



## Briefing Note: Implementing the legal framework for physical restraint

<b>To:</b>	Hon Chris Hipkins, Minister of Education		
<b>Cc:</b>	Hon Tracey Martin, Associate Minister of Education		
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### Purpose

- Given public commentary on the issue of physical restraint, the purpose of this briefing is to provide you with information on: the development and implementation of the new physical restraint legal framework; what the data is telling us about physical restraint use in New Zealand schools; and the work we have planned to address concerns raised by the education sector.

### Summary

- Physical restraint is a high risk behaviour management intervention that can emotionally and physically harm both the student being restrained and the school staff member doing the restraining. It should only be used as a last resort when other prevention and de-escalation strategies have been unsuccessful. The trend internationally and in other sectors is for its use to be regulated.
- In 2016, the cross-sector Restraint and Seclusion Advisory Group developed guidance on using physical restraint in schools. This guidance was informed by current and best practice. It recognised that physical restraint may be necessary in emergency situations when the student's behaviour poses an imminent danger of physical injury to themselves and others, and provided school staff with advice on how to use the practice safely.
- During the development of the guidance, a member of the Advisory Group expressed concern that without appropriate statutory protections, teachers could face legal action when using physical restraint, even if they followed the guidance. s 9(2)(h)  
s 9(2)(h)

- The previous Government decided to develop a new legal framework so school staff could be clear about when and how they could use physical restraint. The legal framework, which came into force in May 2017, regulates physical restraint through a combination of legislation, and statutory rules and guidelines. This contrasts with the previous legal situation where school staff had to take into account their obligations under a range of general law, such as the New Zealand Bill of Rights 1990 and the Health and Safety at Work Act 2015, when making the rapid decision to physically restrain a student.
- A key aspect of the legal framework is a requirement for schools to report all incidents of physical restraint to the Ministry of Education. For the first time, we have information about the use of physical restraint in schools. This includes who is being physically restrained; who is applying the physical restraint; and where the physical restraint is occurring. So far there have been 1,412 reported incidents involving 797 children and young people. This represents about 0.01% of the schooling population. Almost all of the reported incidents have been in primary schools (72%) and special schools (22%).
- At a workshop organised by the Education Council of Aotearoa New Zealand in February 2018, education sector representatives expressed their concerns with the physical restraint legal framework. These concerns included: school staff not being clear on when and how they can use physical restraint; school staff not being able to use physical restraint to protect property; and the need to simplify the reporting regime to reduce compliance for schools.
- We consider the legal framework is robust. It is consistent with other sectors in New Zealand where physical restraint is used, and other legislation such as the Crimes Act 1961. It is flexible enough to apply to a wide range of situations within a school. It strikes the appropriate balance between mitigating legal risk, and ensuring the safety and wellbeing of students and school staff.
- However, we recognise it will take some time for the legal framework to become fully bedded in. In the coming months, we will be working with the Advisory Group to revise the statutory guidelines and incident reporting forms so they are clearer and easier to use. This work will provide an opportunity to address the concerns raised at the Education Council workshop.

  
 Katrina Casey  
 Deputy Secretary  
 Sector Enablement and Support

23/4/2018



## Background

### **International evidence tells us that physical restraint is a last resort, high risk action that should be regulated in schools**

1. Physical restraint is when a school staff member uses physical force to prevent or restrict a student from moving their body or part of their body. It is a last resort, high risk action that can emotionally and physically harm both the student being restrained and the school staff member doing the restraining. There can be legal and reputational risks as a result of physical restraint being used.
2. Physical restraint practices came to be commonly used in residential and day special schools over the last century. A lack of data in this area means we are uncertain when these practices moved into mainstream schools in New Zealand.<sup>1</sup>
3. The international literature is in agreement that physical restraint must be regulated if its use in schools is to continue. Reports of death and injury, emotional trauma, inappropriate use, the potential for discrimination, and limited data on efficacy show the need for robust policies and guidelines to guide the use of physical restraint, and to ensure the safety and wellbeing of both students and school staff.<sup>2</sup>
4. Countries such as the United Kingdom, Australia and the United States, have developed policies and guidelines to control and standardise the use of physical restraint. The trend is for these policy and guidelines to focus on minimising the use of physical restraint in schools, and promoting the use of positive interventions and best practice alternatives.<sup>3</sup>

### **Other sectors in New Zealand regulate physical restraint with a focus on minimising the practice**

5. Physical restraint is also used in the social welfare, mental health and justice sectors in New Zealand. While the law and practice varies, there are common elements across sectors:
  - a. physical restraint is viewed as a last resort, to be used where alternative behavioural management options have failed
  - b. the force used must be proportionate in the circumstances
  - c. physical restraint can only be used by trained staff
  - d. records must be kept, and the use of the practice must be monitored and reviewed.
6. Annex one provides information on comparative New Zealand approaches to physical restraint.

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<sup>1</sup> Johnstone, T., Frost, A., Lattin, K. (2015). *The Use of Physical Restraint Practices in Schools: A Literature Review*

<sup>2</sup> *ibid*

<sup>3</sup> *ibid*

**A cross-sector advisory group acknowledged that physical restraint may still be necessary in emergency situations and developed guidance for schools...**

7. In December 2014, the Ministry of Education (the Ministry) commissioned an independent inquiry into a complaint about the use of seclusion at a special school. A recommendation from this inquiry was that the Ministry convene a cross-sector advisory group to consider the use of seclusion and physical restraint in schools, and to investigate best practice models for managing challenging behaviour.
8. Starting its work in June 2015, the Restraint and Seclusion Advisory Group<sup>4</sup> (the Advisory Group) developed *Guidance for New Zealand Schools on Behaviour Management to Minimise Physical Restraint*. Released on 3 November 2016, this guidance was informed by a literature review of local and international best practice, school visits, and consultation with the education sector, parent and disability organisations, and agencies such as the Ministry of Health, the Police and the Office of the Children's Commissioner.
9. This guidance recognised that physical restraint may still be necessary in emergency situations when the student's behaviour poses an imminent danger of physical injury to themselves and others. It provided advice to schools on techniques for preventing and de-escalating these situations, and how to apply physical restraint safely if these techniques were unsuccessful.

**...but there was concern that the guidance did not go far enough and additional statutory protections were needed for teachers**

10. During the development of the guidance, the Secondary Principals' Association of New Zealand (SPANZ) representative on the Advisory Group expressed concern that without appropriate statutory protections, teachers could face legal action when using physical restraint, even if they followed the guidance. s 9(2)(h)  
s 9(2)(h)
11. In May 2017, a new legal framework for physical restraint was created through the Education (Update) Amendment Act 2017. Physical restraint is now regulated via a combination of the Education Act 1989 (the Act), the Education (Physical Restraint) Rules 2017 (the Rules), and the statutory *Guidelines for Registered Schools in New Zealand on the Use of Physical Restraint* (the Guidelines). The Act and the Rules set out what schools must do when using physical restraint, and the Guidelines set out good practice in using, monitoring and reporting on physical restraint. The Guidelines are attached as Annex two.
12. The Act states that teachers and authorised staff members<sup>5</sup> can only use physical restraint in situations in a school where there is a serious and imminent risk to the safety of a student or any other person. It requires the physical restraint used to be reasonable and proportionate in the circumstances.

<sup>4</sup> The Restraint and Seclusion Advisory Group is made up of representatives from the New Zealand School Trustees Association, the Special Education Principals' Association of New Zealand, the New Zealand Principals' Federation, the Secondary Principals' Association of New Zealand, the New Zealand Post Primary Teachers Association, the New Zealand Educational Institute Te Riu Roa, the inter-agency High and Complex Needs Unit, the Ministry of Health, and the Ministry of Education.

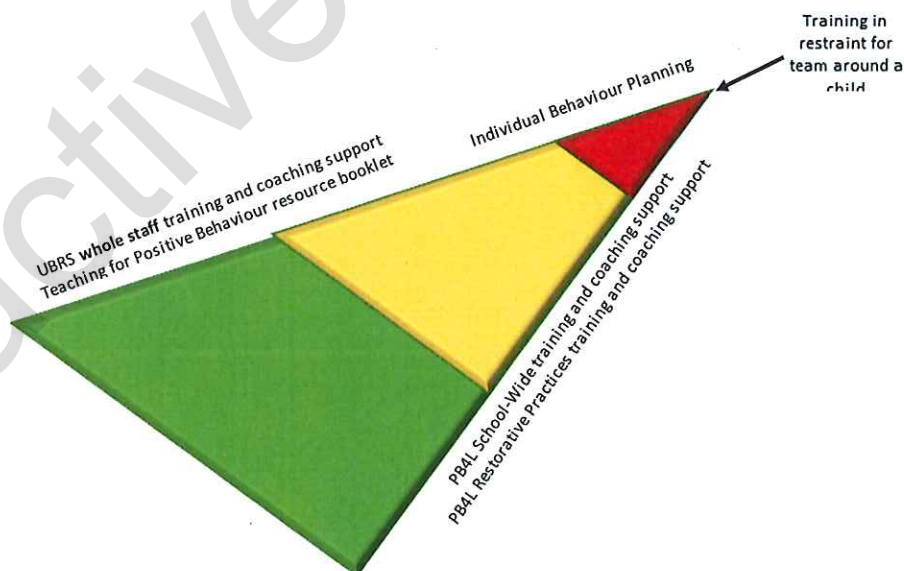
<sup>5</sup> Authorised staff members are employees of a school authorised by their employer (i.e. board of trustees, sponsor or manager) to use physical restraint.



