



RESTRAINT AND SECLUSION POLICY

POLICY

The purpose of this policy is to ensure Melba College Staff are informed about the Department's policy about student restraint including that it is only used when certain conditions are met and that appropriate standards and procedures are followed.

SUMMARY

Regulation 25 of the Education and Training Reform Regulations 2017 Regulation 25 — Restraint from Danger provides that:

- A member of 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 that is dangerous to the member of staff, the student, or any other person.
- The Melba College Principal must report each instance of restraint or seclusion to the Incident Support and Operations Centre (ISOC) on [1800 126 126](tel:1800126126).

DEFINITIONS

Physical Restraint

Physical restraint means the use of physical force to prevent, restrict or subdue movement of a student's body or part of their body. Students are not free to move away when they are being physically restrained. Physical restraint should only be used when it is immediately required to protect the safety of the student or any other person. In some limited circumstances, it may also be necessary to restrain a student from imminent dangerous behaviours by secluding them in an area where such action is immediately required to protect the safety of the student or any other person.

Seclusion

Seclusion is the solitary confinement of a student in a room or area (e.g a garden) from which their exit is prevented by a barrier or another person. When used by a staff member in immediate response to behaviours of concern, seclusion may also include situations where a student is left alone in a room or area and reasonably believe they cannot leave that room or area even if they would physically be able to, i.e it is not locked.

WHEN PHYSICAL RESTRAINT OR SECLUSION MAY BE USED

School staff may only use physical restraint on a student when there is an imminent threat of physical harm or danger to the student or others; and where such action (i.e. to physically restrain or seclude) would be considered reasonable in all the circumstances and there is no less restrictive means of responding in the circumstances.

As with physical restraint, seclusion should only be used when it is immediately required to protect the safety of the student or any other person, as permitted by Regulation 25.

The decision about whether to use physical restraint or seclusion rests with the professional judgment of the staff member/s involved, who will need to take into account both their duty of care to their students, their right to protect themselves from harm and obligations under the [Charter of Human Rights and Responsibilities Act 2006](#). The charter requires Victorian government school staff to act consistently with human rights and to give proper consideration to relevant human rights when making decisions, including decisions about responding to behaviours of concern leading to harm to self or others.

If restraint or seclusion of a student is used at Melba College the Principal must be immediately informed.

DURING RESTRAINT

If applying physical restraint in the limited circumstances set out above, staff must:

- use the minimum force required to avoid the dangerous behaviour or risk of harm
- only restrain the student for the minimum duration required and stop restraining the student once the danger has passed

Staff should ensure the type of restraint used is consistent with a student's individual needs and circumstances, including:

- the age/size of the student
- gender of the student
- any impairment of the student e.g. physical, intellectual, neurological, behavioural, sensory (visual or hearing), or communication
- any mental or psychological conditions of the student, including any experience of trauma
- any other medical conditions of the student
- the likely response of the student
- the environment in which the restraint is taking place

Staff should monitor the student for any indicators or distress. Staff should talk to the student throughout the incident, making it clear to the student why the physical restraint is being applied. Staff should also calmly explain that the physical restraint will stop once it is no longer necessary to protect the student and/or others.

WHEN PHYSICAL RESTRAINT OR SECLUSION SHOULD NOT BE USED

Restraint and seclusion must only be used as a last resort in an emergency where there is an imminent threat of physical harm or danger to the student or others.

Physical restraint and seclusion should only be used when required to protect the safety of the student or any other person.

Restraint or seclusion must not be used except in situations where:

- the student's behaviour poses an imminent threat of physical harm or danger to self or others
- where such action (i.e. to physically restrain or seclude) would be considered reasonable in all the circumstances
- where there is no less restrictive means of responding in the circumstances

Every instance of physical restraint or seclusion has the potential to place the student and staff member in a harmful situation, which can include injury and death.

- In every instance of physical restraint, breathing must be visually monitored.
- Every instance of seclusion must be visually monitored throughout the incident by a staff member to ensure that the seclusion is justified, time limited and that the student, and other students and staff are safe.

