

## TEACHER ADVISOR

## Should teachers apply physical restraint?

What you need to know about restraint training certification

By Joe Pece

“ANY TIME A TEACHER MAKES PHYSICAL CONTACT WITH A STUDENT, IT OPENS THE DOOR TO ALLEGATIONS AND INVESTIGATIONS.”

For a number of years now, school boards have been providing training for teachers on the use of physical restraint on students. It has been predominantly Special Education teachers who have undergone this training. Often referred to as Non-Violent Crisis Intervention Training, there are some positive aspects to this training because it includes behavioural support prevention plans that teachers could utilize without resorting to physical intervention.

The problem is that this type of training almost always incorporates instruction on how to restrain students using physical means. Any time a teacher makes physical contact with a student, it opens the door to allegations and investigations. Last edition's Teacher Advisor provided advice regarding Children's Aid Society, Police and Ontario College of Teachers' investigations around allegations of physical contact, so you should already be aware of these liabilities.

Teachers are often asked to volunteer for such training in order to be certified to practice restraint. In some school boards, this training has become “voluntary-mandatory.” Any teacher who has completed this training may be called upon to restrain students. This is akin to qualifications as a certified First Aid Provider, and will invariably mean the teacher will be the “go to” person when it comes to restraint. It is important to be aware of these increased expectations if you decide to volunteer for this training. If the school board directs you to take this training, please seek advice immediately from your local OECTA unit.

Teachers with restraint-training certification are held to a higher standard of care than other teachers, and are therefore held to a higher standard of liability. The police, courts and the Ontario College of Teachers treat teachers who are certified in restraint as having a greater duty of care and a greater responsibility regarding crisis intervention and restraint of students. This increase in duty of care and crisis intervention

may result in a trained teacher being subject to more severe consequences than one who is not trained.

There is nothing in the *Education Act* or its regulations that specifically permits teachers to use physical force. The common law imposes on teachers the obligation to exercise reasonable care in protecting students from risk of harm, i.e., *in loco parentis*. This imposed obligation is based on the parental delegation of disciplinary authority to teachers and administrators. The requirement for a pupil is to “accept such discipline as would be exercised by a kind, firm and judicious parent,”<sup>1</sup> and the obligation in the *Education Act* “to maintain... proper order and discipline...”<sup>2</sup>

When should teachers apply physical restraint? The preferred response to this question is: NEVER. In an ideal world, teachers should never make physical contact with students because of the professional liabilities they face from outside agencies. However, if that were true, our filing cabinets in the Counselling and Member Services Department would be a lot thinner. In addition, the employer often encourages teachers to be trained in physical restraint. The employer will also be quick to initiate its own investigation, which puts the teacher at further risk of discipline. On the other hand, teachers cannot stand idle when a student could be at risk of harm from another student. Using other strategies and techniques to remove the danger is the first course of action, hence the “non-violent” aspects of the intervention. Physical restraint should always be a last resort.

Even though many boards have developed Non-Violent Crisis Intervention programs, they have not declared they will assume costs for liabilities assigned to a teacher who restrains a student. It is not in teachers' best interests to

needlessly expose themselves to legal investigation and/or prosecution by participating in a physical-restraint training program. Beyond the legal implications, teachers have been seriously injured while performing such actions. Unfortunately, Workplace Safety Insurance Board (WSIB) benefits are often difficult for those teachers to receive because school boards actively oppose compensation for injured teachers.

In some cases, students will require physical intervention based on their Individual Education Plan (IEP). In these cases of aggressive behaviours, a safety plan should be implemented, and parents should be aware of, and agree with, the restraint methods used. The principal should be present when discussing any parental concerns regarding the safety plan. In most instances, an Educational Assistant should be assigned to actually implement the restraint procedures. If this situation puts teachers at ongoing risk of harm, in particular because there is a need for a continuous application of restraint, they should contact their local OECTA unit or the Provincial Office to seek information about a possible health and safety remedy.

<sup>1</sup>Ontario Education Act, Regulation 298, Operation of Schools, Section 23(1)(c), Requirement of Pupils.

<sup>2</sup>Ontario Education Act, Section 264(e), Duties of Teachers.

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