

Callum and Victoria Turnbull

8 November 2023

To: IPCA

This is a complaint against **Detective Inspector Shona Low D625** for her handling of our Police complaint against **Christine Menzies** – Ministry of Education Representative, during the 2016-17 Ruru School Allegations of Physical and Emotional Abuse interagency Police Investigation.

Please refer to the Police Complaint, correspondence, Timeline and information that follows.

On multiple occasions during the Ruru Specialist School Police Investigation, Police had asked Christine Menzies for MoE guidelines. However, she did not provide the current guidelines to Police. The guidelines that were current stated - *Timeout rooms should not be used.*

She did give Police a copy of 'draft' Seclusion Guidelines, which were created by a corrupted MoE Advisory Group. The 'draft' Seclusion Guidelines, which allowed for seclusion and the use of timeout rooms in schools, was given to Police by Christine Menzies the same day parliament published that a Supplementary Order Paper (proposed amendment) was introduced to the bill which proposed changes to the Education Act 1989 – to *Ban enforced seclusion of a student.*

Even though the Education Minister publicly announced banning intolerable seclusion and the issuance of new Guidance for schools reiterating the ban, in November 2016 – Police used the 'draft' Seclusion Guidelines given to them by Christine Menzies for their Investigation conclusion in March 2017.

When Callum Turnbull met with Shona Low recently, she answered relevant questions we had regarding our complaint against Christine Menzies with - "I don't know." "I don't know why." Shona Low disregarded all evidence we provided that indicated Christine Menzies was deceptive and dishonest during the Police Investigation into Abuse Allegations, as well as in response to our 2023 complaint – simply stating, "I've got to believe what she tells me."

Shona Low did not properly enquire about, question or investigate Christine Menzies. Instead, she said, "She's never had the intention to do anything."

"Never any intention."

Callum asked Shona, how did she come up with the "no intention". She said, "well just her, just the way, like how she is."

Shona Low told Callum Turnbull, "it's not an offence to tell us a lie."

Thank you.

Callum and Victoria Turnbull



# **Ministry of Education Guidelines**

## **Managing Extreme Behaviour in Schools – (1998 MoE Guidelines)**

*It is important to avoid actions that are likely to be emotionally or physically distressing to a student. These actions are aversive and can place both students and staff at risk:*

- *shutting students into rooms where they can't get out*

*Timeout rooms should not be used. They are not necessary and can result in teachers and schools being accused of using inhumane and cruel punishments.*

**The resource was published by the Ministry in 1998 and was sent to all schools – (revised in 1999, 2005) 2005 version was sent to all schools in hard copy – remained current until October 2016.**

**Hard-copies of the publication were also available to Ministry staff.**

## **Practice Guidelines for the Management of Serious and Challenging Behaviour – (2007 MoE Internal Guidelines)**

### **Isolation (Seclusion)**

*The Ministry of Education, Special Education does not recommend any form of time-out procedure in an Early Childhood/School setting, which involves a child/young person being shut in a room, or screened area, by him or herself without any way of getting out unless someone comes to release them. This is a form of isolation (seclusion) and is not an appropriate practice in Early Childhood/School settings.*

### **Seclusion (Solitary Confinement)**

*A child/young person is secluded if he or she is shut in a room or screened area by himself or herself without any way of getting out unless someone comes to release them. The Ministry of Education, Special Education does not recommend any practices involving seclusion (solitary confinement) in Early Childhood/School settings.*

### **Legal Issues**

*There are no legal rules setting out who can restrain a child and in what situation restraint can be used. In extreme cases where the restraint could be regarded as unlawful assault or detention and could be the subject of legal action.*

### **Bibliography** (and referenced throughout)

*Dunckley, I (2006) Managing Extreme Behaviour in School. Ministry of Education, Special*

**From 2007 all MoE behaviour staff in the regions were able to access a copy.**

***"The purpose of these internal guidelines is to support staff to reduce any inappropriate use of time-out in Early Childhood or School setting" – remained current until October 2016.***



## Timeline

Nov 2014 – Turnbulls make complaint to Police, after discovering barbaric seclusion room at Ruru Specialist School.

Police advise –

- “it’s a well used room”
- “the ministry are aware of it”
- they don’t investigate abuse at school, it was a matter for MoE

Dec 2014 – MoE contract Terri Johnstone to investigate

- Ruru’s use of a timeout/safe room in the school and it’s lawfulness  
Terri Johnstone questions MoE District Manager Christine Menzies during her investigation.

Feb 2015 – Terri Johnstone MoE Investigation Report

- “Ruru Specialist School’s criteria for removing a child to a safe room does not appear to be unlawful.”
- “I also contacted the Ministry of Education regarding the use of timeout facilities or safe rooms and I have been unable to locate any MoE Guidelines about the use of these rooms.”
- Terri Johnstone recommends – MoE convenes a National Working Party (2019 email between TJ & T) - TJ “the rationale behind the recommendation – to create guidelines because there were none.” T “when were you first aware of the guidelines?” TJ “I think it was after the report not 100% sure.”

Apr 2015 – Terri Johnstone letter to Turnbulls

- “I contacted NZSTA for advice on the lawfulness of safe rooms. I found basic guidelines around ventilation and the physical characteristics, but found nothing that said that the rooms themselves were either lawful, or unlawful.”
- “I have been unable to find clear guidelines on the use of safe rooms on the Ministry of Education website.”
- “While I could not find use of the safe room unlawful, I was surprised that rooms like that of Ruru School could be lawful.”

Apr 2015 – Turnbulls meeting with MoE officials, including Terri Johnstone and Christine Menzies

- discuss Turnbulls concerns about the Terri Johnstone Investigation Report.

Apr 2015 – KEAN, John Andrew - Police File

- Victoria Turnbull contacts Detective Wyatt and is unhappy about the outcome of the initial complaint, Police waiting for report from Ministry of Education who conducted enquiry into the Turnbull complaint. This may help to ascertain if there is any criminal offending which at this point is not clear or evident.

May 2015 – KEAN, John Andrew – Police File

- Review file and read Ministry of Education Report, this report is into the handling of the complaint by Ruru School and not into the allegations itself. Matt Wyatt is doing scoping

interviews with key people at Ruru School today. Once this is done then that may give some direction to this enquiry. As it stands there is no clear evidence of either criminal offending or anything that suggests or justifies a Police Investigation. We don't want to be in a position where we are conducting enquiry after enquiry on the basis that the complainant's are unsatisfied, it has to be balanced on what information exists to justify further Investigation and at this point it does not appear to exist.

June 2015 – BOWMAN, Michael Alan – Police File

- There were a number of issues raised by the parents of the child concerned. Each was assessed on an individual basis. This assessment was in conjunction with CYFS and on each occasion the matter did not meet the CPP threshold it clearly sat with issues with the parents/School. And ministry to resolve. However in regards to the time out room the investigator has continued to make further inquiries as did the ministry. It is clear the room is designed as a safety barrier for both students/teachers and other students. It is also clear that the child concerned has a history of causing bruising to himself due to his behaviour (thrashing about). In the end I agree that there is no criminality identified in this matter and that it should be filed.

June 2015 – CROUDIS, Kallum Duncan – Police File

- Matter is well documented and the decision making of previous supervisors is sound. I asked for this to be looked at in more detail as these matters can sometimes play out in other forums such as the media. The matters contained herein do not give rise to criminal offending and both police, school and CYFs concur on this matter filed.

**Over the next 15 months MoE Advisory Group (Brian Coffey Chair, Terri Johnstone Project Lead) work on creating Seclusion and Restraint Guidelines, when seclusion and the use of timeout rooms was against existing MoE Guidelines. Terri Johnstone, Project Lead writes a multitude of Papers for the Advisory Group – none refer to the existing MoE 1998 Guidelines.**

June 2015 – Draft TOR - MoE Advisory Group

- "Contractor (Terri Johnstone) reviews the Ministry of Education Practice Guidelines for the Management of Serious and Challenging Behaviour"

June 2015 – Advisory Group Minutes –

- Terri Johnstone Project Lead, MoE Advisory Group provides papers – *The use of Physical Restraint and Seclusion in Schools: Legal Issues written by Terri Johnstone* **(In most cases the restraint or seclusion of a child is likely to breach the child's rights and would be unlawful.)**
- "Brian Coffey noted regards the action that the Ministry's legal team have been consulted and have reviewed the legal background paper. The police have not been consulted at this time."
- "The Ministry's Internal guidelines were circulated."
- Terri Johnstone Project Lead, MoE Advisory Group provides papers – *The use of Seclusion Practices in Schools: A Literature Review written by Terri Johnstone* **(New Zealand does not currently have any guidelines for this practice.)**



## **Aug 2015 – Turnbull's make IPCA Complaint**

- Shona Low investigates on behalf of IPCA

Dec 2015 – 10/12/15 Shona speaks with Brian Coffee MoE, Group Manager Special Education and Strategy and asks questions about guidelines – Advisory Group Chair, Brian Coffee does not advise Shona of existing MoE Guidelines – “There are some national guidelines being developed as we speak”

Dec 2015 – 12/12/15 Shona speaks with Julie Anderson MoE, Director of Education Otago/Southland – Julie Anderson states, “A thorough review of the guidelines for the use of seclusion rooms is implemented.” Julie Anderson does not advise Shona of existing MoE Guidelines.

### *Police Report Form*

*As a result of this complaint and other complaints into the use of seclusion rooms at Ruru School and others around the country, new Guidelines are being finalised for all special education around treatment of children at all Special Education school overseen by the Ministry of Education.*

*Of note the new guidelines will recommend that any use of seclusion/timeout rooms are used as a last resort in extreme situations where safety of the child, other children or staff is at risk.*

Dec 2015 – Turnbull's complaint to IPCA (against Police) upheld

May 2016 – Police hold Interagency Meeting - Ruru School Allegations of Physical and Emotional Abuse

- Christine Menzies MoE representative discusses guidelines – “no definition of seclusion previously”

Aug 2016 – Police ask Christine Menzies and Phil Straw (Teaching Council) for guidelines

- *I have been unable to identify any legislation or industry guidelines that dictate how a Safe (or Seclusion) Room in an educational facility is to be set up or constructed. **If any of you have information that would assist it would be appreciated.***

*In the absence of any such legislation the only question to be answered centres around whether the room is fit for purpose.*

*If it is fit for purpose, there are no issues.*

### Christine &/or Phil

*Can you provide any guidelines provided to School/ the Education Sector in general around Training links and /or packages/ Best practise for Schools around these areas (restraint seclusion) that were available at the time of these incidents.*

*Finally for Christine – Can you provide a draft for the general Guidelines currently under construction for National roll out regarding Seclusion and Restraint for attachment to the file please.*

Aug 2016 - Crown Law Opinion was provided to the MoE Advisory Group on 15<sup>th</sup> August.

