

Virginia Board of Education Agenda Item



Agenda Item: P

Date: June 27, 2013

Title	Final Review of Proposed <i>Regulations Governing the Operation of Private Schools for Students with Disabilities</i> (8VAC20-670-10 et seq.) (Final Stage)		
Presenter	Dr. Sandra E. Ruffin, Director of Federal Program Monitoring		
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Purpose of Presentation:

Action required by Board of Education regulation.

Previous Review or Action:

Previous review and action. Specify date and action taken below:

NOIRA: July 22, 2010

Proposed Stage: January 13, 2011

Public Hearing – November 29, 2012

Board’s First Review – April 25, 2013

Further Outreach and Public Comments – May 2013 through June 2013

Action Requested:

Final Review: Action requested at this meeting.

Alignment with Board of Education Goals: Please indicate (X) all that apply:

X	Goal 1: Accountability for Student Learning
	Goal 2: Rigorous Standards to Promote College and Career Readiness
	Goal 3: Expanded Opportunities to Learn
	Goal 4: Nurturing Young Learners
	Goal 5: Highly Qualified and Effective Educators
X	Goal 6: Sound Policies for Student Success
X	Goal 7: Safe and Secure Schools
	Other Priority or Initiative. Specify: Proposed regulations for the management and conduct of private schools for students with disabilities

Background Information and Statutory Authority:

The revised proposed regulations provide standards for quality specialized education and services for students enrolled in private schools for students with disabilities. The regulations provide clarity to provisions for the management and conduct of schools and standards for programs offered by the schools to include policies and procedures to ensure safe learning environments and the protection of children in their care. The regulations require a standard school day and school year consistent with that

of the public school and an instructional program offering the core subjects -- English, mathematics, science, and history/social science.

With repeal of the *Standards for Interdepartmental Regulation of Children's Residential Facilities*, 22 VAC 42-11-10 et seq., and outdated information in the Board's *Regulations Governing the Operation of Private Day Schools*, one set of regulations for both private day and residential schools would be beneficial for the private school providers, public schools, licensing agencies, and families of students served in the schools.

Authority: Code of Virginia, Chapter 16. Schools for Students with Disabilities

Title 22.1. Education, Chapter 16 of the Code of Virginia outlines the provisions for schools for students with disabilities. The Board of Education shall make regulations not inconsistent with law for the management and conduct of schools. The regulations may include standards for programs offered by the schools. The Board may authorize the Superintendent to issue licenses to operate schools.

Summary of Important Issues:

Public Comments Following the Board's Meeting on April 25, 2013

Following the Board of Education's meeting on April 25, 2013, Mr. Christian Braunlich and the Department of Education contacted a wide audience of parents and parent advocacy groups that resulted in 152 written comments. The Department held two audio conferences: one for parents of students attending private schools for students with disabilities, and one for advocates and those concerned about the proposed behavior management provisions. The audio conferences provided collaborative exchange of views and helped to clarify issues. The written comments, audio conferences and continuing collaboration with private school representatives have resulted in revisions that strengthen the proposed regulations, add greater protections for students, and require increased accountability of private schools for students with disabilities.

The written comments were largely from parents, advocates, parent advocacy organizations, private schools serving students with autism, special education attorneys, and college professors. Parent advocacy groups included the Virginia Coalition for Students with Disabilities, the Legal Aid Justice Center, Virginia Office for Protection and Advocacy, Virginia Board for People with Disabilities, The Arc of Virginia, Families and Allies of Virginia's Youth, and the Senior Advocate Center for Self Determination, Inc. A review of the comments revealed concerns primarily with "restraint, seclusion, and aversive stimuli" and asked the Department to restore original language to the section on "Prohibitions." Most comments were supportive of the recommendations submitted by the Coalition for Students with Disabilities, a statewide network of organizations collaborating to support education rights and opportunities for students. The Department agreed with The Coalition's recommendations and addressed each in the proposed regulations. The Coalition was provided a copy of the proposed changes that resulted from their recommendations and has provided a letter to the Board regarding the Department's responsiveness. They specifically stated that the revised proposed regulation will help ensure the students are safe while at school.

A complete listing of all public comments received following the Board's April meeting and the Department's responses can be found in this packet. The packet also includes a letter addressed to the Board from the Virginia Coalition for Students with Disabilities expressing the Department's responsiveness to their recommendations.



Virginia Coalition for Students with Disabilities

6300 E. Virginia Beach Blvd
Norfolk, VA 23502

June 10, 2013

David Foster, President
Board of Education
Dr. Patricia I. Wright, Superintendent
Virginia Department of Education
P. O. Box 2120
Richmond, VA 23218

Dear Mr. Foster and Dr. Wright:

On behalf of the Virginia Coalition for Students with Disabilities, thank you for the additional time allocated to receive public comment on the proposed *Regulations Governing the Operation of Private Schools for Students with Disabilities in the Commonwealth*. The Coalition is a statewide network of organizations collaborating to support education rights and opportunities for students

In May, the Coalition reviewed and commented on the proposed *Regulations Governing the Operation of Private Schools for Students with Disabilities in the Commonwealth*. The Virginia Department of Education has been responsive to our comments. We understand that the revised proposed Regulations favorably address the concerns expressed in the Coalition's May 22nd comments. The Coalition is pleased that the revised proposed Regulations that are being presented to the Board for consideration at the Board's June meeting will help to ensure that students are safe while at school.

Sincerely,

Maureen Hollowell

Maureen Hollowell
757-351-1584
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Cc: John Eisenberg, Division of Special Education & Student Services, VDOE
Carolyn Hodgins, Private Day Schools, VDOE
Sandra Ruffin, Director, Division of Special Education & Student Services, VDOE

Requirements for Background Checks (Fingerprinting) for Criminal History Record Information
Code of Virginia

*Applicable to private schools

Public Schools	Businesses and Organizations	Accredited Private Schools	Department of Behavioral Health and Developmental (DBHDS) Services	Department of Behavioral Health and Developmental Services	Department of Social (DSS) Services
§22.1-296.2. Fingerprinting required.	§19.2-392.02. National criminal background checks by businesses and organizations regarding employees or volunteers providing care to children, the elderly and disabled.	*§22.1-296.3. Certain private school employees.	§37.2-408.1. Background check required; children's residential facilities.	*§37.2-416. Background checks required.	*§63.2-1726. Background check required; children's residential services, regulated by DSS, DBHDS, Education, Military Affairs
A. <u>As a condition of employment ...the school boards of the Commonwealth shall require any applicant who is offered or accepts employment after July 1, 1989, whether full-time or part-time, permanent, or temporary</u>	B. <u>... any provider who is employed by such entity.</u>	A. <u>As a condition of employment, private or religious elementary or secondary schools which is accredited by a statewide accrediting organization recognized by the Board of Education. ...any applicant who accepts employment for the first time after July 1, 1998, whether full-time or part-time, permanent or temporary....</u>	A... <u>as a condition of employment, volunteering or providing services on a regular basis, ...any person who (i) accepts a position of employment at such a facility... ...volunteers for such a facility on a regular basis and will be alone with a juvenile in the performance of his duties ... provides contractual services directly to a juvenile for such facility on a regular basis and will be alone with a juvenile in the performance of his duties</u>	A. <u>... term "direct care position" means any position that includes responsibility for...treatment, case management, health, safety, development, or well-being of an individual receiving services or ...immediately supervising a person in a position with this responsibility. ... any applicant who accepts employment in any direct care position....</u>	A. <u>As a condition of employment, volunteering or providing services on a regular basis, ... any individual who ...accepts a position of employment at such a facility ... volunteers for such a facility on a regular basis and will be alone with a juvenile in the performance of his dutiesprovides contractual services directly to a juvenile for such facility on a regular basis and will be alone with a juvenile in the performance of his duties....</u>

**Requirements for Search of Founded Complaints of Child Abuse and Neglect
Code of Virginia**

*Applicable to private schools

Public School Employees	Public School Employees	*Children's Residential Facilities	Direct Care Staff *Therapeutic Day Treatment	*Children's Residential Facilities
§22.1-296.1 Data on convictions for certain crimes and child abuse and neglect required.	§22.1-296.4. Child abuse and neglect data required.	§37.2-408.1. Background checks required; children's residential facilities.	§37.2-416. Background checks required. (Would apply to TDT staff)	§63.2-1726. Background check required; children's residential facilities
<p>A. <u>As a condition of employment for all of its public school employees, whether full-time or part-time, permanent, or temporary, every school board shall require....</u></p> <p>C. As a condition of awarding a contract for the provision of services that require the <u>contractor or his employees to have direct contact with students on school property during regular school hours or during school-sponsored activities....</u></p>	<p>A. On and after July 1, 1997, every school board shall require, as a condition of employment, that any applicant who is <u>offered or accepts employment requiring direct contact with students, whether full-time or part-time, permanent or temporary....</u></p> <p><u>In addition, where the applicant has resided in another state within the last five years, the school board shall require as a condition of employment that such applicant provide written consent and the necessary personal information for the school board to obtain information from each relevant state as to whether the applicant was the subject of a founded complaint of child abuse and neglect in such state.</u></p>	<p>A... <u>as a condition of employment, volunteering or providing services on a regular basis, ...any person who (i) accepts a position of employment at such a facility... ..volunteers for such a facility on a regular basis and will be alone with a juvenile in the performance of his duties</u></p> <p>... <u>provides contractual services directly to a juvenile for such facility on a regular basis and will be alone with a juvenile in the performance of his duties.</u></p>	<p>A. <u>"direct care position"</u> means any position that includes responsibility for (i) <u>treatment, case management, health, safety, development, or well-being of an individual receiving services or (ii) immediately supervising a person in a position with this responsibility.</u></p> <p>G. Providers licensed pursuant to this article also shall require, as a <u>condition of employment for all applicants, written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect that is maintained by the Department of Social Services.</u></p>	<p>A. <u>As a condition of employment, volunteering or providing services on a regular basis.....position of employment at such a facility who was not employed by that facility prior to July 1, 2007, (ii) volunteers for such a facility on a regular basis and will be alone with a juvenile in the performance of his duties who was not a volunteer at such facility prior to July 1, 2007, or (iii) provides contractual services directly to a juvenile for such facility on a regular basis and will be alone with a juvenile in the performance of his duties.</u></p> <p>C. <u>Those individuals listed in clauses (i), (ii) and (iii) of subsection A also shall authorize the children's residential facility to obtain a copy of information from the central registry....</u></p>

The Department of Education proposes the following requirements for the *Proposed Regulations for the Operation of Private Schools for Students with Disabilities*.

Criminal background check/fingerprints

§671-210. Responsibilities of the licensee.

The licensee shall:

8. Require as a condition of employment that any applicant who accepts employment full-time or part-time, permanent or temporary; volunteers on a regular basis and will be alone with a student in the performance of his duties; or provides contractual services, including services of a student intern, on a regular basis and will be alone with a student in the performance of his duties shall submit to fingerprinting and to provide personal descriptive information to be forwarded along with the applicant's fingerprints through Virginia's Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant.
a. Anyone who is hired or is approved to provide volunteer services, contractual services, or services of a student-intern on a regular basis and will be alone with students cannot begin working with children until the criminal history background check has been received by the school.

Central registry CPS search

9. Require as a condition of employment that any applicant who accepts employment requiring direct contact with students, whether full-time or part-time, permanent or temporary; volunteers on a regular basis and will be alone with a student in the performance of his duties; or anyone who provides contractual services, including services of a student intern on a regular basis and will be alone with a student in the performance of his duties shall provide written consent and necessary personal information for the school to obtain a search of the registry of founded complaints of child abuse and neglect maintained by the Department of Social Services.
a. Any individual who has not submitted to a search of the registry of founded complaints of child abuse and neglect maintained by the Department of Social Services shall not be permitted to work alone with children.
b. The results of the search of the registry must be received prior to permitting an applicant to work with children.

Note: The Department proposes to define “*regular basis*” as more than two times in a month, which is consistent with other licensing agencies.

Revisions to Proposed Regulations Following the Board’s First Review on April 25, 2013

The following section identifies the proposed regulations with revisions since the Board’s meeting on April 25, 2013. The first column shows the proposed language presented to the Board on April 25, 2013. The second column shows the proposed current language. A change is denoted with brackets, []; new language is underlined; and a strike-through, denotes deleted language. The third column provides the change/rationale. An asterisk denotes substantial change or a new requirement has been added to the proposed regulation.

The Department’s collaboration with parents and parent advocates following the Board’s April meeting resulted in several new requirements managing student behavior in emergency situations.

Proposed language presented to the Board on April 25, 2013	Proposed current language	Change/Rationale
	<p>671.10. Definitions Added three definitions: <u>["Aversive stimuli" means any action used to punish a student or to eliminate, reduce, or discourage the problem behavior by use of any of the following or any other actions that are painful, humiliating, degrading, or abusive:</u> 1. <u>Noxious odors and tastes;</u> 2. <u>Water and other mists or sprays;</u> 3. <u>Blasts of air;</u></p> <p><u>["Mechanical restraint" means the use of any device or equipment to restrict a student’s freedom of movement. This term does not include ...]</u></p> <p><u>["Pharmacological restraints" means a drug or medication used on a student to control behavior or restrict freedom of movement that is not (1) prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional’s authority for the standard treatment of a student’s medical or psychiatric condition; and (2) administered as prescribed by]</u></p> <p><u>["Regular basis" means more than twice a month.]</u></p>	<p>Advocates recommended adding to definition section</p>

Proposed language presented to the Board on April 25, 2013	Proposed current language	Change/Rationale
<p>671-150. Monitoring. The licensing agency shall: 1. Make at least one announced or unannounced visit during the effective dates</p>	<p>671-150. Monitoring. The licensing agency shall: 1. Make at least one [announced or] unannounced visit</p>	<p>671-150. Monitoring. Deleted words “announced or” All visits for the purpose of issuing a license to operate are “unannounced.”</p>
<p>671-210. Responsibilities of the licensee. 8. Require as a condition of employment that any applicant who accepts employment full-time or part-time, permanent or temporary, including interns and volunteers [who work alone with students], to submit to fingerprinting....</p> <p>[In addition, where the applicant has resided in another state within the last five years, the school shall as a condition of employment determine if there are any founded complaints of child abuse or neglect in such state(s) pursuant to §§ 22.1-296.3 and 22.1-296.4 of the [Code of Virginia].</p>	<p>671-210. Responsibilities of the licensee. 8. Require as a condition of employment that any applicant who accepts employment full-time or part-time, permanent or temporary [;] [including interns and volunteers [who work alone with students]] [<u>volunteers on a regular basis and will be alone with a student in the performance of his duties; or anyone who provides contractual services, including services of a student intern, on a regular basis and will be alone with a student in the performance of his duties shall submit to fingerprinting and]</u></p> <p>*New requirement added [a. <u>Anyone who is hired or is approved to provide volunteer services or contractual services, or services of a student-intern on a regular basis and will be alone with students cannot begin working with children until the criminal history background check has been received by the school.</u>]</p>	<p>671-210. Responsibilities of the licensee. §22.1-296.3, <i>Code of Virginia</i>, fingerprinting requirements for private schools accredited by a statewide accrediting organization recognized by the Board of Education, is consistent with the requirements for public schools.</p> <p>§22.1-296.2 of the <i>Code</i>. as of July 1, 2007, § 63.2-1726, <i>Code of Virginia</i>, expressly requires background checks for volunteers and individuals who provide contractual services directly to juveniles in a <i>residential facility</i>, “<i>on a regular basis and will be alone with a juvenile in the performance of his duties.</i>”</p> <p>Added new requirement for clarification and safeguard.</p>
<p>671-210. Responsibilities of the licensee. 9. Require as a condition of employment that any applicant who accepts employment requiring direct contact with students, whether full-time or part-time, permanent or temporary, including interns and volunteers [who work alone with students], provide written consent....</p>	<p>9. Require as a condition of employment that any applicant who accepts employment requiring direct contact with students, whether full-time or part-time, permanent or temporary, [and including interns and volunteers who work alone with students]] [<u>volunteers on a regular basis and will be alone with a student in the performance of his duties; or anyone who provides contractual services, including</u></p>	<p>9. §63.2-1726, <i>Code of Virginia</i>, requires a search of the central registry for founded cases of child abuse/neglect for children’s <i>residential facilities: any employee, volunteers and contractual service providers who are in the school on a regular basis and will be alone with a student in the performance</i></p>

Proposed language presented to the Board on April 25, 2013	Proposed current language	Change/Rationale
	<p><u>services of a student intern on a regular basis and will be alone with a student in the performance of his duties shall provide written consent....]</u> <u>[Where the applicant has resided in another state within the last five years, the school shall as a condition of employment determine if there are any founded complaints of child abuse or neglect in such state(s) pursuant to §§ 22.1-296.3 and 22.1-296.4 of the [Code of Virginia].</u></p> <p><u>*New requirement</u> <u>[a. Anyone who has not submitted to a search of the registry of founded complaints of child abuse and neglect maintained by the Department of Social Services shall not be permitted to work alone with children. b. The results of the search of the registry must be received prior to permitting an applicant to work with children.]</u></p>	<p><i>of his duties.</i></p> <p>Added clarification</p>
<p>671-330. Support staff. <u>B. Paraprofessionals and other ancillary staff shall be at least 18 years of age (21 years of age preferred), [at a minimum hold a high school diploma or [GED a general educational diploma (GED), have two years of full-time successful work-experience with children or completed two years of coursework in a related field, complete orientation conducted by the school administrator or designee regarding school policies and procedures and characteristics of students served, and work under the supervision of qualified staff.]</u></p>	<p>*671-330. Support staff <u>B. Paraprofessionals and other ancillary staff shall be at least 18 years of age (21 years of age preferred), [at a minimum hold a high school diploma or [GED a general educational diploma, (GED)], have two years of successful] work experience with children, or completed two years of coursework in a related field, [or upon employment, complete within 60 calendar days of hire training specific to the assigned student population and job duties as they relate to the academic and behavior progress of students. Such training shall include individualized instruction and student behavior management, including principles and strategies to reduce interfering behavior, build positive skills and</u></p>	<p>671-330. Support staff <u>B. Revised language to strengthen qualifications for hiring paraprofessionals. If the new hire has no training, shall complete specific training within 60 calendar days of hire. The training topics are consistent in fulfilling requirement for public schools, HB325, 2012 General Assembly; §22.1-298.3 of the Code of Virginia. The bill requires training and supervision of staff working with children with autism spectrum disorders.</u></p>

Proposed language presented to the Board on April 25, 2013	Proposed current language	Change/Rationale
	<p><u>enhance communication of students with autism spectrum disorders.]</u></p> <p>*New requirement <u>[E. Paraprofessionals shall work under the supervision of qualified professional staff.]</u></p>	E. Added clarification.
<p>671-350. Staff development. G. Each full-time staff person shall annually receive professional development complete an additional 15 hours of annual training applicable to the staff's job duties.]</p>	<p>*671-350. Staff development. <u>[G. Each staff who works directly with students shall annually receive 15 hours of professional development related to student progress and academic achievement that is applicable to the population served and to their job duties.]</u></p>	<p>671-350. Staff development G. Restored 15 hours of professional development annually to include all staff. Requires specific training.</p>
<p>671-370. School facilities and safety. [2. C. [Schools established after the effective date of these regulations and classrooms added to existing buildings shall provide 50 [net] square feet [per occupant] of classroom or instructional area per student [excluding classroom fixtures.]</p>	<p>671-370. School facilities and safety. [2. C. [Schools established after the effective date of these regulations and classrooms added to existing buildings shall provide 50 [net] square feet [per occupant] of classroom or instructional area per student [excluding classroom fixtures.]</p> <p>*New requirement <u>[M. Schools shall have safeguard(s) to be able to identify any visitor in the school building and on the premises during the school day.]</u></p>	<p>671-370. School facilities and safety. C. Added words “at least” 50 square feet for clarification and excluding classroom fixtures.</p> <p>A new requirement was added to 671-370 for added safeguard.</p>
<p>671-380. Contingency plans. C. Each school shall have at least [three one tornado drill[s] and at least one earthquake drill] every school year. [and more often if necessary for ...order that students may be practiced in such drills.]</p>	<p>671-380. Contingency plans. C. Each school shall [annually] have at least [three] one tornado drill[s]; [at least one earthquake drill; and at least two lockdown drills, one in September and one in January.]</p>	<p>671-380. Contingency plans. C. Added lockdown drills, consistent with public school requirement, effective July 1, 2013, (HB 2346, 2013 General Assembly)</p>
<p>671-400. Strip searches. A. Strip searches and body cavity searches are prohibited, [except as permitted by other applicable state regulations or as ordered by a court of competent jurisdiction.]</p>	<p>671-400.[Strip sSearches.] [A. Strip searches and body cavity searches are prohibited, [except as permitted by other applicable state regulations or as ordered by a court of competent jurisdiction.]</p>	<p>671-400. Searches. Omitted “Strip Searches” from this section. “Strip search and body cavity search” are listed under Prohibitions in 671-650.</p>

Proposed language presented to the Board on April 25, 2013	Proposed current language	Change/Rationale
<p>671-490. Program of instruction and learning objectives.</p>	<p>671-490. Program of instruction and learning objectives.</p> <p>*New requirement <u>[K. Each school shall implement evidence-based practices to improve academic, behavior, and social outcomes for all students.]</u></p>	<p>671-490. Program of instruction and learning objectives.</p> <p>K. Added language to require evidence-based practices</p>
<p>671-620. Student conduct.</p> <p><u>B. When a publicly placed student is suspended, including in-school suspension, or expelled, the [student's school shall notify the student's] home school division [shall be notified] within 24 hours.</u></p>	<p>671-620. Student conduct.</p> <p>*New requirement <u>[A. Each school shall provide a schoolwide environment that reinforces appropriate behaviors and assists students in becoming actively engaged in their own learning, academic and behavioral success.]</u></p> <p><u>[B. C] [The parent shall be notified on the date on which the decision is made to suspend or expel a student because of a violation of a code of student conduct.]</u> When a publicly placed student is suspended, <u>[including in-school suspension]</u>, or expelled, the <u>[student's school shall notify the student's]</u> home school division <u>[shall be notified]</u> within 24 hours.</p>	<p>671-620. Student conduct.</p> <p>A. Added new requirement to this section for clarification and expectation that schools are to provide an environment conducive for learning.</p> <p>C. Revised to require timely notification to the parent on the day decision is made.</p>
<p>671-630. Behavior intervention.</p> <p>A. Each school shall develop and implement written policies and procedures that emphasize positive behavior interventions that focus on teaching and supporting students to practice methods to manage their own behavior.</p> <p>[E. Application of a formal behavior management program designed to reduce or eliminate severely maladaptive, violent, or self-injurious behavior contingent upon the exhibition of such behaviors is allowed only as part of an individually approved plan that is consistent with sound therapeutic practice.]</p>	<p>671-630. Behavior intervention.</p> <p>A. Each school shall develop and implement written policies and procedures that emphasize positive behavior interventions[.] [that focus on teaching and supporting students to practice methods to manage their own behavior.]</p> <p>[E. Application of a formal behavior management program designed to reduce or eliminate severely maladaptive, violent, or self-injurious behavior contingent upon the exhibition of such behaviors is allowed only as part of an individually approved plan that is consistent with sound therapeutic practice.]</p>	<p>671-630. Behavior intervention.</p> <p>A. Deleted language from this section, covered more appropriately in 671-620. A.</p> <p>E. Deleted previous language and added new requirement.</p>

Proposed language presented to the Board on April 25, 2013	Proposed current language	Change/Rationale
	<p>*New requirement <u>[E. Parents shall be provided access to the school's behavior management policy and procedures upon enrollment and at the beginning of each school year, and provided a written copy upon request.]</u></p>	<p>E. Added for clarification that the school's behavior management policy and procedures shall be provided to parents.</p>
<p>671.650. Prohibitions. [A.] The following actions are prohibited: [1. Restraint and seclusion, except when it is necessary to protect the student or others from personal harm, injury, or death and other less restrictive interventions were unsuccessful;] [2. Prone "face down" restraints, mechanical restraints, [and]pharmacological restraints [, and any other restraint that restricts breathing or harms the child or interferes with the child's ability to communicate;] [97.] Application of aversive stimuli; [10. Strip and body cavity searches; and]</p>	<p>*671.650. Prohibitions. [A.] The following actions are prohibited: <u>[1. Restraint and seclusion, except when it is necessary to protect the student or others from personal harm, injury, or death and other less restrictive interventions were unsuccessful;] [2. Prone "face down" restraints, mechanical restraints, [and] pharmacological restraints[, and any other restraint that restricts breathing, or harms the child or interferes with the child's ability to communicate;] [9. Application of aversive stimuli;] [10. Strip and body cavity searches; and]</u></p>	<p>671.650. Prohibitions. 1. Changed to original proposed language, restoring all prohibitions and added new language, prohibiting any other restraint that restricts breathing, harms the child or interferes with the child's ability to communicate.</p>
<p>671-660. Managing student behavior in emergency situations. [B. A.] Each school shall have written policies and procedures that include, but are not limited to</p> <p>1. Physical restraint or seclusion is allowed only in an emergency situation for a time period that is necessary to contain the behavior of the student so that the student no longer presents an immediate threat of causing physical injury to self or others or causing severe property damage [that may result in personal</p>	<p>*671-660. Managing student behavior in emergency situations. [B. A.] Each school shall have written policies and procedures [made available annually to students, parents, and placing agencies] that include, but are not limited to....</p> <p>[4. B.] Physical restraint or seclusion is allowed only in an emergency situation [for a time period that] [and] is necessary to [protect the student or another person from imminent danger of serious physical harm after less intrusive interventions have been attempted and failed to manage that particular</p>	<p>671-660. Managing student behavior in emergency situations. Added language for clarification</p> <p>B. Reworded to ensure other less intrusive interventions have been attempted and failed and to provide clarification.</p>

Proposed language presented to the Board on April 25, 2013	Proposed current language	Change/Rationale
injury].	<p><u>behavior and there is a substantial explanation for why other interventions were deemed inadequate or inappropriate.]</u> [contain the behavior of the student so that the student no longer presents an immediate threat of causing physical injury to self or others or causing severe property damage [that may result in personal injury]</p> <p><u>*New requirement</u> <u>[1. 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, shall trigger a review and, if appropriate, a revision of behavioral strategies currently in place to address dangerous behavior. If positive behavioral strategies are not in place, staff shall develop them.]</u></p> <p><u>*New requirement</u> <u>[2. In cases where a student has a history of dangerous behavior for which restraint or seclusion was considered or used, a school shall have a plan developed in consultation with the parent for: (a) teaching and supporting more appropriate behavior; and (b) determining positive methods to prevent behavioral escalations that have previously resulted in the use of restraint or seclusion.]</u></p> <p><u>*New requirement</u> <u>[8. Schools shall permit parents to inspect any area used during an emergency for the purpose of seclusion.]</u></p> <p>[g- 8- 10.] Each application of physical restraint or seclusion shall</p>	<p>1. Requires a review of the use of restraint or seclusion when there is repeated use, and revision or development of behavioral strategies.</p> <p>2. Added new requirement for development of a plan for teaching and supporting more appropriate behavior; and determining positive methods to prevent the child’s behavioral escalations. The plan must be developed in consultation with the parent.</p> <p>8. Added new requirement that permits parents to inspect area used for seclusion.</p> <p>10. Added “behavior antecedents”</p>

Proposed language presented to the Board on April 25, 2013	Proposed current language	Change/Rationale
<p>g. 8.] Each application of physical restraint or seclusion shall be fully documented in the student's record including date, time, staff involved, justification for the [physical] restraint or seclusion, less restrictive interventions that were unsuccessfully attempted prior to using physical restraint or seclusion, duration, description of method or methods of physical restraint techniques used, signature of the person completing the report and date, and reviewer's signature and date.</p>	<p>be fully documented in the student's record including date, time, staff involved, ... [physical] restraint or seclusion, [<u>behavior antecedents</u>],.... <u>[The written report shall be made available to the parent within two business days of the occurrence and opportunity given for the parent and student, as appropriate, to discuss the matter with school staff.]</u></p> <p>*New requirement <u>[11. Schools shall collect and annually report to the Virginia Department of Education the number of times restraint and seclusion were used during the school year.]</u></p>	<p>Added written report to the parent within two business days.</p> <p>Added requirement for written report to the parent within two business days and opportunity to meet with staff.</p> <p>11. Added requirement for reporting on restraint and seclusion. Data will be used for monitoring purposes and additional safeguard.</p>
<p>671-690. Suspected child abuse 2. [Promptly referring Reporting as soon as possible, but no later than 24 hours after having a suspicion of a reportable offense [suspected cases] of child abuse and neglect to [the proper authorities and cooperating with child protective services during any investigation]</p>	<p>671-690. Suspected child abuse and neglect</p> <p>No change to proposed language</p> <p>The proposed language is consistent with changes to the <i>Child Abuse and Neglect Mandated Reporting</i> law, §63.2-1509, Effective, July 1, 2012.</p>	<p>671-690. Suspected child abuse and neglect</p> <p>Recommend no change. Mandated reporters are required to report "<i>as soon as possible, but no later than 24 hours</i>" after having a suspicion of a reportable offense. (§63.2-1509, <i>Code of Virginia</i>)</p>
<p>*671-700. Serious incident reports. A. Any serious incident, accident, or injury to a student [or medication error] that occurs at the school or a school-sponsored activity shall be reported immediately, [but] no later than [the end of the school day] 24 hours of the occurrence] to the parent, and [licensing agency. For publicly placed students, the home school division and]....</p>	<p>671-700. Serious incident reports. A. Any serious incident, accident, or injury to a student [or medication error] that occurs at the school or a school-sponsored activity shall be reported [to the parent] immediately, [but] no later than [<u>the end of the school day.</u>] [to the parent, the student's public school, placing agency, and licensing agency.] [<u>A publicly placed student's home school division and the placing agency shall be notified as soon as possible but not later than 24 hours of the occurrence.</u>]</p>	<p>671-700. Serious incident reports. A. Revised language for immediate reporting to the parent but no later than the end of the school day.</p>

Parent Notification Requirements

The chart below identifies the sections of the proposed regulations that require timelines for reporting to parents.