13. The Act deals with the upper end of the spectrum of situations where school staff have physical contact with students, such as breaking up a fight; stopping a student who is throwing a computer close to others who could be injured; and stopping a student from running onto a road. It is important to be clear about what school staff can do in these situations.
14. The Advisory Group was involved in developing the Rules and the Guidelines before they were issued by the Secretary for Education on 15 August 2017. The Guidelines were adapted directly from the Advisory Group's guidance.

**We are providing a range of support to help schools understand the legal framework and minimise their use of physical restraint**

15. We are delivering Understanding Behaviour, Responding Safely (UBRS) training to whole-school staff groups. UBRS focuses on prevention and de-escalation strategies, and provides an opportunity to link the legal framework to practice. To date 290<sup>6</sup> schools have completed UBRS training or have made arrangements to do so.
16. We are updating UBRS in response to feedback from participants. This includes looking at how the training is delivered; enabling more customisation for schools; and providing more real life examples.
17. In addition to UBRS, there is a suite of positive behaviour supports available to schools to help minimise physical restraint. These preventative frameworks and resources help to upskill school staff in positive behaviour management, therefore reducing the need for escalating consequences and physical restraint. They include Positive Behaviour for Learning (PB4L) School-Wide, Teaching for Positive Behaviour, PB4L Restorative Practice, and Incredible Years Teacher.<sup>7</sup>



<sup>6</sup> This comprises 227 primary schools, 18 intermediates, 22 secondary schools, 11 composite schools, and 12 special schools.

<sup>7</sup> PB4L School-Wide helps schools to build a culture where positive behaviour and learning is a way of life. Teaching for Positive Behaviour is a resource booklet designed to help teachers to support the positive behaviour, engagement, participation and learning of children and young people. The PB4L Restorative Practice model focuses on building and maintaining positive relationships across the school community, and offers school staff best practice tools and techniques to restore relationships when things go wrong.

18. We are progressing work to expand our behaviour services<sup>8</sup> so that they reach more and younger children. As part of this work, we will be introducing a pathway of behaviour support for 0-8 year olds that will give us the flexibility to shape and adapt our support to cater for children's needs, especially during times of change and transition. We will also be running Incredible Years Toddler<sup>9</sup> for 0-2 year olds, and looking at other evidence-based behaviour support for this age group and their parents and whānau.
19. Some students with the most challenging behaviour have specific interventions and restraint techniques in their individual plans. Where we are involved in supporting a student, we can provide specialist guidance and instruction in physical restraint that is tailored to the student's individual needs.

## Physical restraint use in New Zealand schools

### **For the first time we have data showing why and how schools are using physical restraint**

20. A key aspect of the legal framework is the requirement for schools to report every incident of physical restraint to their employer, and to the Ministry. This data gives boards, managers and sponsors greater visibility over why and how the practice is being used in their schools, and gives us greater visibility over why and how the practice is being used across the country.
21. We are building a comprehensive picture of how schools are using physical restraint. Although the reporting regime is still in its early days, we are starting to see some trends emerging. We will be doing further analysis to understand what is driving them.
22. Building this comprehensive picture relies on schools complying with their reporting requirements. As incidents are self-reported, it is not possible for us to know if we have been notified of all physical restraint use. We will, however, use mechanisms such as complaints from parents and whānau to help to identify any unreported physical restraint use.

### **On average nine incidents of physical restraint are reported each day**

23. The Ministry received 1,412 reports of physical restraint between 15 August 2017 and 22 March 2018<sup>10</sup>, which is on average nine reports a day. The total number of students who have been physically restrained is 797. This represents about 0.01% of the approximately 800,000 children and young people in our schools.
24. Around three-quarters (72%) of reported physical restraint incidents have been in primary schools. This is followed by special schools (22%), secondary schools (4%) and composite schools (2%).

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<sup>8</sup> Our behaviour services provide specialist support to children and young people with behaviour difficulties to improve their behaviour, learning achievements and social interactions. The Incredible Years Teacher provides teachers of children aged 3-8 years with approaches to help turn disruptive behaviour around and create a more positive learning environment for their students.

<sup>9</sup> Incredible Years Toddler is a programme designed to help parents and whānau to encourage their toddler's language, social and emotional development, and to better manage behavioural problems.

<sup>10</sup> Although the legal framework for physical restraint came into force on 19 May 2017, the Rules and Guidelines creating the reporting regime were issued on 15 August 2017.



25. The number of reported physical restraint incidents in Canterbury/Chatham Islands is significantly higher than in other regions. This is likely to be a combination of historically higher use of restraint, together with a concerted effort from schools in the region to comply with the new legislation. Prior to the law change, a number of Canterbury schools had their use of seclusion and physical restraint publicly disclosed. As a result, Canterbury schools have been early adopters of UBRS, and have actively sought advice from us on their responsibilities under the legal framework.
26. Almost half of the reported incidents in Canterbury have come from special schools. One of these schools, Halswell Residential College, has some of the most complex and challenging students in the country. Many of the reported incidents at this school have followed psychotic episodes brought on by significant mental health issues.

Regions	Restraints
Auckland	295
Bay of Plenty/Wairariki	56
Canterbury/Chatham Islands	456
Hawke's Bay/Tairāwhiti	43
Nelson/Marlborough/West Coast	75
Otago/Southland	111
Tai Tokerau	63
Taranaki/Whanganui/Manawatu	98
Waikato	98
Wellington	117
<b>Total</b>	<b>1412</b>

27. About one-third of reported incidents involve someone being injured either before or during the use of physical restraint. Typically the reported injuries are physical and appear to be fairly minor (e.g. bruises and scratches). We will continue to monitor the nature and causes of the injuries so we can provide more support and advice to schools and school staff.

### **Boys under ten years are the most likely group to be physically restrained**

28. The data shows that boys are 4.9 times more likely to be physically restrained than girls. It also shows that students who are Māori or who have disabilities and additional learning needs are overrepresented in physical restraint incidents.

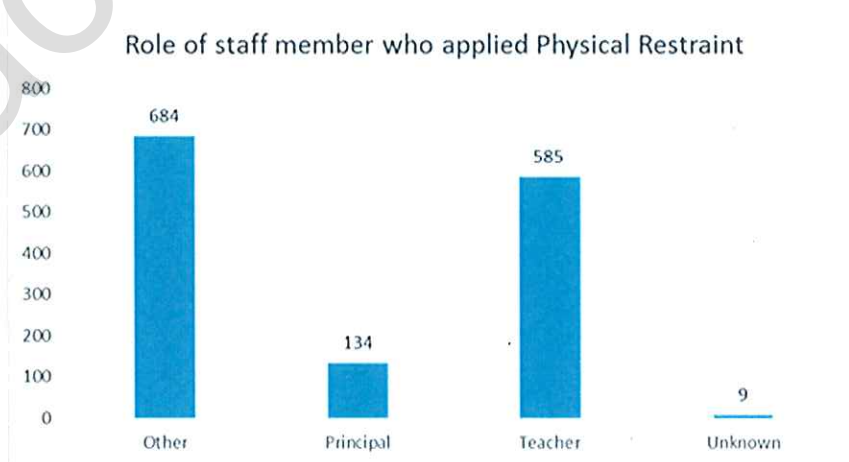
29. Physical restraint peaks at nine years, but the number of reported incidents involving five and six year olds is also high.<sup>11</sup>



30. Although the total number of students being physically restrained is very small, many of these students are being physically restrained on multiple occasions, sometimes on the same day. Two-thirds of reported incidents involved students with plans in place to manage their behaviour. This suggests that most of the students being physically restrained have identified behaviour difficulties, and are already receiving learning support.
31. We need to look into this data in more detail as it potentially has implications for the way we support schools to manage challenging behaviour, and the way we provide support to individual children and young people with behavioural and emotional issues.

**A significant proportion of physical restraint appears to be applied by people who are not teachers or principals**

32. The data indicates that a significant proportion of physical restraint has been applied by people who are not teachers or principals. While many of these people are teacher aides, other roles identified by schools include house managers, youth workers, other students, coaches, office staff, lifeguards and librarians. We need to undertake further analysis to understand exactly who is physically restraining students.



<sup>11</sup> One reported incident involved a four year old being physically restrained at a special school.



