Trail 10/5/16                      J. Markum 10/5/16                      L. Daniel 10/5/16                      V. Gobeyn 10/5/16                      C. Poe 10/11/16                      T. Champion 10/4/16                      S. Campbell 10/4/16                      C. McGee 10/4/16</p>	<p>Ban seclusion entirely</p>	<ul style="list-style-type: none"> <li>• Comment rejected</li> </ul>
75	<p>Juliet Hiznay, Esq. Arlington, VA 11/15/16 email to VBOE</p>	<ul style="list-style-type: none"> <li>• <b>Ban seclusion entirely.</b> “Additionally, in my professional opinion, seclusion should not be permitted at all in the public school setting. My local school division, Arlington Public Schools, does not permit seclusion. There are no seclusion rooms in the district. Arlington Public Schools is able to function just fine and has better outcomes than many other school districts as a result of this very sound policy. In my practice, I have noticed that seclusion appears to have the most dangerous psychological impact on students, including the potential to cause psychiatric hospitalization in the short-term and Post Traumatic Stress Disorder in the long-term. ... Banning seclusion in public school would result in better problem solving at the school level.”</li> </ul>	<ul style="list-style-type: none"> <li>• See comment 74</li> </ul>
76	<p>L. Altieri 10/5/16</p>	<p>Space should include sensory objects; “places to calm individuals, rather than places to detain”                      Emphasize de-escalation training</p>	<ul style="list-style-type: none"> <li>• Changed to include flexibility</li> </ul>
77	<p>B. Greene 10/5/16</p>	<p>Should not be part of any BIP                      Wants more than visual monitoring; what led to use? How often is data gathered?</p>	<ul style="list-style-type: none"> <li>• See comment 76</li> </ul>



		How often inspected, used, etc.?	
78	Heather Luke 10/5/16	Exclusion v. seclusion (Maryland model); Disagrees with R & S use for property damage “everyone will use seclusion if it is available;” Should not be first response to issue. Wants parental right to issue “no R & S letter”	<ul style="list-style-type: none"> <li>• See comment 76</li> </ul>
79	Heather Luke 10/27/16 BOE meeting	described son’s experience with restraint and seclusion in Va. school; suggested looking at regulations through student lens; husband Navy captain, stationed in VBCPS; son Carson—autism, ADHD and anxiety; sometimes demonstrated aggressive behaviors against property and persons. Had aide in previous state, but in VA was placed in SECEP (Hampton). Aggression increased; at age 10, in 2011—forced into “quiet room.” Concrete, unpadded room; three large locks—very high window. Five trained professionals closed concrete door on son’s hand, resulting in serious injuries. Both son and mother suffer from lingering psychological effects (son has PTSD); supports CISS edits; wants to ban seclusion rooms; research indicates seclusion makes behaviors worse; seclusion is abusive. Noted 500+ instances of students entering seclusion; about 3 seclusions daily in one school year.	<ul style="list-style-type: none"> <li>• See comment 76</li> </ul>
80	L. Daniel 10/5/16	Include fidget toys in seclusion room	<ul style="list-style-type: none"> <li>• See comment 76</li> </ul>
81	M. Mathews 10/11/16	Ensure NO LOCKS Remove mattress from specifications; replace with bean bag chair or other item capable of being sanitized, etc.	<ul style="list-style-type: none"> <li>• See comment 76</li> </ul>
82	J. Liban 10/11/16	Eliminate exception in seclusion definition for investigation/interrogation of students	<ul style="list-style-type: none"> <li>• See comment 1</li> </ul>
83	C. Bethea parent 10/11/16	Concerns re seclusion room specifications (“Jail cell”); wants to “opt out”	<ul style="list-style-type: none"> <li>• See comment 76</li> </ul>
84	V. Campbell 10/11/16	If used for medically fragile, have medical personnel within arm’s length; higher standard for <u>restraint</u> if medically fragile	<ul style="list-style-type: none"> <li>• Changed</li> </ul>

		Policies should advise of what types R & S used, etc.; used of MOU for medically fragile	
85	K. Koziol 10/4/16	Include de-escalation protocols in seclusion; time-limited; attempts for staff to re-enter; use of sensory objects	<ul style="list-style-type: none"> <li>• See comment 76</li> </ul>
86	S. Campbell 10/4/16	Concerns re locks, specifications	<ul style="list-style-type: none"> <li>• See comment 76</li> </ul>
87	Lori P. Buckingham, Behavior Specialist, Spotsylvania Co. Schools 10/27/2016 via email <b>Also provided resources</b>	<ul style="list-style-type: none"> <li>• Seclusion- recommend a limit time in seclusion of no more than 30 minutes. If a student cannot regulate within 30 minutes, an assessment should be made by the school social worker and a plan should be made for the immediate removal of the student from seclusion. The student might be sent home with the parent, or sent for assessment.</li> <li>• Prohibit the use of separate seclusion rooms with doors and/or doors that lock. Seclusion locations can be open time-out type areas in which staff remain with students at all times.</li> </ul>	<ul style="list-style-type: none"> <li>• Changes made to require additional detail in local policies and procedures</li> </ul>
88	Jeff Perry, Divisional Superintendent, Wythe Co. Public Schools; Chair for <b>Region VII</b> Superintendent’s Study Group: “this letter should be considered as a collective response from all corresponding school divisions. 10/31/16 via email	<b>g. Seclusion Rooms</b> We recommend you provide flexibility in the definition and requirement for a seclusion room. It is extremely difficult for the Commonwealth to accurately predetermine the need and physical structure of a seclusion room. It may be more practical and helpful to offer suggestions or recommendations but allow local school divisions to create seclusion rooms which meet their own needs. Also, it is important to provide flexibility so that rigid restraints on these rooms are not created which would practically prevent any facility from being an acceptable room. Also, we recommend you leave out any references to furniture such as the requirement to have a mattress.	<ul style="list-style-type: none"> <li>• See comment 76</li> </ul>
89	COPAA 11/1/16	<ul style="list-style-type: none"> <li>• “Staff must always supervise students and they should never be locked in a room alone.”</li> <li>• “COPAA believes there is never a reason</li> </ul>	<ul style="list-style-type: none"> <li>• See comment 76</li> </ul>

		<p>to lock students in a room from which they cannot exit. The description of such a room in the draft regulations is sickening and more so because the intended use is for a child. Every effort should be made to reduce the number of students who are secluded and building rooms for its sole purpose cannot achieve the desired outcome. Just this year in January President Obama announced a ban on the use of solitary confinement for juveniles in prisons citing 'the potential for "devastating, lasting psychological consequences" from the use of the isolation.' Seclusion is a form of solitary confinement and has no place in schools."</p>	
<p>90</p>	<p>Each email based on Nov.15, 2016, form letter from Emily Dreyfus, Justice4All)</p> <ol style="list-style-type: none"> <li>1. Wayne &amp; JoAnne Groover Nov. 18, 2016, email to VBOE</li> <li>2. Janet Lilly Nov. 16, 2016, email to VBOE</li> <li>3. Jill Buzby, Arlington, VA Nov. 15, 2016, email to VBOE</li> <li>4. Angela Stevens PBS Coordinator Nov. 15, 2016, email to VBOE</li> <li>5. Pat Hommel</li> </ol>	<ul style="list-style-type: none"> <li>• <b>"6. Ensure safe and humane treatment if seclusion is used.</b> The seclusion room standards in the draft regulation are inadequate. There are good requirements that seclusion rooms to be safe, sizeable, ventilated, include viewing panels and other safety rules. However, the draft prohibits calming materials such as bean bag chairs or music, and does not require continued de-escalation, so the child is no longer a danger and can return to the classroom. This type of confinement is harmful to both students and the school environment and is completely inconsistent with the <i>Fifteen Principles...."</i></li> </ul>	<ul style="list-style-type: none"> <li>• See comment 76</li> </ul>

