

Comparison between the previous and current legal situations

	Previous legal situation	Current legal situation
<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>	The Human Rights Commission's primary functions include: <ul style="list-style-type: none"> • advocate and promote respect for, and an understanding and appreciation of, human rights in New Zealand society; • encourage the maintenance and development of harmonious relations between individuals and among the diverse groups in New Zealand society; • promote and protect the full and equal enjoyment of human rights by persons with disabilities. 	The Human Rights Commission's primary functions include: <ul style="list-style-type: none"> • advocate and promote respect for, and an understanding and appreciation of, human rights in New Zealand society; • encourage the maintenance and development of harmonious relations between individuals and among the diverse groups in New Zealand society; • promote and protect the full and equal enjoyment of human rights by persons with disabilities.
<i>Education Act 1989 (the Act)</i>	Nothing in the Act to cover appropriate use of physical restraint in schools.	The physical restraint provisions set out the appropriate use of physical restraint by teachers and authorised staff members in a school. They establish a positive authority for teachers and authorised staff members to use force in a school context.
<i>Associated guidance</i>	<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. 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.	Statutory Rules set out what schools, teachers and authorised staff members must do when using physical restraint. 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.
<i>Crimes Act 1961</i>	The Crimes Act 1961 provides general defences to explain why a school staff member was justified in using force on a student.	The Crimes Act 1961 are not affected by the Education Act 1989, and sit alongside the provisions which regulate the use of physical restraint by a teacher or authorised staff member on a student in a school.

		The Crimes Act 1961 defences apply (as they have always done) to the use of physical restraint by an unauthorised staff member in a school in an emergency situation.
<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>

<i>Code of Health and Disability Services Consumers' Rights 1996</i>	<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</p>
--	--	---

		accordance with the Act, Rules and Guidelines.
--	--	--

Released under the Official Information Act 1982

At a Glance: Everything you need to know about the use of Physical Restraint in NZ schools

Physical Restraint defined

The Education 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.

Programmes that support positive behaviour in schools

Programmes that provide staff with the skills and knowledge to prevent and/or de-escalate violent student behaviour:

- **PB4L initiatives:** *School-Wide; Restorative Practice; Incredible Years Teacher.*
- *Understanding Behaviour Responding Safely (UBRS)* – delivered by MOE on request

Restraint - and professional judgement

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...

...then teachers or authorised staff need to use their professional judgement to decide if to use physical restraint.

- Physical restraint is a serious intervention. The aim is to minimise or eliminate its use. If there is an alternative to physical restraint, use the alternative.

Use physical restraint only as a last resort

- Developing an understanding of challenging children and having a behaviour plan with whanau is important
- Know the child. Know the triggers and remove. Learn what works from the family. Work as a team
- It is far better to prevent dangerous situations developing or use de-escalation techniques to calm things down.

Challenging students' behaviour may escalate...

- when they feel anxious or unsafe in situations
- with proximity of others
- with voice tone or unhelpful verbal interactions
- when punished.

De-escalation techniques

- Create space and time
- Communicate minimally and calmly
- Think ahead – devise an exit plan; send for help if necessary

Legal requirements

It is a legal requirement for schools to comply with the Act and rules and to have regard to the guidelines. [The Rules](#) cover:

1. Information to be made available
2. Authorisation of staff members who are not teachers
3. Notifying the use of physical restraint
4. Monitoring the use of physical restraint
5. Reporting on the use of physical restraint
6. Keeping records
7. Training and support for staff
8. School policies

Using physical restraint

Apply physical restraint only for the minimum time necessary and stop as soon as the danger has passed.

Some restraints are dangerous when:

- They inhibit breathing or communicating
- Use pressure on neck/chest/face
- Risk breaking or twisting joints (tackling, sitting, lying or kneeling on, headlocks, dragging or moving to another location)

DO:

- **Request safe restraint advice and instruction from your local Ministry office.**
They will provide advice and instruction for the team around a child with a behaviour plan that includes the need for restraint.

Go to the [Guidelines for Registered Schools in New Zealand on the Use of Physical Restraint](#) for:

- Best practice guidance
- What to do following an incident involving physical restraint – eg. Reviewing, documenting, reporting.

Meeting of Physical Restraint Advisory Group

Friday 14 September 2018, 9am-1pm

Ministry of Education, 33 Bowen St, RM 2.04

Agenda

- 1 Welcome
- 2 Introductions
- 3 Purpose of the meeting:
Together discuss insights from restraint data, and consider some proposed changes
- 4 What is the data telling us, one year on?
- 5 Feedback themes and proposed changes
 - Q and A
 - Scenarios and prompts
 - Supports and resources
 - Structure of the guide
- 6 Reporting forms
- 7 Reflection forms
- 8 Resources and supports

We will break at 10.30 am. Lunch is provided at 1pm

Refresh of 2017 Guidelines for Registered Schools in New Zealand on the Use of Physical Restraint

Released under the Official Information Act 1982

Agenda

- What is the data telling us, one year on?
- Feedback themes, and proposed changes
 - Q and A
 - Scenarios and prompts
 - Supports
 - Structure of the guide
- Reporting forms
- Reflection forms
- Resources and supports

One year on, what is the data telling us?

139AD Rules on physical restraint

The rules must include—

(a) requirements to keep written records on the use of physical restraint, including requirements to notify, monitor, and report on the use of physical restraint

