



Inclusion Ireland

The National Association for People
with an Intellectual Disability.

Inclusion Ireland Notes

(The need for) Statutory
guidance on seclusion and
restraint in educational settings.



Our Aim:

Irish legislation and guidance on the use of restrictive practices in educational settings, that protects children and young people from harm and complies with and the UN Convention on the Rights of the Child (UNCRC) the UN Convention on the Rights of People with disabilities.

Why it Matters:

In 2017, a group of parents came together to tell their story, all sharing a similar experience of having their child subjected to seclusion and/or restraint in a school in Ireland. They were concerned by the inaction of the Department of Education and Skills and other stakeholders in addressing the issue of seclusion and restraint. They believed that there was a real, on-going risk of physical and psychological harm to children. Their stories are recorded in the 2018 Inclusion Ireland Report – Shining a Light on Seclusion and Restraint.

The Department of Education has been repeatedly asked to issue guidelines to schools on the issue of restraint and seclusion. The National Council for Special Education asked for guidelines as far back as 2012, again in 2016 and in 2018. In 2019 the Department of Education established an Expert Working Group to develop guidelines to assist schools in managing “crisis situations”. The views of the public were invited to inform the work and draft guidelines were prepared.

At the first All-Island Restraint Reduction Network (AIRRN) Conference in October 2022 a group of parents again came together to tell their story of their experience of having their child subjected to seclusion and/or restraint in a school in Ireland. To date the guidance asked for since 2012 and promised in 2019 has not been issued to schools.

The use of restraints on children in educational settings raises the most serious human rights concerns potentially amounting to inhuman and degrading treatment in some circumstances. Children should not be subjected to inhuman and degrading treatment in any situation. Restraints can impact on a child’s right to access and benefit from education and the use of physical restraints can only be used in minimal circumstances. It must be lawful, necessary, proportionate and for a particular purpose prescribed in human rights law.

“The (AIRRN 2022) conference helped me to fully recognise the true impact on children caused by the lack of guidelines and procedures and recording of incidents in schools. The words of the mothers, in describing the pain of their children, following numerous incidents were powerful and harrowing. It is incumbent upon the State to ensure that seclusion and restraint within our education system become distant memories, in the same way that corporal punishment has. Educators argued for many, many years that they needed to option of physical punishment in order to “maintain order” in schools, but that has been very clearly debunked and we need to do the same with seclusion and restraint.”

Dr. Niall Muldoon, Ombudsman for Children, AIRRN 2022

Supporting the disabled child or child with additional needs within the educational setting

This conversation about the misuse of restrictive practices takes place particularly in the context of the disabled child or child with additional needs within the educational setting. In the absence of reporting and recording we do not have data for misuse of restrictive practices on the Island of Ireland. US federal data reports that of the 101,990 students who were restrained at school - to immobilize them or reduce their ability to move freely or were placed in seclusion — 79,676, or 78%, were students with disabilities, although students with disabilities made up just 13% of the school population. (U.S. Dept. of Education 2018)

Current guidance on the issue of the misuse of restrictive practices, placed within the framework of school behaviour and disciplinary policies, with only passing references to the exception that is the child with disability or additional needs, cannot succeed when the context in the main is a child with disability or additional needs and the context in the main is not misbehaviour or a failure in discipline, but a manifestation of the disabled child's distress or a reaction to an approach that is not developmentally appropriate for the child.

We will also fail if we continue to define the "crisis" in terms of what is being experienced by the school, the staff, the class - as observers and interveners - when the real difficulty and the crisis is that being experienced by the child, most likely a disabled child. This was recently put most clearly and succinctly by Workplace Relations Commission (WRC), adjudicator Thomas O'Driscoll. Finding that a school discriminated against a child with Down Syndrome on the grounds of disability. Mr O'Driscoll stated that "undoubtedly the girl's behaviour was challenging for the staff, as they described it, but instead of seeing the "challenge" as how best to deliver and meet the educational needs of all in their charge they attributed the problem to her." (RTE 2022)

US Dept. of Education (2018), The Use of Restraint and Seclusion on children with Disabilities in K-12 Schools, Accessed 28 November 22,
<<https://www2.ed.gov/about/offices/list/ocr/docs/restraint-and-seclusion.pdf> >

RTE 2022, School ordered to pay compensation for excluding child with Down syndrome from classroom, Accessed 28 November 22,
<<https://www.rte.ie/news/ireland/2022/1109/1335128-wrc-primary-school/> >

What needs to be done: Guidance and Legislation.

1. Guidance

It is now necessary for the Department of Education and Skills to provide robust guidance on the use of restrictive practices. The guidelines must be child- rights centred and must be about preventing the use of restrictive practices through building a relationship with the child and understanding what they need to thrive and flourish. . The guidelines must stipulate that restrictive measures are used only to protect the child or others and not as a form of punishment. Seclusion should never be allowed in school.

