

# School discipline and pupil-behaviour policies – Guidance for schools



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**Separate DfES guidance is available on:**

- Exclusions
- Pupil Referral Units and Alternative Provision
- Commissioning, monitoring and quality assuring alternative provision
- School partnerships to improve behaviour and tackle persistent absence
- Learning Support Units
- Bullying
- Social and Emotional Aspects of Learning (SEAL)
- Pastoral Support Programmes
- Making reasonable adjustments for disabled pupils
- Attendance
- Penalty Notices, Parenting Contracts and Parenting Orders
- How to source parenting provision
- Involving Parents, Raising Achievement
- Violence reduction in schools
- Safer School Partnerships
- Use of Force
- The Use of Restrictive Physical Interventions for Pupils with Severe Behavioural Difficulties
- Weapons searches [published in May]
- National Programme for Specialist Leaders in Behaviour and Attendance (NPSL-BA)

**Further references:**

- Learning Behaviour: The Report of the Practitioners' Group on School Behaviour and Discipline
- Education and Inspections Act 2006

## 1. Introduction

### Purpose of the guidance

- 1.1 This guidance aims to help schools understand their overall legal powers and duties as regards establishing a school behaviour policy and disciplining pupils. It also provides more specific advice on certain key sanctions (detention and confiscation). It does not, however, offer a definitive interpretation of the law: interpreting the law is a matter for the courts.
- 1.2 The guidance replaces earlier guidance provided by the National Strategies on school behaviour and attendance policies.<sup>1</sup> It focuses particularly on provisions in the School Discipline chapter of the **Education and Inspections Act 2006** (EIA 2006), which came into force on 1 April 2007. These include provisions on school behaviour policies, the power to discipline, detention and confiscation. A separate chapter of the EIA 2006 sets out provisions on more specific issues around parental responsibility and excluded pupils.
- 1.3 Some of the provisions in the EIA 2006, such as the statutory power to discipline, are new. Others re-enact or replace existing legal provisions. It is important that schools understand what these powers and duties mean for them in practical terms, and this is a key aim of the guidance. The Act clarifies and as appropriate strengthens schools' powers to discipline, reducing the risk of misunderstandings and challenges to their disciplinary authority. Schools are advised to review their existing policies in the light of this clarification.
- 1.4 While the majority of pupils behave well and schools are generally orderly and productive places of learning, the Government is determined to support teachers and other school staff who have to deal with poor and disruptive behaviour. Poor behaviour blights the learning, and so possibly the life chances, of other pupils. It is also demoralising for school staff to have to deal with persistent disruption to their teaching and makes the job harder and less enjoyable. This is unacceptable.

### Scope

- 1.5 This is not intended as a comprehensive guide to the wide range of topics relating to school discipline, pupil behaviour and attendance. A number of these (such as pupil **exclusions, use of force, truancy, or tackling bullying**) raise extremely sensitive and complex issues, which is why we have produced separate guidance on them.

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<sup>1</sup> Primary National Strategy: developing and reviewing your whole-school behaviour and attendance policy and Key Stage 3 National Strategy: advice on whole school behaviour and attendance policy, published by the Department for Education and Skills in September 2003 (DfES 0759-2003 and 0628-2003). Separate advice is available on school attendance.

- 1.6 The guidance should however be seen as the centre piece to an overall suite of DfES guidance across the broad range of issues around school discipline, pupil behaviour and attendance.
- 1.7 The guidance covers all the provisions in the School Discipline chapter of the EIA 2006 except, for reasons already indicated, the use of force.

### Audience

- 1.8 The sections of this guidance on establishing, developing and communicating a pupil behaviour policy apply to all maintained schools, including Pupil Referral Units (PRUs) and nursery schools, and non-maintained special schools. This is because the relevant provisions in the EIA 2006 apply to those categories of school. All references to 'school' in these parts of the guidance should be understood to be referring to all these categories of school, and references to 'head teacher' should be understood to include the teacher in charge of PRUs.
- 1.9 Although these parts of the guidance do not apply to independent schools, including Academies and City Technology Colleges, such schools may nonetheless find the material contained herein helpful as regards how they might choose to develop their own school discipline and pupil behaviour policies.
- 1.10 The sections of guidance on the power to discipline, use of rewards and enforcement of sanctions (including detention and confiscation) apply to **all** schools. This is because the relevant legal powers apply to any school.
- 1.11 The guidance is aimed particularly at senior school leaders (governors, head teachers, and staff who may be given a specific responsibility as the 'lead behaviour professional' within a school) though it is relevant to all staff members.
- 1.12 The Department strongly recommends that the content of this guidance be disseminated to staff through training sessions or continuing professional development (CPD) events. It is important, however, that there is an ongoing review of the school behaviour policy and disciplinary procedures; the content of the guidance should not be covered in one training event and then forgotten.
- 1.13 Many parts of this guidance refer to consulting or communicating with parents. The definition of a parent for the purposes of the Education Acts is broadly drawn and includes any person who has parental responsibility (which includes the local authority where they have a care order in respect of the child) and any person (for example, a foster carer) with whom the child lives and/or the child's birth parent(s). Any reference to 'parent' in this guidance should be understood as including any person with parental responsibility for the pupil.

