



Proposed Regulations Governing the Use of Seclusion and Restraint in Virginia's Public Elementary and Secondary Schools

A public comment forum will be open from February 18, 2019 to April 19, 2019. More information about the regulations and their development can be found online at <http://www.townhall.virginia.gov/ViewStage.cfm?StageID=7894>

A public hearing is scheduled for March 21, 2019 at noon in the 22nd floor conference room of the James Monroe Building. Additional details about the public hearing can be found online at <http://www.townhall.virginia.gov/viewmeeting.cfm?meetingid=28969>

Background

In 2015, the Virginia legislature passed a law directing the Virginia Board of Education to adopt regulations governing the use of seclusion and restraint. Once finalized and adopted, these regulations will apply to all students and school personnel in Virginia's public elementary and secondary schools.

School divisions are not required to use seclusion or restraint in their schools, but those that opt to do so will be required to follow the finalized and adopted regulations.

What are the Expectations for the Actions of School Division Staff?

- As long as the action does not meet the level defined as "seclusion" or "physical restraint," school division staff may respond to undesirable student behavior with "reasonable discretion."
- When intervention meets the standard of "seclusion" or "physical restraint," school division staff may only employ such in certain circumstances
- Acts detrimental to the "health, safety or dignity of the student" may never be used by school division staff.

What is Physical Restraint?

Physical restraint is defined as any personal restriction that keeps a student from moving or reduces their ability to move freely. This does not include briefly holding a student to calm or

comfort them, holding a student's hand while escorting them from one area to another, or other incidental, minor, reasonable physical contact.

What is Seclusion?

Seclusion is defined as any involuntary confinement of a student alone in a room or other area where the student is physically prevented from leaving. This does not include a time-out when the student is not confined, in-school suspensions, detention, student-requested breaks or short removals to allow the student to regain self-control, removal by a teacher for disruptive classroom behavior, or confinement during an investigation regarding a student's role in violation of the student code of conduct.

When is Seclusion or Restraint Allowed?

Restraint and Seclusion may only be used in an emergency situation when other interventions would be ineffective, and only to

- Prevent a student seriously harming or injuring themselves or others
- Quell a disturbance or remove a student from a disturbance
- Defend self or others from serious physical harm or injury
- Obtain possession of weapons/dangerous objects/controlled substances/paraphernalia

Physical restraint must be discontinued as soon as the imminent risk of serious harm has dissipated. Damage to property alone, without imminent risk of serious harm or injury to people, is not a justification for restraint or seclusion.

Seclusion rooms or areas must be free of any objects that might injure the student, have sufficient dimensions, lighting, heating/cooling and ventilation to ensure the dignity and safety of the student.

School staff must engage in continuous visual monitoring of students in seclusion.

Prohibited Actions

School division staff may never use:

- Mechanical Restraint – use of any material, device, or equipment to restrict a student's movement (except where medically or developmentally necessary and appropriate)
- Pharmacological Restraint – use of a drug or medication to control a student's behavior or restrict their movement (except those administered as prescribed by a qualified health professional in the standard course of treatment for the student)
- Application of Aversive Stimuli – any intervention intended to induce pain or discomfort, used to punish the student or reduce/eliminate an unwanted behavior
- Any restraint that harms a student or reduces their breathing
- Any seclusion or restraint documented as medically or psychologically contraindicated
- Corporal punishment
- Otherwise allowable seclusion or restraint if used
 - To punish or discipline

- In coercion or retaliation
- As a convenience
- To prevent property damage
- For any other reason besides those explicitly allowed

What Happens After the Seclusion or Restraint?

The Day of the Seclusion or Restraint:

- School staff must inform the principal of the seclusion or restraint and any related first aid as soon as possible, no later than the end of the day
- The principal must make a reasonable effort to make direct contact with the parent to inform them of the incident and any related first aid by phone, email, or in person

Within 2 School Days Following the Seclusion or Restraint:

- Or as soon as practicable, the staff involved must submit an incident report to the principal. This report must be given to the parent within 7 days of the event;
- The principal must meet with school staff involved to determine whether the seclusion or restraint was implemented using the methods required in regulation and school division policy, and to discuss how to prevent future need for seclusion or restraint
- Or within 2 school days of the student's return to school, the principal must meet with the student to discuss the details of the incident to identify patterns of behaviors, triggers, or antecedents, and identify alternative behaviors or coping skills the student can use to prevent or reduce behaviors that led to the seclusion or restraint.

School Division Policy Development

School divisions must create policies in line with these regulations which include a statement of intent to use positive behavioral supports to reduce the use of seclusion and restraint, provisions for the appropriate use of seclusion and restraint, and detail how the school division will comply with these regulations. These policies and procedures must be made available to the public and posted on the school division's website.

Seclusion and Restraint Prevention Planning

School principals must regularly review the use of seclusion and restraint to ensure compliance with the regulations and school division policy, taking steps to address frequency of use when multiple or repeated incidents of seclusion or restraint are reported.

At the initial development or annual review of a student's IEP or 504 Plan, the IEP/504 team must consider whether the student is likely to be secluded or restrained. If the team agrees that seclusion or restraint is likely, or after the second time a student is restrained or secluded in a school year, they must meet and consider a Functional Behavioral Assessment (FBA), development or revision of a Behavior Intervention Plan (BIP), new or revised behavioral goals, and additional evaluations.

If a student does not already have an IEP or 504 plan, after the second seclusion or restraint event in a school year, the school must hold a meeting with a team consisting of the parents, the principal, a teacher, the staff member involved in the seclusion or restraint, and other appropriate staff members to discuss and consider a FBA, development or revision of a BIP, and a referral for evaluation for special education eligibility.

School Division Staff Training

All school division staff must be given evidence-based basic training in strategies and procedures to make seclusion and restraint less likely to occur. Every school must provide advanced training in the use of physical restraint and seclusion to at least one administrator and any staff members who work with students whose IEP or Section 504 teams think the student is likely to be secluded or restrained.

What's Next?

These regulations were approved by the Governor and will be published in the Virginia Register of Regulations on February 18, 2019.

More information on the status and development of these regulations can be found on the Virginia Town Hall website at

<http://www.townhall.virginia.gov/ViewStage.cfm?StageID=7894>

Schools can still work to implement policies and procedures in line with these approved regulations. It's never too early to protect children from unnecessary or potentially harmful seclusion and restraint practices.