Section of Proposed Regulations	Proposed requirement for parent notification
670-380. Contingency plans – disaster, emergency, fireshall notify the parent... <u>as soon as possible</u>
670-620. Student conduct. Suspension and expulsion	...shall notify the parent <u>on the date on which the decision is made</u> to suspend or expel a student.
670-660. Managing student behavior in emergency situations. Physical restraint and seclusion	B. 9. <u>On the day of each incident of physical restraint or seclusion...</u> B. 10. <u>The written report shall be made available to the parent within two business days of the occurrence....</u>
670-690. Suspected child abuse and neglect.	B. A case of suspected child abuse or neglect occurring at the school or on a school-sponsored event or excursion shall be <u>reported immediately</u> to the student’s parent....
670-700. Serious incident reports.	A. Any serious incident, accident, or injury to a student that occurs at the school or a school-sponsored activity shall be <u>reported to the parent immediately but no later than the end of the school day.</u>

Impact on Fiscal and Human Resources:

There is no additional projected cost to the state or localities to implement and enforce the proposed regulations. Promulgation of these regulations would be an advantage for public schools that cannot serve students because of their disabilities. Parents who seek alternative education have the option of private school placement in schools licensed by the Board. The Virginia Department of Education's licensing specialists and the private education providers will benefit from a single regulation for both day and residential schools. There will be minimum impact on the existing private schools for students with disabilities.

Timetable for Further Review/Action:

Upon the Governor’s approval of the proposed *Regulations Governing the Operation of Private Schools for Students with Disabilities*, the Virginia Department of Education will post the revised regulations on the agency’s Web site and inform constituents through written communications, meetings with private and public stakeholders, and the Virginia Association of Independent Specialized Education Facilities (VAISEF).

Superintendent's Recommendation:

The Superintendent of Public Instruction recommends that the Board of Education approve the proposed *Regulations Governing the Operation of Private Schools for Students with Disabilities*, 8 VAC20-670-10 et seq. (Final Stage) and request repeal of the Board’s *Regulations Governing the Operation of Private Day Schools for Students with Disabilities*, 8 VAC 20-670-10 et seq., and authorize the Department of Education to proceed with the requirements of the Administrative Process Act.

Public Comments

These comments were submitted to the Board of Education in response to sections regarding the management of student behavior in the *Proposed Regulations Governing the Operation of Private Schools for Students with Disabilities*, (8VAC20-671 et. seq). The comments were submitted after the Board of Education’s meeting on April 25, 2013. The deletion of restraint and seclusion in §671-650, Prohibitions, may have caused misunderstanding that they would be allowed. This was never the case as they were expressly prohibited in §671-660, Managing student behavior in emergency situations, where restraint and seclusion are allowed only in an emergency situation.

Commenter	Comment	Agency Response
<p>Maureen Hollowell Virginia Coalition for Students with The Virginia Coalition of Students with Disabilities</p>	<p>Recommendation: In proposed 8 VAC20-671-650 (Prohibitions), restore the proposed language prohibiting “application of aversive stimuli.”</p>	<p>§671-650. Prohibitions. Restored all prohibitions, including "aversive stimuli."</p>
<p>Autism National Committee, national Autism Society Central Virginia Autism Society of Northern Virginia Autistic Self-Advocacy Network, Central Virginia Chapter</p>	<p>Recommendation: In proposed 8 VAC20-671-650 (Prohibitions), restore the proposed language prohibiting prone face down restraint and add a prohibition on “restraint that is life-threatening, including restraint that restricts breathing.”</p>	<p>§671-10. Definitions. A definition of aversive stimuli has been added. "Aversive stimuli" means any action used to punish a student or to eliminate, reduce, or discourage the problem behavior by use of any of the following or any other actions that are painful, humiliating, degrading, or abusive....</p>
<p>Blue Ridge Independent Living Center, Inc., Roanoke Children and Adults with Attention Deficit/Hyperactivity Disorder, national CJR Enterprises, LLC, Stephenson disAbility Resource Center of the Rappahannock, Inc. Down Syndrome Association of Greater Richmond Down Syndrome Association of Northern Virginia Endependence Center, Inc., Norfolk ENdependence Center of Northern Virginia, Inc. Fairfax Alliance for Appropriate Public Education</p>	<p>Recommendation: In 8 VAC 20-671-660, strengthen the language so the use of restraint and seclusion is prohibited unless there is an emergency threatening an immediate danger of physical injury and less restrictive measures have failed or would be ineffective to resolve the situation. Also clarify that restraint/seclusion may be used for violent property destruction that threatens immediate risk of physical harm and danger. Currently, the regulation does not require less restrictive measures to have failed or be deemed ineffective; and permits the use of restraint/seclusion for “severe property damage that may result in personal injury.” Finally, continue the existing prohibitions on placing a person in a room from which they cannot exit in residential programs and the proposed ban on placing any child in a room where the door is locked or blocked by</p>	<p>§671-650. Prohibitions. Restored all prohibitions, including prone “face down” restraints, mechanical restraints, pharmacological restraints, and any other restraint that restricts breathing or harms the child or interferes with the child’s ability to communicate.</p> <p>§671-660. B. Revised language: Physical restraint or seclusion is allowed only in an emergency situation and is necessary to protect the student or another person from imminent danger of serious physical harm after less intrusive interventions have been attempted and failed to manage that particular behavior and there is a substantial explanation for why other interventions were deemed inadequate or inappropriate.</p> <p>§671-660. B. 7. The door to any room in which a student is secluded may be held shut only when a staff member is personally</p>

Commenter	Comment	Agency Response
<p>Grafton Integrated Health Network, Winchester Independence Empowerment Center, Manassas Junction Center for Independent Living, Inc., Wise Legal Aid Justice Center, JustChildren Program, statewide Mathews County Special Education Advisory Committee National Association of Councils on Developmental The Virginia Coalition of Students with Disabilities, national Parents of Autistic Children of Northern Virginia PELE Special Education Advocacy Clinic, Williamsburg The Arc of Augusta The Arc of Central Virginia The Arc of Greater Williamsburg The Arc of North Central Virginia The Arc of Northern Virginia The Arc of the Virginia Peninsula, Inc. The Arc of Virginia, statewide The Arc South of the James, Colonial Heights The WHOLE in Autism, LLC, Centreville Virginia Association of Centers for Independent Living, statewide Virginia Board for People with The Virginia Coalition of Students with Disabilities, statewide Virginia Down Syndrome</p>	<p>furniture, equipment, etc.</p> <p>Recommendation: Amend proposed 8VAC20-671-630 (Behavior intervention) so that it defines positive behavioral interventions as evidence-based practices, instruction, and assistance that improve academic and social outcomes, rather than defining it in terms of teaching children to manage their own behavior. Specifically, require that each school develop and implement written policies and procedures that emphasize positive behavior interventions, meaning a schoolwide systematic approach to embed evidence-based practices and data-driven decision making to improve school climate and culture in order to achieve improved academic and social outcomes, and increase learning for all students, including those with the most complex and intensive behavioral needs; and encompasses a range of systemic and individualized positive strategies to reinforce desired behaviors, diminish reoccurrence of challenging behaviors, and teach appropriate behaviors to students.</p> <p>Recommendation: Eliminate proposed 8VAC20-671-630 (E) that would permit the inclusion of restraint, seclusion, and potentially aversive in a formal behavior management programs. Replace it with a provision forbidding the inclusion of restraint and seclusion in any student’s behavior management plan (and ban aversive, as stated above).</p>	<p>securing it. The door must immediately disengage when the staff member steps away from it. The room must meet specification including size and viewing panels that ensure the student’s safety at all times including during a fire or other emergency.</p> <p>§671-490. Program of Instruction and Learning Objectives. Added: K. Each school shall implement evidence-based practices to improve academic, behavior, and social outcomes for all students.</p> <p>§671-620. A. New requirement added: Each school shall provide a schoolwide environment that reinforces appropriate behaviors and assists students in becoming actively engaged in their own learning, academic, and behavioral success.</p> <p>§671-630. A. Each school shall develop and implement written policies and procedures that emphasize positive behavior interventions. The end of the statement was deleted: "that focus on teaching and supporting students to practice methods to manage their own behavior."</p> <p>§671-630. C. Staff shall consider behavior management data in their annual review of the school's policies and procedures.</p> <p>§671-630. E. was replaced with new language: Parents shall be provided access to the school’s behavior management policy and procedures upon enrollment and at the beginning of each school year, and provided a written copy upon request.</p> <p>§671-660. New requirement has been added:</p>

Commenter	Comment	Agency Response
<p>Alliance, statewide Voices for Virginia's Children, statewide Virginia Office for Protection and Advocacy, statewide WrightsLaw, national</p>	<p>Recommendation: Amend proposed 8VAC20-671-630 (Behavior intervention) to make clear that parents must consent to a behavioral intervention plan for their child, including children who are privately placed by their parents rather than placed at public expense.</p> <p>Recommendation: In proposed 8 VAC20-671-650 (Prohibitions), add a clause prohibiting the use of restraint or seclusion that prevents a child from communicating distress or danger.</p> <p>Recommendation: In 8 VAC 20-671-660, new B. 7, states that parents must receive oral or other notification within 24 hours, followed by a written report within 2 days including the information required in the B.8. documentation, including the date, time, staff involved, justification for restraint/seclusion, less restrictive</p>	<p>B. 2. In cases where a student has a history of dangerous behavior for which restraint or seclusion was considered or used, a school shall have a plan developed in consultation with the parent for: (a) teaching and supporting more appropriate behavior; and (b) determining positive methods to prevent behavioral escalations that have previously resulted in the use of restraint or seclusion.</p> <p>§671-630. Behavior intervention. The section does not address behavior intervention plans. The following section speaks to behavior plans.</p> <p>§671-660. Managing student behavior in emergency situations. A new requirement has been added: B. 2. In cases where a student has a history of dangerous behavior for which restraint or seclusion was considered or used, a school shall have a plan developed in consultation with the parent for: (a) teaching and supporting more appropriate behavior; and (b) determining positive methods to prevent behavioral escalations that have previously resulted in the use of restraint or seclusion.</p> <p>§671-650. Prohibitions 2. was amended to: Prone "face down" restraints, mechanical restraints, pharmacological restraints, and any other restraint that restricts breathing or harms the child <i>or interferes with the child's ability to communicate</i>;</p> <p>§671-660. B. Requirement has been revised to: 9. The parent shall be informed on the day of each incident of physical restraint or seclusion. The student's home school division and placing agency shall be informed as soon as possible but within 24 hours of the occurrence.</p>

Commenter	Comment	Agency Response
	<p>interventions that were unsuccessfully attempted prior to using restraint/seclusion, duration and description of the methods of restraint used. The written notification should also include a description of the behavioral antecedents that occurred before the child engaged in dangerous behavior that led to emergency use of restraint/seclusion.</p> <p>Recommendation: Add a new provision requiring that after each use of restraint or seclusion, the school shall convene a debriefing or review meeting to review the incident, consider relevant information, plan to prevent and reduce reoccurrence of the use of physical restraint and seclusion, and recommend appropriate positive behavioral interventions and support.</p> <p>Recommendation: Add a new provision requiring the collection and reporting to the Virginia Department of Education the following data each year: the total number of incidents in which restraint or seclusion was imposed upon a student; and the total number of incidents in which restraint or seclusion resulted in injury to students or school personnel.</p>	<p>§671-660. B.10. was amended to: Each application of physical restraint or seclusion shall be fully documented in the student's record including date, time, staff involved, justification for the physical restraint or seclusion, behavior antecedents, less restrictive interventions that were unsuccessfully attempted prior to using physical restraint or seclusion, duration, description of method or methods of physical restraint techniques used, signature of the person completing the report and date, and reviewer's signature and date. The written report shall be available to the parent within two business days of the occurrence and opportunity given for the parent and student, as appropriate, to discuss the matter with school staff.</p> <p>§671-660. New requirement added: B. 1. 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, shall trigger a review and, if appropriate, a revision of behavioral strategies currently in place to address dangerous behavior. If positive behavioral strategies are not in place, staff shall develop them.</p> <p>§671-660. B.11. New requirement has been added: Schools shall collect and annually report to the Virginia Department of Education the number of times restraints and seclusion were used during the school year.</p> <p>§671-700 C. addresses serious incident reports. It states: The licensing agency shall review reports of serious incidents and investigate as appropriate.</p> <p>§671-10. Definitions. Definitions have been added: "Mechanical restraint" means</p>

Commenter	Comment	Agency Response
	<p>Recommendation: Adopt definitions of mechanical and pharmacological restraint. (A) Define Mechanical Restraint to mean the use of devices as a means of restricting a student's freedom of movement, and does not mean does not mean devices used by trained school personnel, or used by a student, for the specific and approved therapeutic or safety purposes for which such devices were designed and, if applicable, prescribed, including-- (1) restraints for medical immobilization; (2) adaptive devices or mechanical supports used to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports; or (3) vehicle safety restraints when used as intended during the transport of a student in a moving vehicle. (B) Define pharmacological restraint as a drug or medication used on a student to control behavior or restrict freedom of movement that is not--(1) prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional's authority under Virginia law, for the standard treatment of a student's medical or psychiatric condition; and (2) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional's authority under Virginia law.</p> <p>Recommendation: Retain the current draft 8VAC20-671-620 (Student Conduct) requiring private schools to</p>	<p>the use of any device or equipment to restrict a student's freedom of movement. This term does not include devices implemented by trained school personnel, or utilized by a student that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were designed, such as:</p> <ol style="list-style-type: none"> 1. Adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to all greater freedom of mobility than would be possible without the use of such devices or mechanical supports; 2. Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle; 3. Restraints for medical immobilization; or 4. Orthopedically prescribed devices that permit a student to participate in activities without risk of harm. <p>U.S. Department of Education, <i>(Restraint and Seclusion: Resource Document, 2012)</i></p> <p>"Pharmacological restraints" means a drug or medication used on a student to control behavior or restrict freedom of movement that is not (1) prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional's authority for the standard treatment of a student's medical or psychiatric condition; and (2) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional's authority. <i>(Keeping All Students Safe Act, 2011)</i></p> <p>§671-620. No change was made concerning comment.</p>

Commenter	Comment	Agency Response
	have policies to prevent disability harassment and procedures for enforcement.	
Bob and Helen Welch Parents of a child with a disability	Questioned if the proposed regulations apply to public schools and requested copies of regulations that govern special education students in Virginia's public schools, specifically Fairfax.	The proposed regulations do not apply to public schools. Mailed copy of the Board of Education's <i>Regulations Governing Special Education Programs for Children with Disabilities in Virginia, 8VAC20-81-10</i> .
Karla Lopez	Supports the comments of The Virginia Coalition of Students with Disabilities.	See responses to The Virginia Coalition of Students with Disabilities.
Sheogorath	Supports the comments of The Virginia Coalition of Students with Disabilities	See responses to The Virginia Coalition of Students with Disabilities.
Catherine Meade	Supports the comments of The Virginia Coalition of Students with Disabilities	See responses to The Virginia Coalition of Students with Disabilities.
Tricia Smigel	Supports the comments of The Virginia Coalition of Students with Disabilities	See responses to The Virginia Coalition of Students with Disabilities.
Daniel Wade	Supports the comments of The Virginia Coalition of Students with Disabilities	See responses to The Virginia Coalition of Students with Disabilities.
Heidi L. Lawyer Virginia Board for People with The Virginia Coalition of Students with Disabilities	<p>Supports the comments made by The Virginia Coalition of Students with Disabilities and the Virginia Office for Protection and Advocacy (VOPA).</p> <p>Opposes proposed language which would allow "aversive stimuli" and of prone, face-down restraints.</p> <p>Recommends that VDOE revise the regulations to ensure that the use of seclusion and restraint is only used in emergencies which pose an immediate danger of physical harm to self or others and only after less restrictive measures have failed or have been determined to be ineffective.</p> <p>Supports The Virginia Coalition of Students with Disabilities' recommendations that the regulations should be more specific in addressing behavioral interventions including the</p>	<p>See responses to The Virginia Coalition of Students with Disabilities.</p> <p>§671-650. Prohibitions. All prohibitions have been restored to this section. The section includes: Application of aversive stimuli, prone "face down" restraints, mechanical restraints, pharmacological restraints and any other restraint that restricts breathing or harms the child or interferes with the child's ability to communicate.</p> <p>It was never the intent of the Virginia Department of Education to allow those practices unless in an extreme emergency situation.</p> <p>See responses to The Virginia Coalition of Students with Disabilities.</p>

Commenter	Comment	Agency Response
	<p>following: redefinition and adoption of evidence-based positive behavioral interventions; development of person-centered behavioral plans based on professional assessments which include both the student and family/guardian; systematic approaches to embed evidence-based practices and data-driven decisions, and prohibition on including seclusion, restraint, and aversive stimuli as part of any behavioral plan.</p>	
<p>Nathan Habel, M.Ed., BCBA, LBA The Faison School for Autism</p>	<p>In instances of imminent danger it is critical for well-trained professionals to be able to utilize supervised seclusion and/or physical restraint (including prone restraint to ensure the safety of both students and staff members.</p> <p>It is paramount that individuals who serve students with disabilities who may engage in imminent dangerous behavior receive appropriate training and that restraint and seclusion not be utilized as a behavior intervention technique and only as a last resort.</p> <p>The manner in which restraint and seclusion is being presented by several advocacy groups to the general public is inappropriate and unfounded. It should be the goal of any special educator and behavior analyst to utilize the least restrictive treatments and interventions possible when working with students that emit dangerous behavior.</p> <p>To ignore the fact that students emit behavior which presents imminent danger to themselves and others and to hinder the use of appropriate safety measures is irresponsible.</p> <p>If restraint and seclusion were</p>	<p>§671-660. A. Each school shall have written policies and procedures made available annually to students, parents, and placing agencies that include, but are not limited to: 3. A statement that behavior management techniques are applied in order of their degree of intrusiveness or restrictiveness and the conditions under which they may be used by trained personnel.</p> <p>§671-660. Managing student behavior in emergency situations. B. Physical restraint or seclusion is allowed only in an emergency situation and is necessary to protect the student or another person from imminent danger of serious physical harm after less intrusive interventions have been attempted and failed to manage that particular behavior and there is a substantial explanation for why other interventions were deemed inadequate or inappropriate.</p> <p>§671-650. Prohibitions. Prohibits restraint and seclusion. They can only be used in an extreme emergency. All prohibitions have been restored to this section.</p>

Commenter	Comment	Agency Response
	<p>restricted in private day schools, it would be impossible for many students to receive appropriate education in a school setting, which would in turn lead to more restrictive treatment settings for these students, including hospitalization and what has previously been referred to as institutionalization.</p>	
<p>Eli Newcomb CABAS Certified Teacher Assistant Director The Faison School</p>	<p>Many of those making comments have neglected to consider the needs of the most challenged individuals served in private schools and have failed to fully read and interpret the specific language and context for a few of the proposed items. Many have discounted the repercussions of an educational system that can no longer serve severely aggressive and self-injurious individuals in the private school setting.</p> <p>I write to express my full support for these proposed regulations as written.</p> <p>When staff are properly overseen, internally and externally, restrictive procedures such as restraint and seclusion can most definitely be carried out safely, ethically, and for the express purpose of keeping students and teachers safe.</p> <p>As written, I believe the proposed regulations adequately stipulate the necessary conditions (i.e., Imminent Danger) to utilize these procedures and I feel confident that the Department of Education is positioned to evaluate school practices ongoing as it pertains to this matter.</p>	<p>§671-660. Managing student behavior in emergency situations. Continues to allow the use of restraint and seclusion only in an emergency situation. The language has been strengthened and reworded as follows: B. Physical restraint or seclusion is allowed only in an emergency situation and is necessary to protect the student or another person from imminent danger of serious physical harm after less intrusive interventions have been attempted and failed to manage that particular behavior and there is a substantial explanation for why other interventions were deemed inadequate or inappropriate.</p>
<p>Nicole Dooley Attorney, JustChildren Legal Aid Justice Center</p>	<p>Only adopt regulations that explicitly limit the use of restraint and seclusion to a last resort option to prevent physical injury in an emergency situation where there is immediate</p>	<p>§671-650. Prohibitions. The original list of prohibitions was restored in this section. Restraint and seclusion are prohibited.</p>

Commenter	Comment	Agency Response
	<p>danger of physical harm and less restrictive measures have failed or would be ineffective to resolve the situation.</p> <p>Eliminate the proposed regulation permitting the inclusion of restraint, seclusion, and potentially aversive in a formal behavior management program.</p> <p>Clarify this issue by including a provision forbidding the inclusion of restraint, seclusion, or aversive in any student’s formal behavior management plan or IEP.</p> <p>Add a new provision requiring the collection and reporting to the Department of Education of the following data each year: the total number of incidents in which restraint or seclusion was imposed upon a student; and the total number of incidents in which restraint or seclusion resulted in injury to students or school personnel.</p>	<p>§671-660. Managing student behavior in emergency situations, states: B. Physical restraint or seclusion is allowed only in an emergency situation and is necessary to protect the student or another person from imminent danger of serious physical harm after less intrusive interventions have been attempted and failed to manage that particular behavior and there is a substantial explanation for why other interventions were deemed inadequate or inappropriate.</p> <p>§671-660. Managing student behavior in emergency situations. The section does not provide provision for restraint, seclusion, or aversive stimuli in a formal behavior management plan. Development of IEPs is the responsibility of public schools, not private schools.</p> <p>§671-660. Managing student behavior in emergency situations. Added: B. 11. Schools shall collect and annually report to the Virginia Department of Education the number of times restraints and seclusion were used during the school year.</p>
Missa Jones	Supports the comments of The Virginia Coalition of Students with Disabilities	See responses to The Virginia Coalition of Students with Disabilities.
Angee Hall	Supports the comments of The Virginia Coalition of Students with Disabilities	See responses to The Virginia Coalition of Students with Disabilities.
Melissa Waugh Special Education Attorney	<p>Supports the comments of The Virginia Coalition of Students with Disabilities.</p> <p>The regulations should ban restraints that threaten life or impede breathing, especially prone restraint. Restraint and seclusion should only be used in</p>	<p>See responses to The Virginia Coalition of Students with Disabilities.</p> <p>§671-650. Prohibitions. The original list of prohibitions was restored in this section. Restraint, seclusion, and aversive are prohibited.</p>

Commenter	Comment	Agency Response
	<p>emergencies where it is absolutely necessary to prevent physical injury to someone – never injury to property if there is no immediate threat of injury to a person. They should never be part of a student’s behavioral plan.</p> <p>Parents should receive oral and written notice of their use within 24 hours, so that medical attention can be sought for any latent injuries that could be life threatening. Parents should be part of a debriefing process following the use of restraint/seclusion so that strategies can be developed to eliminate the necessity of these techniques in the future.</p> <p>VDOE should restore the initial proposal to ban aversive stimuli-such as chemical sprays, electric shock, placing children in freezing cold, and excessively loud noises. Aversive stimuli are painful, inhumane, and should never be used.</p>	<p>§671-660. Managing student behavior in emergency situations. B. Deleted language concerning property damage.</p> <p>§671-660. Managing student behavior in emergency situations. B. 9. The parent shall be informed on the day of each incident of physical restraint or seclusion. The student’s home school division and placing agency shall be informed as soon as possible but within 24 hours of the occurrence.</p> <p>§671-660. Managing student behavior in emergency situations. B. 10. Each application of physical restraint or seclusion shall be fully documented in the student's record including date, time, staff involved, justification for the physical restraint or seclusion, behavior antecedents, less restrictive interventions that were unsuccessfully attempted prior to using physical restraint or seclusion, duration, description of method or methods of physical restraint techniques used, signature of the person completing the report and date, and reviewer's signature and date. Added to statement: The written report shall be made available to the parent within two business days of the occurrence and opportunity given for the parent and student, as appropriate, to discuss the matter with school staff.</p> <p>§671-10. Definitions. The definition of "aversive stimuli" has been added.</p> <p>§671-650. Prohibitions. Application of aversive stimuli is prohibited. It was never the intent of the Department of Education to allow aversive stimuli.</p>
Mary Ann Bergeron Executive Director	Supports the comments of The Virginia Coalition of Students with	See responses to The Virginia Coalition of Students with Disabilities.

