



Briefing Note: Analysis of proposed changes to the physical force section of the Education and Training Bill

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| To: | Hon Chris Hipkins, Minister of Education Hon Tracey Martin, Associate Minister of Education | | |
| CC: | Hon Jenny Salesa, Associate Minister of Education Hon Kelvin Davis, Associate Minister of Education | | |
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| Drafter: | Talia Pollock | DDI: | s 9(2)(a) |
| Key Contact: | Ben O'Meara | DDI: | |
| Messaging seen by Communications team: | No | Round Robin: | No |

Purpose of Paper

Within the time available today, we have prepared this advice on proposed changes to the physical force provision (Clause 95) of the Education and Training Bill. We suggest an alternative approach that provides for non-violent interventions to be used by teachers, whilst providing an authorisation for physical restraint in serious situations.

Proactive release

Agree that this Briefing will be proactively released.

Agree **Disagree**

Ben O'Meara
Ben O'Meara
Group Manager
Education System Policy
26/06/2020

Chris Hipkins
Hon Chris Hipkins
Minister of Education
27/ 6/ 2020

Hon Tracey Martin
Associate Minister of Education
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Analysis of proposed changes

1. You have requested advice on changes to the physical force sections of the Education and Training Bill that include using the term “non-violent intervention” instead of “physical restraint” or “physical force.”
2. We are concerned that the proposed definition of “non-violent intervention” incorporates aspects of physical restraint that are not generally considered to be non-violent. The definition of non-violent intervention captures restricting or subduing the movement of a student’s body, which are not always non-violent techniques. It is important not to minimise the nature and seriousness of a restraint intervention in a serious harm situation, the use of which is carefully regulated in the health, law enforcement, youth justice and justice sectors.
3. Physical restraint is a highly skilled intervention that uses techniques that would in other contexts be classified as assault, such as the use of restraint holds. For this reason, the Ministry is proposing a differentiated arrangement in the law.
4. We can divide the actions that teachers may take in response to disruptive behaviour into three categories:
 - a. Non-violent intervention designed to prevent or de-escalate a situation, which may involve some physical contact (e.g. guiding) that is not strongly resisted by the student. The use of such interventions should not be subject to specific conditions under the law.
 - b. Physical restraint. This is a serious intervention that should only be used as a last resort, and should be subject to strict conditions.
 - c. Violent and disproportionate use of physical force, which is prohibited.
5. An issue that has been identified with the current physical restraint framework is that it does not provide clarity that teachers and authorised staff members are permitted to intervene in situations where there is a risk of harm in non-violent ways.
6. While the proposed changes do provide clarity that staff may use non-violent interventions to de-escalate a situation, as discussed above we are concerned that they include physical restraint within the definition of a non-violent intervention. We therefore propose that the Bill provide clarity about when and how physical restraint may be used.
7. The proposed definition of “non-violent intervention” also relies on the development of another framework, which would not provide immediate certainty for teachers about when and how they can intervene in situations of serious risk.
8. To ensure that the law prohibits violent, disproportionate use of force; places strict conditions on the use of physical restraint; and provides certainty for teachers about when and how they can intervene in situations in non-violent ways, we propose reinstating the physical restraint provisions from the Education Act into the Education and Training Bill alongside an additional new provision that provides for the use of non-violent intervention. Specifically we are proposing:
 - a. Reinstating the wording of current section 139AC of the Education Act 1989 (Limits on use of physical restraint in schools);
 - b. Keeping clauses 96 and 97 of the Education and Training Bill (Rules on physical restraint, and guidelines on physical restraint), but with the inclusion of the new consultation requirements as inserted by the Select Committee;

- c. Adding a new avoidance of doubt provision to expressly state that these provisions do not prevent teachers and authorised staff members from using non-violent interventions, which are intended to “prevent, de-escalate and safely respond to disruptive or assaultive behaviour”, and which are intended to “provide for the care, welfare, safety and security of all persons involved”;
- d. Adding to the section 139AC wording the condition from the Bill at present that physical restraint must only be used when “the teacher or authorised staff member reasonably believes that there is no other option available in the circumstances”;
- e. Replacing the definition of an authorised staff member with “an employee of a registered school who is trained and authorised by the employer to use physical restraint”;
- f. Ensuring that the provisions for the making of rules and guidelines are broad enough to enable the rules and guidelines to expand upon the meaning of “non-violent intervention”.

Teaching Council’s view

- 9. The Teaching Council is concerned that the Ministry’s proposal undoes some of the good work done in developing the Bill. Their view is that the starting point for amendment should be the Bill as currently drafted, with modifications around the language of physical force.
- 10. In particular, the Council wishes to ensure the term “serious and imminent risk” which is currently in the Act is changed to reflect the wording in the Bill about preventing “imminent harm”.
- 11. The proposed SOP wording indicates staff members may be authorised to use non-violent intervention only if they have been trained. The Teaching Council believes training also needs to be provided to teachers and would like to see this included in the Bill. We heard from the profession that the training delivered during the roll-out of the physical restraint framework from 2017 was inconsistent across the country and contributed to the confusion of teachers about when they could and could not safely intervene, to the extent some teachers chose not to intervene at all. The consistency and robustness of any training programme is critical to the confidence of teachers and authorised staff members to confidently apply behavioural management and restraint / force / non-violent interventions.
- 12. The Teaching Council continues to recommend that some protection from civil proceedings (but not disciplinary or criminal proceedings) be provided to teachers and schools who act in accordance with the requirements outlined. Our view is that a trained teacher who acts reasonably, proportionately and in accordance with rules, guidelines and framework should be protected from civil proceedings related to those actions.