

VIRGINIA

Current Statutes, Regulations, Policies, and/or Guidance

Statutes

8 Va. Admin. Code § 20-670-130 (Education; State Board of Education; Regulation Governing the Operation of Private Day School for Students with Disabilities; Program Requirements)

Existing Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits, 8 VAC 20-13, provides the basis upon which private trade, technical, business, and correspondence schools, and private day schools for children with disabilities can be established and operated within the Commonwealth. Within the statute the term physical restraint is defined. Policies and procedures that are required for behavior management programs are also specified in this statute.

(see

<http://74.125.95.132/search?q=cache:9H4Toa6u5doJ:legis.state.va.us/codecomm/register/vol20/iss24/f8v20670.doc+%2220-670-130%22+and+%22virginia%22&cd=4&hl=en&ct=clnk&gl=us>)

Guidelines

The Virginia Department of Education's Office of Special Education Instructional Services issued guidelines for Virginia Public Schools in November 2005. The document is titled "Guidelines for the Development of Policies and Procedures for Managing Student Behaviors in Emergency Situations in Virginia Public Schools Focusing on Physical Restraint and Seclusion."

Recommended best practices in policy, regulation or guidance documents

Virginia demonstrates evidence (bulleted items below) of each of the following recommended best practices in the amendment. The source for each bulleted item is the "Guidelines for the Development of Policies and Procedures for Managing Student Behaviors in Emergency Situations in Virginia Public Schools Focusing on Physical Restraint and Seclusion." Specific guidelines follow each bullet (in italics).

- Clear definitions of relevant terms such as 'seclusion' and 'restraint' and 'emergency'
 - Exclusion** means the removal of a student to a supervised area for a limited period of time during which the student has an opportunity to regain self-control and is not receiving instruction including special education, related services, or support.*
 - Physical Restraint** means the use of approved physical interventions or "hands-on" holds by trained staff to prevent a student from moving his/her body to engage in a behavior that places him/her or others at risk of physical harm. Physical restraint does not include:*
 - *briefly holding a student in order to calm or comfort the student; or*
 - *holding a student's hand or arm to escort the student safely from one area to another*
 - Emergency** means a situation that requires a person(s) to take immediate action to avoid harm, injury, or death to a student or to others, or to avoid substantial property damage*
- Clear limitations on what seclusion and restraint techniques specifically are limited or not allowed

School divisions should have written policies and procedures that include, but are not limited to:

- *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,*
- *Methods for identifying child abuse and/or neglect and the reporting requirements for such occurrences,*

A policy clearly stating that corporal punishment and abusive techniques and interventions are not authorized, permitted, or condoned in Virginia's public schools,

A policy stating that corporal punishment is prohibited by state law, as well as the identification of the consequences prescribed by law,

A policy regarding physical restraint provides:

- *a determination of the behavior management program adopted by the school division and advising parents and students of the program*
- *a description and explanation of the school division's or program's criteria for the use of physical restraint*
- *a statement that the use of physical restraint is allowed only in emergency situations*
- *the conditions under which physical restraint is allowed- training and certification requirements*
- *incident reporting requirements*
- *follow-up procedures after each incident*
- *a procedure for receiving and investigating complaints regarding the use of physical restraint, and*
- *a statement of how and when the parents will be informed of each occurrence of physical restraint.*

See Appendix C for a sample format for a policy. This sample format is not considered a model to be duplicated without considering the particular needs of the school division. It is not intended to supplant or replace any existing policy, but rather to provide a structure for divisions that will be developing new or revised policies.

A policy regarding the use of seclusion that provides:

- *a description and explanation of the school division's or program's criteria for the use of seclusion,*
- *a statement that the use of seclusion is allowed only in emergency situations,*
- *the conditions under which seclusion is allowed,*
- *training requirements,*
- *room and monitoring requirements,*
- *incident reporting requirements,*
- *follow-up procedures after each incident,*
- *a procedure for receiving and investigating complaints regarding the use of seclusion, and*
- *a statement of how and when the parents will be informed of each occurrence of seclusion.*

A policy identifying corrective measures to be followed when a review reveals improper implementation procedures.