Commenter	Comment	Agency Response
<p>Virginia Association of Community Services Boards (VACSB) Grandmother of a child with a disability</p>	<p>Disabilities.</p> <p>Should ban restraints that threaten life or impede breathing, including prone restraint. Restraint and seclusion should be used only in emergencies where they are absolutely necessary to prevent physical injury to someone. They should never be part of the student's behavioral plans.</p> <p>Should guarantee that parents receive oral and written notice of their use, and be part of a debriefing process. Restraints should never stop children from communicating medical distress.</p> <p>VDOE should restore the initial proposal to ban aversive stimuli – such as chemical sprays, electric shock, placing children in freezing cold, and excessively loud noises. Aversive stimuli are painful, inhumane, and should never be used. Please use your role in public policy to protect children with disabilities from these dangerous practices and adopt The Virginia Coalition of Students with Disabilities' comments on behalf of the VACSB.</p>	<p>§671-650. Prohibitions. The section identifies all prohibited actions, including any harmful restraint or seclusion, except when it is necessary to protect the student or others from personal harm, injury, or death and other less restrictive interventions were unsuccessful.</p> <p>Prone "face down" restraints, mechanical restraints, and pharmacological restraints and any other restraint that restricts breathing or harms the child or interferes with the child's ability to communicate.</p> <p>§671-660. Managing student behavior in emergency situations.</p> <p>B. 9. The parent shall be informed on the day of each incident of physical restraint or seclusion. The student's home school division and placing agency shall be informed as soon as possible but within 24 hours of the occurrence.</p> <p>§671-660. Managing student behavior in emergency situations.</p> <p>B. 10. The written report shall be made available to the parent within two business days of the occurrence and opportunity given for the parent and student, as appropriate, to discuss the matter with school staff.</p> <p>§671-650. Prohibitions. The original list of prohibitions has been restored in this section, including restraint, aversive stimuli, and seclusion.</p> <p>See responses to The Virginia Coalition of Students with Disabilities</p>
<p>Helen Ragazzi MD Virginia Chapter of the American Academy of Pediatrics</p>	<p>Supports the comments of The Virginia Coalition of Students with Disabilities</p>	<p>See responses to The Virginia Coalition of Students with Disabilities.</p>

Commenter	Comment	Agency Response
Scott Zeiter Grafton Integrated Health Network	Attached White Paper regarding ethical issues surrounding the use of seclusion and restraint and other aversive practices in private and public schools within the Commonwealth.	§671-650. Prohibitions. The original list of prohibitions has been restored. Aversive behavior interventions, restraint and seclusion are prohibited and can only be used in emergency situations.
Martha Wingfield Cousin of a man with The Virginia Coalition of Students with Disabilities	Do not allow the use of prone restraint and aversive behavior interventions in private schools for people with disabilities.	§671-650. Prohibitions. The original list of prohibitions has been restored. Aversive behavior interventions, restraint and seclusion are prohibited and can only be used in emergency situations.
Ken Jurman	Supports the comments of The Virginia Coalition of Students with Disabilities.	See response to The Virginia Coalition of Students with Disabilities.
Sean Campbell Parent of a child with a disability	<p>Supports the comments of The Virginia Coalition of Students with Disabilities.</p> <p>Requests that regulations require written notification of parents of the use of restraints and seclusion.</p> <p>No child should be exposed to aversive stimuli.</p>	<p>See response to The Virginia Coalition of Students with Disabilities.</p> <p>§671-660. Managing student behavior in emergency situations. Requirement added: B.9. The parent shall be informed on the day of each incident of physical restraint or seclusion. The student's home school division and placing agency shall be informed as soon as possible but within 24 hours of the occurrence.</p> <p>§671-660. Managing student behavior in emergency situations. Added new requirement: B. 10. The written report shall be made available to the parent within two business days of the occurrence and opportunity given for the parent and student, as appropriate, to discuss the matter with school staff.</p> <p>§671-650. Prohibitions. The original list of prohibitions has been restored. Aversive behavior interventions are prohibited.</p>
Jill Buzby	Supports the comments of The Virginia Coalition of Students with Disabilities.	See response to The Virginia Coalition of Students with Disabilities.
Sue Nelson Sargeant Educator	Recommends notification of parents of alleged abuse against their child by	§671-660. Managing student behavior in emergency situations.

Commenter	Comment	Agency Response
	<p>a school employee at the same time DSS is notified.</p>	<p>B. 9. Requirement added: The parent shall be informed on the day of each incident of physical restraint or seclusion. The student’s home school division and placing agency shall be informed as soon as possible but within 24 hours of the occurrence.</p> <p>§671-690. Suspected child abuse and neglect.</p> <p>A. Written policies and procedures related to child abuse and neglect shall comply with the requirements of § 63.2-1509 of the [<i>Code of Virginia</i>] and distributed to all staff members. Policies and procedures shall include:</p> <ol style="list-style-type: none"> 1. Handling accusations against staff; and 2. Reporting as soon as possible, but no later than 24 hours after having a suspicion of a reportable offense of child abuse and neglect to the proper authorities and cooperating with child protective services during any investigation. <p>B. Any case of suspected child abuse or neglect occurring at the school or on a school-sponsored event or excursion shall be reported immediately to the student's parent, and licensing agency. For publicly placed students, the home school division and the placing agency shall also be notified.</p>
Teresa B. Snow	<p>Proposes an end to cruel treatment of special needs children that inflicts pain, causes suffering and death.</p>	<p>§671-650. Prohibitions. The original list of prohibitions has been restored in this section. Aversive behavior interventions, restraint and seclusion are prohibited and can only be used in emergency situations.</p>
Sharon DeBoever Virginia Dept. of Social Services	<p>Recommends that restraint and seclusion not be allowed in private schools.</p> <p>We should be looking to equalize programming and intervention strategies between private and public schools.</p>	<p>§671-660. Managing student behavior in emergency situations.</p> <p>B. Physical restraint or seclusion is allowed only in an emergency situation and is necessary to protect the student or another person from imminent danger of serious physical harm after less intrusive interventions have been attempted and failed to manage that particular behavior and there is a</p>

Commenter	Comment	Agency Response
		substantial explanation for why other interventions were deemed inadequate or inappropriate.
Christine P. Powell Parent of a child with a disability	Supports the comments of The Virginia Coalition of Students with Disabilities.	See responses to The Virginia Coalition of Students with Disabilities.
Sandra Esposito	If educators are going to be allowed to restrain, recommends use of cameras in schools to verify and document use of restraint, and that the records be maintained for a minimum of one year.	§671-670. Videotaping. There is no express connection to restraints in this section. Schools are not precluded from using cameras.
Gwen Leech Parent of a child with a disability	Opposes removal of the prohibition of prone restraint and aversive behavior interventions. Expressed concern that the use of these interventions could easily be mismanaged and overused by unskilled caregivers.	§671-650. Prohibitions. The original listing of prohibitions has been restored in this section. Prone face down restraints and the application of aversive stimuli are expressly prohibited. § 671-660. Managing student behavior in emergency situations. B. 6. Physical restraint may only be implemented, monitored, or discontinued by staff who have received proper training.
Amy Arnett	Supports the comments of The Virginia Coalition of Students with Disabilities.	See responses to The Virginia Coalition of Students with Disabilities.
Patricia E. Roberts, Esquire Clinical Associate Professor of Law and Director, PELE Special Education Advocacy Clinic – William and Mary Law School	Supports the comments of The Virginia Coalition of Students with Disabilities. Restraint and seclusion should never be part of the student’s behavior management plan.	See responses to The Virginia Coalition of Students with Disabilities.
Susan St. Amand Parent of a child with a disability	Opposes the use of aversive, prone restraint and other restraints that impede breathing.	§671-650. Prohibitions. A. 9. Application of aversive stimuli has been restored as a prohibition. The definition of "aversive stimuli" has been added to §671-10. §671-650. A.2. Prone "face down" restraint has been restored as a prohibition and any other restraint that restricts breathing or interferes with the child’s ability to communicate.

Commenter	Comment	Agency Response
	<p>The regulations do not fully protect the parent’s right to know or to be able to have a debriefing where they work with the school to make changes.</p> <p>They must be limited to emergencies where they are absolutely necessary to protect someone from physical harm.</p>	<p>§671-660. Managing student behavior in emergency situations. Added: B. 9. The parent shall be informed on the day of each incident of physical restraint or seclusion. The student’s home school division and placing agency shall be informed as soon as possible but within 24 hours of the occurrence. B. 10. Each application of physical restraint or seclusion shall be fully documented in the student's record including date, time, staff involved, justification for the physical restraint or seclusion, behavior antecedents, less restrictive interventions that were unsuccessfully attempted prior to using physical restraint or seclusion, duration, description of method or methods of physical restraint techniques used, signature of the person completing the report and date, and reviewer's signature and date. Added new requirement: The written report shall be made available to the parent within two business days of the occurrence and opportunity given for the parent and student, as appropriate, to discuss the matter with school staff.</p> <p>§671-660. Managing student behavior in emergency situations. B. Physical restraint or seclusion is allowed only in an emergency situation and is necessary to protect the student or another person from imminent danger of serious physical harm after less intrusive interventions have been attempted and failed to manage that particular behavior and there is a substantial explanation for why other interventions were deemed inadequate or inappropriate.</p>
<p>Estelle Syretz Parent of a child with a disability</p>	<p>Oppose allowing the use of prone restraint and aversive.</p> <p>Regulations governing private schools should not delete the current requirements that forbid private</p>	<p>§671-650. Prohibitions. A. 9. Application of aversive stimuli has been restored as a prohibition. A definition of aversive stimuli has been added to §650.10.</p>

Commenter	Comment	Agency Response
	<p>schools from using those tactics.</p> <p>Opposes the removal of prohibitions on private schools for any state approved placement using prone restraint or aversive.</p>	<p>A. 2. Prone "face down" restraint has been restored as a prohibition.</p> <p>The Virginia Department of Education never attempted to allow restraint or seclusion unless in an emergency situation.</p>
Read2Achieve	Against the use of restraints and aversions when dealing with children with special needs.	<p>§671-660. Managing student behavior in emergency situations.</p> <p>B. Physical restraint or seclusion is allowed only in an emergency situation and is necessary to protect the student or another person from imminent danger of serious physical harm after less intrusive interventions have been attempted and failed to manage that particular behavior and there is a substantial explanation for why other interventions were deemed inadequate or inappropriate.</p>
<p>Roberta McIntosh Educator Parent of a child with a disability</p>	<p>Supports the comments of The Virginia Coalition of Students with Disabilities.</p> <p>Banning methods should be in place and educating personnel in BCBA therapies in how to deal with behavior should be a priority in educating all school personnel.</p>	<p>See responses to The Virginia Coalition of Students with Disabilities.</p> <p>§671-490. Program of instruction and learning objectives.</p> <p>K. Each school shall implement evidence-based practices to improve academic, behavior, and social outcomes for all students.</p>
<p>Cynthia Gregory Parent of a child with a disability</p>	<p>Supports the comments of The Virginia Coalition of Students with Disabilities.</p> <p>Children in every setting should be treated with dignity and respect and given the supports necessary to thrive.</p>	<p>See response to The Virginia Coalition of Students with Disabilities.</p> <p>§671-650. Prohibitions. Any action that is humiliating, degrading, or abusive is prohibited.</p> <p>§671-620. Student conduct.</p> <p>A. Each school shall provide a schoolwide environment that reinforces appropriate behaviors and assists students in becoming actively engaged in their own learning, academic, and behavioral success.</p>
<p>Adam Warman, M.S. BCBA, LBA Director of Enrollment,</p>	Proposes that in cases of imminent danger, it is vital for service providers to be able to intervene in a way that	§671-650. Prohibitions. The original list of prohibitions has been restored.

Commenter	Comment	Agency Response
Curriculum and Training at The Faison School for Autism	<p>ensures the safety of everyone involved in the situation.</p> <p>The use of prone restraint is one of the safest types of physical restraints available in current practice, when implemented by trained staff.</p> <p>It is important for any training package to include the ideas of using the least restrictive treatment approach and of weighing the risk of intervention against the risk of the current imminently dangerous behavior.</p>	<p>§671-650. Prohibitions. The original listing of prohibitions has been restored in this section. Prone "face down" restraint is expressly listed as being prohibited and any other restraint that restricts breathing, or interferes with the child's ability to communicate.</p> <p>§671-660. Managing student behavior in emergency situations. B. Physical restraint or seclusion is allowed only in an emergency situation and is necessary to protect the student or another person from imminent danger of serious physical harm after less intrusive interventions have been attempted and failed to manage that particular behavior and there is a substantial explanation for why other interventions were deemed inadequate or inappropriate.</p>
Gwen Smith Parent of a child with a disability	<p>Supports the comments of The Virginia Coalition of Students with Disabilities.</p> <p>Educate students with care and dignity while keeping staff safe when challenging situations arise.</p>	See responses to The Virginia Coalition of Students with Disabilities.
Iris Anongos	Opposes the use of prone restrain and aversive stimuli and does not want prohibition deleted from the current requirements that forbid private schools from using those tactics.	§671-650. Prohibition. Prohibition language was restored to original section and expressly prohibits the use aversive.
Katrina VanHuss Parent of a child with a disability	Opposes the removal or easing of prohibition of restraints on disabled children.	§671-650. Prohibition. The prohibition of prone "face down" restraint has been restored. Restraints prohibited except in emergency situations to protect the student and others from personal harm, injury or death and other less restrictive interventions were unsuccessful.
Maxine and Richard Popik	Supports the comments of The Virginia Coalition of Students with Disabilities.	See responses to The Virginia Coalition of Students with Disabilities.
Karen Jackson	Supports the comments of The	See responses to The Virginia Coalition

Commenter	Comment	Agency Response
Director, Faith Inclusion Network	Virginia Coalition of Students with Disabilities	of Students with Disabilities.
Elizabeth Lennox Parent of a child with a disability	Supports the comments of The Virginia Coalition of Students with Disabilities	See responses to The Virginia Coalition of Students with Disabilities.
Brenda Cookus	Supports the comments of The Virginia Coalition of Students with Disabilities	See responses to The Virginia Coalition of Students with Disabilities.
Jeffrey S. Katz, Ph.D.	Supports the comments of The Virginia Coalition of Students with Disabilities	See responses to The Virginia Coalition of Students with Disabilities.
Cebro (unidentified email)	Supports the comments of The Virginia Coalition of Students with Disabilities	See responses to The Virginia Coalition of Students with Disabilities.
S. Renee Salas Virginia Board for People with The Virginia Coalition of Students with Disabilities	Supports the comments of The Virginia Coalition of Students with Disabilities	See responses to The Virginia Coalition of Students with Disabilities.
Sandy Chung, MD President Fairfax Pediatric Associates, PC	Supports the comments of The Virginia Coalition of Students with Disabilities	See responses to The Virginia Coalition of Students with Disabilities.
Christine Cadwallader	Supports the comments of The Virginia Coalition of Students with Disabilities	See responses to The Virginia Coalition of Students with Disabilities.
Dacia Juhn	Untrained and unregulated individuals using dangerous procedures is not the answer. Meltdowns are an attempt to communicate. A safe and consistent protocol needs to be put in place.	§671-660. Managing student behavior in emergency situations. B. 6. Physical restraint may only be implemented, monitored, or discontinued by staff who have received proper training.
James Allan Jorgensen	Move forward towards fair and humane life for all humanity.	Changes should provide further indication and reiteration of intent to treat everyone fairly and humanely.
Denise Callahan Parent of a child with a disability	Supports the comments of The Virginia Coalition of Students with Disabilities	See responses to The Virginia Coalition of Students with Disabilities.
Ray Snow Grandparent of a child with a disability	Requests reconsideration of the proposal to allow isolation and restraint.	§671-650. Prohibitions. The original list of prohibitions has been restored in this section. There was never an attempt to allow any of the actions listed under "Prohibitions."
Melissa Scott	Supports the comments of The Virginia Coalition of Students with	See responses to The Virginia Coalition of Students with Disabilities.

Commenter	Comment	Agency Response
	Disabilities	
Laura L. Philpot Parent of a child with a disability	Urges the board of education to reject the application of adverse stimuli, restraints and seclusion.	§671-650. Prohibitions. The original listing of prohibitions has been restored in this section. There was never an attempt to allow any of the actions listed under "Prohibitions."
Stephanie Smith Lee	Supports the comments of The Virginia Coalition of Students with Disabilities. Many states are taking action to eliminate or severely limit restraints, seclusion and aversive practices.	See responses to The Virginia Coalition of Students with Disabilities. §671-650. Prohibitions. The original list of prohibitions has been restored in this section. There was never an attempt to allow any of the actions listed under "Prohibitions."
Kelly H. Fulk	Supports the comments of The Virginia Coalition of Students with Disabilities	See responses to The Virginia Coalition of Students with Disabilities.
Ike Logan	Supports the comments of The Virginia Coalition of Students with Disabilities	See responses to The Virginia Coalition of Students with Disabilities.
Vania O'Keefe	Supports the comments of The Virginia Coalition of Students with Disabilities	See responses to The Virginia Coalition of Students with Disabilities.
Marlene Mandulak	Supports the comments of The Virginia Coalition of Students with Disabilities	See responses to The Virginia Coalition of Students with Disabilities.
Keith Snow	Supports the comments of The Virginia Coalition of Students with Disabilities	See responses to The Virginia Coalition of Students with Disabilities.
Linda Ciancio-Brown Parent Resource Center Coordinator – Hopewell	Supports the comments of The Virginia Coalition of Students with Disabilities	See responses to The Virginia Coalition of Students with Disabilities.
Carolyn Peifer	Supports the comments of The Virginia Coalition of Students with Disabilities	See responses to The Virginia Coalition of Students with Disabilities.
Elin Cortijo-Doval, Ph.D.	Supports the comments of The Virginia Coalition of Students with Disabilities	See responses to The Virginia Coalition of Students with Disabilities.
Bill and Vanessa Brownley The Brownley Law Group	Supports the comments of The Virginia Coalition of Students with Disabilities	See responses to The Virginia Coalition of Students with Disabilities.
Gary Farrar	Supports the comments of The Virginia Coalition of Students with Disabilities	See responses to The Virginia Coalition of Students with Disabilities.

Commenter	Comment	Agency Response
Dawn Peifer	Supports the comments of The Virginia Coalition of Students with Disabilities	See responses to The Virginia Coalition of Students with Disabilities.
Karen Marlo Parent of a child with a disability	Expressed a concern that regulations in no way hinder the ability of these schools to teach kids with special needs and would not want regulations that hinder innovation. Allow private schools the flexibility not available in public schools. Supports regulations with no further revisions.	The proposed regulations continue to allow staff flexibility and creativeness in delivering services to students. The changes to the proposed regulations add greater protection for the safety of all students who attend private schools for students with disabilities.
Nichole Pangle Executive Director – ARC of Northern Shenandoah Valley	Supports the comments of The Virginia Coalition of Students with Disabilities	See responses to The Virginia Coalition of Students with Disabilities.
Paul Kunberger	Supports the comments of The Virginia Coalition of Students with Disabilities	See responses to The Virginia Coalition of Students with Disabilities.
Janet Lilly Parent of a child with a disability	Supports the comments of The Virginia Coalition of Students with Disabilities Communication needs to improve. Teachers shouldn't ignore individuals who know these kids best. The schools should work with parents and not against to serve these special individuals.	See responses to The Virginia Coalition of Students with Disabilities. §671-450. Student achievement expectations. A. Schools shall develop strategies to address the learning, behavior, and communication needs of individual students in collaboration with the parent.
Elizabeth Edens Paraprofessional Colonial Heights Public Schools Parent of a child with a disability	Supports the comments of The Virginia Coalition of Students with Disabilities. Protect this population of individuals in our community from being subjected to such cruel and inhumane practices.	See responses to The Virginia Coalition of Students with Disabilities.
Eleanor Stickley Parent of a child with a disability	Supports the comments of The Virginia Coalition of Students with Disabilities. Opposes deletion of current regulatory requirements that protect students from harmful restraints, seclusion, and aversive interventions.	See responses to The Virginia Coalition of Students with Disabilities.
Karen A. Singleton, MD, MPH Parent of a child with a	Expressed concern about the development of regulations in regard to the use of restraint, seclusion, and	See responses to The Virginia Coalition of Students with Disabilities.

Commenter	Comment	Agency Response
disability	<p>aversive practices among disabled school children.</p> <p>Proposes that any use of restraints should be documented, closely monitored, and appropriate training should be provided to staff.</p> <p>The use of aversive should be forbidden.</p> <p>Transparency is critical with open lines of communication with parents.</p> <p>Opposes prone restraint and aversive practices.</p> <p>Supports the comments of The Virginia Coalition of Students with Disabilities.</p>	
Bradford Hulcher Parent of a child with a disability	<p>Supports the comments of The Virginia Coalition of Students with Disabilities.</p> <p>Requests a change in language of the proposed regulations to remove the use of restraint, seclusion, or aversive for students with disabilities.</p>	See responses to The Virginia Coalition of Students with Disabilities.
Rob Woomer	<p>Restraints are dangerous and should never be part of an integral part of a behavioral plan unless directly supervised by a qualified physician.</p> <p>Do not allow schools to restrain children without full consent and knowledge of the parent.</p> <p>Supports the comments of The Virginia Coalition of Students with Disabilities.</p>	See responses to The Virginia Coalition of Students with Disabilities.
Sue Taylor Parent of children with The Virginia Coalition of Students with Disabilities	Supports the use of positive behavior support, such as TOVA.	The Department of Education does not endorse any one particular behavior management program. A school would not be allowed to use any program that violates the Board of Education's regulations.
Beth Troutman	<p>Supports the comments of The Virginia Coalition of Students with Disabilities.</p> <p>Expressed concern use of restraint and seclusion for students with disabilities may be discriminatory and be a violation of ADA.</p>	See responses to The Virginia Coalition of Students with Disabilities.

Commenter	Comment	Agency Response
Angela Cimmino, Pharm.D.	Supports the comments of The Virginia Coalition of Students with Disabilities	See responses to The Virginia Coalition of Students with Disabilities.
Elizabeth Sayre	Opposes the inclusion of the proposed language governing the use of restraint, seclusion, and aversive with children with disabilities in private schools.	§671-650. Prohibitions. The original list of prohibitions has been restored in this section. There was never an attempt to allow any of the actions listed under "Prohibitions."
Mary Ann Wolfgang	Supports the comments of The Virginia Coalition of Students with Disabilities	See responses to The Virginia Coalition of Students with Disabilities.
David Cordell	Supports the comments of The Virginia Coalition of Students with Disabilities	See responses to The Virginia Coalition of Students with Disabilities.
Joy Prickett	Opposes use of aversive behavior interventions, prone restraint, and seclusion in private institutions.	§671-650. Prohibitions. The original list of prohibitions has been restored in this section. There was never an attempt to allow any of the actions listed under "Prohibitions." §671-10. The definition of "aversive stimuli" has been added.
Juliet Hiznay	Expressed concern of how private educational facilities would view changes in the regulations. The risk of abuse is high for students unable to communicate, potential damage is too great. Agrees with language of Just Children. Suggests that prohibitions be restored in the regulations.	Private school feedback indicates the schools have no problem with restoration of language within the prohibition section that was removed only because it was duplicative of language that prohibited the actions elsewhere in the proposed regulations. Added definitions provide further clarity to all. Private schools' first priority is safety of all students.
Angela A. Ciolfi Legal Director, JustChildren Program Legal Aid Justice Center	The proposed regulations appear to provide a high degree of latitude to providers to use harmful techniques. We hope the clear prohibitions will be restored before they go to the board on a final vote.	See responses to The Virginia Coalition of Students with Disabilities.
Sheri B. Langham	Request to restore the proposed language prohibiting application of aversive stimuli. Restore the proposed language	§671- 650. Prohibitions. A. 9. Application of aversive stimuli has been restored as a prohibition. §671-10. Definitions. The definition of "aversive stimuli" has

Commenter	Comment	Agency Response
	<p>prohibiting prone face down restraint and add a prohibition on “restraint that is life-threatening, including restraint that restricts breathing”.</p> <p>Strengthen the language so the use of restraint and seclusion is prohibited unless there is an emergency threatening an immediate danger of physical injury and less restrictive measures have failed or would be ineffective to resolve the situation.</p> <p>Revise the definition of positive behavioral interventions.</p> <p>Add language to forbid the inclusion of restraint and seclusion in any student’s formal behavior management program, ban aversive, and never permit restraint/seclusion for maladaptive behaviors.</p> <p>Restraint and seclusion are emergency interventions to be used only in crises in which they are necessary to prevent an imminent threat of physical injury. Ban restraint or seclusion that prevents a child from communicating distress or danger.</p>	<p>been added.</p> <p>§671-650. Prohibitions. Prone "face down" restraint has been restored as a prohibition and any other restraint that restricts breathing, or interferes with the child’s ability to communicate has been added.</p> <p>§671-660. Managing student behavior in emergency situations. B. Physical restraint or seclusion is allowed only in an emergency situation and is necessary to protect the student or another person from imminent danger of serious physical harm after less intrusive interventions have been attempted and failed to manage that particular behavior and there is a substantial explanation for why other interventions were deemed inadequate or inappropriate.</p> <p>There is no definition stated for "positive behavioral interventions."</p> <p>§671-630. Behavior intervention. E. Deleted language from proposed regulation.</p> <p>§671-660. Managing student behavior in emergency situations. B. 2. In cases where a student has a history of dangerous behavior for which restraint or seclusion was considered or used, a school shall have a plan developed in consultation with the parent for: (a) teaching and supporting more appropriate behavior; and (b) determining positive methods to prevent behavioral escalations that have previously resulted in the use of restraint or seclusion.</p> <p>See the responses to The Virginia Coalition of Students with Disabilities.</p>

Commenter	Comment	Agency Response
<p>Victoria Ducheneauz Grandparent of children with The Virginia Coalition of Students with Disabilities</p>	<p>Request to restore the proposed language prohibiting application of aversive stimuli.</p> <p>Restore the proposed language prohibiting prone face down restraint and add a prohibition on “restraint that is life-threatening, including restraint that restricts breathing”.</p> <p>Strengthen the language so the use of restraint and seclusion is prohibited unless there is an emergency threatening an immediate danger of physical injury and less restrictive measures have failed or would be ineffective to resolve the situation.</p> <p>Revise the definition of positive behavioral interventions.</p> <p>Add language to forbid the inclusion of restraint and seclusion in any student’s formal behavior management program, ban aversive, and never permit restraint/seclusion for maladaptive behaviors.</p> <p>Restraint and seclusion are emergency interventions to be used only in crises in which they are necessary to prevent an imminent threat of physical injury.</p> <p>Ban restraint or seclusion that prevents a child from communicating distress or danger.</p>	<p>§671-650. Prohibitions. The original list of prohibitions has been restored in this section. There was never an attempt to allow any of the actions listed under "Prohibitions."</p> <p>See the responses to The Virginia Coalition of Students with Disabilities.</p>
<p>MJ Dean</p>	<p>Opposes deletion of requirements that protect students from harmful restraints, seclusion and aversive interventions.</p>	<p>§671- 650. Prohibitions. Prohibitions have been restored in this section to include restraints, aversive stimuli, and seclusion. §671- 10. Definition of "aversive stimuli" has been added.</p>
<p>Allison Thurman</p>	<p>Opposes deletion of requirements that protect students from harmful restraints, seclusion and aversive interventions. Doing so is harmful and counter to evidence based practice.</p>	<p>§671- 650. Prohibitions. Prohibitions have been restored in this section to include restraints, aversive stimuli, and seclusion. §671- 10. Definition of "aversive stimuli" has been added.</p>

Commenter	Comment	Agency Response
Michelle Redmond Parent of a student with a disability	Reconsider deletion of requirements that protects students from harmful restraints, seclusion, and aversive interventions.	§671- 650. Prohibitions. Prohibitions have been restored in this section to include restraints, aversive stimuli, and seclusion. §671- 10. Definition of "aversive stimuli" has been added.
Marcia Fisher	Opposes removal of prohibition against the use of prone and aversive restraints in any educational setting.	§671-650. Prohibitions. Restraints, including prone "face down" restraints, aversive stimuli, and seclusion have been restored in this section.
Richard Foster	<p>The use of restraint should be the rare exception and not the rule. It should be carefully documented and should only be used within carefully proscribed (sic) policy. Parents should be notified whenever this occurs and an intervention meeting should be held with school and parents to discuss the situation.</p> <p>The restraint should be filmed or otherwise documented. Restraint devices and procedures should be designed to be the least restrictive possible and not life-threatening under any circumstance.</p> <p>No one should be left in restraint for extended periods of time or on a regular basis. It should only be used for a brief behavioral intervention and only in the most severe of circumstances.</p>	<p>§671-660. Managing student behavior in emergency situations.</p> <p>B.10. Each application of physical restraint or seclusion shall be fully documented in the student's record including date, time, staff involved, justification for the physical restraint or seclusion, behavior antecedents, less restrictive interventions that were unsuccessfully attempted prior to using physical restraint or seclusion, duration, description of method or methods of physical restraint techniques used, signature of the person completing the report and date, and reviewer's signature and date. The written report shall be made available to the parent within two business days of the occurrence and opportunity given for the parent and student, as appropriate, to discuss the matter with school staff.</p> <p>§671-670. Videotaping. Filming is not a requirement.</p> <p>§671-660. Managing student behavior in emergency situations.</p> <p>B.1. 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, shall trigger a review and, if appropriate, a revision of behavioral strategies currently in place to address dangerous behavior. If positive behavioral strategies are not in place, staff shall</p>

