

North Lanarkshire Council Report

Additional Support Needs Member/Officer Review Group

approval noting

Ref DB / JP

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Promoting Positive Relationships: De-escalation and Physical Intervention Policy

From Derek Brown

Email pollockjud@northlan.gov.uk

Telephone 01236 812291

Executive Summary

Within North Lanarkshire there is currently a review of the Additional Support Needs sector which includes a Member Officer Working Group and the Improving Relationships Group taking strategic overview. There are different work streams focusing on policy design, the allocation of provision, curriculum design, recruitment, deployment and training for staff. These Groups are bringing forward recommendations for the final report which will be brought to committee in September 2019.

A part of this work is to refresh the Council's policy and practice relating to the use of De-escalation and Physical Interventions to support children and young people with distressing and challenging behaviour.

This paper explores the issues involved and recommends an approach.

This will replace Management Circular C11 Physical Restraint which was specifically for school use in relation to physical restraint.

Recommendations

The Additional Support Needs Member Officer Working Group is asked to:

- (i) Note the contents of the report
- (ii) Approve this policy for adoption from August 2019 subject to ratification by the JCNT

Supporting Documents

Council business Support all children to realise their full potential
plan to 2020

Related Documents

Standards in Scotland's Schools etc. Act 2000

<http://www.gov.scot/Resource/0051/00515736.pdf>

Education (Additional Support for Learning) (Scotland) Act 2004 (as amended)

<http://www.gov.scot/Publications/2009/11/03140104/0>

Getting it Right for Every Child

<http://www.gov.scot/Topics/People/Young-People/gettingitright>

Children and Young People (Scotland) Act 2014

http://www.legislation.gov.uk/asp/2014/8/pdfs/asp_20140008_en.pdf

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

<https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>

Included Engaged and Involved Part 2 2017

<https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2017/06/included-engaged-involved-part-2-positive-approach-preventing-managing-school/documents/00521260-pdf/00521260-pdf/govscot%3Adocument/00521260.pdf>

Developing a positive whole-school ethos and culture – Relationships, Learning and Behaviour (2018)

<https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2018/06/developing-positive-whole-school-ethos-culture-relationships-learning-behaviour/documents/developing-positive-whole-school-ethos-culture-relationships-learning-behaviour/developing-positive-whole-school-ethos-culture-relationships-learning-behaviour/govscot%3Adocument/00537041.pdf>

No Safe Place

<https://www.cypcs.org.uk/ufiles/No-Safe-Place.pdf>

1. Background

1.1 Rationale

- 1.1.1 North Lanarkshire Council recognises its responsibility to keep everyone safe and also acknowledges that some children and young people can present distressing behaviours that may require those staff working with them to intervene to keep themselves and others safe from serious injury. An establishment's approach to prompting positive relationships and behaviours should be welcoming and nurturing, ensuring that the safety and wellbeing of all members of the establishment is prioritised.
- 1.1.2 Staff are expected to work positively and confidently with children and young people, building relationships of trust and understanding. In responding to challenging behaviour it is important to remember that all behaviours are a form of communication. The foundation of good practice is understanding that child or young person's needs, understanding the causes of their behaviour and finding solutions. Staff are always expected to find the least intrusive way possible to support, empower and keep children and young people and themselves safe.
- 1.1.3 This policy has been produced to assist heads of establishments and staff across Education and Families understand the legislative and policy context around de-escalation and physical intervention and support establishments to put policy into practice.
- 1.1.4 The policy takes account of all relevant and up to date legislation and national guidance including those relating to children rights (UNCRC) and will be supplemented with a practice guide, currently under development, for day to day use in all establishments by all relevant staff.
- 1.1.5 This policy replaces Management Circular C11 which was specifically for school use in relation to physical restraint.

1.2 Policy Context and Legislation

- 1.2.1 The Health and Safety at Work act 1974 requires every employer to ensure, so far is reasonably practicable, the health and safety and welfare at work of all employees and also the provision of information, instruction, training and supervision as is necessary to ensure, so far is reasonably practicable, the health and safety at work of all employees.
- 1.2.2 The Education (Scotland) Act 1980 recognises that there may be occasions when staff may have to use 'such force as is reasonable' to prevent a child or young person causing injury to themselves or others. Despite using preventative and de-escalation strategies, it is recognised that in certain exceptional situations children and young people may continue to exhibit distressed or challenging behaviour that will require physical intervention as a last resort to prevent injury or serious harm.
- 1.2.3 The Children (Scotland) Act 1995 places a duty on schools and local authorities to safeguard and promote the welfare of children.
- 1.2.4 The Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) *defines additional support needs as when "the child or young person*

is, or is likely to be, unable without the provision of additional support to benefit from school education provided or to be provided for the child or young person”.

