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Easy to read summary



INCLUSION IRELAND

Inclusion Ireland has collected stories from a group of parents on the experience of their children in schools.



There are 14 stories.

The stories are about seclusion and restraint in schools.



Seclusion is where someone is left on their own. They could be left in a room or other place on their own.

Sometimes the room is locked.



Restraint is where someone is holding another person down and the person is not allowed move around.

Parents have told Inclusion Ireland that their children have been restrained and secluded in Irish schools. Some parents are afraid to speak up about seclusion and restraint happening to their children.

TÚSLA

An Ghníomhaireacht um
Leanaí agus an Teaghlach
Child and Family Agency



AN ROINN | DEPARTMENT OF
OIDEACHAIS | EDUCATION
AGUS SCILEANNA | AND SKILLS

Some parents have already been talking to the schools and State bodies to help their children. In these cases, nothing changed for their children.



Other types of services have rules on seclusion and restraint where children are in services run by the Government.

The rules say when and how to use seclusion and restraint on children.



Not all people working in schools have training on how to use seclusion and restraint.

Reports have shown that training helps seclusion and restraint to be used less on children.



There are no rules on how people working in schools should use seclusion and restraint on children.

Some children with disabilities were physically affected and some were emotionally affected by their experience.



Some parents felt they had had no choice but to remove their children from the schools to protect them.

Some children with disabilities are not having their right to education protected and are being put on short school days or excluded from school.



Rules are needed to say when restraint and seclusion can be used and to protect the human rights of children.

Introduction

In 2017, a group of parents came together to tell their story. All of these families shared a similar experience of having their child subjected to seclusion and/or restraint in a school in Ireland.

These parents and Inclusion Ireland are concerned by the inaction of the Department of Education and Skills and other stakeholders such as the Child and Family Agency (Tusla) in addressing the issue of seclusion and restraint and believe that there is a real, on-going risk of physical and psychological harm to children. There is also a risk to other children and staff who are involved in or witness these practices.

The Department has been repeatedly asked to issue guidelines to schools on the issue of restraint and seclusion. The National Council for Special Education (NCSE)¹ asked for guidelines as far back as 2012, again in 2016 and in 2018 repeated this call in its review of the Special Needs Assistant (SNA) scheme. In that review, the NCSE highlighted the seriousness of the situation around supporting children with “challenging behaviours in school” was noted. The NCSE stated that these students require specialist supports but are being supported by SNA staff without specialist training in behaviour management and called for “immediate action”, warning of “very serious consequences for students and staff”.²

To date, Inclusion Ireland is not aware of any guidance being issued to schools.

This paper looks at the stories of 14 children who have experienced seclusion and/or restraint in school and how this has impacted upon their educational journey. We examine international perspectives and international law and examine how existing guidance from other sectors can be used to develop guidance for educators and educational establishments.

1 NCSE Policy Advice Paper No. 3; The Education of Children with Challenging Behaviour arising from Severe Emotional Disturbance/Behavioural Disorders (2012) and NCSE Policy Advice Paper No. 5; Supporting Children with Autism Spectrum Disorders in Schools (2016).

2 NCSE Policy Advice Paper No. 6; Comprehensive Review of the Special Needs Assistant Scheme.

A breach of rights? The international human rights perspective

Ireland is a signatory to many international agreements which deal directly with issues of bodily integrity, liberty and a right to be free from torture or demeaning treatment. A brief overview of these human rights instruments is below and it shines a stark light on the use of seclusion and restraint in the Irish education system.

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

The UNCRPD entered into force in Ireland in April 2018³ and while the UNCRPD does not create any new rights, it does seek to clarify the duties of States to protect the rights recognised in previous human rights instruments.

These rights include the right to education, security of person and dignity, integrity, to be free from cruel, inhuman and degrading treatment and a prohibition on torture and discrimination (both direct and indirect).

Article 17 of the UNCRPD provides that every person with a disability has a right to respect for his or her physical and mental integrity on an equal basis with others.

Article 14 of the UNCRPD states that the existence of a disability shall in no case justify a deprivation of liberty and in each of the case studies below, it is children with a disability who are secluded and thus deprived of liberty.

United Nations Convention on the Rights of the Child (CRC)

The Committee of the CRC has recognised that children need special safeguards and care, including appropriate legal protection and that government institutions, such as schools, have additional responsibilities to protect children.

Article 28 of the CRC says "States 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."

