

Restraint and assault.

A recent Branch Council question sought AEU office clarification of the definition of assault, and advice about the Union's position on use of restraint with students.

The current AEU position on use of restraint is as stated in the AEU Position Paper *Physical Violence in Schools*, 2003:

The Department's Student Management and Welfare Policy (2000) states:

Restraining a student, whose behaviour is dangerous to self or others, may be required by school staff using a reasonable amount of force. A reasonable amount of force is just enough force for effective protection of self and others, and no more than is absolutely necessary.

There are times when some physical restraint of the student is the only realistic option available to teachers concerned about the safety of other students/staff. There is also a need for guidelines as to what constitutes a reasonable amount of force. In addition, recent training in PART appears to deliver little which is useful in actually physically restraining a student.

In the interests of providing some concrete advice to our members, the AEU offers the following extract from *Teachers, Students and the Law*, by Drew Hopkins from the Victoria Law Foundation. This publication is distributed to all beginning teacher members through the Union office.

Restraint

A teacher can use as much force as is necessary to prevent students from injuring themselves or others, or to stop a dangerous situation from developing. Hence it is lawful for teachers to physically break up fights, or to restrain a student who is about to assault someone or damage property.

The use of excessive force - that is, going beyond prevention of the danger and actually punishing the student - could amount to an assault. Excessive force is not easy to define, and will depend on all the circumstances. For example, threatening a fleeing student with a heavy object is likely to be more force than is necessary. On the other hand, if a teacher fails to try to stop a student behaving dangerously and someone is injured, the teacher's duty of care may not have been met.

Teachers should not put themselves in danger - send for help and use voice control to quell the situation. Male teachers should take care how they restrain a female student, to avoid allegations of sexual assault.

A violent student may be restrained until the policy or the student's parents arrive. The force used must be in proportion to the danger, and the student should be handed over to the police or the parents as soon as practicable.

If a student insists on leaving a class or school activity without permission, they should not be physically restrained unless they are endangering themselves or others. Send someone to report it to the Assistant Principal or other senior teacher, and follow it up after class. The police should be notified if it is appropriate. It may be necessary to restrain very young children, as it would be dangerous to let them run away.

Assault

Assault is the threat or attempt to strike another, whether successful or not, provided the target is aware of the danger. The assaulter must be reasonably capable of carrying through the attack. There are different types and degrees of assault depending on whether there is actual hitting, injury or just a threat. Assault is both a criminal wrong, for which one may be charged and tried, and civil wrong for which the target may sue for damages due to the assault, including for mental distress.

Undue use or severity of restraint with a student could lead to a charge of assault against a teacher. Similarly, a teacher can also pursue criminal and/or civil proceedings against someone who threatens or assaults them. A teacher can also defend him/herself if physically assaulted, so long as the action taken is proportional to the threat.

Robin Ballantyne