	<p>Charlottesville, VA Nov. 15, 2016, email to VBOE</p>		
<p>91</p>	<p>VCASE Feb. 25, 2016, comments to VBOE</p>	<ul style="list-style-type: none"> <li>• <b>Delete the term “seclusion cell,” its definition, and its list of prohibitions</b> (pp. 4, 5, 6, 7). The Section <b>VAC 20-750-40 Seclusion; Standards of Use</b> describes the appropriate standards for any seclusion rooms. In fact, prohibiting a seclusion cell as defined may also prohibit any seclusion space otherwise meeting specifications (Department of Behavioral Health and Developmental Services for Children’s Residential Facilities) ....</li> <li>• <b>Remove the reference in #7 (p. 7) that requires a mattress in a seclusion room.</b> A mattress should not be required. Suggested revision: “If a seclusion room includes any furniture or accessories, it shall contain only a mattress....”</li> </ul>	<ul style="list-style-type: none"> <li>• Changed</li> <li>• See comment 76</li> </ul>
<p>92</p>	<p>Coalition for Improving School Safety (CISS)* 10/17/16 e-mail Line-by-line edits</p>	<ul style="list-style-type: none"> <li>• <b>Seclusion rooms and use generally--</b> “The room used for seclusion shall meet the design requirements for buildings used for detention or seclusion of persons, <del>(CISS questions this as explained below in the Rationale because we do not know if this refers to prisons and jails, which would cause deep concern. CISS believes strongly that any seclusion rooms must meet state and municipal fire and building safety code requirements).</del>”</li> <li>• <b>Delete mattress in seclusion room.</b><del>The seclusion room shall contain only a mattress with a washable mattress covering designed to avoid damage by tearing.</del><i><b>Rationale:</b> ...Seclusion is inherently traumatizing and dangerous. Seclusion and restraint must be used rarely, if at all. ... The VDOE included very important requirements like those that rooms be sizeable, ventilated, without fixtures likely to cause injury,</i></li> </ul>	<ul style="list-style-type: none"> <li>• See comment 76</li> </ul>

		<p><i>viewing panels, and other safety requirements... Still, the regulation - contains some extremely dangerous language. Seclusion rooms as described in the regulation appear to be solitary confinement prison cells, with only barren mattresses permitted. This does not permit calming materials such as bean bag chairs or music, and does not require continued de-escalation, so the child is no longer a danger and can return to the classroom. This type of confinement will be harmful to both students and the school environment and is completely inconsistent with the Fifteen Principles. It is also not clear if the reference to buildings for detention of persons suggests subjecting students to jail or prison-like rooms. This also is inconsistent with the Fifteen Principles.</i></p> <ul style="list-style-type: none"> <li>• <b>Require lighting in seclusion room.</b> 8. The seclusion room shall maintain temperatures appropriate for the season. <del>The rooms shall not be dark and shall have appropriate lighting.</del> <b><i>Rationale:</i></b> <i>No child should be placed in a dark room without light. That is inherently unsafe. This is particularly true if the light switches are outside of the room, as in this proposal.</i></li> </ul>	
93	<p>Sue Nelson-Sargeant Speech pathologist 1318 William St Fredericksburg, VA. 22401 11/15/16 email to VBOE</p>	<ul style="list-style-type: none"> <li>• <b>Need for windows, data sheet for seclusion</b> (“cinderblock [no mats] STOP [timeout] room”). Described specific incidents involving (i) securing door with rope; (ii) slapping of student; (iii) failure of local social services agency to open investigation; (iv) failure of school to contact parent regarding use of restraint; and (v) use of LEA personnel as CPS “designee.”</li> </ul>	<ul style="list-style-type: none"> <li>• See comment 76</li> </ul>
94	<p>Marie Tucker 10/27/16 BOE meeting</p>	<ul style="list-style-type: none"> <li>• parent; cited military experience—questioned property damage as situation that may prompt restraint or</li> </ul>	<ul style="list-style-type: none"> <li>• See comment 76</li> </ul>

		seclusion; concern about remote locks/monitoring—“are we talking about a prison?”—requested change to these provisions—cited students’ civil and human rights	
95	Kevin Koziol Disability Resource Center—member CISS—former sped administrator 10/27/16 BOE meeting	<ul style="list-style-type: none"> <li>• need “clear standards” for personnel; requests revision to definitions of PR and seclusion—</li> <li>• wants sensory objects in seclusion room</li> </ul>	<ul style="list-style-type: none"> <li>• See comment 76</li> </ul>

Training			
96	All panels Donna 10/4/16	Emphasize prevention, de-escalation, “evidence-based”	<ul style="list-style-type: none"> <li>• Changed</li> </ul>
97	B. Roberts 10/5/16 M. Sainte 10/5/16	What if all staff cannot <u>physically</u> meet training standards?	<ul style="list-style-type: none"> <li>• Changed to provide additional flexibility with regard to second tier training</li> </ul>
98	L. Altieri 10/5/16	Crisis response team should have training Training in “classroom management” at higher education or professional development level is not enough; teach HOW to conduct FBA	<ul style="list-style-type: none"> <li>• See comment 97</li> </ul>
99	A. Trainique 10/5/16	De-escalation; antecedents; what about persons ON THE SCENE of incident?	<ul style="list-style-type: none"> <li>• See comment 97</li> </ul>
100	Panel 10/5/16	Majority of training money should support prevention rather than implementation of restraints, etc. Costs for substitutes; turnover; tuition; re-training	<ul style="list-style-type: none"> <li>• See comment 97</li> </ul>
101	Heather Luke 10/27/16 written comments	Disagrees with information regarding training costs.	<ul style="list-style-type: none"> <li>• See comment 97</li> </ul>
102	E. Dreyfus 10/5/16 C. Poe 10/11/16	“trauma-informed” practices	<ul style="list-style-type: none"> <li>• See comment 97</li> </ul>
103	J. Baker 10/5/16	Address de-escalation, PBIS, etc. in teacher prep in higher education	<ul style="list-style-type: none"> <li>• Beyond the scope of the legislation</li> </ul>
104	C. Poe 10/4/16	“evidence-based practices” (already in regulations) “trauma-informed approaches”	<ul style="list-style-type: none"> <li>• See comment 97</li> </ul>
105	M. Asip 10/11/16	Concern re staff who want to intervene/respond but are not trained Staff want to feel protected if they need to intervene	<ul style="list-style-type: none"> <li>• See comment 97</li> </ul>

		Data supports higher training for self-contained setting Grafton model Ukeru; Wants tiered-training but notes “teacher in the hallway”	
106	M. Bloom 10/4/16	Wants timeline for training; training in physical interaction techniques for ALL students Some schools do not have self-contained classrooms—thus might not have any adv. trained personnel Allow locally-developed training	<ul style="list-style-type: none"> <li>• See comment 97</li> </ul>
107	T. Champion 10/4/16	“highly trained” and “scientifically-based;” Wants training for ALL	<ul style="list-style-type: none"> <li>• See comment 97</li> </ul>
108	Spotsylvania 10/4/16	Unreasonable to expect all personnel to be trained	<ul style="list-style-type: none"> <li>• See comment 97</li> </ul>
109	T. Smith 10/4/16 D. Feltman 10/11/16	Concerns re Money for training	<ul style="list-style-type: none"> <li>• See comment 97</li> </ul>
110	V. Campbell 10/11/16	Parents to be informed of level of training; train ALL so not applied in discriminatory fashion to sped students	<ul style="list-style-type: none"> <li>• See comment 97</li> <li>• Non-discrimination subject of existing law</li> </ul>
111	Stafford Co. Public Schools 10/18/16 via mail Signed by <ul style="list-style-type: none"> <li>• Tom Nichols, chief secondary officer</li> <li>• 5 SCPS high school principals</li> <li>• Principal, Commonwealth Gov. School</li> <li>• Student Services officer</li> <li>• Dr. Bruce</li> </ul>	<ul style="list-style-type: none"> <li>• “identified costs to meet the training requirements contained in the proposed policy would present an extreme undue burden to Stafford County Public Schools. For over ten (10) years we have been providing safe, research based de-escalation and restraint practices and ongoing training to our <u>key</u> staff members in each school.”</li> </ul>	<ul style="list-style-type: none"> <li>• See comment 97</li> </ul>



	Benson, Supt. (duplicate letter)		
112	Lori P. Buckingham, Behavior Specialist, Spotsylvania County Schools 10/27/2016 via email <b>Also provided resources</b>	<ul style="list-style-type: none"> <li>• Page 18 (Lines 6-10) Training- not all staff require training in the use of restraint. Percentage of time in a special education setting or assignment to a self-contained setting is not an appropriate indicator of the need for training in the use of restraint and seclusion. Training in the use of restraint should be provided to staff in high-risk positions (i.e., staff working with students with emotional disabilities, and autism) and staff working with students who have a history of physically aggressive behavior. Administrators and school safety personnel should be trained in the use of restraint and seclusion. All staff would benefit from training in prevention, de-escalation, trauma informed care, and PBIS. Individuals should be trained or refreshed annually.</li> <li>• Capacity of individual staff members- consideration should be given to the appropriateness of employment of individuals in high-risk positions who do not possess the capacity to support challenging student behavior. This is a job requirement for some positions.</li> <li>• Not all staff members trained in the use of restraint are required to use restraint- staff are only required to get help in a situation in which a student requires protection from hurting self or others- staff members must know their limitations and the limitations of their training.</li> </ul>	<ul style="list-style-type: none"> <li>• See comment 97</li> </ul>
113	Jeff Perry, Divisional Superintendent, Wythe Co. Public Schools; Chair for <b>Region VII</b> Superintendent’s Study Group: “this	<ul style="list-style-type: none"> <li>• <b>Training Needs and Costs.</b> As division superintendents, we are inundated with numerous unfunded and underfunded mandates. Already, we have been required to provide intense and costly training on restraint and seclusion. We have not received any specific funding to offset these expenditures. Clearly this</li> </ul>	<ul style="list-style-type: none"> <li>• See comment 97</li> </ul>