3 <http://nda.ie/Disability-overview/Legislation/UN-Convention-on-the-Rights-of-Persons-with-Disabilities.html>

The Committee of the CRC has also recognised that children with disabilities are more vulnerable to violence, abuse and neglect in all settings, including schools.

Article 37(a) of the CRC states that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. The CRC committee has recognised "that there are exceptional circumstances in which teachers and others working with children in institutions may be confronted with dangerous behaviour which justifies the use of reasonable restraint to control it".⁴ However, the Committee noted that there is a distinction between the use of force motivated by the need to protect a child or others and the use of force to punish.

The Committee also stated that the minimum force necessary for the shortest period of time must always apply and that detailed guidance and training is also required, both to minimise the necessity to use restraint and to ensure that any methods used are safe and proportionate to the situation.⁵

European Convention on Human Rights (ECHR)

Article 3 of the ECHR prohibits torture and inhuman or degrading treatment or punishment. The restraint and seclusion of a child can be described as degrading treatment and may amount to a breach of Article 3. To date, in Ireland, the human rights implications of restraint and seclusion have primarily arisen in the context of inpatient treatment of persons with mental health problems or prisoners. However, similar issues could arise in relation to the use of restraint or seclusion in schools.

The United Nations Human Rights Committee (HRC)

The HRC emphasises that "prohibition must extend to corporal punishment, including excessive chastisement ordered... as an educative or disciplinary measure."⁶ The Committee emphasised that Article 7 of the International Covenant on Civil and Political Rights protects children, pupils and patients in teaching and medical institutions. It clarified that the "prohibition relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim".⁷ The HRC's comments imply that the excessive use of seclusion of the detained or imprisoned person may amount to acts prohibited by Article 7.

4 Committee on the Rights of the Child, General Comment No. 8, (Forty-second session, 2006) The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (Articles 19; 28, para. 2; and 37, inter alia) CRC/C/GC/8, 2 March 2007 at para. 15

5 ibid

6 Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN

7 ibid

United Nations Convention against Torture

Article 16 of the Convention against Torture (UNCAT) establishes a ban on “cruel, or degrading treatment” and the Committee against Torture has indicated that the “continuing application” of corporal punishment “could constitute in itself a violation of the Convention”. Restraint and seclusion, if regularly used as a form of punishment rather than as an intervention of last resort, could violate the Convention against Torture.

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has stated that there can be no therapeutic justification for the use of solitary confinement and prolonged restraint of persons with disabilities in psychiatric institutions and that both prolonged seclusion and restraint constitute torture and ill treatment.⁸

Although these comments related to an inpatient facility, the principles expressed could be applied to the use of such measures against children in schools.

Given that there is no legislation, national guidance or policy in Ireland on the use of restraint and seclusion of children with disabilities in schools, these practices cannot be said to be “prescribed by law” within the meaning of Article 5 of the ECHR. The proposed legislation in this area (discussed below) will only cover adults and not children. This would also appear to contravene Article 14 of the UNCRPD and Article 37(b) of the CRC’s prohibition on unlawful or arbitrary deprivation of liberty.

8 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN GA A/HRC/22/53, 1 February 2013 at para. 63

Restraint & Seclusion: The Case Studies

Inclusion Ireland would like to acknowledge the 14 brave families who have shared the stories that form this section of the report. While these families have had very negative experiences they are seeking system change so no child has to go through what their child has experienced.

The following 14 case studies are compiled from the stories told to us by 14 parents of a child with a disability. Many of those parents have also told us that they are aware of other families who have similar experiences but, for various reasons, are reticent to speak up.

*All names and many identifying features have been changed.

Multiple seclusions of a 9-year-old boy too afraid to return to school

"Liam* was forcibly held and taken to a padded room where he was locked on his own numerous times in his special school. One day I was even locked into the room when I went to get him out. Liam told me that when he is being brought into the room 'my feet do not touch the ground'. On one day he had nail marks on his arm and on another day bruising which he said were caused by staff getting him into the room. He repeated all of this to Tusla who closed the case with no finding against the school. When I requested his file from school I was shocked to find he had been put into seclusion numerous times that I did not know about. Liam is now scared of school and has been out for a year."

Ambulant child made to use a wheelchair

"Jack* attends a special school. He also experiences seizures from time to time and instead of letting him get back up himself after them, the school use a hoist for some unusual reason. On other occasions when there is a regular school outing, Jack is strapped into a wheelchair despite him being able to walk unaided."

