



YouthLaw

Free legal help throughout Aotearoa

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03/04/2022

Ministry of Education
Mātauranga House
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Wellington 6011

By email: physicalrestraint.convo@education.govt.nz.

Tēnā koutou,

Thank you for the opportunity to give feedback on the draft rules and guidelines on physical restraint. We welcome this consultation, and we are willing to be approached about any future consultations.

1. What is YouthLaw Aotearoa?

YouthLaw Aotearoa is a Community Law Centre vested under the Legal Services Act 2000. We are part of the nationwide network of twenty-four community law centres throughout Aotearoa / New Zealand. We are a national service providing free legal advice and advocacy, specifically for children and young people under 25 years of age. We also develop legal information resources and deliver legal education to children and young people, and those who are guardians of them, or who work with them.

This submission was prepared by Sarah Butterfield a Solicitor on our legal team.

2. Our experience with children and young people

In 2019/2020, we provided more advice on matters regarding education than any other query type. Many of those queries were primary or secondary school issues; however, we also provide advice about tertiary matters.

We assist with queries about physical restraint in the following ways:

- Our lawyers in the legal advice team support students and their families with information and advice to help them navigate physical restraint issues.
- We run legal education workshops for young people, or those supporting them.
- We ran a session on the Education and Training Act 2020 last year, which included information about the updates to the physical restraint legal framework, for Community Law Centres across Aotearoa.

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- We publish youth-friendly information resources, undertake research, and make submissions on law and policy affecting children and young people. We have previously made submissions about physical restraint in our submissions on the Education and Training Bill, and the Human Rights Commission's report about seclusion and restraint.

3. YouthLaw Aotearoa's work with the Ministry of Education

YouthLaw Aotearoa has a long history of providing feedback on Ministry of Education consultations and law reform. Most recently we provided feedback on the Tertiary Disputes Panel and the pastoral code for domestic and international students.

We endeavour to maintain an open dialogue with the Ministry so that our perspectives on education matters can be considered. We are willing to be approached about any future consultations.

4. Our feedback on the Physical Restraint Framework in the Education and Training Act 2020 draft rules and guidelines

YouthLaw Aotearoa acknowledge and support the Ministry of Education's ("MOE") focus on new rules and guidelines for physical restraint.

We wish to start our submission by acknowledging the scope limitations of section 99 of the Education and Training Act 2020. Our understanding of this section is that the physical restraint rules apply to all primary and secondary schools regardless of status (e.g., state, state-integrated, private, Kura Kaupapa), however, they do not apply to ECEs or alternative education providers. We submit that it is appropriate for ECE's and alternative education providers to be subject to physical restraint rules. We are unsure how this change can be achieved, it may require an amendment to the Education and Training Act 2020.

Draft Rules

In relation to the proposed draft rules:

- *Rule 3* - Some of the definitions are not consistent with section 10 of the Education and Training Act 2020. Section 10 itself is also not consistent. For instance, a State Integrated school comes under the definition of a registered school but is not mentioned in relation to employer. The definition of 'employer' in the draft rules should clearly state who the employer of a State integrated school is. It should also state "the commissioner if that commissioner has been appointed to act in place of a State school board".
- *Rule 6* – We support information being available to the school community. Similarly, ECE's are required to provide Child Protection policies and their Complaint policies to

the community. There are access issues for the community as the policies are often displayed in the ECE (on a notice board) or in a folder and are not available online. We recommend that the information be available online, as this is the easiest way for the community to access the information.

We also submit that it may be more appropriate to state “Every board and employer”, to be inclusive of private schools.

- *Rule 8* – We strongly support the proposed rule 8, that requires boards and managers of private schools to ensure that support plans are in place. However, the “support plans” do seem similar to “Individual Education Plans” (“IEP”) and “Safety Plans”. IEPs are created when a student has learning or behavioral needs that need to be addressed via a plan. Safety plans are often used when there has been a “crisis” situation, such as a child having a “melt-down” or using physical violence against a student or staff member or running away from school. We question whether the “support plan” will be required in addition to the IEP and safety plans, or if they are different. The purpose of the “support plan” should be clearly outlined in the guidelines, and any significant differences in purpose to IEPs or Safety Plans be clarified. Often, we find that Safety Plans are incorporated as part of a “return to school” plan after a stand-down or suspension. It would be appropriate for “support plans” to be a recommended part of a “return to school” plan after a crisis incident. We also submit that informed consent should be given in writing.
- *Rule 9* – We support rule 9. Instead of a 72-hour deadline we submit that a debrief meeting should be required “within three school days”. This deadline considers weekends and school holidays.
- *Rule 10* – We support rule 10. However, we question what “monitoring” will look like. It may be appropriate for parents and family members to monitor the child at home in some situations (i.e., over weekends and if the child is stood down or suspended).
- *Rule 11* – We support the reporting of every incident of physical restraint. However, we submit that there should be a timeframe in which a report must be made. This could be added as (3) and read “Every staff physical restraint incident report and Information for the Ministry of Education and for Board of Trustees Report should be made within three school days.”
- *Rule 12* – We support this rule. Hopefully the new training and safety requirements will help teachers to better understand when physical restraint actions are permitted.
- *Information for the Ministry of Education and for Board of Trustees Report* – Recommend the following changes:
 - Support plan – this may need to be amended to indicate whether IEP’s and Safety plans classify as “support plans”.