### **Statutory and non-statutory elements of the guidance**

- 1.14 Section 88 of the EIA 2006 requires governing bodies of the relevant schools to have regard to guidance from the Secretary of State for Education and Skills (or, in the case of Wales, the Welsh Assembly) in making and reviewing the written statement of general principles on school discipline. The guidance to governors on these matters, in **section 2** below, should thus be regarded as statutory guidance.
- 1.15 The other sections of the guidance are non-statutory. This means that schools are not required to have regard to these sections, although they will help schools to understand how to implement their relevant legal powers and duties to promote good school discipline and pupil behaviour. Schools are, therefore, strongly advised to follow the guidance.
- 1.16 The guidance uses the term 'must' when the person(s) in question is legally required to do something (e.g. 'head teachers must bring their school's behaviour policy to the attention of pupils, parents and staff at least once a year'). The term 'should' is used when good practice advice is being offered (e.g. 'the head teacher should ensure that the full written policy is available in the staff handbook').

## 2. Statutory guidelines for governors on their duties as regards the school behaviour policy

2.1 This section of the guidance covers the legal duties and responsibilities of governing bodies as regards establishing the principles underlying the school behaviour policy. The term 'statutory guidance' is used because there is a legal duty for governing bodies to have regard to it. It describes the legal requirements and advises on appropriate practice.

### What the law says

2.2 Section 88(2) of the **Education and Inspections Act 2006** (EIA 2006) requires a governing body to:

- make, and from time to time review, a written statement of general principles to guide the head teacher in determining measures to promote good behaviour; and
- notify the head teacher and give him or her related guidance **if** the governing body wants the school's behaviour policy to include particular measures or address particular issues.

2.3 The full governing body, or a committee of it, must make final decisions about the statement of principles and any notifications and guidance. These responsibilities cannot be delegated to an individual.<sup>2</sup> For PRUs, these functions of the governing body would fall to the PRU management committee or, for PRUs that currently do not have a management committee, the local authority. In the case of a federation of schools, the federated governing body has this responsibility. The governing bodies of collaborating schools remain responsible for final decisions about the statement of principles and any notifications and guidance pertaining to that school, even where schools in a collaboration produce a common statement of principles, notifications and/or guidance.

2.4 In carrying out these functions the governing body must have regard to guidance provided by the Secretary of State for Education and Skills. This document provides the relevant, statutory guidance.<sup>3</sup> It also includes guidance on the governing body's duty to consult, to which governing bodies and local authorities must have regard by virtue of section 176 of the Education Act 2002.

<sup>2</sup> Regulations 17(1)(d) and 20(2) School Governance (Procedures) (England) Regulations 2003 (SI 2003/1377).

<sup>3</sup> On the distinction between statutory and non-statutory guidance, see 1.14 and 1.15 above.

- 2.5 The governing body is legally required to consult with the head teacher, staff, parents and pupils on the principles of the behaviour policy. The consultation may be arranged in such manner as appears appropriate to the governing body and include such representatives of the staff as the governing body deems appropriate. All pupils and parents must be included, i.e. given the opportunity to comment on proposals at the formative stage, and their responses considered when decisions on the proposals are made. The requirements on the governing body to consult staff and pupils on the principles are new ones, introduced under the EIA 2006.
- 2.6 Part IV of the Disability Discrimination Act 1995 (DDA 1995) creates a duty on governing bodies to take reasonable steps to ensure that disabled pupils are not placed at a substantial disadvantage in comparison with pupils who are not disabled (a duty to make ‘reasonable adjustments’). This would include making reasonable adjustments to the statement of principles, school behaviour policy and disciplinary practices.
- 2.7 Governing bodies of maintained schools also have a duty (the ‘general equality duty’) under Part 5A DDA 1995 (inserted by the Disability Discrimination Act 2005) to have regard to the need to: eliminate disability discrimination; eliminate harassment of disabled persons that is related to their disabilities; promote equality of opportunity between disabled persons and other persons; take account of disabled persons’ disabilities; promote positive attitudes towards disabled persons; and encourage participation by disabled persons in public life.
- 2.8 In addition they must publish a Disability Equality Scheme showing how they intend to fulfil this general equality duty.<sup>4</sup> The school must involve disabled people in the development of their Disability Equality Scheme. This should include collecting the views of disabled pupils about how school discipline and behaviour policies impact on them and their life in school and using those views to inform the development of their scheme, and their behaviour policies where school discipline and behaviour are identified as an area for action. Guidance on consulting with disabled pupils and on reasonable adjustments is available in **Promoting disability equality in schools**, part of the Department’s resource **Implementing the Disability Discrimination Act in schools and early years settings** resource.
- 2.9 Schools also have specific duties, under various equalities legislation, to monitor and assess the impact of their policies on pupils by racial group and gender. The governing body must therefore ensure that neither the overall school behaviour policy nor any particular disciplinary measures impact disproportionately or unfairly on any pupil within the school. Further guidance on taking account of the needs of vulnerable children is at **section 3.9** of this guidance.

<sup>4</sup> The duty to publish a scheme, in the case of primary schools, special schools and PRUs is on or before 3rd December 2007. As regards other maintained schools this is already a requirement.

2.10 Governing bodies must also have regard to the health and welfare of staff, and the duty of care which they have for this. Behaviour policies and the principles which underpin them must take appropriate account of staff health and welfare issues.