Commenter	Comment	Agency Response
Paula C. Durbin-Westby	<p>Opposed to changes that would allow restraints, aversive, and seclusion to be used on children in private special education schools.</p> <p>The proposed changes will sanction abuse of Virginia’s private students, while keeping regulations in place that attempt to protect public school students.</p> <p>The proposed changes single out Virginia’s private school students for a “look the other way” policy that will endanger these students’ well-being and safety.</p>	<p>develop them.</p> <p>§671-650. Prohibitions. Restraints, aversive stimuli, and seclusion have been restored in this section and expressly listed as prohibitions.</p> <p>Review the responses to The Virginia Coalition of Students with Disabilities.</p>
Cyndi Pitonyak Coordinator Positive Behavior Interventions & Supports Montgomery County Public Schools	Opposes deletion of the current regulatory requirements that protect students from harmful restraints, seclusion, and aversive interventions designed to address problem behavior.	<p>§671-650. Prohibitions. Restraint, aversive stimuli, and seclusion were restored to this section.</p> <p>§671-650. Restraint, aversive stimuli, and seclusion are also prohibited in this section.</p> <p>Review the responses to The Virginia Coalition of Students with Disabilities.</p>
Eleanor Stickley Parent of a child with a disability	Do not delete requirements that protect students from harmful restraints, seclusion, and aversive interventions.	<p>§671-650. Prohibitions. Application of aversive stimuli has been restored as a prohibition.</p> <p>§671-10. Definitions. The definition of aversive stimuli has been added.</p>
Alison Bell Parent of a student with a disability	Prohibit the use of prone restraint and aversive in Virginia’s private schools for all children, including those with disabilities.	<p>§671-650. Prohibitions. Application of aversive stimuli, restraint, and seclusion has been restored.</p> <p>§671-10. The definition of aversive stimuli has been added.</p>
Ian Ford	There are different rights applied to people with disabilities and those without disabilities. The State is	§671-650. Prohibitions. Application of aversive stimuli, restraint, and seclusion has been restored under

Commenter	Comment	Agency Response
	<p>considering allowing application of aversive stimuli-such as introduction of foul or burning substances, deprivation of senses, and excessively loud sounds – and allowing prone restraint that impede breathing. Discrimination on the basis of disability will be legal. Torture of children will be legal.</p>	<p>prohibitions.</p> <p>§671-660. Managing student behavior in emergency situations. The section also prohibits restraint and seclusion. Restraint and seclusion can only be used in emergency situations.</p>
<p>Vincent Caballero Certified Special Education Advocate COPAA Member</p>	<p>Opposes the use of restraint as a method of circumventing behaviors that would be more appropriately addressed and ameliorated with the use of positive behavior interventions.</p> <p>Restraint is too aversive and does nothing to provide adaptive behavior.</p>	<p>§671-650. Prohibitions. The original list of prohibitions has been restored in this section. There was never an attempt to allow any of the actions listed under "Prohibitions."</p> <p>§671-10. Definitions. The definition of "aversive stimuli" has been added.</p>
<p>Stacy Smith</p>	<p>Request to not delete requirements that protect students from harmful methods.</p> <p>Requested that the public be provided with research that demonstrates the effectiveness of abusive restraints, seclusion, and aversive stimuli.</p>	<p>§671-650. Prohibitions. The original list of prohibitions has been restored in this section. There was never an attempt to allow any of the actions listed under "Prohibitions."</p> <p>§671-10. Definitions. The definition of "aversive stimuli" has been added.</p>
<p>Allyson Hough Mahmood</p>	<p>Do not delete requirements that protect students from harmful restraints, seclusion and aversive interventions. Doing so is harmful and counter to evidence based practice.</p>	<p>§671-650. Prohibitions. Language was restored regarding restraint and seclusion, prone restraint, and application of aversive stimuli.</p>
<p>Jill Ryland, MD Pediatric Partnership, P.C.</p>	<p>Do not delete requirements that protect students from harmful restraints, seclusion, and aversive interventions.</p>	<p>§671-650. Prohibitions. Language was restored regarding restraint and seclusion, prone restraint, and application of aversive stimuli.</p>

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<p>Kimberly Lett disAbility Resource Center Program Manager and Deputy Director and parent of a student with a disability</p>	<p>The proposed regulations would allow the “application of aversive stimuli” and restraints that could impede breathing.</p> <p>The regulations lack specificity about when restraint and seclusion can be used.</p> <p>Without guidelines and proper staff training, this could result in the use of these methods in situations other than when there is imminent danger of physical injury and when less restrictive measures have failed.</p> <p>The proposed regulations need to be changed or amended with regards to aversive stimuli, restraints, and guidelines for use of any action staff take to calm students in their care.</p>	<p>§671-650. Prohibitions. Language was restored regarding restraint and seclusion, prone restraint, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.</p> <p>§671-660. Managing student behavior in emergency situations. B. Physical restraint and seclusion is allowed only in an emergency situation and is necessary to protect the student or another person from imminent danger of physical harm after less intrusive interventions have been attempted and failed to manage that particular behavior and there is a substantial explanation for why other interventions were deemed inadequate or inappropriate.</p> <p>A. 3. Schools are required to have policies and procedures and to develop and implement behavior management in order of their degree of intrusiveness or restrictiveness and the conditions under which they may be used by trained personnel.</p>
<p>Nancy P. Hemenway INCIID Executive Director</p>	<p>It is not acceptable that any regulations would allow application of aversive stimuli such as introduction of foul or burning substances, deprivation of senses, excessively loud sounds; allow restraints that impede breathing (as a prone restraint does); or use any type of isolation or seclusion.</p> <p>Opposes the proposed regulations related to aversive stimuli, restraints that impede breathing, or use of any type of isolation.</p>	<p>§671-650. Prohibitions. Language was restored regarding restraint and seclusion, prone restraint, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.</p>
<p>George Rathbone, EdM., NCC, CCBT, CBIS, PFSF Director Developmental Support Associates, LLC</p>	<p>There is no place for “support rooms” in our schools.</p> <p>Prone restraint should not be used in the community or in schools.</p>	<p>“Support rooms” are allowed only under the conditions stated in §671-660. B. 7. Managing student behavior in emergency situations.</p>

Commenter	Comment	Agency Response
	<p>Suggests that those authorized to use physical restraint in schools should be required to practice regularly under supervision.</p> <p>The use of aversive substances to treat behavioral issues is unnecessary, ineffective, and inhumane.</p>	<p>B. 7. The door to any room in which a student is secluded may be held shut only when a staff member is personally securing it. The door must immediately disengage when the staff member steps away from it. The room must meet specification including size and viewing panels that ensure the student's safety at all times including during a fire or other emergency.</p> <p>§671-650. Prohibitions. Language was restored regarding restraint and seclusion, prone restraint, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.</p> <p>Recognized behavior management program that include restraint protocols have a required schedule for refresher training. Regular practice is not expressly addressed in the regulations.</p>
<p>Ken Yasnowsky Parent of a child with a disability</p>	<p>Do not allow the use of prone restraint and aversive in private (or public) schools.</p> <p>Do not delete requirement that forbid private schools from using those tactics.</p> <p>Schools must develop safe and humane ways to teach children proper behavior.</p>	<p>§671-650. Prohibitions. Language was restored regarding restraint and seclusion, prone restraint, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.</p>
<p>Maria Scholnick Santa Cruz Parent Love Connection and parent of a child with a disability</p>	<p>Opposes deletion of the current regulatory requirements that protect students from harmful restraint, seclusion, and adverse interventions.</p>	<p>§671-650. Prohibitions. The original list of prohibitions has been restored in this section. There was never an attempt to allow any of the actions listed under "Prohibitions."</p>
<p>Pete Wright, Pam Wright, and Sue O'Connor Wrightslaw</p> <p>Darrel Tiller Mason</p> <p>Candace Cortiella</p>	<p>The regulations would permit the use of aversive stimuli by removing a planned prohibition from the draft regulations.</p> <p>Concerned that the regulations do not require that less restrictive</p>	<p>§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.</p>

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<p>Advocacy Institute</p> <p>Patricia E. Roberts Clinical Associate Professor of Law Director, Clinical Programs and PELE Special Education Advocacy Clinic – William and Mary Law School</p> <p>JustChildren Legal Aid Justice Center Jamie Ruppman Past President – Virginia Chapter Autism Society of America Past President – Fairfax County Advisory Committee for Students with The Virginia Coalition of Students with Disabilities and Past Chairperson – Northern Virginia Association for Learning The Virginia Coalition of Students with Disabilities</p> <p>William B. Reichhardt Adrienne E. Volenik Bill and Vanessa Brownley Melissa K. Waugh Sheree Brown – Kaplan, Founder and Chair – Fairfax Alliance for Appropriate Public Education (FAAPE) Cheryl Poe Patrick Sensiba Jane Burnette Jessica Butler</p>	<p>interventions be used or deemed ineffective before restraint/seclusion are used.</p> <p>Concerned that the regulations would permit the use of restraint/seclusion for property damage that “may” threaten physical injury.</p>	<p>§671-660. Managing student behavior in emergency situations. B. Physical restraint or seclusion is allowed only in an emergency situation and is necessary to protect the student or another person from imminent danger of physical harm after less intrusive interventions have been attempted and failed to manage that particular behavior and there is a substantial explanation for why other interventions were deemed inadequate or inappropriate. The last statement was revised to delete reference to "causing severe property damage that may result in personal injury."</p> <p>See the responses to The Virginia Coalition of Students with Disabilities.</p>
<p>Jamie Liban Executive Director The Arc of Virginia</p>	<p>The Board should not delete current regulatory requirements that protect students from harmful restraints, seclusion and aversive interventions.</p> <p>The changes to the regulations would be harmful to people with intellectual</p>	<p>§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.</p>

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	<p>and developmental disabilities because they:</p> <p>Allow the application of aversive stimuli such as introduction of foul or burning substances, deprivation of senses, and excessively loud sounds.</p> <p>Allow restraints that impede breathing</p> <p>Lack clarity about when restraint and seclusion could be used which could result in their use in situations other than when there is imminent danger of physical injury and when less restrictive measures have failed or would be ineffective</p> <p>Allow the use of restraint and seclusion for severe property damage that may result in personal injury.</p> <p>The Arc is opposed to all aversive procedures, such as deprivation, seclusion and isolation.</p> <p>The Arc is opposed to the use of life-threatening, prone restraint, which impedes learning.</p> <p>Do not delete current regulatory requirements that protect students from harmful restraints, seclusion and aversive interventions.</p>	<p>§671-660. Managing student behavior in emergency situations.</p> <p>B. Physical restraint or seclusion is allowed only in an emergency situation and is necessary to protect the student or another person from imminent danger of physical harm after less intrusive interventions have been attempted and failed to manage that particular behavior and there is a substantial explanation for why other interventions were deemed inadequate or inappropriate.</p>
<p>Maureen Devaney – VA TASH Special Education Teacher Christiansburg High School, Montgomery County Public Schools</p> <p>Liz Altieri – Professor, Special Education Program Area, School of Teacher Ed</p>	<p>Requests reconsideration of the use of restraints, seclusion, and aversive stimuli for people with disabilities in schools.</p> <p>Instead of resorting to inhumane actions such as seclusion, aversive, and restraints, there needs to be a Functional Behavior Plan or Adaptive Behavior Plan to figure out why the</p>	<p>§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.</p> <p>§671-660. Managing student behavior in emergency situations. B. Physical restraint or seclusion is</p>

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<p>and Leadership, Radford University</p> <p>Melissa Ainsworth – Doctoral Student in Special Education, parent</p> <p>Cornelia L. Izen – Assistant Professor of Special Education, George Mason University</p> <p>Jessica Morris – Autism Specialist, Montgomery County Public Schools</p> <p>Brad Powers – Special Education Teacher, Montgomery County Public Schools</p> <p>Suzanne Ripley – Director, Accessing Disability Services</p>	<p>student is acting out and a positive behavior support plan to address and teach acceptable behaviors.</p> <p>Team members working with students need to be highly trained in positive behavior support plans and not how to restrain a child.</p> <p>Consider input before making changes which take equality and civil rights out of Virginia schools.</p>	<p>allowed only in an emergency situation and is necessary to protect the student or another person from imminent danger of serious physical harm after less intrusive interventions have been attempted and failed to manage that particular behavior and there is a substantial explanation for why other interventions were deemed inadequate or inappropriate.</p> <p>§671-660. Managing student behavior in emergency situations.</p> <p>B. 2. In cases where a student has a history of dangerous behavior for which restraint or seclusion was considered or used, a school shall have a plan developed in consultation with the parent for: (a) teaching and supporting more appropriate behavior; and (b) determining positive methods to prevent behavioral escalations that have previously resulted in the use of restraint or seclusion.</p>
<p>Mary W. Grimm, M. Ed Educator, Parent Advocate and Educational Consultant to The Arc of Virginia</p>	<p>Vote against restraint, seclusion and aversion.</p>	<p>§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.</p> <p>§671-660. Managing student behavior in emergency situations.</p> <p>B. Physical restraint or seclusion is allowed only in an emergency situation and is necessary to protect the student or another person from imminent danger of serious physical harm after less intrusive interventions have been attempted and failed to manage that particular behavior and there is a substantial explanation for why other interventions were deemed inadequate or inappropriate.</p>
<p>Wendy Holland, CAM</p>	<p>Do not delete regulatory requirements that protect students from harmful restraints, seclusion, and aversive interventions.</p>	<p>§671-650. Prohibitions. Language was restored regarding restraint and seclusion, prone restraint, and application of aversive stimuli. Added language to clarify prohibition</p>

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	<p>Amendments should be added to proposed regulations to better protect students.</p> <p>The proposed regulations:</p> <p>Allow the application of aversive stimuli such as introduction of foul or burning substances, deprivation of senses, and excessively loud sounds.</p> <p>Allow restraints that impede breathing</p> <p>Lacks clarity about when restraint and seclusion could be used which could result in their use in situations other than when there is imminent danger of physical injury and when less restrictive measures have failed or would be ineffective.</p> <p>Allow the use of restraint and seclusion for severe property damage that may result in personal injury.</p>	<p>of any restraint that impedes breathing.</p> <p>§671-660. Managing student behavior in emergency situations B. Physical restraint or seclusion is allowed only in an emergency situation and is necessary to protect the student or another person from imminent danger of serious physical harm after less intrusive interventions have been attempted and failed to manage that particular behavior and there is a substantial explanation for why other interventions were deemed inadequate or inappropriate.</p> <p>Restraint is not allowed for property damage.</p>
<p>Liane Rozzell Founder Families & Allies of Virginia's Youth</p>	<p>Request to restore the bans on prone restraints and aversive behavioral interventions in the proposed regulations. Removing them may endanger these students as well as staff in the schools.</p> <p>The use of aversive interventions is also problematic, as it can escalate a bad situation and does nothing to positively teach a youth to modulate their behavior. Seclusion, restraints and aversive interventions increase their risk. Schools should use many proven methods of reducing conflict, teaching and supporting positive behaviors, and increasing students' connection with their learning community.</p> <p>Oppose allowing the use of prone restraints and aversive. The regulations governing private schools should not delete the current requirements that forbid private</p>	<p>§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.</p> <p>§671-660. Managing student behavior in emergency situations. B. Physical restraint or seclusion is allowed only in an emergency situation and is necessary to protect the student or another person from imminent danger of physical harm after less intrusive interventions have been attempted and failed to manage that particular behavior and there is a substantial explanation for why other interventions were deemed inadequate or inappropriate.</p> <p>§671-490. Program of instruction and learning objectives. K. Each school shall implement</p>

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	schools from using these tactics.	<p>evidence-based practices to improve academic, behavior, and social outcomes for all students.</p> <p>§671-620. Student conduct.</p> <p>A. Each school shall provide a schoolwide environment that reinforces appropriate behaviors and assists students in becoming actively engaged in their own learning, academic, and behavioral success.</p>
<p>Austin Mulloy, Ph.D. Assistant Professor Department of Special Education and Disability Policy School of Education Virginia Commonwealth University</p>	Do not delete the requirements that protect students from harmful restraints, seclusion and aversive interventions.	<p>§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.</p> <p>§671-660. Managing student behavior in emergency situations. B. Physical restraint or seclusion is allowed only in an emergency situation and is necessary to protect the student or another person from imminent danger of physical harm after less intrusive interventions have been attempted and failed to manage that particular behavior and there is a substantial explanation for why other interventions were deemed inadequate or inappropriate.</p>
Andrea Carpenter	Opposes the proposed regulations.	Refer to the responses to The Virginia Coalition of Students with Disabilities.
Susan Schilling Parent of a child with a disability	Opposes the use of restraints in school.	<p>§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.</p>

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Deidre Hammon Senior Advocate Center for Self Determination, Inc.	Opposes the use of aversive interventions, including seclusion, in school. Requests that teachers learn how to use positive behavioral interventions.	<p>§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.</p> <p>§671-660. Managing student behavior in emergency situations. B.1 and B.2. Requires staff to develop positive behavioral strategies.</p>
Mindy Schwartz Katz, MS, ACC ADHD/Life Coach	Do not delete requirements that protect students from harmful restraints, seclusion and aversive interventions.	<p>§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.</p>
Ray Fowler Board Member ArcNSV	Continue preventing restraints, seclusion and unhealthy interventions for the disabled populations of Virginia.	<p>§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.</p>
Marilyn Matula	<p>Do not vote to disregard COPAA’s Declaration of Principles Opposing the Use of Restraint, Seclusion and Aversive Interventions or delete requirements that protect students.</p> <p>I stand in direct opposition to these proposed regulation changes.</p> <p>These new regulations are in direct conflict with current evidence based practice.</p>	<p>§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing</p> <p>§671-490. Program of instruction and learning objectives. K. Each school shall implement evidence-based practices to improve academic, behavior, and social outcomes for all students.</p>
Liz Uebelhoer DD Case Manager disability Resource Center	<p>Concerned about the possible deletion of requirements that protect students from harmful restraints, seclusion and aversive interventions.</p> <p>ABA therapy and other behavior interventions work and should be used on any student with behavior issues before further action is taken.</p>	<p>§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing</p> <p>§671-450. Student achievement expectations. A. Schools shall identify and develop strategies to address the learning, behavior, and communication needs of</p>

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		individual students in collaboration with the parent.
Jennifer Lockwood President, Stafford County Special Education PTA Parent of a child with a disability	Do not delete requirements that protect students from harmful restraints, seclusion and aversive interventions.	§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and the application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.
Tania L. Whiteleather Special education attorney	Do not delete requirements which protect students from harmful restraints, seclusions, and aversive interventions. The deletion of such requirements would be harmful to children; as such practices – restraints, seclusions, and aversive interventions—are counter to respected evidence-based practices.	§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.
Lucy Beadnell Director of Advocacy Arc of Northern Virginia	Supports maintaining current prohibitions on prone restraint and aversive interventions.	§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.
Virginia Mackintosh, Ph.D. Assistant Professor of Psychology University of Mary Washington	Do not remove the prohibitions on using prone restraints and aversive behavior interventions. There are safer and more effective alternatives to using prone restraints and aversive behavior interventions. We should be moving toward more thoughtful and humane approaches.	§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.
Alice McKay Cooper	Proposed regulations could result in inhumane practices. Urges the rejection of proposals to allow time for consideration of better alternatives.	Consideration was delayed one month with all comments considered.
Kim Shanks Parent of a child with a disability	Opposes use of restraint in private schools.	§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.
Amy Burman	Do not delete requirements that forbid private schools from using prone restraints and aversive behavior interventions.	§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to

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	<p>Expressed concern about humane treatment of people with disabilities, especially true of children in residential programs who have no one to stand up for them and whose voices go unheard.</p> <p>Keep the current requirements against prone restraint and aversive behavior interventions in place.</p>	<p>clarify prohibition of any restraint that impedes breathing.</p>
<p>Tierney Temple Fairchild, Ph.D. Socratic Solutions, Inc.</p>	<p>Concerned about the deletion of restrictions on use of prone restraint and aversive.</p> <p>Please follow best practices in this area, as they are available to protect our students. We need thoughtful consideration of any changes that could potentially harm even one child.</p>	<p>§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.</p>
<p>Tammy Burns</p>	<p>Opposes allowing the use of prone restraint and aversive. Regulations governing private schools should not delete the current requirements that forbid private schools from using those tactics.</p>	<p>§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.</p>
<p>Kate Flinn Parent of a child with a disability</p>	<p>Say no to allowing the use of prone restraint.</p> <p>Routine force is never the best route to take, especially with children, and especially with special needs children and allowing or even encouraging force to be used as a strategy to address instructional problems or inappropriate behaviors is a step backward.</p> <p>Educating and training teachers, staff, aides, and administrators in positive behavior interventions and supports when working with special needs children is a best practices solution, and will be a long term solution to creating a positive, compassionate atmosphere.</p>	<p>§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing</p> <p>§671-490. Program of instruction and learning objectives. K. Each school shall implement evidence-based practices to improve academic, behavior, and social outcomes for all students.</p> <p>§671-660. Managing student behavior in emergency situations. B.1. 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, shall trigger a review and, if appropriate, a</p>

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		revision of behavioral strategies currently in place to address dangerous behavior. If positive behavioral strategies are not in place, staff shall develop them.
Gail Dolan, MD, FAAP Bristow Pediatrics	<p>Expressed concern for changing the current regulations regarding restraint and seclusion practices for disabled students in private schools in Virginia.</p> <p>Proper regulatory requirements that protect students from harmful restraints, seclusion and aversive interventions be maintained.</p> <p>These students are some of the least able to advocate for themselves, so we need to advocate for them and ensure their safety.</p>	§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing
Wendi K. Strickland ASOL Autism Matoaca High School Chesterfield County Public Schools	<p>Oppose allowing the use of prone restraint and aversive.</p> <p>The regulations governing private schools should not delete the current requirements that forbid private schools from using those tactics.</p> <p>Hopes that Virginia addresses issues and deficits regarding the support of people with disabilities in a way that is positive, person centered, and takes steps toward the full equality of individuals who have disabilities.</p>	<p>§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.</p> <p>§671-490. Program of instruction and learning objectives. K. Each school shall implement evidence-based practices to improve academic, behavior, and social outcomes for all students.</p>
Clemnita Unidentified email Parent of a child with a disability	Against the ruling of changing the regulations that will not protect our children from harm.	§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.
L.S. Cantrell J.T. Nix, Jr. J.T. Nix, III L.J. Cantrell	Request that the Virginia Department of Education not remove the current requirements that protect students from harmful restraints, seclusion and aversive interventions.	§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.
Leslie O’Neal Parent of a child with a disability	Oppose allowing the use of prone restraints and aversive.	§671-650. Prohibitions. Language was restored regarding restraint, seclusion, and application of aversive stimuli.

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	The regulations governing private schools should not delete the requirements that forbid private schools from using these tactics.	Added language to clarify prohibition of any restraint that impedes breathing.
Jesse Senechal Assistant Director for Research and Evaluation Virginia Commonwealth University	Oppose allowing the use of prone restraints and aversive in private schools licensed by the state of Virginia. Do not vote to remove these prohibitions.	§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.
Mira Levine	Opposes removal of the regulation banning the use of prone restraints and aversive. We need to protect the civil rights of people with disabilities who are so vulnerable and often lack the ability to speak for themselves or access help if needed.	§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.
Anh Nguyen	Expresses opposition to allowing the use of prone restraint and aversive. The regulations governing private schools should not delete the current requirements that forbid private schools from using those tactics.	§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.
Medina Wilkerson Parent of a child with a disability	Oppose the use of restraints and aversive in private schools. Do not delete the current requirements that forbid private schools from using such abusive tactics as restraints and aversive.	§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.
Patricia Knicely Member Arc of Virginia	Oppose prone restraint and aversive proposed as a change to the current policy at private schools.	§671-650. Prohibitions. Language was restored regarding restraint and seclusion, prone restraint, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.
Sue Randolph, RN, CCM Deputy Executive Director The Arc of Greater Prince William/INSIGHT, Inc.	Opposed the repeal of requirements that allow for aversive strategies and prone restraints to be used on children. They are completely unnecessary when skilled, well trained staff is intervening during crisis situations.	§671-650. Prohibitions. Language was restored regarding restraint and seclusion, prone restraint, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.
V. Colleen Miller Executive Director Virginia Office for	Concerned with the proposed regulations relating to private residential and day program schools.	§671-650. Prohibitions. Language was restored regarding restraint and seclusion, prone restraint,

Commenter	Comment	Agency Response
Protection and Advocacy	<p>Concerned that the proposed changes to the regulations appear to allow private school providers to use seclusion, restraint, and aversive stimuli.</p> <p>Recommend the regulations restore the language prohibiting application of aversive stimuli.</p> <p>The regulations should also prohibit the use of prone and face-down restraint in all situations.</p> <p>We urge the Department of Education to prohibit all use of seclusion and restraint in these regulations.</p> <p>At a minimum, the regulations must contain stronger language limiting the use of restraint and seclusion to those situations where there is imminent danger of physical injury and only when less restrictive measures have failed.</p> <p>The regulations should make clear that seclusion and restraint may never be used to protect them against harm to property.</p>	<p>and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.</p> <p>§671-10. Definitions. A definition for aversive stimuli has been added and both mechanical and pharmacological restraints are defined.</p> <p>§671-660. Managing student behavior in emergency situations. B. Physical restraint or seclusion is allowed only in an emergency situation and is necessary to protect the student or another person from imminent danger of physical harm after less intrusive interventions have been attempted and failed to manage that particular behavior and there is a substantial explanation for why other interventions were deemed inadequate or inappropriate.</p>
Joanne Groover	<p>Express thoughts on the proposed use of prone restraints and aversive.</p> <p>Raised questions on how staff would be monitored and held accountable.</p>	<p>§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.</p> <p>§671-660. Managing student behavior in emergency situations. B. 10. Each application of physical restraint or seclusion shall be fully documented in the student's record including date, time, staff involved, justification for the physical restraint or seclusion, behavior antecedents, less restrictive interventions that were unsuccessfully attempted prior to using physical restraint or seclusion, duration, description of method or</p>

Commenter	Comment	Agency Response
		<p>methods of physical restraint techniques used, signature of the person completing the report and date, and reviewer's signature and date. The written report shall be made available to the parent within two business days of the occurrence and opportunity given for the parent and student, as appropriate, to discuss the matter with school staff.</p>
<p>Debe Fults Executive Directory, disAbilityResource Center of the Rappahannock, Inc.</p>	<p>Oppose allowing the use of prone restraints and aversive.</p> <p>The regulations governing private schools should not delete the current requirements that forbid private schools from using those tactics.</p>	<p>§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.</p>
<p>Samantha Richardson-Epps</p>	<p>Oppose allowing the use of prone restraint and aversive on students with disabilities placed in private schools licensed by the state.</p> <p>The regulations governing private schools should not delete the current requirements that forbid private schools from using those tactics.</p> <p>Add more special needs and sensitivity training.</p>	<p>§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.</p> <p>§671-350. Staff development. This section addresses staff development and training. Additional training could be required for a school as the need is determined through the Virginia Department of Education's monitoring of a school.</p>
<p>Mary Ann Cisne Educator</p>	<p>Oppose removal of the prohibitions of prone restraint and aversive used in private school settings.</p> <p>Suggest that no public money be used in settings that use these techniques.</p>	<p>§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.</p>
<p>Heidi Poon</p>	<p>No prone restraints or aversive</p>	<p>§671-650. Prohibitions. Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.</p>
<p>Joseph Patrick Anthony</p>	<p>Oppose allowing the use of prone</p>	<p>§671-650. Prohibitions.</p>

Commenter	Comment	Agency Response
Parent of a child with a disability	<p>restrains and aversive.</p> <p>The regulations governing private schools should not delete the current requirements that forbid private schools from using those tactics.</p>	<p>Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.</p>
Neal L. Waters Attorney at Law Scott/Kroner, PLC	<p>Oppose the proposed changes to the regulations which would permit the use of prone restraints and aversive interventions by private schools licensed by the Commonwealth.</p> <p>Questions if private schools cannot educate students without such methods should the schools be licensed at all.</p> <p>Oppose the adoption of regulations which would permit the use of prone restraints and aversive interventions by private school operators.</p>	<p>§671-650. Prohibitions.</p> <p>Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.</p>
Melinda Whitehurst	<p>Oppose allowing the use prone restraint and aversive.</p> <p>The regulations governing private schools should not delete the current requirements that forbid private schools from using those tactics.</p>	<p>§671-650. Prohibitions.</p> <p>Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.</p>
Mary Anna Dunn	<p>Oppose allowing the use of prone restraint and aversive.</p> <p>The regulations governing private schools should not delete the current requirements that forbid private schools from using those tactics.</p>	<p>§671-650. Prohibitions.</p> <p>Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing.</p>
Laura Lewis	<p>Agree with the proposed legislation to allow for licensing for private and residential facilities by the Virginia Department of Education, opening up options for these students that would not have a place to be educated.</p>	<p>The proposed regulations hold private schools for students with disabilities to greater accountability for student safety and student learning.</p>
Juliet Hiznay	<p>Several important safeguards for students have been deleted from the draft to accommodate consistency with other agencies. Supports prohibitions restored in the regulations.</p>	<p>§671-650. Prohibitions.</p> <p>Language was restored regarding restraint and seclusion, and application of aversive stimuli. Added language to clarify prohibition of any restraint that impedes breathing. Strip and body cavity search was restored to the</p>

Commenter	Comment	Agency Response
	<p>Concerned about the deletion of the prohibitions on aversive stimuli and strip and body cavity searches. Clarify the very limited circumstances under which this might be considered acceptable, if at all. This is a human rights issue.</p> <p>No provisions for the nature or extent of the training requirements for those who engage in restraint and seclusion practices.</p> <p>There should be a regulatory provision that imposes a requirement that a functional behavior analysis (FBA) be performed by a BCBA after a given number of restraint and seclusion incidents have occurred within a given period of time with a specific student.</p> <p>Definition of “Time Out” not sufficiently clear. What is an open location?</p>	<p>"Prohibition" section.</p> <p>§671-660. Managing student behavior in emergency situations. B. 6. Physical restraint may only be implemented, monitored, or discontinued by staff who has received proper training.</p> <p>§671-660. Managing student behavior in emergency situations. B.1. 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, shall trigger a review and, if appropriate, a revision of behavioral strategies currently in place to address dangerous behavior. If positive behavioral strategies are not in place, staff shall develop them.</p> <p>B.2. In cases where a student has a history of dangerous behavior for which restraint or seclusion was considered or used, a school shall have a plan developed in consultation with the parent for: (a) teaching and supporting more appropriate behavior; and (b) determining positive methods to prevent behavioral escalations that have previously resulted in the use of restraint or seclusion.</p> <p>An open location is any area the student can leave on his own.</p>

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TITLE 8. EDUCATION
STATE BOARD OF EDUCATION
Proposed Regulation

Titles of Regulations: **8VAC20-670. Regulations Governing the Operation of Private Day Schools for Students with Disabilities (repealing 8VAC20-670-10 through 8VAC20-670-440).**

8VAC20-671. Regulations Governing the Operation of Private Schools for Students with Disabilities (adding 8VAC20-671-10 through 8VAC20-671-780).