33. The data indicates that about a quarter of those identified as 'other' in the graph above are not trained in managing challenging behaviour and applying physical restraint. This means they are less likely to have knowledge of prevention and de-escalation techniques, and more likely to cause an injury to the student or themselves. It is also risky for employers to have untrained staff or others within the school taking such risks.
34. While UBRS involves a whole of school approach, it is up to individual schools whether or not staff such as teacher aides take part in the training. We are strengthening our messaging around the importance of including all staff in the training when schools request UBRS.
35. Although physical restraint should only be applied by teachers and authorised staff, a small number of reported incidents (49) involved unauthorised staff members. While the Rules set out a process for authorising school staff members who are not teachers, we will be providing more information to schools on the importance of having a robust authorisation process. This will help them to understand the risks associated with unauthorised staff members using physical restraint.

#### **Parents are not always notified when their child has been physically restrained**

36. There were 146 incidents where the school did not tell the parents their child had been physically restrained. The Rules and Guidelines are explicit that parents should be informed after every incident. Effective practice should ensure ongoing communication and parental involvement.

#### **Education sector concerns**

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37. In February 2018, the Education Council of Aotearoa New Zealand (Education Council) brought together education sector representatives, CCS Disability Action, Autism New Zealand, the Ministry, and an interested parent, for a workshop on physical restraint. A key point arising from the discussion was that having a legal framework for physical restraint has made school staff more aware of their physical contact with students, and their own practice when managing challenging behaviour.

#### **School leaders and teachers would like more clarity on when and how to use physical restraint**

38. A key concern of the education sector was the need for more clarity on what constitutes serious and imminent risk to safety, and what types of physical contact are acceptable. Anecdotal evidence suggests that some school staff are confused about when and how they can use physical restraint, and that incorrect information is being passed on to parents and whānau.
39. Sector representatives were unclear on how the legal framework interacts with other legislation, particularly the Crimes Act 1961. They expressed concern that school staff now face greater restrictions than members of the public in a similar situation.

#### **Sector representatives raised the issue of using physical restraint to protect property**

40. Sector representatives asked that consideration be given to teachers and authorised staff members to use physical restraint to protect property. Currently teachers and authorised staff members can use physical restraint in response to property damage, but only in the context of ensuring the safety of the student or any other person. For example, they could physically restrain a student who is throwing or smashing a computer and the shattering parts could injure either the student or somebody nearby.

## Primary schools consider the reporting regime to be a compliance burden

41. Primary sector representatives at the workshop described the reporting regime as time-consuming and a compliance burden. They reported that as a result, some schools are breaking the law (i.e. not reporting their use of physical restraint to the Ministry), or are using poor practice (e.g. only reporting on incidents that have been witnessed by a parent).
42. We deal with each of these issues below.

## Providing more clarity on when and how physical restraint can be used in schools

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### The legal framework for physical restraint was designed to bring clarity to a legally grey area...

43. One of the key objectives of the legal framework is to make it clear to school staff when and how they can use physical restraint in a school. It does not deal with the acceptable physical contact that goes on in schools every day (e.g. shepherding young children from place to place, or holding a hand briefly to provide comfort). However, once a school staff member is at the point of stopping or restricting a student from moving their body or part of their body, the legal framework tells them what they can and cannot do. If school staff act in accordance with the legal framework, they will minimise their risk of injuring a student or being hurt themselves, and mitigate the risk of legal liability.
44. This clarity was needed because the use of physical restraint in schools was a legal grey area prior to the legal framework being established. There was nothing in education or general law that specified the appropriate use of physical restraint in a school. Instead school staff had to take into account their obligations under a range of general law when making the decision to physically restrain a student. This general law included the New Zealand Bill of Rights Act 1990, the Human Rights Act 1993, the Crimes Act 1961, the Health and Safety at Work Act 2015, and the Code of Health and Disability Services Consumers' Rights 1996. Taking all of this general law into account when making a rapid decision was a considerable ask of a school staff member in an emergency situation.
45. While *Guidance for New Zealand Schools on Behaviour Management to Minimise Physical Restraint* was available to schools, it was non-statutory. This meant it was voluntary for schools to follow all or some aspects.
46. In practice, this meant that physical restraint was being used inconsistently and sometimes poorly across the country. This was putting school staff at physical, emotional and legal risk. It increased the risk that a student would be seriously injured or traumatised as a result of having physical restraint applied on them.
47. Annex three provides a comparison of the previous legal situation and the legal framework.



**...and to give school staff a schooling context defence if they are charged with a crime as a result of using physical restraint**

48. Using physical restraint on a student can result in a school staff member being charged with an offence, such as assault on a child<sup>12</sup>, under the Crimes Act 1961. If convicted, the school staff member can receive a sentence ranging from a discharge without conviction to a fine, community-based sentence or prison term, depending on the seriousness of the case.
49. The Crimes Act 1961 has a range of possible defences that can be used by defendants in Court. These defences work by providing an explanation as to why the defendant was justified in committing the offence. For example, a defendant can claim they were acting in self-defence if they were protecting themselves or someone else<sup>13</sup>. These defences generally require any force used to be reasonable and proportionate. They do not provide immunity from prosecution.
50. However, the defences in the Crimes Act 1961 apply to all people in all contexts. They do not take into account the different expectations on school staff, particularly teachers and principals, when they are acting in their professional capacity rather than their private capacity. Unlike members of the public, teachers and principals are trained public servants with responsibility over children and young people. This has implications for them as it means they would be less likely to be successful when using one of these general defences than members of the public in a similar situation.
51. To address this issue, the legal framework has created a defence that specifically deals with teachers and authorised staff members using physical restraint in schools. This defence provides a justification for the use of reasonable and proportionate force on a student if there is a serious and imminent risk to the safety of a student or any other person. The threshold and requirements underpinning this defence are consistent with those underpinning the Crimes Act 1961 defences.
52. What this means in practice is that teachers and authorised staff members will have a good defence if they can show they acted in accordance with the physical restraint regime set out in the Act, Rules and Guidelines.
53. There may be situations when an unauthorised staff member intervenes and physically restrains a student, for example in an emergency when there are no teachers or authorised staff members nearby. In these situations, the schooling context defence does not apply. However, the general defences in Crimes Act 1961 may apply.
54. While unauthorised staff members are not specifically prohibited from using physical restraint, they would generally be bound by their employer's policy relating to any such interactions with students. Given the risks associated with physical restraint, health and safety obligations, and the policy intent set out in the legal framework, boards, managers and sponsors should be explicit about whether or not they want unauthorised staff members to use physical restraint in their school.

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<sup>12</sup> Section 194(a) of the Crimes Act 1961 deals with assault on a child under fourteen years. This carries a higher maximum penalty than common assault (up to two years imprisonment compared to one years imprisonment). This recognises that children are a more vulnerable group of victims. In its *Review of Part 8 of the Crimes Act 1961* (2009), the Law Commission noted there is a substantial difference in culpability between assault on a child and other instances of assault. This has resulted in consistently more severe sentences being imposed by judges when a child victim is involved.

<sup>13</sup> Section 48 of the Crimes Act 1961



55. Another advantage of having a schooling context defence is that, unlike the Crimes Act 1961 defences<sup>14</sup>, it can be used to mitigate legal liability under other legal regimes. This is because school staff can clearly show when and how they can use physical restraint on a student in a school. This is important as there can be serious consequences from breaching other legal regimes. For example, a breach of the Code of Health and Disability Services Consumers' Rights 1996 could result in the Human Rights Review Tribunal awarding up to \$350,000 in compensatory damages for losses suffered.<sup>15</sup>

**We do not propose making any law changes at this time...**

56. We consider the legal framework to be robust. It is consistent with other sectors in New Zealand where physical restraint is used, and other legislation such as the Crimes Act 1961. It is flexible enough to apply to a wide range of situations within a school. It strikes the appropriate balance between mitigating legal risk and ensuring the safety and wellbeing of students and school staff.
57. We have, however, looked at a potential law change that would bring the legal framework into closer alignment with the Crimes Act 1961. This would involve changing the wording in section 139AC from a "teacher or authorised staff member **must not** physically restrain a student **unless...**" to "a teacher or authorised staff member is **justified in** physically restraining a student **if...**"
58. This law change would make no difference to how the legal framework operates. Teachers and authorised staff members would still have to use their professional judgement to determine if there is a serious and imminent risk to safety. The physical restraint they use would still need to be reasonable and proportionate.
59. Given that this law change is about the way the authorisation to use physical restraint is framed, and will not change anything in practice, we do not think that it is needed at this time. We will continue to monitor the data to identify any areas of concern or changes in practice that could be addressed through a law change.
60. In addition, making a law change risks reopening the public discussion on the use of physical restraint by school staff on students at a time when the regime is bedding in. Stakeholders hold strong and sometimes opposing views on the need to regulate physical restraint.
61. In particular, any law change is likely to concern disability and human rights organisations, and the parents and whānau of children and young people with disabilities and additional learning needs. Public consultation during the passing of the Education (Update) Amendment Act 2017 showed these groups' strong support for the legal framework and, in some cases, a desire to strengthen the framework further. At the time, these groups expressed concern that children and young people with disabilities and additional learning needs would be overrepresented in physical restraint incidents. So far the data is confirming that this is the case.