#### **What this means in practical terms**

2.11 Governors should decide on an appropriate timescale for reviewing the principles and for the head teacher to update the resulting behaviour policy. Good practice would suggest this should be done on average every two years. The principles may not need updating every time they are reviewed. A consultation exercise should be undertaken every time the statement of principles is updated (see 2.18-2.24 below).

#### **Reflecting school values and equal opportunities in the principles of the school behaviour policy**

2.12 The values a school is committed to promoting – such as respect, fairness and social inclusion – should be the basis for the principles underlying its behaviour policy. Schools must comply with equalities legislation and the duty to promote the well-being of pupils (section 21 of the Education Act 2002, as amended by section 38 EIA 2006) and therefore it is important that the school's statement of principles reflects a commitment to improving outcomes for all pupils and eliminating all forms of discrimination, harassment and bullying, as well as promoting equality of opportunity, the welfare of pupils and good relations across the whole school community. The statement of principles should also ensure that vulnerable pupils – such as those with special educational needs, physical or mental health needs, migrant and refugee pupils and looked-after children – receive behavioural support according to their need. Children in all these groups can experience particular difficulties with behaviour, for example related to medical conditions, lack of understanding or trauma (for further information on such issues, see **section 3.9** of this guidance).

#### **What a statement of principles might look like**

2.13 The kind of expectation which might be reflected in the principles of a school behaviour policy are considered further in **section 4** of this guidance, which offers some illustrative examples. It is, however, for individual schools to determine their own principles in the light of their individual characteristics/ethos; the needs of their own school community; and any agreement they have with other schools in a local **partnership for improving behaviour and tackling persistent absence**.

### **How the statement of principles can help the head teacher develop more specific disciplinary measures**

2.14 The head teacher will use this statement of principles to determine the more detailed measures (rules, rewards, sanctions and behaviour management strategies) that make up the overall school behaviour policy. Principles that most assist the head teacher in doing this:

- are based on the school's values;
- can be explained to pupils of any age or ability;
- represent widespread agreement about standards amongst pupils, staff (including union representatives) and parents;
- encourage a healthy balance between rewards and sanctions to encourage positive behaviour;
- promote behaviour improvement as a means of improving learning and teaching; and
- are challenging but realistic and appropriate for development as the school builds on its successes.

### **Particular measures or matters that governors may want the head teacher to include in the policy**

2.15 If the governing body want the school's behaviour policy to include particular measures or deal with particular matters, they must notify the head teacher and as appropriate give him or her related guidance.

2.16 Governors should take full account of the head teacher's views as to the likely effectiveness of a measure before deciding whether to include it. In all cases the measure should be supportive of the principles agreed by the governing body. In this way the governing body will be seen as acting consistently and upholding the principles agreed with stakeholders. Governors should also ensure that any measure they want the head teacher to include in the behaviour policy maintains the necessary balance between sanctions and rewards in the policy.

2.17 The head teacher must have regard to notification and guidance of this kind from the governing body.

## **Consultation**

- 2.18 The wider duties on consultation introduced under the EIA 2006 are aimed to ensure that all parts of the school community have an opportunity to help shape the behaviour policy. This in turn should result in a greater sense of ownership of and commitment to the behaviour policy. The involvement of all pupils should also help ensure that they understand the overall standards of behaviour which are expected by the school and which they need to meet.
- 2.19 In order to secure an appropriately representative view from school staff, the governing body needs to include staff members who can represent the views of the unions which have members within the school. Partnership with the unions in developing the behaviour policy should also help ensure that any concerns around staff workload, conditions of service and health and safety are appropriately taken into account.
- 2.20 The consultation of pupils is an important new duty, which reflects children's rights under Article 12 of the United Nations Convention on the Rights of the Child (UNCRC). It will also help schools to meet the National Healthy Schools Standards criteria on allowing children a voice in matters that affect them. While all pupils must have the opportunity to comment on the statement of principles and so help shape the behaviour policy, this need not be laborious or burdensome for the governing body. In some cases class teachers or form tutors – particularly those in charge of very young pupils – could simply talk to their class about the behaviour principles and gather any views. Work in PSHE lessons or when a class is looking at the Social and Emotional Aspects of Learning (SEAL) resource might also provide opportunities for discussing the principles. Pupils could also be given the opportunity to feed their views through 'suggestion boxes', pupil representatives or their school council.
- 2.21 The form of the consultation with pupils must be such that disabled pupils have a full opportunity to express their views. The consultation of disabled pupils could be organised in various ways: in groups; individually; face-to-face; by email; or using trained peers. All the views collected – whether these are from disabled pupils or not – should be considered by the governing body in the light of the pupil's age and understanding.
- 2.22 Schools should consider the most effective way to gather the views of parents. They could be informed of the opportunity to take part in the consultation by means of an invitation letter or via an item in the school newsletter, for instance. In addition, the School Parent Association might form a working group; parent governors might take the lead; or feedback could be sought in a combination of meetings and informal discussions.

- 2.23 Governors should also consider taking account of the views of local partners working with the school. This may include voluntary agencies, other schools, children's services and community safety partners such as the police and youth offending teams. This will ensure that all partners are engaged with what the school is trying to achieve and can shape behaviour support work accordingly.
- 2.24 Governors should consider the results of the consultation exercise at a meeting of the full governing body and the feedback received from staff, pupils and parents should be appropriately recorded.