- 1.2.5 Section 16 of the Standards in Scotland’s Schools etc.(Scotland) Act 2000 provides that action taken to avert an immediate danger of personal injury to, or an immediate danger to the property of, any person (including the child or young person concerned) would not be considered as corporal punishment of the child or young person.
- 1.2.6 The Universal Declaration on Human Rights states that children and young people are entitled to special care and assistance. This concept is reiterated throughout the UN Rights of the Child. Article 37 states that children and young people have a right to be protected from cruel, inhuman or degrading treatment or punishment, and a right not to be deprived of their liberty unlawfully or arbitrarily. These conventions are further detailed in paragraph 2.2
- 1.2.7 The refreshed guidance: Included, Engaged and Involved Part 2: Preventing and Managing School Exclusions referenced the use of physical intervention and seclusion in schools (2017). It states that:

“it is only acceptable to physically intervene where the member of staff reasonably believes that if they do not physically intervene, the child or young person's actions are likely to cause physical damage or harm to that pupil or to another person”.

1.3 National Drivers

- 1.3.1 In Scotland there has been a parent led campaign, gathering momentum and attracting support from professional organisations such as BILD (British Institute Of Learning Disability) and the Challenging Behaviour Foundation, calling for the Scottish Government to provide greater regulation of restraint and seclusion in Scottish Schools. This is an international issue: concerns have been raised in the rest of the U.K., Republic of Ireland, Australia, New Zealand, Canada and several states in America over the use of restraint and seclusion in schools for pupils with additional support needs/disabilities.
- 1.3.2 In Scotland physical restraint and seclusion practices are monitored and regulated by the Care Inspectorate in Local Authority care settings and in Residential Special Schools but are not subject to the same level of scrutiny in educational establishments.
- 1.3.3 The report from the Children and Young People’s Commissioner: “No Safe Place: Restraint and Seclusion in Scotland’s Schools” (2018) draws together findings with regards to the use of physical intervention and seclusion with children and young people across Scotland. This report found that the lack of clear National Guidance means that restrictive practices in Scotland’s schools are not properly regulated or monitored and focussed on Health and Safety. The Report provides 22 recommendations for Local Authorities and the Scottish Government. In response the Scottish Government, Education Scotland along with COSLA and ADES are currently working with all 32 Local Authorities to produce more robust National Guidance.

1.4 The Local Context

- 1.4.1 Within North Lanarkshire Council there are 13 Additional Support Needs Schools and 10 Language and Communication Support Centres (3 in Secondary Schools and 7 in Primary Schools) and 5 ASN Early learning and childcare establishments. Within these schools and early years establishments, there are children and young people who can display particularly distressing and challenging behaviours that may require adults to physical intervene to keep everyone safe.
 - 1.4.2 Currently 9 schools have staff trained in the use of Physical Intervention. Six schools use a system called CALM (Crisis and Aggression Limitation and Management) and three use TCI (Therapeutic Crisis Management).
 - 1.4.3 Within North Lanarkshire there are five residential children's houses. Staff working in children's residential care who are trained to use Physical Intervention use a system called PPB (Promoting Positive Behaviour). This system has been rolled out to adult services, foster carers and homeless services.
 - 1.4.4 In relation to the mainstream sector there are 23 Secondary Schools and 120 Primary Schools, 16 Family Learning Centres and 73 Primary School Nursery Classes. Currently, there are no staff specifically trained in either CALM, TCI or PPB.
 - 1.4.5 Currently in North Lanarkshire, the decision is left up to individual schools which system for De-escalation and Physical Intervention they use.
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2. Report

2.1 Context

- 2.1.1 Positive relationships and mutual respect between staff, children and young people are essential to an effective care and learning environment. A nurturing climate which focuses on children and young people's entitlement to be safe, healthy, active, nurtured, achieving, respected, responsible and included is the foundation of North Lanarkshire's approach to supporting children and young people to realise their full potential.
- 2.1.2 A range of asset based evidence informed supports are also offered to meet the needs of children and young people who, as a result of compromised emotional wellbeing, experience difficulty in settling to learn and participate in educational activities.
- 2.1.3 This framework supports the implementation of staged intervention and the Health and Wellbeing map for GIRFEC planning pathways.
- 2.1.4 Consistent implementation of these approaches should prevent the occurrence of behaviours which risk harm to the child, young person or others. However in

very exceptional circumstances where safety is at immediate risk it may be necessary to physically intervene.