8VAC20-671-10. Definitions.

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

"Applicant" means the person, partnership, corporation, or association that has completed and submitted an application to the licensing agency for approval for a license to operate a school for students with disabilities in Virginia.

"Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance. A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in this definition are satisfied. [Regulations Governing Special Education Programs for Children with Disabilities in Virginia, 8 VAC 20-81-10]

["Aversive stimuli" means any action used to punish a student or to eliminate, reduce, or discourage the problem behavior by use of any of the following or any other actions that are painful, humiliating, degrading, or abusive:

1. Noxious odors and tastes;
2. Water and other mists or sprays;
3. Blasts of air;
4. Corporal punishment as defined in Section 22.1-279 of the Code of Virginia;
5. Verbal and mental abuse;
6. Placement of a student alone in a room, where the door is locked or held shut and the student is prevented from leaving the room;
7. Forced exercise where:
 - a. The student's behavior is related to his or her disability;
 - b. The exercise would have a harmful effect on the student's health; or
 - c. The student's disability prevents participation in activities; and
8. Deprivation of necessities, including:
 - a. Food or liquid at a time when it is customarily served;
 - b. Medication, or
 - c. Use of restroom.]

[Virginia Department of Education, Guidelines for the Development of Policies and Procedures for Managing Student Behaviors in Emergency Situations, Focusing on Physical Restraint and Seclusion, 2009.]

"Behavioral intervention plan" means a plan that utilizes positive behavioral interventions and supports to address behaviors that (i) interfere with the learning of students with disabilities or with the learning of others

or (ii) [behaviors that] require disciplinary action. [(Regulations Governing Special Education Programs for Children with Disabilities in Virginia, 8 VAC 20-81-10)]

["Behavioral support" means those principles and methods employed by a school to help a student achieve positive behavior and to address and correct a student's [inappropriate] behavior in a constructive and safe manner in accordance with written policies and procedures governing program expectations, educational and treatment goals, safety and security, and the student's Individualized Education Program (IEP), [or] Individualized Instruction Plan (IIP) [, or 504 Plan].]

"Board" means the State Board of Education[.] [, which has general supervision of the public school system.]

"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). [(Regulations Governing Special Education Programs for Children with Disabilities in Virginia, 8 VAC 20-81-10)]

"Calendar days" means consecutive days, inclusive of Saturdays and Sundays. Whenever any period of time fixed by this chapter shall expire on a Saturday, Sunday, or federal or state holiday, the period of time for taking such action under this chapter shall be extended to the next day that is not a Saturday, Sunday, or federal or state holiday. [(Regulations Governing Special Education Programs for Children with Disabilities in Virginia, 8 VAC 20-81-10)]

"Complaint" means an accusation that a school has violated one or more of the requirements of this chapter or other applicable regulation.

"Consent" means:

1. The parent(s) or eligible student has been fully informed of all information relevant to the activity for which consent is sought in the parent's or eligible student's native language or other mode of communication;
2. The parent(s) or eligible student understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
3. The parent(s) or eligible student understands that the granting of consent is voluntary on the part of the parent(s) or eligible student and may be revoked any time.

If a parent [or eligible student] revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked. Revocation ceases to be relevant after the activity for which consent was obtained was completed.)

The meaning of the term "consent" is not the same as the meaning of the term "agree" or "agreement."

"Agree" or "agreement" refers to an understanding between the parent or eligible student and the school about a particular matter and as required in this chapter. There is no requirement that an agreement be in writing, unless stated in this chapter. The school should document their agreement. [(Regulations Governing Special Education Programs for Children with Disabilities in Virginia, 8 VAC 20-81-10)]

"Controlled substance" means a drug or other substance identified under Schedules I, II, III, IV, or V in § 202(c) of the Controlled Substances Act, 21 USC § 812(c).

"Corrective action plan" means the school's plan of action to correct a finding of noncompliance [applicable to this chapter or other applicable regulation]. The plan must identify specific timelines and the person(s) responsible for implementation.

"Deaf-blindness" means simultaneous hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness. [~~34 CFR 300.8(c)(3)~~] (*Regulations Governing Special Education Programs for Children with Disabilities in Virginia*, 8 VAC 20-81-10)]

"Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects the child's educational performance. [(~~34 CFR 300.8(c)(3)~~ *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*, 8 VAC 20-81-10)]

"Department" means the Virginia Department of Education.

"Developmental delay" means a disability affecting a child age two by September 30 through six, inclusive: (34 CFR 300.8(b) and 34 CFR 300.306(b))

1. Who (i) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development or (ii) has an established physical or mental condition that has a high probability of resulting in developmental delay;
2. The delay is not primarily a result of cultural factors, environmental or economic disadvantage, or limited English proficiency; and
3. The presence of one or more documented characteristics of the delay has an adverse effect on educational performance and makes it necessary for the student to have specially designed instruction to access and make progress in the general educational activities for this age group. [(*Regulations Governing Special Education Programs for Children with Disabilities in Virginia*, 8 VAC 20-81-10)]

"Disability category" means a listing of special education eligibility classifications for students served including: autism, deaf-blindness, developmental delay, emotional disability, hearing impairment (including deafness), intellectual disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment (including blindness). [~~§ 22.1-213 of the Code of Virginia; 34 CFR 300.8(a)(1) and 34 CFR 300.8(a)(2)(i) and (ii)~~]. [(*Regulations Governing Special Education Programs for Children with Disabilities in Virginia*, 8 VAC 20-81-10)]

"Education records," [~~also known as scholastic records,~~] mean those records that are directly related to a student and maintained by the school or by a party acting for the school. Education records may be recorded in any manner including, but not limited to, handwriting, print, computer media, video or audiotape, film, microfilm, or microfiche. Education records include discipline and medical records. Education records include electronic exchanges between school personnel and parent(s) regarding matters associated with the child's educational program.

"Eligible student" means a student who has reached 18 years of age.

"Emotional disability" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: [(~~34 CFR 300.8(c)(4)~~)]

1. An inability to learn that cannot be explained by intellectual, sensory, or health factors;
2. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
3. Inappropriate types of behavior or feelings under normal circumstances;
4. A general pervasive mood of unhappiness or depression; or

5. A tendency to develop physical symptoms or fears associated with personal or school problems. Emotional disability includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disability as defined by the [Regulations Governing Special Education Programs for Children with Disabilities in Virginia.]

"Guaranty instrument" means a surety bond, irrevocable letter of credit, or certificate of deposit.

"Hearing impairment" means an impairment in hearing in one or both ears, with or without amplification, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in the Regulations Governing Special Education Programs for Children with Disabilities in Virginia, [34 CFR 300.8(c)(5), 8 VAC 20-81].

"Illegal drug" means a controlled substance [or a prescription drug not prescribed for the person] but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act, 21 USC § 812(c), or under any other provision of federal law.

"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 for Children with Disabilities in Virginia. 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. [(34 CFR 300.22)(Regulations Governing Special Education Programs for Children with Disabilities in Virginia, 8 VAC 20-81-10)]

"Individualized Instruction Plan" or "IIP" means a written statement [(plan)] for a child who is privately placed or for a child who has not been determined eligible for special education services that is developed, reviewed, and revised at least annually in a team meeting that includes the parent [and student when appropriate]. The IIP specifies the student's academic level, course of study, individual educational needs, and the educational services the child will receive.

"Intellectual disability" means the definition formerly known as "mental retardation" and means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance. [(34 CFR 300.8(c)(6) Regulations Governing Special Education Programs for Children with Disabilities in Virginia, 8 VAC 20-81-10)]

"Licensee" also known as the sponsor, means the person, partnership, corporation, or association to whom a license is issued and who is legally responsible for compliance with this chapter.

"License to operate" or "license" means a document issued by the [State] Superintendent of Public Instruction that [verifies authorizes] approval to operate a school for students with disabilities [and that indicates the status of the school regarding compliance with applicable regulations].

"Licensing agency" means the [state agency responsible for oversight responsibility] Virginia Department of Education].

["Mechanical restraint" means the use of any device or equipment to restrict a student's freedom of movement. This term does not include devices implemented by trained school personnel, or utilized by a

student that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were designed, such as:

1. Adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to all greater freedom of mobility than would be possible without the use of such devices or mechanical supports;
2. Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle;
3. Restraints for medical immobilization; or
4. Orthopedically prescribed devices that permit a student to participate in activities without risk of harm.]

[U.S. Department of Education, Restraint and Seclusion: Resource Document]

"Multiple disabilities" mean simultaneous impairments (such as intellectual disability with blindness or intellectual disability with orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness. [~~34 CFR 300.8(c)(7)~~ (*Regulations Governing Special Education Programs for Children with Disabilities in Virginia*, 8 VAC 20-81-10)]

"Orthopedic impairment" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures). [~~34 CFR 300.8(c)(8)~~ (*Regulations Governing Special Education Programs for Children with Disabilities in Virginia*, 8 VAC 20-81-10)]

"Other health impairment" means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome that adversely affects a child's educational performance. [~~34 CFR 300.8(c)(9)~~ (*Regulations Governing Special Education Programs for Children with Disabilities in Virginia*, 8 VAC 20-81-10)]

"Paraprofessional," also known as paraeducator, means an appropriately trained employee who assists and is supervised by qualified professional staff in meeting the requirements of this chapter.

"Parent" means (§ 22.1-213.1 of the Code of Virginia):

1. A person who is:

- a. A biological or adoptive parent of a child;
- b. A foster parent, even if the biological or adoptive parent's rights have not been terminated, but subject to subdivision 2 of this definition;
- c. A guardian generally authorized to act as the child's parent or make educational decisions for the child (but not the Commonwealth if the child is a ward of the Commonwealth);
- d. An individual acting in the place of a biological or adoptive parent (including grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
- e. If no party qualified under subdivisions 1 a through d of this definition can be identified, or those parties are unwilling to act as parent, a surrogate parent who has been appointed in accordance with 8VAC20-81-80.

2. The biological or adoptive parent, when attempting to act as the parent pursuant to this section and when more than one party is qualified under subdivision 1 of this definition to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent has had his residual parental rights and responsibilities terminated pursuant to § 16.1-277.01 , 16.1-277.02 , or 16.1-283 of the Code of Virginia or a comparable law in another state.

3. The local school division shall provide written notice to the biological or adoptive parents at their last known address that a foster parent is acting as the parent pursuant to this section, and the local school division is entitled to rely upon the actions of the foster parent pursuant to this section until such time that the biological or adoptive parent attempts to act as the parent.

4. If a judicial decree or order identifies a specific person or persons among subdivisions 1 a through e of this definition to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of the special education identification, evaluation, and placement of a child and the provision of a free appropriate public education to a child.

"Personally identifiable information" means information that includes, but is not limited to:

1. The student's name, the child's parent, or other family member;
2. The address of the child;
3. A personal identifier, such as the child's social security number or student number; or
4. A list of personal characteristics that would make the student's identity easily traceable.

["Pharmacological restraints" means a drug or medication used on a student to control behavior or restrict freedom of movement that is not (1) prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional's authority for the standard treatment of a student's medical or psychiatric condition; and (2) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional's authority. (*Keeping All Students Safe Act, 2011*)]

"Physical restraint" means the use of approved physical interventions or "hands-on" holds by trained staff to prevent a student from moving his body to engage in a behavior that places him or others at risk of physical harm. Physical restraint does not include:

1. Briefly holding a student in order to calm or comfort the student; or
2. Holding a student's hand or arm to escort the student safely from one area to another. [(Virginia Board of Education's *Guidelines for the Development of Policies and Procedures for Managing Student Behaviors in Emergency Situations*)]

"Privately placed student" means a student placed in a private school for students with disabilities by ~~his~~ the parent(s) .]

"Publicly placed student" means a student placed in a private school for students with disabilities by a local school division[,] ~~or~~ Comprehensive Services Act team, or by court order.

"Qualified personnel" or "qualified staff" means personnel who have met [the state-approved or state-recognized [Virginia Department of Education approved or recognized] certification, licensing, [or other comparable requirement applicable to a specific discipline.] ~~registration, or other comparable requirements that apply to the area in which the individual is providing special education or related services. In addition, the professional must meet other state agency requirements for such professional service and Virginia licensure requirements as designated by Virginia law or regulations.~~]

["Regular basis" means more than twice a month.]

"Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education and includes speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in

children; counseling services, including rehabilitation counseling; orientation and mobility services and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services; social work services in schools; and parent counseling and training. Related services do not include a medical device that is surgically implanted including cochlear implants, the optimization of device functioning (e.g., mapping), maintenance of the device, or the replacement of that device. The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music and dance therapy, if they are required to assist a child with a disability to benefit from special education. [(§ 22.2-213 of the [Code of Virginia]; 34 CFR 300.34(a) and (b)) (Regulations Governing Special Education Programs for Children with Disabilities in Virginia, 8 VAC 20-81-10)]

"School" means a school for students with disabilities that has a license to operate issued by the Superintendent of Public Instruction.

"School for students with disabilities," "school," or "schools" means a privately owned and operated preschool, school or educational organization, no matter how titled, maintained, or conducting classes for the purpose of offering instruction, for a consideration, profit or tuition, to persons determined to have autism, deaf-blindness, developmental delay, a hearing impairment including deafness, multiple disabilities, orthopedic impairment, other health impairment, an emotional disturbance, a severe disability, a specific learning disability, a speech or language impairment, a traumatic brain injury, or a visual impairment including blindness. (§ 22.1-319 of the [Code of Virginia])

"Seclusion" means the confinement of a student alone in a room from which the student is physically prevented from leaving. (Virginia Board of Education's Guidelines for the Development of Policies and Procedures for Managing Student Behaviors in Emergency Situations)

"Section 504" means that section of the Rehabilitation Act of 1973 (29 USC § 701 et seq.), as amended, which is designed to eliminate discrimination on the basis of disability in any program or activity receiving federal financial assistance.

"Serious incident" means:

1. Any accident or injury requiring medical attention by a licensed physician;
2. Any illness that requires hospitalization;
3. Any runaway; or
4. Any event that affects, or potentially may affect, the health, safety, or welfare of any student being served at the school or school-related activity.

"Serious injury" means any injury resulting in bodily hurt, damage, harm, or loss that requires medical attention by a licensed physician.

"Special education" means specially designed instruction[+] to meet the unique needs of a child with a disability. [There is no cost to the parent(s) for special education for a child who is placed in a school for students with disabilities by a school division, [the Department of Social Services] [a Comprehensive Services Act team, or court order. (§ 22.1-213 of the [Code of Virginia]; (34 CFR 300.39)] The term includes:

1. Speech-language pathology services or any other related service, if the service is considered special education rather than a related service under state standards;
2. Vocational education; and
3. Travel training. [(Regulations Governing Special Education Programs for Children with Disabilities in Virginia, 8 VAC 20-81-10)]

"Specially designed instruction" means adapting, as appropriate to the needs of an eligible child under this chapter, the content, methodology, or delivery of instruction to: [(34 CFR 300.39(b)(3))]

1. Address the unique needs of the child that result from the child's disability; and
2. Ensure access of the child to the general curriculum, so that the child can meet the educational standards that apply to all children within the jurisdiction of the local educational agency.

[(Regulations Governing Special Education Programs for Children with Disabilities in Virginia, 8 VAC 20-81-10)]

"Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of (i) visual, hearing, or motor disabilities; (ii) intellectual disabilities; (iii) emotional disabilities; or (iv) environmental, cultural, or economic disadvantage. [(§ 22.1-213 of the Code of Virginia)] Dyslexia is distinguished from other learning disabilities due to its weakness occurring at the phonological level. Dyslexia is a specific learning disability that is neurobiological in origin. It is characterized by difficulties with accurate or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge. [(Regulations Governing Special Education Programs for Children with Disabilities in Virginia, 8 VAC 20-81-10)]

"Speech or language impairment" means a communication disorder, such as stuttering, impaired articulation, expressive or receptive language impairment, or voice impairment, that adversely affects a child's educational performance. [(34 CFR 300.8(c)(11)) (Regulations Governing Special Education Programs for Children with Disabilities in Virginia, 8 VAC 20-81-10)]

"Standard precautions" mean precautions designed to prevent transmission of HIV, hepatitis B virus (HBV), and other bloodborne pathogens when providing first aid or health care. Standard [precautions] cautions apply to blood; all body fluids, secretions, and excretions except sweat, regardless of whether or not they contain blood; nonintact skin; and mucous membranes. The precautions are designed to reduce the risk of transmission of microorganisms from both recognized and unrecognized sources of infection when providing first aid or health care. Standard precautions include protective barriers such as gloves, gowns, aprons, masks, or protective eye wear that can reduce the risk of exposure with materials that may contain infectious microorganisms.

"Standards of Learning" or "SOL" means Virginia's rigorous academic standards established by the Board of Education.

"Strip search" means a visual inspection of the body of a student when that student's outer clothing or total clothing is removed, and there is an inspection of the removed clothing. Strip searches are conducted for the detection of contraband.

["Substantial compliance" means that while there may be noncompliance with one or more regulations that represent minimum risk, compliance clearly and obviously exists with most of the regulations as a whole.]

"Superintendent" means the [State-state]Superintendent of Public Instruction.

"Teacher of record" means the teacher who is responsible for the delivery of instruction. The teacher of record shall hold a license issued by the [State-Virginia] Board of Education.

"Time-out" means assisting a student to regain control by removing the student from his immediate environment to a different open location until the student is calm or the problem behavior has subsided. (Board of Education's Guidelines for the Development of Policies and Procedures for Managing Student Behaviors in Emergency Situations)

"Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; ~~problem-solving~~ problem solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative or to brain injuries induced by birth trauma. [~~34 CFR 300.8(c)(12)~~] (Regulations Governing Special Education Programs for Children with Disabilities in Virginia, 8 VAC 20-81-10)]

"Visual impairment including blindness" means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness. [~~34 CFR 300.8(c)(13)~~] (Regulations Governing Special Education Programs for Children with Disabilities in Virginia, 8 VAC 20-81-10)]

"Volunteer" means any individual who of his own free will and without compensation provides goods or services to the school.

"Virtual learning" means the delivery of instruction through emerging technologies such as satellite, streaming video, or the Internet.

8VAC20-671-20. Exemptions.

This chapter shall not apply to any of the following at § 22.1-320 of the [Code of Virginia]:

1. Any school that is licensed or approved pursuant to other statutes of the Commonwealth;
2. Any public or private high school accredited or recognized by the Board of Education that has offered or may offer programs for students with disabilities covered in this chapter, if any tuition, fees, and charges made by the school are collected in accordance with the regulations prescribed by the governing body of such school;
3. Tutorial instruction given in a private home or elsewhere as supplemental to regular classes for students enrolled in any public or private school or in preparation of an individual for an examination for professional practice or higher education;
4. A program through which persons with disabilities are provided employment and training primarily in simple skills in a sheltered or protective environment; [or]
5. Any privately owned or operated preschool, or elementary, middle, or secondary school that operates primarily to provide educational services to students without disabilities, although the school may serve children with disabilities in a regular academic setting[.]; ~~or~~]
- ~~[6. Any private school for students with disabilities that operates or on the premises of an elementary, middle, or secondary public school in a regular school setting during a typical school day.]~~

8VAC20-671-30. Licenses generally.

A. The Board of Education has established general requirements for a license to operate a private school for

students with disabilities and has authorized the Superintendent of Public Instruction to issue licenses. The following applies in accordance with § 22.1-323 of the [Code of Virginia]:

1. No person shall open, operate, or conduct any school for students with disabilities in this Commonwealth without a license to operate.
 2. A license to operate shall be restricted to the disability categories specifically indicated on the license, which may include one or more of the disability categories in the definition of a school for students with disabilities in this chapter.
 3. A license to operate may be issued for a period of up to three successive years.
 4. The term of a school's license may be reduced at any time during the licensure period based on a change in the school's compliance with these requirements.
 5. A license to operate shall be prominently displayed on the premises of the school in a place open for inspection by any interested person during the hours of operation.
 6. A license to operate shall be restricted to the approved conditions as printed on the license. Such conditions include, but are not limited to, the maximum number of students that can be enrolled, the disability category or categories of students that can be served, age range and gender, [and grade levels].
- B. An individual seeking to operate a school for students with disabilities shall file an application with the licensing agency.
- [C. The licensing agency may make exception to the requirements of this chapter for good cause.]

8VAC20-671-40. Advertising.

The following provisions consistent with § 22.1-323 of the [Code of Virginia] regarding advertisement of a school shall apply:

1. No school may use the seal of the Commonwealth in any advertisement, publication, or document, including diplomas, certificates, and other awards.
2. The advertisement of a school shall be in a form and manner that is free from misrepresentation, deception, or fraud and shall conform to the following:
 - a. The complete school name as listed on the license to operate shall be used in all publicity, publications, or promotions or for marketing purposes.
 - b. Advertisement shall not expressly or by implication indicate by any means that the license to operate represents an endorsement by the Virginia Department of Education or the Board of Education.
 - c. No fraudulent or misleading statement shall be in print or nonprint about the school's admission policy, tuition and fees; programs and services; size and location; or any other information concerning the school.
 - d. Endorsements, commendations, or recommendations by students, individuals, manufacturers, business establishments, or organizations are prohibited except with their written consent and without any offer of financial compensation.
 - e. The accrediting agency shall be named [using its official title][,] if accreditation is used[,], as part of a school's promotional materials.
3. Prospective applicants may advertise projected services and staff positions while in the application process but shall not misrepresent licensure status and shall not enroll students prior to receiving a license to operate from the Superintendent of Public Instruction.

8VAC20-671-50. Types of licenses.

The following shall apply consistent with § 22.1-323.1 of the [Code of Virginia]:

1. A conditional license shall be issued [upon approval of an application to operate a school for students with disabilities not to exceed a period of one year.] ~~[to a new school that demonstrates compliance with administrative and policy requirements but has not demonstrated compliance with all requirements of this chapter.]~~
 - a. A conditional license may be renewed [for a period of one year when a new school demonstrates compliance

with administrative and policy requirements but has not demonstrated substantial compliance with requirements of this chapter.]

~~[b. The issuance of a conditional license and any renewals thereof shall be for no longer a period than six successive months.]~~

~~[2. A provisional license may be issued to a school that has demonstrated an inability to maintain compliance with this chapter or other applicable regulations.]~~

~~a. A provisional license may be issued at any time.]~~

~~b. A provisional license may be renewed.]~~

~~c. The issuance of a provisional license and any renewal thereof shall be for no longer a period than six successive months.]~~

~~[3 2.] An annual license may be issued under the following conditions and may be extended for a period not to exceed ~~[six 36]~~ successive months:~~

~~a. When a school holds a [A school applies for renewal while holding a conditional or provisional license and] substantially meets the requirements of this chapter;~~

~~[b. The licensing agency determines that a major violation has occurred that impacts the overall operation of the school; or]~~

~~[e b. When a The] school makes significant changes in its operation.~~

~~[4-3.] A triennial license shall be issued when a school [holds an annual or triennial license and substantially meets the requirements of this chapter.]~~

~~[a. [Holds for renewal while holding an annual or triennial license; and]~~

~~b. Substantially meets or exceeds the requirements of this chapter and other applicable regulations.]~~

~~5. The term of a school's license may be modified at any time during the licensure period based on a change in the school's compliance with this chapter and other applicable regulations.]~~

~~[2- 4.] [The term of a school's license may be reduced to] [A] provisional [license] when the [may be issued to a] school [that] has demonstrated an inability to maintain compliance with this chapter or other applicable regulations.~~

~~a. A provisional license may be issued at any time.~~

~~b. A provisional license may be renewed.~~

~~c. The issuance of a provisional license and any renewal thereof shall be for no longer a period than ~~[six 12]~~ successive months.~~

8VAC20-671-60. Change in condition.

