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Convener
Public Petitions Committee
The Scottish Parliament
Edinburgh
EH99 1SP

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Dear John

Petition PE1548 (National Guidance on Restraint and Seclusion in Schools)

Thank you for providing me with the opportunity to comment on Petition PE1548 on national guidance on restraint and seclusion in schools, submitted by Beth Morrison. I support this petition and am pleased to see this important issue being given much needed attention. There is, as far as I am aware, no national guidance on the appropriate use of seclusion and restraint in educational establishments, although I am aware that guidance does exist in other settings e.g. in relation to residential care. I would support the development of such guidelines.

I am familiar with the issue raised by the Petitioner because of prior contact with my office. I wish to state from the outset that restraint or seclusion should only be used as a last resort and never as a punitive measure or to maintain order in the classroom. This is especially relevant to disabled children and young people because of their vulnerability. Children with learning disabilities and/or language or communication needs may not be able to express themselves effectively and may also have difficulties in understanding what is being said to them. This places them in an extremely vulnerable position and reliant on highly skilled staff, trained to understand and interpret what may manifest as challenging behaviour. Staff must be trained in how to deal with this appropriately, positively and effectively.

Evidence from research

This vulnerability is brought into stark relief by evidence from research which confirms that disabled children are at significantly greater risk of physical, sexual and emotional abuse and neglect than non-disabled children (Sullivan, Vernon and Scanlan 1987; Cross et al. 1993; Sullivan and Knutson 2000; Kvam 2004; Spencer et al. 2005). Those at greatest risk of abuse are those with behaviour/conduct disorders, children with learning difficulties/disabilities, children with

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speech and language difficulties, children with health-related conditions and deaf children (NSPCC 2014).

Sadly, I hear of too many incidents of poor practice in relation to restraint and seclusion in schools across Scotland. Staff often lack the training and skills to understand challenging behaviour and may not always appreciate that the child may actually be trying to communicate a particular need. The response can sometimes be inappropriate in ways that can scare the child and escalate the situation, resulting in injury to both child and staff member. This leads me to believe that there is a strong case for developing national guidance. Such guidance would help to resolve discrepancies in practice across the country and ensure a more rigorous approach to training, particularly around behaviour management and an awareness of children's rights. The Scottish Government Child Protection and Disability Toolkit is also a useful training resource which provides practical assistance to those working in the child care and disability fields and I have previously written to the Minister regarding its effective implementation.

Restraint and seclusion – a children's rights issue

The rights of disabled children to protection from abuse are enshrined in the UN Convention on the Rights of the Child (UNCRC). Key articles include:

- Article 2, which addresses the rights of all children, without discrimination of any kind, to all rights enshrined in the Convention;
- Article 3, which recognises that in all actions concerning the child, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration;
- Article 19, which provides for the protection of the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, and maltreatment or exploitation, including sexual abuse;
- Article 23, which recognises the right of the disabled child to enjoy a full and decent life in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community;
- Article 29, which states that the education of the child shall be directed to: (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential; (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

The UN Convention on the Rights of Persons with Disabilities, ratified by the UK in 2009, reaffirms that all disabled people must enjoy all human rights and fundamental freedoms. Article 7 of the Convention states that all necessary measures should be taken to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children, whilst article 16 details the right of all disabled people, in accordance with the Convention, to be free from exploitation, violence and abuse.

It is also worth noting that in its 2008 Concluding Observations, the UN Committee on the Rights of the Child, urged the UK State Party to 'ensure that restraint against children is used only as a last resort and exclusively to prevent harm to the child or others and that all methods of physical restraint for disciplinary purposes be abolished.' This applies to all children.

Is restraint or seclusion ever an acceptable response within positive behaviour support ?

I note that this question was asked by Jim Eadie MSP during the Committee session of 17th March 2015, and I wish to respond directly to this. Reference was made to 'Holding Safely'¹, the current guidance on the use of restraint for children in residential care, and the statement contained within that, namely

Restraining a child at the right time, in the right way, for the right reasons, can be a better thing to do than failing to restrain them.

My view is that restraint can be used, for the right reasons, but that it must be applied by trained and skilled professionals, used exceptionally and for the shortest time possible.