Black and blue after restraint in special school

"One day I went to collect Brian* from his special school and he was sitting on the sofa in reception crying. His arms were very sore and staff would not tell me what happened. Later Brian calmed down and could tell me two Special Needs Assistants had held him face down on the floor by his arms which were now black and blue. Even though there was CCTV in the school they could not provide it to me as it had 'self-erased'. Both of us were so upset he could never go back to the school.

After this incident he suffered from panic attacks, depression and lost trust in all adults for a time. He even said he wanted to kill himself."

10-year-old boy forced to work in an empty classroom

"Michael*, who was 10 years old at the time, wasn't allowed in the classroom of his Dublin school for 3 months. Instead Michael had to work in an empty room next door to the room where his class-mates were working. The Special Needs Assistant would come in to do 15 minutes of reading with him and check on him regularly. In the next year, I found out from another student that Michael was not allowed into the classroom, that he was doing his work alone in a room. He had been there for a month before this student had told me. Michael hadn't wanted to tell me as he was ashamed. No staff informed me. Staff said they checked on him every 10 minutes, my son says it was much longer."

Multiple use of prone restraint

"My daughter Jenny* was restrained in a 'prone restraint' which is being held in a face down position by 2 or three people. On one month this took place up to 50 times and this went on for some time. When I complained, I was met with the threat of Jenny's expulsion. Eventually, I was asked to sign an Individual Education Plan that included permission for restraint; I refused and Jenny was suspended. We took and won an appeal but Jenny was then expelled before she could return to school. The Tusla were involved and said "there were no child protection concerns" and there was "no excessive use of restraint". The National Educational Psychological Service was very concerned but could do nothing about it. The Department of Education and Skills knew this was going on but did not intervene."

Restrained on the school bus

"William* was restrained in his school transport by the escort with his head held down physically for the whole journey which took 20 minutes. William said he found it very hard to breathe and it was a painful experience. On other occasions William's hands were held down 'just in case'.

Later, I then found out that the school also put him into a 'quiet' room without informing us between the age of 5 and 8. This quiet room is a darkened empty room with the handle removed from the inside and the supervision screen covered. We found out that William was placed in the room for both convenience (SNA on leave) or for health and safety reasons such as the child seemed 'UP'. We were not aware of the room and the misuse of the room and did not consent to a seclusion room been used.

We complained to Tusla and when Tusla contacted the school William was suspended immediately."

Boy restrained in Senior Infants

"Seán* was restrained by a teacher when he was in senior infants. The teacher in question told me that I didn't have to worry about Seán's behaviour in school as he had found a way to restrain him.

In the last year in school it was decided that Seán's 'punishment' would be to put him into seclusion and make life as boring as possible while telling him the class would be doing all the activities that he enjoyed."

A young child restrained against a wall

"Nathan* was 5 and 6 years old when he was restrained up against a wall on a number of occasions. Nathan would react when other children hit him in the school yard and the school would not believe him. The children who hit him in the first place were not restrained. In class Nathan was separated from his peers by placing a ring of chairs around him at the back of the class."

My child was locked into a toilet

"Luke* attended a special school and he told me that his teacher had locked him into a toilet. The school denied this when I complained. We moved him to another school and a number of months later I was contacted by Tusla as two more children had alleged the teacher had locked them into a toilet. An investigation followed but found that the teacher posed no risk to children and the teacher returned to the school.

In the new school the teacher was great and he was doing well, until a change in teacher who would put my son into a 'withdrawal or seclusion' room for minor issues. He would become highly distressed by the confinement and react negatively, which led to more seclusion. He was then put on a short school day, which meant he missed a cumulative 100 days of school that year. The fallout from this practice eventually led to the breakdown of his school placement. He is now home-schooled."

A child suffers injury while secluded

"Gareth* was locked into a seclusion room unfit for human use. There were broken blinds and pipes in room. Gareth was so upset and agitated he hurt himself badly on the blinds and pipes. While left alone he tried to escape out the window and fell from the window-sill. He spent a night in hospital being treated after this experience.

Secluded 40 times in one school year

"Matthew* was forced into the 'time out' room 40 times in one school year. The 'time out' room meant that he placed into a room alone and secluded. On two occasions that I am aware of, he was there for 2 hours. He was only 10 at the time.

The room that he was secluded in had no handle on the inside, and only a peephole on the door. It had paint peeling off the walls and bars on the window. He was given work to do and he had to eat his lunch in there with nowhere to sit except on a dirty floor.

When I didn't agree to this room I was expected to collect him from his special school. Phone calls for collection would start from 9:10am. After all of this he would cry a lot saying how he was not good enough."

