



Banning seclusion and creating a legal framework for physical restraint

Seclusion of a child or young person is no longer an acceptable tool in behaviour management, and physical restraint is a serious intervention that should only be used in circumstances where it is absolutely necessary.

The Education Act 1989 now bans the use of seclusion in schools, early childhood services and ngā kōhanga reo. It also reinforces the existing regulatory requirements in the early learning sector, which do not allow seclusion. Seclusion can be physically and psychologically harmful, and is no longer considered an acceptable behaviour management strategy.

The Act also creates a legal framework for the use of physical restraint in schools. This makes it clear to teachers and authorised staff members how and when they can use physical restraint, and puts safeguards in place to prevent physical restraint being used unreasonably or disproportionately.

What is covered by the ban on seclusion?

Schools, early childhood services and ngā kōhanga reo must not use seclusion.

Seclusion is placing a child or student in a room involuntarily, alone, and from which they cannot freely exit, or believe they cannot freely exit. An action must meet all three of these tests to be considered seclusion.

Does this mean that my school can no longer use time out?

No. Time out is where a child or student voluntarily takes themselves to an agreed space or unlocked room to de-stimulate or calm down, or when a teacher prompts a disruptive child or student to work in another space.

Teachers should be very explicit when using time out that the child or student is free to come out of the room whenever they choose. This clarity is consistent with good practice around using time out in schools.

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 be used by teachers or authorised staff members.

Authorised staff members are employees authorised by their employer (e.g. board of trustees, sponsor or manager) to use physical restraint.

When can physical restraint be used in schools?

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

- » they reasonably believe that there is a serious and imminent risk to the safety of the student or any other person; and
- » the restraint used is reasonable and proportionate in the circumstances.

What do schools have to do?

Physical restraint is now regulated via a combination of the Act and the Rules. It is a legal requirement for schools to comply with the Act and Rules.

The Rules have requirements for schools to notify, monitor and report on the use of physical restraint, including reporting to the Ministry.

We'll have statutory guidelines for schools on behaviour management to minimise physical restraint available in early September 2017. Schools must have regard to these guidelines, which are adapted from the *Guidance for New Zealand Schools on Behaviour Management to Minimise Physical Restraint* issued in October 2016.

Creating this legal framework for schools brings the restraint regimes in early childhood and compulsory education into alignment. The Education (Early Childhood Services) Regulations 2008 and the Education (Playgroups) Regulations 2008 already make it clear that immobilisation, which is very similar to inappropriate physical restraint, is unacceptable.

Physical restraint is a serious intervention. When it is used schools now need to notify the Ministry of Education and the employer (board of trustees, sponsor of a partnership school kura hourua, or manager of a private school). This new requirement will allow us to provide support to schools and update the Rules and guidelines if needed to address emerging issues.



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This will ensure that employers are aware of when physical restraint has been used, and enable the Ministry to monitor its use and provide support to schools and students as necessary.

What is the impact of the physical restraint provisions on teachers and authorised staff members?

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 about the use of physical restraint in the ECE sector?

Similar provisions relating to behaviour management practices and limits on the use of physical restraint will be created for early childhood services and ngā kōhanga reo through the early childhood regulations. The Education (Early Childhood Services) Regulations 2008 already make it clear that immobilisation, which is very similar to inappropriate physical restraint, is unacceptable.

What does the legislation now say?

Section 139AB prohibits the use of seclusion in schools, early childhood services and ngā kōhanga reo. Sections 139AC to 139AE create a legal framework to limit the use of physical restraint in schools.

When do the changes take effect?

The provisions in the Act around seclusion and restraint came into effect on 19 May 2017. Statutory Rules came into effect on 15 August 2017. Statutory guidelines will be published by a notice in the New Zealand Gazette in early September 2017.

What should parents and whānau do if they have concerns about an incident of physical restraint?

If you have concerns about the use of seclusion or physical restraint speak to the principal then the employer (e.g. board of trustees, sponsor or manager) of your school.
If you are not happy with the response from the school contact your local Ministry office for support.
<https://education.govt.nz/ministry-of-education/regional-ministry-contacts/>



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What support is the Ministry providing to schools and kura on managing challenging student behaviour?

A new training workshop Understanding Behaviour, Responding Safely (UBRS) is available on request for schools concerned with behaviour management.

The workshop is in modules, for whole school staff groups focusing on prevention and de-escalation strategies. It's delivered by professionals who are experienced in behaviour management and will also provide on-going support.

The new resource and the training modules were developed through extensive consultation with sector representatives, incorporating their feedback and advice.

Other resources and support available for schools and teachers managing challenging student behaviour.

Principals, employers and staff wanting more information about assessing their policies and practice can contact their local Ministry office.

Our Behaviour Services and Support team, supports students with higher levels of challenging behaviour. This includes students whose behaviour management plans include the possibility of physical restraint. This includes students whose behaviour management plans include the possibility of physical restraint.

We also provide specialist training in physical restraint that's tailored to the individual needs of each young person. A school can talk to the Ministry specialist already involved with the student, or contact their local Ministry office.

Links to key provisions

Section 139AB (seclusion):

<http://www.legislation.govt.nz/act/public/1989/0080/latest/DLM7269325.html>

Section 139AC (physical restraint):

<http://www.legislation.govt.nz/act/public/1989/0080/latest/DLM7269332.html>