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<sup>14</sup> The Crimes Act 1961 defences can only be relied on in criminal proceedings.

<sup>15</sup> The Code of Health and Disability Services Consumers' Rights 1996 extends to schools catering for students with disabilities, particularly those who cannot participate in the classroom without support. The Code confers rights such as to be treated with respect; to be free from discrimination, coercion, harassment and exploitation; to dignity and independence; to services of an appropriate standard; to effective communication; to be fully informed; and to give informed consent. Awards by the Human Rights Review Tribunal are typically for injuries to feelings, humiliation and loss of dignity.



**...but we will be making improvements to the Guidelines so they are easier to use**

62. It will take time for the legal framework to become bedded in. As we are seeing in Canterbury, training and information provision is critical to helping schools understand how the legal framework works in practice, and how they can respond to challenging behaviour more effectively. We will continue to follow up directly with all schools that report incidents of physical restraint to see if they need additional support, including UBRs training.
63. To support the bedding in of the legal framework, we will be working with the Advisory Group in the coming months to revise the Guidelines so they are clearer and easier to use. Changes suggested by the sector at the workshop include incorporating more practical examples; using positive wording (i.e. a focus on what teachers and authorised staff members can do rather than on what they cannot do); providing more detail on what type of physical restraint is allowed; and making the guidance on what constitutes acceptable physical contact easier to find.
64. We will get input from the Advisory Group on other ways to provide advice and foster good practice in this area. For example, the special schools in greater Christchurch have formed a community of practice around physical restraint, with the aim of supporting positive approaches to managing crisis behaviour. This might be an approach we wish to encourage in other areas. We could also make information available in accessible formats so students and parents and whānau are able to understand how the legal framework works.

### **Using physical restraint to protect property**

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**We do not recommend lowering the threshold for using physical restraint to enable school staff to protect property in the absence of imminent harm to a student or someone else**

65. The previous Government made a policy decision that teachers and authorised staff members should not put themselves at physical or legal risk to protect property. It was concerned about the health and safety implications for employers that could arise from having their staff take such risks. It considered calling the Police to be the appropriate response in such situations.
66. The current approach in the Act is consistent with the one in the Crimes Act 1961. Sections 52 to 56 of the Crimes Act 1961 permit a limited use of force to protect property. These sections put human life and safety, even for the person doing wrong, above protecting or possessing property. They require the force used to only be what is necessary to protect the property, and generally exclude striking or causing physical harm to another person.<sup>16</sup>
67. We acknowledge there could be financial implications for schools when students damage property. However, we do not recommend enabling teachers and authorised staff members to use physical restraint only to protect property. It would be difficult to set a legal test that would prevent them physically restraining students in response to incidents such as throwing a stapler or doing graffiti on a desk. We consider that lowering the threshold to include these types of incidents would make the legal framework too permissive, and would increase the likelihood of students and school staff being put at risk through inconsistent or poor practice.

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<sup>16</sup> Reed, Alan and Bohlander, Michael. (2016) *General Defences in Criminal Law: Domestic and Comparative Perspectives*

## Simplifying the way schools report on physical restraint

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### **Reporting on the use of physical restraint is considered good practice**

68. Internal and external reporting on the use of physical restraint is consistent with good practice in the health, disability and justice sectors. It is associated with improving the quality of practice and preventing further occurrences of physical restraint. It also provides a safeguard for the person doing the restraining by providing a written record of what has occurred if there is a complaint.
69. Boards, managers and sponsors can use the data they receive to see the extent of physical restraint use in their school, and any trends. This will help them to ensure they meet their health and safety responsibilities, as well as inform the development of their behaviour management procedures and policies.
70. We are using the data to identify areas of concern where we need to target resourcing, support and training. Over time, the data will also enable us to update the Rules and Guidelines to address these areas of concern or reflect evolving practice. We are also following up on reported incidents to see if the student involved requires additional support.

### **We will be making changes to the incident reporting forms and the reporting process so they are easier and quicker for schools**

71. The current reporting regime for physical restraint requires schools to complete and email a one-page, largely tick box form to the Ministry for every instance of physical restraint, and to provide a copy of the completed form to the employer. In addition, every school staff member who uses physical restraint must complete a one-page physical restraint incident report that is put on the student's file.
72. It is considered good practice for schools to run a debriefing process after each incident. The Guidelines have forms that can be used or tailored by schools for this purpose. We have anecdotal evidence that schools are confused as to how these forms fit into the reporting regime, and how to use them.
73. We will work with the Advisory Group in the coming months to review the incident reporting forms to see where we could make some changes to simplify them. This will provide an opportunity to ensure we are collecting the right kind of information (e.g. more detail about the role of staff members applying physical restraint), and to make it clear that the debriefing forms are non-mandatory and can be used how schools wish.
74. We are also making improvements to the reporting process by putting in place an automated system. This will make it easier for schools to lodge incidents of physical restraint, and reduce errors in the data.

## Annexes

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Annex one: Comparative New Zealand approaches to physical restraint

Annex two: Guidelines for Registered Schools in New Zealand on the Use of Physical Restraint

Annex three: Comparison between previous legal situation and new legal framework



## Annex one: Comparative New Zealand approaches to physical restraint

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### Social Welfare

1. A staff member may only use physical force where he or she has reasonable grounds to believe that its use is reasonably necessary:
  - a. in self-defence, or in the defence of another person, or to protect the child or young person from injury
  - b. to prevent the child or young person from damaging property
  - c. to prevent the child or young person from leaving the residence
  - d. to secure the containment of the child or young person in secure care
  - e. for the purpose of carrying out a search.
2. The force used must be no more than the minimum amount that is reasonably necessary in the circumstances. Records of the use of force and the circumstances giving rise to its use must be kept.
3. The available guidance material and reports indicate that physical restraint is considered to be a last resort option for ensuring the safety of children, young people, and staff at residences. Non restraint options are preferred because of the negative consequences resulting from the use of physical restraint, both for the child or young person, and for their relationship with staff members.
4. At residential facilities with schools, teachers are not permitted to use physical restraint. A trained staff member, authorised to exercise physical restraint, attends each class. Such staff members must attend regular refresher courses. Cameras are present in classrooms which allows for the recording of any incident involving physical restraint.
5. In residences run by non-government organisations (such as Barnardos), the use of physical restraint is limited to situations involving the risk of harm to the child or young person or to others. Only staff who are trained and hold current certification can exercise physical restraint.
6. At both types of residential facilities, the use of physical restraint is subject to monitoring and review.

### Mental Health

7. In the mental health sector, it is a clinical decision whether or not to use physical restraint as part of a range of strategies for managing a patient's condition at a particular time with a particular goal in mind. It is used to enhance or maintain the safety of the patient, service providers or others.
8. Physical restraint is only to be used after less restrictive interventions have been attempted. The guidance material emphasises that there must be prior planning and preparation. The most appropriately trained health professional is to exercise the restraint, with it to take place in a safe and appropriate environment and with adequate resources.

9. Extensive documentation is required to ensure that there is an accurate account of the nature of the restraint that has been used, the duration, and outcome. Post the use of physical restraint, there are internal and external reviews, involving the patient, his or her family/whānau, and relevant health professionals.

### **Corrections**

10. An officer or staff member may only use physical force where he or she has reasonable grounds for believing that its use is reasonably necessary:
  - a. in self-defence, in the defence of another person, or to protect the prisoner from injury
  - b. in the case of an escape or attempted escape
  - c. to prevent damage to property or in the case of active or passive resistance to a lawful order (officers only).
11. The force used must be no more than is reasonably necessary in the circumstances. For those prisoners who are taken to a cell, they must be monitored every 15 minutes. An examination by a health professional and an interview must both be conducted within three hours of the incident.
12. There are extensive requirements for the debriefing of staff, the provision of support services for the officer or staff member involved, and the reporting and review of the incident.
13. If a physical hold is required, this can only be done by trained officers and staff members. Prior approval to the use of the hold must be obtained from the prison manager or employer, unless this would be impracticable. Officers and staff must attend a minimum of one refresher course every 12 months.



Proactively Released

# Guidelines for Registered Schools in New Zealand on the Use of Physical Restraint

AUGUST 2017

New Zealand Government



These guidelines are issued by the Secretary for Education under section 139AE of the Education Act 1989.

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## Foreword

**The *Guidelines for Registered Schools in New Zealand on the use of Physical Restraint* (the guidelines) are issued by the Secretary for Education under section 139AE of the Education Act 1989 (The Act). They supplement the legislation relating to limits on the use of physical restraint and the prohibition of seclusion. They explain the legislation (sections 139 AB to 139AE of the Education Act 1989) and the associated Education (Physical Restraint) Rules 2017 (the rules).**

Student and staff wellbeing is at the heart of these guidelines. Inclusive practices and a safe physical and emotional environment are of greatest importance for all students.