A child forced out of school

"Ciara* hit another child. This followed a historical situation which was mismanaged in school. Ciara was placed into a padded room with a bolt lock on the outside. She later told me she had been placed into the room on many occasions; sometimes she was physically put into the room. She was often in there for a 'long time'.

Ciara was put on a rolling suspension and eventually forced to take home tuition as I would not allow the school to use seclusion again. Tusla were made aware the school were using the seclusion room. Nothing happened. Ciara eventually had to move to another school."

Locked into an unattended room for up to 5 hours

"Killian* was locked into a small storage room with a small window. We were initially told the room would only ever be used as a 'last resort'. The teacher put Killian into this locked room, unattended for up to four or five hours for trivial reasons such as not doing school work quick enough or talking in class.

Killian was expelled for trying to escape from the room and was so traumatised that he was out of school for 18 months. We received great therapeutic support that helped Killian to get back into a new school. He has never been locked up in his new school. Our family were so upset that this issue was not taken seriously by Tusla or the DES. When I asked Tusla to investigate the incident the social worker told me "we do not investigate schools; only parents".

Child prone to seizures secluded unsupervised

"Ben* was placed into seclusion (he calls it solitary confinement) in school as a form of discipline. He was no threat to others; all he did was kick a table. He suffers from seizures but was left unsupervised for long periods of time. The school did not even tell me this room existed; another parent did. I had to collect him from the room and it is like a prison cell with no handle on the inside of the door. My son was quite distressed and was crying. I contacted Tusla who made no finding against the school."

Implications for Policy & Law in Ireland

Defining restrictive practices

Seclusion and restraint are both examples of restrictive practices, however at present there is no statutory definition of restrictive practices.

There are definitions of restraint available in other contexts, including health and social care environments. The Department of Health has defined 'restraint' as "the use of practices for non-therapeutic purposes that result in the intentional restriction of a person's movement or behaviour".⁹ Physical Restraint has been also been defined as the use of trained staff to hold a child or young person to restrict their movement in order to prevent serious harm.¹⁰

Seclusion can be defined as "the placing or leaving of a person in any room alone, at any time with the exit door locked or fastened or held in such a way as to prevent the person from leaving."¹¹ The person may be blocked from leaving the room by a person, a locked door or a piece of furniture. "Seclusion can be seen as a negative experience. It can also damage therapeutic relationships, re-traumatise people who have a history of trauma or abuse, it can cause fear and it causes loss of dignity".¹²

The Mental Health Commission further state "It is clear, from a human rights perspective, that restraint and seclusion are safety interventions of last resort, should be carried out within a legal framework and should only be used for the shortest time possible".¹³

Deprivation of liberty

Many jurisdictions have deprivation of liberty safeguards which sets out the processes involved when a person is de facto detained without a legislative basis. Ireland does not have legislation in this regard and legislative provisions for safeguards against deprivation of liberty are being drafted by the Department of Health in order to amend the Assisted Decision-Making (Capacity) Act 2015. Head 10 deals with the subject of restrictive practices and prohibits non-therapeutic chemical restraint outright. Head 10 also provides that a person should not be subjected to any restrictive practices unless there are exceptional circumstances and in accordance with Regulations prescribed

9 Department of Health, Towards a restraint free environment in nursing homes, 2011.

10 Best practice guidelines in the use of physical restraint (child care residential units), Special Residential Services Board, 2006.

11 Mental Health Commission, Rules governing the use of seclusion and mechanical means of bodily restraint, Version 2, 2009.

12 Mental Health Commission, Annual Report 2017.

13 ibid

by the Minister.¹⁴

In the United Kingdom, where there is an already established system surrounding deprivation of liberty, there is an understanding that parental consent is required to authorise the deprivation of liberty of a child.

As the Assisted Decision-Making (Capacity) Act only applies to over-18s, the liberty of a child is not concerned and guidance from the Department of Health would be welcomed during the development of these liberty protection safeguards.

Equal Status Legislation

The use of restraint and seclusion may amount to indirect discrimination. While any child may experience seclusion or restraint it is nearly always a child with a disability who is affected. While there is no recorded data on its use in Ireland, anecdotal reports and international research suggest it disproportionately affects children with a disability at a much greater rate than other children. In this case, the use of restraint or seclusion could amount to an unreasonable requirement or condition that disadvantages the child because of his or her disability.