A policy statement assuring the provision of students' rights

- Specifies when seclusion and restraint techniques may be used (for example, that seclusion and restraint only be used as a physical safety procedure, or if permitted as 'treatment' or 'behavioral intervention' in limited circumstances, the circumstances under which this is permitted)

Exclusion means the removal of a student to a supervised area for a limited period of time during which the **student** has an opportunity to regain self-control and is not receiving instruction including special education, related services, or support

Removal means excluding the student from the place where current educational services are provided

Long-term removal means suspension of a student with a disability to an alternative setting for more than 10 consecutive school days in a school year; or, when the student is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year

Short-term removal means suspending a student with a disability to an alternative setting for 10 school days or less in a school year. It also applies to removals when the cumulative amount is 10 school days, but not consecutive, and does not constitute a pattern or change of placement.

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. In some instances, the student may self-select this procedure

No particular behavior management program is recommended or endorsed by the Virginia Department of Education. The selection of a behavior management program is a school division decision.

- If seclusion and restraint techniques are permitted as behavioral interventions, the state education agency (SEA) addresses these interventions in the context of behavioral intervention plans

Behavioral Intervention Plan (BIP) means a plan that utilizes positive behavioral interventions and supports to address behaviors that interfere with the learning of a student, the learning of others, or require disciplinary action

Functional Behavioral Assessment (FBA) means the systematic process of gathering information to guide the development of a positive, effective, and efficient behavioral intervention plan for a problem behavior. The process includes:

- a description of the problem behavior,
- the identification of environmental and other factors and settings that contribute to or predict the occurrence, nonoccurrence, and maintenance of the behavior overtime, and
- the determination of the underlying cause or functions of a student's behavior that impede the learning of the student with a disability or the learning of the student's peers

- Describes how the State uses the data and whether the data are publicly reported

Reporting

In the reporting process the procedures would include at a minimum:

- *the procedures for informing school/program administration,*
- *the procedures for informing parents, and*
- *the procedures for transmitting the report to a review committee where a determination would be made on whether the school division's policies and procedures have been followed.*

Investigation of Injuries and Complaints

School divisions should develop policies and procedures that detail the process by which injuries and/or complaints are investigated and reported to local authorities, if required by law. The policies and procedures should address injuries and complaints filed by all parties, including educational professionals, parents, and students. It is essential that all injuries, incidents, accidents, or other related activities be fully documented at the time they occur. In any complaint process, it is essential that all parties involved be identified, the time of actions be recorded fully, the events and behaviors preceding the incident be investigated, and any other relevant data or evidence be documented. Copies of documentation of incidents should be maintained in the appropriate records and provided to the school and the central administration as set forth in division policy or as otherwise required by the school division or by law. School administration should ensure that any incidents with special reporting requirements are promptly reported and appropriately documented.

See Appendices A and B for sample reporting forms that include the required elements of an incident report.

- Requires effective personnel training in the administration of seclusion and restraint of students, including clearly indicating for whom the training is targeted, what type of training, how frequently personnel are trained, and the duration of the training

Training and Staff Development

Each principal or program administrator should determine a time and method to ensure that all staff, personnel, parents, and students are familiar with the school division's policies and procedures regarding the use of behavior management techniques, physical restraint, and seclusion in emergency situations.

The school division should ensure that everyone concerned has information on these interventions, and should decide who needs to receive specific training. Training should occur within the first month of each school year for all staff and, for employees hired after the school year begins, within one month of their employment. Periodic in-service training should be scheduled to update information and to give staff an opportunity to practice and enhance skills. Attendance at each training should be documented. At a minimum, training should include information on the following:

Examples of severe behavior requiring interventions are provided for training purposes, in various behavior management programs.

