



Restrictive Practices Authorisation in New South Wales

Submission by Children and Young People with Disability Australia, August 2019

Overview

Children and Young People with Disability Australia (CYDA) is the national representative organisation for children and young people with disability aged 0 – 25 years. CYDA has an extensive national membership of over 5,000 young people with disability, families and caregivers of children with disability, with the majority of our members being families.

CYDA's purpose is to advocate systemically at the national level for the rights and interests of all children and young people with disability living in Australia and it undertakes the following to achieve its purpose:

- Listen and respond to the voices and experiences of children and young people with disability.
- Advocate for children and young people with disability for equal opportunities, participation and inclusion in the Australian community.
- Educate national public policy-makers and the broader community about the experiences of children and young people with disability.
- Inform children and young people with disability, their families and care givers about their citizenship rights and entitlements.
- Celebrate the successes and achievements of children and young people with disability.

CYDA is pleased to provide this brief submission to the New South Wales (NSW) Government Consultation Discussion paper on *Restrictive Practices Authorisation in NSW*.

Background

CYDA maintains that restrictive practices including restraint and seclusion must be eliminated and constitute a breach of human rights. There is no safe way to implement restrictive practice and it should only be used 'in very limited circumstances' and as a 'last resort'. The data collected by CYDA over multiple years shows restrictive practices are being used widely.

The *Restrictive Practices Authorisation in NSW* Consultation Discussion Paper poses a number of questions including the settings where restrictive practices need to be authorised before they can be used.

One of the settings where restrictive practices are of signification concern for children and young people with disability is within the school education system. Schools have a legislative and statutory responsibility to ensure the safety of students with disability at school.

CYDA members report a range of abusive practices in schools. This includes the use of restrictive practices, including restraint and seclusion. Restraint and seclusion is a breach of the human rights of students with disability.¹ It also causes trauma and harm to students with disability.

Restraint encompasses a range of interventions intended to manage student behaviour. It can include physical restraint and mechanical restraint where a device is used to restrain students such as a belt. It can also include chemical restraint using medication to change a person's behaviour and psychological restraint, which include the use of coercion or limit-setting to manage behaviour.

Seclusion is the confinement of a person in a room or area from which their free exit is prevented. Restraint and seclusion is often justified as being necessary to protect themselves and others from harm.

"Research has demonstrated that, in practice, restraint and seclusion are used in school settings for a variety of purposes beyond or in addition to a protective purpose, including as a means of coercion, discipline, convenience or retaliation."²

Existing national guidelines and frameworks do not directly address the use of restraint and seclusion in schools, and state and territories have differing regulation, most allowing physical restraint and some including seclusion. What is common is a complete lack of policy frameworks that sit around eliminating restraint and seclusion.³ One of the ongoing challenges is that there is no consistent data routinely collected in Australian schools on the rates of restrictive practice including restraint and seclusion.

CYDA has tried to obtain data on restraint and seclusion from state and territory governments through Freedom of Information (FOI) requests. While some jurisdictions have been able to provide this information at an aggregate level, others such as the Victorian government have refused to provide this information because it is too administratively burdensome. Information has been requested from the New South Wales Education Department, but CYDA will only be able to access information that is held by the Employee Performance and Conduct Directorate. The information available is only if there has been an allegation against an employee. Complaints are held and managed by schools, and therefore the NSW Education Department has advised it cannot provide full information on restraint and seclusion in schools. Additionally there are no data on the extent of restrictive practices in early childhood services.

In 2017 CYDA completed a national education survey of 771 students with disability and families of children with disability. In that survey we found 19% (n=146) of Australian students with disability experienced restraint and 21% (n=162) of students with disability experienced seclusion in the previous year.

CYDA is part way through completing our 2019 national education survey in August and September 2019. The national results to date show 19% of Australian students with disability experienced restraint and 21% of students with disability experienced seclusion in the last year. Our results from NSW to date (n=75) shows eleven students (15%) with disability experienced restraint and sixteen (21%) students with disability experienced seclusion in the last year.

Qualitative feedback was also received in relation to restraint and seclusion some of the comments from NSW were:

¹ McCarthy, T (2018) Regulating restraint and seclusion in Australian Government Schools, A Comparative Human Rights Analysis, QUT Law Review Volume 18, General Issue 2 pp. 194–228 ISSN: Online–2201-7275

² McCarthy, T (2018), p. 200, citing a range of research

³ McCarthy, T (2018)

“The school failed to understand that my child has motor planning issues and did not allow enough time for her to respond to a request they then "picked" her up and put her on her feet. There is a real lack of understanding, unwillingness to read information provided by the parents an over whelming attitude is "we know what we are doing, we have been doing it a long time, you are only a parent", Many of the staff have outdated attitudes to disability, in fact similar to the attitudes that the NDIS has sought to stamp out from old government services and private service providers.” Family member, student with disability aged 16-18 years, Regional NSW

