

School Behaviour Management

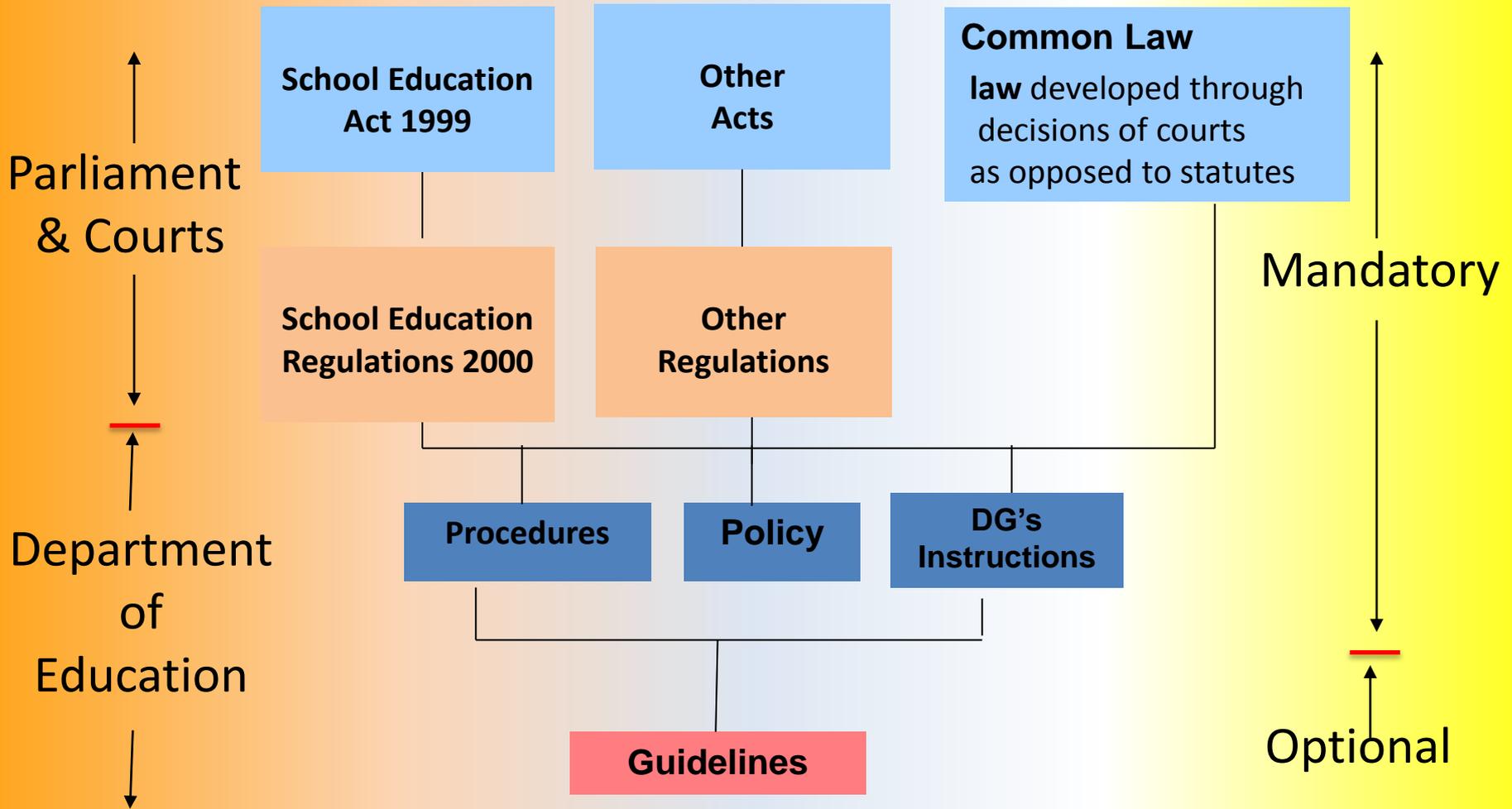
- **LEGAL CONSIDERATIONS**
- **PHYSICAL CONTACT / INTERVENTION/RESTRAINT**
- **DOCUMENTATION**