	<p>letter should be considered as a collective response from all corresponding school divisions. 10/31/16 via email</p>	<p>provision will force us to train a significant number of professionals to effectively implement the new regulations. This type of training is highly expensive and time consuming. We will be forced to divert money and attention from other important safety, instructional, and curriculum projects to pay for this additional training. Each year, we have been flooded with the implementation of multiple requirements without any funding. This is placing an enormous strain on already devastated budgets. We are legitimately concerned about the cost and burden for localities to train thousands of staff members. It is also important to note that many school divisions consistently experience significant turnover each year - especially in areas dealing with children who demonstrate challenging behaviors. This turnover creates even more need for required training which consumes even more funding. We would ask the Board of Education to ensure sufficient funding is allocated to local school divisions to pay for this training if you proceed with its implementation. It is important to note that often, these mandates are declared to be funded and the revenue is said to be included in our basic aid. However, our basic aid has been consistently reduced and while there may be a line item for revenue associated with new projects – our overall amount of funding has been reduced. We can't continue to add the cost of additional programming without receiving the appropriate funding. It is also important to understand that we will divert the attention, energy and focus of current staff members from other important programs and initiatives to support this training if implemented. We are drowning in a system which is already over regulated and underfunded. Please think carefully before adding yet another weight to our load.</p>	
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<p>114</p>	<p>Jason Van Heukelum Superintendent Winchester City Public Schools 10/19/16 via email</p>	<ul style="list-style-type: none"> <li>• With the current proposal, we are concerned about the requirement to train all staff. The training we use includes a multi-day training protocol and requires recertification every three years. We have an internal practice of ensuring that all of our SPED teachers and teacher assistants who work with high probably cases, along with all administrators, are current in their training. We believe this practice has given us the necessary capacity to handle these isolated situations. As a counterpoint to the proposal, one of our fears is that by training all staff, some staff may be more embolden to perform restraint, whereas now most of our staff do not consider restraint as part of their responsibility. My fear is that more training on restraint might actually increase the number of restraints performed on an annual basis.</li> </ul>	<ul style="list-style-type: none"> <li>• See comment 97</li> </ul>
<p>115</p>	<p>Eric Williams, Ed.D. Superintendent Loudoun Co. Public Schools 10/19/16 email</p>	<ul style="list-style-type: none"> <li>• “In sum, we agree and support the comments on the proposed regulations offered by VCASE including the expressed concern about the cost and burden for localities to train “all school personnel to have initial evidence-based training in physical restraint and seclusion.”</li> </ul>	<ul style="list-style-type: none"> <li>• See comment 97</li> </ul>
<p>116</p>	<p>COPAA 11/1/16 email</p>	<ul style="list-style-type: none"> <li>• “Training must be based on positive, evidence-based practices and include information on trauma informed care.”</li> </ul>	<ul style="list-style-type: none"> <li>• See comment 97</li> </ul>
<p>117</p>	<p>Coalition for Improving School Safety (CISS)* 10/17/16 email Line-by-line edits</p>	<ul style="list-style-type: none"> <li>• <b>Advanced training for crisis intervention team</b></li> <li>• <b>All receive training in content and purpose of regulations</b></li> <li>• <b>Emphasize “evidence-based positive and preventative supports”</b></li> <li>• School divisions that employ physical restraint or seclusion shall:             <ul style="list-style-type: none"> <li>(i) ensure that all school personnel are periodically trained in the use of physical restraint and seclusion; <u>and trained about the content and purpose of these regulations and their legal</u></li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• See comment 97</li> </ul>

		<p><u>obligations, including reporting and notification requirements;</u></p> <p>(ii)include all school personnel <u>i.n.</u> receiving initial training that shall focus on skills related to positive behavior support, conflict prevention, de-escalation, and crisis response;</p> <p>(iii)provide advanced training in the use of physical restraint and seclusion <u>for a crisis intervention team in each school</u>  <del>school personnel assigned to a self-contained classroom or other special education setting in which a majority of the students in regular attendance are (i) provided special education and related services and (ii) assigned to a self-contained classroom or other special education setting for at least 50 percent of the instructional day;</del></p> <p>(iv) ensure that any initial or advanced training is evidence-based.</p> <ul style="list-style-type: none"> <li>• <i>“Rationale: School Division training must emphasize and implement evidence-based positive and preventative supports to support children with behavioral needs and to keep schools safe for everyone. This is what the 15 Principles require, particularly Principles 1 and 9. Schools should focus heavily on evidence-based behavioral accommodations, supports, and interventions to create a positive learning environment which prevents difficult behaviors from arising. In addition, it makes little sense to have these legal requirements if staff are not trained in them. The national media has reported about several incidents of restraint and seclusion where school personnel either were not properly trained or ignored reporting requirements and concealed the use of restraint and seclusion.”</i></li> </ul>	
118	Juliet Hiznay, Esq. Arlington, VA 11/15/16 email to	<ul style="list-style-type: none"> <li>• <b>Supports CISS revisions</b></li> <li>• “The Fifteen Principles ... emphasize positive behavioral supports; and more.”</li> </ul>	<ul style="list-style-type: none"> <li>• See comment 97</li> </ul>

	VBOE		
119	<p>(Each email based on Nov.15, 2016, form letter from Emily Dreyfus, Justice4All)</p> <p>1. Wayne &amp; JoAnne Groover Nov. 18, 2016, email to VBOE</p> <p>2. Janet Lilly Nov. 16, 2016, email to VBOE</p> <p>3. Jill Buzby, Arlington, VA Nov. 15, 2016, email to VBOE</p> <p>4. Angela Stevens PBS Coordinator Nov. 15, 2016, email to VBOE</p> <p>5. Pat Hommel Charlottesville, VA Nov. 15, 2016, email to VBOE</p>	<ul style="list-style-type: none"> <li>• <b>“7. Require schools to work with School Resource Officers (SROs) and School Security Officers (SSO) to implement positive and preventative supports, rather than dangerous restraint and seclusion.</b> School staff, including SROs and SSOs, should receive training, including on the requirements to use positive behavioral supports and preventative measures, their role in decreasing, preventing, and de-escalating difficult behavior, and the requirements of the regulations. Moreover, schools or individuals should not be able to avoid the restraint and seclusion law by simply calling law enforcement and having SROs restrain or seclude the child. In Virginia, a four-year-old with ADHD in Greene County was shackled in 2015. Following seclusion and restraint, students are traumatized and may not be in a condition to effectively participate in learning. These practices potentially worsen the cycle of violence.”</li> </ul>	<ul style="list-style-type: none"> <li>• See comment 97</li> </ul>
120	<p>Kathleen Smith, Director AdvancED 11/7/16 email to J. Eisenberg</p>	<ul style="list-style-type: none"> <li>• Supports VCASE comments from February 2016</li> <li>• “The identified costs to meet the training requirements contained in these proposed regulations would present an undue burden on localities.”</li> </ul>	<ul style="list-style-type: none"> <li>• See comment 97</li> </ul>
112	<p>VCASE Feb. 25, 2016, comments to VBOE</p>	<ul style="list-style-type: none"> <li>• <b>Training Needs and Costs.</b> “...we are concerned about the cost and burden for localities to train thousands more staff, some with a lower level of training and others with an undefined “Advanced” level of training. These</li> </ul>	<ul style="list-style-type: none"> <li>• See comment 97</li> </ul>