A. A condition of a license may be modified during the term of the license with respect to: capacity of the school or classrooms; disability category or categories of students served; age range; [grade levels of students]; change in location; change in services; change in ownership; merger of schools; and enrollment of day student(s) in a residential setting.

B. A change in a condition shall not be implemented prior to approval by the licensing agency. ~~[The licensing agency shall respond to the request and provide approval or denial in 10 calendar days following the date the request was received.]~~

~~[C. A change in a condition may not be approved during a provisional or conditional licensure period.]~~

8VAC20-671-70. License to operate is nontransferable.

A change of ownership occurs when control of a school changes from one owner to another. If there is a change in ownership, the following shall apply:

1. The licensee shall notify the licensing agency at least 30 calendar days prior to the proposed change.

2. The new owner shall submit an initial application for a license to operate to the licensing agency within 30 calendar days following the effective date of the change in ownership.

3. The school may operate under the existing license for 60 calendar days from the effective date of the change

in ownership at which time a conditional license may be issued.

8VAC20-671-80. Penalty for noncompliance in obtaining a license to operate.

Failure to obtain a license to operate a school for students with disabilities shall result in the following penalties allowed in § 22.1-331 of the Code of Virginia:

1. Any person who opens, operates, or conducts a school without first obtaining a license to operate may be found guilty of a Class 2 misdemeanor.
2. Each day the school remains open without a license to operate, the owner or board of directors shall incur a separate offense.
3. The licensing agency shall refer to the Office of the Attorney General any alleged or known violation of this chapter. The Office of the Attorney General shall refer the matter to the Commonwealth's attorney of proper jurisdiction.

8VAC20-671-90. Directory of private schools for students with disabilities.

The licensing agency shall maintain a directory of schools holding valid licenses to operate that shall be available to the public (§ 22.1-332 of the Code of Virginia). The directory [~~shall identify other applicable state licensing agencies over the school and~~] may include additional information to inform the public about the school's operation.

8VAC20-671-100. Initial application.

To obtain a license to operate a school for students with disabilities, [an] application shall be filed with the [Virginia] Department of Education. A completed initial application shall include the following:

1. Complete name [~~and with~~] physical [~~and mailing addresses~~] of the school;
2. Name and address of owners, controlling officials, and managing employees;
3. Evidence that the applicant has conducted a needs assessment;
4. Evidence of the applicant's compliance with the applicable regulations of the State Corporation Commission when the school is owned by a partnership or corporation;
5. Narrative description of building and scale drawing[s] or copy of all floor plans including room use and dimensions;
6. Certificate of occupancy with educational use group or other report from the appropriate government agency or agencies indicating that the location meets applicable zoning, building code, use permit, business license, fire safety, and sanitation requirements;
7. Copy of the deed, lease, or other legal instrument authorizing the school to occupy such location;
8. Proposed working budget for the year showing projected revenue and expenses for the first year of operation and a balance sheet showing assets and liabilities; a three-year financial plan; and documentation of sufficient operating capital or line of credit to carry the school through the first year of operation;
9. Original signed surety bond, irrevocable letter of credit, or certificate of deposit to protect the contractual rights of parents and students;
10. Schedule of tuition and other fees and the procedure for collecting and refunding tuition;
11. Copies of all proposed advertisements;
12. Description of the education program to include disability category or categories to be served, enrollment capacity, [grade level(s),] age range, gender, and course offerings;
13. Listing of instructional resources and equipment;
14. Description of related services;
15. School's policy manual;
16. Proposed staffing and organizational chart;
17. Job description for each position;
18. Parent/student handbook;

19. Statement [regarding ~~of~~] transportation services if the school provides transportation for students;
20. Statement regarding provision of student lunches; [~~and~~]
[21. Description of the behavior management program [,and;]
~~[21 22.] Any other information necessary to complete the application process.~~

8VAC20-671-110. Applicant commitments.

Each application for a license to operate a school for students with disabilities shall contain the following commitments:

1. To conduct the school in accordance with all applicable regulations of the board;
2. To permit the board or department to inspect the school or classes being conducted therein at any time and to make available to the board or department, when requested to do so, all information pertaining to the activities of the school required for the administration of this chapter, including its financial condition;
3. To advertise the school at all times in a form and manner that is free from misrepresentation, deception, or fraud and to conform to provisions of the board governing such advertising;
4. To ensure that all representations made by an agent of the school are free from misrepresentation, deception, or fraud and to conform to provisions of the board governing such advertising;
5. To display the current license to operate prominently where it may be inspected by students, visitors, and the board or department; and
6. To maintain all premises, equipment, and facilities of the school in an adequate, safe, and sanitary condition.

8VAC20-671-120. Assessment of application.

- A. The licensing agency shall evaluate each application within 60 calendar days from the date received and advise the applicant in writing of approval or deficiencies.
- B. The applicant shall correct all deficiencies within 30 calendar days from the date of the written assessment of the application. The licensing agency may grant an extension for a reasonable period of time.
- ~~[C. Any application that has not been approved within the allotted time period shall be denied and returned to the applicant. The applicant may reapply for a license 90 calendar days following the date of the returned application.]~~
- [C. The licensing agency shall conduct a review of the character, reputation, status, and responsibility of the applicant before issuing a license.]
- ~~[C. D.] The licensing agency may require the applicant to appear before a review committee [~~for~~ before] final approval of the application.~~

8VAC20-671-130. On-site inspection.

Before a license can be issued [to an applicant], the licensing agency shall conduct an on-site inspection or equivalent virtual inspection of the school building and grounds to determine its suitability for the operation of a school for students with disabilities.

8VAC20-671-140. Renewal of licenses.

- ~~[A. Sixty calendar days prior to the expiration of a license to operate, the licensee shall submit to the licensing agency notification of intent for continued operation of the school.]~~
- ~~[A. B.] The license of each school that continues to operate as such shall be renewed on or before the anniversary date set by the licensing agency.~~
- ~~[B. C.] Each license that has not been renewed in accordance with this chapter shall expire. [~~and a new license shall be obtained from the board before such school may continue to operate. A new application must be submitted to the licensing agency.~~]~~

8VAC20-671-150. Monitoring.

The licensing agency shall:

1. Make at least one [~~announced or~~] unannounced visit during the effective dates of the license to operate for the purpose of monitoring the school's compliance with this chapter;
2. Notify relevant local governments and placing and funding agencies of health and safety or human rights violations;
- [3. Notify the appropriate public agencies when a school's licensure status is lowered to provisional;]
[~~3. 4.] Cooperate with other [state] licensing agencies[, specifically, the Department of Social Services and the Department of Behavioral Health and Developmental Services] in fulfilling licensing responsibilities[; and] [The licensing agency shall notify the relevant local governments and placing and funding agencies when a school's licensure status is lowered to provisional.]~~]
- [5. Provide a process for school officials to file an appeal when there is disagreement with the licensing agency's identification of noncompliance with these regulations.]

8VAC20-671-160. Complaint resolution procedures.

- A. A complaint may be filed with the licensing agency by any individual or organization and shall address an action that occurred not more than one year prior to the date the complaint is received by the licensing agency.
- B. A complaint must provide a statement of some disagreement with procedures or process regarding any matter relative to this chapter or other applicable regulations.
- C. Upon receipt of a complaint, the licensing agency shall initiate an investigation to determine whether the school is in compliance with applicable laws and regulations in accordance with the following procedures:
 1. Within seven business days of the receipt of a complaint, the licensing agency shall provide written notification to each complainant and the private school.
 - a. The notification sent to the school shall include:
 - (1) A copy of the complaint;
 - (2) An offer of technical assistance in resolving the complaint;
 - (3) A statement that the school has the opportunity to propose a resolution of the complaint;
 - (4) A request that the school submit within 10 business days of receipt of the letter of notification either:
 - (a) Written documentation that the complaint has been resolved; or
 - (b) If the complaint was not resolved, a written response including all requested documentation.
 2. The licensing agency shall review the complaint and the school's response and determine the need for any further investigation or corrections.
 3. The licensing agency shall notify appropriate agencies of serious violations.
 4. During the course of the investigation, the licensing agency shall:
 - a. Conduct an investigation of the complaint that shall include a complete review of all relevant documentation and may include interviews with appropriate individuals and an independent on-site investigation, if necessary.
 - b. Consider all facts and issues presented and the applicable requirements specified in this chapter or other applicable regulations.
 - c. Make a determination of compliance or noncompliance on each issue in the complaint based upon the facts and applicable regulations and notify the parties in writing of the findings and the bases for such findings. The licensing agency has 60 calendar days after the written complaint is received to carry out the investigation and to resolve the complaint. An extension of the 60 calendar day time limit may occur if exceptional circumstances exist with respect to a particular complaint.
 - d. Ensure that the final decision is effectively implemented, if needed, through technical assistance activities, negotiations, and corrective actions to achieve compliance.
 - e. Notify the parties in writing of any needed corrective actions and the specific steps that shall be taken by the school to bring it into compliance with applicable timelines.
 - E. Parties to the complaint procedures shall have the right to appeal the final decision to the licensing agency within 30 calendar days of the issuance of the decision.

- F. When the school develops a plan of action to correct the violations, such plan shall include timelines to correct violations not to exceed 30 business days unless circumstances warrant otherwise. The plan of action shall include a description of all changes contemplated and shall be subject to approval of the licensing agency.
- G. If the school does not come into compliance within the period of time set forth in the notification, the licensing agency may reduce or revoke the school's license to operate.

8VAC20-671-170. Denial, revocation, or suspension of license.

- A. The superintendent may refuse to issue or renew a license to operate or may revoke or suspend a license issued to any school pursuant to this chapter for the following causes (§ 22.1-329 of the [Code of Virginia]):
1. Violating any provision of this chapter or regulation of the board;
 2. Furnishing false, misleading, or incomplete information to the board or department or failure to furnish information requested by the board or department;
 3. Violating any commitment made in an application for a license;
 4. Presenting either by the school or by any agent of the school to prospective students information relating to the school which is false, misleading, or fraudulent;
 5. Failing to provide or maintain premises or equipment in a safe and sanitary condition as required by law;
 6. Making any false promises through agents or by advertising or otherwise of a character likely to influence, persuade, or induce enrollments;
 7. Paying a commission or valuable consideration to any person for any act of service performed in willful violation of this chapter;
 8. Failing to maintain financial resources adequate for the satisfactory conduct of courses of instruction offered or to retain a sufficient or qualified instructional staff;
 9. Demonstrating unworthiness or incompetency to conduct the school in a manner calculated to safeguard the interests of the public;
 10. Failing within a reasonable time to provide information requested by the board or department as a result of a formal or informal complaint to or by the board or department that would indicate a violation of these requirements;
 11. Attempting to use or employ any enrolled students in any commercial activity whereby the school receives any compensation whatsoever without reasonable remuneration to the student, except to the extent that employment of students in such activities is necessary or essential to their training and is permitted and authorized by the board; or
 12. Engaging in or authorizing any other conduct, whether of the same or of a different character from that specified in this section, that constitutes fraudulent or dishonest dealings.

8VAC20-671-180. Summary or final order of suspension.

The provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the [Code of Virginia]) shall be applicable to proceedings under this section. In compliance with § 22.1-329 of the [Code of Virginia], the following shall apply:

1. In addition to the authority for other disciplinary actions provided in this chapter, the Superintendent of Public Instruction may issue a summary order of suspension of a license of a residential or day school for students with disabilities in conjunction with any proceeding for revocation, denial, or other action when conditions or practices exist in the school that pose an immediate and substantial threat to the health, safety, and welfare of the students who are residing or attending the school and the Superintendent of Public Instruction believes the operation of the school should be suspended during the pendency of such proceeding.
2. The summary order of suspension shall take effect upon its issuance and shall be served on the licensee or its designee as soon as practicable thereafter by personal service and certified mail, return receipt requested, to the address of record of the licensee. The order shall state the time, date, and location of a hearing to determine whether the suspension is appropriate. Such hearing shall be held no later than three business days

after the issuance of the summary order of suspension and shall be convened by the Superintendent of Public Instruction or designee.

3. After such hearing, the Superintendent of Public Instruction may issue a final order of summary suspension or may find that such summary suspension is not warranted by the facts and circumstances presented. A final order of summary suspension shall include notice that the licensee may appeal the Superintendent of Public Instruction's decision to the appropriate circuit court no later than 10 days following issuance of the order. The sole issue before the court shall be whether the Superintendent of Public Instruction had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. The concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary suspension.

4. The willful and material failure to comply with the summary order of suspension or final order of summary suspension shall be punishable as a Class 2 misdemeanor. The Superintendent of Public Instruction may require the cooperation of any other agency or subdivision of the Commonwealth in the relocation of students who are residents of a home or facility whose license has been summarily suspended pursuant to this section and in any other actions necessary to reduce the risk of further harm to students.

8VAC20-671-190. Timeline for correction of unsatisfactory conditions.

In compliance with § 22.1-330 of the [Code of Virginia], the board or department:

1. May, upon its own motion, and shall, upon the verified complaint in writing of any person setting forth facts that, if proved, would constitute grounds for refusal, suspension, or revocation of a license, investigate the actions of any applicant for or any person or persons holding or claiming to hold a license to operate.
2. Before refusing to renew, revoking, or suspending any license, may grant such period of time as it deems reasonable to correct any unsatisfactory condition.

8VAC20-671-200. Governing body.

A. Each school shall use its complete name as [~~listed~~ printed] on the license to operate for all publicity, publications, promotions, or marketing purposes.

B. Any governing board, body, entity, or person to whom it delegates the legal responsibilities and duties of the licensee shall be clearly identified.

8VAC20-671-210. Responsibilities of the licensee.

The licensee shall:

1. Appoint an individual(s) to whom it delegates the authority and responsibility to assume the administrative direction of the school. The appointment shall be in writing.
2. Develop and implement a written decision-making plan that shall include provision for a staff person with the qualifications of the school administrator or education program director to be designated to assume the temporary responsibility for the operation of the school in the absence of the school administrator. The plan shall include a current organizational chart.
3. Ensure that staff positions and responsibilities meet the needs of the population served.
4. Develop a written statement of the objectives of the school including a description of the target population and the program offerings.
5. Develop and implement written policies and procedures to monitor and evaluate the effectiveness of the education program on a systematic and ongoing basis and implement improvements when the need is determined.
6. Ensure compliance with applicable child labor laws.
7. Develop a written policy prohibiting the consumption of tobacco products, [illegal] drugs, and alcohol or being under the influence of intoxicating or hallucinogenic agents while on campus and at school-sponsored [student] activities.

8. [Require as a condition of employment that any applicant who accepts employment full-time or part-time, permanent or temporary [;] [,including interns and volunteers [who work alone with students] [volunteers on a regular basis and will be alone with a student in the performance of his duties; or anyone who provides contractual services, including services of a student intern, on a regular basis and will be alone with a student in the performance of his duties shall] submit to fingerprinting and to provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant. [In addition, where the applicant has resided in another state within the last five years, the school shall as a condition of employment determine if there are any founded complaints of child abuse or neglect in such state(s) pursuant to §§ 22.1-296.3 and 22.1-296.4 of the [Code of Virginia].

[a. Anyone who is hired or is approved to provide volunteer services, contractual services, or services of a student-intern on a regular basis and will be alone with students cannot begin working with children until the criminal history background check has been received by the school.]

9. Require as a condition of employment that any applicant who accepts employment requiring direct contact with students, whether full-time or part-time, permanent or temporary; [including interns and volunteers who work alone with students] [volunteers on a regular basis and will be alone with a student in the performance of his duties; or anyone who provides contractual services, including services of a student intern on a regular basis and will be alone with a student in the performance of his duties] shall provide written consent and necessary personal information for the school to obtain a search of the registry of founded complaints of child abuse and neglect maintained by the Department of Social Services. [Where the applicant has resided in another state within the last five years, the school shall as a condition of employment determine if there are any founded complaints of child abuse or neglect in such state(s) pursuant to §§ 22.1-296.3 and 22.1-296.4 of the Code of Virginia.]

[a. Anyone who has not submitted to a search of the registry of founded complaints of child abuse and neglect maintained by the Department of Social Services shall not be permitted to work alone with children.]

[b. The results of the search of the registry must be received prior to permitting an applicant to work with children.]

10. Notify the licensing agency within five calendar days of any change in administration or newly appointed individual responsible for the day-to-day administration or operation of the school.

11. Ensure that all staff members receive annual professional development related to their job responsibilities.

12. Report to the licensing agency within 10 business days lawsuits, [settlements, or criminal charges relating to the operation of the school] against or settlements with the licensee relating to the health and safety or human rights of students and any criminal charges against staff that may be related to the health and safety or human rights of students.]

13. Develop and implement an accessible policy and procedures to handle grievances from students, parents, and employees. [Schools are required to provide written notification of the right to file a complaint with the Virginia Department of Education's private school licensure office.]

[14. The school shall have a written policy and procedure that the school does not discriminate on the basis of race, color, national origin, sex, disability, or age in its programs and activities.]

8VAC20-671-220. Fiscal accountability.

A. The licensee shall prepare at the end of each fiscal year:

1. An operating statement to include a month-to-month accounting of revenue and expenses for the fiscal year just ended;

2. A working budget showing projected revenue and expenses for the next fiscal year that gives evidence of sufficient funds to operate; and

3. A balance sheet showing assets and liabilities for the fiscal year just ended.

B. There shall be a system of financial recordkeeping that shows a separation of the school's accounts from all

other records.

C. There shall be written policies and procedures that address the day-to-day handling of the school's funds.

D. The licensing agency reserves the right to call for one of these two types of statements:

1. An audited financial statement certified by an outside independent certified public accountant in accordance with standards established by the American Institute of Certified Public Accountants; or

2. A financial statement that has been reviewed by an outside independent certified public accountant in accordance with principles established for reviews by the American Institute of Certified Public Accountants.

8VAC20-671-230. Protection of contractual rights.

In compliance with § 22.1-324 of the [Code of Virginia], provisions for the protection of contractual rights shall include the following:

1. With each application, the applicant shall submit and maintain a guaranty instrument payable to the Commonwealth of Virginia to protect the contractual rights of students and other contracting parties.

2. The guaranty instrument shall be based on the school's approved capacity. A minimum guaranty of \$10,000 for up to 25 students and \$5,000 for each additional 25 students shall apply.

3. In the event a guaranty instrument is terminated, the license to operate will terminate within 30 calendar days if a replacement bond or other instrument is not filed with the licensing agency.

4. If a school collects no advance tuition other than equal monthly installments or receives payment after services have been rendered, the school may apply to the licensing agency for exemption from the guaranty requirements.

8VAC20-671-240. Insurance.

A. The licensee shall maintain liability insurance covering the premises and the school's operation.

B. The licensee shall maintain liability insurance on all vehicles used to transport students, including vehicles owned by staff. [The school shall obtain written consent from the parent to transport a student in a staff member's personal vehicle.]

C. The members of the governing body and staff who are authorized to handle school or [~~students'~~ student] funds shall be bonded [or indemnified against employee dishonesty.]

8VAC20-671-250. Fundraising.

[A.] Written consent of the [parent(s) or legal guardian and of a child age 14 or older parent] shall be obtained before [allowing a student to participate participating] in any school fundraising activity.

[B. No student shall be forced to participate in any school fundraising activity.]

8VAC20-671-260. Relationship to the licensing agency.

The licensee shall make information available to the licensing agency upon the requested due date in order to make a timely determination of compliance with this chapter and other applicable regulations and statutes. The licensing agency may alter the term of a license if the school fails to comply in a reasonable time period.

8VAC20-671-270. Personnel policies and procedures.

A. The licensee shall have written personnel policies and procedures that include, but are not limited to, job qualifications, job descriptions, [~~staff~~] supervision, evaluation, grievance, and termination.

1. The licensee shall develop and implement written policies and procedures that persons appointed or designated to assume the responsibilities of each position possess the education, experience, [~~knowledge,~~] skills, and abilities specified in the job description.

2. The licensee shall make written personnel policies and procedures accessible to each employee.

B. The licensee shall maintain a current organizational chart of all full-time and part-time positions.

8VAC20-671-280. Job qualifications.

A person who assumes or is designated to assume the responsibilities of a position or any combination of positions described in this chapter shall meet the qualifications of the position, comply with all applicable regulations for each function, and demonstrate a working knowledge of the policies and procedures applicable to the position.

8VAC20-671-290. Job descriptions.

A. There shall be a written job description for each position that includes job title; duties and responsibilities; job title of the immediate supervisor; and minimum education, experience, ~~[knowledge,]~~ skills, and abilities required for entry-level performance of the job.

B. A copy of the job description shall be given to each person assigned to a position at the time of employment or assignment.

8VAC20-671-300. School administrators.

A. The licensee shall designate ~~[one or more an]~~ individual(s) ~~[who is a graduate of an accredited college or university and is]~~ responsible for the administrative operation of the school ~~[who serves as the instructional leader and is responsible for including effective school management that promotes positive student achievement; and a safe and secure environment in which to teach and learn].~~ ~~[This individual may also serve as the instructional leader.]~~

B. ~~[As the instructional leader, t-]~~ ~~[T]he school administrator [shall:] is responsible for ensuring that students are provided an opportunity to learn and shall:]~~

1. Protect the academic instructional time from unnecessary interruptions ~~[and disruptions and enable the professional teaching staff to spend the maximum time possible in the teaching/learning process by keeping to a minimum clerical responsibility and the time students are out of class];~~

2. Seek to maintain a safe and secure school environment;

3. Involve the school staff ~~[of the school]~~ in identifying ~~[the types of staff development needs needed to improve student achievement and ensure [that the staff participation e in those activities];~~

4. Analyze classroom practices and methods for improvement of instruction;

~~[5-4.] Ensure [that students' student] education records are maintained [confidentially;] and that criteria used in making placement and promotion decisions, as well as any instructional interventions used to improve the student's students'] performance, are included in the record[s]; and~~

~~[6 5.] Monitor and evaluate the quality of instruction [and provide supports as needed ~~-provide staff development, and provide support that is designed]~~ to improve instruction.~~

C. The instructional leader shall hold a valid five-year renewable postgraduate professional license issued by the board with an endorsement in school administration and supervision or special education and have at least three years of experience working with students with disabilities.

D. The instructional leader or designee shall at all times be on the premises of the school while the school is in operation.

E. All staff on duty must know who is responsible for the administration of the school at any given time.

8VAC20-671-310. Teachers and staffing.

A. Each teacher shall meet the requirements of the ~~[Board of Education's Licensure Regulations for School Personnel, (8VAC20-22)].~~

1. Schools where students are instructed by content or grade level endorsed teachers shall have available appropriately endorsed special education teachers to case manage IEPs and to provide disability specific technical assistance and instruction.]

2. Schools offering only self-contained classroom instruction shall have teachers endorsed in either special education general curriculum or special education adapted curriculum depending on the functioning level[s] of

the students.]

B. Staffing shall be in accordance with the [Regulations Governing Special Education Programs for Children with Disabilities in Virginia] (8VAC20-81) in the following settings:

1. A student with an Individualized Education Program (IEP) may be instructed with students without disabilities, as appropriate, and in accordance with the IEP.

2. A student with an IEP may receive services with children with the same disability or with children with different disabilities.

C. Teacher personnel assignments shall be in accordance with [Regulations Governing Special Education Programs for Children with Disabilities in Virginia] (8VAC20-81).

1. General education qualified personnel who are knowledgeable about the students and their special education may implement special services in collaboration with special education personnel.

2. Special education services include those services provided directly to the student and those provided indirectly.

D. Teacher caseloads shall be assigned in accordance with the [Regulations Governing Special Education Programs for Children with Disabilities in Virginia] (8VAC20-81).

1. If children with disabilities in a single building receive academic content area instruction from multiple special education teachers, the teachers' caseloads shall be determined by using a building average.

2. When special education personnel are assigned to provide services for students who do not have a disability under this chapter or are assigned to administrative duties, there shall be a reduction in the caseload specified in proportion to the percentage of school time on such assignment.

3. Special education personnel may be assigned to serve children who are not eligible for special education and related services as long as they hold appropriate licenses and endorsements for such assignments.

E. Staffing for early childhood special education shall be in accordance with the [Regulations Governing Special Education Programs for Children with Disabilities in Virginia] (8VAC20-81).

1. Children of preschool ages (two to five, inclusive) who are eligible for special education may receive early childhood special education.

2. Students receiving early childhood special education may receive services together with other preschool-aged children with the same or with different disabilities.

F. A school may offer for consideration of approval an alternative staffing plan in accordance with the department's procedures. The department may grant approval for alternative staffing levels [and teaching assignments] upon request from private schools for students with disabilities seeking to implement innovative programs that are not consistent with the staffing levels outlined in the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* (8VAC20-81).

8VAC20-671-320. Substitute teachers.

A. No substitute teacher shall be used to fill a vacant teaching position for more than 90 teaching days in such vacancy during one school year.

B. Substitute teachers shall be at least 18 years of age, hold a high school diploma or a [General eEducational diploma- Development] (GED) certificate, have two years of full-time postsecondary education or two years of ~~successful~~ work experience with children [with disabilities or equivalent, and receive orientation to the school's policies and procedures].

[C. A substitute teacher employed to fill a teacher vacancy for a period of time shall receive orientation to the school's policies and procedures.]

8VAC20-671-330. Support staff.

A. School support personnel, including contractual service providers, shall meet the Board of Education's [Licensure Regulations for School Personnel] (8VAC20-22) or the requirements of another state or national accrediting agency.

B. Paraprofessionals and other ancillary staff shall be at least 18 years of age (21 years of age preferred), [at a minimum hold a high school diploma or [GED a general educational diploma (GED)], have two years of [full-time successful] work experience with children or completed two years of coursework in a related field, [complete orientation conducted by the school administrator or designee regarding school policies and procedures and characteristics of students served, and work under the supervision of qualified staff] [, or upon employment, complete within 60 calendar days of hire training specific to the assigned student population and job duties as they relate to the academic and behavior progress of students. Such training shall include individualized instruction and student behavior management, including principles and strategies to reduce interfering behavior, build positive skills, and enhance communication of students with autism spectrum disorders.]

C. No support staff shall be used as replacement for teachers or related service staff unless they meet the qualifications of the position.

D. Support staff who do not meet licensure or certification requirements shall not be given misleading work titles or titles that infer [that] they meet required credentials.

[E. Paraprofessionals shall work under the supervision of qualified professional staff.]

8VAC20-671-340. Staff supervision.

The licensee shall develop and implement written policies and procedures regarding the supervision of employees [, full-time and part-time,] and all other staff including volunteers and [student] interns [working in the school building or on school grounds].

8VAC20-671-350. Staff development.

A. Within seven calendar days following [their staff's] begin date, each staff member responsible for working with students shall receive orientation of the school's philosophy, goals and objectives; duties and responsibilities of their position; and the school's policy and procedures for behavior intervention.

B. Within 14 calendar days following [their staff's] begin date and before an individual is alone supervising students,] all staff shall receive emergency preparedness and response training that shall include: alerting emergency personnel and sounding alarms; implementing evacuation procedures with particular attention to students with special needs; using, maintaining, and operating emergency equipment; accessing emergency information for students including medical information; and utilizing community support services.

C. Within 14 calendar days following [their staff's] begin date, [all] staff shall receive professional development on confidentiality; the school's administrative decision-making plan; and policies and procedures [including prohibited actions,] that are applicable to their positions, duties, and responsibilities.

D. Within 30 calendar days following [their staff's] begin date, [all] staff shall receive training on the school's policy and procedures, including standard precautions, child abuse and neglect, [and] mandatory reporting [, and maintaining appropriate professional relationships and interactions among staff and students, and suicide prevention.]

[E. Within 30 calendar days following their begin date, all staff responsible for medication administration shall have successfully completed an approved medication training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medications. Staff shall meet this requirement before administering any medication to students and shall receive annual retraining.]

