

## SECLUSION AND RESTRAINT: OVERVIEW AND UPDATE ON REGULATORY PROCESS

### STUDY PLAN

#### Study Mandate

- In 2014, the Commission on Youth conducted a study on the use of seclusion and restraint by schools. This study surveyed the policies of schools in Virginia related to seclusion and restraint.
- As a result of the study, the Commission adopted a recommendation, and the General Assembly passed a law in 2015, requiring the Board of Education to adopt regulations on the use of seclusion and restraint in public elementary and secondary schools in the Commonwealth.
- Since 2015, the Board of Education has been working through the regulatory process to establish regulations governing seclusion and restraint in public elementary and secondary schools. The proposed regulations are entering the final stage of the regulatory process.
- During the 2019 study year, the Commission on Youth will continue to monitor the regulatory process and receive an update on the seclusion and restraint regulations.

#### Background

- The standard regulatory process is a three stage process. The first stage was completed in August 2015. This step is known as the Notice of Intended Regulatory Action (NOIRA). A NOIRA alerts the public that an agency is considering a regulatory change.
- Following the NOIRA stage the Department of Education began preparing the proposed regulations for stage two of the regulatory process. In 2015, the Department hosted three informal stakeholder meetings on the seclusion and restraint regulations, and the Board conducted its first review of the regulations in January 2016.
- The Department hosted three public hearings on the regulations in the fall of 2016 and the Board heard its second review of the regulations in October 2016. The Board heard its final review in March 2017. During the subsequent Executive branch review process, the proposed regulations were returned to the Department in August 2017 for suggested amendments.
- The Board reviewed the regulations with the suggested amendments in January 2018, and they were subsequently sent back to the Executive branch for review. The Executive branch completed its review process in November 2018, and the proposed regulations were printed in the *Virginia Register* for a 60 day public comment period earlier this year.
- The third and final stage in the regulatory process is the final regulation stage. This stage for the regulations governing the use of seclusion and restraint is forthcoming and will consist of a review of the final regulations by the Board, Executive branch review, the publishing of the final regulations in the *Virginia Register*, and a thirty day public comment period on the Town Hall website.

- As the Board continues to move through the regulatory process, the General Assembly passed a law during the 2019 Session stating that in its regulations on seclusion and restraint “The Board shall specifically (1) identify and prohibit the use of any method of restraint or seclusion that it determines poses a significant danger to the student and (2) establish safety standards for seclusion.”

### **Identified Issues**

- The U.S. Department of Education requires public school districts to report seclusion and restraint data to the Office of Civil Rights to ensure no specific demographic group is unfairly targeted.
- Currently, there is no requirement for local school districts’ to report seclusion and restraint data to the state, but a provision for annual reporting is included in the proposed regulations that are going through the regulatory process.
- An April 7, 2019, article by the *Washington Post* indicated that one local school district failed to report 1,679 incidents of seclusion and restraint over the 2017-2018 school year.
- Students with disabilities are shown to be overrepresented in the nationwide seclusion and restraint data collected by the Office for Civil Rights. In the most recent 2015-2016 school year data, students with disabilities represent 12 percent of the enrollment in public schools, and they account for 71 percent of all students restrained and 66 percent of all students secluded.

### **Study Activities**

- Monitor the regulatory process regarding the promulgation of regulations on seclusion and restraint, and provide updates to the Commission on Youth as necessary.
- Request the Virginia Department of Education to give an update on approved regulations and its implementation plan.
- Review and update the Commission on Youth on the recently published report in February 2019 by the U.S. Government Accountability Office (GAO) on Federal Data and Resources on Restraint and Seclusion.
- Assist the GAO with their current study on evaluating recommendations for improving restraint and seclusion data reported to the U.S. Department of Education’s Civil Rights Data Collection (CRDC).