		<p>training levels are not clearly defined and our school divisions are very concerned regarding the costs for such training. We would ask the Board of Education to ensure the provision of funding for local school divisions as a condition of final approval of these regulations that will affect every school division.”</p>	
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Miscellaneous			
113	B. Greene 10/5/16	Encouraged use of FBA—“as kids fail, they want to get out of instruction;” students with ED may function poorly in academics	<ul style="list-style-type: none"> <li>Included</li> </ul>
114	C. Poe 10/5/16	<p>“trauma-informed approaches”</p> <p>Panels did not include minority representation (10/5; 10/11)</p> <p>Disparate use for minorities</p>	<ul style="list-style-type: none"> <li>Data will be collected</li> </ul>
115	S. Lawrence 10/5/16	Wants cameras in classrooms; no restraint needed	<ul style="list-style-type: none"> <li>Beyond the scope of the statutory authorization</li> </ul>
116	C. Pinello 10/11/16	“streamline” use of “calendar day” v. “school day”	<ul style="list-style-type: none"> <li>Definitions are consistent with other regulatory definitions</li> </ul>
117	Overall CONSENSUS J. Liban 10/11/16 C. Poe 10/11/16 M. Asip 10/11/16	Overall emphasis on prevention, de-escalation, use of less intrusive options –R & S as exception rather than primary/regular practice	<ul style="list-style-type: none"> <li>Changed</li> </ul>
118	<p>(Each email based on Nov.15, 2016, form letter from Emily Dreyfus, Justice4All)</p> <p>1. Wayne &amp; JoAnne Groover Nov. 18, 2016, email to VBOE</p> <p>2. Janet Lilly Nov. 16, 2016, email to VBOE</p> <p>3. Jill Buzby, Arlington, VA Nov. 15, 2016,</p>	<ul style="list-style-type: none"> <li>“3. Emphasize preventing problem behavior with de-escalation, conflict management and evidence-based positive and preventative behavioral supports, as specified by the Department of Education’s Fifteen Principles and the 2009 Suggested Virginia Guidelines.”</li> </ul>	<ul style="list-style-type: none"> <li>Changed</li> </ul>

	<p>email to VBOE</p> <p>4. Angela Stevens PBS Coordinator Nov. 15, 2016, email to VBOE</p> <p>5. Pat Hommel Charlottesville, VA Nov. 15, 2016, email to VBOE</p>		
119	J. Cimino 10/11/16	Use of SROs to be discouraged/prohibited	<ul style="list-style-type: none"> <li>Beyond the scope of VDOE’s authority</li> </ul>
120	J. Liban 10/11/16	Have SROs and SSOs trained in PBIS	<ul style="list-style-type: none"> <li>Beyond the scope of VDOE’s authority</li> </ul>
121	Ms. Campbell 10/11/16	Get copy of R & S policy upon enrollment; unique medical condition	<ul style="list-style-type: none"> <li>Covered by existing statutes</li> </ul>
122	J. Becker DJJ 10/11/16	Inquires about applicability to state-operated program/DJJ and unique requirements of DJJ	<ul style="list-style-type: none"> <li>Carve out to be developed</li> </ul>
123	Spotsylvania 10/4/16	Wants sample forms, etc.	<ul style="list-style-type: none"> <li>Issue for operationalizing the regulations</li> </ul>
124	<p>Stafford Co. Public Schools 10/18/16 via mail Signed by</p> <ul style="list-style-type: none"> <li>Tom Nichols, chief secondary officer</li> <li>5 SCPS high school principals</li> <li>Principal, Commonwealth Gov. School</li> <li>Student Services officer</li> <li>Dr. Bruce Benson, Supt.</li> </ul>	<ul style="list-style-type: none"> <li>“policy is consistent with the Fifteen Principles in the USDOE Restraint and Seclusion Resource document as required.”</li> <li>“requirements are consistent with Virginia’s Corporal Punishment Statute per an opinion by the Virginia Attorney General’s Office.”</li> <li>“policy properly seeks the balance between the safety of every student and the reality that we as high school principals must address emergencies and disruptions effectively, while protecting the dignity of all students, the integrity of the classroom, and the safety of all persons in our public schools.”</li> </ul>	<ul style="list-style-type: none"> <li>See comment 1</li> </ul>



	(duplicate letter)	<ul style="list-style-type: none"> <li>• “policy speaks to the use of physical restraint and seclusion as this permits staff that are permitting a student from inflicting serious physical harm or injury to self or others to use reasonable judgment in emergency situations.”</li> <li>• Costs (see training section)</li> </ul>	
125	<p>Jeff Perry, Divisional Superintendent, Wythe Co. Public Schools; Chair for <b>Region VII</b> Superintendent’s Study Group:                      “this letter should be considered as a collective response from all corresponding school divisions.                      10/31/16 via email</p>	<ul style="list-style-type: none"> <li>• <b>Consistency with Corporal Punishment Law-</b> We understand the Board is attempting to draft policy to ensure the safety of all students while balancing the need to prevent corporal punishment and reduce liability among educators while restraining or secluding a child. However, it is critical we maintain a practical balance between the safety of every student and the reality that school personnel must be able to address emergencies and disruptions effectively. We deal with a wide range of issues already while protecting the dignity of all students, the integrity of the classroom, and the safety of all persons in our public schools. Existing corporal punishment law, as well as laws prohibiting child abuse, negligence, and assault, currently protect students and hold educators and caregivers accountable. There is no need to include additional language in these regulations which will only create more opportunities for confusion and potential inappropriate accusations.</li> <li>• <b>Use of Support Programs -</b> We support the initiative in the draft regulations that promote effective practices and programs be implemented into the school day. These programs include programs such as Positive Behavioral Interventions and Supports (PBIS), Functional Behavioral Assessments (FBA), Virginia Tiered Systems of Support (VTSS), and Behavioral Intervention Plans (BIP) that may</li> </ul>	<ul style="list-style-type: none"> <li>• See comment 1</li> </ul>

		<p>preclude or reduce the need for restraint and seclusion.</p> <ul style="list-style-type: none"> <li> <p><b>Use of Physical Restraint and Seclusion.</b> --We support the draft regulations pertaining to the use of physical restraint and seclusion as an appropriate response by staff who are preventing a student from inflicting serious physical harm or injury to self or others when they use reasonable judgment in emergency situations. Because the regulations will apply to all students and all educators, it is critical that they do not have the unintended consequence of deterring educators from reasonable interventions to protect students. If staff is reluctant to intervene due to overly-restrictive regulations, the potential for dangerous situations to escalate and require police intervention could actually increase. We support this essential language that promotes student safety and supports the reasonable judgment of school personnel to intervene physically in an emergency situation as outlined in this provision.</p> </li> <li> <p><b>Policy Motivation</b>—Often these types of policies are created in response to extreme cases involving highly irresponsible and incompetent individuals. Other policies and regulations are already in place to deal with those extreme cases. The vast majority of educators throughout the Commonwealth deal with restraint and seclusion of students in an effective, efficient and appropriate manner. It is our hope that the Board doesn't create and adopt policy which may have positive intentions but which will result in serious and damaging consequences to staff and students in our school system. We agree and concur with many elements of these new regulations and agree they are needed. However, there are a few</p> </li> </ul>	
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		<p>provisions which we believe may not produce the desired effect. In fact, we believe some of these provisions may actually place staff and students in more danger. We highly recommend you should carefully consider unintended consequences before adoption.</p> <ul style="list-style-type: none"><li>• <b>School Resource Officers-</b> We have some type of permanent or occasional school resource officer presence in the majority of our schools. They have a specific duty and work closely with our school administration to maintain order and safety in our schools. It would appear the current regulations may restrict school resource officers and school security officers from using their authority and resources. This may have a devastating and unintended negative impact on the safety of students. Local law enforcement officials at the county and city level will read these regulations and direct their officers to withdraw support and assistance when needed the most. Please consider this provision and ensure we don't prevent our school resource officers from providing critical support in a highly volatile environment.</li><li>• We appreciate your attention to our concerns and please contact me if you have any additional questions or concerns. We have dedicated our professional career to the care and wellbeing of children and staff under our control. We understand the need to protect children and to care for physically challenging students deserves careful attention and deliberate planning. We understand the Board is attempting to address some issues which have been created in a small number of our school divisions. Direction, support, guidance, and training are clearly needed to help school divisions deal</li></ul>	
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		<p>with an ever changing clientele. Local school divisions are grossly underfunded, overregulated, short-staffed, and under tremendous pressure to perform academically. Many of these proposed provisions will be one more weight and burden we must place on staff members who are already fatigued. Please consider our thoughts and integrate them into the regulations so that we have the authority, ability, and motivation to effectively deal with students who are struggling. Thank you for your attention to this letter.</p>	
126	<p>VCASE Feb. 25, 2016, comments to VBOE</p>	<ul style="list-style-type: none"> <li>• <b>Revise Construction and Interpretation (p. 12)</b> to include the following “(ii) the authority, <i>actions</i>, and duties of school resource officers and school security officers, as defined in Va. Code 9.1-101.” VCASE does not believe that draft regulations should modify or restrict school resource officers and school security officers in their authority, actions, and duties, even as we support efforts by the Governor’s “Classrooms not Courtrooms” initiative to reduce the criminalization of some school student conduct matters.”</li> </ul>	<ul style="list-style-type: none"> <li>• Beyond the scope of VDOE’s current authority</li> </ul>
127	<p>Karen Yedell, Asst. Principal Bethel Manor E.S. York Co. Public Schools 11/1/16 via email</p>	<ul style="list-style-type: none"> <li>• “I fully support the VCASE comments concerning Seclusion and Restraint guidelines. Thanks for listening to the perspectives shared by VAESP.”</li> </ul>	<ul style="list-style-type: none"> <li>• See comment 126</li> </ul>
128	<p>Handle With Care Bruce Chapman, President Hilary Adler, VP 184 McKinstry Road</p>	<ul style="list-style-type: none"> <li>• Supports VDOE current guidelines but not regulations</li> <li>• <b>HWC does not support the proposed regulations.</b> It is our position that the provisions contained in VBOE’s proposed restraint regulation is [sic] outside the scope of its</li> </ul>	<ul style="list-style-type: none"> <li>• Comments would require statutory changes</li> </ul>