Sep 2016 – Police follow up request for guidelines with Christine Menzies and Phil Straw.

Sep 2016 – Police file notes 12/09/2016 13:54

- **Receive draft Seclusion and Restraint Policy from MoE as attached**  
**Note – This document is a draft only and not for release without first seeking MoE approval as a courtesy.**  
**Christine MENZIE is the source.**

Sep 2016 – Significant changes to NZ education proposed – Parliament published 12 September 2016

- **A Supplementary Order Paper (proposed amendment) has been introduced to the bill, which proposes to make two changes: Ban enforced seclusion of a student; and Limit the use of physical restraint of a student.**

Sep 2016 – Terri Johnstone investigates Parent Complaint at Miramar Central School, Wellington

- The MoE 'draft' Seclusion Guidelines are used for Investigation Report
- "it is unfair to judge Miramar in relation to these guidelines (draft Seclusion Guidelines) as they are not yet published. This means that Miramar Central School, along with all New Zealand Schools, would have been unable to reference these guidelines and therefore would have had few parameters from which to draw their timeout room processes and policies."

Nov 2016 – Education Minister Hekia Parata publicly announces banning use of seclusion in schools and issues MoE Guidance.

" Mar 2017 – Police Report D/SGT CAMERON

- "With regard Lawfulness JOHNSTONE states at Page 21 paragraph 6 that "Ruru Specialist School's criteria for removing a child to a safe room does not appear to be unlawful."
- **"Ministry of Education – Christine MENZIES – District Manager, Southland identified that, at the relevant time, no National Guidelines were in existence with regard Restraint and Seclusion and that individual Schools were responsible for establishing their own Policies as determined by their Board of Trustees. Any breach of Policy was thus a matter for the individual School."**
- "Finally, it is in my view, appropriate to comment on the tenacity and passion of the complainants in this matter – length of this report is an indicator of the complexity of the matter alleged, as they relate to the question of whether seclusion in an educational setting could be considered to be unlawful and – whilst the outcome of the investigation may be a source of some disappointment to them – it should be acknowledged that without their determination, it is entirely possible that National Guidelines developed for the Education sector, in regard the use of Seclusion may have yet remained a notion still to be acted on."

Mar 2017 – Detective Inspector Steve WOOD sends letter to Turnbills

- "We noted the 'Catalyst for Change' Document, authored by Terri JOHNSTONE and have acknowledged her criticism of the schools seclusion room and of the associated practise and procedures. We also acknowledged that in regard to lawfulness, she states on Page 21,



paragraph 6, that Ruru Specialist School's criteria for removing a child to a safe room "does not appear to be unlawful."

Jul 2023 – Turnbolls make a complaint against Christine Menzies to New Zealand Police.

- Christine Menzies was deceptive and withheld MoE Guidelines from Police during the 2016-17 Ruru School Allegations of Physical and Emotional Abuse Investigation.

Sep 2023 - NZ Police Job Sheet 12/09/23 – released under OIA

- "3/8/23 Travel to Invercargill"
- "Meet with Christine Menzies at Ministry of Education offices".  
"Guidelines – Christine was aware of the guidelines that were about at the time however believed these were not policy and thought it was a small booklet however was not available in all schools."  
Christine states – "I have never had any intention to impede the criminal investigation, and I always sort authority or legal advice before releasing any information"

Sep 2023 – Detective Inspector Shona Low sends letter to Turnbolls dated 6 September 2023"

- "I am comfortable Ms Menzies did not have any intent to deceive Police in terms of these guidelines"

Oct 2023 –Turnbolls arrange to meet with Shona Low and submit 12 questions prior to the meeting (as requested by Shona Low)

Example:

Q 3. *Did you check any of the 3 reasons Christine Menzies gave you for not providing D/S Cameron the current/existing guidelines (not policy, small booklet, not available in all schools), when he requested them during the 2016/17 potential mass allegations investigation?*

*This is what we know:*

- a. Education Act: requires schools to follow Ministry of Education policies and guidelines (Schools and the Right to Discipline – sponsored by Wellington Community Law and Office of the Children's Commissioner)*
- b. 1998 Ministry of Education Guidelines (updated 1999, 2005) 54 pages – 'draft' Seclusion Guidelines (Christine Menzies provided Police) 14 pages, 2016 Guidance 16 pages, 2017 Guidelines 21 pages, 2023 Guidelines (Reviewed) 61 pages*
- c. Ministry of Education under OIA – the 1998 version of the document **was sent to all schools in hard copy**. Hard copies of the publication were also available to Ministry behaviour practitioners.*

Shona Low responded:

*"She's (Christine Menzies) never had the intention to do anything."*

*"Never any intention."*

Callum asked: How did you come up with the 'no intention'

Shona responded: *"Well just her, just the way, like how she is."*

Shona Low states during the meeting:

- "I've got to believe what she tells me."
- "I believe what she said. Let's just leave it at that."
- "I'm not going back to her because the Ministry of Education have told you - no more."

Shona Low went as far to say, "It's not an offence to tell us a lie."

Oct 2023 – Turnbulls send Shona Low – Legal Issues Paper written by Terri Johnstone, Project Lead – MoE Advisory Group



---

**From:**  
**Date:** Sunday, 2 July 2023 6:09 p.m.  
**To:** <Andrew.Coster@police.govt.nz>  
**Attach:** IM0EDC~1.PDF  
**Subject:** Fw: Complaint - Christine Menzies, Ministry of Education Representative

Our email to Police (that you were cc'd into) was returned/rejected. Could you please see our complaint gets to the appropriate people.

Thank you.  
Callum & Victoria Turnbull

**From:**  
**Sent:** Sunday, July 2, 2023 2:19 PM  
**To:** [information@police.govt.nz](mailto:information@police.govt.nz)  
**Cc:** [Andrew.Coster@police.govt.nz](mailto:Andrew.Coster@police.govt.nz) ; [g.andersen@ministers.govt.nz](mailto:g.andersen@ministers.govt.nz) ;  
**Subject:** Complaint - Christine Menzies, Ministry of Education Representative

To New Zealand Police

Please accept the attached letter and information as a formal complaint.

Regards  
Callum and Victoria Turnbull

..

---

**From:** "Police" <Police.portfolio@parliament.govt.nz>  
**Date:** Thursday, 31 August 2023 4:19 p.m.  
**To:**  
**Cc:** "Police" <Police.portfolio@parliament.govt.nz>  
**Subject:** Ministerial Response re: Complaint - Christine Menzies, Ministry of Education Representative

Kia ora Callum and Victoria

Thank you for your patience on this matter.

I have received confirmation from Police National Headquarters that they have received your correspondence. I have been advised that you can expect a response from Police by 6 September 2023.

We seek to apologise for the delay and thank you once again for taking the time to write.

Kind regards,

Georgina



**Georgina**

Police – Correspondence Administrator  
Office of Hon Ginny Andersen  
Minister for the Digital Economy and Communications | Minister of Justice  
Minister for Police | Minister for Seniors | Minister for Small Business  
Associate Minister for Treaty of Waitangi Negotiations  
Website: [www.Beehive.govt.nz](http://www.Beehive.govt.nz)  
Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand

**From:**  
**Sent:** Monday, 28 August 2023 1:11 PM  
**To:** Police <Police.portfolio@parliament.govt.nz>  
**Subject:** Re: Ministerial Response re: Complaint - Christine Menzies, Ministry of Education Representative

Good afternoon Georgina

We appreciated your response to our complaint against Christine Menzies, who represented the Ministry of Education during the 2016-2017 Police investigation into abuse allegation at Ruru Specialist School. However, we have not received any response from Police, or any notification that Police have, or are considering the complaint. We were hoping you may be able to follow this up with Police National Headquarters, or provide us with a contact.

For your information/interest we are forwarding you our statement to the Royal Commission under separate e-mail.

Look forward to your reply.

Regards  
Callum and Victoria

**From:** Police  
**Sent:** Thursday, July 6, 2023 3:52 PM



**To:** \_\_\_\_\_  
**Cc:** Police  
**Subject:** Ministerial Response re: Complaint - Christine Menzies, Ministry of Education Representative

Kia ora Callum and Victoria

On behalf of the Minister of Police, I acknowledge your email of 2 July 2023, concerning your attached letter of complaint.

What you have outlined is distressing and I thank you for taking the time to highlight your concerns with us. Your correspondence and attached letter are believed to be more closely aligned with the functions of New Zealand Police. Therefore, we have transferred your matter onto Police National Headquarters to consider.

Thank you for taking the time to contact the Minister of Police.

Ngā mihi  
Georgina



**Georgina**

Police – Correspondence Administrator  
Office of Hon Ginny Andersen  
Minister for the Digital Economy and Communications | Minister of Police  
Minister for Seniors | Minister for Small Business  
Associate Minister for Treaty of Waitangi Negotiations  
Website: [www.Beehive.govt.nz](http://www.Beehive.govt.nz)  
Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand

**From:** \_\_\_\_\_  
**Sent:** Sunday, 2 July 2023 2:19 PM  
**To:** [information@police.govt.nz](mailto:information@police.govt.nz)  
**Cc:** [Andrew.Coster@police.govt.nz](mailto:Andrew.Coster@police.govt.nz); G Andersen (MIN) <[G.Andersen@ministers.govt.nz](mailto:G.Andersen@ministers.govt.nz)>;  
<[\\_\\_\\_\\_\\_@abuseincare.org.nz](mailto:_____@abuseincare.org.nz)>  
**Subject:** Complaint - Christine Menzies, Ministry of Education Representative

To New Zealand Police

Please accept the attached letter and information as a formal complaint.

Regards  
Callum and Victoria Turnbull

---

---

Callum J \_\_\_\_\_

Victoria \_\_\_\_\_

2 July 2023

To New Zealand Police

information@police.govt.nz

Please accept this letter as a complaint against Christine Menzies, Southland when she represented the Ministry of Education during the interagency response to the Potential Mass Allegation Investigation – ***Ruru School Allegations of Physical and Emotional Abuse*** in 2016-17.

1. Christine Menzies had conflict of interest

- Previously, we had raised concerns in a complaint letter to the Education Minister, about information/evidence Christine Menzies provided the Ministry of Education during their 2015 *Investigation into Complaint Ruru School Invercargill*.
- Christine Menzies was District Manager and was responsible for Ministry of Education staff - staff that were to reduce any inappropriate use of time-out in school settings.

