



**FINAL REPORT OF THE
VIRGINIA COMMISSION ON YOUTH**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**

**Seclusion and Restraint:
Overview and Update on Regulatory
Process**

**COMMONWEALTH OF VIRGINIA
RICHMOND
2019**



COMMONWEALTH of VIRGINIA
Commission on Youth

Delegate Richard P. "Dickie" Bell, *Chair*
Senator Dave W. Marsden, *Vice Chair*

Pocahontas Building
900 E. Main Street, 11th Floor
Richmond, Virginia 23219

Executive Director
Amy M. Atkinson

804-371-2481
FAX 804-371-0574
<http://vcoy.virginia.gov>

November 26, 2019

TO: The Honorable Ralph S. Northam, Governor of Virginia
and
Members of the Virginia General Assembly

In 2014, the Commission on Youth conducted a study on the use of seclusion and restraint in public schools in the Commonwealth. The 2014 study contained four recommendations, including legislation requiring the Virginia Board of Education to promulgate regulations on the use of seclusion and restraint in Virginia's public schools. Since the summer of 2015, these regulations have worked their way through the regulatory process. Over the past five years, the Commission on Youth has remained committed to this topic and is encouraged by the near completion of the regulatory process.

This report presents an update on the regulatory process regarding the promulgation of seclusion and restraint regulations. The Commission on Youth is grateful for the work of the Board and the Department of Education on this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dickie", written over a light blue horizontal line.

Richard P. "Dickie" Bell

MEMBERS OF THE VIRGINIA COMMISSION ON YOUTH

Virginia House of Delegates

Richard P. "Dickie" Bell, Chair
Emily M. Brewer
Jerrauld C. "Jay" Jones
Mark L. Keam
Christopher K. Peace
Todd E. Pillion

Senate of Virginia

David W. "Dave" Marsden, Vice-Chair
Charles W. "Bill" Carrico, Sr.
Barbara A. Favola

**Gubernatorial Appointments
from the Commonwealth at Large**

Avohom B. Carpenter
Deirdre S. "Dede" Goldsmith
Christian Rehak

Commission on Youth Staff

Amy M. Atkinson, Executive Director
Will Egen, Senior Policy Analyst
Christine Wilcox, Policy Editor

TABLE OF CONTENTS

I. Authority for Study	1
II. Members Appointed to Serve	1
III. Executive Summary	2
IV. Study Goals and Objectives	2
A. Identified Issues	
B. Study Activities	
V. Background	3
VI. Conclusion	13

Appendices

- A. Public schools; Board of Education regulations on use of seclusion and restraint. HB 1443/SB 782, 2015**
- B. Public schools; prohibits use of seclusion and restraint. HB 2599, 2019**
- C. Regulations governing the use of seclusion and restraint in public elementary and secondary schools in Virginia (final draft)**
- D. Virginia school divisions 2015 Civil Rights Data Collection (CRDC) on restraint and seclusion**

I. Authority for Study

Section 30-174 of the *Code of Virginia* establishes the Commission on Youth and directs it to “study and provide recommendations addressing the needs of and services to the Commonwealth’s youth and their families.” This section also directs the Commission to “encourage the development of uniform policies and services to youth across the Commonwealth and provide a forum for continuing review and study of such services.” Section 30-175 of the *Code of Virginia* outlines the powers and duties of the Commission on Youth and directs it to “undertake studies and to gather information and data ... and to formulate and report its recommendations to the General Assembly and the Governor.”

In 2014, the Commission on Youth conducted a study on the use seclusion and restraint by schools. This study surveyed the policies of schools in Virginia on 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 in the final stage of the regulatory process.

At its May 6, 2019, meeting, the Commission approved a study plan to monitor the regulatory process and receive an update on the seclusion and restraint regulations.

II. Members Appointed to Serve

The Commission on Youth is a standing legislative commission of the Virginia General Assembly. It is comprised of twelve members: three Senators, six Delegates, and three citizens appointed by the Governor.

Members of the Virginia Commission on Youth are:

Delegate Richard P. “Dickie” Bell, Staunton, Chair
Delegate Emily M. Brewer, Smithfield
Delegate Jerrauld C. “Jay” Jones, Norfolk
Delegate Mark L. Keam, Vienna
Delegate Christopher K. Peace, Mechanicsville
Delegate Todd E. Pillion, Abingdon
Senator David W. “Dave” Marsden, Burke, Vice-Chair
Senator Barbara A. Favola, Arlington
Senator Charles W. “Bill” Carrico, Sr., Galax
Avohom B. Carpenter, Chester

Deirdre S. “Dede” Goldsmith, Abingdon
Christian Rehak, Radford

III. Executive Summary

In 2014, the Commission on Youth conducted a study on the use seclusion and restraint by schools. This study surveyed the policies of schools in Virginia on 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 in the final stage of the regulatory process.

At its May 6, 2019, meeting, the Commission approved a study plan to monitor the regulatory process and receive an update on the seclusion and restraint regulations.

During 2019, the regulations, as part of the proposed stage of the regulatory process, were published in the *Virginia Register of Regulations* on February 18, 2019. After a 60 day public comment period and a public hearing, the proposed stage ended. The Board of Education approved the regulations governing the use of seclusion and restraint in public elementary and secondary schools in Virginia on July 25, 2019. Following the approval by the Board of Education, the regulations have continued to move their way through the Executive Branch review process. These regulations are currently at the Governor’s office for review.

IV. Study Goals and Objectives

In 2014, the Commission on Youth conducted a study on the use seclusion and restraint by schools. This study surveyed the policies of schools in Virginia on 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 in the final stage of the regulatory process.

At its May 6, 2019, meeting, the Commission approved a study plan to monitor the regulatory process and receive an update on the seclusion and restraint regulations.

A. 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 during 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.

B. STUDY ACTIVITIES

The Commission's approved study plan includes the following 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).

V. Background

Commission on Youth Study History

During the 2014 General Assembly Session, the House and Senate passed and the Governor signed HB 1106 (Hope) instructing the Commission on Youth to review use of seclusion and restraint in schools. The legislation called for the Commission, in consultation with the Department of Education and the Department of Behavioral Health and Developmental Services, to review (i) statewide policies and regulations on the use of seclusion and restraint in public and private elementary and secondary schools and (ii) methods used in other states to reduce and eliminate the

use of seclusion and restraint in public and private elementary and secondary schools. The bill required the Commission to make recommendations for the modernization of Virginia's policies and regulations on the use of seclusion and restraint in schools and submit its recommendations no later than November 30, 2014, to the General Assembly.

At the May 7, 2014, Commission on Youth meeting, the Commission adopted a study plan to review statewide policies and regulations related to seclusion and restraint, to review the methods used in other states to reduce and eliminate the use of seclusion and restraint, and to make recommendations and report its findings to the General Assembly before the 2015 General Assembly Session.

The Commission on Youth heard two presentations on seclusion and restraint. On September 16, 2014, the Commission heard a presentation from staff on federal law related to seclusion and restraint, Virginia laws and regulations related to seclusion and restraint, Virginia guidance, and the Virginia School Boards Association policy. The Commission also heard an overview of other states' laws, the U.S. Department of Education's 15 principles on seclusion and restraint, Commission-initiated survey results, and key findings from 23 stakeholder interviews. Finally, Commission staff presented several recommendations for public comment.

The Commission on Youth heard a second presentation on seclusion and restraint from staff on October 20, 2014. At this meeting, Commission members were presented with the final results from the survey conducted by staff during the 2014 study year.