	<p>Gardiner, NY 12525 10/5/16 via email</p>	<p>authority. Specifically--</p> <ul style="list-style-type: none"> <li>• Neither VBOE nor the Virginia legislature has the authority to restrict a person’s Constitutional right to self-defense.</li> <li>• The Virginia legislature does not have the authority to delegate lawmaking authority especially lawmaking authority concerning Constitutional right to an administrative agency employing an unelected bureaucracy accountable to no-one.</li> <li>• “Unlawfully restricts school staff from exercising their Constitutional right to defend self and others.”</li> <li>• “The underlying purpose of this regulation is to disempower teachers, create unsafe schools and exponentially increase school violence and youth incarceration. The result will be increased incarceration, increased violence, increased restraint, unsafe schools and higher use of force interventions.”</li> <li>• “The 15 principles on restraint and seclusion is nothing more than a piece of political propaganda.”</li> <li>• <b>The “Imminent Danger of Serious Physical Harm” required by VBOE establishes an illegal standard and a threshold of injury that offends the sensibilities</b></li> <li>• <b>The right to defend self, others and property in Virginia is based on a “Reasonable Person Standard” not “Serious Physical Harm Standard”</b></li> <li>• <b>Summary of proposed changes to VBOE Restraint Regulation:</b> <ul style="list-style-type: none"> <li>• Use the language of <i>VA Code 22.1-279.1</i></li> <li>• Remove the ban on prone restraint.</li> <li>• Remove the term serious physical harm</li> <li>• Restraint should also be allowed as part of an IEP or BP.</li> </ul> </li> </ul>	
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<p>129</p>	<p>COPAA 11/1/16 email</p>	<ul style="list-style-type: none"> <li>• “Given the disproportionate impact of the use of restraint or seclusion on students of color it is urgent that there is representation on the panel reviewing the regulations and that meaningful parental and student engagement occur.”</li> <li>• “Final regulations must adhere to and follow the research-based provisions included in the U.S. Department of Education’s (ED) <i>Restraint and Seclusion: Resource Document</i>”</li> <li>• “Additionally, the Every Student Succeeds Act (ESSA) (cite) requires that States must also include new information in their Title I plan indicating how they will support districts <i>to improve school conditions for student learning, including through <b>reducing</b>—“(i) incidences of bullying and harassment;“(ii) the overuse of discipline practices that remove students from the classroom; and“(iii) <u>the use of aversive behavioral interventions that compromise student health and safety.</u> The ESSA conference report clarifies that <u>the term aversive means seclusion and restraint.</u>”</i></li> <li>• “There is a clearly a need for the State to closely examine and respond to the intersection of both Federal and State law. The data from Virginia schools is alarming. According to the Civil Rights Data Collection (CDRC), hundreds of students have restraint or seclusion imposed upon them in school. Schools report that students who are Black experience restraint and seclusion at rates double that of their white peers. Given this well-known fact, it is very disconcerting that there were absolutely NO people of color included in panel presentations of educational stakeholders who worked on the regulations. It is imperative that the voices of ALL stakeholders whose lives are impacted by the practice of imposing restraint and seclusion be part of the</li> </ul>	<ul style="list-style-type: none"> <li>• Noted</li> </ul>
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		<p>discussion and decision making....          “Disturbingly, the combination of the lack of appropriate and adequate community input combined with the current construct of the regulations are [sic] likely to result in an increase in the use of restraint and seclusion in Virginia schools without important changes. This is unconscionable.”</p>	
130	<p>Coalition for Improving School Safety (CISS)*          10/17/16 email          Line-by-line edits</p>	<ul style="list-style-type: none"> <li>Proposed new Preamble: <u>Virginia’s schools should foster learning in a safe and healthy environment for all children, teachers, and staff. All behavioral interventions must be consistent with the child’s rights to be treated with dignity and to be free from abuse. Because restraint and seclusion are dangerous, every effort should be made to prevent their use. They should be used only in emergencies threatening serious physical harm when less restrictive alternatives would not prevent the danger to self or others, and use must end when the emergency ends. Parents must be informed and all students and all incidents, included in the data. School Division policies must emphasize and implement evidence-based positive and preventative supports to support children with behavioral needs and to keep schools safe for everyone.</u></li> </ul>	<ul style="list-style-type: none"> <li>Preamble is not regulatory</li> </ul>
131	<p>Coalition for Improving School Safety (CISS)*          10/17/16 email          Line-by-line edits</p>	<ul style="list-style-type: none"> <li><b>Emphasis on prevention; review of local policies</b></li> <li>The principal or designee shall regularly review the use of physical restraint or seclusion to ensure compliance with school division policy and procedures. <del>and, w</del>When there are multiple incidents within the same classroom or by the same individual, the principal or designee shall take appropriate steps to address the frequency of use, including <u>a review</u>.</li> </ul>	<ul style="list-style-type: none"> <li>See comment 1</li> </ul>

		<p>and, if appropriate, revision of strategies currently in place to address dangerous behavior; if positive behavioral strategies are not in place, staff should develop them.</p> <ul style="list-style-type: none"> <li>• <b><i>“Rationale:</i></b> <i>As worded, the regulation deviates sharply from Principle 8, and thus is contrary to Virginia’s 2015 statute. Principle 8 provides, ‘The use of restraint or seclusion, particularly when there is repeated use for an individual child, multiple uses within the same classroom, or multiple uses by the same individual, should trigger a review and, if appropriate, revision of strategies currently in place to address dangerous behavior; if positive behavioral strategies are not in place, staff should consider developing them.’ In addition, by failing to emphasize positive and preventative supports, the regulation continues to emphasize using restraint and seclusion. There is significant evidence and research demonstrating that positive and preventative supports prevent behaviors from developing into emergencies. The proposed regulations should require that every effort be made to avoid the use of restraint and seclusion. These should include evidence-based behavioral accommodations, supports, and interventions to create a positive learning environment which improves both academic and social outcomes for students.”</i></li> </ul>	
<p>132</p>	<p>Sue Nelson-Sargeant Speech pathologist 1318 William St Fred, VA. 22401 11/15/16 email to</p>	<ul style="list-style-type: none"> <li>• “This is a matter of due process for these students, especially the ones who are nonverbal. You need to look at DSS CPS and see if they are still letting a LEA-employee be a CPS-designee. You will be part of the problem if you do not address these safety concerns...and assurance of due process for the</li> </ul>	<ul style="list-style-type: none"> <li>• Beyond the scope of the statute</li> </ul>



	VBOE	vulnerable ones in this Commonwealth. DO the right thing.”	
133	Juliet Hiznay, Esq. Arlington, VA 11/15/16 email to VBOE	<ul style="list-style-type: none"> <li>• <b>Supports CISS revisions</b></li> <li>• “[I]t is apparent that the use of restraint and seclusion leads to children with disabilities requiring a more restrictive (and therefore a more expensive) placement in either private day school or in residential in order to receive the educational benefit mandated under IDEA.”</li> <li>• “...long-term outcomes associated with the unregulated use of restraint and seclusion are extremely poor. ... In my experience, when school staff find themselves at a loss for how to otherwise address a problem behavior it is typically the case that at least one, if not all, of the following factors are at play (1) school staff do not understand why the child is behaving as they are, or how their own conduct is contributing to the problem, (2) the school district has failed to address the child’s underlying educational needs, (3) children are experiencing a hostile school environment, (4) children lose significant instructional time as a result of parents picking them up from school regularly or seeking homebound services because of the unacceptable mental health impacts of exposing their children to these techniques, (5) use of the practices escalates the behavior of the child and the staff, leading to more dangerous conditions for staff and students, (6) children who observe the use of restraint and seclusion on students are fearful of it being used on themselves, (7) use of these practices has a negative impact on staff morale, (8) use of restraint and seclusion results in the child being socially ostracized by peers, and (9) children who have experienced restraint and seclusion lose trust in school staff and are unable to</li> </ul>	<ul style="list-style-type: none"> <li>• Beyond the scope of the statute</li> </ul>

		reintegrate back into the same public school setting, leading to administrative transfers and more restrictive special education placements. These more restrictive special education placements represent a significant drain on the budget of schools, Medicaid funds and funds available under the Virginia Children’s Services Act. Reducing the use of restraint and seclusion would permit those funds to be redirected, and therefore meet the needs of more children in the public school setting with better individual outcomes and lower dropout rates.”	
134	Kevin Koziol Disability Resource Center— member CISS— former sped administrator 10/27/16 BOE meeting	<ul style="list-style-type: none"> <li>wants “more robust” emphasis on evidence-based positive behavioral supports</li> </ul>	<ul style="list-style-type: none"> <li>Beyond the scope of the statute</li> </ul>