I support the guidance provided by the British Institute of Learning Disabilities (BILD) which states that restraint or seclusion must not be used to punish a child, but that it is acceptable when it is to protect someone from serious injury or death (or the injury of other people). However, this should always be a measure of last resort and always as part of a wider behaviour management strategy which focuses on positive behaviour strategies and which seeks to reduce and eliminate restraint and seclusion. The emphasis should be on supporting and understanding behaviour, within an educational setting, which should have as its main aim the development of the child's personality, talents and mental and physical abilities to their fullest potential, in line with article 29 noted earlier and developing appropriate culture and ethos which places the child firmly at the centre (in line with the Getting It Right for Every Child model).

Key to this will be to working within established frameworks which recognise the child's specific diverse needs e.g. adaptations may need to be made for a child who is a BSL user and who should be supported by proficient BSL teachers or support assistants. The British Institute of Learning Disabilities recognises the specific needs of such children and notes that for de-escalation "a set of verbal and non-verbal responses that, if used selectively and appropriately, may reduce the person's level of hostility by reducing anger" (Patterson et al, 1997).

Ultimately the main focus should be on understanding the child, rather than managing the problem. Disabled children and young people have the right to be treated with respect and dignity and not to be subjected to treatment which may negatively impact on their emotional, mental or physical wellbeing. In terms of 'seclusion,' I support the comments made by ENABLE in

¹ Davidson, J., McCullough, D., Steckley, L. and Warren, T. (eds.) (2005) *A guide for residential child care practitioners and managers about physically restraining children and young people*. Glasgow: Scottish Institute for Residential Child Care.

terms of not confusing this with 'time out', which is a behaviour intervention used as part of a structured behaviour support plan and does not necessarily involve being physically removed to a separate room or area. This points to a wider issue around definitions of 'physical restraint' and 'seclusion' and I would suggest that the development of any guidance seeks to establish clarity around these terms.

A need for National Guidance?

Dr Brodie Paterson, one of the authors of 'Holding Safely,' noted that this guidance was not designed with disabled children in mind, due to the very complex support that these young people may require. I support this view and agree that separate policy and guidelines is required. I would be more than happy to be involved in providing advice around a rights based approach to this.

As it stands, each local authority currently develops its own behaviour management and physical intervention strategies, the result of which has led to widespread inconsistencies in practice and – on occasion – questionable practice which suggest that children's rights are being infringed. There is often limited accountability, and no effective complaints mechanism for parents or other professionals to challenge failures or such violations. The lack of independent regulation and poorly trained staff suggests that this problem which requires specific attention to be dealt with effectively.

I must add, however, that there will also be countless examples of good practice which can be shared and learned from, and perhaps featured in any forthcoming guidance. I look forward to hearing evidence from COSLA in this regard.

Gap in current inspection landscape

The point was made during the Committee session and in other submissions (*e.g.* from ENABLE), that because of the particular remits of Education Scotland and the Care Inspectorate around inspection, there may be an unintended gap in protection for some of the most vulnerable children attending special schools or units. Currently Education Scotland has responsibility for inspecting and reporting on the quality of education across all types of provision, but it does not have a specific role to ensure appropriate care and dignity, as this sits within the remit of the Care Inspectorate. The Care Inspectorate's remit, however, only applies to registered care providers. The Committee may wish to consider how this could be addressed to ensure that all children receive the same protection in terms of the care and support they receive at school, even if that school is not a registered care provider.

Need for training

As Ms Morrison rightly notes in her evidence, those caring for disabled children must be trained in understanding challenging behaviour. Lack of confidence by staff along with limited knowledge and training can result in restraint and seclusion being used as a first resort, often as a result of not knowing how to deal with the situation and panicking. Training should be ongoing

and be a key part of a school's CPD programme. No untrained staff should employ restraint – unless the situation is an emergency – and any physical restraint techniques should only be performed by trained staff, in line with tried, tested and approved methods such as CALM or NVCI. If used inappropriately or by untrained individuals, restraint can cause serious physical or psychological harm to children and young people.

I am pleased to note from the evidence session that the Committee intends to follow up on this issue with the Scottish Ministerial Working group on child protection and disability and look forward to hearing of developments in this regard.

I would be happy to elaborate further on my response should that be required.

Yours sincerely



Tam Baillie
Scotland's Commissioner for Children and Young People

References

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