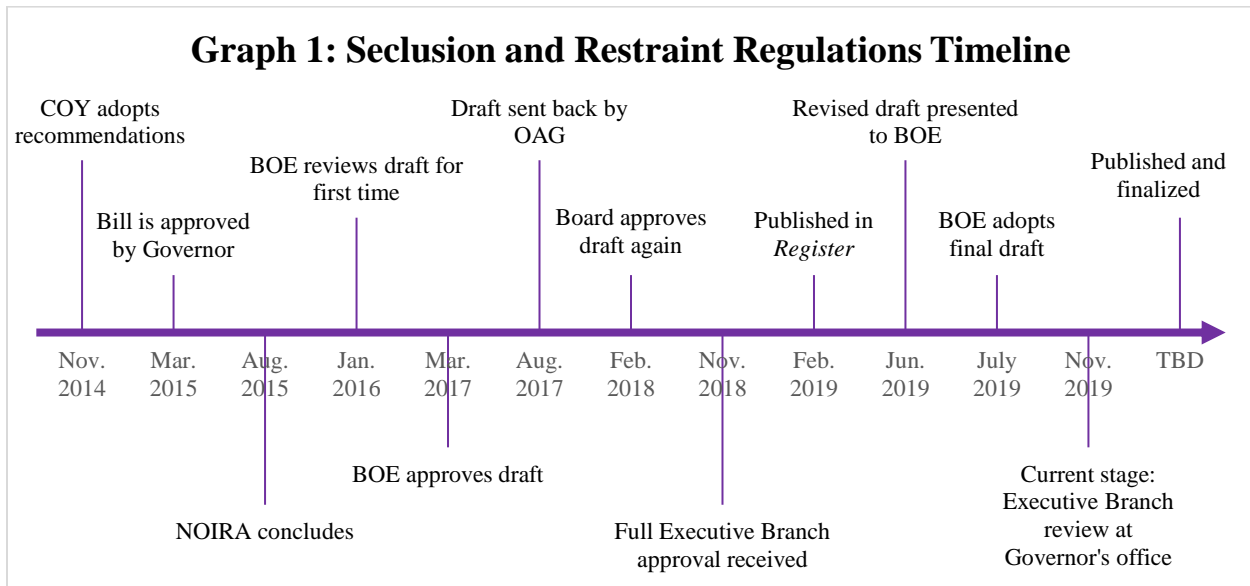
At the November 17, 2014, Commission on Youth meeting, the Commission adopted several recommendations including the following:

Introduce legislation requiring the Board of Education to promulgate regulations on the use of seclusion and restraint in Virginia's public schools. These regulations will be consistent with the 2009 Department of Education Guidelines and the U.S. Department of Education 15 Principles on Seclusion & Restraint and address definitions, criteria for use, restrictions for use, training, notification requirements, reporting, and follow-up procedures.

In 2015, the General Assembly passed HB 1443 (Dickie Bell) and SB 782 (Favola). These identical bills were signed into law by the Governor. This legislation required the Board of Education to adopt regulations on the use of seclusion and restraint in public elementary and secondary schools in the Commonwealth. The bill ordered that such regulations be consistent with certain existing guidance documents; include definitions of terms, criteria for use, restrictions on use, training requirements, notification requirements, reporting requirements, and follow-up requirements; and address distinctions between certain student populations.

Regulatory Process History

The regulatory process in Virginia is governed by the Administrative Process Act (APA), of the *Code of Virginia*¹ and Executive Order 14 (2018).² The standard rulemaking process follows three steps, and the regulations for seclusion and restraint fall under this mechanism. Graph 1 outlines the regulatory process for the seclusion and restraint regulations starting in 2014.



The first step of the regulatory process for the seclusion and restraint regulations began in March 2015 and ended 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. The Department of Education (DOE) submitted the NOIRA to the Executive Branch for review, then DOE submitted the NOIRA for publication in the *Virginia Register of Regulations*. After publication, a 30-day public comment period is required. DOE did not receive public comment during this stage.

After the NOIRA, DOE hosted three informal stakeholder meetings in August, September, and October of 2015 to receive input on potential regulations. The Board of Education conducted its first review of the regulations at its January 2016 Board meeting. During the remainder of 2016, DOE continued to work on the regulations. DOE received feedback from the public by hosting three listening sessions in October 2016 in Stafford County, Botetourt County, and Hampton City.

¹ § 2.2-4000, *et seq.*

² Executive Order 14. *Development and Review of State Agency Regulations*. Retrieved from: <https://townhall.virginia.gov/EO-14.pdf>.

The Board of Education then heard its second review of the regulations at the October 2016 Board meeting, its third review at the February 2017 Board meeting, and its final review at the March 2017 Board meeting.

The second step in the regulatory review process is called the “proposed stage.” In this stage, agencies submit their proposed regulations to the Executive Branch for approval, including the Attorney General, Department of Planning and Budget (DPB), the appropriate Secretariat, and then the Governor.

The proposed regulations that were approved by the Board of Education at its final review were first submitted to the Executive Branch in March 2017. The Attorney General had some technical amendments, and the regulations were returned to DOE in August 2017. In January 2018, these technical amendments were presented to the Board, and the proposed regulations were resubmitted to the Executive Branch in February 2018. Full Executive Branch approval was completed on November 21, 2018.

After Executive Branch approval was given, DOE submitted the proposed regulations and associated materials for publication in the *Virginia Register of Regulations*. This submission occurred on December 20, 2018, and the regulations were published in the *Virginia Register* on February 18, 2019.³

Once published in the *Virginia Register*, a 60-day comment period began, during which time DOE received comments from the public. DOE received 99 comments on the Virginia Regulatory Town Hall website regarding the seclusion and restraint regulations. DOE also accepted public comment at a hearing on March 21, 2019. Twenty-four members of the public gave public comment at that meeting. The public comment period for the proposed stage ended on April 19, 2019.

The third and final step in the standard regulatory process is called the “final stage.” During this stage, an agency will again review the proposed regulations and make any necessary revisions. After an agency approves regulations, as part of the final stage, regulations will again go through the Executive Branch review process and be published in the *Virginia Register of Regulations*, with any changes noted. Final draft regulations will become effective 30 days after publication in the *Virginia Register*.

At the June 20, 2019, Board of Education meeting, the Board heard its first review of the revised Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia. The one change that was made from the proposed stage was based on a

³ Virginia Register of Regulations. Vol. 35, Iss. 13. (February 18, 2019). *Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia*. Retrieved from: <http://register.dls.virginia.gov/details.aspx?id=7380>.

comment from the Department of Juvenile Justice, requesting that the language exclude their facilities from the regulations to accommodate the unique circumstances of their facilities.

At the July 25, 2019, Board of Education meeting, the Board held its final review of the revised seclusion and restraint regulations. During this meeting, the Board amended the regulations to include a ban on the use of prone restraints. The regulations were then approved by the Board.

Subsequently, the regulations moved through the final Executive Branch review process and are currently at the Governor's office for review.

Update on Identified Issues

Since HB 1443 and SB 782 were passed in 2015, a few issues have continued to come up as the regulatory process remains underway.

Gigi's Law

The General Assembly revisited the issue of seclusion and restraint in 2019 after an incident that occurred at a Loudoun County middle school in September 2017. In the incident at hand, a special needs student was photographed (by another student) being kept trapped in an area with furniture blocking her exit as she clung to a drawer.⁴ In the photo, two women sit nearby with their backs turned.