2. Christine Menzies was deceptive and withheld Guidelines from Police (Refer attachment 2 OIA)

- Christine Menzies withheld, from Police, Ministry of Education 1998 Guidelines *Managing Extreme Behaviour in Schools* (current at the time) which stated - ***Timeout rooms should not be used.***
- Christine Menzies provided Police draft *Seclusion Guidelines*, which allowed for seclusion in schools. The draft was never promulgated and was scrapped soon after she sent it to Police.
- In October 2016, the Ministry of Education issued *Guidance for New Zealand Schools on Behaviour Management to Minimise Physical Restraint*, replacing the 1998 Guidelines. The Guidance stated, ***Seclusion should no longer be used in New Zealand schools.*** (Refer attachment 1.)



Not only did Christine Menzies withhold the 1998 Guidelines from Police – she did not notify Police the draft *Seclusion Guidelines*, that she had provided, was scrapped. Nor did she provide Police with the new October 2016 Guidance.

During the 2016-17 Police Investigation, seclusion in schools was highlighted in media and in early November 2016, the then Education Minister Hekia Parata announced, “seclusion rooms and the practice of seclusion is not acceptable and will be made illegal.” At the same time, she publicly advised the issuance of the new Guidance, by the Ministry of Education.

Despite the public announcements and media attention and even though Police requested to be informed and updated by Christine Menzies (and other agencies), Police did not receive, refer to, or use, current or correct Ministry of Education Guidelines when investigating our complaints against Ruru Specialist School. Instead, an invalid draft, which was in stark contrast to Ministry of Education Guidelines, that existed, was used and referenced by Police.

3. Christine Menzies was involved with a secret witness/whistle blower because Police provided Christine Menzies with this person’s name and contact information and soon after this happened, the secret witness cancelled their planned interview with Police.

During the Abuse in Care Royal Commission of Inquiry 2022 hearing, Ministry of Education head, Iona Holsted was asked by lawyer Michael Thomas, “Would the Ministry regard it (seclusion) as an abusive practice?” The Secretary for Education responded, “Yes, because it’s a form of abuse, it went into the law.”

The deception from Christine Menzies Ministry of Education, had a major impact on the outcome of the Police Investigation and was an attempt to cover-up the cruel and inhumane punishment used by staff and management at Ruru Specialist School in Invercargill.

Yours sincerely



Callum and Victoria Turnbull

cc [Andrew.Coster@police.govt.nz](mailto:Andrew.Coster@police.govt.nz)

[g.andersen@ministers.govt.nz](mailto:g.andersen@ministers.govt.nz)

[abuseincare.org.nz](http://abuseincare.org.nz)

Attachment 1.

**From:** "Ed Act Update" <EdAct.Update@education.govt.nz>  
**Date:** Thursday, 22 March 2018 12:05 p.m.  
**To:**  
**Subject:** RE: Banning seclusion and creating a legal framework for physical restraint

Kia ora Victoria,

Thank you for your email regarding our fact sheets on the amendments relating to seclusion and restraint last year.

We are currently updating this material to clarify that the Ministry did not consider seclusion an appropriate tool in behaviour management prior to the law change.

Thank you for bringing this to our attention.

Ngā mihi,

**Anna Kidd | Ed Act Update Mailbox | Ministry of Education |**  
 33 Bowen St, Wellington

[education.govt.nz](http://education.govt.nz) | Follow us on Twitter: @EducationGovtNZ

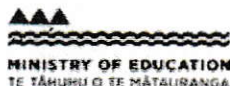
We get the job done Ka oti i a mātou ngā mahi

We are respectful, we listen, we learn He rōpū manaaki, he rōpū whakarongo, he rōpū ako mātou

We back ourselves and others to win Ka manawanui ki a mātou, me ētahi ake kia wikaoria

We work together for maximum impact Ka mahi ngātahi mā te tūkinga nui tonu

Great results are our bottom line Ka ngā huanga tino pai ā mātou whāinga mutunga



**From:**  
**Sent:** Friday, 16 March 2018 2:14 p.m.  
**To:** Ed Act Update <EdAct.Update@education.govt.nz>  
**Subject:** Banning seclusion and creating a legal framework for physical restraint

Good afternoon

**I refer to the Ministry of Education Quick Guide "Seclusion of a child or young person is no longer an acceptable tool in behaviour management..."**

The wording in this overview of changes relating to the Education Act Update, is misleading and suggests that the use of seclusion has previously been acceptable, when this is not true.

*I refer to the 1998 Ministry of Education Guidelines on Managing Extreme Behaviour in Schools, Timeout rooms should not be used. They are not necessary and can result in teachers and schools being accused of using inhumane and cruel punishments, and 2007 Ministry of Education Time-out and Physical Intervention Practice Guidelines, The Ministry of Education, Special Education does not recommend any form of time-out procedure in an Early Childhood/School setting, which involves a child/young person being shut in a room, or screened area, by him or herself without any way of getting out unless someone comes to release them. This is a form of isolation (seclusion) and is not an appropriate practice in an Early Childhood/School setting.*



I suggest that just because there is no law against using a specific restrictive practice, that does not make that practice acceptable. In fact, the use of seclusion has been described as 'intolerable' by former Education Minister Hekia Parata, and Education Minister Hon Chris Hipkins recently wrote to me stating "The use of seclusion rooms is of course absolutely unacceptable in the 21st century."

Please review the wording in documentation, guides and overviews to reflect the point I have raised.

Thank you.  
Victoria Turnbull

1998

Ministry of Education guidelines **Managing Extreme Behaviour in Schools** (I. Dunckley) was published and distributed to all schools.

Nov

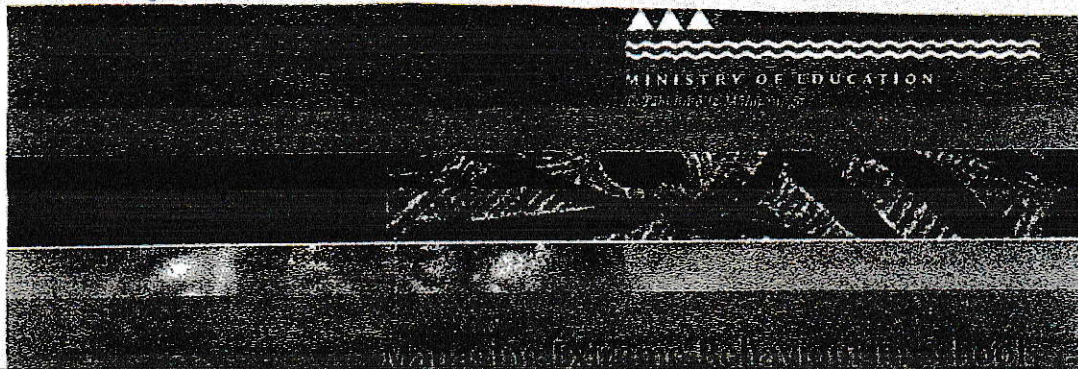
1999

Ministry of Education guidelines **Managing Extreme Behaviour in Schools** (I. Dunckley) was revised.

July

2005

Ministry of Education guidelines **Managing Extreme Behaviour in Schools** (I. Dunckley) was revised and updated. The updated 2005 version of the guideline was sent to all schools in hardcopy. Hard copies of the publication were also distributed to Ministry staff and management.



It is important to avoid actions that are likely to be emotionally or physically distressing to a student. These actions are aversive and can place both students and staff at risk:

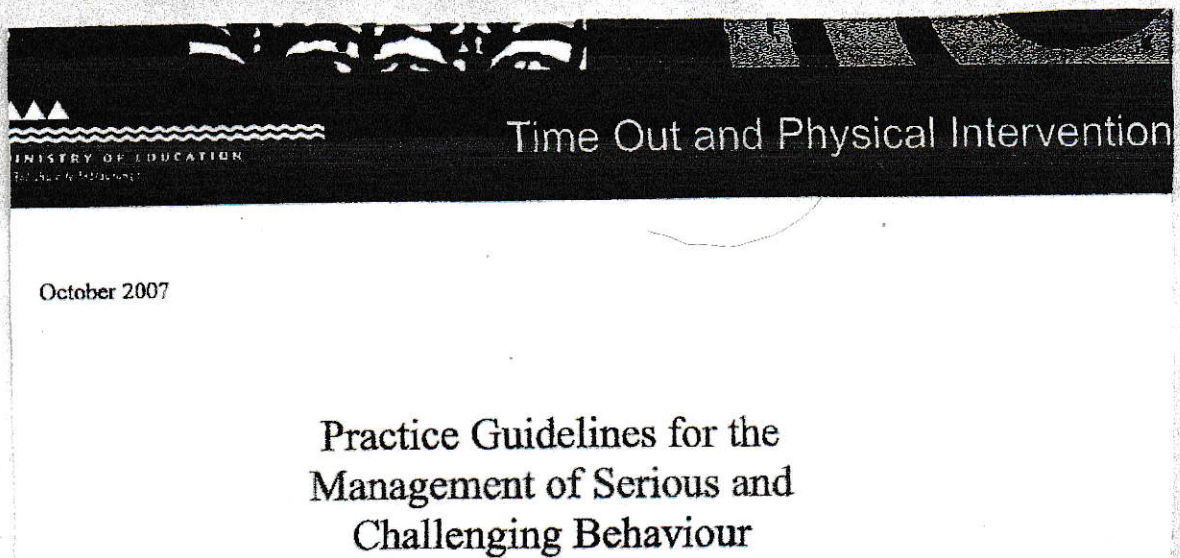
- shutting students into rooms where they can't get out

Timeout rooms should not be used. They are not necessary and can result in teachers and schools being accused of using inhumane and cruel punishments.

Oct

2007

Ministry of Education internal document – **Practice Guidelines for the Management of Serious and Challenging Behaviour** was available to all behaviour staff in the regions.





## BIBLIOGRAPHY

In developing this paper, the RCBI consulted with a range of Ministry of Education, Special Education staff. The RCBI project would like to acknowledge and thank these parties for their support and guidance in the development of this paper.

Dunckley, I. (2006). *Managing Extreme Behaviour in Schools*. Ministry of Education, Special Education

### ISOLATION (SECLUSION)

Sometimes when teachers refer to time-out, they are referring to a procedure, which involves removing the child/young person to a "time-out room". This is one type of time-out and is

discussed in these guidelines under the heading of isolation. Isolation involves placing the child/young person in an environment such as a room, by him or herself for a specified period. This type of time-out is sometimes used as part of a comprehensive home base parenting programme (See: parenting programmes below).

The Ministry of Education, Special Education does not recommend any form of time-out procedure in an Early Childhood/School setting, which involves a child/young person being shut in a room, or screened area, by him or herself without any way of getting out unless someone comes to release them. This is a form of isolation (seclusion) and is not an appropriate practice in an Early Childhood/School setting.

### Types of Restraint

The following examples of restraint are included to demonstrate the definition. They are not listed as recommended practice, as in certain circumstances they would be considered aversive and therefore not recommended. Information in the following section based on the New Zealand: Restraint minimization and safe practice Standards (NZS 8141: 2001).