A significant body of research has been carried out in the United States where one government agency found that the majority of allegations reported around the use of seclusion and restraint in public and private schools during a ten-year period concerned students with disabilities.¹⁵ Another study in the United States found that “students with disabilities represented twelve percent of students in a sample, but comprised nearly seventy percent of the students who were physically restrained in their schools.”¹⁶

The Public Sector Duty

Government departments are required to have regard to the Public Sector Equality and Human Rights Duty in all activities as provided for by Section 42 of the Irish Human Rights and Equality Commission Act, 2014. This includes its activities as an employer, provider of services and policy maker.

The Public Sector Equality and Human Rights Duty places a positive obligation on the DES to be proactive in promoting equality, ensuring human rights are realised and eliminating discrimination. As restraint and seclusion disproportionately affect students with a disability there are possible human rights and discriminatory issues for the DES to address under the Duty.

14 Part 13 of the Assisted Decision Making (Capacity) Act 2015, Draft Head of Bill, 2017.

15 Government Accountability Office, Published: May 19, 2009, Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment, <https://www.gao.gov/assets/130/122526.pdf>

16 Office for Civil Rights, US Dept. of Education, The Transformed Civil Rights Data Collection, (CRDC) 5 (2012). See also for statistics on disproportionate use of restraint and seclusion on children with disabilities Human Rights Watch and the ACLU, Impairing Education: Corporal Punishment of Student with Disabilities in the US Public Schools 29 (2009).

The international context

Some jurisdictions have approached the practice of restraint and seclusion more proactively than Ireland has to date, putting in place national guidelines and/or legislation. Others have had to develop reactive responses due to serious fatal incidents that arose from the inappropriate use of restraint and seclusion or the excessive forceful application of restraint.

United States

Seclusion and restraint practices have been legislated and regulated for in at least 20 states. In general, restraint and seclusion are considered only where a student is a risk to themselves or risking another student's safety, and after other approaches have failed to deal with the challenging or risky behaviour.¹⁷

The Office for Civil Rights, within the Department of Education in the US, has issued guidance to public schools to clarify that mechanical restraint or seclusion should never be used as a disciplinary measure on students with disabilities.¹⁸ Only trained school professionals can use seclusion or restraint and only where they encounter a situation where a child is at imminent risk to themselves or another student.

New Zealand

New Zealand is an example of a country which has banned the use of seclusion in schools.

The New Zealand government has put in place guidelines which includes behaviour management, which looks at the cause of the behaviour that challenges.

Physical restraint in schools can only take place where there is an imminent and serious risk to safety. The restraint must also be reasonable and proportionate, authorised and a record must be kept.

Emphasis is placed equally on the rights of the child and on the preparedness of staff and the importance of training for staff is recognised.¹⁹

17 Out of Darkness Full report New Approaches to Reducing the Use of Seclusion and Restraint with Wisconsin Children, A joint report from Disability Rights Wisconsin, Wisconsin FACETS and Wisconsin Family Ties, 2009. See also US Department of Education, Appendix A, Summary of all States with statutes and policies on seclusion and restraint <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>

18 Letter from the Department of Education Office for Civil Rights

19 Guidelines for registered schools in New Zealand on the use of physical restraint, August 2017.

United Kingdom

In the UK, the Human Rights Commission, children's rights groups and other organisations challenged rules on restraining young offenders. The Government wanted to use restraint and seclusion for the purpose of "good order".²⁰ Opponents argued that this amounted to "inhuman and degrading treatment". The High Court in the UK held that because the Secretary of State could not establish that physical restraint was necessary to establish good order and discipline, these Rules were in breach of Article 3 of the European Convention Human Rights.²¹

A recent English case involving an 18-year-old man with autism and severe learning disabilities who had been regularly placed in a padded seclusion room more than six times a day, found that he had been unlawfully deprived of his liberty as the practice had not been authorised by the English Court of Protection.²² In interpreting whether local practice with individual children might amount to deprivation of liberty under Article 5, the Court stated that schools should be mindful of consent to confinement relating to capacity and that the sole responsibility for deprivation of liberty lies with the State.

In its Concluding Observations on the United Kingdom, the CRC Committee urged the State to review the use of restraints and solitary confinement in custody, education, health and welfare institutions to ensure compliance with the Convention, in particular Articles 37 and 25.²³

20 Secure Training (Amendment) Rules, 2007.

21 R. (C.) v. Secretary of State for Justice [2008] EWCA 882

22 R(C) v A Local Authority & Others

23 The Concluding Observations of the UN Committee on the Rights of the Child published on 9 October 2002 and available online at www.unhcr.ch/tbs/doc.nsf

What can be done? Developing guidance for restraint & seclusion

While there is an absence of official guidelines from the Department of Education & Skills for schools on restrictive practices, regulators of other public services such as mental health and children's residential services have published comprehensive guidelines. These guidelines cover reporting of incidents, training for staff, supervision for staff and monitoring.