In response to this incident, during the 2019 General Assembly Session, the House and Senate passed and the Governor signed HB 2599 (John Bell) instructing 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." This law is also known as Gigi's law, named after the girl in the aforementioned photo.

In response to the new legislation passed in 2019, Department of Education staff noted that the requirements of HB 2599 are already addressed in the regulations that are currently going through the rulemaking process. However, the Board of Education subsequently added a prohibition on "the use of prone restraints (i.e. lying face down or any other restraints that restrict a student's breathing or harm the student," based on public comment.⁵

⁴ Edmunds, Chantalle. *Loudoun Times-Mirror*. (February 15, 2018). "The Isolation Room: Local parents share horror stories about school system's treatment of students with special needs." Retrieved from: https://www.loudountimes.com/news/the-isolation-room-local-parents-share-horror-stories-about-school/article_ba901f88-2ec7-11e8-8ede-57e67c4140be.html.

⁵ Virginia Regulatory Town Hall. (August 27, 2019 at 5:12 p.m.). *Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia*. Retrieved from: <https://townhall.virginia.gov/L/ViewXML.cfm?textid=13630>.

Data Reporting

Currently, there is no requirement for local school districts in Virginia to report seclusion and restraint data to the state. However, a provision for annual reporting is included in the proposed regulations that have been going through the regulatory process since 2015. At the federal level, 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.

News investigations indicate that, in one Virginia county, accurate reporting has not been occurring. While it is a requirement of the federal government that school districts report every time a student is restrained or secluded, an April 7, 2019, article by the *Washington Post* indicated that Fairfax County public schools failed to report 1,679 incidents of seclusion and restraint that occurred during the 2017-2018 school year.⁶ An investigation done by WAMU 88.5, American University Radio, found that zero cases of seclusion and restraint were reported in 2009, 2013, and 2015 by Fairfax County.⁷

The WAMU article also highlights the fact that schools use different definitions of what seclusion and restrain means, which can lead to divergent reporting techniques to the Civil Rights Data Collection (CRDC). For example, according to WAMU, during the 2015-2016 school year, “students were secluded or restrained in Fairfax County almost 2,000 times.”⁸ Nearby counties Arlington and Loudoun reported only 11 and 13 cases respectively. Currently in Virginia, schools use different definitions of seclusion and restraint based on their policies. These definitions will be made uniform across Virginia when the final draft regulations are adopted. Chart 1 highlights the definitions for restraint and seclusion used for reporting purposes to the Federal Government and the forthcoming regulatory definitions in Virginia.

⁶ Truong, Debbie. *Washington Post*. (April 7, 2019). “Fairfax students were secluded or restrained nearly 1,700 times last year.” Retrieved from: https://www.washingtonpost.com/local/education/fairfax-students-were-secluded-or-restrained-nearly-1700-times-last-year/2019/04/07/e1f01cde-57b3-11e9-9136-f8e636f1f6df_story.html?noredirect=on.

⁷ Abamu, Jenny. WAMU 88.5. (March 13, 2019). “Children are routinely isolated in some Fairfax County schools. The district didn’t report it.” Retrieved from: <https://wamu.org/story/19/03/13/children-are-routinely-isolated-in-some-fairfax-county-schools-the-district-didnt-report-it/>.

⁸ Ibid.

Chart 1: U.S. Department of Education and Virginia final draft definitions for Restraint and Seclusion

U.S. Department of Education definitions ⁹	Virginia final draft regulations ¹⁰
Physical restraint	
Physical restraint refers to restricting a student’s ability to freely move his or her torso, arms, legs, or head; it does not include a physical escort, such as temporary touching of the arm or other body part for the purpose of inducing a student who is acting out to walk to a safe location.	"Physical restraint" means a personal restriction that immobilizes or reduces the ability of a student to move freely. The term "physical restraint" does not include (i) briefly holding a student to calm or comfort the student; (ii) holding a student's hand or arm to escort the student safely from one area to another; or (iii) the use of incidental, minor, or reasonable physical contact or other actions designed to maintain order and control.
Mechanical restraint	
Mechanical restraint refers to the use of any device or equipment to restrict a student’s freedom of movement; this does not include vehicle safety restraints or medical devices.	"Mechanical restraint" means the use of any material, device, or equipment to restrict a student's freedom of movement. The term "mechanical restraint" does not include the devices implemented by trained school personnel or used by a student that have been prescribed by an appropriate medical or related service professional and are used with parental consent and for the specific and approved purposes for which such devices were designed.
Seclusion	
Seclusion refers to involuntarily confining a student alone in a room or area from which he or she cannot physically leave; it does not include a timeout, which the CRDC instructions define as a behavior management technique that is part of an approved program, involves the monitored separation of a student in a non-locked setting, and is implemented for the purpose of calming.	"Seclusion" means the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. Provided that no such room or space is locked, the term "seclusion" does not include (i) time-out, as defined in this chapter; (ii) in-school suspension; (iii) detention; (iv) student-requested breaks in a different location in the room or in a separate room; (v) removal of a student for a short period of time from the room or a separate area of the room to provide the student with an opportunity to regain self-control, so long as the student is in a setting from which the student is not physically prevented from leaving; (vi) removal of a student for disruptive behavior from a classroom by the teacher as provided in § 22.1-276.2 of the <i>Code of Virginia</i> ; or (vii) confinement of a student alone in a room or area from which the student is physically prevented from leaving during the investigation and questioning of the student by school personnel regarding the student's knowledge of or participation in events constituting a violation of the code of student conduct, such as a physical altercation, or an incident involving drugs or weapons.

⁹ U.S. Government Accountability Office (GAO). (February 27, 2019). *Federal Data and Resources on Restraint and Seclusion*. Retrieved from: <https://www.gao.gov/assets/700/697114.pdf>.

¹⁰ See *supra* note 5.

Once the final draft regulations are adopted, the requirement for annual reporting in Virginia will be as follows:

“The principal or the principal's designee shall submit to the division superintendent a report on the use of physical restraint and seclusion in the school based on the individual incident reports completed and submitted to the principal or the principal's designee by school personnel pursuant to 8VAC20-750-60 C. The division superintendent shall annually report the frequency of such incidents to the Superintendent of Public Instruction on forms that shall be provided by the Department of Education and shall make such information available to the public.”¹¹

Having consistent definitions and reporting requirements across the Commonwealth should in turn positively impact the quality of reporting to the Federal Government.

Lack of reporting is a nationwide concern that is not just confined to Virginia. A report completed by the U.S. Government Accountability Office (GAO) in June 2019 found that 70 percent of the more than 17,000 school districts in the U.S. reported zero incidents of restraint and seclusion. The GAO report showed that nine out of 30 of the largest school districts in the country reported zero incidents of seclusion and restraint. However, review of the data by the GAO indicated that not all incidents of seclusion and restraint are being captured, and that the largest districts reporting zero “had incidents they did not report, had incidents they were unable to report, or were not collecting the data.”¹² As the report concluded, “data left uncorrected could further undermine the public’s confidence in these data and limit the utility of a dataset intended to assist with federal civil rights monitoring, enforcement, and oversight.”¹³

Students with Disabilities

Students with disabilities are shown to be overrepresented in incidents of seclusion and restraint. In the most recent 2015-2016 school year data, students with disabilities represent 12 percent of the enrollment in public schools, but they account for 71 percent of all students restrained and 66 percent of all students secluded.¹⁴ In Chesterfield County, for example, 80 incidents of seclusion and 29 incidents of physical restraint were reported in the 2015-2016 data. All of these 109

¹¹ Ibid.