### **School Partnerships**

- 2.25 By September 2007 all secondary schools are expected to be in **partnerships designed to improve behaviour and tackle persistent absence**. Many primary schools, special schools and PRUs will also be involved. It is important that head teachers and governing bodies of partner schools understand and respect each other's behaviour policies. Some degree of harmonisation may also be helpful, particularly as regards the overall principles of the behaviour policies (this is also true for any Learning Support Unit (LSU) to which several members of the partnership send pupils), but this is entirely a matter for local determination.

Guidance on the other duties and responsibilities of the governing body as regards behaviour and discipline and equality legislation can be found in **A Guide to the Law for School Governors** and in the **Exclusions** guidance.

### 3. Non-Statutory guidance for head teachers and other school staff

The following sections of the guidance cover a range of legal duties and responsibilities for head teachers and/or other school staff. The term ‘non-statutory guidance’ is used because there is no legal duty for schools to have regard to it. Schools may, however, find it helpful in understanding their duties and in deciding how they should implement the statutory requirements upon them.

#### 3.1 Developing the behaviour policy

##### Key Points

- Every school must have a behaviour policy, including disciplinary measures, determined by the head teacher in the light of principles set by the governing body.
- The policy must be designed to promote good behaviour and deter bad behaviour, including all forms of bullying.
- The policy must be publicised to school staff, pupil and parents.

##### What the head teacher is legally required to do

- 3.1.1 The process of establishing a school behaviour policy is a two-stage one. It starts with the governing body, which has the legal duty to draw up a statement of general principles on behaviour and discipline. The governors outline the overarching values to which the school subscribes and they consult widely with the whole school community in so doing. The second stage of the process is handled by the head teacher, who has the legal duty to establish the more detailed measures (rules, rewards, sanctions and behaviour management strategies) on behaviour and discipline that form the school’s behaviour policy.
- 3.1.2 Head teachers are legally required to ensure that the measures aim to promote good behaviour and respect, prevent bullying, ensure that pupils complete assigned work, and regulate the conduct of pupils. The measures need to deal with preventing **all** forms of bullying, including bullying related to **race, religion and culture**; homophobic bullying; bullying of pupils with SEN or disabilities; sexist or sexual bullying; and **cyberbullying** (an increasingly prevalent form of bullying). We suggest that ideally the anti-bullying policy be incorporated into the behaviour policy. The rules determined by the head teacher can also include, as far as is reasonable, measures to regulate behaviour outside school premises when pupils are not in the charge or control of members of staff. This is discussed further in **section 3.4** of this guidance. As well as determining the school rules, the head teacher should establish the different rewards and sanctions staff

have at their disposal for dealing with good and unacceptable behaviour respectively. All head teachers must act in accordance with their statutory responsibilities towards disabled pupils and pupils with special educational needs when doing so (see further **section 3.9** of this guidance).

- 3.1.3 In some schools, a member of the senior management team may have a specific designated responsibility as the school's 'lead behaviour professional' and, as such, may help the head teacher to establish appropriate disciplinary measures. There is no legal problem with such an arrangement, so long as the final determination of the measures is made by the head teacher and does not amount in reality to giving somebody else the responsibility. Ultimately, the legal responsibility lies with the head teacher. See further paragraph 3.1.8 below.
- 3.1.4 While all paid members of staff at the school have a general power to impose sanctions on pupils, head teachers have the power to decide that particular members of staff should not have the power to impose certain penalties. The head teacher may also extend the power as reasonable to other adults who have lawful control or charge of pupils. This enables head teachers to make disciplinary arrangements to suit the particular circumstances of their school. They can decide, for example, that only a head of year is able to put pupils in detention or that a classroom assistant is not able to issue extra homework. This is discussed further in section 3.3.5.
- 3.1.5 It is the head teacher's legal duty to maintain and publicise the behaviour policy. The head teacher must take all reasonable steps to ensure that pupils and parents are aware of the policy and that it is brought to their attention and the attention of persons who work at the school at least once a year to keep it fresh in their minds. Communicating the policy is discussed further in **section 3.2**.

#### **What this means for schools in practical terms**

- 3.1.6 School behaviour policies should aim to establish a positive school ethos and promote effective learning by establishing:
- clearly stated expectations of what constitutes acceptable behaviour;
  - effective behaviour management strategies;
  - processes which recognise, teach, reward and celebrate positive behaviour;
  - processes, rules and sanctions to deal with poor conduct.
- 3.1.7 The behaviour policy may also include a specific code of conduct. The code of conduct establishes appropriate standards of behaviour within the school.

3.1.8 Head teachers should work with other staff in developing disciplinary measures. This should include a lead behaviour professional if the school has one, the inclusion coordinator or SENCO as appropriate, and consultation with school workforce unions. This will help ensure that staff have ownership of, and confidence in, the behaviour policy.

3.1.9 Detailed good practice advice on how to develop a school behaviour policy has been produced by the Practitioners' Group on School Behaviour and Discipline. The Practitioners' Group was comprised of head teachers and other school leaders with particular interest and expertise in issues around pupil behaviour, including representatives of the six main teacher professional associations. It describes ten key aspects of school practice, which schools should reflect on in developing their behaviour policies. These are:

- a consistent approach to behaviour management, teaching and learning;
- school leadership;
- classroom management, learning and teaching;
- rewards and sanctions;
- behaviour strategies and the teaching of good behaviour;
- staff development and support;
- pupil support systems;
- liaison with parents and other agencies;
- managing pupil transition; and
- organisation and facilities.