**\*NOTE: Coalition for Improving School Safety (CISS) includes:**

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| Autism Society Central VA                                    | The Arc of Hanover   |
| Autism Society, Tidewater Virginia                           | The Arc of Harrisonburg and Rockingham                       |
| Blue Ridge Independent Living Center,<br>Roanoke             | The Arc of North Central Virginia                            |
| DisAbility Law Center of Virginia                            | The Arc of Northern Virginia                                 |
| disAbility Resource Center of the<br>Rappahannock Area, Inc. | The Arc of Southside   |
| Down Syndrome Association of Greater<br>Richmond             | The Arc South of the James                                   |
| Endeppence Center, Inc.                                      | The Arc of Virginia  |
| Greater Richmond SCAN (Stop Child Abuse<br>Now)              | The Autism Society of Central Virginia                       |
| Independence Empowerment Center                              | The Autism Society of Northern Virginia                      |
| Legal Aid Justice Center’s JustChildren Program              | VersAbility Resources  |
| Lynchburg Area Center for Independent Living<br>Inc.         | Virginia Association of Community Services<br>Boards (VACSB) |
| National Alliance on Mental Illness of Virginia              | Virginia Association of Centers for<br>Independent Living    |
| Parents of Autistic Children of Northern<br>Virginia         | Virginia Board for People with Disabilities                  |
| Partnership with People with Disabilities at                 | Virginia Autism Project                                      |
|  | Virginia Coalition for Students with Disabilities            |
|  | Virginia TASH  |
|  | Wrightslaw   |

VCU  
 Prevent Child Abuse Virginia  
 The Advocacy Institute  
 The Arc of Augusta  
 The Arc of Eastern Shore

**March 22, 2017 Comments  
 SUMMARY**

<b>DEFINITIONS</b>			
	<b>Commenter</b>	<b>Summary</b>	<b>Staff Response</b>
1	Virginia Education Association - 2/23/17 (Comments at the February 23, 2017, Board of Education meeting were delivered by James Livingston)	Supports continuous monitoring of students in seclusion. Does not support a “free to leave” standard.  Believes that the concept of “consistent with the 15 Principles” mean that they must be identical with the 15 Principles.	<ul style="list-style-type: none"> <li>No change required, as the definition is consistent with the advice of the Office of the Attorney General.</li> </ul>
2	The ARC of Virginia – 3/22/17 (Comments at the February 23, 2017 Board of Education Meeting were delivered by Jamie Liban as were comments at the March 23, 2017, Board of Education Meeting)	Believes that the definitions should follow the 15 Principles and Office of Civil Rights definitions.  Believes that the exception for “reasonable physical contact to maintain order or control” should be eliminated.  Believes that the exclusions from the definition on mechanical restraints and feeding stations should state “when used for these purposes.”	<ul style="list-style-type: none"> <li>See comment 1</li> </ul>
3	Just Children – 2/23/17 (Comments at the 2/23/17	Believes that the definitions should follow	<ul style="list-style-type: none"> <li>See comment 1</li> </ul>

	Board of Education Meeting were delivered by Rachael Deane, and comments at the 3/23/17 Board of Education Meeting were delivered by Amy Woolard)	the 15 Principles and Office of Civil Rights definitions.	
4	Virginia Board for People with Disabilities – 2/23/17 (Comments at the 2/23/17 Board of Education Meeting were delivered by John Cimino)	Believes that the definition should be consistent with the 15 Principles, particularly limited to “danger to self or others.”	<ul style="list-style-type: none"> <li>• See comment 1</li> </ul>
<b>PROHIBITIONS/PERMITTED USE OF RESTRAINT OR SECLUSION</b>			
5	Virginia Education Association – 2/23/17	Supports prohibiting restraint in a manner that restricts a child’s breathing.	<ul style="list-style-type: none"> <li>• See comment 1</li> <li>• Language modified to prohibit restraints that constrict the student’s airway</li> </ul>
6	Lori Buckingham, Spotsylvania County Public Schools – 2/23/17	Believes that students should not be left alone.  Supports an explicit ban on prone and supine restraints.	<ul style="list-style-type: none"> <li>• See comment 5</li> </ul>
7	Virginia Council of Administrators of Special Education (VCASE) -2/23/17 (Comments at the February 23, 2017 Board of Education Meeting were provided by Michael, Asip, VCASE President; Angela Neely, Culpeper County Public Schools; and Jane Strong, Fairfax County Public Schools)*	Opposes the prohibition on use of restraint and seclusion to protect property.  Believes seclusion should be permitted, studied and regulated.  Believes seclusion should not include student isolation for investigation of a violation of the Code of Student Conduct.  Opposes a “free to leave” standard for	<ul style="list-style-type: none"> <li>• See comment 5</li> </ul>

		<p>seclusion.</p> <p>Supports flexible standards for seclusion rooms, and believes that sensory room should be excluded from the definition.</p> <p>Supports the revision of language regard prone and supine restraints.</p>	
8	<p>Parent Educational Advocacy Training Center (PEATC) – 2/22/17</p>	<p>Believes that seclusion should be permitted.</p> <p>Believes that the language regarding prone and supine restraints should be modified.</p>	<ul style="list-style-type: none"> <li>• See comment 5</li> </ul>
9	<p>Virginia Association of Elementary School Principals (VAESP) – 2/19/17 (Comments delivered at the February 23, 2017, Board Meeting by Jim Baldwin).</p>	<p>Opposes prohibition of restraint or seclusion for damage to property.</p> <p>Opposes concept that students may not be left alone.</p>	<ul style="list-style-type: none"> <li>• See comment 5</li> </ul>
10	<p>Virginia Association of Secondary School Principals (VASSP) – 2/22/17 (Comments were delivered at the February 23, 2017, Board Meeting by Brian Matney, Past President, and Randy Barrack, Executive Director)</p>	<p>Supports the need to seclude students during investigation of a violation of the Code of Student Conduct, or where necessary for student safety.</p> <p>Opposes prohibition of restraint or seclusion for damage to property.</p> <p>Supports flexibility in the standards for seclusion room/seclusion.</p>	<ul style="list-style-type: none"> <li>• See comments 1 and 5</li> </ul>

11	ARC of Virginia – 3/22/17 and 3/23/17 (Comments delivered by Jamie Liban)	Supports additional provisions defining the circumstances where restraint may be used for investigation of a violation of the Code of Student Conduct.	<ul style="list-style-type: none"> <li>• See comments 1 and 5</li> </ul>
12	Just Children – 2/23/17 (Comments at the 2/23/17 Board of Education Meeting were delivered by Rachael Deane and at the 3/23/17 meeting by Amy Woolard)	<p>Support banning seclusion.</p> <p>Believe that the exception for investigation of Code of Student Conduct should be eliminated.</p>	<ul style="list-style-type: none"> <li>• See comments 1 and 5</li> </ul>
13	Shelley Montante, Parent - 2/23/17	<p>Supports elimination of use of restraint and seclusion for property damage and that seclusion to investigate a violation of the Code of Student Conduct should be prohibited.</p> <p>Believes that items in a seclusion room should not be limited to a mattress</p>	<ul style="list-style-type: none"> <li>• See comments 1 and 5</li> </ul>
14	Virginia Association of School Superintendents (VASS) – 2/23/17 (Comments at the 2/23/17 Board of Education Meeting were delivered by Steve Parker)	<p>Seclusion should be allowed.</p> <p>Supports the use of seclusion during the investigation of a violation of the Code of Student Conduct.</p> <p>Supports flexibility in standards for seclusion rooms.</p>	<ul style="list-style-type: none"> <li>• See comments 1 and 5</li> <li>• Draft modified to allow flexibility in seclusion rooms.</li> </ul>
15	disAbility Law Center – 2/23/17 (Comments at the 2/23/17 Board of Education meeting were delivered by Jenny	Supports banning of seclusion and restraints, but should be limited to instances of serious	<ul style="list-style-type: none"> <li>• See comments 1 and 5</li> </ul>