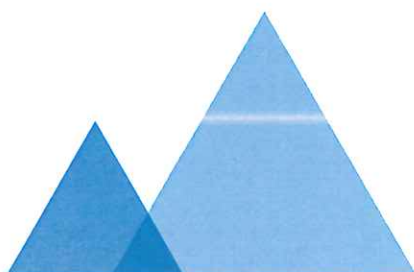
The guidelines have been issued under the legislation to help schools understand the legislation and follow it. They address the uncertainty staff experience when faced with a student exhibiting difficult behaviour that may escalate into a dangerous situation. The legislation requires all schools to have regard to these guidelines.

The guidelines aim to strengthen good practice and minimise the need to use physical restraint. They provide school staff with advice about safe ways to manage potentially dangerous situations when a student may need to be physically restrained. These include preventative or de-escalation techniques to avoid the need to physically restrain a student. Options for managing behaviour, if prevention or de-escalation does not work, are also provided.

Information is provided on how to incorporate physical restraint into an Individual Behaviour Plan if necessary, and who to involve in the decision-making process, including parents and caregivers.

The guidelines direct staff to training in techniques for managing potentially dangerous situations and applying physical restraint safely, and describe how to debrief and report a situation involving physical restraint.

The guidelines also make it clear that under the legislation seclusion is prohibited and must not be used in New Zealand schools.



## Developing the guidelines: expertise from throughout the sector

An advisory group from across the sector contributed to the development of the guidelines. The group included representatives from the Special Education Principals' Association of New Zealand, New Zealand Principals' Federation, New Zealand Educational Institute Te Riu Roa, New Zealand School Trustees Association, Secondary Principals' Association of New Zealand, New Zealand Post Primary Teachers Association, Ministry of Health, High and Complex Needs Unit and the Ministry of Education.

The guidelines take into account current international research and directions, and relevant legislation and international conventions including the New Zealand Bill of Rights Act 1990, Education Act 1989, United Nations Convention on the Rights of the Child, United Nations Convention on the Rights of Persons with Disabilities, Vulnerable Children Act 2014, Health and Safety at Work Act 2015, and the Crimes Act 1961.

### Guiding principles

These guidelines supplement the Act and rules and provide a resource to assist principals and boards, sponsors of partnership schools kura hourua, and managers of private schools understand their responsibilities under the legislation, and to support staff to safely manage potentially dangerous behaviour where the safety of students, staff, or any other person is threatened.

There are some fundamental principles on which the guidelines are built.

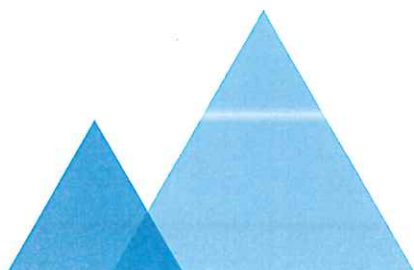
**Principle 1:** Physical restraint is a serious intervention. These guidelines aim to minimise the use of physical restraint.

**Principle 2:** If there is an alternative to physically restraining a student, use the alternative.

**Principle 3:** All schools are required to provide a safe physical and emotional environment for students and staff. Parents, students and the public have a legitimate expectation that the school environment will be a safe environment that supports learning.

**Principle 4:** The Education Act 1989 provides for the circumstances when teachers and authorised staff members may physically restrain a student. In exercising these powers, teachers and authorised staff members must act reasonably and proportionately in the circumstances to achieve a safe environment for students and staff.

**Principle 5:** Students' rights are protected under the Bill of Rights Act 1990.





# Legislation

## What is physical restraint?

The Act defines physical restraint as using physical force to prevent, restrict, or subdue the movement of a student's body or part of the student's body.

## Who can use physical restraint in schools?

Physical restraint can only be used by teachers or authorised staff members. Teachers are people employed in a teaching position at a school. This includes a person with a Limited Authority to Teach, and a relief teacher employed by the employer (e.g. board of trustees, sponsor or manager). All teachers are automatically authorised to act under the legislation.

Authorised staff members are employees of a school authorised by their employer to use physical restraint.

## When can physical restraint be used in schools?

The Act limits the use of physical restraint by teachers or authorised staff members in schools to situations where:

- » the teacher or staff member reasonably believes that the safety of the student or of any other person is at serious and imminent risk; and
- » the restraint used is reasonable and proportionate in the circumstances.

## How does the legal framework for physical restraint work?

Physical restraint is now regulated via a combination of the Act, the rules and statutory guidelines. It is a legal requirement for schools to:

- » comply with the Act and rules
- » have regard to the guidelines.

The legislation and rules set out what schools must do. The guidelines outline good practice in using physical restraint, and monitoring and reporting on the use of physical restraint.

By following the Act, the rules and the guidelines when using physical restraint, a teacher or authorised staff member will minimise their risk of injuring a student or being hurt themselves, and mitigate their risk of legal liability.

## What does the legislation say?

Section 139AC limits the use of physical restraint in schools.

## When does the legislation come into effect?

The legislation applies from 19 May 2017.

## Seclusion

The Act bans the use of seclusion in schools and early childhood services including ngā kōhanga reo.

More information about seclusion can be found on the Ministry of Education website:

<https://education.govt.nz/school/managing-and-supporting-students/student-behaviour-help-and-guidance/seclusion/>

# Responsibilities of Boards of Trustees, Sponsors of Partnership Schools Kura Hourua, Managers of Private Schools

## Authorising Staff Members

Boards, sponsors of partnership schools kura hourua and managers of private schools must follow the procedure for authorising staff members, who are not employed as teachers, to use restraint in accordance with Rule 5 of the rules.

## Administration

Boards, sponsors and managers should ensure that:

- » school practices are clear, follow the rules, are well-documented, explained to students in an age-appropriate way, and available to all
- » teachers and authorised staff who are designated to physically restrain students are suitably supported and trained for this task
- » systems are in place to support the smooth running of the school. These include keeping written records and following requirements to notify, monitor and report on the use of physical restraint.

## School policies on physical restraint

Each school should:

- » develop policies on physical restraint that follow these guidelines and make these policies available for all students, parents and caregivers
- » provide a clear complaints process for students, parents and caregivers
- » review the policy as part of the school's annual review cycle.

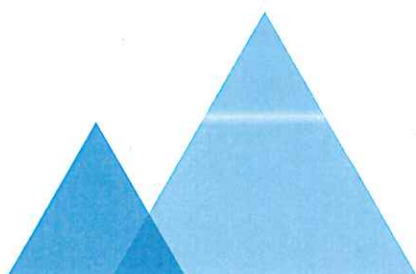
## Communicating with students and with the school community

It is the school's responsibility to ensure that parents, students, school staff and the community know about the school's plans and policies for managing challenging behaviour and using physical restraint.

This includes having processes in place to inform parents when physical restraint has been used.

## Review

The Education Review Office may review a school's use of physical restraint, as it would any other school operation or procedure.





## Good practice guidance

### Student and staff wellbeing come first

Physical restraint affects the wellbeing of both the student and the staff member who applies it. It is associated with injury and increased emotional trauma to them both.

These guidelines focus on staff and student safety and wellbeing. They provide staff with generic techniques for preventing and de-escalating potentially dangerous situations. For more information schools can request the Understanding Behaviour – Responding Safely training (see page 13).

## Identifying when you may need to apply physical restraint

### Use physical restraint only where safety is at a serious and imminent risk

Physical restraint is a serious intervention. The emotional and physical impact on the student being restrained and the person doing the restraining can be significant. There are legal and reputational risks if a student is harmed.

The first aim should be to avoid needing to use physical restraint. Use preventative and de-escalation techniques to reduce the risk of injury.

#### Use physical restraint only when:

The teacher or authorised staff member reasonably believes that the safety of the student or of any other person is at serious and imminent risk.

The physical restraint response must be reasonable and proportionate in the circumstances:

- » Use the minimum force necessary to respond to the serious and imminent risk to safety.
- » Use physical restraint only for as long as is needed to ensure the safety of everyone involved.

### What is serious and imminent risk to safety?

The physical restraint provisions are intended to deal with the upper end of the spectrum of situations where teachers and authorised staff members have physical contact with a student. It is clear that, in these situations, the restraint is in response to a serious and imminent risk to safety.

Teachers and authorised staff members will need to use their professional judgement to decide what constitutes “a serious and imminent risk to safety”. These situations are examples.

- » A student is moving in with a weapon, or something that could be used as a weapon, and is clearly intent on using violence towards another person.
- » A student is physically attacking another person, or is about to.
- » A student is throwing furniture, computers, or breaking glass close to others who would be injured if hit.
- » A student is putting themselves in danger, for example running onto a road or trying to harm themselves.

### These examples do not pose a serious and imminent risk to safety

Avoid using physical restraint to manage behaviour in these situations:

- » to respond to behaviour that is disrupting the classroom but not putting anyone in danger of being hurt
- » for refusal to comply with an adult's request
- » to respond to verbal threats
- » to stop a student who is trying to leave the classroom or school without permission
- » as coercion, discipline or punishment
- » to stop a student who is damaging or removing property, unless there is a risk to safety.