The full advice can be found in the publication **Learning Behaviour Principles and Practice – What Works in Schools** (section 2 of the full **Learning Behaviour** report).

3.1.10 As indicated by the Practitioners' Group and by other studies, including the Elton Committee's 1989 report, schools need to adopt procedures and practices that help pupils learn how to behave appropriately.

3.1.11 The National Primary and Secondary Strategies on Behaviour and Attendance offer schools practical materials to help develop pupil's social, emotional and behavioural skills. Schools should familiarise staff in primary settings with the **Social and Emotional Aspects of Learning (SEAL) resource** that can be used through the taught curriculum as part of a whole school approach to developing pupils' emotional literacy.

The Department is in the process of piloting a follow-on programme for secondary schools which is due to be made available in September 2007.

3.1.12 The Practitioners' Group specifically recommended that schools undertake an audit of behaviour, in order to identify strengths and weaknesses in the school system and detect areas for improvement. The Department recommends using one of the National Strategies for School Improvement audit tools:

- the **National Strategies audit tool for primary schools**; or
- the **National Strategies audit tool for secondary schools**.

An audit can be followed up by use of the **National Strategies toolkit for secondary schools** and **CPD materials for primary schools**, all of which can be downloaded on-line.

3.1.13 The Practitioners' Group also particularly underlined the importance of good teaching and learning as a way of improving behaviour in schools and stressed the importance of approaching behaviour as a whole-school issue. Schools need to ensure that classrooms are effective learning environments and that the quality of the relationship between teacher and pupil is given utmost regard.

3.1.14 Schools, of course, cannot by themselves resolve all of the behaviour issues that some children face. Working in partnership with other schools and with outside agencies is very important, including communicating agency referral systems to all staff. The design principles for **school partnerships on improving behaviour and tackling persistent absence** give further advice on how this can work.

3.1.15 For some pupils who may have a range of needs that require support from different agencies, it may be appropriate to assess those needs by using the Common Assessment Framework (CAF). CAF provides a process to consider the needs of a child or young person holistically, to enable practitioners and/or multi-agency teams to provide a co-ordinated response. One practitioner is then likely to act as the 'lead professional', so that the child and family have one point of contact to co-ordinate and review the action agreed. As CAF is implemented across all areas, all members of staff in a school should be aware of the CAF and know who should undertake an assessment with the child and family and liaise with the multi-agency team as appropriate. For further information on taking account of the needs of individual pupils, see **section 3.9**.

### Staff development, training and support

- 3.1.16 The head teacher should ensure that all staff are clear about the expectations in the behaviour policy and procedures which they should use. Where specific training needs have been identified for particular members of staff, through school self-evaluation and individual performance management reviews,<sup>5</sup> the head teacher must ensure that those members of staff have access to the advice, training and development opportunities appropriate to their needs.<sup>6</sup>
- 3.1.17 Staff training and development plays a key role in building the capacity of the school and in developing good practice. As well as the National Strategies toolkit and other materials, a school might use:
- the Improving Behaviour for Learning DVD for secondary schools, which is available from Prolog (ref: DfES/0875/2004);
  - the accredited **National Programme for Specialist Leaders in Behaviour and Attendance (NPSL-BA)**;
  - the National Professional Qualification for Head Teachers (NPQH);
  - induction and continuing training programmes through the Training and Development Agency (TDA) for Higher Level Teaching Assistants (HLTAs) and other support staff;
  - existing or new arrangements for mentoring and coaching for new and existing staff as part of their continuing professional development (CPD);
  - the experience of those with specific roles in behaviour to support staff development. For example, Learning Support Unit (LSU) managers, SENCOs, Nurture Group managers, and other staff working in the school community may have valuable expertise, understanding and knowledge.
- 3.1.18 Local Authorities and commercial providers also offer a range of training programmes which can be tailored to meet the needs of specific school settings.
- 3.1.19 All student teachers undertaking Initial Teacher Training (ITT) have to meet professional standards related to managing behaviour. Schools should ensure that student teachers either on higher education institution placements or on work-related routes are fully supported in understanding the policy and practice in the school and in developing their behaviour management skills.

<sup>5</sup> Performance management reviews must be carried out under The School Teachers' Performance Management (England) Regulations 2007 (SI 2007/2661).

<sup>6</sup> This is one of the head teacher's professional duties specified in the School Teachers' Pay and Conditions Document (Part 9).

- 3.1.20 Head teachers should encourage school governors to develop appropriate skills in the area of behaviour and discipline, either through training or on the job experience.

### 3.2 Communicating the behaviour policy

#### Key Points

- Head teachers must bring their school's behaviour policy to the attention of pupils, parents and staff at least once a year.
- Staff should be clear about:
  - who is empowered to impose sanctions; and
  - the importance of taking account of pupil characteristics such as SEN and disability when applying the behaviour policy.

