



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 Act 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 by teachers or authorised staff members in schools to situations where:

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

Will there be any advice to schools about the use of physical restraint?

Guidance for New Zealand Schools on Behaviour Management to Minimise Physical Restraint (Link: <https://education.govt.nz/school/student-support/special-education/behaviour-services-to-help-schools-and-students/support-for-schools-to-minimise-physical-restraint/>) was issued in October 2016. This is now being adapted to become the new statutory guidelines. The Ministry is working with the sector-based Advisory Group on this guidance.

Schools should continue to follow this guidance when managing challenging behaviour until the new statutory guidelines are issued.

Will schools be required to report on incidences of physical restraint?

The Ministry is working with the sector on new rules, which will include a reporting regime.



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This will ensure that boards are aware of when physical restraint has been used and enable the Ministry to monitor its use and provide support to schools 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 139 AE limit the use of physical restraint in schools.

When do the changes take effect?

The provisions around seclusion and restraint take effect from 19 May 2017. Statutory rules and guidance around the use of restraint will be issued in the coming months.

Who to contact if you have concerns

If you have concerns about the use of seclusion or physical restraint speak to the Principal then Board of Trustees 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/>