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January 6, 2021

Dr. Eric Jones, Superintendent
Powhatan County Public Schools
4290 Anderson Highway
Pocahontas Landmark Center
Powhatan, VA 23139

Dear Dr. Jones:

The disAbility Law Center of Virginia (dLCV) reviewed Powhatan County Public School's (PCPS's) policy JM and accompanying procedures titled *Restraint and Seclusion of Students*, as presented at the December 8, 2020 PCPS School Board meeting. We reviewed the proposed policy to determine whether it meet or exceed the requirements of the Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia (8VAC20-750-5 *et. Seq.*) (hereinafter, the Regulations), which became effective on January 1, 2021.

We have determined that PCPS's Restraint and Seclusion Policy and procedures do not meet the minimum requirements of the Regulations.

As you know, school divisions must adopt policies and procedures that meet or exceed the requirements of Regulations (8VAC20-750-70(A)). A school division may not adopt a policy that offers fewer protections against the use of seclusion and restraint than required by the Regulations. PCPS's proposed policy does, in fact, propose fewer protections and fails to meet the minimum regulatory requirements.

Pursuant to the Regulations, physical restraint and seclusion may only be used in specific, enumerated circumstances. These include, among others, when physical restraint or seclusion is necessary to:

2. Quell a disturbance or remove a student from the scene of a disturbance in which such student's behavior or damage to property threatens serious physical harm or injury to persons.... (8VAC20-750-40(B)(2)).

It is clear that the necessity to quell a disturbance would be a permissible exception only when serious physical harm or injury is a risk. In the Agency Background Document submitted to the Virginia Regulatory Town Hall during the notice and comment period for the Seclusion and Restraint Regulations, the Virginia Department of Education (VDOE) explained the intent behind 8VAC20-750-40, which, as VDOE explained:

Provides that school personnel are not required to use restraint or seclusion, but if they do, it must be used in the manner set forth in the regulations. School personnel may use physical restraint or seclusion only when, in the reasonable judgement of the school personnel, other interventions are or would be ineffective, and only for the following purposes: to prevent a student from inflicting serious physical harm or injury to self or others, **to quell a disturbance that threatens such harm**, to remove a student from the scene of a disturbance that threatens such harm, to defend self or others from such harm, to obtain possession of controlled substances, paraphernalia, a weapon, or other dangerous objects. (VDOE, Virginia Regulatory Town Hall Final Regulation Agency Background Document, available at https://townhall.virginia.gov/L/GetFile.cfm?File=93\4336\8705\AgencyStatement_DOE_8705_v3.pdf) (bold and italics added).

PCPS's policy and procedures differ significantly from the language of 8VAC20-750-40. PCPS's policy divides the single provision contained in 8VAC20-750-40(B)(2) into two separate provisions separated by a semicolon, and in so doing, expands the circumstances when seclusion and restraint may be used. PCPS's policy allows for the use of seclusion and restraint when, among other things, they are necessary to:

2. Quell a disturbance;
3. Remove a student from the scene of a disturbance in which the student's behavior or damage to property threatens serious physical harm or injury to persons;

As written, PCPS's policy allows for the use of seclusion and restraint to "quell a disturbance" without limitation. This would invite the use of seclusion and restraint in circumstances where a student's behavior poses no threat of physical harm or injury to any person, contrary to Regulations, and contrary to the goal of promoting safe and healthy schools for children in Virginia.

PCPS must amend its policy and procedures in accordance with the Seclusion and Restraint Regulations by limiting the use of restraint and seclusion to instances when a student's behavior

threatens serious physical harm or injury to persons.

Please feel free to contact staff attorney John Paul Cimino or myself at 804-225-2042 if you have any questions or concerns about the contents of this letter.

Sincerely,



Colleen Miller
Executive Director

Cc: Dr. James F. Lane
Superintendent of Public Instruction
Virginia Department of Education

Dr. Samantha Marsh Hollins
Assistant Superintendent, Department of Special Education
Virginia Department of Education

Dr. Lynn Prince
Director of Special Education
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Mr. Joe Walters, Chair
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