¹² U.S. Government Accountability Office (GAO). (June 18, 2019). *K-12 Education: Education Should Take Immediate Action to Address Inaccuracies in Federal Restraint and Seclusion Data*. Retrieved from: <https://www.gao.gov/assets/700/699795.pdf>.

¹³ Ibid.

¹⁴ U.S. Department of Education Office for Civil Rights. (May 2019). *2015-16 Civil Rights Data Collection School Climate and Safety*. Retrieved from: <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>.

instances involved students with disabilities.¹⁵ Students with disabilities, however, represent 13.6% of the student population in Chesterfield.¹⁶

As recent news reports have highlighted, instances of seclusion and restraint have had a negative and disproportionate impact on students with disabilities in Fairfax, Loudoun,¹⁷ and Chesterfield Counties.¹⁸ In Fairfax, for example, “multiple families say their kids exhibited post-traumatic stress disorder or PTSD-like symptoms in response to school environments long after they were pulled out of settings with seclusion rooms. Constant seclusion also affected the academic achievement of some students.”¹⁹ These incidents in Fairfax have also resulted in a lawsuit being filed by parents and disability rights groups, which is still ongoing.²⁰

Chart 2 shows the 25 highest reporting Virginia school divisions of restraint and seclusion instances to the 2015 Civil Rights Data Collection (CRDC). Reported instances from all of Virginia’s 132 school divisions can be found in Appendix D.

The data depicted in Chart 2 demonstrates the disproportionate impact of seclusion and restraint on students with disabilities across Virginia. In 17 of the 25 school divisions highlighted, instances of restraint and seclusion were 50 percent or greater for students with disabilities as a percentage of total instances. Rockingham County is the only public school division listed in Chart 2 where zero students with disabilities were impacted by seclusion and restraint, and the school division only reported instances involving students without disabilities. This data shows that if a school division uses restraint and seclusion in Virginia, then that school division will likely use either practice disproportionality in the special education classroom.

¹⁵ Civil Rights Data Collection. 2015-16, Chesterfield County Public Schools. *Restraints and Seclusion - Instances*. Retrieved from: <https://ocrdata.ed.gov/Page?t=d&eid=32500&syk=8&pid=2293>.

¹⁶ Civil Rights Data Collection. 2015-16, Chesterfield County Public Schools. *LEA Summary of Selected Facts*. <https://ocrdata.ed.gov/Page?t=d&eid=32500&syk=8&pid=2278>.

¹⁷ Truong, Debbie. *Washington Post*. (May 26, 2018). “A photo emerges and a Va. school system’s use of seclusion comes under scrutiny.” Retrieved from: https://www.washingtonpost.com/local/education/a-photo-emerges-and-a-va-school-systems-use-of-seclusion-comes-under-scrutiny/2018/05/26/c8f75658-3693-11e8-9c0a-85d477d9a226_story.html.

¹⁸ Pauly, Megan. VPM. (April 3, 2019). “Critics say proposed policies on seclusion and restraint in Virginia don't go far enough.” Retrieved from: <https://vpm.org/news/articles/3493/critics-say-proposed-policies-on-seclusion-and-restraint-in-virginia-dont-go-far>.

¹⁹ See *supra* note 7.

²⁰ Truong, Debbie. *Washington Post*. (October 8, 2019). “Parents sue Fairfax schools, allege improper seclusion and restraint of students with disabilities.” https://www.washingtonpost.com/local/education/parents-sue-fairfax-schools-allege-improper-seclusion-and-restraint-of-students-with-disabilities/2019/10/08/066166dc-e9f8-11e9-85c0-85a098e47b37_story.html.

Chart 2: Highest Reporting Virginia School Divisions of Restraint and Seclusion Instances to the 2015 Civil Rights Data Collection (CRDC) (25 public school divisions)²¹ *

Public School Division	Students without disabilities		Students with disabilities (IDEA/504)		
	Restraint	Seclusion	Restraint	Seclusion	% of total
Prince William County	38	17	302	226	90.6
Frederick County	6	2	175	32	96.3
Chesterfield County	0	0	29	80	100.0
Alexandria City	3	0	36	8	93.6
Richmond City	25	0	16	0	39.0
Newport News City	20	0	9	0	31.0
Campbell County	5	0	23	0	82.1
Giles County	0	0	28	0	100.0
Henrico County	1	0	20	6	96.3
Botetourt County	4	5	16	0	64.0
Roanoke County	1	0	10	14	96.0
Fredericksburg City	14	5	3	0	13.6
Montgomery County	2	9	3	6	45.0
Pulaski County	2	2	13	2	78.9
Rockingham County	18	0	0	0	0.0
Fauquier County	8	0	9	0	52.9
Henry County	6	0	10	0	62.5
Roanoke City	8	0	8	0	50.0
Loudoun County	0	0	10	3	100.0
Bristol City	8	0	4	0	33.3
Franklin County	5	2	3	2	41.7
Scott County	0	0	12	0	100.0
Shenandoah County	1	0	11	0	91.7
Arlington County	2	0	9	0	81.8
Culpeper County	6	0	5	0	45.5

Restraint and Seclusion numbers are by instances.
Listed from highest to lowest reported instances.

Special education classrooms pose unique challenges—including incidences of students kicking, biting, and hitting—that are not as common in the regular education classroom environment. The position of Chesterfield Public Schools is that “physical restraint and seclusion should only be

²¹ Civil Rights Data Collection. 2015-16. Retrieved from: <https://ocrdata.ed.gov/DistrictSchoolSearch>.

* Fairfax County did not report any use of restraint and seclusion to CRDC for 2015-2016. However, according to WAMU, as noted earlier, “students were secluded or restrained almost 2,000 times.”

used if the student is in danger of harm to self or others.”²² This view is commonplace among schools that use seclusion and restraint. However, many schools have policies that permit for the use of seclusion and restraint beyond safety-related situations, as noted in the Commission on Youth’s 2015 report.²³ These policies and procedures will not be updated until the regulations on seclusion and restraint are adopted, which will be to the benefit of all public school children.

VI. Conclusion

Since 2014, when the Commission on Youth first conducted a study on the use of seclusion and restraint in public schools in the Commonwealth, its members have remained committed to this issue. The adoption of regulations will set in place a uniform set of standards across Virginia’s public schools. Over the past four and a half years, the Department of Education and Board of Education have worked with parents, schools, and advocacy groups on developing regulations that will protect the safety of children and teachers in the classroom. The adoption of these regulations will ensure that concerns that have arisen over the past few years, such as practices that pose a significant danger to the student, underreporting or non-reporting of data, and the overreliance of seclusion and restraint in the special education classroom, will be addressed.

²² O’Brien, Kerri. WRIC. (April 18, 2019). “ ‘It’s not a prison’: Children physically restrained and isolated In Virginia schools.” <https://www.wric.com/news/taking-action/its-not-a-prison-children-physically-restrained-and-isolated-in-virginia-schools/>.

²³ Virginia Commission on Youth (2015). *Study of Seclusion and Restraint in Schools*. <https://rga.lis.virginia.gov/Published/2015/HD2/PDF>.

**Public schools; Board of Education regulations on use of seclusion and restraint.
HB 1443/SB 782, 2015**

CHAPTER 142

An Act to amend the Code of Virginia by adding a section numbered [22.1-279.1:1](#), relating to the use of seclusion and restraint in public schools; Board of Education regulations.