### SECLUSION (SOLITARY CONFINEMENT)

A child/young person is secluded if he or she is shut in a room or screened area by himself or herself without any way of getting out unless someone comes to release them. The Ministry of Education, Special Education does not recommend any practices involving seclusion (solitary confinement) in Early Childhood/School settings.

27 Feb

2015

Ministry of Education receives Investigation Report from Terri Johnstone into complaints against Ruru Specialist School. The Report is forwarded to the National Office, then confirmation was given for the Investigation Report to be released.

4 Mar

2015

Dear Mr & Mrs Turnbull,

### Re: Investigation – Ruru Specialist School Report

Attached is a copy of the Investigation Report received from the Ministry appointed investigator Ms Terri Johnstone who was engaged to investigate the concerns you raised with the Ministry in December 2014,

The report was received by the Ministry last Friday and is being released to both parties today.



I also contacted the Ministry of Education regarding the use of time out facilities or safe rooms and I have been unable to locate any MOE Guidelines about the use of these spaces.



9 April

2015

Ruru Specialist School lawyer writes to Turnbull's lawyer with knowledge that Ministry are writing new guidelines.

**From:** Tony Irvine [i]  
**Sent:** Thursday, 9 April 2015 7:28 p.m.  
**To:** Helen Coutts  
**Subject:** Turnbull - Ruru School

Hi Helen

I have attached the response and comments to the report by Terri Johnstone sent to Murray Roberts, for your information.

As you can see, the Ministry have written guidelines which have not been promulgated. However, at the

18 April

2015

18 April 2015

Murray Roberts  
Regional Manager  
Special Education Southern  
Ministry of Education  
Email: [Murray.Roberts@minedu.govt.nz](mailto:Murray.Roberts@minedu.govt.nz)  
**CHRISTCHURCH**

Dear Murray,

**Re: Jonathan H M Eaton QC 'Response to Investigation into Complaint Ruru School February Report'**

said that the rooms themselves were either lawful, or unlawful. I have also been unable to find clear guidelines on the use of safe rooms on the Ministry of Education website. While I

and my concerns around the use of these rooms as well as the physical space itself, that I recommend a National Working Party to further investigate the use of such spaces and to develop a Code of Best Practice regarding the use of such spaces. I captured the experiences

Yours sincerely,

Terri Johnstone

Dec

2015

Turnbull's complaint to IPCA (against Police) upheld

31 May

2016

**RURU SCHOOL ALLEGATIONS OF PHYSICAL AND EMOTIONAL ABUSE**

INTERAGENCY MEETING CONDUCTED 31 MAY 2016 AT 1100hrs OFFICE OF THE MINISTRY OF EDUCATION, INVERCARGILL BRANCH.

**PRESENT**

Brian CAMERON –	Police
Christine MENZIES –	MoE
Jan OSTER –	CYFS
Phil STRAW –	Education Council (By phone)

1. Initial call for any conflict of interest to be declared – none arising.

NZ Police  
OIA Section  
Private bag 1824  
Date: 31 May 2016



7. Discussion of MoE development of 'Guidelines' around restraint and Seclusion which will provide for a written definition of seclusion -not previously stated

31 May  
2016

Guidelines<sup>u</sup> - restraint  
MOE 2007 - Seclusion.  
now updated

NZ Police  
C.I.A. Section  
Private Bag 1024  
Dunedin 9104

MoE - guidelines [no definition of seclusion previously.]

1 Aug  
2016

**From:** CAMERON, Brian  
**To:** Jan Oster; "Phil Straw"; Christine Menzies  
**Bcc:** BOURNE, Richard (Rick)  
**Subject:** RE: Ruru School Historic allegation of physical abuse - TURNBULLS  
**Date:** Monday, 1 August 2016 10:44:00 a.m.

All,

To provide an update on this matter read as follows;

#### **The Room**

I have been unable to identify any legislation or industry guidelines that dictate how a Safe (or Seclusion) Room in an educational facility is to be set up or constructed. ***If any of you have information that would assist it would be appreciated.***

#### **Further information sought**

#### **Christine &/or Phil**

Can you provide a complete Staffing List for Ruru School since 2011

Can you provide any guidelines provided to Schools/ the Education Sector in general around Training links and/or packages/ Best practise for Schools around these areas (restraint seclusion) that were available at the time of these incidents

Are there any accredited trainers in these areas that you recommend Schools use regard the whys and wherefores of restraint seclusion?

Finally for Christine - Can you provide a draft for the general Guidelines currently under construction for National roll out regarding Seclusion and Restraint for attachment to the file please.

Any questions please come back to me.

Kind regards

Brian

**Brian Cameron**  
**Detective Sergeant | Queenstown/Wanaka | Otago Lakes Central Investigations | New Zealand Police**  
☎ 03 441 1625 | Ext 34625 | ✉ bcc990@police.govt.nz | 📧 Queenstown CJU | PO Box 45 | Queenstown 9300 | New Zealand



10 Aug

2016

NZ Police  
OIA Section  
Private & Confidential  
Email: oia@nzpolice.govt.nz

**From:** Christine Menzies  
**To:** CAMERON, Brian  
**Subject:** RE: Ruru School Historic allegation of physical abuse - TURNBULLS  
**Date:** Wednesday, 10 August 2016 4:17:38 p.m.

Hi Brian

I am still working on obtaining some further information. In the meantime I can advise as below

Can you provide a complete Staffing List for Ruru School since 2011

- The Board of Trustees will be able to provide you with this information

Can you provide any guidelines provided to Schools/ the Education Sector in general around Training links and/or packages/ Best practise for Schools around these areas (restraint seclusion) that were available at the time of these incidents

- The previous guidelines that I referred to in our face to face meeting were, as I have discovered, an internal draft for Ministry employees only, so Ruru School staff and Board did not have had access to them

Can you provide a draft for the general Guidelines currently under construction for National roll out regarding Seclusion and Restraint for attachment to the file please.

- I will send this documentation on to you separately from this email but I am attempting to obtain the latest draft for you. Further work is occurring on these at the moment which means that it will be only a draft. Please let me know if will be helpful to have the draft or you wish to wait until the final document is available

Thanks Christine

11 Aug

2016

NZ Police  
OIA Section  
Private & Confidential  
Email: oia@nzpolice.govt.nz

**From:** CAMERON, Brian  
**To:** 'Christine Menzies'  
**Subject:** RE: Ruru School Historic allegation of physical abuse - TURNBULLS  
**Date:** Thursday, 11 August 2016 10:54:00 a.m.

Hi Christine,

That has been most helpful thank you.

In regard the Draft v final – I am happy with a draft but if the final is not far away it can wait. I have been advised that the school staff have elected to engage a Solicitor who is now out of NZ and unavailable to offer advice until early September, so if the document will be finalised within the next 8 weeks or so it can wait.

Kind regards

Brian

Brian Cameron

Detective Sergeant | Queenstown/Wanaka | Otago Lakes Central Investigations | New Zealand Police

☎ 03 441 1625 | ✉ brc990@police.govt.nz | 📍 Queenstown CIU | PO Box 45 | Queenstown 9300 | New Zealand



8 sept

2016

**From:** CAMERON, Brian [  
**Sent:** Thursday, 8 September 2016 12:30 p.m.  
**To:** Jan Oster; 'Phil Straw'; Christine Menzies  
**Cc:** BOURNE, Richard (Rick)  
**Subject:** RE: Ruru School Historic allegation of physical abuse - TURNBULLS

In the meantime Christine – I am still awaiting the information from your Office per our prior emails – are you able to provide any update please?

**From:** Christine Menzies  
**To:** CAMERON, Brian  
**Subject:** RE: Ruru School Historic allegation of physical abuse - TURNBULLS  
**Date:** Thursday, 8 September 2016 3:01:43 p.m.  
**Attachments:** [FINAL with all signatures - Seclusion Guide 24 August.docx](#)  
[FINAL with all signatures - Physical Restraint Guide 24 August.docx](#)

Hi Brian

Please find attached the two guidelines which are still in draft form. It is expected that these will be provided to schools later this month but there is no confirmed date as yet. If there is specific information you still require please let me know. There were a couple of other matters I was checking but I have no update as yet.

Regards

Christine

Christine Menzies | District Manager

## Transitional guidance for New Zealand schools as we work towards the elimination of seclusion

FINAL Draft version

updated 2 August 2016 (Di)

### Guidance if you have to use seclusion

- Seclusion should be justifiable in the circumstances and it should be proportionate to the level of risk.
- When a student has been placed in seclusion, work towards getting them out of seclusion as soon as possible.
- Only permit designated staff members who are trained in physical restraint and seclusion procedures, and in emergency first aid, to seclude a student.
- A staff member must monitor the student's physical and emotional wellbeing continuously. They must be able to see and hear the student at all times.
- Offer water to the student during and after seclusion.
- End seclusion as soon as the conditions or behaviours which caused the need for seclusion stop, and the imminent danger is no longer present.



## The seclusion room

*In rare situations, when seclusion is part of an Individual Behaviour Plan, the room used for seclusion must provide for the student's welfare.*

8 Sept  
2016

- The seclusion room must have an unbreakable observation window so the student can be monitored, watched and heard continuously. It must have adequate ventilation and lighting.
- The room must be reasonably sized, have soft, fixed furnishings and be free of potential safety hazards.

Page | 6

Transitional guidance for New Zealand schools as we work towards the elimination of seclusion

Oct

2016

Minister of Education Hekia Parata directs the Ministry of Education to end the work on Seclusion Guidelines.

3 Nov

2016

Education Minister Hekia Parata announces that she is proposing to make the use of seclusion in schools illegal.

Acting Secretary for Education issues Guidance for New Zealand Schools and sends a letter to all schools to make the expectation clear that no school should be using seclusion.

The new Guidance replace existing Ministry of Education 1998 guidelines – Managing Extreme Behaviour in Schools.



# Guidance for New Zealand Schools on Behaviour Management to Minimise Physical Restraint

October 2016



## What is seclusion?

3 Nov

Seclusion is when a student is involuntarily placed alone in a room, at any time or for any duration, from which they cannot freely exit. The door may be locked, blocked or held shut.

2016

This may occur in any room that is lockable or, even if not locked, where a level of authority or coercion leads to a student believing that they must not or cannot exit the room in which they are confined.

When used in this way, seclusion has no therapeutic value nor does it promote mental and physical wellbeing. It also creates serious health and safety risks if a child cannot leave a locked or blocked room if there is an emergency such as a fire. In the event of something like this occurring this action would be a serious breach of the Health and Safety Act.