Period Aug '17 to Aug '18

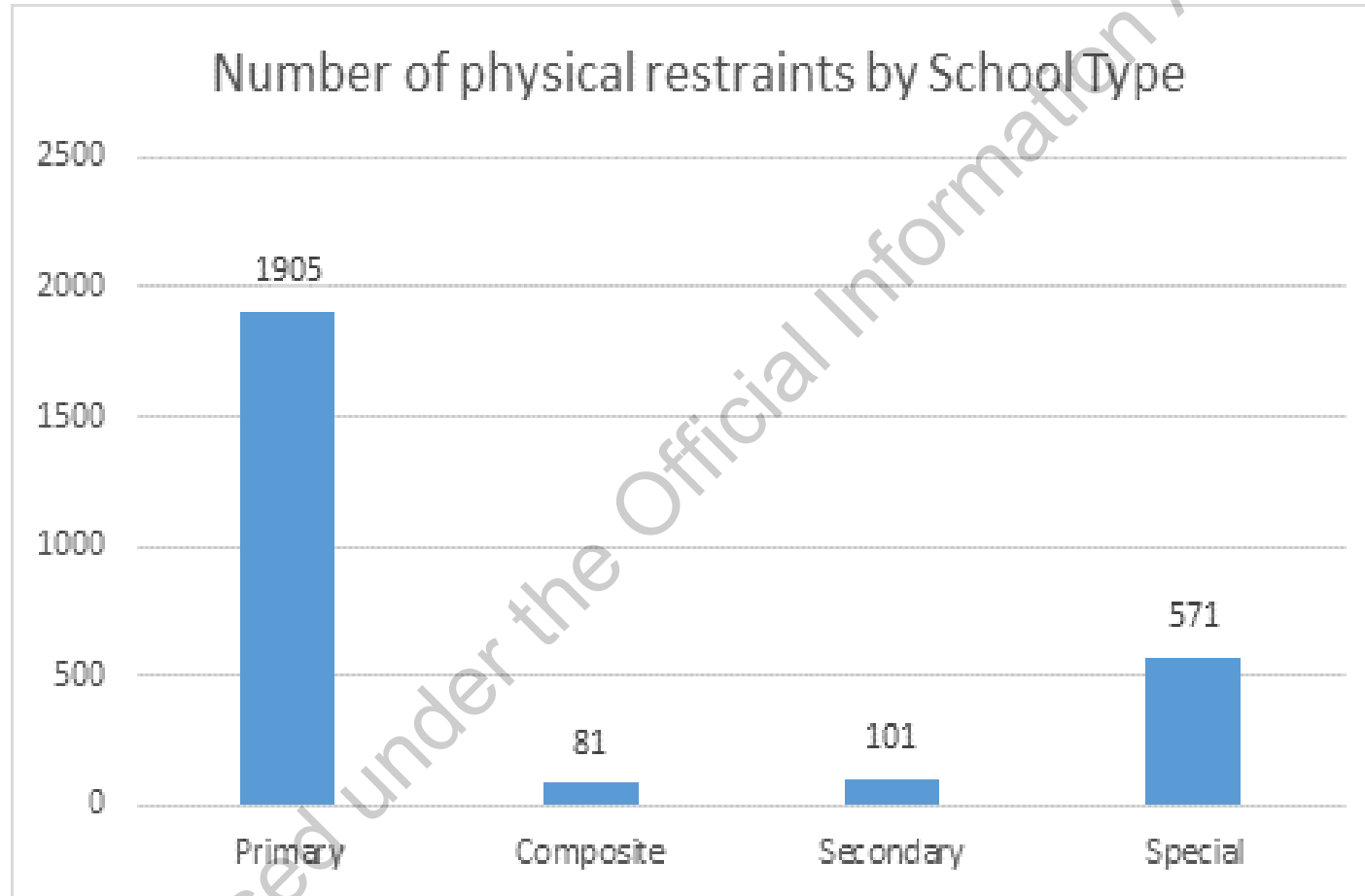
- 2658 reports of restraint (~222 per month)
- Total # of students: 1407 (0.18% of the 800,000 students in schools)

What about the data?

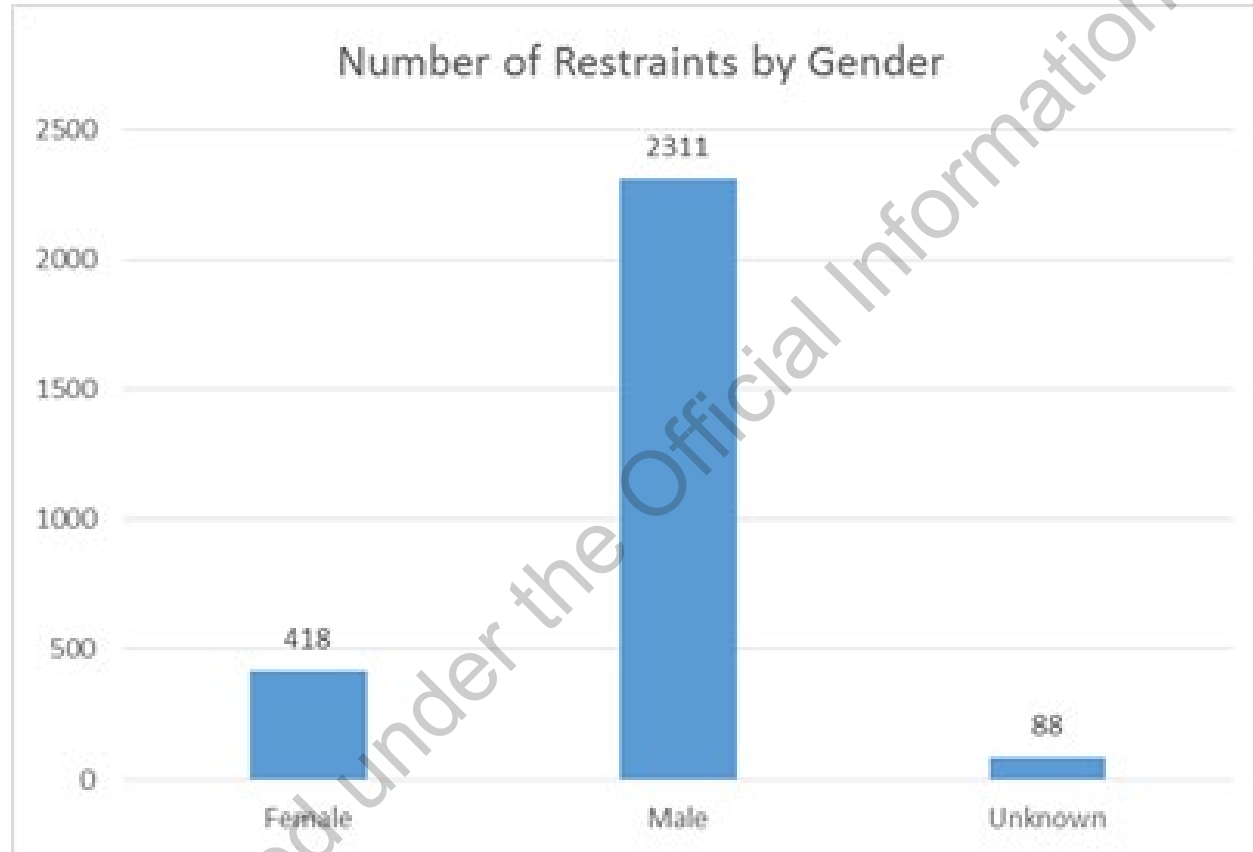
Initial observations since the changes came into effect are:

- Prevalence – about 12 incident reports a day are sent through for Ministry to follow up
- Overwhelmingly, physical restraint is being reported in primary schools
- Boys are 5.5 times more likely to be physically restrained than girls
- Some very young students are being physically restrained.

