



Legal Issues Bulletin

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Physical restraint of students

The Department and its staff owe a duty of care to students to take reasonable care to protect them against risks of not insignificant injury which are reasonably foreseeable. This duty extends to taking reasonable care to prevent a student from injuring him or herself, injuring others or damaging property. In order to meet this duty, school staff may be required to consider the need to physically restrain students.

In what circumstances should use of physical restraint be considered?

Any decision taken by staff to physically restrain a student should be exercised only in those circumstances where there is a real and immediate threat of injury to a person or serious damage to property and there is no other practical way of preventing the likely injury or damage.

Staff must not jeopardise their own safety in such situations. Staff should only physically intervene if they are confident they can do so without being injured. In this context it is important that staff seek out and implement any relevant Departmental school guidelines, strategy or advice for managing student behaviour.

What level of physical restraint should be used?

Any physical restraint of a student should be only that which is reasonably necessary in the circumstances to prevent the feared injury or serious damage. What is reasonable physical restraint will vary from case to case depending on issues such as the age, size and strength of the student and staff member, what the student is actually doing that gives rise to the fear and where the behaviour is occurring. **It is stressed that staff must not use physical restraint if this places them at risk of injury.**

Are there specific circumstances where staff may be required to intervene and or physically restrain students?

The following circumstance may warrant more careful consideration of the need to use physical restraint or otherwise intervene -

1. Behaviour by a student that threatens the safety of other persons

The Department's duty of care towards its students means that staff have an obligation to take positive action in situations where students' behaviour threatens the safety of other persons. The level of intervention will range from verbally directing the students to stop through to physical restraint of one or more of the students involved. The Department's obligations may not be met if staff wait until the behaviour subsides before taking action. The action that staff may be able to take however will be dependent on the nature of the particular incident. Physical restraint should only be used if other measures have not or will not prove effective in the circumstances. If physical restraint is considered necessary, it must be reasonable in the circumstances and staff must not put themselves at risk of injury.

2. Behaviour by a student that may lead to self-harm or injury

As in 1, the Department's duty of care towards its students means that staff have an obligation to act in situations where a student's actions may cause the student harm or injury. It may be the case that a student's actions occur as a result of both

voluntary and involuntary behaviour. The same obligations and considerations as outlined in 1 apply to situations of student self-harm or injury.

3. Physical altercations between students

As in 1 and 2, the Department's duty of care towards its students means that staff have an obligation to take positive action in situations where students become involved in physical altercations with each other. The Department's obligations will not be met if staff wait until the altercation concludes before taking action. The same obligations and considerations as outlined in 1 and 2 apply to situations where physical altercations between students occur.

4. Students leaving Departmental premises without authorisation

Students will sometimes leave or attempt to leave Departmental premises without authorisation and in circumstances where their safety may be at risk. Students may leave premises in a heightened state of anxiety such that their ability to recognise dangers is impaired. In such cases, physical restraint of the student to prevent their leaving the premises may be justified. Any restraint used must be reasonable and staff must not put themselves at risk of injury.

If a student has left the premises without permission in situations where concerns are held for the student's safety, the degree of intervention by staff in attempting to return the student to the premises is a matter for judgment based on the specific circumstances. The action that may be taken can range from verbally requesting the student to return through to pursuit and physical restraint. Should it not be possible to return the student to the premises, parents/carers should be contacted and if necessary, police notified.

Can allegations of assault arise if staff physically restrain students?

In rare cases yes. While the physical restraint of students may be necessary to ensure the Department's duty of care is exercised, the restraint of students without their consent may constitute an assault. In extremely rare cases criminal or civil action is taken against a member of staff who has restrained a student. So long as the restraint employed has been reasonable, one or more of the following defences will be available to staff depending on the circumstances:

- Self defence - this arises whenever there is a reasonable apprehension of physical aggression. It is not necessary to be actually struck before being allowed to defend yourself.
- Defence of others - there is a clearly defined legal right to take action to defend others from threatened or actual violence.
- Defence of Property - every person has the right to protect his or her property from damage. This right is founded on possession or control of the property rather than full ownership. The right extends to protecting departmental property from damage.
- Lawful chastisement - this defence is available to parents as well as teachers and other departmental staff into whose care and control students are placed. To be considered lawful chastisement, the action needs to be warranted having regard to the circumstances and be exercised in a reasonable manner.

The Department has clear guidelines on discipline procedures, the use of corporal punishment and physical contact with students. The fact that a member of staff may have exceeded those guidelines does not mean these defences cannot be relied upon. Staff should be careful to use only that level of restraint that is reasonable in the circumstances to prevent the feared injury or damage. Departmental disciplinary action may follow where clearly unreasonable use of restraint has occurred.

What happens if a staff member is subject to legal proceedings as a result of physically restraining a student?

Should a member of staff be subject to criminal assault proceedings by the police or by private prosecution, he or she may apply to the Department for Crown representation. It should be noted that such criminal proceedings are extremely rare. Given the defences available to staff, the probability of a staff member who has acted professionally and reasonably being convicted is virtually nil.

In the even more unlikely event that civil proceedings are commenced against a member of staff, he or she may similarly apply to the Department for Crown representation. If granted, staff will be indemnified for any verdict against the staff member and any legal costs incurred as a result of the proceedings. It should be noted that there is no record of any proceedings of this nature ever being taken against a staff member.

It is important to remember:

- 1. Physical restraint of students should only be exercised as an absolute last resort.**
- 2. Physical restraint should only occur where there is an immediate risk of injury to persons, including the student, or an immediate risk of serious damage to property.**
- 3. Physical restraint should only be what is reasonably necessary having regard to the specific circumstances.**
- 4. Physical restraint must not be used if there is a risk of injury to staff.**

About Legal Services

Legal Services provides legal support and advice to staff in schools, colleges, regions, state office directorates and specialist boards and authorities. It arranges for the Department to be represented before a range of courts and tribunals and assists with the preparation of legal documents. It is also available to provide legal advice in respect of any departmental policies or procedures that may have a legal complexion.

The Legal Services Directorate can provide legal advice to departmental staff only. It is not able to provide legal advice or assistance to parents, students or members of the public.

The Legal Services Directorate posts a large amount of information on the Department's intranet. This includes:

- all current Legal Issues Bulletins
- questions the Legal Services Directorate most frequently encounters
- information about the Government Information (Public Access) Act
- links to other related legal web-sites
- other information for the use of schools and TAFE

The Legal Services Directorate continues to offer its telephone advice service to DEC personnel.

The service is available between **9.00am to 5.00pm** weekdays.