Restraint or seclusion should be discontinued as soon as the immediate danger has dissipated

Restraint and seclusion **must not be** included in a Behaviour Support Plan or be used as a routine behaviour management technique, to punish or discipline a student or to respond to:

- a student's refusal to comply with a direction, unless that refusal to comply creates an imminent risk to the safety of the student or another person
- a student leaving the classroom/school without permission, unless that conduct causes an imminent risk to the safety of the student or another person
- verbal threats of harm from a student, except where there is a reasonable belief that the threat will be immediately enacted

- property destruction caused by the student unless that destruction is placing any person at immediate risk of harm

Types of physical restraint which **must not be used** include:

- any restraint which covers the student's mouth or nose, and in any way restricts breathing
- the application of pressure to a student's neck, chest, abdomen, joints or pressure points to cause pain or which involves the hyperextension of joints
- holding a student's head forward, headlocks, choke holds
- take-downs which allow students to free-fall to the ground whether or not in a prone or supine position or otherwise
- wrestling holds (including 'full or half nelsons'), using a hog-tied position or straddling any part of a student's body
- basket holds, bear hugs, 'therapeutic holding'

Rooms or areas designed specifically for the purpose of seclusion or which are used solely or primarily for the purpose of seclusion are **not permitted** in Melba College or other Victorian government schools.

RESTRAINT AND SECLUSION – STUDENTS WITH DISABILITY

Disability discrimination obligations

In broad terms it is unlawful to directly or indirectly discriminate against a student on the basis of their disability. It is also a requirement that reasonable adjustments are made for students with disabilities.

These obligations are outlined in the following legislation:

- *Equal Opportunity Act 2010* (Victoria)
- *Disability Discrimination Act 1992* (Commonwealth)
- Disability Standards for Education 2005 (Commonwealth)

The definition of disability under discrimination legislation is wide and includes behaviour that is a symptom or manifestation of a disability. In these cases, physical restraint or seclusion may amount to discrimination as a form of unfavourable treatment of a student because of their disability where reasonable adjustments have not been made.

Obligation to make reasonable adjustments:

- Legislation requires schools to provide students with a disability with reasonable adjustments to enable participation in education on the same basis as students without a disability.
- The kind of reasonable adjustment that will be appropriate will depend on several factors including the disability of the particular student and what is reasonable in all the circumstances.

For example, a student with vision difficulties might require large print textbooks to allow them to participate in class. Other examples of reasonable adjustment include modifications to the curriculum and provision of additional supports for students with communication, sensory or social difficulties.

Staff at Melba College, therefore, must not restrain or seclude a student because of behaviours that are a symptom or manifestation of their disability.

The law does, however, allow steps to be taken to protect the health and safety of a person where the steps can be justified as reasonably necessary.

Direct discrimination

Direct discrimination occurs when a person is treated unfavourably because of their disability. It is not necessary for the person who is discriminating to intend to act in a discriminatory way. For example, not allowing a student with a disability to participate in physical education classes because of their disability may constitute direct discrimination.

Indirect discrimination

Occurs when a requirement or condition is imposed that disadvantages students with a disability in a way that is unreasonable. For example, if a school only provided access to classrooms by stairs, the school would be indirectly discriminating against students who have a disability that means that they are confined to a wheelchair, and therefore could not get to their classes.

For more information refer to [Program for Students with Disabilities](#) and [disability discrimination obligations](#).

Occupational health and safety obligations

The *Occupational Health and Safety Act 2004 (Vic)* imposes the following obligations, so far as is reasonably practicable, on principals of Victorian government schools:

- provide and maintain a working environment that is safe and without risks to health for his or her employees
- monitor the health of employees
- monitor the working conditions at the school
- provide an environment where students, parents and visitors to the school are not exposed to risks to their health and safety

To discharge their obligations under this Act, the Melba College Principal must ensure that there are adequate safety policies and procedures in place to identify and manage risks.

Consistent with Human Rights principles all Melba College staff should focus on the least restrictive option when needing to restrain or seclude a student and work proactively to identify and manage risk.

