

THE EDUCATIONAL INSTITUTE OF SCOTLAND

Physical Restraint Techniques

1. Introduction

- 1.1 The following resolution was approved by Executive Council in November 2003:

“This Executive Council instructs the Salaries and Conditions Committee to review and update Institute advice to members on the use of physical restraint techniques.”

- 1.2 Extant Institute policy relates to Therapeutic Crisis Intervention techniques and was drawn up in 1995. Since then, TCI has been withdrawn in a number of councils while other techniques such as CALM (Crisis Aggression Limitation Management) and TEAM-TEACH have been introduced.
- 1.3 The legislative and social concerns have changed. The integration of more children with complex behavioural needs in mainstream schools has created a context in which many councils are producing policies on physical restraint. Regrettably all teachers face more challenging behaviour and may have to intervene to prevent or to stop physical violence, as a last resort.
- 1.4 Scottish Office Circular 5/97 defines Violence as “Any incident in which any employee of a school is seriously abused, is threatened or is assaulted by a pupil, parent, member of the public or any other persons in circumstances arising out of the course of his/her employer.”
- 1.5 The EIS challenges the assumption that teachers should be expected to tolerate or deal with violent behaviour from pupils in Scottish schools and challenges the assumption that the solution lies in physical restraint techniques. On the contrary the EIS demands schools free from violent behaviour where teachers can concentrate on the job of teaching.
- 1.6 It should be understood that it is not possible to give unambiguous advice on physical restraint. Any act of restraint brings the possibility of legal challenge to teachers and judgement made through a legal process rather than through a local authority’s policies.

2. The Legal Background

- 2.1 Section 48A(3) of the Education (Scotland) Act of 1980, as amended by the 1986 Act (which abolished corporal punishment in Scottish schools) states:

“A person is not to be taken for the purposes of this section as giving corporal punishment by virtue of anything done for reasons which include averting an

immediate danger of personal injury to, or an immediate danger to the property of, any person (including the pupil concerned).”

- 2.2 The Education Scotland Act of 1995 also stated that schools do not have the general authority of Section 5 of the Act to do what is reasonable to safeguard the child’s health, discipline and welfare. They must have this authority delegated by parents. The 1995 Act strengthens the rights of parents or guardians to challenge teachers who deploy restraint.
- 2.3 The sections above may allow teachers to restrain children but only in the context of a general duty of care. Members are reminded that any physical restraint brings a risk of criminal investigation and prosecution. The application of “reasonable force” is open to a variety of interpretations and teachers may be subject to challenge through legal process, an employer’s disciplinary procedures and GTC(S) disciplinary investigation.
- 2.4 The Health and Safety at Work etc Act 1974 requires Local Authorities to ensure, so far as is reasonably practicable, the health and safety of all their employees. The Management of Health and Safety at Work Regulations 1999 requires employers to complete suitable and sufficient risk assessments. The risks to teachers’ safety from assaults, violent and other unacceptable behaviours and from, where implemented, the use of physical restraint techniques should be assessed.

3. Guidance from Employers

- 3.1 The motion approved by Executive Council requires advice for individual members. However, the context in which members operate will be dependent on the policies of respective employers. Therefore, local association secretaries, branch secretaries in colleges and representatives in private schools, particularly EBD or CLD establishments, should be consulted on policies on physical restraint or physical intervention which may include guidance on physical restraint.
- 3.2 In any consultation the following principles should be underpinning the EIS negotiating approach:
 - * a recognition that teachers cannot be required to be trained in physical restraint techniques but techniques to reduce threatening behaviour may be introduced in certain establishments.
 - * EBD and CLD schools are the appropriate establishments for pupils whose behaviour is likely to lead to threatening behaviour
 - * a recognition that all staff may have to respond to emergency situations
 - * recording procedures when any physical restraint is deployed.

4. Advice to Members

- 4.1 Physical restraint techniques and training are more directly relevant to the duties of care workers and certain special needs auxiliaries than to teachers.

- 4.2 The Institute believes that employers should carry out risk assessments to identify potentially violent situations and appropriate strategies to prevent violent incidents occurring, thus minimising the need for staff to employ physical restraint techniques.
- 4.3 The Institute believes that where young children exhibit violent behaviour or pose a threat of violence, identified through a risk assessment procedure, the most appropriate placement is an EBD school or unit.
- 4.4 There can be no requirement for Institute members to be trained in physical restraint techniques and the Institute will provide full support to any member pressured by an employer to be trained in physical restraint techniques. Such training should be voluntary and is most relevant for members deployed in EBD schools and units. However, the Institute accepts that members can be involved in training to minimise the risk of violence and to deal with issues of immediate danger e.g. training in de-escalation techniques.
- 4.5 The Institute recognises that where there is an immediate danger to other persons or the possibility of physical assault upon themselves members may intervene physically. Should any member physically intervene in these circumstances they must be aware that any physical contact brings the risk of disciplinary action from the employer or criminal investigation and prosecution.
- 4.6 Intervention should be the last resort and other than in exceptional circumstance should only be considered following other measures to defuse the situation, following, wherever possible, the summoning of assistance and, wherever possible, following a clear warning.
- 4.7 Any action should be the minimum required in the circumstances to prevent a young person harming herself/himself, others or the member.
- 4.8 Where physical contact has occurred the member should report the incident to the head of establishment and branch representatives who shall, when necessary, contact the local association secretary.

5. Recommendations

- 5.1 The Institute is opposed to any requirement for teachers to be required to be trained in physical restraint techniques.
- 5.2 Physical restraint techniques are more appropriate for care workers and some special needs auxiliaries. The Institute is not competent to make comment on the effectiveness of various restraint techniques advocated by authorities.
- 5.3 Young people who present a consistent risk to teachers, other staff and other young people should be more properly placed in EBD/CLD schools or units.
- 5.4 The Institute will investigate further whether additional advice is necessary for our members who work in EBD Schools and Units.

- 5.5 Local association secretaries should seek to clarify policies within their employing authorities in accordance with the advice in Section 3 of this paper.
- 5.6 Advice to members, set out in Section 4 of this paper, should be issued to members in a leaflet.