[H 1443]

Approved March 16, 2015

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered [22.1-279.1:1](#) as follows:

§ [22.1-279.1:1](#). *The use of seclusion and restraint in public schools; Board of Education regulations.*

The Board shall adopt regulations on the use of seclusion and restraint in public elementary and secondary schools in the Commonwealth that (i) are consistent with its Guidelines for the Development of Policies and Procedures for Managing Student Behavior in Emergency 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.

Public schools; prohibits use of seclusion and restraint. HB 2599, 2019

CHAPTER 591

An Act to amend and reenact § [22.1-279.1:1](#) of the Code of Virginia, relating to the use of seclusion and restraint in public schools.

[H 2599]

Approved March 18, 2019

Be it enacted by the General Assembly of Virginia:

1. That § [22.1-279.1:1](#) of the Code of Virginia is amended and reenacted as follows:

§ [22.1-279.1:1](#). The use of seclusion and restraint in public schools; Board of Education regulations.

The Board shall adopt regulations on the use of seclusion and restraint in public elementary and secondary schools in the Commonwealth that (i) are consistent with its Guidelines for the Development of Policies and Procedures for Managing Student Behavior in Emergency 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 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.*

Regulations governing the use of seclusion and restraint in public elementary and secondary schools in Virginia (final draft)

CHAPTER 750

REGULATIONS GOVERNING THE USE OF SECLUSION AND RESTRAINT IN PUBLIC ELEMENTARY AND SECONDARY SCHOOLS IN VIRGINIA

8VAC20-750-5. Application.

A. This chapter is applicable to all students and school personnel in the public elementary and secondary schools of the Commonwealth of Virginia, as defined in 8VAC20-750-20. This chapter governs the use of seclusion and restraint for the purpose of behavioral intervention. [This chapter does not apply to any secure facility or detention home as defined in §16.1-228 of the Code of Virginia, or to any facility operated by the Virginia Department of Behavioral Health and Developmental Services.]

B. To comply with this chapter, school personnel must first determine whether the action constitutes restraint or seclusion, as defined in 8VAC20-750-10. 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 8VAC20-750-10, 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 8VAC20-750-40 and 8VAC20-750-50, and is subject to the other requirements of this chapter.

C. 8VAC20-750-30 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.

8VAC20-750-10. Definitions related to permitted and prohibited actions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Aversive stimuli" means interventions that are intended to induce pain or discomfort to a student for the purposes of punishing the student or eliminating or reducing maladaptive behaviors, such as:

1. Noxious odors and tastes;
2. Water and other mists or sprays;
3. Blasts of air;
4. Corporal punishment as defined in § 22.1-279.1 of the Code of Virginia;
5. Verbal and mental abuse;
6. Forced exercise when:

- a. The student's behavior is related to the student's disability;
- b. The exercise would have a harmful effect on the student's health; or
- c. The student's disability prevents participation in such activities.

7. Deprivation of necessities, including:

- a. Food and liquid at a time it is customarily served;
- b. Medication; or
- c. Use of the restroom; or

"Corporal punishment" means the infliction of, or causing the infliction of, physical pain on a student as a means of discipline.

"Mechanical restraint" means the use of any material, device, or equipment to restrict a student's freedom of movement. The term "mechanical restraint" does not include the devices implemented by trained school personnel or used by a student that have been prescribed by an appropriate medical or related service professional and are used with parental consent and for the specific and approved purposes for which such devices were designed, such as:

1. Adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports;
2. Vehicle restraints, including seat belts, when used as intended during the transport of a student in a moving vehicle;
3. Restraints for medical immobilization;
4. Orthopedically prescribed devices that permit a student to participate in activities without risk of harm; or
5. High chairs and feeding stations used for age or developmentally appropriate students.

"Pharmacological restraint" means a drug or medication used on a student to control behavior or restrict freedom of movement that is not (i) prescribed by a licensed physician or other qualified health professional under the scope of the professional's authority for the standard treatment of a student's medical or psychiatric condition and (ii) administered as prescribed by a licensed physician or other qualified health professional acting under the scope of the professional's authority.

"Physical restraint" means a personal restriction that immobilizes or reduces the ability of a student to move freely. The term "physical restraint" does not include (i) briefly holding a student to calm or comfort the student; (ii) holding a student's hand or arm to escort the student safely from one area to another; or (iii) the use of incidental, minor, or reasonable physical contact or other actions designed to maintain order and control.

"Restraint" means mechanical restraint, physical restraint, or pharmacological restraint.

"Seclusion" means the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. Provided that no such room or space is locked, the term "seclusion" does not include (i) time-out, as defined in this chapter; (ii) in-school suspension; (iii) detention; (iv) student-requested breaks in a different location in the room or in a separate room; (v) removal of a student for a short period of time from the room or a separate area of the room to provide the student with an opportunity to regain self-control, so long as the student is in a setting from which the student is not physically prevented from leaving; (vi) removal of a student for disruptive behavior from a classroom by the teacher as provided in § 22.1-276.2 of the Code of Virginia; or (vii) confinement of a student alone in a room or area from which the student is physically prevented from leaving during the investigation and questioning of the student by school personnel regarding the student's knowledge of or participation in events constituting a violation of the code of student conduct, such as a physical altercation, or an incident involving drugs or weapons.

"Time-out" means a behavioral intervention in which the student is temporarily removed from the learning activity but in which the student is not confined.

8VAC20-750-20. General definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Behavioral intervention plan" or "BIP" means a plan that utilizes positive behavioral interventions and supports to address (i) behaviors that interfere with a student's learning or that of others or (ii) behaviors that require disciplinary action.

"Board" means the Virginia Board of Education.

"Business day" means Monday through Friday, 12 months of the year, exclusive of federal and state holidays (unless holidays are specifically included in the designation of business days).

"Chapter" means these regulations, that is, Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia, 8VAC20-750.

"Calendar days" means consecutive days, inclusive of Saturdays and Sundays. Whenever any period of time fixed by this chapter expires on a Saturday, Sunday, federal holiday, or state holiday, the period of time for taking such action shall be extended to the next day that is not a Saturday, Sunday, federal holiday, or state holiday.

"Child with a disability" or "student with a disability" means a public elementary or secondary school student evaluated in accordance with the provisions of 8VAC20-81 as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disability (referred to in 8VAC20-81 as an emotional disability), an orthopedic impairment, autism, traumatic brain injury, other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities who, by reason thereof, requires special education and related services. This also includes developmental delay if the school division recognizes this category as a disability under 8VAC20-81-80 M 3. If it is determined through an appropriate evaluation that a child has one of the disabilities identified but only needs related services and not special education, the child is not a child with a disability under 8VAC20-81. If the related service required by the child is

considered special education rather than a related service under Virginia standards, the child would be determined to be a child with a disability. As used in this chapter, the disability categories set forth in this definition and the terms "special education" and "related services" shall have the meanings set forth in 8VAC20-81-10.

"Day" means calendar day unless otherwise designated as business day or school day.

"Department" means the Virginia Department of Education.

"Evaluation" means procedures used in accordance with 8VAC20-81 to determine whether a child has a disability and the nature and extent of the special education and related services the child needs.

"Functional behavioral assessment" or "FBA" means a process to determine the underlying cause or functions of a student's behavior that impede the learning of the student or the learning of the student's peers. A functional behavioral assessment may include a review of existing data or new testing data or evaluation as determined as set forth in 8VAC20-750-70.

"Individualized education program" or "IEP" means a written statement for a child with a disability that is developed, reviewed, and revised at least annually in a team meeting in accordance with the Regulations Governing Special Education Programs for Children with Disabilities in Virginia (8VAC20-81). The IEP specifies the individual educational needs of the child and what special education and related services are necessary to meet the child's educational needs.