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**What are the Legal and
Policy / Regulation
positions that will
guide my decisions?**

Regulatory Framework



Relevant Legislation & Policies

Western Australian Legislation

- *Education Act 1999*
- *School Education Act Regulations 2000*
- *Occupational Safety and Health Act 1984*
- *Criminal Code Act Compilation Act*

DOE Policies

- *Behaviour Management in Schools 2000/2013 - (BMIS)*
- *Duty of Care*
- *Risk Management*
- *Emergency Management*
- *Student Health Care*

W.A. Criminal Code

257. Discipline of children

It is lawful for a parent or a person in the place of a parent, or for a schoolmaster, to use, by way of correction, towards a child or pupil under his care, such force as is reasonable under the circumstances.

Regulation 38

School Education Regulations

Part 3 - Management of government schools

Division 4 - Supervision of students, protection of persons and property

38. Supervision of students, restraint of persons:

A member of staff of a government school may, in the performance of the person's functions, take such action, including physical contact with a student or a student's property, as is reasonable;

- (a) to manage or care for a student; or
- (b) to maintain or re-establish order; or
- (c) to prevent or restrain a person from
 - placing at risk the safety of any person; or
 - damaging any property.

What is Reasonable?

- Not extreme or excessive
- Moderate or fair
- Possessing sound judgment

**Excessive Physical Contact / Force
is not Reasonable**

The Reasonable Use of Physical Prompts is Lawful

- Whilst not legislated in an Act, Common Law would prevail in regard to the reasonable use of touching and physical prompts in the implementation of an educational plan whether a parent has agreed to this or not. It is not unlawful.
- The reasonable use of physical prompts is lawful and necessary for the good order and management of a classroom. The Department cannot give this away to parental consent.

....Robert Castiglione, DOE Solicitor..... 2008

Crown Delegates Authority To Teachers

- The commonly held view that teachers derive from parents their authority to supervise and control pupils in their care was overturned by the High Court of Australia.
- ‘It is not the parent but the Crown that delegates authority to a teacher.’

(High Court of Australia RAMSAY v. LARSEN [\[1964\] HCA 40](#))

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/1964/40.html>

Keep in mind...

Physical Contact using Excessive Force - LEGAL POSITION

1. DOE & CRIMINAL repercussions may eventuate if physical contact /restraint is used on a student and that contact /restraint is not justifiable and not reasonable.
2. In addition Civil court action could be taken by parents / caregivers even if (1.) does not eventuate.

**What do I need to be clear on with
regards to Physical Contact /Restraint
in the school setting?**

BMIS GUIDELINE - PHYSICAL CONTACT

- *When attempting to maintain order it is always preferable for staff to use verbal de-escalation strategies to manage student behaviour. **However, it may become necessary for a staff member to use reasonable physical contact to maintain or re-establish order.***
- ***This may also include situations where teachers are required to defend themselves from physical harm. The application of any form of physical contact towards a student places staff in a vulnerable position.***

Types of incident where physical contact may need to be used

Examples

- *Assisting an injured / distressed student*
- A student attacks staff or another student.
- Student engaged /attempting to damage property.
- Student running up and down a corridor in a way that could cause injury.
- A student is absconding - only applies if the child is at risk.
- Student seriously disrupting lesson - refuses to cease and persistently refuses to leave the room.
- Unplanned or emergency interventions may be required in response to unforeseen events.

Physical Contact & Restraint

Can take several forms. It might involve staff:

- caring for a student
- escorting
- physically standing between students;
- blocking a student's path;
- holding
- guiding
- leading a student by the hand or arm
- shepherding a student away
- **physical restraint - restraining a student**

#Behaviour can be very fluid – what may start out as the lightest of physical contact may quickly escalate to restraint.

