



[REDACTED]

Dear [REDACTED]

Thank you for your email of 16 June 2019 to the Ministry of Education requesting information *about the current review of physical restraint guidelines, rules and legislation.*

Your request has been considered under the Official Information Act 1982 (the Act) and my response each aspect of your request is below.

- How parents and children have been involved in the process to develop proposed changes to the guidelines, rules and legislation. If parents have not been involved in a substantive way to date, can you please offer an explanation as to why.

The Physical Restraint Advisory Group (the Advisory Group) was reconvened in September 2018 to discuss the *Guidelines for Registered Schools in New Zealand on the Use of Physical Restraint* (the guidelines) and how they could be improved. We wanted to make sure that the guidelines were as clear and useful to school leaders and teaching staff as possible, so that the requirements of the physical restraint provisions in the Education Act 1989 and related Rules could be applied without confusion.

The Advisory Group was not reconvened for the purpose of reviewing the legislation or the Rules which minimise the use of restraint and safeguard students.

Given the refresh focus on practice guidance for school leaders and staff, parents and children were not directly involved with re-drafting. More generally speaking, including parent representation in the Advisory Group would be difficult because there is no simple way of getting a representative range of views.

We did, however, get strong views from parents who attended a workshop run by the now Teaching Council in the earlier stages of the Ministry's refresh, who wanted even greater restrictions on restraint. These stood in contrast to the views of teachers who wanted the ability to restrain made clearer. We held those views in mind when re-drafting.

We intend to test the new guidelines in schools once they are in a suitable form. That would offer an opportunity to canvas views from the parent community in those places.

- How parents and children and disability groups are represented on the current Advisory Group that is refreshing the guidelines. If they are not represented, please offer an explanation as to why not.

The Advisory Group comprised of representatives from the NZ Principals' Federation, NZ School Trustees Association, Secondary Principals' Association NZ, Te Akatea NZ Maori Principals' Association, Special Education Principals' Association of NZ, NZ Area Schools Association, NZEI Te Riu Roa, and the Post Primary Teachers' Association, the Teaching Council, the Office of the Children's Commissioner, NZ Police and the Ministry of Health.

Given the focus on practice guidance for school leaders and teaching staff, working with representatives of the teaching profession and principals was appropriate. The Advisory Group does, however, include representatives from the Office of the Children's Commissioner who advocate on issues that affect children and young people, and the Ministry of Health.

- What is the status of the work now, and its future phases, the timing of these phases

Work on physical restraint is now focused on clarification of the legal framework for the use of physical restraint in schools. The Ministry of Education and the Teaching Council are exploring policy options in this regard. This focused work will feed into the final version of the guidelines.

As part of this work, there has been some targeted conversations with some teachers and disability sector groups. These include Education For All and the Disabled People's Organisations Coalition, which provides a broad range of disability-related perspectives within the education sector, including parent groups of disabled children.

If any changes to the legislation are proposed, the views of parents, children, and the disability sector will be sought through formal public consultation processes. Consideration may also be given to broadening the membership of the Advisory Group in the future if such changes are proposed.

- When will there be public consultation on the guidelines.

There is no planned formal public consultation on the guidelines. It is our intention to test the new guidelines in schools when they are in a suitable form. That would offer an opportunity to canvas views from the parent community in those places.

Advice to Ministers regarding:

- the process to review and amend the guidelines, rules and legislation

We have identified two documents in scope of this part of your request:

- *Education Report: Legislative options for physical escort and restraint*, 14 March 2019 ("Education Report"); and
- *Briefing Note: Process to refine Guidelines for Registered Schools in NZ on the use of Physical Restraint*, 28 September 2018 ("Briefing Note")

I am withholding the Education Report in full under section 9(2)(f)(iv) of the Act, to protect the confidentiality of advice which remains under active consideration.

I am releasing the Briefing Note to you in part (attached as **Appendix A**). I am withholding some information from the Briefing Note under sections:

- 9(2)(a) of the Act, protect the privacy of natural persons; and
- 9(2)(g)(i) of the Act, to maintain the effective conduct of public affairs through the free and expression of opinions by officials.

As required under section 9(1) of the Act, I have had regard to the public interest considerations favouring the release of the information withheld under sections 9(2)(f)(iv) and 9(2)(g)(i) of the Act. I have identified no public interest considerations sufficient to outweigh the need to withhold this information at this stage in the decision-making process.

- changes to the guidelines, rules and legislation.

No advice has been provided to Ministers on final changes to the legislation, rules and guidelines. I am therefore refusing this part of the request under section 18(e) of the Act as the requested information does not exist.