MELBA COLLEGE RELATED POLICIES

- Melba College Bullying, Cyberbullying and Harassment Prevention Policy
- Melba College Child Safety and Code of Conduct Policy
- Melba College Critical Incident and Reporting Policy
- Melba College Duty of Care Policy
- Melba College Student Engagement and Wellbeing Policy

DET RELATED POLICIES

- [Behaviour — Students](#)
- [Duty of Care](#)
- [Employee Health, Safety and Wellbeing \(Occupational Health and Safety Management System — OHSMS\)](#)
- [Health Care Needs](#)
- [Human Rights Charter](#)
- [Medication](#)
- [Occupational Violence and Aggression in Schools](#)
- [Personal Liability of School Employees](#)
- [Reporting and Managing School Incidents \(including emergencies\)](#)
- [Risk Management — Schools](#)
- [Sensory Rooms](#)
- [Student Engagement](#)
- [Student Support Groups](#)
- [Suspensions](#)

RELEVANT LEGISLATION

- [Charter of Human Rights and Responsibilities Act 2006 \(Victoria\)](#)
- [Disability Discrimination Act 1992 \(Commonwealth\)](#)
- [Education and Training Reform Regulations 2017 \(Victoria\) — Regulation 25](#)
- [Equal Opportunity Act 2010 \(Victoria\)](#)
- [Occupational Health and Safety Act 2004 \(Victoria\)](#)

APPENDIX A

- Human Rights Obligations and Human Rights Charter

Policy Reviewed by School Council	Person Responsible for Policy	Next School Council Review
2020	Assistant Principal Accountabilities	2023

APPENDIX A

Human Rights Obligations

There are federal, state and territory laws in Australia to protect people from discrimination and harassment. There are several human rights treaties, which impact on the day-to-day practice of Victorian government school staff. These treaties need to be translated into domestic law to be legally binding in Australia. Many of them have been so translated.

These include legislation such as the Victorian Charter of Human Rights and Responsibilities and the Commonwealth Anti-Discrimination Acts.

The Australian Human Rights Commission has statutory responsibilities under:

- *The Age Discrimination Act 2004*
- *The Australian Human Rights Commission Act 1986*
- *The Disability Discrimination Act 1992*
- *The Racial Discrimination Act 1975*
- *The Sex Discrimination Act 1984.*

Others have formed the basis of national policy:

- [United Nations Convention on the Rights of the Child](#) (Convention ratified by Australia in December 1990)
- United Nations Convention on the Rights of Persons with Disabilities (Convention ratified by Australia in July 2008 and the optional protocol relating to making complaints to the UN in 2009)
- International Covenant on Civil and Political Rights, (Australia agreed to be bound in 1980 subject to certain reservations)
- International Covenant on Economic, Social and Cultural Rights (Australia agreed to be bound in March 1976)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (convention ratified by Australia 1989 — Australia is currently considering ratifying the optional protocol related to persons deprived of their liberty).
- National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector (endorsed at a Commonwealth level in 2014)

The Victorian Charter of Human Rights and Responsibilities

The [Victorian Charter of Human Rights and Responsibilities](#) is an Act of Parliament in Victoria that requires public authorities (such as Victorian state and local government departments and agencies, and people delivering services on behalf of government) to act in a way that is compatible with human rights. This includes positive obligations to protect, respect and fulfil the rights of children in schools.

The Charter has taken into account the human rights impacts that are likely to arise when a staff member is required to respond to behaviours of concern in schools. This includes the rights of the student exhibiting those behaviours as well as his or her parents, other students and school staff.

The relevant rights include the right to:

- recognition and equality before the law (including the right to enjoy human rights without discrimination)
- protection from torture and cruel, inhuman or degrading treatment (including the right not to be treated or punished in a cruel, inhuman or degrading way)
- protection of families and children (including protection of the best interests of the child)
- liberty and security of the person
- freedom of movement
- freedom of expression
- protection of families

The Charter requires Victorian government school staff to act consistently with human rights and to give proper consideration to relevant human rights when making decisions, including decisions about responding to behaviours of concern leading to harm to self or others.

In accordance with the Charter, certain rights may be subject under law to reasonable limitations that can be demonstrably justified. It is important to note however that limitations on some rights, such as the right to freedom from cruel, inhumane or degrading treatment or punishment, will rarely be justifiable.

Human rights principles permeate all areas relating to restraint and seclusion and strongly influence both proactive strategies to address behaviours that cause harm to self or others and reactive strategies in response to behaviours that cause harm to self or others.

For more information on the Human Rights Charter refer to [Human Resources: Human Rights Charter](#)