Seclusion has been associated with trauma and injury (sometimes self-inflicted). All staff should be aware of the possible effects of seclusion on a student's wellbeing. They should also understand that seclusion can no longer be used.

2 Dec

2016

**From:** CAMERON, Brian  
**To:** Christine Menzies; "Phil Straw"; Jan Oster  
**Bcc:** BOURNE, Richard (Rick)  
**Subject:** Ruru School - INTERAGENCY UPDATE  
**Date:** Friday, 2 December 2016 1:14:00 p.m.

I am aware that this matter is now one of several complaints across the Country as regards restraint and seclusion and would ask that if any of you have received any information that may either impact on, or be relevant to, this inquiry, you make contact with me to discuss.

Kind Regards

brian

**Brian Cameron**

**Detective Sergeant | Queenstown/Wanaka | Otago Lakes Central Investigations | New Zealand Police**

☎ 03 441 1625 | Ext 34625 | ✉ [bco990@police.govt.nz](mailto:bco990@police.govt.nz) | 📍 Queenstown CIU | PO Box 45 | Queenstown 9300 | New Zealand

11 Jan

2017

**From:** CAMERON, Brian  
**To:** Christine Menzies; "Phil Straw"; Jan Oster  
**Bcc:** BOURNE, Richard (Rick)  
**Subject:** Ruru School - inter agency update  
**Date:** Wednesday, 11 January 2017 10:57:00 p.m.

All,

I hope you have enjoyed your break. Sorry for not contacting you sooner in the month.

I am writing to advise that the Police investigation into this matter is at an end - subject to a review of my final (DRAFT) report - which will be submitted on Monday 16<sup>th</sup> Jan to my Supervisor.



March

2017

Police Report refers to "draft" seclusion guidelines, for the Police Investigation, which were never promulgated. Police ended Report stating – it should be acknowledged that without their (Turnbolls) determination, it is entirely possible that National Guidelines developed for the Education Sector, in regard to the use of seclusion (as at 14.) may have yet remained a notion still to be acted on.



NZ Police

POL 258 06/16

## REPORT FORM


SUBJECT: RURU SPECIALIST SCHOOL

ADDRESS: 19 RURU STREET, INVERCARGILL

TEXT: REINVESTIGATION INTO ALLEGATIONS OF ASSAULT AND UNLAWFUL DETENTION

D/Insp Wood  
Crime Manager  
Southern:

This is a Comprehensive report that covers the investigation carried out by SAs Cameron.  
I do not intend to go through the report, but agree with his conclusion that the file can be cleared as a K3.  
For your information and recommendation.

  
Malcolm Inglis  
Det S/Sgt MI6145

8.3.17

13.3 Ministry of Education – Christine MENZIES – District Manager, Southland identified that, at the relevant time, no National Guidelines were in existence with regard Restraint and Seclusion and that individual Schools were responsible for establishing their own Policies as determined by their Board of Trustees. Any breach of Policy was thus a matter for the individual School.

14.3 The document in regard Seclusion provides (at page 5) for guidance in the continued use of Seclusion as well as a clear design for any room used for that purpose (as at page 6) whilst clearly expressing the desire for the eventual elimination of the practice.



Aug

2017

  
MINISTRY OF EDUCATION  
TE TAHUHU O TE MATAURANGA

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

AUGUST 2017

The guidelines also make it clear that under the legislation seclusion is prohibited and must not be used in New Zealand schools.

---



## **Southern District**

Southern District Headquarters, 25 Great King Street, Dunedin

---

6 September 2023

Callum and Victoria Turnbull

By email:

Dear Callum and Victoria

My apologies for the delay in responding to your complaint dated 02 July 2023, I have been overseas.

In terms of the complaint you have made against Christine Menzies, I am able to respond to your points 2 and 3. The complaint about Christine Menzies having a conflict of interest has been forwarded to the Ministry of Education to respond to as it does not involve an allegation of criminal offending.

I have spoken to Ms Menzies in relation to the matters you raise, in particular the allegation that she was deceptive towards Police which directly affected the outcome of the result of the police investigation, and that she was involved with the secret witness causing this person to not make a statement to Police.

In relation to any deception, I am comfortable Ms Menzies did not have any intent to deceive Police in terms of these guidelines and the subject of the revised guidelines which were released in late 2016. Ms Menzies always sought authority or a legal advice before releasing any documents. Regardless of these guidelines or the revised guidelines/policy, the outcome of the Police investigation would not have changed.

Ms Menzies was not aware and has no memory of the secret witness.

This journey has and clearly continues to be a difficult one for you both, however I want to acknowledge that your efforts have resulted in significant change to the way children who have learning / behaviour challenges are treated within specialist schools.

### **Southern District Headquarters**

25 Great King Street, Dunedin, 9016, New Zealand.  
Telephone: 03 471 4800. [www.police.govt.nz](http://www.police.govt.nz)





NEW ZEALAND  
**POLICE**  
Ngā Pirihimana o Aotearoa

If you think it would assist, I am happy to meet with you in person to discuss the criminal aspect of this investigation. Please let me know if you would like me to arrange this?

Yours sincerely

**Detective Inspector Shona Low**  
District Manager Criminal Investigations  
Southern District Police  
Phm: \_\_\_\_\_

**Southern District Headquarters**

25 Great King Street, Dunedin, 9016, New Zealand.  
Telephone: 03 471 4800. [www.police.govt.nz](http://www.police.govt.nz)



NEW ZEALAND  
**POLICE**  
Ngā Pirihimana o Aotearoa

**NZ POLICE**  
**JOB SHEET**

Page 1

---

**SUBJECT:** Turnbull

---

**DATE/TIME**

3/8/23      Travel to Invercargill

1100 hrs      Meet with Christine Menzies at Ministry of Education offices.

Discuss complaint made by Callum and Victoria Turnbull in relation to 2 matters relating to the Ruru School investigation.

**Guidelines**

Christine was aware of the guidelines that were about at the time however believed these were not policy and thought it was a small booklet however was not available in all schools.

**Secret Witness**

Christine was unaware of the secret witness or any memory of the secret witness. She never had contact with this person.

**Christine states**

"I have never had any intention to impede the criminal investigation, and I always sort authority or legal advice before releasing any information"

---

Name: Shona LOW  
Rank: Detective Inspector DCM  
Reg No: D625  
Date: 12/09/23

Checked By:  
Rank:  
Date://



Reference IR-01-23-29002



# OIA - Police File

11/01/16

---

Created by BCG990 22/09/2016 11:03

Receive email and speak with by phone ERO- Shan PATHER and Mark EVANS following an OIA request made by TURNBULLS re the 2016 review of Ruru School.

---

Created by DWJ096 13/09/2016 15:08

receive email from jan OSTER (CYF) relating to an email conversation between herself and Victoria TURNBULL over an historic query arising from the original CYF involvement only

---

Created by BCG990 12/09/2016 13:54

receive draft Seclusion and Restraint Policy from MoE as attached

Note - This document is a draft only and not for release without first seeking MoE approval as a courtesy.

Christine MENZIE is the source.

---

Created by BCG990 12/09/2016 13:44

Receive email response from Garth GALLAWAY (school solicitor) advising he is sourcing the requested information re staff list as previously requested.

Email sent to TURNBULLS advising of contact with DAWKINS

---

Created by BCG990 12/09/2016 13:43

C:\Users\BCG990-1.POL\AppData\Local\Temp\283770080220-CaseSummaryReport.rtf

# Significant changes to NZ education proposed

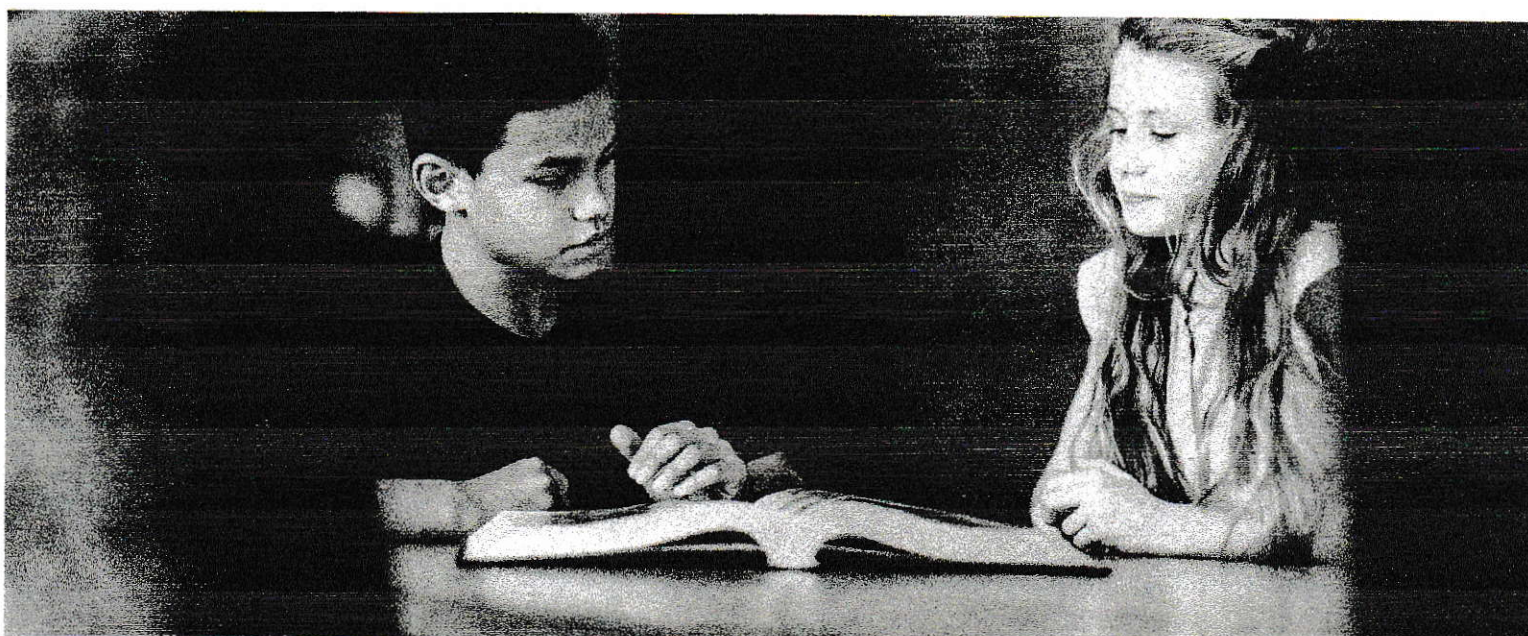
Home » Get Involved » Topics » Topic archive » Significant changes to NZ education proposed

Metadata

Originally published: 12 September 2016

The Education (Update) Amendment Bill aims to bring about significant changes to the way children are educated in New Zealand.