- 2.1.5 Physical intervention is a serious matter. The emotional and physical impact on the child or young person and the person implementing the intervention can be significant.
- 2.1.6 All schools and establishments will have their own relationships and behaviour policy which will set the scene for the culture and ethos for their establishment.
- 2.1.7 In North Lanarkshire children and young people will have their additional support needs supported and planned for across three levels :- Universal, Additional and Intensive. Whilst it is accepted that distressing and challenging behaviours can present at any of these levels, it is acknowledged that children and young people requiring intensive support, to meet their needs, are both more likely to be educated and cared for outwith universal services and are at a higher risk of requiring physical intervention to keep them safe.
- 2.1.8 This will be particularly challenging for staff working in these settings, however, it is important to ensure that all staff, no matter the setting, have been equipped with the right support/training and feel confident in how to de-escalate difficult and distressing situations.

2.2 The European Convention and Human Rights (ECHR) and United Nation on the Convention of the Rights of the Child (UNCRC)

- 2.2.1 The European Convention on Human Rights sets out fundamental human rights and political freedoms and these have been incorporated into domestic law by the Human Rights Act 1998. U.K. law must be interpreted, so far as possible to do so, in a way that is compatible with the Human Rights Act. In the context of seclusion and physical intervention, the following rights are of particular relevance:
 - (1) Article 3 of the ECHR prohibits torture, inhuman and degrading treatment or punishment.
 - (2) Article 5 protects the rights to liberty and security.
 - (3) Article 8 concerns the right to respect for private life, including respect for physical integrity.
- 2.2.2 It is unlawful for any public authority to act incompatibly with ECHR rights (unless under a statutory duty to act in that way), and anyone whose rights have been violated can bring court proceedings against the public authority.
- 2.2.3 UN Convention on the Rights of the Child (UNCRC) is an international convention which is not incorporated into domestic law but the principles of which should be followed and include:
 - (1) Article 2: children have the rights the Convention lays out, and that no child should be discriminated against.
 - (2) Article 3: the best interests of a child should always be considered in all actions that concern them.
 - (3) Article 19: children should be protected from all forms of violence and injury.
 - (4) Article 23: children with disabilities should enjoy full lives in conditions that ensure their dignity.

- (5) Article 29: a child's education should allow them to develop their personality, talents and mental and physical abilities to their fullest potential.

2.3 Definitions and Clarity of Terminology

- 2.3.1 This policy aims to define de-escalation, physical intervention and seclusion and to clarify for staff the situations where physical intervention may be used. These may involve children and young people for whom risks have been assessed and for whom physical intervention strategies have been planned and agreed as well as those whose behaviour is unpredictable and unforeseeable.
- 2.3.2 In the absence of accepted international legal definitions we have based our definitions for Restraint and Seclusion on the Children and Young Peoples Commissioner for Scotland Investigations on Restraint and Seclusion. These definitions are based on a number of resources referenced in the above document and can be accessed using the following link <https://www.cypcs.org.uk/ufiles/Terms-of-Reference-Restraint-and-Seclusion.pdf>
- 2.3.3 **De-escalation** is the reduction of the intensity of a conflict or potentially violent situation. All staff working directly with children and young people in our schools and establishments should be aware of the early preventative and de-escalation approaches. Support for staff in using de-escalation strategies and creating a positive ethos and climate forms an integral part of the Policy and Practice Map for Health and Wellbeing.
- 2.3.4 **Physical Intervention** is a term used to cover the use of direct or indirect force, through bodily, physical or mechanical means, to limit another person's movement. This definition can be further expanded to include:-
- (1) **Proximity:** A physical presence using no contact such as standing beside or near a child or young person to negotiate with them but allowing them freedom to leave if they wish.
 - (2) **Touch Support:** This includes minimum contact in order to lead, guide or usher a child or young person applied in a nurturing and secure manner which permits the child or young person some freedom and mobility.
 - (3) **Restraint:** This includes any measure or technique which involves the child or young person being held firmly or guided away from the situation by one or two trained persons. Physical restraint must be based on the principle of least restriction for the shortest time necessary in order to keep the child or young person safe.
- 2.3.5 **Physical restraint of any kind must always be seen as the last resort.**
- 2.3.6 **Seclusion** must not be confused with 'time out'. Time out is defined as '*a behavioural intervention of short duration in which undesired behaviours are eliminated by not being reinforced.*' Seclusion in contrast is '*the restriction of a person's freedom of association without his or her consent by shutting him or her alone in a room or other area where they are prevented from leaving.*' According to the Mental Welfare Commission for Scotland, seclusion '*can only be justified on the basis of clearly identified and significant risk of serious harm that cannot be managed by any other means.*'