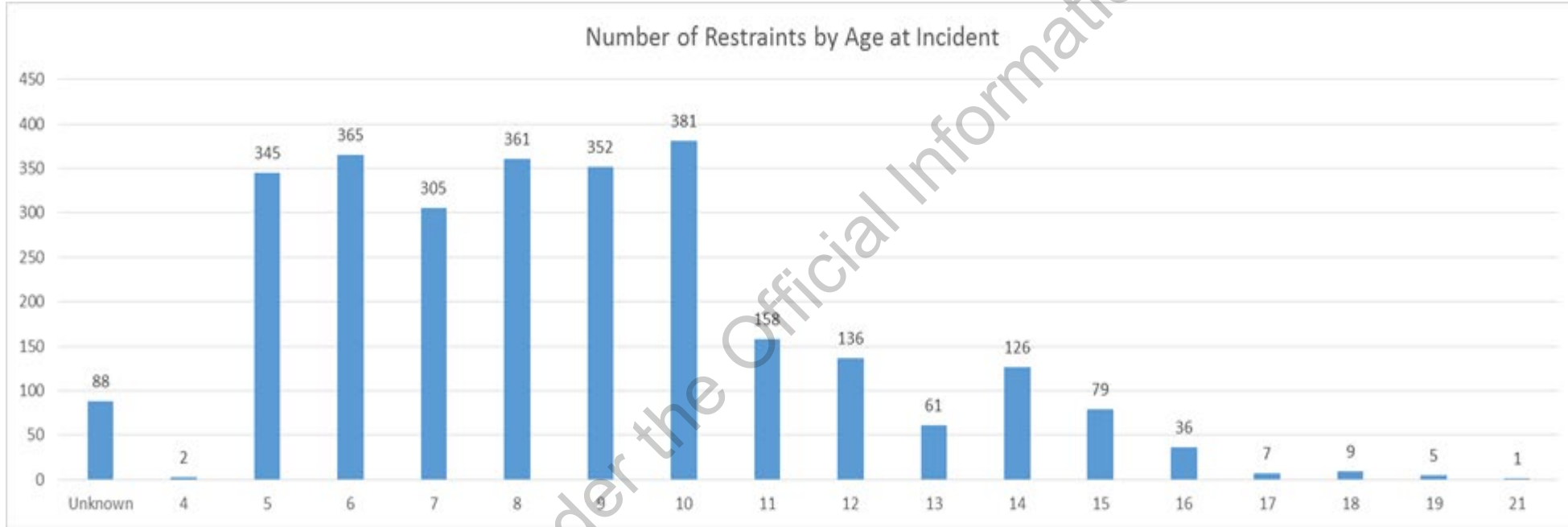
School Type

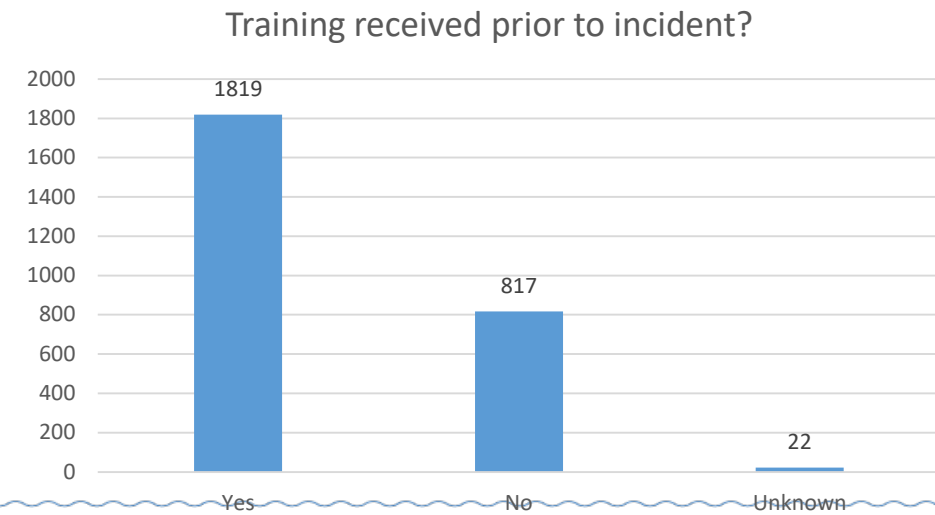
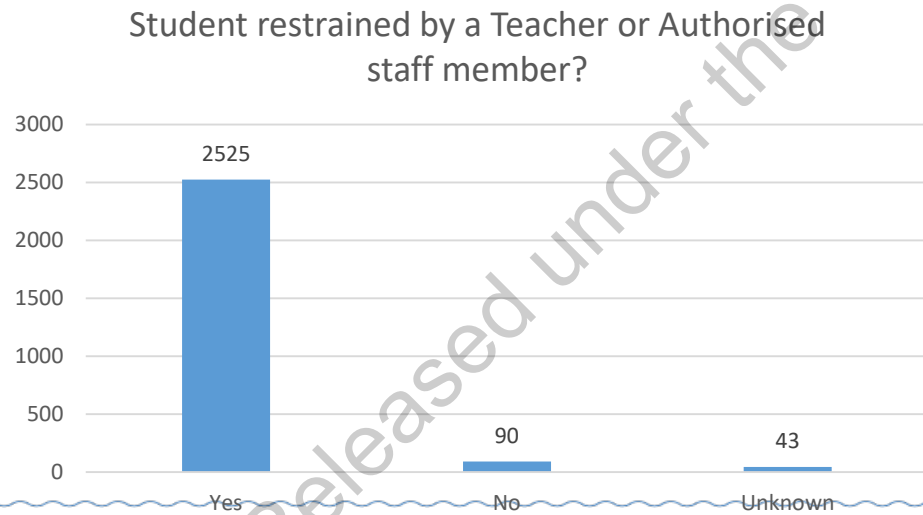
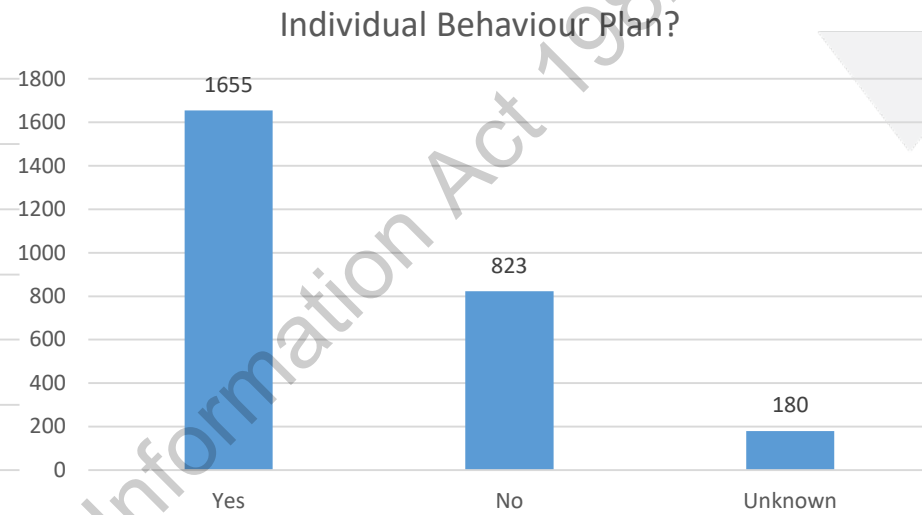
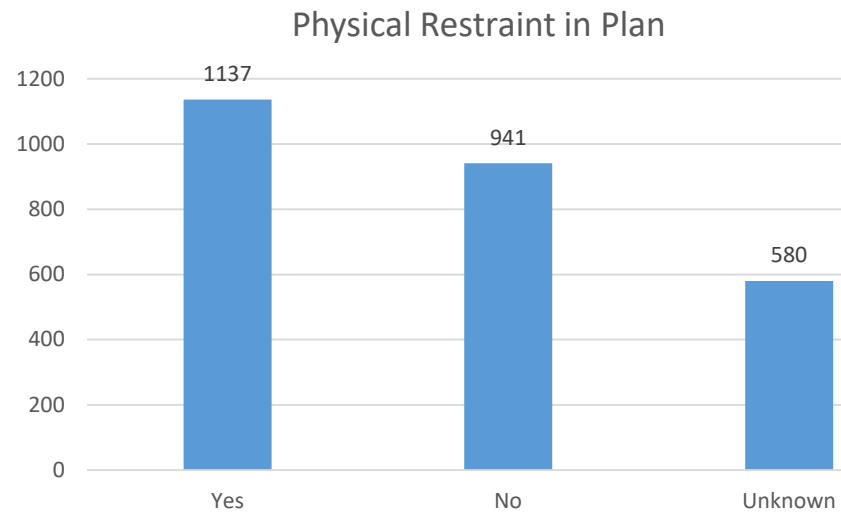