Physical Restraint

Restraint occurs when a member of staff uses bodily physical force intentionally to limit a student's movement against his or her will.

Restraint should not be confused with other forms of physical contact or intervention.

PHYSICAL CONTACT & RISK

- Physical contact including restraint carries risks. These include the possibility of serious physical and psychological trauma and even death.
- Staff also need to consider their own physical limitations.

and REMEMBER.....

Physical contact by staff is not mandatory.

GUIDELINES TO SUPPORT PHYSICAL CONTACT & RESTRAINT - DOE

Do I have to use physical contact/restraint?

NO - You do not have to put yourself into a situation where there is personal danger, as your primary duty of care is always to yourself.

However there is a requirement under Duty of Care to respond with an intervention.

Other appropriate forms of intervention may be – calling for help using a verbal response, removing all bystanders to ensure their safety, removing objects that have the potential to become projectiles or even , ringing the police.

CONSIDERATIONS

Primary Consideration – Exercising professional judgment consistent with School processes and Admin support protocols.

- What is my goal? Compliance? – Safe outcomes?
- Are my actions fair, **reasonable, proportionate, and necessary?**
- Are my actions consistent with school protocols?
- What should I record?
- Who must I tell?
- Do I understand which actions could lead to criminal / civil and/or disciplinary action?

**What are my obligations under
Duty of Care?**

Duty Of Care

Guideline

- *The duty owed to students is not a duty to ensure that no harm will ever occur, but rather a duty to take reasonable care to avoid harm being suffered.*

DUTY OF CARE

- **Teaching Staff** owe a duty to take reasonable care for the safety and welfare of students whilst students are involved in school activities or are present for the purposes of a school activity. The duty is to take such measures as are reasonable in all the circumstances to protect students from risks of harm that reasonably ought to be foreseen.
- **When Non-teaching Staff**, volunteers and external providers agree to perform tasks that require them personally to care for Students (in the absence of a member of the Teaching Staff) they will also owe a duty to take such measures as are reasonable in all the circumstances to protect students from risks of harm that reasonably ought to be foreseen.

Member of Staff

Under the School Education Act 1999 a
“member of staff”, in relation to a government
school, means a person —
Employed in the department and referred to in
section 235(1)(a), (b), (c) or (d)

235 (1) Categories of staff

To enable the functions of the department to be performed persons are to be employed in the department —

- (a) as members of the teaching staff;
- (b) as other officers
- (c) as wages staff
- (d) as public service officers appointed or made available via the Public Service Management Act WA

- **What do I need to document when I use physical contact to manage an issue?**

Key Reporting Requirements

When to Report

- All Restraints
 - Physical contact in any case of an injury or complaint or likely complaint
1. Notify school admin, & provide written report as soon as possible
 2. Notify Parents (Admin responsibility)
 3. Follow Up - The circumstances should be discussed with the student, and with others, as appropriate



Content of Written Report

- Who participated? Observers? Who was informed and when?
- When did the contact/restraint occur? (date/time)
- What was happening before, during, and after the restraint?
- Describe alternative efforts attempted and the outcomes of those efforts.
- What behavior prompted the restraint?
- Describe the restraint.
- Documentation of any injury to students or staff.

Incident Report

Location	
Date & Time of event	
Duration Staff present/observed	
Who was involved?	

Incident Outline

Injury and or Damage to Property

Online Incident Notification System

A Principal will report instances of physical restraint through OINS – This report is received and read by Regional Office and the Standards and Integrity Directorate (SIDS).

SIDS will often follow up with the school and in the case of a parent complaint will investigate staff, hence accurate documenting incidences of restraint is essential.

Read Relevant Regulations & Policies#

All DOE Regulations & Policies are lawful orders

Suggested Reading :

1 - School Regulations Behaviour Management Sections

2 - Behaviour Management In Schools (BMIS)

Lack of knowledge of the law will not protect staff or from the consequences of inappropriate actions.

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