- After the “has the school notified the parents” section, there should be a section that asks when the parent was notified.
- In the “describe events that led to the restraint” section, there should also be a statement to “describe the physical restraint that was used.”
- The section that reads “what is the role of the staff member who applied the restraint?” just has “yes” or “no” as an answer. We are not clear what “yes” or “no” means in this context.
- Under the “has a debrief meeting been organised” there should be a section that asks, “has the debrief meeting been organised within the legal timeframe (72 hours), if not, have the parents agreed to another time.”

Guidelines

We offer the following comments on the proposed guidelines for the use of physical restraint:

- *Principles underpinning guidelines* - Overall, we support the guideline’s underpinning principles. Specifically, YouthLaw Aotearoa supports the aspiration of eliminating physical restraint. We agree that physical restraint should only be used as a last resort to prevent imminent harm. We also acknowledge principle two, and the recognition of the need for the school environment to be inclusive. We are concerned that children with disabilities are disproportionately restrained at schools. We support any measures that are aimed at reducing restraints against children with disabilities.
- *Do not use the following restraints section* – We are concerned by two of the prohibited grounds of restraint in this section:
 - Using force to take/drag a student, against their will, to another location.
 - Restraint when moving a student from one place to another, e.g. trying to get them into a van or taxi. When they are in an escalated state, this action may escalate them further.

Whilst we support the intention behind these prohibited actions, we are concerned that they will be confusing to teachers and could result in situations where teachers do not intervene when they should. We submit that in specific circumstances it may be appropriate to use these restraints on children. For example, if a student runs into a busy road and refuses to leave, in that situation it may be appropriate for a teacher to restrain the student and move them from the road. Or, if the student tries to climb onto the roof of a school building, it may be appropriate for the teacher to try to grab the student and remove them from climbing the building. Or if a student is in a physical fight, it may be appropriate for teachers to use restraint to move the student to another location away from the student they are fighting with. Or if a student has a medical event and needs to be restrained and moved to a safer location. We recommend that the following be added to the last bullet point “However, it may be appropriate to move a student from a dangerous situation, for example a child running on a busy road.”

In relation to the bar on “mechanical” restraints, we ask that a definition of “mechanical” be given. The Ministry of Health’s guidelines on “Guidelines for the Safe Transport of Special Patients and Special Care Recipients in the Care of Regional Forensic Mental Health Services” may be helpful to define this term.

- *Need for dignity* – We also ask that the guidelines explicitly provide that physical restraint should be done in a way that upholds the dignity of the student. Physical restraint of students should never be a “spectacle”. We have heard of situations where students have been restrained and have been deeply embarrassed and shamed by being restrained in front of their peers. It is obviously difficult to always remove other students. However, we ask that this be a recommended course of action. Observing restraints could also be upsetting for other students and trigger trauma.
- *Guidelines for students and their families* – We support the proposed guidelines as they will be helpful to teachers and other teaching professionals. However, we ask that the Ministry also develop guidelines for students and their families. The guidelines are very long and focus on best practice for teachers and other professionals. Students and their families should have a guideline that is written in simple terms, without jargon, about what physical restraint is, when it can be used, and what the school must do. We recommend that the guideline be created in collaboration with students and their families. It is important to have a guideline for students and their families so that they can understand what the student’s rights are and what is expected of schools when a restraint is used. We have been told by families that it is hard to know what the correct procedure is when a student is restrained at school.

Stylistic comments

We also wish to make the following comments on the formatting and design of the guide:

- *Draft rules* – The pale orange background colour, is not easy to read on the screen or when it is printed out, especially pages 7 and 8.
- *Guidelines* – Once again, the pale orange as the background colour makes parts of the Guidelines difficult to read on the screen and if you print them out.
- *Lack of pictures* – The guidelines are very “word-heavy”. We recommend that the text be broken up by white space and also pictures.

Nāku noa, nā



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