Gender

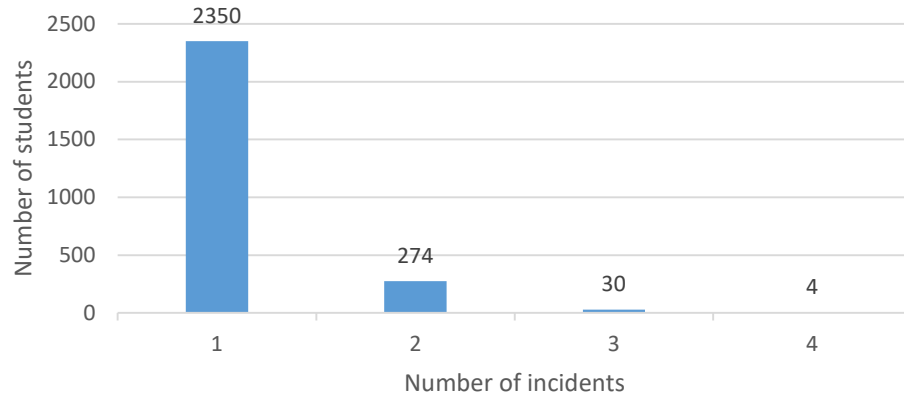


Age distribution

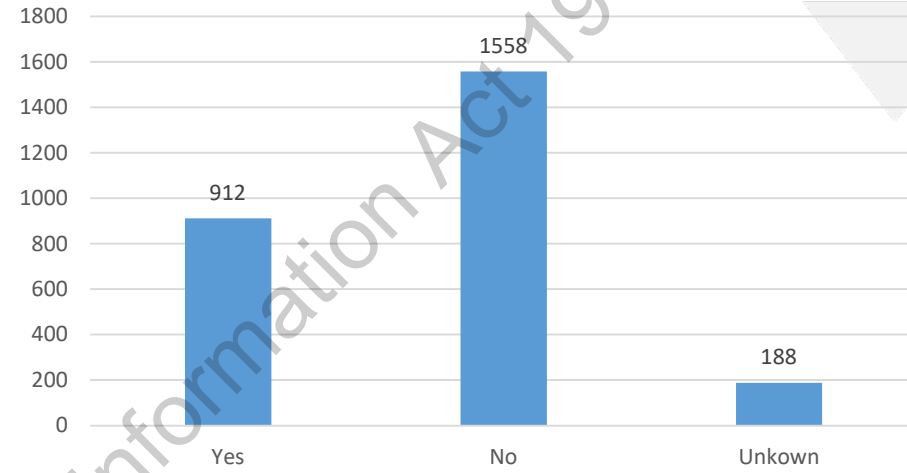




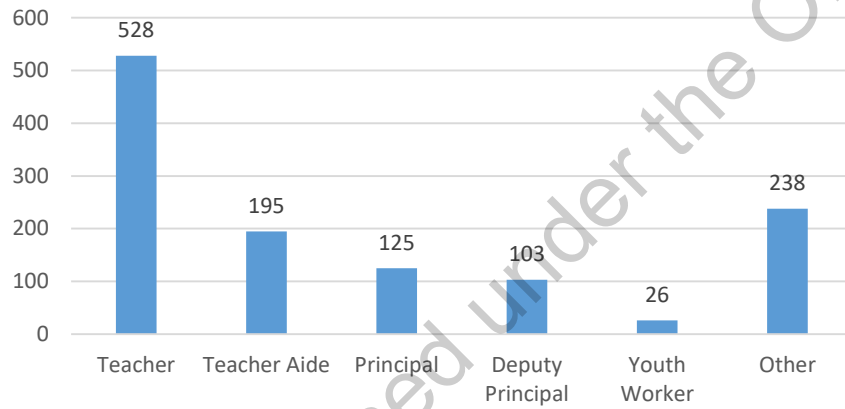
Number of physical restraints occurred on the same day