## Acceptable Physical Contact

Staff may need to physically support students. The following situations involving physical contact to support students happen in schools every day:

- » Temporary physical contact, such as an open hand on the arm, back or shoulders to remove a student from a situation to a safer place.
- » Supporting a student to move them to another location, or help them to get in a vehicle or use the stairs.
- » The practice of harness restraint, when keeping a student and others safe in a moving vehicle, or when recommended by a physiotherapist or occupational therapist for safety or body positioning.
- » Younger students, especially in their first year of school, sometimes need additional help. For example, you may "shepherd" a group of younger students from one place to another.
- » Staff may hold the hand of a young student who is happy to have their hand held for a short time.
- » Staff may pick a student up to comfort them.
- » Assisting a student with toileting, including changing a nappy.

# Use preventative and de-escalation techniques first

The first aim is to avoid needing to use physical restraint.

Use the following strategies to prevent or de-escalate potentially dangerous behaviour. These are general suggestions only.

## Preventative techniques

### Understand the student

- » Get to know the student and identify potentially difficult times or situations that may be stressful or difficult for them.
- » Identify the student's personal signs of stress or unhappiness and intervene early.
- » Monitor wider classroom/playground behaviour carefully for potential areas of conflict.

### Respect the student

- » Demonstrate a supportive approach: "I'm here to help."
- » Be flexible in your responses: adapt what you're doing to the demands of the situation.
- » Be reasonable: a reasonable action, request or expectation deserves a reasonable response.
- » Promote and accept compromise or negotiated solutions, while maintaining your authority.
- » Take the student seriously and address issues quickly.

### Preserve the student's dignity

- » Address private or sensitive issues in private.



- » Avoid the use of inappropriate humour such as sarcasm or mocking.

## De-escalation techniques

### Safety first – create space and time

- » Remove the audience – ask other students to take their work and move away.
- » Give the student physical space.
- » Name the emotion in a calm even voice: "You look really angry", "I can see that you are very frustrated"...
- » Wait.

### Communicate calmly

- » Talk quietly, even when the person is loud.
- » Try to remain calm and respectful.
- » Monitor your own body language and allow the student the opportunity to move out of the situation with dignity.
- » Focus on communicating respect and your desire to help.
- » Keep verbal interactions respectful.
- » When appropriate, give the student clear choices and/or directions to help them feel more secure and regain control.

### Think ahead in case the situation escalates

- » If escalation occurs, move further away.
- » Make sure you have an exit plan.
- » Constantly reassess the situation.
- » Send for help if necessary.

## What may escalate the behaviour

- » Threatening the student.
- » Arguing or interrupting.
- » Contradicting what the student says – even if they are wrong.
- » Challenging the student.
- » Trying to shame the student or showing your disrespect for the student.

# Guidance if you have to use physical restraint

## What to do if prevention and de-escalation do not work

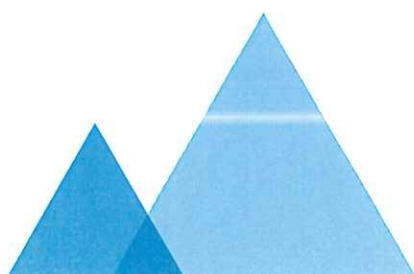
- » Physical restraint should only be applied by teachers and authorised staff.
- » There may be situations when an unauthorised staff member intervenes and physically restrains a student, for example when there are no teachers or authorised staff nearby.
- » The Education Act 1989 will not cover the intervention of an unauthorised staff member who physically restrains a student. There may be other justifications for intervening available in legislation or common law that apply.
- » If teachers and authorised staff members do not have the skills or confidence to safely restrain a student, call for help.
- » Call the police when a student cannot be managed safely and the imminent danger to students, staff or themselves remains, after all alternatives have been explored.
- » All staff should be aware that physical restraint is a serious intervention to be used when no other, less severe, options are available.

## Do not use these restraints

- » Physical restraint that inhibits the student's breathing, speaking or main method of communication, for example physical restraint that inhibits a student's ability to use sign language.
- » Prone (face-down) physical restraint
- » Pressure points and pain holds
- » Tackling, sitting, lying or kneeling on a student
- » Pressure on the chest or neck
- » Hyperextension (bending back) of joints
- » Headlocks
- » Using force to take/drag a student, who is resisting, to another location
- » Restraint when moving a student from one place to another – trying to get them into a van or taxi, for example – when they are in an escalated state, as this may escalate them further.

## Monitor wellbeing throughout when applying physical restraint

- » The physical and psychological state of the student being restrained should be continuously monitored by the person performing the restraint and other people present.
- » Apply physical restraint only for the minimum time necessary and stop as soon as the danger has passed.
- » Monitor the physical and psychological wellbeing of both the student and the staff member who applied the restraint for the rest of the school day. Watch for shock, possible unnoticed injury and delayed effects.





## Good practice following an incident involving physical restraint

After an incident involving physical restraint, take these steps to ensure everyone involved stays safe, future incidents can be prevented if possible, the parents or caregivers know, and the incident is reported.

- » Check the staff member and the student regularly to ensure they are not in shock. Support them as necessary.
- » Tell the parents or caregivers the same day the incident occurred so they can monitor the student's wellbeing at home.
- » If the student attends a residential school, ensure the residential team manager is told, so the student's wellbeing can be monitored after school.

### Reflection

- » Reflect formally on why the incident occurred that resulted in the student being restrained. Consider what might have prevented it, and what might need to change to minimise the likelihood of it happening again.
- » Consider whether all preventative and de-escalation strategies were used according to the Individual Behaviour Plan, if there is one, and whether the restraint used was safe.
- » Review the Individual Behaviour Plan and make decisions as a team about what needs to be strengthened to minimise the likelihood of a similar incident.

## Debriefing the incident

### Debriefing staff

- » Hold a debriefing session with involved staff, the Principal or Principal's delegate, and another member of staff not involved in the physical restraint incident. Hold it within two days of the incident.
- » In the debriefing, focus on the incident, the lead-up to it, the different interventions used that were unsuccessful in de-escalating the behaviour, and what could have been done differently.
- » If Ministry or RTLB practitioners are part of the student's team, involve them in the debriefing process.
- » If the police were involved in the incident, invite them to participate in the debriefing session.
- » Write notes on the debrief along with agreed next steps or actions.

### Debriefing parents or caregivers

- » Offer the parents or caregivers a separate debriefing as soon as practically possible, preferably within two days of the incident.
- » At this meeting, give them the opportunity to discuss the incident. Invite them to become active partners in exploring alternatives to restraint. If appropriate, involve the student in this debriefing session.
- » Write notes from the debriefing along with next steps or actions.

### Managing complaints from parents

- » It is understandable that some parents may feel upset if their child has been physically restrained. All schools will have a policy on responding to parent complaints.
- » The school should also contact the local Ministry office if the complaint cannot be easily resolved. If further investigation is required then the Ministry reserves the right to be a party to that process.

## Promote the minimisation of physical restraint

The Principal or Principal's delegate should be responsible for:

- » promoting the goal of minimising the use of physical restraint through a focus on alternative strategies
- » ensuring appropriate training is provided that aligns with the goal of minimising physical restraint in schools
- » monitoring the use of physical restraint in the school (to include gathering and analysing information, identifying trends, and checking that documentation about each incident is complete)
- » collating information about physical restraint in a report and sharing data on physical restraint regularly with the Board of Trustees via the Principal's report at Board meetings – do this in a public-excluded session
- » managing any complaints and feedback.

## Reporting and documenting the incident

- » Staff must complete an incident report. Use the form attached as appendix 1 to these guidelines, or other suitable template.
- » The staff members involved in the physical restraint should sign the incident report, as well as the Principal or Principal's delegate.
- » Put the completed forms on the student's file, and make them available to the student's teacher and parents or caregivers.
- » All incidents of physical restraint must be reported to the Ministry of Education and the employer. This reporting contributes to the self-review and monitoring process. Use the form attached as appendix 2 to these guidelines.



## Individual Behaviour Plan

A student who regularly presents with high-risk behavior should have an Individual Behaviour Plan. The student's support team may agree to include physical restraint in the Individual Behaviour Plan as an emergency strategy for keeping people safe. Making this part of their plan ensures an individualised approach that is tailored to the student's needs.

The Individual Behaviour Plan should outline the preventative and de-escalation strategies which, if successfully implemented, would prevent the need for physical restraint. It should clearly state that physical restraint is only to be used when the student's behaviour poses a serious and imminent risk to the safety of themselves or others.

The team supporting the student should ensure the type of physical restraint used is consistent with the student's individual needs and characteristics, including:

- » the student's age, size and gender
- » any impairments the student has, for example physical, intellectual, neurological, behavioural, sensory (visual or hearing) or communication impairments.
- » any mental health issues or psychological conditions the student has, particularly any history of trauma or abuse
- » any other medical conditions the student has
- » the student's potential response to preventative, de-escalation and physical restraint techniques.