- make up of the advisory group

Ministers have not received advice on the composition of the reconstituted Advisory group. This part of the request is therefore also refused under section 18 (e) of the Act.

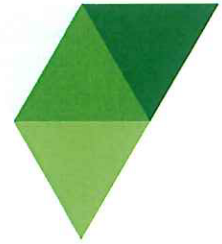
Please note, the Ministry now proactively publishes OIA responses on our website. As such, we may publish this response on our website after five working days. Your name and contact details will be removed.

Thank you again for your email. You have the right to ask an Ombudsman to review this decision. You can do this by writing to info@ombudsman.parliament.nz or Office of the Ombudsman, PO Box 10152, Wellington 6143.

Yours sincerely



Katrina Casey
Deputy Secretary
Sector Enablement and Support



Briefing Note: Process to refine Guidelines for Registered Schools in NZ on the Use of Physical Restraint

To:	Hon Tracey Martin, Associate Minister of Education		
Cc:	Hon Chris Hipkins, Minister of Education		
Date:	28 September 2018	Priority:	Low
Security Level:	In Confidence	METIS No:	1156582 s 9(2)(a) OIA
Drafter:	Olga Berezovsky	DDI:	
Key Contact:	David Wales	DDI:	
Messaging seen by Communications team:	No	Round Robin:	No

Purpose

This briefing note informs you of our process to refine the Guidelines for Registered Schools in NZ on the Use of Physical Restraint ('the Guidelines').

It also provides you with a brief analysis of comments and cases shared by the Tai Tokerau Principals' Association with the Advisory Group and media, about challenging behaviour in Northland schools, including how the Guidelines could be improved.

Summary

- The process outlined will enable roll out of new Guidelines at the start of term two in the 2019 school year.
- An analysis of Tai Tokerau Principals' Association comments and cases about challenging behaviour suggest that schools in Northland face issues beyond the application of the Guidelines, including support for children with challenging behaviour and supporting children to attend or transition into school. Broader Ministry work, currently underway, will help the region respond to these issues.

Katrina Casey
Deputy Secretary
Sector Enablement and Support

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Background

Reconvening of the Physical Restraint Advisory Group

1. The Physical Restraint Advisory Group reconvened on 14 September. Stakeholders were asked to focus their feedback on proposed changes to the Guidelines, in light of their use over the last 12 months. Discussion on legislation that frames the Guidelines (sections 139AB to 139AE of the Education Act 1989) was out of scope.
2. At the meeting, we suggested inclusions and proposed changes to the Guidelines to clarify the technical aspects of the law, and what teachers and authorised staff members can do within the legislation and the Guidelines. Specifically, we suggested the refined Guidelines could:
 - include new material in the form of easily understood Questions and Answers, and the use of true-to-life scenarios to help with teacher and authorised staff decision making; and
 - change some of the language and structure in the Guidelines so that information is easily accessed and understood.
3. We also asked about whether additional training and support was necessary to help teachers and schools apply the Guidelines.
4. Feedback was provided to us, along with other suggestions to improve the Guidelines. These will be incorporated in our redrafting, as appropriate.
5. Concerns outside the scope of the meeting's purpose were also voiced. In particular, a few stakeholder groups argued that the Education Act (section 139AC) needs to be changed as they thought it does not take into account teacher professional judgement in relation to context, or the impact of decisions to restrain (or not) on the learning, health and wellbeing of children witnessing challenging behaviour. Sector groups also pointed out that there was little incentive for schools to report incidents of physical restraint because of the view that the Ministry is largely unable to respond with resourcing of additional support for the children involved.