#### What the head teacher is legally required to do

- 3.2.1 The head teacher is under a legal duty to publicise the behaviour policy that he has determined in the form of a written document (see **section 3.1** for an explanation of the process involved in determining the policy). The head teacher must take steps, at least once a year, to bring the policy to the attention of all pupils, parents and school staff (including anyone working in the school on an unpaid/voluntary basis). Apart from this annual notification, the head teacher has a broad legal duty to make the policy generally known to pupils and parents. This would imply, for example, ensuring that the policy is brought to the attention of any new pupils and their parents – if necessary outside and in addition to the annual notification.
- 3.2.2 These duties on the head teacher, as regards communicating the behaviour policy, complement the duty on governing bodies to consult with the school community as the behaviour policy is being formulated. The overall effect should be to help secure understanding and, insofar as possible, assent to the policy throughout the school community.
- 3.2.3 The head teacher's duty to publicise the policy is particularly important as regards detentions (which are an unlawful sanction if not made generally known within the school and to the parents of registered pupils) and in relation to confiscation (which necessarily entails an interference with a pupil's property rights). While the head teacher might seek help from other school staff in publicising the measures, for example asking an IT specialist to send a system-wide notification to pupils on his behalf, it is preferable – in order to convey the importance attached to the behaviour policy – that it is communicated under the head teacher's name.

**What this means for schools in practical terms**

Head teachers will need to:

**Ensure that there is clarity within the school community about the behaviour policy being used**

- 3.2.4 This might involve, at the start of the school year, engaging the whole school community in considering the policy on behaviour, including sanctions, so that all are aware of what is expected. It is important that pupils or staff joining during the school year have induction into expectations and processes. Published documents (prospectus, website, planners) of the school can include these details. It is also important that, on arrival at the school, supply teachers are immediately provided with an induction pack that includes a copy of the school's behaviour policy.
- 3.2.5 If pupils from another school are attending for particular lessons or sports events, they should also be made aware of the rules and sanctions that apply at the school and how these impact on them.

**Ensure that the authority to use disciplinary sanctions off the school site is clearly stated for pupils, staff, volunteers and parents**

- 3.2.6 Letters inviting parents to apply for school trips should make clear the right to apply sanctions. Agreements with transport providers can be drawn up locally to make clear expectations of behaviour and what sanctions the school will apply if reports of poor behaviour are received.

**Ensure that staff are instructed to act in a way which is reasonable and proportionate to the circumstances**

- 3.2.7 This applies to all staff, whether paid or volunteers, including supply teachers. Communications about the behaviour policy should highlight the need to take appropriate account of the individual pupil's age, any special educational needs and/or disability, and any religious requirements they might have (see further **section 3.9** of this guidance). Head teachers should arrange training and manage information-sharing routines which ensure staff are able to fulfil this requirement.
- 3.2.8 It is not possible in large schools for all staff to be aware of all individual needs. However, effective school information systems can make available information which staff need to take into account. In addition, for the most vulnerable pupils, staff may refer as appropriate to pastoral staff or specialists such as the SENCO, learning mentor or Higher Level Teaching Assistant (HLTA) for advice and support. Schools will rightly expect that teachers have the core responsibility for managing pupils in their classes, but there may be individual pupils who, if a problem occurs, need to be referred immediately to another specific member of staff. This might be because the pupil is on a Pastoral Support Programme, or because of a specific medical or personal circumstance.

3.2.9 If volunteers are assisting the school, and if the head teacher gives them the authority to use sanctions, clear instructions should be given about acting in ways which are reasonable and proportionate, the sanctions which they can use and support strategies.

#### **Be clear about which members of staff or volunteers are authorised to impose which levels of sanction**

3.2.10 The head teacher should ensure that communications make clear which sanctions can be used by teachers, support staff or authorised volunteers, and whether any particular sanction (such as detention) is reserved for a particular category of staff. In particular, the head teacher should ensure that staff and volunteers taking pupils off the school site are clear about their authority to apply sanctions as defined by the school policy.

#### **How should the head teacher make available the written policy to all who need it?**

3.2.11 The head teacher should ensure that the full written policy is available in the staff handbook (usually now in electronic form), and also perhaps in the handbook for the governors' disciplinary committee and/or in the library for pupils. The policy or key principles could also be clearly set out in the prospectus, home school agreement, websites, information for prospective pupils and information for staff applying to work at the school. They can also be set out in pupil and staff planners if these are used.

3.2.12 Head teachers should take all reasonable steps to make available the behaviour policy, and its underlying principles, in a range of accessible formats and in minority languages to reflect the community served by the school.

3.2.13 Schools may choose to have key messages displayed on classroom and staffroom posters and in the reception and public rooms of the school – so that anyone using the school site is clear about the principles and reminded about them. Schools should monitor and evaluate the effectiveness of different strategies for communicating the behaviour policy.

#### **Communicate the policy within the local school behaviour partnership**

3.2.14 Although this is not a legal requirement, schools in **partnerships to improve behaviour and tackle persistent absence**, Federations, Education Improvement Partnerships or other collaborative groupings should share behavioural policies with each other. This will help schools across the partnership understand each other's policies better, share good practice and, as appropriate, develop a closer measure of agreement on common standards across the partnership. It will also help where a pupil from one school is spending part of their time at another. Such sharing of policies should include any PRU or shared facility within the partnership.