	Harbourne)	bodily harm.	
<b>NOTIFICATION/DEBRIEFING/MULTIPLE INCIDENTS</b>			
16	Virginia Education Association – 2/23/17	<p>Supports same day notification, but with reasonable efforts defined as having exhausted all methods of contact that have been provided by the parent.</p> <p>Supports two-day timeline for written report.</p> <p>Supports have parents attend debriefing meeting.</p>	<ul style="list-style-type: none"> <li>• Changed to provide for same day notification.</li> <li>• Parental invitation rejected.</li> </ul>
17	Lori Buckingham – Spotsylvania County Public Schools – 2/23/17	<p>Supports same day notification, next day written report and required content in reports.</p> <p>Believes that participants in the debriefing should be defined more broadly.</p> <p>Believes teams should plan to reduce incidents by 50 percent each year.</p>	<ul style="list-style-type: none"> <li>• See comment 16</li> <li>• Reduction plan is beyond the scope of the regulation.</li> </ul>
18	<p>VCASE – 2/23/17</p> <p>(Additional comments were presented at the 3/23/17 Board of Education Meeting by Ms. Neely and Ms. Strong).</p>	<p>Supports reasonable efforts to provide same day notification.</p> <p>Supports the provision of the incident report within two days and the provision of the report to the parent within five days.</p> <p>Supports a streamlined incident report form.</p>	<ul style="list-style-type: none"> <li>• See comment 16</li> <li>• Draft changed to provide for flexibility in written report.</li> <li>• Other suggestions rejected.</li> </ul>

		<p>Opposes the inclusion of other required members in the student debriefing.</p> <p>Opposes requiring a referral for evaluation following multiple incidents for a general education student.</p> <p>Opposes requiring an IEP meeting after two incidents.</p>	
19	Brenda Robinette – Scott County Public Schools - 2/24/17	Opposes requiring a formal meeting for students with disabilities after two incidents of restraint, as parents already have the right to request a meeting.	<ul style="list-style-type: none"> <li>• Comment rejected</li> </ul>
20	PEATC – 2/22/17	<p>Recommends that documentation regarding restraint and seclusion should be maintained in the student record.</p> <p>Believes that parents should be invited to student debriefing.</p> <p>Supports retaining detailed reporting requirements.</p>	<ul style="list-style-type: none"> <li>• See comment 16</li> </ul>
21	JustChildren – 2/23/17	Support same day notification, written incident report with complete information.	<ul style="list-style-type: none"> <li>• See comments 16 and 18</li> </ul>
22	Shelley Montante, Parent - 2/23/17	Supports same day notification.	<ul style="list-style-type: none"> <li>• See comments 16 and 18</li> </ul>
23	Jeff Perry, Superintendent, Wythe County Public Schools –	Requirements are unduly burdensome.	<ul style="list-style-type: none"> <li>• See comment 18</li> </ul>



	2/23/17		
24	VASS – 2/23/17	Same day notification may not be practical in all instances.	<ul style="list-style-type: none"> <li>• See comment 16</li> </ul>
<b>TRAINING</b>			
25	Virginia Education Association – 2/23/17	Supports having a school based crisis team with VDOE providing the training.	<ul style="list-style-type: none"> <li>• Training requirements modified to allow more division based flexibility</li> </ul>
26	Lori Buckingham – Spotsylvania County Public Schools – 2/23/17	Believes that advanced training should be based upon the student, not the setting.	<ul style="list-style-type: none"> <li>• See comment 25</li> </ul>
27	VCASE – 2/23/17 & 3/23/17	<p>Believes that training should not be required for those who do not work with students.</p> <p>Believes that localities should decide who should receive advanced training.</p>	<ul style="list-style-type: none"> <li>• See comment 25</li> </ul>
28	John Lody – Loudoun County Public Schools – 2/22/17	Believes that school divisions should have the authority to decide who receives training.	<ul style="list-style-type: none"> <li>• See comment 25</li> </ul>
29	Brenda Robinette – Scott County Public Schools – 2/24/17	Believes that school divisions should have the authority to decide who receives training.	<ul style="list-style-type: none"> <li>• See comment 25</li> </ul>
30	PEATC – 2/22/17	Believes that the regulations should be	<ul style="list-style-type: none"> <li>• See comment 25</li> </ul>

		<p>more strongly worded to emphasize proper techniques and protocols.</p> <p>Opposes limiting advanced training to the self-contained special education setting.</p>	
31	VASSP – 2/22/17	Believes that VDOE and the General Assembly should provide funding and/or incentives for the use of Positive Behavioral Intervention Strategies.	<ul style="list-style-type: none"> <li>• See comment 25</li> </ul>
32	Jeff Perry, Superintendent, Wythe County Public Schools – 2/23/17	Training is necessary.	<ul style="list-style-type: none"> <li>• See comment 25</li> </ul>
33	VASS – 2/23/17	VDOE should fully fund all training.	<ul style="list-style-type: none"> <li>• Beyond the scope of VDOE’s authority</li> </ul>
<b>OTHER COMMENTS</b>			
34	PEATC – 2/22/17	Believes that school divisions should have the authority to decide who receives training.	<ul style="list-style-type: none"> <li>• See comment 25</li> </ul>
35	Department of Juvenile Justice - 2/23/17 (Comments at the February 23, 2017, Board Meeting by Lisa Floyd)	Requested an exemption from the regulations due to existing regulations governing the Department, as well as the Department’s unique role.	<ul style="list-style-type: none"> <li>• Change made</li> </ul>
36	Michael Asip - 3/6/17	Provided updated data on the use of restraint and seclusion within Chesterfield County Public Schools.	<ul style="list-style-type: none"> <li>• Data noted</li> </ul>

37	JustChildren – 2/23/17 & 3/23/17	School security officers and school resource officers should be covered by the regulations.	<ul style="list-style-type: none"> <li>• VDOE has no authority over school resource officers. However, draft was revised to provide that school divisions must have a memorandum of understanding with local law enforcement to use school resource officers.</li> </ul>
38	Shelley Montante, Parent – 2/23/17	Believes that the regulations should address school resource officers.	<ul style="list-style-type: none"> <li>• See comment 27</li> </ul>
39	Jeff Perry, Superintendent, Wythe County Public Schools, - 2/23/17	Believes that the regulations are overly broad.	<ul style="list-style-type: none"> <li>• Staff believes that more narrowly drafted regulations would require legislative action</li> </ul>

\*The following individuals or school divisions provided written comment echoing the comments made by VCASE, except to the extent expressly noted above:

- Jim Gallagher, Amherst County Public Schools – 2/23/17
- Botetourt County Public Schools – 2/23/17
- John Lody, Loudoun County Public Schools – 2/22/17
- Carla Alpern, Lousia County Public Schools – 2/23/17
- Randy Jennings, Salem City Public Schools – 2/23/17
- Brenda Robinette, Scott County Public Schools – 2/24/17

**Family impact**

*Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

The emphasis on evidenced-based, positive behavioral supports and interventions will enhance a student’s ability to control his or her behavior, resulting in more time in school and more productive time in school. Research has shown that students with poor attendance, for whatever reason, have poorer

educational outcomes. A strong education is a key to economic self-sufficiency, self-pride and the assumption of responsibility for one’s self and one’s family, and relates directly to achieving economic well-being.

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.*

If a new regulation is being promulgated, that is not replacing an existing regulation, please use this chart:

<b>Section number</b>	<b>Proposed requirements</b>	<b>Other regulations and law that apply</b>	<b>Intent and likely impact of proposed requirements</b>
8 VAC 20-750-5	Application. 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 regulation.	<i>Virginia Code</i> Section 22.1-279.1:1, which directs the promulgation of the regulations.	Intent: To provide background and framework for the regulations.  Impact: To lessen confusion about applicability.
8 VAC 20-750-5	Definitions related to prohibited and permitted actions.		
	“Aversive stimuli” 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	<i>Virginia Code</i> Section 22.1-279.1, which bans corporal punishment in the public schools in the Commonwealth	Intent and impact: To set the framework for the remainder of the regulations.
	“Corporal punishment” which means the infliction of physical pain on a student for the purposes of discipline.	<i>Virginia Code</i> Section 22.1-279.1, which bans corporal punishment in the public schools in the Commonwealth	Intent and impact: To set the framework for the remainder of the regulations.
	“Mechanical restraint” means the use of a device or equipment to restrict a	<i>Virginia Code</i> Section 22.1-279.1, which bans corporal punishment in	Intent and impact: To set the framework for the remainder of the regulations.