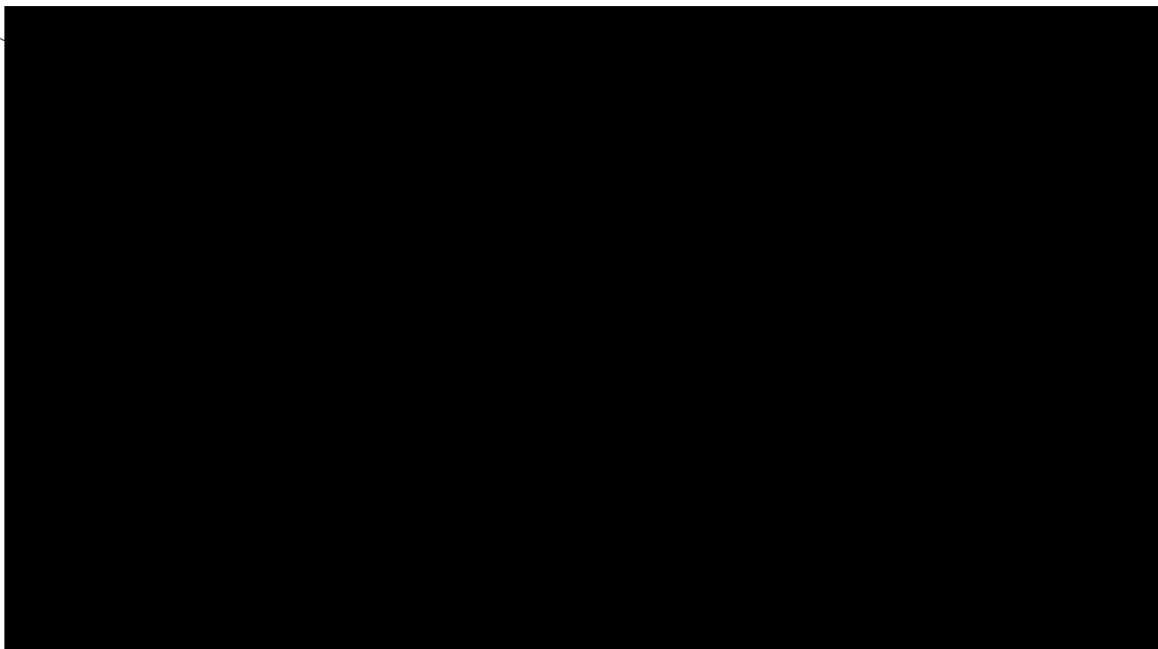
Comments from the Tai Tokerau Principals' Association

6. The President of the Tai Tokerau Principals' Association provided information to members of the Advisory Group, about issues its members face when responding to children with challenging behaviour. Twenty-six primary-aged schools and one secondary school from the northern region inputted into the comment. In summary:
 - Principals agreed that the use of physical restraint is a last resort.
 - Principals noted that the Guidelines include advice about preventative and de-escalation techniques, and these work most of the time.
 - It was said that the Guidelines prevent teachers applying common sense in their class room practice, and removed options to keep students safe.
 - Behaviour issues faced by primary schools are wide ranging, and cases described identified children in their first years of schooling.
 - Two-fifths of student cases described involved difficulty separating from a parent or refusal to enter schools. Teachers expressed frustration at not being able to use restraint in these situations. Restraint was seen as a tool that could potentially have resolved these situations, quickly.

- Teachers' described using restraint in a number of cases but also equally described a number of cases where restraint could have been legitimately used but was not used.
- Some teachers expressed worry about breaking the law when they are justified in using restraint, stating the guidelines are unworkable.

s 9(2)(g)(i) OIA

7.



8. The Northland regional office continues to support students and schools with challenging behaviour. This includes providing workshops for teachers and school staff on 'Understanding Behaviour, Responding Safely'.

Next Steps

9. Taken together with Ministerial correspondence received before and since the Advisory Group meeting, our view is that:
 - the Guidelines will benefit from a refresh;
 - more needs to be done to give confidence to teachers and authorised staff around the use of physical restraint in schools, as part of the continuum of positive behaviour support;
 - more may need to be done to consider and explore the impact of physical restraint decisions on other children. We will specifically consider how teachers should take into consideration the emotional safety and well-being of others, when deciding to physically restrain; and
 - the refined Guidelines will need to be rolled out to regions in ways that will aid understanding of the legislation and the supports available.

10. We will undertake the following process to refine the Guidelines and produce supporting materials:

Task	Date
Ministry completes communication plan, to support: -consultation with schools to user-test update of draft; and -roll-out of Guidelines and key messaging	Friday 12 October
Ministry drafts refined Guidelines based on feedback from first meeting, and provides a working draft to members of the Advisory Group (Requires collating and analysing feedback from Advisory Group membership, and legal input as required)	Friday 2 November
Ministry meets with Advisory Group, for further consultation This includes seeking advice on the best way to consult with schools on the Guidelines, as well as how to effectively roll out the Guidelines once they are finalised.	Friday 9 November Scheduled to avoid school holidays, and after the 'red zone'.
Ministry further develops Guidelines, following feedback Ministry provides draft to Advisory Group for final consultation	Friday 30 November Scheduled to avoid the 'red zone' before school holidays.
Consultation with schools to user-test update of draft Guidelines	Term 1, 2019
Roll-out of finalised Guidelines, along with supporting materials	Term 2, 2019