### Ensure parents and pupils are aware of the school's complaints procedure

- 3.2.15 A school should gather evidence of satisfaction with the behaviour policy so that good practice can be affirmed. In the same way the school should deal effectively with complaints by pupils or parents about the behaviour policy.
- 3.2.16 School governing bodies are required to have a general complaints procedure.<sup>7</sup> If a pupil or parent feels that the measures or sanctions in the behaviour policy are unfair or have been unfairly applied, then they can lodge a complaint through the school's complaint procedure. Schools have a legal responsibility to publicise their complaints mechanism. It is usually best for issues to be resolved informally, but parents and pupils need to be aware of their right to make formal complaints about disciplinary (and other) matters and that schools must have proper procedures to deal with such complaints, including means of redress if the complaint is upheld. Schools should review how complaints can be managed within the school, including procedures for escalating to governors, the local authority or other agencies as appropriate. Fuller advice is contained in the Department's **guidance on school complaints procedure** which contains advice on recording, dealing with, investigating and resolving complaints and how to deal with vexatious complaints.
- 3.2.17 Where a pupil is found to have made a false or malicious allegation of abuse against a member of school staff (or indeed another pupil) this is a serious matter on which the school should take appropriate disciplinary action (see chapter 5 of the Department's guidance on **Safeguarding Children and Safer Recruitment in Education** for more information of dealing with allegations of abuse).

### 3.3 The power to discipline: what it means

#### Key Points

- Schools have a statutory power to discipline pupils for breaches of school rules, failure to follow instructions or other unacceptable conduct.
- All teachers and other staff in charge of pupils have the power to discipline.
- The head teacher may limit the power to apply particular sanctions to certain staff and/or extend the power to discipline to adult volunteers.

<sup>7</sup> Section 29(1) of the Education Act 2002 for maintained schools and regulation 5 and paragraph 7 of the Education (Independent School Standards) (England) Regulations 2003 (SI 2003/1910) for independent schools and city colleges.

3.3.1 Section 91 of the **Education and Inspections Act 2006** introduces, for the first time, a statutory power for teachers and certain other school staff to discipline pupils.

#### **Why this power has been introduced**

3.3.2 Hitherto the legal authority of schools to discipline pupils has been primarily based on the common law principle of the teacher being **in loco parentis** ('in place of the parent'). Much of the related case law dates back to the 19th century. Both the Elton Committee in 1989 and the Practitioners' Group on School Behaviour and Discipline in 2005 identified a risk to schools of having their disciplinary authority challenged. This was partly because the **in loco parentis** principle has been significantly qualified in recent years – no longer applying at all to 18 year olds – and partly because of a perception of an increasing willingness among certain families to challenge the authority of schools. Moreover, there is no reliable common law authority that a teacher's powers are acquired solely by virtue of being a teacher; and it is not always certain whether the power is one the parent actually has or wishes to delegate. So, to quote the **Learning Behaviour** report, there was need to establish a "single piece of legislation to clarify the overall basis of the authority to discipline pupils".

3.3.3 The Act power tackles, in particular, the 'you can't tell me to do that' culture among certain pupils and their parents. It gives school staff a clear statutory authority for punishing pupils whose behaviour is unacceptable, who break school rules or who fail to follow a reasonable instruction.

#### **What the legal power covers**

3.3.4 The power covers those issues on which schools are most likely to face any legal challenges, as regards their disciplinary authority. The legislation does not cover measures schools use to reward good behaviour and build good relationships because these are unlikely to be challenged. In particular, the Act specifies a power for teachers and certain other school staff to enforce disciplinary penalties. The penalty could be for failing to follow a school rule, an instruction given by a member of staff of the school, or for any other reason that causes the pupil's behaviour to fall below the standard which could reasonably be expected of him.

3.3.5 The Act gives this power to all teachers and other paid members of staff who are in lawful control or charge of pupils, except if the head teacher has determined that a member of staff is not permitted to impose the penalty on the pupil in question. The Act also empowers the head teacher to extend the power as is reasonable to any other adult who has lawful control or charge of pupils – such as a parent volunteering to supervise a football match or help on a school trip for example. The Act stipulates that the head teacher may empower staff by reference to an individual pupil or staff member, a group of pupils of a particular description, all pupils, or a group of staff of a particular description.

There are no legal requirements as regards how staff or pupils should be notified of such a decision, this being a matter of common sense and professional judgement. Head teachers should, however, do this in writing for the sake of certainty – including reflecting as appropriate in staff members' contracts, and making this a part of the measures that the head teacher sets down in the school's behaviour policy.

- 3.3.6 Head teachers cannot give the power to discipline to pupils. The legal provisions only relate to members of staff or other adults authorised by the head teacher and therefore do not include prefects or any other pupils. Prefects can have an important role to play in maintaining good order in the school, but it is important to distinguish between giving instructions to help uphold the behaviour policy and the power to impose sanctions. Pupils are not permitted to do the latter.
- 3.3.7 The power to discipline is applicable to any pupil at a school where education is provided for them, and also to misbehaviour by pupils outside school premises when they are not in the lawful control or charge of a member of staff, so far as this is reasonable (see **section 3.4** for further details).
- 3.3.8 To safeguard the interests of pupils against unfair or inappropriate punishments, the Act also provides that the disciplinary penalties in question must be reasonable, not breach any statutory requirement or prohibition (which would include legislation on SEN, disability, race and other equalities and human rights); and take account of the pupil's age, any special educational needs or disability the pupil may have, and any religious requirements affecting the pupil (see **section 3.9** of this guidance).
- 3.3.9 **Exclusion** of pupils, whether on a fixed period or permanent basis, is not covered by the general power to discipline. This is because it is already covered by separate legislation, which reserves the power to apply this particular sanction solely to the head teacher or to the teacher in charge of a PRU (or, their absence, the acting head teacher or acting teacher in charge of a PRU).
- 3.3.10 Corporal punishment – as defined in section 548 of the Education Act 1996 – is unlawful.