- 2.3.7 The degree of physical intervention used **must be proportionate** to the circumstances of the incident. Any physical intervention should always be the **minimum needed** to achieve the desired result and depend on the age, understanding of the child or young person.
- 2.3.8 The law forbids anyone to use any degree of physical intervention which is deliberately intended to punish a child or young person or which is primarily intended to cause harm or humiliation. Only in circumstances where a member of staff reasonably believes that there is an immediate risk of harm to the child, young person or others should physical intervention be considered.
- 2.3.9 The threat of or the damage to property is not a reason for staff to use physical intervention(s). The only circumstance that may be considered as a justification for physical intervention with regard to damage to property would be where the damage could result in harm or injury to a child, young person or a member of staff or endanger lives.

2.4 Planning for Children and Young People

- 2.4.1 All children and young people will require support at some time to support their wellbeing and development. By implementing a staged intervention approach we can ensure that children and young people receive the help they need when they need it. The staged intervention processes for identifying, assessing, planning and monitoring in respect of additional support must be an integral part of care and education.
- 2.4.2 The child or young person's plan should be used to target specific areas within Health and Wellbeing.
- 2.4.3 Where a child or young person for whom it has been assessed is at high risk of causing serious injury to themselves or others, consideration of interventions and strategies to minimise these risks should be identified and captured within the child or young person's plan alongside a risk assessment. On the occasions that the assessment process has identified that to prevent the risk of harm physical intervention strategies may be necessary. It is paramount that the circumstances that give rise and the strategies for managing the risks should be outlined in the planning process.
- 2.4.4 The risk assessment and subsequent plans should involve staff, parents or carers and the child or young person and where appropriate partner agencies. The plan and risk assessment should outline the circumstances and factors that may give rise to the potential need to use of physical intervention, the methods which are known or likely to be effective and other arrangements for its use.
- 2.4.5 It is important to determine whether there are any medical conditions which might place the child or young person at risk, should particular techniques or methods of physical intervention be used. If so, this must be drawn to the attention of those working with or looking after the child or young person and it must be stated in the child or young person's plan. If in doubt, medical advice must be sought.
- 2.4.6 Where a child or young person has not been identified as at high risk of causing harm but an unforeseen circumstance arises, the absence or existence of a plan or a risk assessment should not prevent staff/carers from intervening within the framework of this policy to ensure the safety of others.

2.4.7 This is supported by the following professional bodies;

(1) The General Teaching Council Standards for Registration:

Section 3.2.2 - Develop positive relationships and positive behaviour strategies, which expects that teachers are “able to recognise when a learner’s behaviour may signify distress requiring the need for further support, and take appropriate action”.

(2) Scottish Social Service Council code of Practice for Social Services Workers:

Section 1.4 - Respect and maintain the dignity and privacy of people who use services

Section 4.3 - Take necessary steps to reduce the risks of people who use services harming themselves or other people

2.5 Using Physical Restraint Techniques

2.5.1 The need for the use of physical restraint techniques as opposed to ‘Proximity’ and ‘Positive Touching’ as outlined in para 2.3.4 as a form of physical intervention will only be required in very exceptional circumstances.

2.5.2 Staff should only use physical restraint techniques if they have undertaken approved training which in North Lanarkshire currently includes:

- (1) P.P.B (Promoting Positive Behaviour).
- (2) C.A.L.M (Crisis Aggression Limitation and Management).
- (3) T.C.I (Therapeutic Crisis Intervention).

2.5.3 In an unforeseen circumstance, and in a situation where a child or young person is at significant risk of injury or harm, there may be occasion when an untrained staff member may need to intervene physically. Such situations might include: preventing unpredicted physical behaviours towards self and others.

2.5.4 In all situations, the physical restraint of a child or young person must not:

- (1) Impede the process of breathing;
- (2) Intentionally inflict pain or injury or threaten to do so;
- (3) Affect vulnerable parts of the body;
- (4) Extend the joints beyond the normal limits or range of motion (hyperextension or hyperflexion), and pressure on or across the joints.

2.5.5 It is expected that compliance with the terms of this policy should provide a measure of protection for staff, who in exercising their duty of care towards others, have had to resort to using reasonable force in physical restraint to prevent significant harm. Staff however, should understand that in making the decision to deploy restraint, the decision to do so, and the particular approach deployed may be subject to challenge through legal process, an employer’s disciplinary procedure and GTC(S) disciplinary investigation. Unreasonable or excessive use of force during any physical intervention may result in criminal proceedings or civil proceeding for damages.