[F. E.] All staff shall receive annual professional development and refresher [in on the school's policies and procedures on standard precautions,] emergency preparedness and response to include alerting emergency personnel and sounding alarms; implementing evacuation procedures with particular attention to students with special needs; [and] using, maintaining, and operating emergency equipment [, accessing emergency information for students and staff including medical information and utilizing community supports.]

[G. F.] All staff shall receive annual professional development and refresher on behavior supports, child abuse and neglect, [and] mandatory reporting [, maintaining appropriate professional relationships and interactions among staff and students, and suicide prevention.]

~~G. Each full-time staff person shall complete an additional 15 hours of annual training applicable to their job duties.] [Each staff who works directly with students shall annually receive 15 hours of professional development related to student progress and academic achievement that is applicable to the population served and to their job duties.]~~

8VAC20-671-360. Personnel records.

A. Separate up-to-date personnel records shall be maintained for each full-time and part-time employee, student intern, and volunteer for whom background investigations are required by Virginia statute. Content of personnel records of volunteers, student interns, and contractual service providers shall include, at a minimum, documentation of compliance with requirements of Virginia laws regarding child protective services and criminal history background investigations.

B. A record shall be maintained for each staff to include:

1. A completed employment application or other documentation providing the individual's name, address, and telephone number;

2. Documentation of qualifications [, including educational background and professional licensure or certification;]

3. Employment history;

4. Written references or notations of oral references;

5. Reports of required ~~health examinations~~ tuberculosis certificate];

6. Annual performance evaluations;

7. Date of employment for each position held and date of separation;

8. Documentation of compliance with requirements of Virginia laws regarding child protective services and criminal history background investigations;

9. ~~Driving record verification from the Department of Motor Vehicles checks~~ and a current copy of the driver's license for all staff who transport students;]

10. Documentation of all training required by this chapter and any other training or professional development received by individual staff; and

11. A current job description.

C. All personnel records shall be maintained confidentially and retained in their entirety for a minimum of three years after staff's separation from the school.

8VAC20-671-370. School facilities and safety.

A. Each school shall be maintained in ~~a manner ensuring~~ compliance with the Virginia Uniform Statewide Building Code (13VAC5-63). ~~Each school shall:~~

~~1. B.] Each school shall ~~Maintain~~ maintain a physical plant that is accessible, barrier free, safe, and clean[;.]~~

~~2. C.] Each school shall ~~Provide suitable~~ provide [safe] and adequate instructional areas, ~~and~~ space for administrative staff, pupil personnel services, library and media services, and physical education. [Schools established after the effective date of these regulations and classrooms added to existing buildings shall provide [at least] 50 ~~net~~ square feet ~~per occupant~~ of classroom or instructional area per student [excluding classroom fixtures.] ~~with consideration given to safety.];-~~~~

~~3. D. Each school shall ~~Provide~~ provide adequate, safe, and properly equipped classrooms [and instructional areas, and where appropriate,] laboratories, play areas, and dining areas that meet the needs of students and instruction.~~

~~;~~

~~4. E.] Each school shall ~~Provide~~ provide space for safe storage of items such as first aid equipment, medication, household supplies, school supplies, and equipment.~~

~~B. F.] After the initial application, the school shall document annually that buildings and equipment are maintained in accordance with the Virginia Statewide Fire Prevention Code (13VAC5-51) and maintain records~~

of regular safety, health, and fire inspections conducted and certified by local health and fire departments.

~~[C. G.] Building plans and specifications for new construction, change in use of existing buildings, and any structural modifications or additions to existing buildings shall be submitted in advance to the licensing agency for approval.~~

~~[D. H.] Animals allowed on the premises shall be tested, inoculated, and licensed as required by law.~~

~~[E. Smoking shall be prohibited at all times and in all school buildings, on all school grounds, and during off-campus school sponsored activities.]~~

~~[F. I.] Swimming pools shall be inspected annually by the state or local health authorities or by a swimming pool business.~~

~~[G. J.] There shall be a written policy concerning [the provision of] safeguards for [aquatic-related activities to include supervision by a certified lifeguard] water-related activities and a provision that a certified life guard supervises all swimming activities.~~

~~[H. K.] There shall be a written policy regarding safeguards for school-sponsored activities including adventure and wilderness activities.~~

~~[H. L.] There shall be an electronic two-way a communication system available to staff at all times in the classroom and during school-sponsored activities.~~

[M. Schools shall have safeguard(s) to be able to identify any visitor in the school building and on the premises during the school day.]

8VAC20-671-380. Contingency plans.

A. A school shall have contingency plans for [medical emergencies that include staff certification in cardiopulmonary resuscitation (CPR), [abdominal thrust (Heimlich maneuver), and] emergency first aid [, and medication administration].

B. The school administration shall ensure that the school has:

1. Written procedures to follow in emergencies such as fire, injury, illness, and violent or threatening behavior. Contingency plans should be developed with the assistance of state or local public safety authorities. Such plans shall be outlined in the student handbook and [discussed reviewed] with staff and students; during the first week of each school year;
2. Space for the proper care of students who become ill; and
3. A written procedure for responding to violent, disruptive, or illegal activities by students on school property or during a school-sponsored activity.

C. Each school shall [annually] have at least [three] one tornado drill[s]; [at least one earthquake drill; and at least two lockdown drills, one in September and one in January.]

D. The school shall have a written emergency preparedness and response plan for all locations that addresses:

1. Documentation of contact with the local emergency coordinator to determine (i) local disaster risks, (ii) communitywide plans to address different disasters and emergency situations, and (iii) assistance, if any, that the local emergency management office will provide to the school in an emergency.
2. Analysis of the school's capabilities and potential hazards, including natural disasters, severe weather, fire, flooding, workplace violence [intruder, hostage situation,] or terrorism, missing persons, riot, severe injuries, or other emergencies that would disrupt the normal course of service delivery.
3. Written emergency management policies outlining specific responsibilities for provision of administrative direction and management of response activities; coordination of logistics during the emergency; communications; life safety of students, employees, contractors, student interns, volunteers, and visitors; property protection; community outreach; and recovery and restoration.
4. Written emergency response procedures for assessing the situation; protecting students, employees, contractors, student interns, volunteers, and visitors; [protecting] equipment and education records; and restoring services.
5. Emergency procedures, which shall address:

- a. Communicating with employees, contractors, [volunteers, student-interns,] and community responders;
- b. Warning and notification of students;
- c. Providing emergency access to secure areas and opening locked doors;
- d. Conducting evacuations to emergency shelters or alternative sites and accounting for all students;
- e. Relocating students and staff, if necessary;
- f. Notifying family members and legal guardians;
- g. Alerting emergency personnel and sounding alarms; and
- h. Locating and shutting off utilities when necessary.
- 6. Supporting documents that would be needed in an emergency, including emergency call lists, building and site maps necessary to shut off utilities, designated escape routes, and list of major resources such as local emergency shelters.
- 7. Schedule for testing the implementation of the plan and conducting emergency preparedness drills.
- 8. Children who use wheelchairs, crutches, canes, or other mechanical devices for assistance in walking shall be provided with a planned, personalized means of effective egress for use in emergencies.
- E. The school shall have emergency preparedness and response training for all employees, contractors, student interns, and volunteers that shall include responsibilities for:
 - 1. Alerting emergency personnel and sounding alarms;
 - 2. Implementing evacuation procedures including evacuation of students with special needs (i.e., deaf, blind, nonambulatory);
 - 3. Using, maintaining, and operating emergency equipment;
 - 4. Accessing emergency information for students including medical information; and
 - 5. Utilizing community support services.
- F. There shall be documented review of the emergency preparedness plan annually and revisions made if necessary.
- G. Employees, contractors, student interns, and volunteers shall be prepared to implement the emergency preparedness plan in the event of an emergency.
- H. Floor plans showing primary and secondary means of egress shall be posted on each floor in locations where they can easily be seen by staff and students.
- I. The procedures and responsibilities reflected in the emergency procedures shall be communicated to all students within seven days following admission or a substantive change in the procedures.
- J. At least one [emergency evacuation drill (~~the simulation of the school's emergency procedures~~) shall be conducted ~~each week during the first month of school and one each month thereafter~~] in each building occupied by students [at least once per week for the first twenty school days and then once a month for the rest of the school year and more often if necessary.]
- K. Evacuation drills shall include, at a minimum:
 - 1. Sounding of emergency alarms;
 - 2. Practice in evacuating buildings and buses or vans;
 - 3. Practice in alerting emergency authorities;
 - 4. Simulated use of emergency equipment; and
 - 5. Practice in securing student emergency information.
- L. A record shall be maintained for each evacuation drill and shall include the following:
 - 1. Buildings and buses or vans in which the drill was conducted;
 - 2. Date and time of drill;
 - 3. Amount of time to evacuate the buildings;
 - 4. Specific problems encountered;
 - 5. Staff tasks completed including head count and practice in notifying emergency authorities; and
 - 6. The name of the staff members responsible for conducting and documenting the drill and preparing the record.

M. The record for each evacuation drill shall be retained for three years after the drill.

N. At least one staff member shall be assigned the responsibility for ensuring that all requirements regarding the emergency preparedness and response plan and the evacuation drill program are met.

O. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety, and welfare of students, the school shall notify the parent(s), the student's public school, placing agency, and licensing agency as soon as possible, but no later than 24 hours after the incident occurs.

8VAC20-671-390. Weapons.

The licensee shall develop written policies and procedures governing prohibition of the possession and use of firearms, pellet guns, air guns, and other weapons on the school's premises and during school-related activities unless the weapons are in the possession of licensed security personnel or ~~[law enforcement]~~ law enforcement officers.

8VAC20-671-400. ~~Strip searches~~ Searches.

~~[A. Strip searches and body cavity searches are prohibited, [except as permitted by other applicable state regulations or as ordered by a court of competent jurisdiction.]~~

~~[B-A.] A school that does not conduct pat downs shall have a written policy prohibiting them.~~

~~[C-B.] A school that conducts pat downs shall develop and implement written policies and procedures that shall provide the following:~~

1. Pat downs shall be limited to instances where they are necessary to prohibit contraband;

2. Pat downs shall be conducted by personnel of the same gender as the student being searched;

3. Pat downs shall be conducted only by personnel who are specifically authorized to conduct searches by the school's written policies and procedures; and

4. Pat downs shall be conducted in such a way as to protect the subject's dignity and in the presence of one or more witnesses.

8VAC20-671-410. Student application and admission.

A. The school's written admission policy shall include:

1. A description of the population to be served;

2. A description of the types of services offered;

3. Admission procedures;

4. Exclusion criteria that identify behaviors or conditions the school will not accept; and

5. A description of how educational services will be delivered.

B. ~~[A summary of each-~~ The] school's admissions policy, course offerings, ~~[at each grade level,]~~ and behavioral management program shall be made available to students, parents, and placing and licensing agencies.

C. Each school's admissions process shall be designed to determine the suitability of enrolling a student. The school shall accept and serve only those students whose needs are compatible with the services provided by the school.

~~[D. Upon enrollment and at least annually, the school shall provide parents access, or a copy upon request, to the school's policies and procedures, including those governing the management of student behavior, the school's curriculum, and the school's promotion and retention policies.]~~

~~[D. The school shall provide written notification for a student's education records within five business days of the student's enrollment. Notification shall be made to the superintendent of the school division where the student last attended. The school shall request current information pertinent to the student's educational growth to include, but not limited to, the IEP, 504 Plan, or career development plan; plan of study; assessments; grades or transcript; discipline records; and health records.]~~

[E. When the student's education records are not provided during the application process, with written parental consent, the school shall make a request within five business days of enrollment to the student's last

attended school or the division superintendent or designee.]

~~[E. F.] An application for admission is not to be construed as a binding instrument on the part of the student or the school.~~

~~[F. G.] A school may require the payment of a reasonable nonrefundable initial application fee to cover expenses in connection with processing a student's application provided [if the school] retains a signed statement in which the parties acknowledge their understanding that the fee is nonrefundable. No other nonrefundable fees shall be allowed prior to enrollment.~~

~~[G. H.] Any contract or enrollment agreement used by the school shall be in writing and clearly specify the following:~~

1. Complete name and physical address of the school;

2. Itemized cost of the program to include tuition, ~~[scholarships, and]~~ all other charges, and any scholarship amount applied to the cost of tuition; and]

3. The school's contingency, cancellation, and refund policies.

~~[H. I.] Any contract or enrollment agreement used by the school becomes a legally binding instrument upon the school's written acceptance [of the student].~~

~~[I. Each school that serves privately placed students shall offer access to a tuition insurance plan if the school financially obligates students for more than quarterly increments of annual tuition.]~~

8VAC20-671-420. Standard school year and school day.

A. Each school shall have a standard school year of at least 180 ~~[instructional+ teaching]~~ days [or a total of at least 990 teaching hours per year]. The standard school day for students in grades 1 through 12 shall average at least [five and one-half 5 1/2] teaching hours ~~[(990 hours annual instructional time)-~~ or average 27 and one-half hours weekly], excluding breaks for meals and recess, and a minimum of three [instructional hours daily] for kindergarten.

~~[B. All students in grades 1 through 12 shall maintain a full day schedule of classes (5 1/2 hours) unless otherwise stated in the child's Individualized Education Program (IEP), Individualized Instruction Plan (IIP), 504 Plan, or other documentation.]~~

B. [The private school shall initiate a team meeting to review the child's IEP, 504 Plan or IIP when a student has a medical, mental, or physical condition that requires modification of the student's school schedule.]

C. Each school shall have policies and procedures that address make-up days when the school is unable to meet the required instructional time.

8VAC20-671-430. ~~[School and community communications. Community Relationships.]~~

~~[A. Each school shall promote communications and foster mutual understanding with parents and the community and use information from parents, citizens, business, and industry in evaluating the educational program.]~~

Each school shall facilitate cooperative relationships with neighbors, the school system, local law enforcement, local government officials, and the community at large.

~~[B. Upon enrollment and at least annually, At the beginning of each school year, the school shall provide to parents or guardians [access to the school's curriculum and policies and procedures to include information on the availability of and source for receiving the curriculum for their child's core subjects and a copy of the school's promotion and retention policies and access to the school's policies and procedures.]~~

8VAC20-671-440. Philosophy, goals, and objectives.

A. Each school shall have a current philosophy, goals, and objectives that serve as the basis for all policies and practices and shall be developed using the following criteria:

1. The philosophy, goals, and objectives shall be developed with the advice of professional and lay people who represent the various populations served by the school and in consideration of the needs of the community and

[shall] serve as a basis for an annual self-evaluation of the school.

2. [The g-Goals] and objectives shall (i) be written in plain language so as to be understandable to noneducators, including parents. [- (ii) to the extent possible, be stated in measurable terms; and (iii) consist primarily of measurable objectives to raise student and school achievement in the core academic areas, to increase graduation rates, and to increase the quality of instruction through professional staff development and licensure.]

B. Copies of the school's philosophy, goals, and objectives shall be available upon request.

8VAC20-671-450. Student achievement expectations.

A. [A process to Schools shall [identify and recommend] [develop] strategies to address the learning, behavior, [and] communication[needs of individual students in collaboration with the parent.] [, or development of individual students who are having difficulty in the educational setting shall be developed at each school.]

B. Participation in the Virginia assessment program by students with disabilities shall be prescribed by provisions of their IEPs or 504 Plans. [All students with disabilities shall be assessed with appropriate accommodations and alternate assessments when required.]

C. Each school that serves students who anticipate earning a diploma and graduating from a [public] Virginia high school must follow the requirements for graduation outlined in the [*Regulations Establishing Standards for Accrediting Public Schools in Virginia*] (8 VAC 20-131).

D. The school shall cooperate with the public school in the administration of SOL tests. [to students with disabilities and students who need verified credits to graduate from a public high school in Virginia, and the administration of any other SOL tests.]

E. The school shall use testing and evaluation materials that are not racially or culturally discriminatory and do take into consideration the student's disabling condition(s), racial background, and cultural background.

8VAC20-671-460. Program of instruction and learning objectives.

[A. Each school's instructional program shall reflect the written philosophy of the school. The methods, procedures, and practices shall reflect an understanding of and meet the applicable academic, vocational, therapeutic, recreational, and socialization needs of the students served.]

[B. The instructional program shall be designed to meet the needs of all students enrolled and shall educate students with age-appropriate peers [unless it can be shown that for a particular child with a disability, the alternative placement is appropriate and documented on the student's IEP, 504 Plan, or IIP.]

[C. Services shall be delivered in accordance with the student's IEP, IIP, or 504 Plan.]

[D. Children of preschool ages (two to five, inclusive) shall receive services determined by the child's IEP or IIP.]

D. E. Each school serving Students 14 years of age and older shall [be] provided opportunities for students to gain knowledge and occupational readiness skills necessary for successful transition to [postsecondary education,] training, employment, and independent living, as appropriate.]

[E. Each school shall provide opportunities for students to gain knowledge and occupational readiness skills necessary for successful transition to postsecondary training, education, employment and independent living skills, as appropriate.]

[F. Each school shall provide a program of instruction that supports the SOL [clearly articulates learning outcomes] for the core subjects: English, mathematics, science, and history/social science. [Schools may use Virginia's Standards of Learning (SOL).]

[G. Each school shall require students to participate in a program of health and physical fitness during the regular school year unless the student is unable to participate due to a medical condition [or has met the credit requirement for graduation.]

[H. Each school shall provide students with opportunities to gain appreciation for art and music.]

[I. Each school shall provide an instructional program that promotes the individual student's developmental growth and academic achievement at successive grade levels, as appropriate.]

~~[J. The services provided by a private school shall be provided by personnel meeting the same licensure requirements as personnel providing services in the public school, outlined in Licensure Regulations for School Personnel (8VAC20-22).]~~

~~[K. [J.]The school shall equitably serve the needs and interests of all students, taking into consideration age-appropriateness, cultural norms, physical abilities, and cognitive abilities.]~~

~~**[8VAC20-671-470. 8VAC20-671-460] Individualized Education Program (IEP).**~~

~~A. [When a child is presently receiving the services of a private school,]A representative of the private school shall attend IEP meetings upon the request of the student's school division. If a representative is not able to attend, the school shall use other methods to ensure participation [by the private school] including individual or conference telephone calls.~~

~~B. [After a child with a disability enters a private school,] Any meetings to review and revise the child's IEP may be initiated and conducted by the private school at the discretion of the student's school division.~~

~~C. If the private school initiates and conducts these meetings, the student's school division and the parent(s) shall:~~

- ~~1. Be involved in any decision affecting the child's IEP;~~
- ~~2. Agree to any proposed changes in the program before those changes are implemented; and~~
- ~~3. Be involved in any meetings that are held regarding [reevaluation-re-evaluation].~~

~~D. A parent(s) does not include local or state agencies or their agents, including local departments of social services, if the child is in the custody of such an agency.~~

~~E. When a child with a disability is placed by a local school division or a Comprehensive Services Act team in a private school, all rights and protections under state and federal regulations shall be extended to the child.~~

~~**[8VAC20-671-470. Individualized Education Program (IEP).]**~~

~~[A. When a child is presently receiving the services of a private school, [A] representative of the private school shall attend IEP meetings upon the request of the student's school division. If a representative is not able to attend, the school shall use other methods to ensure participation by the private school including individual or conference telephone calls.]~~

~~[B. After a child with a disability enters a private school, [Any meetings to review and revise the child's IEP may be initiated and conducted by the private school at the discretion of the student's school division.]~~

~~[C. If the private school initiates and conducts these meetings, the student's school division and the parent(s) shall:~~

- ~~1. Be involved in any decision affecting the child's IEP;~~
- ~~2. Agree to any proposed changes in the program before those changes are implemented; and~~
- ~~3. Be involved in any meetings that are held regarding reevaluation [re-evaluation].~~

~~[D. A parent(s) does not include local or state agencies or their agents, including local departments of social services, if the child is in the custody of such an agency.]~~

~~[E. When a child with a disability is placed by a local school division or a Comprehensive Services Act team in a private school, all rights and protections under state and federal regulations shall be extended to the child.]~~

~~**[8VAC20-671-480. Individualized Instruction Program (IIP).]**~~

~~[A. Students not determined eligible for special education] without disabilities and those placed by parents for educational reasons shall have an Individualized Instruction Program (IIP) developed within 30 [business] days of admission enrollment that describes strengths and needs of the student, current level of functioning, goals and objectives, timelines, course of study, and postsecondary goals for students 14 years of age and older.]~~

~~[B. Each school shall request with [written] consent of the parent(s) the student's education records from the last school attended, and information from other agencies as appropriate. This information should be used in developing the student's IIP.]~~

~~[C. The IIP shall provide a beginning and ending date of services.]~~

~~[D. The IIP shall be reviewed at least annually by a team that includes the [school administrator or teacher, other staff as appropriate, parent, and student as appropriate.] and the parent.]~~

~~[E. Student progress reports shall be provided to the parent or guardian at least quarterly.]~~

~~[8VAC20-671-480. 8VAC20-671-470] Individualized Instruction Program (IIP).~~

~~A. Students [not determined eligible for special education without disabilities and those placed by parents for educational reasons]-shall have an Individualized Instruction Program (IIP) developed within 30 [business days of admission]enrollment that describes strengths and needs of the student, current level of functioning, goals and objectives, [timelines,] course of study, and postsecondary goals for students 14 years of age and older.~~

~~B. Each school shall request with [written] consent of the parent(s) the student's education records from the last school attended, and information from other agencies as appropriate. This information should be used in developing the student's IIP.~~

~~C. The IIP shall provide a beginning and ending date of services.~~

~~D. The IIP shall be reviewed at least annually by a team that includes the [school administrator or teacher, other staff as appropriate, parent, and student as appropriate. and the parent.]~~

~~E. Student progress reports shall be provided to the parent [or guardian] at least quarterly.~~

~~8VAC20-671-490. 504 Plans.~~

~~[Each school admitting students with 504 Plans shall implement the plan and cooperate with the school division in its annual review. [An individualized instruction plan (IIP) shall be developed for each student with a 504 Plan.]~~

~~[8VAC20-671-490. 8VAC20-671-480. 504 Plans.]~~

~~[Each school admitting students with 504 Plans shall implement the plan and cooperate with the school division in its annual review. An individualized instruction plan (IIP) shall be developed for each student with a 504 Plan.]~~

~~[8VAC20-671-469. 8VAC20-671-490.] Program of instruction and learning objectives.~~

~~A. Each school's instructional program shall reflect the written philosophy of the school. The methods, procedures, and practices shall reflect an understanding of and meet the applicable academic, vocational, therapeutic, recreational, and socialization needs of the students served.~~

~~B. The instructional program shall be designed to meet the needs of all students enrolled and shall educate students with age-appropriate peers [unless it can be shown that for a particular child with a disability, the alternative placement is appropriate and documented on the student's IEP, 504 Plan, or IIP.]~~

~~C. Services shall be delivered in accordance with the student's IEP, IIP, or 504 Plan.~~

~~[D. Children of preschool ages (two to five, inclusive) shall receive services determined by the child's IEP or IIP.]~~

~~[D. E.] [Each school serving Students 14 years of age and older shall [be] provided opportunities for students to gain knowledge and occupational readiness skills necessary for successful transition to [postsecondary education,] training, employment, and independent living, as appropriate.~~

~~[E. Each school shall provide opportunities for students to gain knowledge and occupational readiness skills necessary for successful transition to postsecondary training, education, employment and independent living skills, as appropriate.]~~

~~F. Each school shall provide a program of instruction that [supports the SOL clearly articulates learning outcomes] for the core subjects: English, mathematics, science, and history/social science. [Schools may use Virginia's Standards of Learning (SOL).]~~

~~G. Each school shall require students to participate in a program of health and physical fitness during the regular school year unless the student is unable to participate due to a medical condition [or has met the credit~~

requirement for graduation.]

H. Each school shall provide students with opportunities to gain appreciation for art and music.

I. Each school shall provide an instructional program that promotes the individual student's developmental growth and academic achievement at successive grade levels, as appropriate.

~~[J. The services provided by a private school shall be provided by personnel meeting the same licensure requirements as personnel providing services in the public school, outlined in Licensure Regulations for School Personnel (8VAC20-22).]~~

~~[K. J.]The school shall equitably serve the needs and interests of all students, taking into consideration age appropriateness, cultural norms, physical abilities, and cognitive abilities.~~

[K. Each school shall implement evidence-based practices to improve academic, behavior, and social outcomes for all students.]

8VAC20-671-500. Instructional program for elementary school grades.

~~[A. The elementary school grades shall provide each student a program of instruction that supports the SOL for English, mathematics, science, and history/social science. In addition, each school shall provide opportunities for students to gain an appreciation for art and music. Students shall be required to participate in a program of health and physical fitness during the regular school year.- In addition to the applicable requirements under 8VAC20-671-490, the following shall apply:]~~

~~[B. A.] In kindergarten through grade 3, reading, writing, spelling, and mathematics shall be the focus of the instructional program.~~

~~[C. B.] To provide students with sufficient opportunity to learn, a minimum of 75% [75 percent] of the annual instructional time of 990 hours shall be given to instruction in the disciplines of English, mathematics, science, and history/social science. Students who are not successfully progressing in early reading proficiency or who are unable to read with comprehension the materials used for instruction shall receive additional instruction [at time] in reading.~~

8VAC20-671-510. Instructional program for middle school grades.

~~[A. The middle school grades shall provide each student a program of instruction that supports the SOL for English, mathematics, science, and history/social science. Each school shall provide opportunities for appreciation of art and music and an introduction to career and technical exploration and require students to participate in a program of health and physical fitness during the regular school year.]~~

~~[B. English, mathematics, science, and history/social science shall be required.- In addition to the applicable requirements under 8VAC20-671-490, the following shall apply:]~~

~~[C. A.]To provide students a sufficient opportunity to learn, each student shall be provided 140 clock hours per year of instruction in each of the four disciplines of English, mathematics, science, and history/social science.~~

~~[D. B.] Each school shall ensure that students who are unable to read with comprehension the materials used for instruction receive additional instruction in reading.~~

[C. Each school shall provide students with opportunities for career and technical exploration.]

8VAC20-671-520. Instructional program for secondary school grades.

[In addition to the applicable requirements under 8VAC20-671-490, the following shall apply:]

~~A. The secondary school grades shall provide each student a program of instruction that supports the SOL in English, mathematics, science, and history/social science.]~~

~~[B. A.] To provide students a sufficient opportunity to learn, each student shall be provided 140 clock hours per year of instruction in each of the four disciplines, English, mathematics, science, and history/social science.]~~

~~[C. B. Students in secondary education programs who plan to graduate with a standard or advanced diploma from a Virginia public high school should have the opportunity to complete credits in foreign languages, fine arts, and career and technical training education. [Each school shall provide a course of study that leads to~~

graduation and postsecondary education, training, employment, and independent living, as appropriate.]
[C. Each school shall provide instruction in economics and personal finance and occupational readiness.]
[D. A curriculum that includes functional living skills training, including ~~community-based~~ community-based instruction, shall be available for students as the need is determined by the IEP or IIP.]
~~[D. E.] Classroom driver education may count for 36 class periods of health education. Students shall not be removed from classes other than health and physical education for the in-car phase of driver education.~~
~~[E. F.] Each school shall ensure that students who are unable to read with comprehension the materials used for instruction receive additional instruction in reading,~~
~~[F. Guidance and counseling shall be provided for students to ensure that a program of studies contributing to the student's academic achievement and meeting graduation requirements is being followed.]~~
[G. Staff shall provide guidance and counseling to assist students in meeting graduation requirements.]

8VAC20-671-530. Alternative education.

Schools may provide students, 16 years of age to 18 years of age [who choose to prepare for the Tests of General Educational Development (GED) certificate] an Individualized Student Alternative Education Plan (ISAEP) program. ~~[that permits enrollment that includes career guidance counseling; mandatory enrollment in a GED preparation program; and career and technical education]~~ Implementation of the ISAEP program requires submission of an application and approval by the Department of Education.