"Individualized education program team" or "IEP team" means a group of individuals described in 8VAC20-81-110 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

"School day" means any day, including a partial day, that students are in attendance at school for instructional purposes. The term has the same meaning for all students in school, including students with and without disabilities.

"School personnel" means individuals employed by the school division on a full-time or part-time basis or as independent contractors or subcontractors as instructional, administrative, and support personnel and include individuals serving as a student teacher or intern under the supervision of appropriate school personnel.

"Section 504 plan" means a written plan of modifications and accommodations under Section 504 of the Rehabilitation Act of 1973 (29 USC § 794).

"Student" means any student, with or without a disability, enrolled in a public elementary or secondary school as defined in § 22.1-1 of the Code of Virginia.

1. For purposes of this chapter, the term "student" shall also include those students (i) attending a public school on a less-than-full-time basis, such as those students identified in § 22.1-253.13:2 N of the Code of Virginia; (ii) receiving homebound instruction pursuant to 8VAC20-131-180 and as defined in 8VAC20-81-10, without regard to special education status; (iii) receiving home-based instruction pursuant to 8VAC20-81-10; and (iv) who are preschool students enrolled in a program operated by a school division or receiving services from school personnel.

2. As used in this chapter, "student" shall not include children meeting compulsory attendance requirements of § 22.1-254 of the Code of Virginia by (i) enrollment in private, denominational, or parochial schools; (ii) receipt of instruction by a tutor or teacher of qualifications prescribed by the Board of Education and approved by the relevant division superintendent; or (iii) receipt of home instruction pursuant to § 22.1-254 of the Code of Virginia [or (iv) receipt of instruction in a secure facility or detention home as defined in §16.1-228 of the Code of Virginia or in a facility operated by the Virginia Department of Behavioral Health and Developmental Services]. With regard to restraint and seclusion, students placed through public or private means in a private day or residential school for students with -disabilities shall be afforded the protections set forth in 8VAC20-671.

8VAC20-750-30. Prohibited actions.

A. The following actions are prohibited in the public elementary and secondary schools in the Commonwealth of Virginia:

1. Use of mechanical restraints.

2. Use of pharmacological restraints.

3. Use of aversive stimuli.

4. Use of [prone restraints (i.e. lying face down) [~~restraint~~] or [any other restraints] [~~seclusion in any manner~~] that [restrict] [~~restricts~~] a student's breathing or [~~harm~~] [~~harms~~] the student.

[5. Use of seclusion that restricts a student's breathing or harms the student.]

[~~5~~] [6.] . Use of physical restraint or seclusion as (i) punishment or discipline; (ii) a means of coercion or retaliation; (iii) a convenience; (iv) to prevent property damage, or in any manner other than as provided in 8VAC20-750-40 and 8VAC20-750-50.

[~~6~~] [7.] Use of corporal punishment.

[~~7~~] [8.] Use of seclusion rooms or freestanding units not meeting the standards set forth in this chapter.

[~~8~~] [9.] Use of restraint or seclusion when medically or psychologically contraindicated as stated in documentation by the IEP team, the student's Section 504 team, school professionals, or by a licensed physician, psychologist, or other qualified health professional under the scope of the professional's authority.

B. Nothing in this section shall be construed to prohibit physical restraint or seclusion under the conditions outlined in 8VAC20-750-40 and 8VAC20-750-50.

8VAC20-750-40. Use of physical restraint and seclusion.

A. Nothing in this chapter shall be construed to require a school division to employ physical restraint or seclusion in its schools. School divisions electing to use physical restraint and seclusion shall comply with the requirements of this chapter.

B. School personnel may implement physical restraint or seclusion only when other interventions are or would be, in the reasonable judgment of the particular school personnel implementing physical restraint or seclusion in an emergency situation, ineffective and only to:

1. Prevent a student from inflicting serious physical harm or injury to self or others;
2. Quell a disturbance or remove a student from the scene of a disturbance in which such student's behavior or damage to property threatens serious physical harm or injury to persons;
3. Defend self or others from serious physical harm or injury;
4. Obtain possession of controlled substances or paraphernalia that are upon the person of the student or within the student's control; or
5. Obtain possession of weapons or other dangerous objects that are upon the person of the student or within the student's control.

C. Physical restraint and seclusion shall be discontinued as soon as the imminent risk of serious physical harm or injury to self or others presented by the emergency situation has dissipated.

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.

E. Unless a student's damage to property creates an imminent risk of serious physical harm or injury to the student or others, the damage of property does not itself indicate an imminent risk of serious physical harm or injury and shall not be the justification for the restraint or seclusion of a student.

F. Any incident involving physical restraint or seclusion in any of the circumstances described in this section shall be subject to the requirements of 8VAC20-750-50 through 8VAC20-750-100.

8VAC20-750-50. Seclusion; standards for use.

A. School divisions electing to use seclusion as permitted by this chapter shall meet the following structural and physical standards for rooms designated by the school to be used for seclusion:

1. Any seclusion room or area shall be free of any objects or physical features that may cause injury to the student.
2. Any seclusion room or area shall be of sufficient dimensions and shall have sufficient lighting, heating, cooling, and ventilation to comport with the dignity and safety of the student.
3. Windows in the seclusion room shall be constructed to minimize breakage and otherwise prevent the occupant from harming himself.
4. All space in the seclusion room shall be visible through the door, either directly or by mirrors.

B. School divisions electing to use seclusion as authorized by this chapter shall provide for the continuous visual monitoring of any seclusion, either by the presence of school personnel in the

seclusion room or area or observation by school personnel through a window, viewing panel, or half-door.

C. School divisions electing to use seclusion as authorized by this chapter shall include within their local policies and procedures provisions that address the appropriate use and duration of seclusion based upon the age and development of the student.

8VAC20-750-60. Notification and reporting.

A. When any student has been physically restrained or secluded:

1. The school personnel involved shall report the incident and the use of any related first aid to the school principal or the principal's designee as soon as possible by the end of the school day in which the incident occurred; and

2. The school principal or the principal's designee, or other school personnel shall make a reasonable effort to ensure that direct contact is made with the student's parent, either in person or through telephone conversation, or other means of communication authorized by the parent, such as email, to notify the parent of the incident and any related first aid on the day the incident occurred.

B. When any student has been physically restrained or secluded after the regular school day, the notifications required by subsection A of this section 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 § 22.1-279.8 of the Code of Virginia.

C. As soon as practicable, but no later than two school days after an incident in which physical restraint or seclusion has been implemented, the school personnel involved in the incident or other school personnel, as may be designated by the principal, shall complete and provide to the principal or the principal's designee a written incident report. The school division shall provide the parent with a copy of the incident report within seven calendar days of the incident.