Parents or caregivers should always be a member of the team developing the plan.

- » Give parents or caregivers the opportunity to help make decisions about their child and agree to the interventions that will be put in place to support them.
- » Inform parents or caregivers if physical restraint is identified in the student's Individual Behaviour Plan, including how it will be applied in accordance with these guidelines.
- » Provide all relevant professionals and parents or caregivers with a copy of the Individual Behaviour Plan. It should be signed off by the Principal (or Principal's delegate) and the student's parents or caregivers.

### The use of physical restraint

- » The use of physical restraint should be regularly reviewed and monitored by the team supporting the student.
- » Parents/caregivers should be told as soon as possible on the same day about the incident and how it was managed in accordance with the guide.
- » If the student resides in a residential school or home, the residential team should be told so the student's wellbeing can be monitored after school.

### Adapting the Individual Behaviour Plan

- » Following an incident of physical restraint hold a meeting as soon as possible. Involve the team supporting the student, including the parents or caregivers, and the residential team manager if the student is enrolled in a residential school. Use the meeting to review the Individual Behaviour Plan and the physical restraint processes followed in the incident.
- » In the updated plan, identify ways to prevent the need to use physical restraint in the future.
- » Incorporate in the plan the suggestions of parents or caregivers and, if appropriate, the student.
- » If a behaviour specialist from the Ministry or an RTLB is supporting the team around the student, involve them in the review of the plan.
- » Put all relevant documentation in the student's file, and copy it to the student's teacher and parents or caregivers.

## Training in safe responses

### For the whole school

A training package, *Understanding Behaviour – Responding Safely (UBRS)*, has been developed for New Zealand schools. It includes a full-day workshop for all staff and ongoing support afterwards. The training can be delivered in modules rather than a full day if this is a better option for your school. The focus is on preventative and de-escalation techniques. Contact your local Ministry of Education office for information about this training.

School staff should be made aware of the following:

- » physical restraint should only be used in emergency situations, and only when less restrictive interventions have not ended the serious and imminent risk to the safety of the student or others.
- » the forms of physical restraint that may compromise health and safety, and the serious physical risks associated with some physical restraint techniques. These include the risk of asphyxia and sudden death.

### For the team supporting the student

- » When a Ministry Learning Support Practitioner is part of the team supporting the student the team will be taught how to safely restrain the student, in situations when preventative and de-escalation strategies have not been effective, and physical restraint is part of an Individual Behaviour Plan. Parents and caregivers who have to use physical restraint in the home environment may want to be part of this training.

## Reporting templates for physical restraint

### Instructions

1. Staff must complete a *Staff Physical Restraint Incident Report*<sup>1</sup>. Use the form attached to these guidelines, or other suitable template. The staff member who applied the physical restraint should sign the incident report, as well as the Principal or Principal's delegate.
2. Place a copy of the *Staff Physical Restraint Incident Report* and any other relevant forms, e.g. an injury form, in the student's file. Make the copied forms available to the student's teacher/s and the student's parents or caregivers.
3. Report all incidents of physical restraint to the Ministry of Education<sup>2</sup> and the employer (boards of trustees, sponsors of partnership schools kura hourua, and managers of private schools). Use the form: *Information for the Ministry of Education and the Employer* specified in Appendix 1 of the rules. A copy of the form is also included below.
4. The debriefing forms should be completed by the Principal or delegate.
5. Share information on physical restraint incidents with the Board of Trustees via the Principal's report. Only share this information in a session that excludes the public.



### Staff physical restraint incident report

- » This must be completed as soon as possible and always within 24 hours.
- » The incident report should be signed off by the staff involved, any staff who witnessed the incident, and the Principal or Principal's delegate.

### Information for the Ministry of Education and the Employer

(boards of trustees, sponsors of partnership schools kura hourua, and managers of private schools).

- » Complete the form and email it to [physical.restraint@education.govt.nz](mailto:physical.restraint@education.govt.nz). Provide a copy of the form to the employer.

**Note:** If the Principal applied the restraint, a delegated senior management team member should sign off the report.

### Staff reflection form

- » The staff member who applied the restraint should complete this as soon as possible and always within 24 hours.

### Physical restraint debriefing form (staff)

- » Within two days of the incident, a debriefing with the staff involved should be held by the Principal or Principal's delegate. Another member of staff who was not involved in the restraint should attend.
- » If a behaviour specialist from the Ministry or an RTLB is supporting the student's team, they should be part of the debriefing process.

**Notes:**

The Principal is responsible for facilitating the debriefing unless they are the person who applied the physical restraint.

If this is the case, a suitable senior leader in the school should take this role.

If police have been involved they should be invited to the staff debriefing too.

### Physical restraint debriefing

(parents or caregivers and, if appropriate, the student)

- » The parents or caregivers should be notified and involved in discussion about the incident with the Principal or Principal's delegate as soon as possible so they can monitor their child's physical and emotional wellbeing at home.
- » The parents or caregivers should be given the opportunity to discuss the incident and invited to become active partners in exploring alternatives to restraint.

**Note:** The staff member who applied the physical restraint should not be part of this meeting.

<sup>1</sup>The reporting requirement is made in accordance with Rule 8<sup>(2)</sup> of the Education (Physical Restraint) Rules 2017.

<sup>2</sup>The reporting requirement is made in accordance with Rule 8<sup>(1)</sup> of the Education (Physical Restraint) Rules 2017.

## Appendix 1: Staff physical restraint incident report form

Report completed by:	Date of incident	Date of report
Name of student		
Date of birth	Gender	M F
Ethnicity		
Time restraint started		
Time restraint ended		
Name/s of staff member/s administering restraint		
Trained in safe physical restraint?	Yes	No
Other staff /adults who witnessed		
<b>Place where restraint occurred</b>		
Classroom		
Corridor		
Assembly hall		
Outdoor area		
Toilet block		
Administration area		
Other (identify)		
<b>Behaviour directed at</b>		
Staff member – name		
Student – name		
Self		
Property – describe the serious and imminent risk to the safety of self or others		
<b>Reason restraint was considered necessary</b>		
Serious and imminent risk to safety – describe		
Actual injury – describe and attach injury form		
<b>Signatures</b>		
Principal or Principal's delegate	Staff member involved	Other staff (witnesses)

Place a copy of this form on the student's file.

**Note:** The information in this form may be the subject of requests made under the Privacy Act 1993 and the Official Information Act 1982.



## Appendix 2: Information for the Ministry of Education and the employer – in accordance with Rule 8(1) of the Education (Physical Restraint) Rules 2017

If a teacher or staff member physically restrains a student the incident must be reported to the Ministry of Education and the employer (board of trustees, sponsor of a partnership school kura hourua, or manager of a private school). Complete the form below and email it to [physical.restraint@education.govt.nz](mailto:physical.restraint@education.govt.nz). Provide a copy of the form to the employer.

Why is the Ministry collecting this information?

The Ministry will use the information to provide appropriate support to schools and students when there are incidents of physical restraint on students.

The Ministry will also use this information to update the rules and guidelines to reflect evolving practice or address areas of concern.

What is physical restraint?

The Act defines physical restraint as using physical force to prevent, restrict, or subdue the movement of a student's body or part of the student's body. Physical restraint is a serious intervention. The legislation limits the use of physical restraint on students to teachers or authorised staff members.

The following situations involving physical contact happen in schools every day. They are not examples of physical restraint and do not have to be reported to the Ministry:

- » Temporary physical contact, such as a hand on the arm, back or shoulders to remove a student from a situation to a safer place.
- » Holding a student with a disability to move them to another location, or help them to get in a vehicle or use the stairs.
- » The practice of harness restraint, when keeping a student and others safe in a moving vehicle, or when recommended by a physiotherapist or occupational therapist for safety or body positioning.
- » Younger students, especially in their first year of school, sometimes need additional help. For example, you may "shepherd" a group of younger children from one place to another.
- » Staff may hold the hand of a young student who is happy to have their hand held for a short time.
- » Staff may pick a young student up to comfort them briefly.

## Information for the Ministry of Education and the employer form

Information for Ministry of Education and the Employer: completed by		Date of incident	dd/MM/yy	Date of report	dd/MM/yy
Name of School					
Student's National Student Number (no name)					
Date of birth	dd/MM/yy	Year level	yy	Gender	M F
Ethnicity					
First time the student has been physically restrained?		Yes	No		
The student was physically restrained more than once during the day?		Yes	No	If yes, how many times?	
The student has an Individual Behaviour Plan?		Yes	No		
Physical restraint was a part of the plan?		Yes	No		
Were parents notified?		Yes	No		
Was anyone injured?		Yes	No	If yes describe	
Was the staff member who applied the restraint a teacher or authorised staff member?		Yes	No	If no, provide details	
Role of staff member who applied the restraint?		Teacher Other		If other, describe role	
Did the staff member who applied the restraint receive any training prior to the incident?		Yes	No	If yes, what training?	
Why was the use of physical restraint considered necessary?					
Serious and imminent risk to the safety of the student or any other person – describe					
Any other comments					

Complete the form above and email it to the Ministry of Education at [physical.restraint@education.govt.nz](mailto:physical.restraint@education.govt.nz)  
Provide a copy to the employer (board of trustees, sponsor of a partnership school kura hourua, or manager of a private school)

**Note:** The information in this form may be the subject of requests made under the Privacy Act 1993 and the Official Information Act 1982.