	student’s freedom of movement. It does not include items such as orthopedically described devices, vehicle restraints and high chairs used for their intended purposes.	the public schools in the Commonwealth	
	“Pharmacological restraint” 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.	<i>Virginia Code</i> Section 22.1-279.1, which bans corporal punishment in the public schools in the Commonwealth	Intent and impact: To set the framework for the remainder of the regulations.
	“Physical restraint” means a personal restriction that immobilizes or restricts the ability of a student to move freely. It does not include briefly holding a student to calm or comfort the student, holding a student’s hand or arm to provide a safe escort for the student, or (iii) the use of incidental, minor or reasonable contact to maintain order and control.	<i>Virginia Code</i> Section 22.1-279.1, which bans corporal punishment in the public schools in the Commonwealth, but that permits these actions.	Intent and impact: To set the framework for the remainder of the regulations.
	“Seclusion” 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 provide an opportunity to regain self-control, removal of the student for disruptive behavior and confinement of a student during the investigation of a violation of the Code of Student conduct.	<i>Virginia Code</i> Section 22.1-276.2, which authorizes a teacher to remove a student from the classroom for disruptive behavior	Intent and impact: To set the framework for the remainder of the regulations.
	“Time-out” means a behavioral intervention in which a student is temporarily removed from the learning activity, but where the student is not confined.	None	Intent and impact: To set the framework for the remainder of the regulations.
8 VAC 20-750-	Other definitions. This section defines terms that	<i>Virginia Code</i> Section 22.1-1, 22.1-253.13.N,	Intent and impact: To set the framework for the remainder of

<p>20</p>	<p>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, day, Department, evaluation, functional behavioral assessment, individualized education program, individualized education program team, school day, school employee, Section 504 plan, and student</p>	<p>22.1-254.  <i>Regulations Governing Special Education Programs for Children with Disabilities in Virginia</i>, 8 VAC 20-81  <i>Regulations Governing the Operation of Private Schools for Students with Disabilities</i>, 8 VAC 20-671</p>	<p>the regulations.</p>
<p>8 VAC 20-750-30</p>	<p>Prohibitions: These regulations prohibit the use of the following in the public elementary and secondary schools in the Commonwealth: mechanical restraints, pharmacological restraints, aversive stimuli, corporal punishment, use of restraint or seclusion in any fashion 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, or as a convenience. 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><i>Virginia Code Section 22.1-279.1</i>, which bans corporal punishment in the public schools in the Commonwealth</p>	<p>Intent and 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>
<p>8 VAC 20-750-40</p>	<p>Use of physical restraint and seclusion. Provides that school personnel are not required to use restraint and seclusion, but if they do, it must be used in the manner set forth in the regulations.  School personnel may use</p>	<p><i>Virginia Code Section 22.1-279.1</i>, which bans corporal punishment in the public schools in the Commonwealth</p>	<p>Intent and 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>

	<p>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; to obtain possession of controlled substances or paraphernalia; to obtain possession of weapons or other dangerous objects.</p> <p>The physical restraint or seclusion must be discontinued as soon as the circumstances causing them to be used have ceased or resolved.</p> <p>School personnel are not required to attempt less restrictive interventions, if, in their reasonable judgement, it would be ineffective.</p>		
<p>8 VAC 20-750-50</p>	<p>Seclusion; standards for use. This section provides that rooms or spaces used for seclusion should be free of objects or features that may cause injury to a student; that it be large enough and have adequate light, heat, cooling and ventilation to comport with the dignity and safety of the student; that windows be constructed to minimize breakage; all space must be visible through the door.</p> <p>The proposed regulations also require that a student in seclusion must be continuously visually</p>	<p><i>Virginia Code</i> Section 22.1-279.1, which bans corporal punishment in the public schools in the Commonwealth</p>	<p>Intent and 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>

	<p>monitored.</p> <p>School divisions that elect to use seclusion must develop local policies that address the appropriate use and duration of seclusion based upon the age and development of the student.</p>		
8 VAC 20-750-60	<p>Notification and reporting. Provides that the staff member implementing a restraint or seclusion report the incident and any first aid to the principal by the end of the school day.</p> <p>Provides that the principal shall make a reasonable effort to notify the parent of the incident on the day it occurred, and provides for notification when the incident does not occur during the school day.</p> <p>No later than two school days following the incident, a written report must be prepared and it must be provided to the parent within seven calendar days of the incident. Furthermore, the principal must review the incident with staff within two school days to determine whether its use was appropriate and how to avoid its use in the future.</p> <p>No later than two school days after the student returns to school, the principal must review the incident with the student to discuss the event and to suggest alternative positive behaviors or coping strategies.</p>	<p><i>Virginia Code</i> Section 22.1-279.1, which bans corporal punishment in the public schools in the Commonwealth</p>	<p>Intent and 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> <p>Review of the situation with staff and the student is intended to promote the use of alternative methods of positive behavioral intervention.</p>
8 VAC 20-750-70	<p>Policies and Procedures. Provides that school divisions using restraint or seclusion must have policies to promote the use of positive behavioral interventions and support,</p>	<p><i>Virginia Code</i> Section 22.1-279.1, which bans corporal punishment in the public schools in the Commonwealth</p>	<p>Intent and 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</p>



	<p>and examples of the same; a description of the training required of staff members; and ensuring that the other requirements of the regulations are followed.</p> <p>Provides that school divisions utilizing school resource officers must enter into a Memorandum of Understanding with local law enforcement that addresses the use of restraint or seclusion by law enforcement personnel in school settings.</p> <p>Provides that the policies and procedures must be reviewed annually and posted on the school division's website.</p> <p>Finally, it provides that, in developing its policies and procedures, school divisions must give due consideration to practice that encourage parent involvement and collaboration.</p>		<p>emergency situations.</p> <p>The regulations are also intended to place the emphasis on positive behavioral supports.</p>
<p>8 VAC 20-750-80</p>	<p>Prevention; multiple uses of restraint or seclusion. Provides that IEP and Section 504 teams must consider whether the student displays behaviors that are likely to result in restraint or seclusion, as well as the need for a functional behavioral assessment, a behavioral intervention plan, behavioral goals and strategies, and additional evaluations.</p> <p>Within ten school days of the second day in a school year in which restraint or seclusion is used, the IEP or Section 504 team must meet to determine whether any of the above-described items are necessary.</p> <p>For students who do not</p>	<p><i>Virginia Code</i> Section 22.1-279.1, which bans corporal punishment in the public schools in the Commonwealth</p>	<p>Intent and 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> <p>The regulations are also intended to place the emphasis on positive behavioral supports.</p>

	<p>have an IEP or Section 504 plan, within ten school days of the second day in a school year in which restraint or seclusion is used, a team consisting of specified school personnel and the parent must meet to determine whether any of the above-described items are necessary or whether the student should be referred for evaluation.</p> <p>Provides that nothing in the regulations is intended to supplant the duty of school personnel to refer students for evaluation for special education or to provide behavioral interventions to a student who otherwise might benefit.</p>		
<p>8 VAC 20-750-90</p>	<p>Annual reporting. Provides that principals must report incidents to the division school superintendent, and that the school superintendent shall provide a report to the Virginia Department of Education on an annual basis.</p>	<p><i>Virginia Code</i> Section 22.1-279.1, which bans corporal punishment in the public schools in the Commonwealth</p>	<p>Intent and Impact: Reporting will allow the VDOE to examine trends and effectiveness in the use of positive behavioral interventions.</p>
<p>8 VAC 20-750-100</p>	<p>Training. Provides for initial training for all school personnel that focuses on positive behavioral support, conflict prevention, de-escalation and crisis response. Also provides for initial training for all school personnel regarding the regulations, policies and procedures governing the use of physical restraint and seclusion.</p> <p>Provides that school divisions must provide advanced training in the use of physical restraint and seclusion to at least one administrator in every school building, and for personnel assigned to work with a student that the IEP or Section 504 team</p>	<p><i>Virginia Code</i> Section 22.1-279.1, which bans corporal punishment in the public schools in the Commonwealth</p>	<p>Intent and 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> <p>The regulations are also intended to place the emphasis on positive behavioral supports.</p>

	<p>determines is likely to be restrained or secluded.</p> <p>Provides that all training must be evidence-based.</p>		
<p>8 VAC 20-750- 110</p>	<p>Construction and interpretation. Provides that the regulations are not intended to supplant the initial authority for a teacher to remove students from a classroom; the authority of school resource officers and school security officers, except to the extent governed by a Memorandum of Understanding between the local law enforcement agency and the school division; the authority of the Virginia Department of Juvenile Justice with regard to students in its custody or at its sites or programs; the civil immunity of teachers as provided for in the <i>Code of Virginia</i>.</p>	<p><i>Virginia Code</i> Section 22.1-276.2</p> <p><i>Virginia Code</i> Section 9.1-101</p> <p><i>Virginia Code</i> Section 8.01-220.1:2</p>	<p>Intent and Impact: This section is intended to guide the applicability of the regulations.</p>