The mental health and older person's sectors have strategies to reduce the instances of seclusion and restraint and all restrictive practices.²⁴ Reduction strategies are multifaceted including recommendations on leadership, the environment, front-line training, organisational culture, reporting and supervision and debriefing for staff.²⁵

Guidance from health and social care services

Occurrences of seclusion and restraint also arise in health and social care environments and the practices are present in designated centres for children with a disability, children's residential centres and in centres approved under the Mental Health Act, including Child and Adolescent Mental Health Services (CAMHS) inpatient services.

A review of guidelines for approved centres²⁶, designated centres²⁷ and children's residential centres²⁸ provides examples of good practices and common principles that could usefully lend themselves to guidance on restraint and seclusion in educational facilities.

The welfare of staff is a key consideration and systems should be in place for staff to have supervision and to be debriefed after any episode of restraint or seclusion. Any staff who may engage in restraint or seclusion must be trained and aware of the risks associated with using such techniques. Staff training in crisis intervention and restrictive practices should in no way mean seclusion and restraint are used more often. It is of critical importance that sufficient attention is paid to techniques that avoid the use of restraint or seclusion.

In the guidance, there is a general acceptance that there are times that a child may present with certain behaviour that requires the use of restraint or seclusion. The type of behaviour in question must be of a nature that poses a real imminent risk of physical harm to the child, another child or to staff.

24 For example: Seclusion and Restraint Reduction Strategy, Mental Health Commission, 2014.

25 *ibid*

26 Code of practice on the use of physical restraint in approved centres, Mental Health Commission, 2009.

27 HIQA, Guidance for Designated Centres, Restrictive Procedures, 2016.

28 Best practice guidelines in the use of physical restraint (child care residential units), Special Residential Services Board, 2006.

In certain circumstances, the safest and least harmful course of action is to intervene and restrain the child but the benefits of the intervention must outweigh the negative impact.

Any physical intervention must be absolutely necessary, for the least amount of time with the least amount of force necessary.

The guidance is clear that the systems surrounding the use of restraint and seclusion are essential, with a written policy in place. Incidences of seclusion or restraint should be reported to parents, a record kept with external monitoring of the use of restraint and seclusion. Any increase in usage should trigger a full external review.

The child should have access to an appeal on the use of restraint and seclusion, and access to independent advocacy where required.

Reducing the need for physical restraint and seclusion

Positive approaches to managing behaviour that challenges are the first steps to ensuring seclusion and restraint are not used in schools. Staff should be trained in an appropriate system that only resorts to restraint as a very last option. Staff must have training in the reduction of, and alternatives to restraint and seclusion: one such example being implementing positive behaviour supports. While such support is best provided in a proactive manner, teachers should also have access to a behaviour specialist (BCBA) when a crisis arises, in a timely manner.

Children should have the support of a multi-disciplinary team from CAMHS or children's disability services as appropriate. When a child exhibits behaviour that is challenging this is often as a consequence of not being able to communicate in an appropriate manner; speech therapy may be able to assist in such instances. Occupational therapists can assist children who experience sensory overload which can lead to difficult behaviour. For some children there may also be a role for psychology or psychiatry supports.

In other sectors, such as mental health and social care, staff are supported through regular supervision sessions and debriefing after any incidents. Guidance states that staff should have access to appropriate supervision and receive a debriefing session after any episode of restraint or seclusion.²⁹

The importance of sufficient quantities of appropriately trained staff cannot be understated. In their annual report for 2017, the Mental Health Commission noted that some services had normalised the use of restraint and seclusion due to an absence of sufficiently trained staff.³⁰ The Mental Health Commission further noted that some service had low levels of restraint and seclusion or had greatly reduced the use of these practices. These services had staff who were

29 HIQA, Guidance for Designated Centres, Restrictive Procedures, 2016; Best practice guidelines in the use of physical restraint (child care residential units), Special Residential Services Board, 2006; Code of practice on the use of physical restraint in approved centres, Mental Health Commission, 2009.

30 Mental Health Commission, Annual Report 2017.

trained in specialist skills to anticipate difficult behaviours and de-escalate these behaviours before the need for restraint or seclusion.³¹

Guidance for schools in Ireland

The Department of Education and Skills guidelines on the design of schools refers to “a small safe place”³² that a child may access for the protection of themselves, other pupils and the staff. The child must be supervised from inside or outside the room and pupils will be encouraged to use the room themselves which will allow them to regulate and reduce their behaviour. Use of the safe space should be documented in the Individual Education Plan (IEP) of the child and reviewed to ensure it is having a positive impact on behaviour.