Get notifications



## Details

Education (Update) Amendment Bill ([https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/00DBHOH\\_BILL69778\\_1/education-update-amendment-bill](https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/00DBHOH_BILL69778_1/education-update-amendment-bill))



MP in charge  
Kaye, Nikki

## What is the bill about?

This bill seeks to amend the Education Act 1989, with objectives for the education system in the early childhood and schooling sectors.

The aims of the bill are to:

- make the achievement and learning of children and young people central to the early childhood education and compulsory schooling parts of the Act
- strengthen the efficiency, effectiveness, and accountability of schools and the schooling network
- enhance collaboration within the schooling network



- increase flexibility in the enrolment and attendance requirements for the first year of learning
- strengthen the legal framework for managing teacher competence issues
- establish a future-focused legislative framework for online learning
- update aspects of the law that have become outmoded or inefficient
- improve the provision of careers services by the Government.

## What does the bill mean?

The bill will affect many different areas of Education in New Zealand such as:

- The bill provides for a government statement, the National Education and Learning Priorities, setting out its objectives for education.
- Early childhood education (ECE) providers, schools and kura will have set objectives through the help of the government statement.
- There is an option for parents and schools to enrol new entrants on the first day of a term closest to the child's fifth birthday. At the earliest, children could start up to eight weeks before they turn five, although parents will still have the option to delay their child starting at school until their sixth birthday.
- The bill seeks to modernise online learning through the establishment of communities of online learning. These communities may be served through tertiary institutions or even private providers.
- The bill seeks to expand the current power of school boards to work for other education services in a community of learning. For example, a school board could provide accounting services to an ECE or another school or kura.
- The bill proposes giving the Minister of Education powers to combine school boards to resolve any ongoing issues.

## Seclusion and physical restraint

A Supplementary Order Paper (proposed amendment) has been introduced to the bill, which proposes to make two changes:

- Ban enforced seclusion of a student; and
- Limit the use of physical restraint of a student.

Get more detailed information about the bill on the Legislation website

([http://www.legislation.govt.nz/bill/government/2016/0160/latest/d56e2.html?](http://www.legislation.govt.nz/bill/government/2016/0160/latest/d56e2.html?search=ts_act%40bill%40regulation%40deemedreg_Education+(Update)+Amendment+Bill+resel+25+a&p=1)

[search=ts\\_act%40bill%40regulation%40deemedreg\\_Education+\(Update\)+Amendment+Bill resel 25 a&p=1\).](http://www.legislation.govt.nz/bill/government/2016/0160/latest/d56e2.html?search=ts_act%40bill%40regulation%40deemedreg_Education+(Update)+Amendment+Bill+resel+25+a&p=1)

## Who might this affect?

- Educational organisations
- Education providers



- Children

## What did the committee recommend?

The majority of the Education and Science Committee recommend amending the bill. Some of the recommendations are to:

- Allow only a student and his or her parents to request to attend a board meeting about a suspension through a telephone conference or video link
- Ensure that the limits on the use of physical restraint would also apply to private schools
- Physical restraint must be proportionate and reasonable in the circumstances
- Change the commencement date of the bill to 28 April 2017 unless a later date is provided for
- Specify the extent to which entities operating a community of online learning must have regard to the National Education and Learning Priorities.

Read the committee's report. ([https://www.parliament.nz/en/pb/sc/reports/document/SCR\\_72629/education-update-amendment-bill-160-2](https://www.parliament.nz/en/pb/sc/reports/document/SCR_72629/education-update-amendment-bill-160-2))

## What happens next?

The next step is for the committee's recommendations to be debated by the New Zealand House of Representatives in a second reading debate.

### RELATED TOPICS

[!\[\]\(faf942dc3e59ce8eb64b4ac481eca7e0\_img.jpg\) Read about other changes being proposed to the education system](#)

### Progress of the bill

<b>In</b>	<b>1</b>	<b>SC</b>	<b>2</b>	<b>CH</b>	<b>3</b>	<b>RA</b>
Bill Introduced	First Reading	Select Committee	Second Reading	Committee of whole House	Third Reading	Royal Assent
22/08/16	13/09/16	20/03/17	11/04/17	12/04/17	11/05/17	15/05/17

What do the symbols mean?

To: Shona Low

From: Callum and Victoria Turnbull

Date: 31/10/23

Subject: OIA - Legal Issues, Police Interview, Crown Law

Thanks for meeting with Callum last week.

During the meeting with Callum you mentioned Detective Inspector Steve Wood's **2017** letter to us and D/SGT Cameron's **2017** Police Report. Both refer to and acknowledge the **February 2015** Ministry of Education Report written by Terri Johnstone, who was contracted by the MoE to investigate Ruru Specialist School's use of a timeout/safe room in the school and its lawfulness.

Both quote the **February 2015 Johnstone Report** – Page 21 paragraph 6 that "Ruru Specialist School's criteria for removing a child to a safe room does not appear to be unlawful."

We think it is important to share with you, a (peer reviewed) Paper written by Terri Johnstone in **June 2015** (received recently under OIA).

We wanted to point out the information in this Paper, which she provided to the Advisory Group as Project Lead, is quite different to what she wrote in her Investigation Report a couple of months earlier.

The views in the Paper are also different to those expressed by Police.

We think it is also important to share with you, that Terri Johnstone documented *Interviews with Relevant Stakeholders* in **June 2015**. She interviewed Police and wrote:

*The most significant thing that I took away from this meeting, was that even they as Police, do not have the legislative support to place under 14 year olds in cells.*

It is also relevant to inform you the MoE Advisory Group also was provided a Crown Law Opinion at around the same time D/SGT Cameron was conducting his investigation into our complaint.

Callum and Victoria Turnbull



## **The Use of Physical Restraint and Seclusion in Schools: Legal Issues**

<b>Name</b>	<b>Position</b>	<b>Title</b>
Terri Johnstone	Project Lead	Director, Catalyst for Change Limited
9(2)(a)	Peer Reviewer	Senior Lecturer, University of Canterbury
9(2)(a)	Research Assistant	Masters Student

## Introduction

The intention of this report is to examine the legal issues pertaining to the use of physical restraint and seclusion in schools. This report will be complemented by a series of separate papers, with the intention of each being to: review the literature on seclusion; review the literature on physical restraint; review the current practice of physical restraint and seclusion in New Zealand schools; use national and international guidelines and research to determine best practice; and propose policies and guidelines based on these to promote safe practices of restraint and seclusion within New Zealand schools.

This paper will examine laws and policies from the New Zealand Bill of Rights Act, 1990, the United Nations Convention on the Rights of the Child, the Education Act, 1989, the Crimes Act, 1961, and Health and Safety legislation. It will conclude with a summation of legal issues related to the use of physical restraint and seclusion schools, and make recommendations based upon these.

### New Zealand Bill of Rights Act 1990

When we look at the rights of New Zealanders, including children, the New Zealand Bill of Rights Act 1990 (NZBOR) is the primary document in New Zealand Law. The New Zealand Bill of Rights applies to acts done: *by any person or body in the performance of any public function, power, or duty conferred or imposed on that person or body by or pursuant to law* (Section 3).

Schools derive their powers from the Education Act 1989 as: *...students are required by the Act to attend school, and schools are required by the Act to enrol them, the whole edifice of state education rests on that mandate from the state.*" (Rushmore, The lawful powers of schools - territorial and substantive limits (2001)) Therefore the Bill of Rights Act will apply in the educational context as schools have a duty conferred on them pursuant to the Education Act.

Section 9 of the New Zealand Bill of Rights Act provides that:

*Everyone has the right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment.*

We therefore need to consider whether removing a child from a classroom into a seclusion room or the restraint of a child is cruel, degrading, or whether it could be considered a disproportionate punishment. This needs to be considered in the context of the literature currently being reviewed and in each individual situation. From the review of the literature provided to us for the purpose of this review, it is clear that there is a strong view among psychologists that the very fact that a child is removed and placed in isolation is likely to be considered cruel or a punishment by them. The exception to this would be where this form of treatment was part of a planned intervention programme approved by the professional responsible for treating the child, and even then it is likely that this recommendation would only be very short term (and incidentally, legally still potentially problematic).

The physical restraint of the child, either to remove them from the situation into seclusion, or for some other reason such as to prevent them from lashing out, is also likely to be a breach of section 9 of the NZBOR. This is likely to be done in front of their peers, which is likely to



be considered degrading. Then there is the deprivation of their liberty and isolation in seclusion which is likely to be considered disproportionately severe treatment. The location of the seclusion and nature of the place the child was required to stay would also be relevant. Extreme care would therefore need to be taken both in restraining or removing the child from the situation, and to the location and nature of the seclusion. Consideration would also need to be given to the behaviour of the child and whether the action taken was proportionate to the child's behaviour.

Section 22 of the NZBOR provides that: *Everyone has the right not to be arbitrarily arrested or detained.*

This right relates more to the right to lawful imprisonment, particularly when this right is considered in the context of where it lies in the legislation under the heading: *Search, arrest and detention*. However as detention is defined in the Concise Oxford English Dictionary as: *the action or state of detaining or being detained or the punishment of being kept in school after hours*, it is also relevant in the situation where a child is removed and held in a secure environment such as a "seclusion room" as this falls within the definition of "detention" and would therefore breach the child's rights contained in section 22 of the NZBOR.

In most cases the restraint or seclusion of a child is likely to breach the child's rights and would be unlawful. In a few exceptional situations the breach of the child's rights may be justified where the child's behaviour was so extreme that the rights needed to be breached in order for the school to comply with other statutory and moral obligations. These will be discussed later.

#### **United Nations Convention on the Rights of the Child**

In addition to the rights contained in the NZBOR, New Zealand children also enjoy the rights contained in the United Nations Convention on the Rights of the Child (UNCROC) which was adopted by New Zealand on 6 April 1993. These rights go even further than those contained in the NZBOR, and expand on the basic principles contained in that Act as they apply to children.

At the time the convention was adopted, the New Zealand Government determined that the rights contained in the convention were adequately provided for in New Zealand law, and therefore any doubt that the NBOR is not intended to apply to children are removed.

When we examine the legal framework surrounding the physical restraint of a child in the educational context, it is therefore essential that these conventions are also considered. The relevant articles to be considered are:

- a) Article 19: *the states shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence.*

Violence is defined as behaviour involving physical force intended to hurt, damage or kill (Concise Oxford English Dictionary). The intent of the person performing the act on the child would therefore be relevant when considering whether Article 19 had been breached. In most instances there would not be a violent intent by the party as

the action is more likely to be taken to diffuse a situation or prevent the child from harm.

b) Article 28: (1) *children have the right to education.*

(2) *State Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present convention.*

The basic right for education contained in the convention is twofold. On the one hand, the child who was being secluded from the classroom for a period, whether it be to cool down or as a punishment, is being denied the right to education as that child is missing out on the classroom activities for the period of their seclusion. However, not taking some steps to stop the child from preventing other children from the right to hear a lesson or learn is likely to be denying the other children their right to education. The rights of the majority therefore need to be balanced against the rights of the child causing the disruption.

