



Leading special education in Victoria

PASS POSITION PAPER ON POSITIVE MANAGEMENT STRATEGIES

JUNE 2011

The Principals' Association of Specialist Schools Victoria Inc. (PASS) is the professional body for the principals of the 81 specialist schools in the Victorian Department of Education and Early Childhood Development (DEECD).

The aims of PASS include:

- To promote the principles of special education and improved community awareness of the capacity for special education throughout the State of Victoria.
- To watch over and protect the interests, rights and privileges of its members and specialist schools.
- To act as a representative body of principals of specialist schools in the state of Victoria.
- To promote the effective administration of special education and the employment of appropriately qualified special education personnel in all areas.
- To consider and deal with all matters affecting the professional interest of its members.
- To promote the consideration and discussion of all questions affecting special education.

Victoria's specialist schools form a substantial part of the provision of education for the state's students with special education needs on the Program for Students with Disabilities (PSD) and outside the program. Presently 46% of the students on the PSD attend the 81 specialist schools. The categories of students under the PSD are mild to profound intellectual disabilities, a physical disability, a severe behaviour disorder, a hearing or visual impairment, a severe language disorder with critical education needs, are on the Autism Spectrum, or have a combination of these factors.

BACKGROUND

Under the *Occupational Health and Safety Act 2004* and the *Occupational Health and Safety Regulations 2007*, Victorian schools have an obligation to provide and maintain as far as practicable a work environment which is safe and which minimises the threat of occupational violence. The DEECD has a duty to protect its employees. One major means for this to occur would be for the DEECD to provide suitable, approved training to these people.

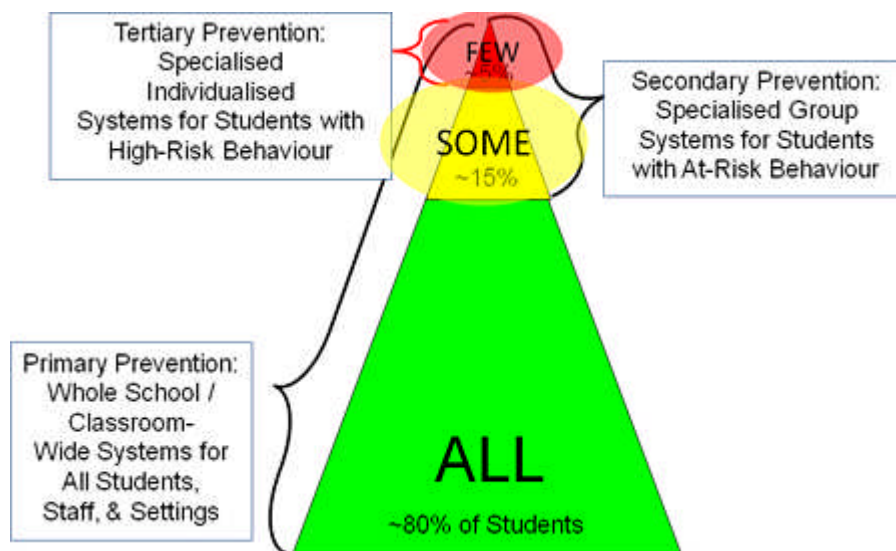
Schools also have a duty of care.

'The law imposes a legal duty on teachers and schools to take care of the safety and wellbeing of pupils in their care. This *duty of care* arises where a **teacher-pupil** relationship exists.

'Duty of care can be defined as "an obligation, recognised by law, to avoid conduct fraught with unreasonable risk of danger to others". Every teacher and school authority owes a duty of care to take reasonable care to ensure that their acts or omissions do not cause reasonably foreseeable injury to their pupils.' (Verma, R., 2010)

A number of students in Victorian specialist schools present at times with behaviours which could pose an imminent threat to themselves or others, such as kicking and biting. All specialist schools in Victoria have students who at times display these behaviours, students with social and emotional difficulties including those with ADHD, Acute Conduct Disorder and Oppositional Defiance Disorder.

All our member schools have comprehensive management strategies, many being modelled on the very well researched Positive Behaviour Strategies (PBS). “Unlike traditional management interventions that view the individual as the problem and strive to eliminate behaviours, PBS and functional behaviour assessment view systems, settings and the lack of skills as part of the problem and work to modify these factors to support the student.” (Walker, Shea. & Bauer, 2007, 94) PBS involves a school wide system with three levels of intervention. Primary prevention strategies focus on interventions used on a school-wide basis for all students. Secondary prevention strategies involve students who do not respond to primary prevention strategies and are at risk of academic failure or behaviour problems but are not in need of individual support. Tertiary strategies are for students who display persistent patterns of disciplinary problems and employ intensive or individualised interventions which are the most comprehensive and complex.



The triangle diagram above is used to demonstrate PBS. While the proportions given above for ‘All’, ‘Some’ and ‘Few’ are regarded as correct for most schools and classrooms, Victoria’s specialist schools generally have higher proportions of students in the ‘Some’ and ‘Few’ categories due to the nature of their student populations.