The written incident report shall contain information sufficient to inform the parent about the incident. Such information would typically include the following:

1. Student name, age, gender, grade, and ethnicity;

2. Location of the incident;

3. Date, time, and total duration of incident, including documentation of the beginning and ending time of each application of physical restraint or seclusion;

4. Date of report;

5. Name of person completing the report;

6. School personnel involved in the incident, their roles in the use of physical restraint or seclusion, and documentation of their completion of the division's training program;

7. Description of the incident, including the resolution and process of return of the student to the student's educational setting, if appropriate;

8. Detailed description of the physical restraint or seclusion method used;

9. Student behavior that justified the use of physical restraint or seclusion;

10. Description of prior events and circumstances prompting the student's behavior, to the extent known;

11. Less restrictive interventions attempted prior to the use of physical restraint or seclusion, and an explanation if no such interventions were employed;

12. Whether the student has an IEP, a Section 504 plan, a BIP, or other plan;

13. If a student, school personnel, or any other individual sustained bodily injury, the date and time of nurse or emergency response personnel notification and the treatment administered, if any;

14. Date, time, and method of parental notification of the incident, as required by this section; and

15. Date, time, and method of school personnel debriefing.

D. Following an incident of physical restraint or seclusion, the school division shall ensure that, within two school days, the principal or the principal's designee reviews the incident with all school personnel who implemented the use of physical restraint or seclusion to discuss:

1. Whether the use of restraint or seclusion was implemented in compliance with this chapter and local policies; and

2. How to prevent or reduce the future need for physical restraint or seclusion.

E. As appropriate, depending on the student's age and developmental level, following each incident of physical restraint or seclusion the school division shall ensure that, as soon as practicable, but no later than two school days or upon the student's return to school, the principal or the principal's designee shall review the incident with the student involved to discuss:

1. Details of the incident in an effort to assist the student and school personnel in identifying patterns of behaviors, triggers, or antecedents; and

2. 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.

F. The principal or the principal's designee shall regularly review the use of physical restraint or seclusion to ensure compliance with school division policy and procedures. When there are multiple incidents within the same classroom or by the same individual, the principal or the principal's designee shall take appropriate steps to address the frequency of use.

8VAC20-750-70. School division policies and procedures.

A. Each school division that elects to use physical restraint or seclusion shall develop and implement written policies and procedures that meet or exceed the requirements of this chapter and that include, at a minimum, the following:

1. A statement of intention that the school division will encourage the use of positive behavioral interventions and supports to reduce and prevent the need for the use of physical restraint and seclusion.

2. Examples of the positive behavioral interventions and support strategies consistent with the student's rights to be treated with dignity and to be free from abuse that the school division uses to address student behavior, including the appropriate use of effective alternatives to physical restraint and seclusion.

3. A description of initial and advanced training for school personnel that addresses (i) appropriate use of effective alternatives to physical restraint and seclusion and (ii) the proper use of restraint and seclusion.

4. A statement of the circumstances in which physical restraint and seclusion may be employed, which shall be no less restrictive than that set forth in 8VAC20-750-40 and 8VAC20-750-50.

5. Provisions addressing the:

a. Notification of parents regarding incidents of physical restraint or seclusion, including the manner of such notification;

b. Documentation of the use of physical restraint and seclusion;

c. Continuous visual monitoring of the use of any physical restraint or seclusion to ensure the appropriateness of such use and the safety of the student being physically restrained or secluded, other students, school personnel, and others. These provisions shall include exceptions for emergency situations in which securing visual monitoring before implementing the physical restraint or seclusion would, in the reasonable judgment of the school personnel implementing the physical restraint or seclusion, result in serious physical harm or injury to persons; and

d. Securing of any room in which a student is placed in seclusion. These provisions shall ensure that any seclusion room or area meet specifications for size and viewing panels that ensure the student's safety at all times, including during a fire or other emergency, as required by this chapter.

B. School divisions utilizing school resource officers shall enter into a memorandum of understanding with local law enforcement addressing the use of seclusion and restraint by law enforcement personnel in school settings.

C. Each school division shall review its policies and procedures regarding physical restraint and seclusion at least annually and shall update these policies and procedures as appropriate. In developing, reviewing, and revising its policies, school divisions shall consider the distinctions in emotional and physical development between elementary and secondary students and between students with and without disabilities.

D. Consistent with § 22.1-253.13:7 D of the Code of Virginia, a current copy of a school division's policies and procedures regarding restraint and seclusion shall be posted on the school division's website and shall be available to school personnel and to the public. School boards shall ensure that printed copies of such policies and procedures are available as needed to citizens who do not have online access.

E. In developing their policies and procedures, school divisions shall give due consideration to practices that encourage parent involvement and collaboration with regard to these matters.

8VAC20-750-80. Prevention; multiple uses of restraint or seclusion.

A. In the initial development and subsequent review and revision of a student's IEP or Section 504 plan, the student's IEP or Section 504 team shall consider whether the student displays behaviors that are likely to result in the use of physical restraint or seclusion. If the IEP or Section 504 team determines that future use is likely, the team shall consider, among other things, the need for (i) an FBA; (ii) a new or revised BIP that addresses the underlying causes or purposes of the behaviors as well as de-escalation strategies, conflict prevention, and positive behavioral interventions; (iii) any new or revised behavioral goals; and (iv) any additional evaluations or reevaluations.

Within 10 school days following the second school day in a single school year on which an incident of physical restraint or seclusion has occurred, the student's IEP or Section 504 team shall meet to discuss the incident and to consider, among other things, the need for (i) an FBA; (ii) a new or revised BIP that addresses the underlying causes or purposes of the behaviors as well as de-escalation strategies, conflict prevention, and positive behavioral interventions; (iii) any new or revised behavioral goals; and (iv) any additional evaluations or reevaluations.

B. For students other than those described in subsection A of this section, within 10 school days of the second school day in a single school year on which an incident of physical restraint or seclusion has occurred, a team consisting of the parent, the principal or the principal's designee, a teacher of the student, school personnel involved in the incident (if not the teacher or administrator already invited), and other appropriate school personnel, such as a school psychologist, school counselor, or school resource officer, as determined by the school division, shall meet to discuss the incident and to consider, among other things, the need for (i) an FBA; (ii) a new or revised BIP that addresses the underlying causes or purposes of the behaviors as well as de-escalation strategies, conflict prevention, and positive behavioral interventions; and (iii) a referral for evaluation.

C. Nothing in this section shall be construed to (i) excuse the team convened under subsection B of this section or its individual members from the obligation to refer the student for evaluation if the team or members have reason to suspect that the student may be a student with a disability; or (ii) prohibit the completion of an FBA or BIP for any student, with or without a disability, who might benefit from these measures but whose behavior has resulted in fewer than two incidents of physical restraint or seclusion in a single school year.

8VAC20-750-90. Annual reporting.

The principal or the principal's designee shall submit to the division superintendent a report on the use of physical restraint and seclusion in the school based on the individual incident reports completed and submitted to the principal or the principal's designee by school personnel pursuant to 8VAC20-750-60 C. The division superintendent shall annually report the frequency of such incidents to the Superintendent of Public Instruction on forms that shall be provided by the Department of Education and shall make such information available to the public.

8VAC20-750-100. Training.

School divisions that employ physical restraint or seclusion shall:

1. Ensure that all school personnel receive [~~initial~~] training that focuses on skills related to positive behavior support, conflict prevention, de-escalation, and crisis response [including follow-up support and social-emotional strategy support for students, staff, and families];
2. Ensure that all school personnel receive initial training regarding the regulations, policies, and procedures governing the use of physical restraint and seclusion;
3. Provide advanced training in the use of physical restraint and seclusion for at least one administrator in every school building and for school personnel assigned to work with any student whose IEP or Section 504 team determines the student is likely to be physically restrained or secluded; and
4. Ensure that any initial or advanced training is evidence-based.

8VAC20-750-110. Construction and interpretation.