## Appendix 3: Staff reflection form

### Events leading to the incident

Describe what was happening before the behaviour started to escalate. What was the student doing? What do you think might have triggered the behaviour? How were other students reacting to the student?

### Behaviour of the student

What did you notice about the student's behaviour that alerted you that they were struggling to cope? Think about the way they looked, for example facial expressions, physical signs, language.

### What did you try before the restraint?

Describe the alternative techniques and interventions tried to prevent the emergency, including a description of the de-escalation strategies you used. What was the response from the student?

### The restraint method used

Describe the nature of the physical restraint. Include the type of hold and number of people required.

### Monitoring

Describe how the student's physical and emotional distress was monitored while they were restrained.

### After the restraint ended

Describe the mood of the student following the restraint. What help and support were they offered?

### If there's a next time

What could be done differently in the future to prevent the need for restraint?

### How about you?

How are you feeling and what support do you need? How about others?

Signature of person who applied the restraint

Signature of any staff witnesses

**Note:** The information in this form may be the subject of requests made under the Privacy Act 1993 and the Official Information Act 1982.



## Appendix 4: Debriefing form for staff involved in physical restraint incident

Date of incident	dd/MM/yy	
Date of debriefing	dd/MM/yy	Time of debriefing
Names of the people at the debriefing		

Findings of debriefing
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Next steps/actions
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Principal or Principal's delegate signature
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**Note:** The information in this form may be the subject of requests made under the Privacy Act 1993 and the Official Information Act 1982.

## Appendix 5: Physical restraint debriefing form – parents or caregivers, student

Date of incident	dd/MM/yy	
Date of debriefing	dd/MM/yy	Time of debriefing
Names of the people at the debriefing		
Findings of debriefing		
Parent or caregiver – comments and suggestions		
Student – comments and suggestions		
Next steps/actions agreed		
<b>Signatures</b>		
Principal or Principal's delegate	Parents or caregivers	Student

**Note:** The information in this form may be the subject of requests made under the Privacy Act 1993 and the Official Information Act 1982.



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MINISTRY OF EDUCATION  
TE TĀHUHU O TE MĀTAURANGA

[www.education.govt.nz](http://www.education.govt.nz)

New Zealand Government

## Annex three: Comparative New Zealand approaches to physical restraint

	Previous legal framework	Current legal framework
<i>United Nations Convention on the Rights of the Child (UNCROC)</i>	Article 19 – Governments should ensure that children are properly cared for and protect them from violence, abuse and neglect by their parents, or anyone else who looks after them.	Article 19 – Governments should ensure that children are properly cared for and protect them from violence, abuse and neglect by their parents, or anyone else who looks after them.
<i>NZ Bill of Rights Act 1990</i>	New Zealanders have the right not to be subjected to torture, or to cruel, degrading or disproportionately severe treatment or punishment.	New Zealanders have the right not to be subjected to torture, or to cruel, degrading or disproportionately severe treatment or punishment.
<i>Human Rights Act 1993</i>	<p>The Human Rights Commission's primary functions include:</p> <ul style="list-style-type: none"> <li>• advocate and promote respect for, and an understanding and appreciation of, human rights in New Zealand society;</li> <li>• encourage the maintenance and development of harmonious relations between individuals and among the diverse groups in New Zealand society;</li> <li>• promote and protect the full and equal enjoyment of human rights by persons with disabilities.</li> </ul>	<p>The Human Rights Commission's primary functions include:</p> <ul style="list-style-type: none"> <li>• advocate and promote respect for, and an understanding and appreciation of, human rights in New Zealand society;</li> <li>• encourage the maintenance and development of harmonious relations between individuals and among the diverse groups in New Zealand society;</li> <li>• promote and protect the full and equal enjoyment of human rights by persons with disabilities.</li> </ul>
<i>Education Act 1989 (the Act)</i>	Nothing in the Act to cover appropriate use of physical restraint in schools.	<p>The physical restraint provisions set out the appropriate use of physical restraint by teachers and authorised staff members in a school.</p> <p>The physical restraint provisions establish a defence that specifically covers the use of physical restraint by teachers and authorised staff members in a school. This defence does not apply to the use of physical restraint by unauthorised staff members.</p>
<i>Associated guidance</i>	<p><i>Guidance for New Zealand Schools on Behaviour Management to Minimise Physical Restraint</i> provided advice to schools, teachers and authorised staff members on when and how they could use physical restraint in a school. This guidance was non-statutory so it was voluntary for schools, teachers and authorised staff members to follow all or some aspects. The Ministry could withdraw the guidance at any time.</p> <p>The guidance advised that physical restraint should ideally only be applied by school staff trained in both its use and emergency first aid. The guidance also provided advice on alternatives for untrained staff such as calling the Police, or removing themselves and other students from the situation and calling for help.</p>	<p>Statutory Rules set out what schools, teachers and authorised staff members must do when using physical restraint.</p> <p>Statutory guidelines set out best practice in using physical restraint. It is mandatory for schools, teachers and authorised staff members to follow all aspects of them.</p>



<i>Crimes Act 1961</i>	<p>The Crimes Act 1961 provided general defences that could be used in criminal proceedings to explain why a school staff member was justified in using force on a student.</p>	<p>The Crimes Act 1961 defences do not apply to the use of physical restraint by a teacher or authorised staff member on a student in a school.</p> <p>The Crimes Act 1961 defences apply to the use of physical restraint by an unauthorised staff member in a school in an emergency situation. However, they would generally be bound by their employer's policy relating to any such interactions with students. Given the risks associated with physical restraint, health and safety obligations, and the policy intent set out in the legal framework, boards, managers and sponsors should be explicit about whether or not they want unauthorised staff members to use physical restraint in their school.</p>
<i>Health and Safety at Work Act 2015</i>	<p>It is the duty of all school boards, managers and sponsors to keep all staff and students healthy and safe. This includes having policies and procedures for staff to follow to ensure their health and safety; notifying all serious injuries or near misses; and monitoring the health and workplace conditions of school staff to prevent injury.</p> <p>School staff must take reasonable care of their own health and safety, and reasonable care that others are not harmed by something they do or do not do. They must follow any reasonable instructions given to them by the school board, manager or sponsor, and cooperate with health and safety policies and procedures.</p>	<p>It is the duty of all school boards, managers and sponsors to keep all staff and students healthy and safe. This includes having policies and procedures for staff to follow to ensure their health and safety; notifying all serious injuries or near misses; and monitoring the health and workplace conditions of school staff to prevent injury.</p> <p>School staff must take reasonable care of their own health and safety, and reasonable care that others are not harmed by something they do or do not do. They must follow any reasonable instructions given to them by the school board, manager or sponsor, and cooperate with health and safety policies and procedures.</p> <p>If a board, manager, sponsor, teacher or authorised staff member is facing legal action under the health and safety regime as a result of the use of physical restraint, they can mitigate their legal liability if they have acted in accordance with the Act, Rules and Guidelines.</p>

<p><i>Code of Health and Disability Services Consumers' Rights</i></p>	<p>The Code extends to schools catering for students with disabilities, particularly those who cannot participate in the classroom without support. It confers rights such as to be treated with respect; to be free from discrimination, coercion, harassment and exploitation; to dignity and independence; to services of an appropriate standard; to effective communication; to be fully informed; and to give informed consent. It places obligations on all people and organisations who provide health and disability services, including schools and teachers.</p> <p>Complaints about breaches of the Code can be made to the Health and Disability Commissioner. If the Commissioner finds that rights under the Code have been breached, they can make recommendations to the provider; report their opinion to the relevant professional body; make a formal complaint to the relevant professional body; or refer the complaint to the Human Rights Review Tribunal.</p>	<p>The Code extends to schools catering for students with disabilities, particularly those who cannot participate in the classroom without support. It confers rights such as to be treated with respect; to be free from discrimination, coercion, harassment and exploitation; to dignity and independence; to services of an appropriate standard; to effective communication; to be fully informed; and to give informed consent. It places obligations on all people and organisations who provide health and disability services, including schools and teachers.</p> <p>Complaints about breaches of the Code can be made to the Health and Disability Commissioner. If the Commissioner finds that rights under the Code have been breached, they can make recommendations to the provider; report their opinion to the relevant professional body; make a formal complaint to the relevant professional body; or refer the complaint to the Human Rights Review Tribunal.</p> <p>If a board, manager, sponsor, teacher or authorised staff member is subject to a complaint under the Code as a result of the use of physical restraint, they can mitigate their legal liability if they have acted in accordance with the Act, Rules and Guidelines.</p>
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