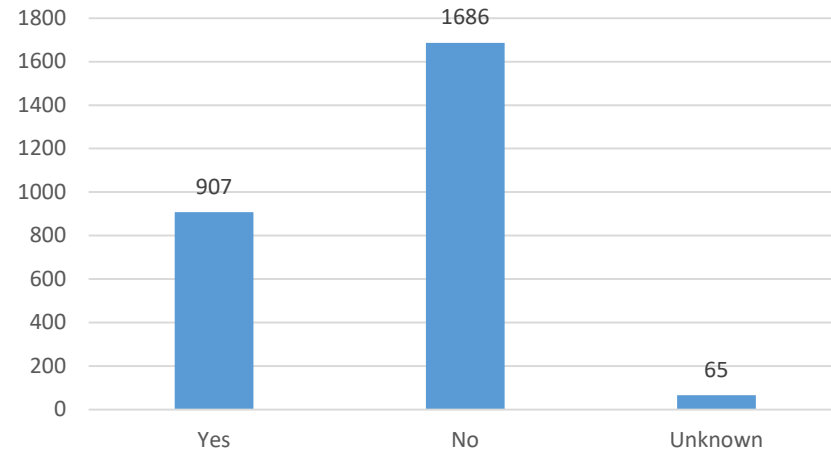
1st time physically restrained?



Role of staff member who applied restraint (from May 2018)



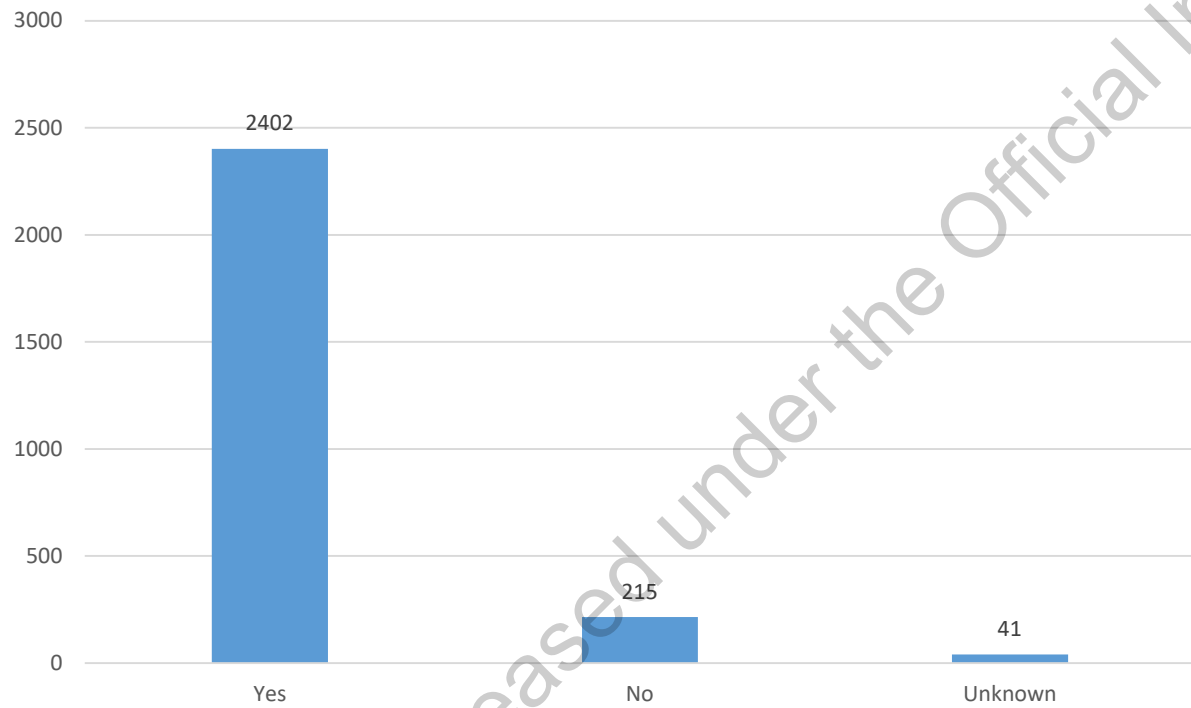
Injured?



Parents notified



Parents notified?