2.6 Seclusion

2.6.1 Seclusion as a punishment is not acceptable as it contravenes both the ECHR and UNCRC and is therefore prohibited in all establishments as a mean a punishment. Very occasionally seclusion may have to be used as a last resort when all other alternatives have been exhausted and it is the safest measure to manage the situation. This should be clearly evidenced with the pupil's plan. Seclusion should be used for the shortest time possible and all incidents should be appropriately.

2.7 Withdrawal

2.7.1 A child or young person may find that time on their own or withdrawal from a situation acts as a positive intervention at times of distress, such interventions should form an integral part of the planning for the child or young person. The child/young people and their parents/carers should know where the safe place is and how to access it.

2.7.2 Withdrawal involves allowing, assisting or guiding a child or young person to move away from a situation which they are finding distressing to a safer quieter or more comfortable space where they have the time and space to regulate their emotions or behaviours. Withdrawal may be used for a child or young person who has requested time out of their environment whilst in a high state of anxiety or whose presenting behaviours are of a high level of physical threat or danger to themselves or others.

2.7.3 Withdrawal should only be used when other less intrusive strategies within the child or young person's plan have been attempted and the behaviour continues to escalate and there becomes a serious threat of imminent injury.

2.8 Reporting Incidents

2.8.1 **All incidents involving physical restraint must be recorded by the following means**

- (1) Schools – incidents will be recorded on the same day on CIRIS (under development)
- (2) Registered Care Settings – incidents will be recorded on the same day on CIRIS and reported to the Care Inspectorate (as appropriate) in line with the Care Inspectorate notification processes.

2.8.2 Each month the findings will be analysed and monitored by senior officers in Education and Families.

2.8.3 Establishments must ensure that parents / carers are informed of the incident on the same day, where appropriate and where it is reasonably practicable to do so.

2.9 Debriefing

2.9.1 Incidents where staff have been required to intervene with challenging and distressing behaviours is likely to have an emotional impact on the staff involved. Following such an incident the Head of Establishment should debrief with the member(s) of staff involved. The conversation should involve checking the well-being of the member of staff, talking through the incident and ensuring the incident has been accurately recorded, as appropriate. The affected member(s)

of staff should be informed of support available to them through North Lanarkshire and their Professional Association.

- 2.9.2 Following any incident, and at an appropriate time, a member of staff who has a strong and trusted relationship with the child or young person should debrief with them. This may include the parent / carer or other agency involved with the child or young person. The conversation should involve checking the well-being of the child and talking through the incident using a solution focused approach.

2.10 Future Practice and Training Requirements

- 2.10.1 Historically schools in North Lanarkshire have used CALM (Crisis Aggression Limitation and Management) and TCI (Therapeutic Crisis Intervention) systems for de-escalation and Physical Intervention. Children and Residential care settings adopted PPB (Promoting Positive Behaviour).
- 2.10.2 Following consultation with key stakeholders and analysis of the three approaches the recommendation is that PPB is phased in as a single response to managing challenging and distressing behaviours in all children and families settings.
- 2.10.3 The existing training programme for residential care staff will form the basis of an Education and Families implementation plan which will include:-
- (1) A minimum of 4 NLC Staff Trainers (4 day training)
 - (2) Universal Training: for staff in mainstream schools (2 day training on de-escalation)
 - (3) High Intensity support staff: Targeted teachers and Additional Support Needs Assistants in Additional Support Needs schools (3.5 day training)

3. Equality and Diversity

3.1 Fairer Scotland

The Fairer Scotland Duty is intended to reduce the inequalities of outcomes caused by socio-economic disadvantage. Inequalities of outcome mean any measurable differences between those who have experienced social – economic disadvantage and the rest of the population.

3.2 Equality Impact Assessment

Since young people in areas of socio-economic disadvantage often experience multiple barriers to learning, this policy should be understood to be coherent with the Council's approach to ensuring fairness and diversity.

4. Implications

4.1 Financial Impact

Training costs are being explored.

4.2 HR/Policy/Legislative Impact

This policy takes account of legislative requirements and relevant Scottish Government guidance. A full programme of support will be in place to ensure effective implementation of the policy.

4.3 **Environmental Impact**

N/A

4.4 **Risk Impact**

Risk assessment is built into the recommended framework.

5. Measures of success

5.1 Staff feel trained and confident in the management of children and young people displaying distressed behaviours.

5.2 Staff are supported and as a result stress related absences are reduced.

5.3 Incidents of child and young people safety have improved outcomes



Derek Brown
Executive Director, Executive Director