Any disciplinary action taken in the school environment must also be done in a manner consistent with the child's human dignity. The term human dignity is not defined, but means the child's intrinsic worth.

c) Article 37: *State parties shall ensure:*

- a. *No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years;*
- b. *No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.*
- c. *Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interests not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.*
- d. *Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority and to a prompt decision on any such action.*

It is clear from the wording of Article 28 (2) that the authors of the convention did foresee the need for discipline in the educational system of member states. However, any discipline in the educational sector must consider the child's human dignity and Article 37.



Any form of seclusion without due process is likely to be a breach of the child's rights. Extreme caution must be exercised if this approach is to be used. The nature of the seclusion, the place this is to occur and how this is managed would all be key.

### **Rights in the Educational Context - Education Act 1989**

Schools derive their authority from The Education Act 1989. The relevant sections of the Education Act 1989 are:

Section 72: Subject to any enactment, the general law of New Zealand, and the school's charter, a school's board may make for the school any by-laws the school thinks necessary or desirable for the control and management of the school.

Section 75: Except to the extent that any enactment of the general law of New Zealand provides otherwise, a school's board of trustees has complete discretion to control the management of the school as it thinks fit.

Section 76: (1) *A school's principal is the board's chief executive in relation to the school's control and management.*

(2) Except to the extent that any enactment or the general law of New Zealand provides otherwise, the principal::

(a) *shall comply with the board's general policy directions; and*

(b) *subject to paragraph (a) of this subsection, has complete discretion to manager as the principal thinks fit the school's day to day administration.*

In each of the sections referred to above, the powers given are made subject to any other enactment. This means that the NZBOR and UNCROC therefore prevail over the powers of the school/board.

Some would argue that the rights of children outlined above have to be tempered somewhat in the educational context. The view expressed in the Unites States Supreme Court case *Tinker v Des Moines Independent Community School District* 393 US 503, 50;21 L Ed 2nd 731,737 (1969) is that:

1. Students do not shed their constitutional rights at the school gates; and
2. Those rights are necessarily tempered by the school environment.

(Rushworth: Guiding principles in education law 1999)

However, any act which occurs in the Educational context is subject to judicial review where the rights of the child will be balanced against the powers of the school and its board. For this reason, the courts recognise that decisions made in the educational context should only be judicially reviewed in exceptional circumstances.

In *Maddever v Umawera School Board of Trustees* [1993] 2 NZLR 478 it was held:

*The remedy of judicial review should be sparingly utilised in the context of the Education Act 1989. Against the statutory background of the education system it seems clear that outside of the areas where the status or educational options of the child are involved and specific rights are explicitly recognised, there is no warrant for an expansive approach to judicial review. The Courts should respect the evident "trade off" between reduced judicial review in return for a wider public (ie parent) participation in decision making (p504 line 43).*

This case was decided before the adoption of the UNCROC and it is possible that the international mandate of the rights contained in the UNCROC may lead the courts to be more proactive in review in the educational context.

The Courts are not, however, the only review authority which could be used to review any decision or act undertaken by a school or board in the seclusion or restraint of a child. The Ombudsman's office could also be used.

In the Submission of the Ombudsmen on the Education Amendment Bill (24 January 2013), it is recorded that:

*Oversight by the Ombudsmen and the application of the Official Information Act are fundamental safeguards to ensure that all partnership schools operate best practice and their pupils are not endangered. The application of both regimes will also assist in ensuring that New Zealand adheres to its international obligations under UNCROC.*

These comments were made in the context of Partnership schools but it is clear that oversight by the Ombudsmen in other matters of school related discipline are key to compliance with the UNCROC where: "...particular attention will be given to due process and natural justice" (Report of Ombudsmen Volume 11, Issue 2, July 2005).

In the Ombudsmen's annual report to Parliament in 1996 (in the context of suspension and expulsion from schools) the report concludes:

*"Resort to an Ombudsman results in an independent assessment of the facts and objective recommendations to address the concerns which the investigation reveals without involving the school or parents in time-consuming and expensive legal proceedings." This view was supported in: Maddever v Umawera School Board.*

Any breach of a child's rights involves the right to legal challenge, therefore any action taken by a school to restrain or seclude a child automatically gives rise to a right of legal review. The Ombudsman sees it as an essential element of compliance with New Zealand's obligations under the UNCROC that school/board decisions and actions in the treatment of children are reviewed, and has shown a willingness to do so. This view is supported by the courts. Schools must therefore be very careful when either of these methods are used, regardless of the circumstances.

#### **Crimes Act 1961**

The Crimes Act 1961 provides at section 59 that:



- (1) *Every parent of a child and every person in the place of a parent of the child is justified in using force if the force used is reasonable in the circumstances and is for the purpose of:*
- (a) *preventing or minimising harm to the child and another person; or*
  - (b)...
  - (c) *preventing the child from engaging or continuing to engage in offensive or disruptive behaviour; or*
- (2) *Nothing in subsection (1) or in any rule of common law justifies the use of force for the purpose of correction.*
- (3) *Subsection (2) prevails over subsection (1)*
- (4) ...

The question therefore arises, can schools rely on section 59 of the Crimes Act to justify restraint or the seclusion of a child for the purposes referred to in (a) or (c)?

The answer is, in our view, no for two reasons:

1. Section 139A of the Education Act bans the use of corporal punishment in schools. If we examine the wording of this section, it goes further than banning force for the purposes of punishment. The section provides: *No person....shall use force, by way of correction or punishment....*

Correction is not defined but it could be argued that "correction" could be the use of restraint or seclusion as it is being used to "correct" or stop unacceptable behaviour. In any event the section prevents the use of force in schools.

2. The view that teachers, schools or boards stand "in loco parentis" is no longer valid in New Zealand law, and section 59 cannot therefore be used to argue that the section 59 gives teachers, schools or boards the powers of parents in the use of force in the circumstances referred to in that section.

In loco parentis is the principle where teachers can stand in for parents while children are at school. It is widely accepted that this principle is no longer applicable in the modern educational environment as:

- (a) in the modern environment of compulsory education parents no longer have the discretion to decide whether or not they will delegate their authority to their child's teachers;
- (b) children now have rights independent of their parents (Hall and Manins, In loco parentis - the professional responsibilities of teachers, Waikato Journal of Education 7:2001); and
- (c) Teachers need to exert authority over each student to achieve educational objectives for all students. Parents cannot therefore control or modify the extent of control over their own children by teachers. (Rishworth, The Lawful powers of schools, 2001)

Would parental consent in some circumstances authorise the use of force to restrain a child in certain circumstances? The short answer is no. Even if parents agree, Section 59 (2) prohibits the justification of the use of force. This is reaffirmed in the educational context by section 139A of the Education Act. Parents cannot give consent for the school to do something that they themselves are prohibited from doing. This would also clearly breach the child's rights.

### Health and Safety

Under Health and Safety legislation school boards have an obligation to provide a safe working environment for employees and to prevent harm for employees and others on school property. Schools also have to take practical steps to ensure no one is harmed or causes harm to others on school property. Currently H&S law (under review and certain to change) requires the identification of hazards and employers to take all practical and reasonable steps to isolate or minimise potential harm.

Therefore, although it has been established that any physical restraint or seclusion of children will breach their rights under the NZBOR and UNCROC, and that this is not permitted by the Crimes Act or the Education Act, schools do have a duty to prevent children from lashing out and harming others. The only practical step may therefore be immediate restraint to prevent any harm occurring.

In the article Sparing the Rod: Reflections on the abolition of Corporal Punishment, and the Increase in Violence in British Classrooms (Parker-Jenkins, Australia & New Zealand Journal of Law & Education, Vol 13, Number 1, 2008, p11) it was argued that: *Physical restraint of pupils should be regarded as part of overall behaviour management strategies. And the restraint used should be gentle and to restrict movement. It should be such as a parent or carer would consider reasonable given the situation and the circumstances pertaining to the child. The need for specialist training was also emphasised.*

The author of this article infers that there should be some discussion between the parent and the school on what is considered appropriate given the child's behavioural problems and the situation when the need to restrain may arise. Parental consent does not, however, permit the use of force on a child in the education context.

The article later goes on to say that guidelines in Britain:

*"...on restraining pupils which are essentially about the safety of pupils, staff and property is that there is little or no reference to the issue of children's rights, and the country's obligations under the European Convention on Human Rights. It was Britain's need to reconcile treaty obligations under Article 3 of the Convention which led to the abolition of corporal punishment...Teachers cannot be empowered to act illegally and in way which contravenes these legal obligations, and therefore there is a continual tension between two sets of rights, those of teachers and those of pupils, and two sets of issues, protection for and from pupils.*

The duty to protect employees in the work place from assault from children has to be carefully considered and such a duty could only be discharged by careful precautionary measures including hazard reporting systems and involvement of staff in health and safety committees. Whether the abstract concept that a child could be



declared a significant health and safety hazard is questionable conceptually, it is theoretically possible and should be carefully considered when planning safety measures. No prosecutions from Worksafe NZ have been tried on behalf of employees but under forthcoming changes to H & S legislation more care and ongoing monitoring will be needed to ensure adequate safeguards are in place.

### Conclusion

The physical restraint or seclusion of a child is a breach of the child's rights and is prohibited by NZ statute, and parents cannot lawfully give authority for the use of force. However, this has to be balanced against the obligation to protect others from harm under Health and Safety legislation.

There is therefore a grey area, where the use of force to restrain may be justified in exceptional circumstances to prevent harm to others. This would need to be done in a way that maintained the child's dignity and recognised their rights as a human. Clearly the child's capacity to understand reason, consequence etc. would play a part in determining whether this was the appropriate course of action as would the circumstances which gave rise to the restraint. The restraint would need to be used only to stop the immediate harm from occurring and would need to end as soon as the immediate threat of harm was over.

While parental consent would not make the restraint legal, if it was foreseeable that there may be situations where physical restraint may be needed in the future (because of the child's particular condition or difficulties) it would be preferable to consult with the child's parent before any such action was taken. From a practical perspective it is the parents, in most circumstances, who will have the ability to enforce the children's legal rights.

The seclusion of a child is not as grey. There would only be very exceptional circumstances where this would be justifiable. Those circumstances are likely to be where a suitably qualified health professional working directly with that child recommends such treatment because of that child's particular condition. Even then, there would need to be very strict parameters about when this would be used, and the nature of the seclusion.