Released under the Official Information Act 1982

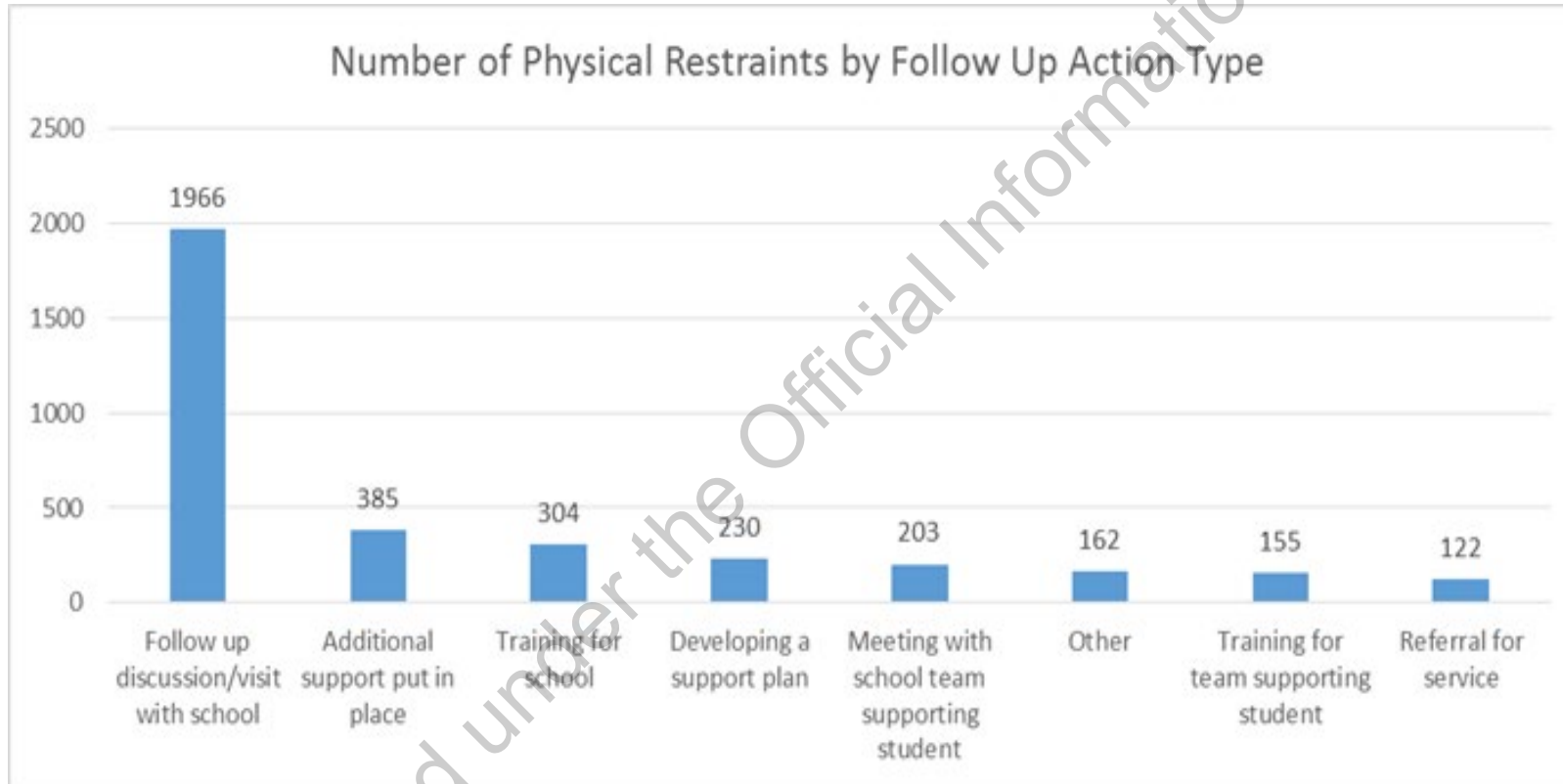
Information for the Ministry of Education and the employer form

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
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.

Follow-up



Released under the Official Information Act 1982

Any surprises with the data?



Released under the Official Information Act 1982

Feedback themes and proposed responses

Technical aspects of the law

- How does the changes in the Education Act fit with the Crimes Act?
 - *Questions and answers in the guide?*

Continued confusion about what staff members can and can't do.

- How does physical restraint differ from acceptable contact?
- More information needed on what we can do?
 - *Scenarios, prompts?*

Feedback themes and responses, continued

Language and structure of the guide

“...the guidelines must include-

- a. Best practice examples for the use of physical restraint; and
- b. Other examples of best practice in behaviour management” (Ed. Act, 139AE)

The guide is overly negative and doesn't provide enough information on what to do

- Do we need a forward that outlines the law or can we footnote this. Can we place the legislation on page 4 further on in the guide.
- Do we need to change the content order (e.g. how the guidelines were developed and responsibilities later – key principles up front, good practice guidance
- What language items ‘jar’ – tell us
- Do we need more information about calming strategies and teaching emotional regulation skills
- What else do we need to change/need more of/less of?

Feedback themes and proposed changes, continued

What happens to the data?

- Why is being collected?
- What happens to it?
 - *Questions and answers*
 - *Information made available to community of practice, including supports?*
 - *Changes needed to the forms?*

Training and support

- Concerns that initial teacher education not preparing teachers
- Training for support teachers
- Mixed reviews of UBRS
 - *Addition of supports and links (school policies behaviour, behaviour plan PB4L Tier 2, restorative practices, search and seizure)*
 - *Review of UBRS training and needs*

Any thing that we have missed



Released under the Official Information Act 1982

Questions and Answers

Q. Why was the law changed?

A. Legal framework is consistent with other sectors in New Zealand where physical restraint is used. It was designed to bring clarity to a legally grey area where potentially school staff could be charged under the Crimes Act 1961 as a result of using physical restraint. Staff also needed to take into account

- The New Zealand Bill of Rights Act, 1990
- The Health and Safety at Work Act, 2015
- The Code of Health and disability Services Consumers Rights, 1996

The international evidence also tells us that physical restraint is a last resort, high risk action that should be regulated in schools particularly to prevent injury or death and to ensure the safety and wellbeing of both students and teachers.

Q. Why did the Ministry publish guidelines?

A. The guidelines were published to take into account of the changes to the Education (Update) Amendment Act 2017 and the Education (Physical Restraint) Rules 2017 (the rules). The act and the rules set out what schools must do when using physical restraint and the guidelines set out best practice in preventing using, monitoring and reporting on physical restraint

Q. Why have the guidelines been refreshed?

A. The legal framework regarding physical restraint has been in place for a year now. We have reviewed these in light of their use and the feedback we have received.

Q. What changed as a result of the refresh?

A.

Q. What constitutes physical restraint?

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

Q. Under what circumstances can schools use physical restraint, and who is allowed to use it?

- A. Physical restraint should only be used where there is a serious and imminent risk to the safety of students, staff or others. It should be used in a responsible way, proportionate to the situation and only for as long as needed to ensure everyone is safe.

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.

Physical restraint is a serious intervention.

Situations where it would be appropriate to use physical restraint include:

- Breaking up a fight
- Stopping a student from moving in with a weapon
- Stopping a student who is throwing furniture close to others who could be injured by it
- Preventing a student from running onto a road.

Q. What was the situation for teachers in schools and kura when using physical restraint prior to the legislative change?

- A. There was nothing in the Act to cover appropriate use of physical restraint in schools and kura. Teachers and support staff in schools and kura had to interpret what general law such as the Crimes Act 1961 and the New Zealand Bill of Rights Act 1990 allowed them to do.