8VAC20-671-540. Transition services.

A. Schools shall cooperate with the public schools to ensure that the transition plan for each student with a disability, beginning at 14 years of age (or younger), is implemented according to the child's IEP.
B. Schools shall provide evidence of transition services designed within an outcome-oriented process for all students, as appropriate, that promotes movement from the private school to a public school the child would normally attend; movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

8VAC20-671-550. Extracurricular and other school activities, and recess.

A. School-sponsored extracurricular activities shall be under [the] direct supervision of ~~[the staff and shall contribute to the educational objectives of the school. Extracurricular activities]~~ organized to avoid interrupting the instructional program.
B. ~~[CPR and first aid certified staff shall accompany students on]~~ School-sponsored ~~extracurricular~~ activities. ~~shall have at least one person certified in CPR for every 10 students.]~~
C. Schools that take students on adventure activities shall develop policies and procedures to ensure supervision, health and safety, and medical management.

8VAC20-671-560. Family life.

A. Schools may use the Standards of Learning for the family life education program or other education program, ~~[which shall have]~~ that is designed to promote parental involvement, foster positive self concepts and provide mechanisms for coping with peer pressure and the stresses of modern living according to the student's developmental stage and has the goal ~~[goals]~~ of reducing the incidence of pregnancy and sexually transmitted diseases and substance abuse.]
B. Schools offering family life shall obtain written consent from the parent ~~[or guardian for the child's participation enrollment in the course].~~

8VAC20-671-570. Student work study or on-the-job training.

A. Each school that places students on work study, on-the-job training, or any other form of employment shall

ensure compliance with the applicable laws governing the employment of children.

~~[B. Work assignments that are paid or unpaid shall be in accordance with the age, health, ability, and education program of the student.]~~

~~[C. B. Work assignments or employment outside the school, including reasonable rates of pay, shall be approved by the school administrator with the knowledge and consent of the parent. or legal guardian.]~~

8VAC20-671-580. Virtual learning.

A. [Virtual courses may only be offered through accredited providers as outlined in VAC §22.1-212.23 and §22.1-253.13:3 of the Code of Virginia. Schools are encouraged to pursue alternative means to deliver instruction to accommodate student needs through virtual learning.]

[B. The virtual learning shall be proctored by a licensed teacher or appropriately trained paraprofessional who is supervised by a licensed teacher. The teacher or paraprofessional shall be available to the student.]

[A school shall ensure that each virtual education course is provided by an institution accredited by a nationally recognized accrediting body or is authorized by a public school or school division.

~~B. A school shall ensure that virtual learning courses meet the following requirements: 1-212.23 and 1. The content, instruction, and assessment of each course is comparable in rigor and breadth to the course that is traditionally delivered;—~~

~~2. The course content is appropriate for the school's grade levels and age range; and—~~

~~3. The virtual learning shall be supervised by a licensed teacher. or a person eligible to hold a Virginia teaching license. The teacher or paraprofessional individual shall be available to the student.]~~

8VAC20-671-590. Equipment, instructional materials, and library media.

A. Each school shall provide [a variety of current grade level] instructional materials and equipment [necessary] to support the instructional program [including the goals and objectives established for individual students. individual, including functional life skills programs.]

B. [Each school shall provide access to computers and library media necessary to meet research inquiry and reading requirements of the instructional program and general student interest. Students shall receive instruction on the use of classroom equipment as appropriate and demonstrate applicable safety competencies before being allowed to use such equipment.]

~~[C. Each student, as appropriate, shall be provided instruction on the use of instructional equipment and shall demonstrate understanding before access to laboratories.—~~

~~D. Each school shall provide textbooks and instructional materials that support Virginia's Standards of Learning.]~~

~~[E. C.] Each school shall establish written policy on the use of computers, including the use of the Internet and email [e-mail.]~~

8VAC20-671-600. School records.

Each school shall maintain up-to-date records to include [a listing of all enrolled students with directory information,] the school's academic calendar, class roster, class schedule, course descriptions, course curriculum, individual student schedules, student progress reports, and [student transcript or other documentation of each student's grades and credits earned.]

8VAC20-671-610. Diplomas.

A. No school shall use the seal of Virginia in its diploma design.

B. Each school that offers a diploma upon graduation shall have written policy and procedures that address the following:

1. The requirements for a diploma shall be those in effect when the student enters the ninth grade for the first time.

2. The requirements for a diploma shall be based upon completion of program requirements that demonstrate

academic rigor.

8VAC20-671-620. Student conduct.

[A. Each school shall provide a schoolwide environment that reinforces appropriate behaviors and assists students in becoming actively engaged in their own learning, academic and behavioral success.]

[A. B.] Each school shall have written policies and procedures that address standards of student conduct and procedures for enforcement to include attendance, truancy, suspension, expulsion, alcohol, drugs, weapons, fighting, bullying, sexual and disability harassment, pornography, and other areas as appropriate.

~~[B. C.] [The parent shall be notified on the date on which the decision is made to suspend or expel a student because of a violation of a code of student conduct.]~~ When a publicly placed student is suspended, ~~[including in-school suspension,~~]or expelled, the ~~[student's school shall notify the student's]~~ home school division ~~[shall be notified]~~ within 24 hours.

8VAC20-671-630. Behavior intervention.

A. Each school shall develop and implement written policies and procedures that emphasize positive behavior interventions[.][that focus on teaching and supporting students to practice methods to manage their own behavior.]

B. Behavior techniques that are used or available for use shall be listed in the order of their relative degree of restrictiveness and specify the staff members who may authorize the use of each technique.

C. Staff shall consider behavior management data in their annual review of the school's policies and procedures.

D. When substantive revisions are made to policies and procedures governing management of student behavior, written information concerning the revisions shall be provided to students, parents, placing agencies, and the licensing agency prior to implementation.

~~[E. Application of a formal behavior management program designed to reduce or eliminate severely maladaptive, violent, or self-injurious behavior contingent upon the exhibition of such behaviors is allowed only as part of an individually approved plan that is consistent with sound therapeutic practice.]~~

[E. Parents shall be provided access to the school's behavior management policy and procedures upon enrollment and at the beginning of each school year, and provided a written copy upon request.]

8VAC20-671-640. Time-out.

~~[A. The school shall have written policy and procedures governing the conditions under which a student may use time-out and the maximum period of time-out not to exceed 30 minutes per episode. The conditions and maximum period of time-out shall be based on the student's chronological and developmental level. The school's policy and procedures shall include provisions that address the following:]~~

[Policies and procedures shall be written that govern the conditions under which a student may ~~[self-select self-select]~~ or be placed in time-out and the maximum length of time a student may be in time-out. The conditions for time-out and the length of time a student may be in time-out shall be based on the student's chronological and developmental levels. The school's policy and procedures shall include:]

1. Each student is entitled to be completely free from any unnecessary use of time-out.

2. ~~[The areas in which a student is placed]~~ A door to a time-out room shall] not be locked nor ~~[the door]~~ secured in a manner that prevents the student from opening it.

3. A student in time-out shall be able to communicate with staff.

4. Staff shall check on the student ~~[in the time-out area]~~ at least every 15 minutes and more often depending on the nature of the student's disability, condition, ~~[and or]~~ behavior.

5. ~~[Procedures shall be implemented for documenting]~~ The use of time-out and staff checks on the student shall be documented].

6. Staff shall review procedures when a student consistently chooses to stay in time-out beyond the determined time limit to determine that it has not become reinforcement.

8VAC20-671-650. Prohibitions.

~~[A.] The following actions are prohibited:~~

1. Restraint and seclusion, except when it is necessary to protect the student or others from personal harm, injury, or death and other less restrictive interventions were unsuccessful;
2. Prone "face down" restraints, mechanical restraints, ~~[and]~~pharmacological restraints [, and any other restraint that restricts breathing or harms the child or interferes with the child's ability to communicate;]
3. Deprivation of drinking water or food[;]
4. Limitation on contacts and visits ~~[with from]~~ the student's probation officer, [social worker[,] regulators, or] placing agency representative, or other service provider as appropriate;]
5. Any action that is humiliating, degrading, or abusive[;]
6. Corporal punishment[;]
7. Deprivation of approved prescription medication or other necessary services[; and treatment]
8. Denial of access to toilet facilities[;]
9. Application of aversive stimuli;
10. Strip and body cavity searches; and
11. Discipline, restraint, or implementation of behavior management plans by other students.

8VAC20-671-660. Managing student behavior in emergency situations.

~~[A. Application of a formal behavior management program designed to reduce or eliminate severely maladaptive, violent, or self-injurious behavior contingent upon the exhibition of such behaviors is allowed only as part of an individually approved time specific plan that is consistent with sound therapeutic practice. Written consent of the student, parent or guardian, and the student's school division is required.]~~

~~[B. A.] Each school shall have written policies and procedures [made available annually to students, parents, and placing agencies] that include, but are not limited to:~~

1. Methods for preventing student violence, self-injurious behavior, and suicide, including de-escalation of potentially dangerous behavior occurring among groups of students or with an individual student.
2. A ~~policy stating~~ statement] that corporal punishment and abusive techniques and interventions are not authorized, permitted, or condoned.

~~[C. 3. A statement that Each school shall develop and implement] behavior management techniques [are applied] in order of their [relative] degree of intrusiveness or restrictiveness and the conditions under which they may be used by trained [school] personnel.~~

~~[D. A school that uses [physical] restraint and seclusion shall have written policies and procedures to include the following:~~

[B. Physical restraint or seclusion is allowed only in an emergency situation [for a time period that] [and] is necessary to [protect the student or another person from imminent danger of serious physical harm after less intrusive interventions have been attempted and failed to manage that particular behavior and there is a substantial explanation for why other interventions were deemed inadequate or inappropriate.] ~~[contain the behavior of the student so that the student no longer presents an immediate threat of causing physical injury to self or others or causing severe property damage [that may result in personal injury].]~~

[1. 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, shall trigger a review and, if appropriate, a revision of behavioral strategies currently in place to address dangerous behavior. If positive behavioral strategies are not in place, staff shall develop them.]

[2. In cases where a student has a history of dangerous behavior for which restraint or seclusion was considered or used, a school shall have a plan developed in consultation with the parent for: (a) teaching and supporting more appropriate behavior; and (b) determining positive methods to prevent behavioral escalations that have previously resulted in the use of restraint or seclusion.]

~~[2- 3.] Physical restraint or seclusion shall not be used [for disciplinary reasons or] as a punishment, retaliation, or for staff's convenience.~~

~~[1- 4. Each student is entitled to be completely free from any unnecessary use of physical restraint or seclusion. Physical restraint and seclusion are allowed only in an emergency situation for a time period that is necessary to contain the behavior of the student so that the student no longer presents an immediate threat of causing physical injury to self or others or causing severe property damage.]~~

~~b. The school shall provide written notice of its behavior management program to and acknowledged by students, parent(s), and placing agency at the time of the student's enrollment.]~~

~~[e-5.] Staff shall [continuously] monitor the use of [physical] restraint and seclusion through continuous face-to-face observation, [and shall not rely on solely by an electronic surveillance device.~~

~~[d-6. Physical restraint Restraints] may only be implemented, monitored, and [or] discontinued by staff who have [received proper training.] [been trained in the proper and safe use of restraint, including hands-on techniques.]~~

~~e. Students must be supervised by staff members trained in behavior intervention.]~~

~~[7. The door to any room in which a student is secluded may be held shut only when a staff member is personally securing it. The door must immediately disengage when the staff member steps away from it. The room must meet specification including size and viewing panels that ensure the student's safety at all times including during a fire or other emergency.]~~

~~[8. Schools shall permit parents to inspect any area used during an emergency for the purpose of seclusion.]~~

~~[f- 7. Schools shall inform the parent and placing agency of each incident of physical restraint or seclusion on the day of the occurrence and make available to the licensing agency upon request.]~~

~~[9. The parent shall be informed on the day of each incident of physical restraint or seclusion. The student's home school division and placing agency shall be informed as soon as possible but within 24 hours of the occurrence.]~~

~~[g- 10.] Each application of physical restraint or seclusion shall be fully documented in the student's record including date, time, staff involved, justification for the [physical] restraint or seclusion, [behavior antecedents,] less restrictive interventions that were unsuccessfully attempted prior to using physical restraint or seclusion, duration, description of method or methods of physical restraint techniques used, signature of the person completing the report and date, and reviewer's signature and date. [The written report shall be made available to the parent within two business days of the occurrence and opportunity given for the parent and student, as appropriate, to discuss the matter with school staff.]~~

~~[11. Schools shall collect and annually report to the Virginia Department of Education the number of times restraints and seclusion were used during the school year.]~~

8VAC20-671-670. Videotaping.

~~A. Schools shall have written policy and procedures regarding videotaping students while in school and any school-sponsored activity, including those used for staff training.~~

~~B. No student shall be videotaped without written consent of the parent and eligible student.~~

~~C. Any videotaping of students shall be maintained confidentially unless there is explicit written permission to release or disclose from the parent[(s)] and eligible student.~~

~~D. Buildings and grounds surveillance is not considered videotaping for the purpose of this chapter.~~

8VAC20-671-680. Referral for evaluation.

~~[A.] When a student, [including those placed by their parent(s) or from out of state], is suspected of having a disability, the school [shall] may make a referral to the division superintendent of the school division where the private school is located. Documentation of the referral notice shall be maintained in the student's record.~~

~~[B. The school shall cooperate with the school division on child find activities.]~~

8VAC20-671-690. Suspected child abuse and neglect.

A. Written policies and procedures related to child abuse and neglect shall comply with the requirements of § 63.2-1509 of the [Code of Virginia] and distributed to all staff members. Policies and procedures shall include:

1. Handling accusations against staff; and
2. [~~Promptly referring~~] Reporting as soon as possible, but no later than 24 hours after having a suspicion of a reportable offense [~~suspected cases~~] of child abuse and neglect to [the proper authorities and cooperating with child protective services during any investigation[.] [~~the school local child protective services unit and for cooperating with the unit during any investigation.~~]

B. Any case of suspected child abuse or neglect occurring at the school or on a school-sponsored event or excursion shall be reported immediately to the student's parent, [~~guardian, or both if appropriate,~~] and [licensing agency. For publicly placed students, the home school division and] the placing [agency] shall also be notified [~~and licensing agencies~~].

[~~C. Suspected child abuse shall be handled and reported as a serious incident.~~]

[C. Suspected child abuse or neglect shall be immediately documented to include the following: ~~When a case of suspected child abuse or neglect is reported to child protective services, the school shall document the following:~~]

1. The date and time the suspected abuse or neglect occurred;
2. A description of the suspected abuse or neglect;
3. Action taken as a result of the suspected abuse or neglect;
4. The name of the person who made the report to child protective services; and
5. The name of the person to whom the report was made at the local child protective services unit.

8VAC20-671-700. Serious incident reports.

A. Any serious incident, accident, or injury to a student [~~or medication error~~] that occurs at the school or a school-sponsored activity shall be reported [to the parent] immediately, [but] no later than the end of the school day [. ~~to the parent, the student's public school, placing agency, and licensing agency.~~] [A publicly placed student's home school division and the placing agency shall be notified as soon as possible but not later than 24 hours of the occurrence.]

B. The school shall document the following:

1. The date and time the incident occurred;
2. A brief description of the incident;
3. The action taken as a result of the incident;
4. The name of the person who completed the incident report; and
5. The date and name of the person who made the report to the proper authorities.

C. The licensing agency shall review [~~all~~] reports of serious incidents and investigate as appropriate [~~using the complaint resolution procedures of this chapter~~].

8VAC20-671-710. Medication and health.

A. Each student shall have on file evidence of a comprehensive physical examination prescribed by the State Health Commissioner from a qualified licensed (i) physician, (ii) nurse practitioner, or (iii) physician assistant acting under the supervision of a licensed physician. The examination must contain, at a minimum, information required on the Commonwealth of Virginia School Entrance Health Form.

B. Each student shall have an up-to-date certificate of immunization. [~~documenting the immunizations required by the Code of Virginia and State Board of Health's Regulations for the Immunization of School Children (12VAC5-110).~~]

C. Any student or staff with a [~~disease or~~] medical condition that is contagious or infectious shall ~~be excluded~~ take leave ~~attend~~ from school while in that condition unless attendance is approved by a qualified healthcare provider. Conditions meeting this requirement must be provided in the parent/student handbook or other print

materials.

D. A first aid kit shall be maintained and readily accessible for minor injuries and medical emergencies in each building used for instruction or other school activity.

E. All medications shall be accepted only in the original container with written permission signed and dated by the parent to administer to his child. The use of all prescriptive medication must be authorized in writing by a licensed prescriber.

F. All medication and medical paraphernalia shall be securely locked and properly labeled.

~~G. A program of medication administration shall be initiated for a student only when prescribed in writing by a person authorized by law to prescribe medication and written consent from the parent is obtained to administer.~~

~~H. G.] An individual medication administration record shall be maintained for each medication a student receives and shall include student name, date the medication is to begin, drug name, schedule for administration, strength, route, identification of the individual who administered the medication, and dates the medication was discontinued or changed.~~

~~H. H.] The provider shall develop and implement written policies and procedures regarding:~~

~~1. Managing medication errors to include the following: administering first aid; contacting the poison control center; notifying the prescribing physician; taking action as directed; documenting the incident; reviewing medication errors and staff responses; and reporting errors to the parent and placing agency.~~

~~2. Handling adverse drug reactions;~~

~~3. Revising procedures as events may warrant;~~

~~4. Disposing of medication and medical supplies such as needles, syringes, lancets, etc.;~~

~~5. Storing of controlled substances;~~

~~6. Distributing medication off campus; and~~

~~7. Documenting medication refusal. Medication refusal to include who is responsible for documentation, where it will be documented and action taken by staff.~~

~~H. I.] The telephone number of a regional poison control center and other emergency numbers shall be posted on or near the phone.~~

~~K. J.] Medication training[-]~~

~~1. All staff responsible for medication administration shall have successfully completed a medication training [including refresher training, in a] program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medication before they can administer medication.~~

~~2. Training shall be provided to all staff in medication procedures and effects and infection control measures, including the use of standard precautions.~~

~~3. [There shall be a ratio of one staff member to 10] Staff certified in first aid and CPR [shall be and] available at all times on the school grounds and during any school-sponsored activity.]~~

~~4. Documentation of medication training must be maintained in personnel files.~~

~~5. Staff authorized to administer medication shall be informed of any known side effects of the medication and the symptoms of the effects.~~

~~L. K.] Monitoring the supply of medications~~

~~1. Upon receiving any medication, staff members handling medication shall count individual tablets and measure the level of liquid medicine in the presence of the parent(s) or another staff member and record the count on the medication log.~~

~~2. The medication log shall include the signature or initials of the staff member who counted the medication and the parent or staff who witnessed the occurrence. When initials are used, the medication administration record must contain the full name of the staff with corresponding initials for identification purposes.~~

~~3. Students shall be prohibited from transporting medication.~~

8VAC20-671-720. School nutrition.

A. Schools with ~~[internal]~~ food service shall ~~[ensure a [serve to each student on a daily basis a daily]]~~ diet that (i) consists of nutritionally balanced meals, (ii) includes an adequate variety and quantity of food for the age of students, and (iii) meets ~~[the]~~ minimum requirements ~~[and of]~~ the U.S. Dietary Guidelines.

1. ~~[Schools with internal food service shall ensure that]~~ All food safety and sanitation procedures are ~~[shall be]~~ followed in accordance with state and federal regulations.

~~[C.]~~ 2. Records of menus for all meals served shall be kept on file for six months.

~~[D.]~~ 3. ~~[Provisions shall be made for special diets shall be provided]~~ when prescribed by a physician or requested by the student or parent because of the student's established religion.

~~[E. B.]~~ In schools where students are required to bring their own lunch, provisions shall be made to ensure a meal for all students.

8VAC20-671-730. Transportation.

A. Transportation provided for or used by students shall comply with local, state, and federal laws relating to: ~~[Each school shall have on file evidence that any vehicles used for the purpose of transporting students to and from school and school-related activities meet federal and state regulations, including:]~~

1. Vehicle safety and maintenance;

2. Licensure of vehicles;

3. Licensure of drivers;

4. Child passenger safety, including requiring children to wear ~~[appropriate]~~ seat belts or restraints for the vehicle in which they are being transported;

~~[4. 5.]~~ Vehicle liability insurance;

~~[5. 6.]~~ Safety measures that take into consideration the age and disabling conditions of students.

B. All vehicles used to transport students to school activities shall be equipped with first aid kits, a fire extinguisher, and two-way communication devices.

C. Individual student emergency information including currently prescribed and over-the-counter medications, significant medical problems, and any allergies shall accompany students when they are being transported.

~~8VAC20-671-740. Treatment services.~~

~~Licensed providers of treatment services shall coordinate those services to allow students to receive the required hours of instruction to the extent possible. When treatment services are not prescribed by a licensed mental health professional, the student shall receive the required number of hours of instruction.~~

~~[8VAC20-671-750. 8VAC20-671-740.] Student discharge.~~

A. Each school shall have policies and procedures that address conditions for which a student may be discharged from the school.

B. The school's criteria for discharge shall be made available to prospective students, parents, and placing agencies before their enrollment.

C. The student's education record shall be documented with the date of discharge and reason for discharge.

D. Students shall be discharged only to the parent or legally authorized representative.

~~8VAC20-671-760. 8VAC20-671-750.] Maintenance of student records.~~

A. The school shall have written policies and procedures for the management of all records, print and nonprint, regarding confidentiality, accessibility, security, ~~[and]~~ retention, and ~~[disposition]~~.

B. Student education records shall be maintained in ~~[fireproof fire resistant]~~ cabinets. ~~[and protected from unauthorized disclosure.]~~

C. Each student's education record shall contain information pertinent to the educational growth and development to include a completed enrollment sheet; a current IEP, 504 Plan, or IIP; student transcript; course of studies; and progress reports. Other information should include disciplinary records, health records, and

achievement and test data.

D. ~~[A school shall obtain written]~~ Written consent from the child's parent [shall be obtained] before disclosure of information from a student's education record to unauthorized parties. Authorized parties shall be limited to school employees including contracted employees, and representatives of [placing school divisions, accrediting parties agencies and,] state licensing agencies who need access to the ~~student's~~ [student's] records to carry out their work responsibilities.

E. ~~[A school may disclose information]~~ Information may be disclosed] in an emergency to any person who needs that particular information for the purpose of preventing injury to a student or staff. The school shall not disclose any information that is not needed for this specific purpose. ~~[The school may disclose any records if they are properly subpoenaed, if a court orders them to be produced, to the school's own legal counsel, or to anyone working on behalf of legal counsel in providing representation to the school.]~~

F. The school shall permit a parent ~~[or parents]~~ to inspect and review any education records relating to their child that are collected, maintained, or used by the school. The school shall comply with a request without unnecessary delay and before any meeting regarding an IEP or 504 Plan. ~~[or in no case more than 14 calendar days after the request has been made.]~~ The right to inspect and review education records under this section includes:

1. The right to a response from the school to reasonable requests for explanations and interpretations of the records;

2. The right to request that the school provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records;

3. The right to have a representative of the parent inspect and review the records; and

4. A school may presume that a parent has authority to inspect and review records relating to his child unless the school has been advised that the parent does not have the authority under applicable Virginia law governing such matters as guardianship, separation, and divorce.

G. Each school shall keep a record of parties, except parents and authorized employees of the school, obtaining access to education records collected or maintained, including the name of the party, the date of access, and the purpose of the access.

H. If any education record includes information on more than one child, the parent(s) of those children have the right to inspect and review only the information relating to their child or to be informed of the specific information requested.

I. Schools may charge a fee for copies of records that are made for a parent(s) under this chapter if the fee does not effectively prevent the parent(s) from exercising their right to inspect and review those records. A school may not charge a fee to search for or to retrieve information under this section.

J. A parent(s) who believes that information in the education records collected, maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the child may request the school that maintains the information to amend the information.

1. The school shall decide whether to amend the information in accordance with the request within a reasonable period of time ~~[of receipt of the request].~~

2. If the school decides to refuse to amend the information in accordance with the request, it shall inform the parent(s) of the refusal and inform the parent of the right to place in the child's education records a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the school.

3. Any explanation placed in the records of the child under this section must:

a. Be maintained by the school as part of the records of the child as long as the record or contested portion is maintained by the school; and

b. If the records of the child or the contested portion is disclosed by the school to any party, the explanation must also be disclosed to the party.

K. ~~[Records retention]~~ Transfer of records.]

When a privately placed student graduates or leaves school, ~~the school shall offer all~~ [the student's education] records [shall be offered] to the eligible student or parent. The records of a publicly placed student who graduates or leaves school shall be transferred to the child's ~~public home~~ school.

[L. Records retention.]

[1. Each school shall maintain all education records, including discipline and medical records for as long as the student continues enrollment at the school.]

[2. When a student transfers to another school, the student's complete education record shall be transferred within five business days from the date of request and notification of the transfer to the parent, guardian, and placing agency.]

[3. When a privately placed student graduates or leaves school, the school shall offer all [education] records [shall be offered] to the eligible student or parent. The records of a publicly placed student who graduates or leaves school shall be transferred to the child's public school.]

[L. Permanent record of attendance]

[4.] Each school shall maintain a permanent record of attendance to include the following:

[a. 1.] Name and address of school;

[b. 2.] Name, address, and birth date of student;

[3.] Name and address of the home school division for publicly placed students;

[c. 4.] Name and address of [the] parent ~~or parents~~;

[d. 5.] Student ID [number];

[e. 6.] Dates of attendance; [and]

[f. 7. ~~Verification of immunizations~~; Academic transcript.]

[g. 8. ~~Scholastic work completed~~; and

[h. Academic transcript]

~~[8VAC20-671-770. 8VAC20-671-760.] Participation of students in human research.~~

A. No human research involving students shall be conducted or authorized by any school unless in compliance with the Board of Education's regulation, 8VAC20-565, or other applicable law, including 45 CFR Part 46.

B. No such research shall be conducted or authorized unless the student and the student's legally authorized representative give their informed consent. Such informed consent shall be by a signed and witnessed informed consent form. Such form shall comply with § 32.1-162 of the *[Code of Virginia.]*

C. Any such research shall be approved and conducted under the review of a human research committee, which shall be established by the school conducting or authorizing the research. Any such committee shall comply with the provisions of § 32.1-162.19 of the *[Code of Virginia]*. The committee shall submit to the Governor, the General Assembly, and the Superintendent of Public Instruction or designee at least annually a report on the student projects reviewed and approved by the committee, which shall state significant deviations from the proposals as approved.

D. There shall be excluded from the operation of this chapter those categories of research in § 32.1-162.17 of the *Code of Virginia* that exempt research or student learning outcomes as conducted in educational settings involving regular or special education instructional strategies; the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods; or the use of educational tests, whether cognitive, diagnostic, aptitude, or achievement, if the data from such tests are recorded in a manner so that subjects cannot be identified, directly or through identifiers linked to the subjects.

~~[8VAC20-671-780. 8VAC20-671-770.] Procedures for [permanent] school closing.~~

A. A school that ceases operation shall provide written notice as early as possible to all enrolled students, the parent(s), the student's public school, and licensing agencies.

B. All advertisements of the school's operation shall cease immediately, and the current license to operate shall be returned promptly to the licensing agency.

C. If privately placed students are unable to complete the academic year due to the school's closing, the school's guaranty instrument shall be used for tuition reimbursement to the fullest extent allowable.

D. All education records of privately placed students shall be provided to the parent or student who has reached 18 years of age and acknowledgement of such to the licensing agency.

E. All education records of publicly placed students shall be returned to the school division of the parent's residence and acknowledgement of such to the parent or student who has reached 18 years of age, and the licensing agency.