The guidance looks at seclusion rooms in an abstract manner as the document is mainly concerned with how schools should be designed. The guidance could give the false impression that seclusion is something that is safe in itself and there is no mention of the strategies that may be employed to reduce the need for seclusion in the first place, which is a crucial aspect of managing seclusion.

Inclusion Ireland has seen a letter from the Minister of Education relating to ‘withdrawal rooms’ in schools. The letter notes that approval was given to a named school to build two withdrawal rooms but the funding was not drawn down.³³ It would seem from this letter that the DES are funding schools to have withdrawal rooms in the absence of guidance or training on their usage.

The National Council of Special Education (NCSE) has looked at the issue of restraint and seclusion in schools. In the context of violent behaviour in schools for children with severe emotional behaviour disturbance the NCSE recommended the DES issue guidelines on when it is and is not appropriate to use restraint and time-out rooms (seclusion).³⁴ The NCSE did not talk about these practices in isolation. Recommendations were also made in relation to training for teachers and Special Needs Assistant’s, training for principals to implement whole of school approaches to behaviour, support from the National Educational Psychological Service and multi-disciplinary supports from CAMHS.³⁵

Inclusion Ireland is not aware of any guidelines that were issued on the use of restraint or seclusion in schools related to training, when it is/is not appropriate, recording of events, reporting of events, etc.

31 ibid

32 School Design Guide, TGD-026, Department of Education, 2012.

33 Letter from Richard Bruton TD, Minister for Education to Joan Collins TD, July 2018.

34 The education of children with challenging behaviour arising from severe emotional disturbance/behavioural disorders, NCSE, 2012.

35 ibid

In 2016, the NCSE issued policy advice on the education of children with autism.³⁶ The use of seclusion rooms was included in this policy advice as the case of a child with autism being secluded had appeared in the media. The NCSE clearly make a distinction between quiet spaces and “time out rooms” which they stated had no evidence base for their use.

A quiet space is where a child may go to take a sensory break voluntarily. The NCSE recommended again to the DES to issue guidance for teachers on what to do in “crisis situations” (see recommendation 10 below).³⁷ Crisis situations often lead to episodes of restraint and seclusion.

NCSE Autism Policy Advice Recommendation 10: Crisis Situations

“The DES should request the National Educational Psychological Service to prepare and issue clear guidelines to schools on: realistic and appropriate emergency procedures for crisis situations, involving episodes of extremely challenging or violent behaviour, causing serious risk to the student him/herself, other students or staff members; and the supports available to students, teachers, and parents following such incidents. In addition to the legal requirements referenced above, the DES should also seek legal advice to ensure the guidelines are lawful.”

The NCSE, as before, made recommendations on access to appropriate health therapy services, especially speech and language therapy. It is important to note that these services are severely under-resourced in many areas of the country.³⁸³⁹ CAMHS services are also characterised by significant waiting lists in certain areas of the country. In the HSE area that covers Cork and Kerry (CHO 4) 245 children and young people were waiting more than 12 months for access to CAMHS, in other areas no child is waiting this long.⁴⁰

The Special Education Support Service does offer some training in relation to challenging behaviour and de-escalation but this training is not mandatory, is only open to teaching staff and is limited in nature.

In 2018, the NCSE completed a comprehensive review of the SNA scheme and addressed the issue of “challenging behaviour”. Yet again the NCSE called for the publication of guidelines on restrictive practices in schools. The NCSE noted the absence of staff trained to spot triggers and prevent behaviours that challenge from ever occurring. “In NCSE’s view, these students’ behaviour is being

36 Supporting Children with ASD in schools, NCSE, 2016.

37 ibid

38 Children’s Disability Services in Ireland, NDA, 2015.

39 The Case of Speech and Language Therapy, Inclusion Ireland, 2014.

40 HSE Performance Profile, Jan-March 2018 Quarterly Report.

contained but not being therapeutically addressed. We consider that what these students need is specialist support from appropriately trained personnel to bring about meaningful changes in their behaviour.” The NCSE was very clear that this is an issue that requires immediate attention and that inaction “could have very serious consequences for students and staff”.⁴¹

Reporting and monitoring of the use of restraint and seclusion

There is currently no legal requirement for a teacher or school in Ireland to record or report the use of restraint or seclusion of a student. Practically speaking, this means that there is little or no data available on how frequently these practices occur in schools, why they are used or their impact on children or staff.