Q. If physical restraint is a last resort, what alternative techniques should teachers be using?

- A. The best thing teachers can do is try to prevent a situation developing to the stage where safety becomes an issue. Most schools use positive behaviour management practices to deal with inappropriate or dangerous student behaviour. If things do start to develop there are a number of ways to try to cool things down and ‘de-escalate’. Training is available to help schools and teachers learn how to do this.

Q. Why are schools being required to report incidents of physical restraint to the Ministry?

- A. 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.

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). Reporting incidents also enables the Ministry of Education to provide to schools to manage challenging behaviour

Q. What does the Ministry of Education do with the data and information?

- A. The Ministry is using the information to provide appropriate support to schools and students when there are incidents of physical restraint on students. The data has indicated that the total number of students being restrained is very small, many of these students are being restrained multiple times and 2/3rds involved students with plans in place. The information also has implications for the way we provide support to schools to manage challenging behaviour.

Q. What advice and support is available to schools about the use of physical restraint?

- A. 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. The rules and guidelines were developed with the help of a cross-sector advisory group.

The training workshop Understanding Behaviour, Responding Safely, has been offered to all schools. It focuses on prevention and de-escalation strategies and is run by experience behaviour management specialists (who also offer ongoing support). Any school interested in the workshop should contact their local Ministry of Education office.

Some of the students with the most challenging behaviours will have specific physical intervention and restraint techniques in their individual student plans. Where the Ministry is part of the team supporting such a student specific training for staff in using those techniques is available.

Q. Do the restraint rules and guidelines apply in private and partnership schools?

- A. Yes.

- Q. What should school and kura staff do if they see an incident of physical restraint or seclusion and are concerned?**
- A. They should speak to the principal and the Board of Trustees in the first instance. If they are not happy, they should contact the Ministry of Education. The same advice applies to family or whanau.

- Q. Are unauthorised staff and teachers allowed to use restraint in an emergency are they covered under the current laws?**

- A. The Act provides a framework for the use of physical restraint in schools that is based on its use by authorised staff. Unauthorised staff using physical restraint are not covered by the Act and may be in breach of school policy. Everyone is justified in using, in the defence of himself/herself or another, such force as, in the circumstances as he/she believes them to be, it is reasonable to use (Crimes Act s48). Justified means not guilty of an offence and not liable to any civil proceedings (Section 2, Crimes Act 1961).
- *Was the purpose defending themselves or another?*
 - *What were the circumstances the defendant believed them to be?*
 - *Was the force reasonable?*
 - *Does the school have a robust authorisation process and behaviour policy?*

- Q. Can teachers and authorised staff members use physical restraint to protect property?**

- A. No. The Education Act s139AC does not allow restraint to be employed for the sole purpose of protecting property. Sections 52 - 56 of the Crimes Act permit 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. The force required to protect property excludes striking or causing physical harm to another person

Seclusion

- Q. What is covered by the ban on seclusion?**

- A. 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.

- Q. Are any schools still using seclusion rooms?**

- A. No - seclusion is prohibited under the legislation.

- Q. Does this mean that my school can no longer use time out?**

- A. 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.

Released under the Official Information Act 1982

DRAFT

Restraint and Seclusion Scenarios

A panel discussion on restraint and seclusion was held at the Education Law Conference 2018. The discussion was chaired by a school principal and the panel was made up of MoE practitioners and education lawyers. The panel discussed seven scenarios, in conversation with the audience of educators and legal professionals

Task: Read through the following scenarios. Determine the serious and imminent danger, if restraint would be justified, what advice and guidance you would give for each one.

Scenario One

A group of Year 13 students were playing touch rugby on the back field. The game turned sour when student 'A' began mocking student 'B's mother as a joke. Student 'B' became enraged at the insult and began to seriously assault student 'A'.

A teacher on field duty came upon the assault with other Year 13 students watching. Student 'A' is on the ground and is at risk of serious injury, while student 'B' is so angry he is not listening to anyone, yelling 'you're dead meat'. The teacher is unsure of his ability to intervene to stop the fight or whether to ask the other students to assist. The field is some distance from the office and he is very concerned about his obligation to protect student 'A'.

Would restraint be justified?

Would you recommend using other students in this situation?

What would you recommend?

Panel Recommendation

- Restraint can be justified (in order to create a space between the students and prevent further harm)
- Try to remove the audience and support the provision of a distraction (e.g. whistle, siren)
- Schools must address NAG 5 to keep students safe. Recommend having a whole staff discussion about possible situations, obligations and capabilities and devise a support system. Teachers should not be alone in dealing with a fight, back up is required.
- Use of professional teacher judgement comes into effect at the time of the situation - this may have to be justified formally later. If teachers do not feel able to intervene they do not need to. Their intention should be made clear to the fighters and audience. The incident must be reported.
- Schools must address NAG 5 to keep students safe. Recommend having a whole staff discussion about possible situations, obligations and capabilities and devise a support system. Teachers should not be alone in dealing with a fight, back up is required. Remembering that
- to discuss as a school their system "protocols" around how they will get help, and the level staff have also been injured intervening in fights on schools grounds
- Need of response. This needs to be clear for students, staff and parents what e protocols are.
- Other students **cannot** be asked or encouraged to intervene
- Do ask students to get help
- Try to remove the audience and support the provision of a distraction (e.g. whistle, siren)
- Schools must address NAG 5 to keep students safe. Recommend having a whole staff discussion about possible situations, obligations and capabilities and devise a support system. Teachers should not be alone in dealing with a fight, back up is required.
- Need to discuss as a school their system around levels of response and be clear when students are this age what they can do – needs to be transparent for students, staff and parents what the protocols are.

Scenario Two

James, age 45, was a police officer for 15 years before deciding to retrain as a secondary school history teacher. James is an expert in unarmed combat and pursued karate as a sport for 20 years. He is also experienced in the use of firearms, having been an armed offenders' squad member whilst in the police.

During a class, James hears a scuffle in the corridor outside his room. He looks out and sees two well-built Year 13 male students fighting. They appear equally matched. While punches are being thrown, it does not appear that either is doing serious harm to the other. James moves into the corridor and orders them to stop fighting. They carry on. He orders again and they ignore his request. James then takes one of the students by the arm in an attempt to pull him away from the other. The student turns and swings a punch at James. James responds by putting the student into a painful arm-lock, combined with gripping the student's head to bring him to his knees on the ground. The scuffle then ends.