- *the identification and implementation of the behavior management program(s) adopted by the school division.*

- *procedures to be followed when informing students and parents of the adopted program and the implementation procedures,*
- *the local policies on the use of behavior management techniques, physical restraint, and seclusion,*
- *interventions and alternatives that may preclude the need for physical restraint and seclusion, e.g. de-escalation of problematic behavior,*
- *procedures to be followed when physical restraint or seclusion is necessary,*
- *related safety considerations, including information regarding the increased risk of injury to a student when physical restraint is implemented or a student is secluded,*
- *administering physical restraint and implementing seclusion procedures in accordance with established medical or psychological limitations and when applicable, as specified in a student's Behavioral Intervention Plan (BIP),*
- *identification of staff who have received training and are certified to administer procedures in the use of physical restraint and seclusion, and*
- *procedures to be followed when documenting and reporting incidents of physical restraint or seclusion to parents and school administration.*

School divisions should develop policies and procedures regarding the amount of training that identified staff will need to administer physical restraint and seclusion effectively and safely while also protecting and respecting the dignity and rights of the individual student involved. The training should include, but not be limited to:

- *specific instruction to meet licensure/certification requirements of individual behavior management programs,*
 - *strategies and techniques for de-escalation,*
 - *clearly identifiable conditions under which physical restraint and seclusion are allowed,*
 - *procedures to be followed when physical restraint and seclusion are implemented,*
 - *opportunities to practice through simulations, prior to actual use,*
 - *demonstrations of proficiency in administering physical restraint and implementing seclusion procedures,*
 - *instruction on the effects of physical restraint and seclusion on the student involved, monitoring for physical signs of distress, and procedures for obtaining medical assistance,*
 - *instruction regarding incident documentation and reporting requirements, and the procedures for investigating injuries and complaints, and*
 - *annual and periodic in-service training scheduled to update, practice and enhance skills.*
- Provides for monitoring to ensure adherence to State law, regulations, policies and guidance
- Policy Implementation and Monitoring*

When a policy has been drafted and approved, whether existing, revised, or new, that policy is implemented through the division's procedures and any related methods for monitoring the use of those procedures.

Essential to this process are:

- *ensuring that proper documentation exists,*

- *ensuring that reporting requirements are in place and are properly used,*
 - *ensuring training of building and program staff on the policies and procedures,*
 - *investigating incidents, and*
 - *resolving complaints.*
- Ensures that the use of these interventions is fully documented in a form accessible to parents when requested

Documentation

In the documentation process, each incident report would require at a minimum:

- *incident, including the date, time, location of incident, persons involved partially and fully, and other relevant details,*
- *a justification statement setting forth why physical restraint, seclusion, or other behavioral interventions were necessary,*

The school division should consult the school board attorney for a review of its implementation and monitoring procedures.

Multiple behavioral interventions should not be merged into a single report.

- *a substantial explanation why less intrusive interventions were deemed inappropriate or inadequate, and*
- *a comprehensive list of persons who must be informed or notified of the incident.*

Future Plans

The Virginia Department of Education (VDOE) will continue to work with Virginia's State Special Education Advisory Committee (SSEAC) to monitor implementation of appropriate physical restraint and seclusion practices and related guidance. VDOE is not requesting assistance in revising or strengthening policy or regulations at this time, but they are interested in information that may become available as a result of this compilation reports from the states.

Additional Information

The VDOE, in collaboration with SSEAC, surveyed Virginia school divisions (LEAs) and, based on the information compiled from that survey, decided school divisions needed guidance in writing policies and procedures on physical restraint and seclusion. The guidance document was prepared and distributed to school divisions in 2005. The Virginia Constitution limits the authority of the Virginia Board of Education and its department of education to impose regulations and policies on local school divisions. The preface for the guidelines states, "These guidelines are informational and are neither mandated nor required."

A Superintendent's Memo requesting that all school divisions review the guidelines relevant to their policies and practices was released in October 2009.

(see http://www.doe.virginia.gov/info_centers/administrators/superintendents_memos/2009/294-09.shtml)