Guidance must stipulate:

1. Recording and reporting of all incidents of restraint and seclusion with regular publication of data on the use of restrictive interventions on children in all educational settings.
2. Clear definitions of restrictive practices and support practices, with restraint solely used to prevent serious harm to the child or others and only as a last resort. The use of seclusion must be banned outright.
3. A clear outline of the roles, responsibilities and accountabilities of school staff, health professionals, Principals, Boards of Management, TUSLA, parents/carers, children and young people and the Department of Education.
4. Exemplars of positive, preventative and early intervention practices informed by best practice.
5. Training and supervision for staff in educational settings. (Training and supervision is compulsory in other sectors such as mental health). Guidance must include details of training and resources available for educational settings in relation to supporting a child who is distressed.
6. Access to a multi-disciplinary team to include educational psychology, child mental health or children's disability services as appropriate
7. The requirement to notify of parents/carers of any incident and to follow up with a written report to include details of supports for the student and staff to minimise the prospect of repeat incidents.
8. Access to an appeal on the use of restraint and seclusion, and access to independent advocacy where required.
9. Access to a complaints process with links to statutory safeguarding and child protection services. An outline of whistleblowing procedures
10. Provision for review and published reporting of the guidance in operation.

2. Legislation

Guidance may not be enough in preventing restrictive practices in school environments. It may be necessary to introduce legislation to give a statutory footing to the guidance and ensure that the roles of schools, boards of management, Tusla, families are all stipulated, as well as legislating for the availability of the necessary supports for a child in the school environment.

Legislation should allow for:

- Mandatory training for school teams and multidisciplinary staff in the elimination of restrictive practices.
- Mandatory recording and reporting of all incidents of restraint and seclusion to an appropriate body (e.g Tusla)
- Investigation by appropriate body on use of restraint and seclusion.
- Mandatory reporting to families/guardians of use of restrictive practices.
- Statutory Supports for children through their IEP or other mechanism.

Informed by the

- UN Convention on the Rights of the Child
- UN Convention on the Rights of Persons with Disabilities
- Harry's Law Campaign Northern Ireland - 10-point mandate
- 2019 Department of Education (RoI) consultation and draft Guidelines for Schools on the use of Physical Intervention for the Prevention and Management of Crisis Situations,
- the 2022 Department of Education Northern Ireland Review of the Use of Restraint and Seclusion in Educational Settings in Northern Ireland,
- consultation with parents/carers and professional stakeholders for the 2018 Inclusion Ireland Shining a Light on Seclusion and Restraint Report and 2022 All-Island Restraint Reduction Network Conference Report.

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

A mentally or physically disabled child should 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 23

Every child has the right to education; School discipline should be administered in a manner consistent with the child's human dignity.

Article 28

In 2016, the UN Committee on the Rights of the Child, reviewing the UK made the following Concluding Observations concerning the use of restraint and seclusion on children in schools:

- Abolish all methods of restraint against children for disciplinary purposes in all institutional settings, both residential and non-residential, and ban the use of any technique designed to inflict pain on children.
- Ensure that restraint is used against children exclusively to prevent harm to the child or others and only as a last resort.
- Systematically and regularly collect and publish disaggregated data on the use of restraint and other restrictive interventions on children in order to monitor the appropriateness of discipline and behaviour management for children in all settings, including in education.
- Ensure that corporal punishment is explicitly prohibited in all schools and educational institutions and all other institutions and forms of alternative care.
- Abolish the use of isolation rooms.

The concluding observations included concerns about the use of restraint and seclusion on children with psycho-social disabilities, including children with autism, in schools.

Restraint reduction was a key part of the Inclusion Ireland submission to the UNCRC committee 2022 review of Ireland. The joint submission to the UNCRC from the Children's Rights Alliance also stated it as a core issue. The UNCRC report, issued 9th February 2023, states- The (UNCRC) committee recommends that the state party ... "explicitly prohibit the use of seclusion and restraint in educational settings."

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

Article 24 - Every person with a disability has a right to education without discrimination and on the basis of equal opportunity and the right to an inclusive education system at all levels, in the communities in which they live, and lifelong learning.

Article 14 - The existence of a disability shall in no case justify a deprivation of liberty.

Article 17 - Every person with a disability has a right to respect for his or her physical and mental integrity on an equal basis with others.

About Inclusion Ireland

At Inclusion Ireland we work towards the full inclusion of people with intellectual disabilities by supporting people to have their voices heard and advocating for rights under the United Nations Convention on the Rights of People with Disabilities (UNCRPD).





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