Nothing in this chapter shall be construed to modify or restrict:

1. The initial authority of teachers to remove students from a classroom pursuant to § 22.1-276.2 of the Code of Virginia;
2. The authority and duties of school resource officers and school security officers, as defined in § 9.1-101 of the Code of Virginia, except to the extent governed by a memorandum of understanding between the local law enforcement agency and the school division;
3. The authority of the Virginia Department of Juvenile Justice with regard to students in its custody at any of its sites or in any of its programs; or
4. The civil immunity afforded teachers employed by local school boards for any acts or omissions resulting from the supervision, care, or discipline of students when such acts or omissions are within such teacher's scope of employment and are taken in good faith in the course of supervision, care, or discipline of students, unless such acts or omissions were the result of gross negligence or willful misconduct, as provided in § 8.01-220.1:2 of the Code of Virginia.

Virginia school divisions 2015 Civil Rights Data Collection (CRDC) on restraint and seclusion²⁴

Public School Division	Students without disabilities		Students with disabilities (IDEA/504)		
	Restraint	Seclusion	Restraint	Seclusion	% of total
Accomack County	1	0	7	0	87.5
Albemarle County	1	0	2	0	66.7
Alexandria City	3	0	36	8	93.6
Alleghany County	0	0	2	0	100
Amelia County	0	0	0	0	n/a
Amherst County	0	0	0	0	n/a
Appomattox County	0	0	0	0	n/a
Arlington County	2	0	9	0	81.8
Augusta County	0	0	0	0	n/a
Bath County	0	0	0	0	n/a
Bedford County	0	0	1	0	100
Bland County	0	0	0	0	n/a
Botetourt County	4	5	16	0	64
Bristol City	8	0	4	0	33.3
Brunswick County	0	0	0	0	n/a
Buchanan County	0	0	0	0	n/a
Buckingham County	0	0	0	0	n/a
Buena Vista City	0	0	0	0	n/a
Campbell County	5	0	23	0	82.1
Caroline County	0	0	2	0	100
Carroll County	0	0	1	1	100
Charles City County	0	0	0	0	n/a
Charlotte County	0	0	0	0	n/a
Charlottesville City	0	0	0	0	n/a
Chesapeake City	0	0	0	0	n/a
Chesterfield County	0	0	29	80	100
Clarke County	0	0	1	0	100
Colonial Beach	0	0	0	0	n/a
Colonial Heights City	0	0	0	0	n/a
Covington City	0	0	0	0	n/a
Craig County	0	0	2	0	100
Culpeper County	6	0	5	0	45.5

²⁴ Civil Rights Data Collection. 2015-16. Retrieved from: <https://ocrdata.ed.gov/DistrictSchoolSearch>.

Public School Division	Students without disabilities		Students with disabilities (IDEA/504)		
	Restraint	Seclusion	Restraint	Seclusion	% of total
Cumberland County	0	0	0	0	n/a
Danville City	0	0	0	0	n/a
Dickenson County	0	0	1	0	100
Dinwiddie County	0	0	0	0	n/a
Essex County	0	0	0	0	n/a
Fairfax County	0	0	0	0	n/a
Falls Church City	0	0	0	0	n/a
Fauquier County	8	0	9	0	52.9
Floyd County	0	0	0	0	n/a
Fluvanna County	0	0	0	0	n/a
Franklin City	0	0	0	0	n/a
Franklin County	5	2	3	2	41.7
Frederick County	6	2	175	32	96.3
Fredericksburg City	14	5	3	0	13.6
Galax City	0	0	4	0	100
Giles County	0	0	28	0	100
Gloucester County	0	0	0	0	n/a
Goochland County	0	0	1	0	100
Grayson County	0	0	0	0	n/a
Greene County	0	0	3	0	100
Greensville County	0	0	1	0	100
Halifax County	0	0	0	0	n/a
Hampton City	0	0	0	0	n/a
Hanover County	0	0	0	0	n/a
Harrisonburg City	0	0	0	0	n/a
Henrico County	1	0	20	6	96.3
Henry County	6	0	10	0	62.5
Highland County	0	0	0	0	n/a
Hopewell City	0	0	0	0	n/a
Isle of Wight County	1	0	2	0	66.7
King and Queen Co.	0	0	0	0	n/a
King George County	0	0	0	0	n/a
King William County	0	0	6	0	100
Lancaster County	0	0	0	0	n/a
Lee County	0	0	0	0	n/a
Lexington City	0	0	0	0	n/a
Loudoun County	0	0	10	3	100
Louisa County	0	0	0	0	n/a

Public School Division	Students without disabilities		Students with disabilities (IDEA/504)		
	Restraint	Seclusion	Restraint	Seclusion	% of total
Lunenburg County	0	0	0	0	n/a
Lynchburg City	3	0	0	0	0
Madison County	0	0	1	0	100
Manassas City	0	0	1	0	100
Manassas Park City	0	0	3	0	100
Martinsville City	0	0	0	0	n/a
Mathews County	0	0	0	0	n/a
Mecklenburg County	0	0	0	0	n/a
Middlesex County	0	0	0	0	n/a
Montgomery County	2	9	3	6	45
Nelson County	0	0	0	0	n/a
New Kent County	0	0	2	0	100
Newport News City	20	0	9	0	31
Norfolk City	0	0	0	0	n/a
Northampton County	0	0	0	0	n/a
Northumberland Co.	0	0	1	0	100
Norton City	0	0	1	0	100
Nottoway County	0	0	0	0	n/a
Orange County	4	0	2	0	33.3
Page County	2	0	5	0	71.4
Patrick County	0	0	3	0	100
Petersburg City	0	0	0	0	n/a
Pittsylvania County	0	1	0	0	0
Poquoson City	0	0	0	0	n/a
Portsmouth City	0	0	0	0	n/a
Powhatan County	0	0	0	0	n/a
Prince Edward County	0	0	0	0	n/a
Prince George County	0	0	0	0	n/a
Prince William County	38	17	302	226	90.6
Pulaski County	2	2	13	2	78.9
Radford City	0	0	1	0	100
Rappahannock County	0	0	0	0	n/a
Richmond City	25	0	16	0	39
Richmond County	0	0	0	0	n/a
Roanoke City	8	0	8	0	50
Roanoke County	1	0	10	14	96
Rockbridge County	0	0	0	0	n/a
Rockingham County	18	0	0	0	0

Public School Division	Students without disabilities		Students with disabilities (IDEA/504)		
	Restraint	Seclusion	Restraint	Seclusion	% of total
Russell County	0	0	0	0	n/a
Salem City	1	0	3	0	75
Scott County	0	0	12	0	100
Shenandoah County	1	0	11	0	91.7
Smyth County	0	0	7	0	100
Southampton County	0	0	0	0	n/a
Spotsylvania County	0	0	0	0	n/a
Stafford County	0	0	0	0	n/a
Staunton City	0	0	0	0	n/a
Suffolk City	0	0	0	0	n/a
Surry County	0	0	0	0	n/a
Sussex County	0	0	0	0	n/a
Tazewell County	0	0	0	0	n/a
Virginia Beach City	0	0	0	0	n/a
Warren County	0	0	1	0	100
Washington County	0	0	1	0	100
Waynesboro City	0	0	0	0	n/a
West Point	0	0	0	0	n/a
Westmoreland County	0	0	0	0	n/a
Williamsburg-JCC Co.	0	0	0	0	n/a
Winchester City	0	0	0	0	n/a
Wise County	0	0	5	1	100
Wythe County	1	3	0	1	20
York County	0	0	0	0	n/a

Restraint and Seclusion numbers are by instances.
Listed in alphabetical order by school division.

Seventy-four school divisions reported zero use of restraint and seclusion during 2015-2016.