There is no independent oversight or monitoring of the use of seclusion and restraint in schools. This contrasts with the system governing the use of restraint and seclusion in approved centres under the Mental Health Act 2001. The Mental Health Commission⁴² has issued rules on the use of seclusion and mechanical means of bodily restraint.⁴³ These require written records to be kept of any seclusion with a medical review to be carried out every four hours and provide for the oversight of the Inspector of Mental Health Services.

Article 16 of the United Nations Convention on the Rights of Persons with Disabilities requires states to create independent oversight mechanisms to prevent against all forms of exploitation, violence and abuse. Independent authorities are required to effectively monitor all facilities and programmes designed to serve persons with disabilities. This includes schools.

41 NCSE Policy Advice Paper No. 6: Comprehensive Review of the Special Need Assistent Scheme.

42 Pursuant to Section 69(2) of the Mental Health Act 2001

43 Mental Health Commission, Rules Governing the Use of Seclusion and Mechanical Means of Bodily Restraint: Issued pursuant to section 69(2) of the Mental Health Act, 2001, October 2009. An addendum to these rules was published in January 2011.

Conclusion & Next Steps

- Children are being restrained and/or secluded in schools across Ireland. There is no regulation or reporting of these practices so it is impossible to say how many children are affected.
- The State's human rights obligations do not require the State to ban restraint or seclusion however international and national best practice indicates that regulation is necessary. It is now necessary for the Department of Education and Skills to tightly prescribe the use of restrictive practices and issue guidelines that ensure that restraint and seclusion are used only to protect the child or others and not as a form of punishment. It is questionable whether seclusion should ever be allowed in school.
- The principle of least restrictive alternative must be applied to minimise the necessity to use restraint. Where it is necessary to use restraint, it should be for the shortest necessary period.
- The 14 cases in this paper do not represent the full extent of the issue. The parents involved have told us of other parents who are afraid to speak up on this issue who have a child who has experienced seclusion or restraint.
- These case studies demonstrate that seclusion and restraint has occurred across all school settings: mainstream classes, special classes and special schools.
- In most cases staff were not trained in any 'crisis intervention or prevention' strategy. There is no compulsory training on crisis intervention for school staff. Training and supervision is compulsory in other sectors such as mental health.
- Children have been secluded and restrained for minor incidents or 'just in case'. This is not in line with best practice guidelines in other sectors such as designated centres or other jurisdictions.
- There is a real risk of physical and emotional harm for children who experience restraint or seclusion, staff who partake in incidents and children who witness incidents.

- There is a lack of any policy or guidance on restraint and seclusion practices in the education sector in Ireland; these practices are monitored by HIQA and the Mental Health Commission in health and social care settings. Other jurisdictions, as outlined above, are providing guidelines on the use, monitoring and training required on the use of restraint and seclusion of children in schools. Ireland is lagging behind. Best practice places the child's wellbeing at the centre of the use of restraint and seclusion. Well trained teachers and other school staff are crucial for this, ensuring children and staff are not harmed unnecessarily.
- Parental experience is that there is no redress when a child has been restrained or secluded. In some cases, Tusla, the National Education Psychological Service, the National Council for Special Education, the Department of Education and Skills were aware of restraint and seclusion of a child. However, they were either unable or unwilling to tell a school to cease these practices.
- Children have been 'forced' to leave their schools due to parents not agreeing to allow the use of restraint or seclusion (when asked); not receiving an education; and/or being too fearful of returning to school after an incident of restraint or seclusion. The right to an education for these children is being restricted and this could have a serious knock on effect on the development of these children.

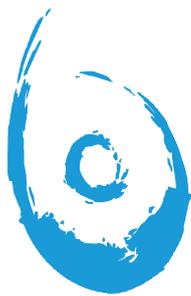
Acknowledgements

Inclusion Ireland would like to acknowledge the 14 brave families who have shared their stories that form the basis of this report. While these families have had very negative experiences they are seeking system change so no child has to go through what their child has experienced.

We would also like to thank Gareth Noble from KOD Lyons who gave a legal guidance session to Inclusion Ireland and the families.

Thank you to Eithne Lynch and Rachel Power from the Public Interest Law Alliance who gave Inclusion Ireland invaluable support.

We would also thank the Government and Pobal who through the Scheme to Support National Organisations support Inclusion Irelands work in this area.



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