“I believe she has been in her wheelchair for extended periods than she should be.” Family member, student with disability aged 16-18 years, Regional NSW

“Sent to 'planning room' for misbehaviour for specified periods of time - mostly gets into further trouble as inadequate supervision and he leaves. He's told he should not leave until teacher gives permission - mostly occurs during recess or lunchtime.” Family member, student with disability aged 7-9 years, Regional NSW

“Planning room, which is basically detention. Our son gets planning room when he leaves the classroom. He leaves the classroom because he has trouble to regulate his emotions. He is getting punished for something out of his control and understanding. Planning room is done in playtime at the school and they are not to leave that room until they are told and whilst in there they have to make a plan on how they can improve their behaviour. For a child with autism this is unachievable add they do not understand they have done anything wrong.” Family member, student with disability aged 7-9 years, Regional NSW

“When my son has had a meltdown he has been put into the classroom on his own with the door shut till he calmed down. Once this worked, another time he trashed the classroom and got suspended.” Family member, student with disability aged 13-15 years, Regional NSW

The 2019 results to date also show 21% of students with disability in NSW do not have an Individual Education Plan in place or the families are unaware if there is a plan in place. Overall 27% of families in NSW reported they were not involved in the development of the Individual Education Plan. There were 33% of respondents in NSW who disagree/strongly disagree to the statement “There is regular communication with the family/caregivers about the student's learning progress” and 53% who disagree/strongly disagree to the statement “The teachers and support staff have the training required to provide a supportive and enriching education environment for the students”. CYDA does not have access to data on how many students with disability have Behaviour Support Plans in NSW government schools.

Whilst these results are preliminary as the survey is not yet finalised, they do confirm previous surveys conducted by CYDA⁴ about the unacceptable use of restrictive practices in schools in Australia, including NSW. They also confirm that schools have a long way to go in providing inclusive education⁵ and preventing restrictive practices.

We are also aware that restrictive practices occur in other settings for children and young people with disability including early childhood services, disability services, health services, transport (including school transport) justice and child protection services. CYDA strongly recommends that NSW adopts a broad approach to reducing and eliminating restrictive practices across all settings, not just NDIS services.

⁴ See the results from CYDAs Education Surveys 2015, 2016 & 2017
https://www.cyda.org.au/education_issues

⁵ See CYDA (2013) Inclusion in Education: towards equality for students with disability
<https://www.cyda.org.au/inclusion-in-education>

The principles outlined for in the discussion paper do identify the principle of “reducing and eliminating the use of restrictive practices” which is pleasing, however this should be an overarching guiding principle. A principle of “accountability and transparency” is also required. Restrictive practices in all settings should be regularly reported publicly in aggregate form, across all risk settings inclusive of education. Key setting and systemic issues also need to be identified and reported on regularly.

Further principles required are “raising awareness, providing education and facilitating accessible information about restrictive practices”, “human rights” and “raising awareness, providing education and facilitating accessible information about restrictive practices” which are principles in the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector.⁶

The discussion paper proposed the development of Behaviour Support Plans. For children and young people with disability consistent Behaviour Support Plans that can go across different settings such as education and disability services are required. These should be based on the principle that restrictive practices will not to be used unless as “a last resort and utilising the least restrictive practice and for the shortest period of time possible time”.⁷ Further definition, training and supporting guidance needs to be provided on “last resort” and how to prevent restrictive practice.

Families are often the main caregivers of children and young people with disability and therefore they must be involved in the development Behaviour Support Plans and this must not be optional. Informed consent of the child or young person and their families/caregivers is also essential.

While the NDIS Quality and Safeguarding Commission has an important role in monitoring restrictive practices and complaints in relation to NDIS funded services, this alone will not be sufficient in reducing and eliminating restrictive practice for children and young people with disability in NSW.

CYDA recommends that legislation is necessary to reduce and eliminate restrictive practice in NSW covering all settings where restrictive practice occurs including education. Policy, guidance and training across all settings is also required to successfully implement the legislation. The legislation should also specify how the use of restrictive practice is monitored and authorised. CYDA would welcome further consultation about the drafting of the legislation.

Recommendations

- The NSW government introduce principles-based, comprehensive legislation to reduce and eliminate restrictive practice which covers all settings where restrictive practices occur, including education
- Restrictive practices are only authorised as an absolute last resort and utilising the least restrictive practice and for the shortest period of time possible
- There is increased monitoring, accountability and transparency around the use of restrictive practice in NSW and settings like education, disability services and child protection are compelled to publicly report data on when restrictive practices are used.

⁶ Department of Social Services (2014) [National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector](#)

⁷ Department of Social Services (2014)

- There are clear and accessible processes for families of children with disability and young people with disability to make complaints about the use of restrictive practice and have them investigated.
- The NSW government invests in initiatives to educate service providers, schools and other services about their responsibilities in eliminating restrictive practice.

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