In passing, we note that we are aware of anecdotal evidence where parents have affirmed or approved restraint that would otherwise be unlawful – to be clear, this does not exempt a school from legal liability (nor, arguably, the parent, who could be deemed a party to an assault). In addition school staff are vulnerable to being charged under the Crimes Act for assault on children (although this is a rare occurrence). In some cases staff can avail themselves of the defence of necessity if they or others are under physical threat, but it is unwise to build training around knowledge of this defence. Rather, there must be an emphasis on adequate restraint in emergency situations being taught, and staff being very clear about boundaries around the use of physical force.

Overall, using an analogy of the current Euthanasia debate, legislative intervention clarifying “grey” areas is unlikely and schools should simply ensure:

- Staff are well trained to de-escalate conflict and where appropriate “safe” restraint techniques to use in very, very limited circumstances.
- Policies are clear and regularly reviewed and actively work-shopped with staff.

- Strict adherence to a child's human rights are reinforced in training, maintained in practice and reinforced by management.
- Appropriate disciplinary action is taken against staff transgressing policies.
- Confinement is used in only very, very exceptional circumstances and does not become the norm.

Released under the Official Information Act 1982



CJ and V A Turnbull

25 July 2023

Iona Holsted

Secretary for Education

Ministry of Education

Dear Madam

Please accept this letter as a complaint against Terri Johnstone, Investigator contracted by the Ministry of Education 2014 – 2017.

Terri Johnstone's Ruru School Investigation Report – a catalyst for cover-up

When we asked Ministry of Education (MoE) managers if they would allow us to view the *dark and grimy* storeroom Ruru Specialist School staff had been secretly shutting our autistic son in – Terri Johnstone, MoE Investigator piped up, "Do you really want to go there?"

We did. We wanted to see the changes that Ruru staff had made to the room, when they found out the room was going to be the subject of a MoE investigation.

We saw the alterations made to the room during the investigation, as deliberate intent to mislead. Terri Johnstone wrote to us, "I too saw it as that."

"The changing of the environment was so obviously wrong, that I let the pictures speak for themselves."

Terri Johnstone had written in her 2015 Investigation Report, *I spoke with the DP (Hera Fisher) who was adamant that since her employment at the school in 2002 the room has never had a lock.*

In fact, Terri Johnstone shared with us at a meeting that because Hera Fisher Deputy Principal (DP) had used *very emotive words (swearing on* – she could guarantee that the door has not been locked.

Terri Johnstone reported she spoke to Christine Menzies, MoE manager - she and another manager saw the room on the 12 December 2014. Terri reported, *they also reiterated that the room did not have a lock.*

However, we asked Christine Menzies, at a meeting with the managers, whether the door had a lock and she said, "I don't remember."

We asked her, "Did you see a door handle on the inside?" She replied, "No."

Whether the door had a lock, did not really matter. If the room had no internal door handle, students could not exit. If the door was blocked by staff using their bodies or by staff sitting on chairs blocking the door – as described to us by ex DP Paul Anderson-Kereti, student could not exit.

When we called Paul Anderson-Kereti (DP 2013) in February 2015, we asked him, "so was he (Rovin) freely able to leave the room?"

"No, as I would sometimes sit in front of the door on a chair or would stand in front of the door and block it with my foot."

"I would sit on the chair and block his exit. If I was standing, I would use my foot and weight against the door to stop him getting out."

We shared this with MoE managers and Terri Johnstone at the meeting. We asked them to stop calling the seclusion room at Ruru a 'safe room'. If children were unable to freely leave the room – it is seclusion.



Terri stated, "Okay, on that point I agree on how that room was used and Hera Fisher has also said how that room was used. The DP (Paul Anderson-Kereti) that came forward was consistent with my understanding of how that room was used."

Both DP's changed their account of how the room was used, later, for the Chief Ombudsman Investigation.

In a letter to our lawyer, she wrote – *All of my interviews with staff were consistent with his description. I was well aware that the staff sat on chairs outside the room and that the child was not permitted to leave the room.*

Terri Johnstone did not write about that in her 2015 Report – that students could not freely exit the room, once shut inside the room. She did not write about it being seclusion.

This was important because in May 2015 we wrote to the Minister, Hekia Parata explicitly referring to the seclusion room at Ruru. In that letter we defined – ***Seclusion is the placing of a person at any time for any duration, alone in an area where he/she cannot freely exit.***

Later in 2016, Hekia Parata was asked about her knowledge of schools using seclusion rooms and she claimed she only found out about seclusion in 2016, despite our letter to her a year earlier.

When asked about our complaint, Ms Parata stood by her statement that she had not heard about seclusion rooms before July 2016. She said the room at Ruru was deemed not to be a seclusion room, referring to Terri Johnstone's Report.

"I am saying that's not what the investigation found in the Report, and I am also saying that the term 'seclusion' was used very loosely over the past year or two."

"What we have now done is define specifically what it is and ruled it out."

**Terri Johnstone's Report covered up years of abuse at Ruru Specialist School in Invercargill.**

MoE Investigator Terri Johnstone was "unable to locate MoE Guidelines"

February 2015 – Ruru School Investigation Report by Terri Johnstone.

- *I also contacted the Ministry of Education regarding the use of time-out facilities or safe rooms and I have been unable to locate any MoE Guidelines about the use of these rooms.*

April 2015 - Terri Johnstone responds to Turnbull's lawyer letter

- *I have been unable to find clear guidelines on the use of safe rooms on the Ministry of Education website.*

The dearth of information *regarding the use of time-out facilities or 'safe rooms'* was due to timeout room being unacceptable and not appropriate, some 15 years earlier.

In 1998 Ministry of Education employee and registered psychologist Ingrid Dunckley wrote Ministry of Education Guidelines – *Managing Extreme Behaviour in Schools*.

These guidelines clearly stated:

***Timeout rooms should not be used. They are not necessary and can result in teachers and schools being accused of using inhumane and cruel punishments.***

We only found out about the 1998 Guidelines through an Ombudsman Investigation in 2017, when the MoE gave the 1998 Guidelines to the Chief Ombudsman. We wrote to Ms Johnstone in 2019 to ask her when she was first aware of these guidelines. She replied, "*I think it was after the Report. Not 100% sure.*"

#### Catalyst for corruption

As a final recommendation in her 2015 Ruru School Investigation Report, Terri Johnstone wrote -

*I recommend the Ministry of Education convene a national working party to consider the use of seclusion and restraint in schools and to investigate best practice models.*

"It's a national working party!" Terri Johnstone and MoE managers suggested we pat ourselves on the back for that.

Ms Johnstone had secured future work with the MoE as a result of her recommendation as she was included in the working party. Ironically, she prepared the background papers, providing them to the Advisory Group, when she was unable to locate the existing MoE guidelines.



By October 2015 the Group had draft Seclusion Guidelines finalised. In effect our complaint had initiated the development of guidelines that would make unacceptable, intolerable treatment of children, like the years of seclusion at Ruru, "acceptable".

In August 2016 Ms Johnstone was again contracted by the MoE to conduct the "Investigation of Parent Complaint at Miramar Central School Wellington" regarding their use of timeout. She reported:

***10 years is a long time, and with literature and research on best practice constantly being updated, significant changes have occurred in approaches to timeout rooms. In recognition of the variance of practice, the Ministry of Education has recently developed National Guidelines around the use of locked timeout rooms (now defined as seclusion). They are currently in the process of being ratified and socialised, and will assist schools in the development of best practice around timeout rooms.***

Terri Johnstone went on to use the Seclusion Guidelines (which were still in draft form), that the Advisory Group (she was included in) had developed, in her Miramar Investigation Report. She reported:

***Table 3 below can be used to compare the use of timeout at Miramar Central School with what is now considered best practice. These guidelines can provide future tools of reflection and guidance for Miramar Central School in their use of timeout. However, it is unfair to judge Miramar in relation to these guidelines as they are not yet published. This means Miramar Central School, along with all New Zealand schools, would have been unable to reference these guidelines and therefore would have had few parameters from which to draw their timeout room processes and policies.***

With these words MoE Investigator Terri Johnstone let all New Zealand schools, that had been using seclusion, off the hook. Like Ruru, Terri Johnstone's Miramar Report did not say - *here is a school acting outside guidelines*. Her Report is saying - *the school acted because there were no guidelines*, which was untrue and Terri Johnstone knew this through her involvement in Advisory Group, if not before.

The MoE provided Police the draft Seclusion Guidelines in September 2016. The draft (that allowed for seclusion) was used and referred to by the Police investigating the use of seclusion at Ruru School in 2016-2017, when the draft was in stark contrast to the MoE guidelines that were current at the time of our complaint, and the 15 years prior.

Shortly after the draft Seclusion Guidelines were used for the MoE Miramar Investigation Report and provided to the Police to use for their ongoing investigation at Ruru, they were scrapped, and new Guidance was issued by the MoE that stated - *Seclusion should no longer be used in New Zealand schools*.

A few months later, a Ministry of Education survey found 38 New Zealand schools had seclusion rooms, for the purpose of secluded students.

Terri Johnstone – catalyst for abuse

At the meeting we had with Terri Johnstone and MoE managers in April 2015, Terri Johnstone interjected, *"Let's cut to the chase here."*

She reiterated she was not a criminal investigator and said, *"Nor is it wise to look at things historically."*

*"If you ask me is there abuse now at Ruru School – and I'm not saying there was in the past, but is there now, I would say confidently, and I would, and I did have my eyes open believe me because I have a mental health background which is a distrusting model, I would say there is not abuse at that school. I wouldn't, and I am also very aware that you have Rovin, sitting at home, and when I looked at the Verdon site, I guess, as a mother also, I would have liked to have seen Rovin there."*

This summed up Terri Johnstone thoughts – she had seen the dark and grimy storeroom Ruru staff had been shutting children in for punishment. We had told her about the bruises on our son. We had just read aloud to her the xy Interview Notes from an ex-staff member, taken by our lawyer. We had just told her about teacher, who we had trusted, who signed forms saying we were informed about the seclusion, when we were not. We had just told her about the teacher aide, that we were saying physically assaulted our son, and *as a mother* she wanted to see him back in that environment.

Terri Johnstone's investigation was not child centred. Student safety and wellbeing did not come first. Her goal was to mitigate the risk of legal liability and cover up abuse.

Yours sincerely



Callum and Victoria Turnbull

cc:

[jan.tinetti@parliament.govt.nz](mailto:jan.tinetti@parliament.govt.nz)

[erica.stanford@parliament.govt.nz](mailto:erica.stanford@parliament.govt.nz)

[greenparty@greens.org.nz](mailto:greenparty@greens.org.nz)

[chris.baillie@act.org.nz](mailto:chris.baillie@act.org.nz)