Although there are comprehensive behaviour management plans for most of these students, and training in Aggression Management for staff in many of the schools, situations can arise when it is deemed that a student needs to be withdrawn or restrained to minimise the chances of harm to themselves or to others. It must be emphasised that staff in Victoria’s specialist schools do not use restraint as a punishment or threat, but rather as one of a range of behaviour management techniques, in these cases to protect the safety of all parties involved.

In the DEECD *Schools Reference Guide* at 16.6 Legal liability and associated matters, Item 6.16.11.5 Restraint of students under regulation notes:

Regulation 15 of the Education and Training Reform Regulations 2007 states: “A member of the staff of a Government school may take any reasonable action that is immediately required to restrain a student of the school from acts or behaviour dangerous to the member of staff or any other person.”

The regulation authorises *'reasonable'* action which is *'immediately'* required to *'restrain'* a student. In less serious cases, the reasonable action could involve a warning or instruction to the student not to proceed. In more serious cases where a person faces an imminent threat of injury due to the student, the reasonable action could involve the physical restraint of the student.

The object of the restraint is to avert the danger to some person. It should therefore be measured (i.e. reasonable in the circumstances) and removed once the danger has passed.

Our member schools are also governed by the *WorkSafe Guide to Challenging Behaviour Risk Prevention in Specialist Schools*. This lengthy document has sections on:

- 1 Purpose
- 2 Definitions
- 3 Consultation
- 4 Hazard identification
- 5 Risk assessment
- 6 Risk control
- 7 Incident management procedures and systems
- 8 Review and audit

Many of these sections have comprehensive checklists.

The first two sections are:

1 Purpose

This document is designed to assist WorkSafe inspectors in assessing whether a specialist school is controlling, so far as is practicable, the risks to employees from student initiated challenging behaviour. Many of the questions in this document help inspectors form an opinion on occupational health and safety (OHS) compliance. *[It should be noted here that this document is limited in its scope as its Purpose speaks only of 'risk to employees' and not of risks to other persons.]*

The document was developed in consultation with employers and employees to assist with understanding of their duties under OHS legislation.

2 Definitions

2.1. Student initiated **challenging behaviour** denotes any behaviour that:

- is a barrier to a person participating in, and contributing to their schools community
- undermines, directly and indirectly, a person's rights, dignity or quality of life and damages psychological health
- poses a risk to the health and safety of the student, staff, other students and visitors.

The document then notes that student -initiated challenging behaviour can cause muscular-skeletal disorders and/or psychological injuries to the student, other students and/or staff.

As well as these documents, there can be other policies operating in some specialist school workplaces which provide an integrated service with organisations such as those of CAHMS (Child and Adolescent Mental Health Services). These schools' policies are therefore in line with those of these organisations.

Interventions to moderate or change adverse student behaviours should form a continuum of interventions which has been agreed upon by the school.

PASS member schools need clarity and explicit advice regarding these procedures. At present legal advice to one of our member schools from a DEECD legal officer (Feb 15th 2011) indicates that if a student in time out is unable to remove him/herself of his/her own volition then time out with the door "closed" can be

construed as illegal imprisonment in terms of common law. He does qualify this by stating that in “extreme circumstances” as defined above, a teacher is able to “close” the door.

While it is preferable to have the door open, in “extreme circumstances” it is irresponsible to put the student and others at risk. It is preferable to have the door closed and to have the student contain him/herself, rather than having the door open which often necessitates the need to put a student into a hold; a more invasive strategy. It also needs to be understood that whilst being in Time Out, the student is supervised, supported and in sight of the teacher at all times.

The staff at the school felt secure having very clear guidelines which are well understood and practiced at a whole school level as evidenced in the school’s Policies. However, these teachers are now concerned regarding the advice from DEECD which infers that having the door “closed” contravenes the Human Rights Charter. Teachers feel that their management strategies are compromised and less effective if the choice to close the door is taken away. Clarity is required about circumstances which limit such rights when safety is the predominant issue.

PASS, on behalf of its member school, asks for clarity regarding holding. In isolated and severe cases, holds can last for an extended time if the student is out of control and the safety of the student or others is compromised.

RECOMMENDATIONS

PASS recommends:

- 1. that the Victorian DEECD clarifies more explicitly policies and procedures on the restraint of students**
- 2. that the DEECD implements procedures to endorse individual school policies re restraint of students so that teachers and other staff in specialist schools can work with confidence**
- 3. that the DEECD implements procedures to endorse individual school policies re the use of time away so that teachers and other staff in specialist schools can work with confidence**
- 4. that the DEECD provide funds for training school staff to undertake appropriate training in working with students with very challenging behaviour**
- 5. that a meeting be organised by DEECD between Conduct and Ethics, Legal, Student Wellbeing and PASS to discuss and finalise these issues.**

REFERENCES

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This position paper was endorsed by a PASS meeting on 23rd June 2011.