The student suffers no lasting injury or ongoing pain. However, the student and the parents complain to the school, saying that James used excess force, causing significant pain and humiliation.

What would you recommend?

Does the teacher have any potential criminal liability?

Should he be exposed to professional disciplinary proceedings?

Should the school take employment disciplinary action against him?

For the record: James is not fictitious and he opted not to physically intervene. He chose to call the police after the students ignored his instructions to stop fighting. Before the police arrive, one of the students lost his front teeth.

Again, does the teacher have any potential criminal liability? Should he be exposed to professional disciplinary proceedings? Should the school take employment disciplinary action against him?

Panel Recommendation

Response as above Restraint can be justified (in order to create a space between the students and prevent further harm). Distract, get help, have a protocol in place

- Other students **cannot** be asked or encouraged to intervene
- Do ask students to get help
- In the case of the 'arm-lock' and parental complaint, Crimes Act Section 42: preventing breach of peace (e.g. fighting) could justify restraint. "Justified" means not liable to criminal prosecution or civil proceedings.
- Risk: If a single limb is held this can expose you to a reaction from the other limbs and head.

Scenario Three

Student 'A', who has known 'anger management' issues was working quietly on his Year 12 Art folio when another student accidentally spilt black ink onto his work. Student 'A' lost the plot, jumping up shouting 'you've f....g ruined it, and proceeded to rip up his board. He then began to attack other Year 12 Art folios.

The teacher recognised he is in an extremely emotional state and not listening to reason. Although there is no physical risk to anyone, the Art folios represent hundreds of hours of work by students and are an essential part of their NCEA assessment, which can't be redone if they are destroyed. The teacher is not sure if restraint is justified in these circumstances or to just remove the other students from the Art room.

Would restraint be justified?

What do you know about willful vandalism?

What would you recommend?

Panel Recommendation

- Restraint is not justified in terms of the Education Act Restraint Rules, as it is property.
- From a legal perspective staff may be defended in a court of law through the Crimes Act Section 41 if they choose to restrain in this circumstance.
- Consider a 'fire' situation in terms of health and safety policy; whereby students gather up items and exit in an orderly manner.
- Some students may need further support emotionally if they have lost their work. The school can follow up with NZQA for next steps. Preventative steps could have included safe storage of items, ongoing records of work and submission / evidence of finished items.
- The school receives funding for vandalism in their Operations Grant. Insurance may not cover vandalism. A top up of this funding may be granted under some circumstances - the BOT would be expected to have a Vandalism Policy.

Scenario Four

A student who is diagnosed with Autism has had a confrontation with the Deputy Principal of a primary School. When asked to report to the Principal's office, he rushes to the school fence and begins climbing. There is a busy motorway on the other side of the fence. The DP perceives a real threat to the student's safety but knows if he tries to pull him down from the fence, he may cause injury to the student or himself.

Would restraint be justified?

What would you recommend?

Would it make a difference if this student was secondary age?

Panel Recommendation

- Use of temporary physical contact may be necessary in this situation.
- Whilst the fence is an obstacle, this can be similar to running onto the road. Failure to act may cause further injury (motorway)
- Support through remaining calm, stating intent "I'm here to help" and sending for a staff member who has a relationship with the student.
- If the student is prone to running away and the risk is already known, agreed strategy with family and staff can be planned and communicated to all members of school staff.

Scenario Five

Ms X, an art teacher, reported to the DP that she believed that student A took an 'up the skirt' video on his phone while he was in her class. The P has spoken to few students in the class who confirmed the teacher's account and add that he planned to upload it on his Facebook page. It is now 3pm and student A is in the DP's office denying the allegation. He is refusing to hand over the cell phone and insisting he has to leave to catch a bus.

Would restraint be justified?

What do you know about surrender and retention?

What would you recommend?

Panel Recommendation

- There should be no physical contact. The family should be informed.
- Follow Surrender and Retention Guidelines (2014).
- Refusal to hand over, use school discipline process, even if they delete the evidence.
- Netsafe can support situation and retrieval of material.

Scenario Six

Student A is transitioning into a new primary school. He does not follow the class routine and ignores the teacher's requests to join the class on the mat. Student A leaves the classroom. The teacher follows and sends another student to reception to get another adult to supervise the class. Student A climbs to hide on the adventure playground. The teacher tries to encourage Student A to come down and return to class. Student A throws a stone nearby the teacher. Another staff member sees the stone being thrown and comes to assist the teacher. They agree that his behaviour is unsafe and are now deciding how to transfer the student to the principal's office.

Would restraint be justified?

What would you recommend?

What happens if the Ministry of Education witnesses restraint, and the school do not report it?

Panel Recommendation

- No restraint is justified.
- Give space to decrease the risk of injury
- Supervise only, no interaction, wait it out (can take over an hour).
- School system to determine support for teacher at this time and logical consequence for student when he is ready to engage again.
- The Education Council Code of Conduct 2.1 states that a teacher will work in the best interests of learners by promoting the wellbeing of learners and protecting them from harm. Therefore, inappropriate handling such as physically grabbing, shoving or pushing, or using physical force to manage a learner's behaviour is not permissible.
- If inappropriate handling occurs or restraint occurs then the school must report it.
- If Ministry of Education staff are aware the school have not reported an incident they have witnessed then Ministry of Education staff should discuss with the Principal and report it in compliance with the Restraint Rules and Child Protection Policy. The BOT may also be requested to be involved.

Scenario Seven

In the New Entrants class there is a child who is distressed at beginning of the day as they don't want their parent to leave. The child will cry and cling onto their mum or dad and not want to stay in the classroom. When their mum or dad starts leave they run after them and try to leave the classroom to find their parent. The teacher is not sure whether they can intervene as would that mean that a restraint notification form would need to be completed?

Would restraint be justified?

What would you recommend?

Are there conflicting views about this situation?

Panel Recommendations

- Consider acceptable physical contact (Page 7)
- Holding a New Entrant's hand and/or supporting them to move to a new location and providing them with comfort when they are upset about leaving their parent are all acceptable responses to a distressed child and would not be seen as restraint.
- Parents can often feel anxious about a child starting schools and contribute to the separation issues. Building a relationship with the parents can help to ease separation worries on both sides.
- Having a plan and a routine to follow with the child's parents to help support the separation would be important