#### **What this means for schools in practical terms**

- 3.3.11 All staff should be clear about which sanctions they can apply and which may only be applied by more senior staff. For example, the school's policy might be that detentions held on a weekend and on training days have to be authorised by a member of the senior leadership team, while lunchtime detentions can be set by any staff member.

- 3.3.12 Other types of staff or adults on site will also need to be aware of the authorisation levels. Temporary staff, student teachers and volunteers (providing, for example, help with educational visits or mentoring support) should be informed of the levels of sanctions they can apply.
- 3.3.13 Schools should apply to the Criminal Records Bureau (CRB) for an Enhanced Disclosure for regular volunteers who have contact with pupils (i.e. three or more times in a 30 day period or once a month or more, or overnight). For further advice on vetting and recruitment of staff and volunteers, see **Safeguarding Children and Safer Recruitment in Education**. This sets out the responsibilities of local authorities, schools and FE colleges to safeguard and promote the welfare of children and young people, and details the process for dealing with allegations of abuse against staff.

### 3.4 Regulating pupils' conduct and disciplining them for misbehaviour outside school premises

#### Key Points

- Schools have a statutory power to regulate the behaviour of pupils when off school premises and not supervised by school staff.
- Regulation must be reasonable. Schools should be clear about the factors they take into account in deciding whether a rule or sanction is reasonable.

#### Schools' legal powers

- 3.4.1 Under the common law, the extent of schools' power to regulate the conduct of pupils at times when they are not on the premises of the school and not under the lawful control or charge of a member of staff was not fully clear. Section 89(5) of the **Education and Inspections Act 2006** gives head teachers a specific statutory power to regulate pupils' behaviour in these circumstances "to such extent as is reasonable".
- 3.4.2 The Government believes that individual schools are best placed to make judgments about what is reasonable in their particular circumstances. However, paragraph 3.4.5 suggests factors that a school could take into account in making such judgments.
- 3.4.3 While schools are able to regulate certain conduct off school premises, they can only impose sanctions when the pupil is on the school site or under the lawful control or charge of a member of staff. A sanction could be imposed whilst a pupil is on a school trip, but not whilst the pupil is on his journey home from school for instance. In such circumstances, the member of staff could indicate to the pupil that he has been seen misbehaving and will be punished, but must wait until the pupil is next in school to issue the punishment.

### **What this means for schools in practical terms**

3.4.4 An effective policy on school discipline and pupil behaviour should also set expectations for positive behaviour off the school site. This includes behaviour on activities arranged by the school, such as work experience placements, educational visits and sporting events; behaviour on the way to and from school; and behaviour when wearing school uniform (if any) in a public place.

### **Possible criteria for regulating off-site behaviour**

3.4.5 Schools must act reasonably both in relation to expectations of pupil behaviour and in relation to any measures determined for regulating behaviour by pupils when off the school site and not under the lawful control or charge of a school staff member. Ultimately only a court of law could decide what was reasonable in a particular case, but schools should decide what to take into account in deciding whether a rule or sanction in a particular case is reasonable. A school could sensibly take account of the following factors (which may not all apply to every incident):

- the severity of the misbehaviour;
  - the extent to which the reputation of the school has been affected;
  - related to this, whether the pupil(s) in question were wearing school uniform or were otherwise readily identifiable as members of the school;
  - the extent to which the behaviour in question would have repercussions for the orderly running of the school and/or might pose a threat to another pupil or member of staff (e.g. bullying another pupil or insulting a member of the staff);
  - whether the misbehaviour in question was on the way to or from school, outside the school gates or otherwise in close proximity to the school;
  - whether the misbehaviour was whilst the pupil was on work experience, taking part in a further education course as part of a school programme or participating in a sports event with another school (i.e. when the pupil might be expected to act as an ambassador for the school) which might affect the chance of opportunities being offered to other pupils in the future.
- 3.4.6 Applying such factors, there would, for example, be a strong case for punishing a pupil for harassing a member of staff off school premises, including through the internet. There would also be a strong case for punishing a pupil for verbally abusing members of the public on a bus on the way to school. However, the case for punishing a pupil for verbally abusing somebody who had no connection with the school at a weekend would be much weaker. This is not, of course, to say that schools should take no interest in behaviour they do not regulate. Liaison between the school and the local authority anti-social behaviour team may be particularly relevant in this context.

- 3.4.7 Schools may find it helpful to relate whatever factors they decide to use to a set of overall objectives that make clear why a policy for regulating behaviour off school premises is being applied. Such objectives might include:
- to maintain good order on transport, educational visits or other placements such as work experience or college courses;
  - to secure behaviour which does not threaten the health or safety of pupils, staff or members of the public;
  - to provide reassurance to members of the public about school care and control over pupils and thus protect the reputation of the school;
  - to provide protection to individual staff from harmful conduct by pupils of the school when not on the school site.
- 3.4.8 Many extended school activities take place on school premises. Behaviour during such activities may be dealt with in the same way as for any other on-site activity. It would be logical to deal with behaviour during off-site extended school activities which are not supervised by school staff in the same way as behaviour during further education college or work experience placements.

#### **Communicating the rules on behaviour out of school**

- 3.4.9 Schools should work with transport providers to agree how behaviour on public or contract transport should be addressed. Clear statements about rewards and consequences (including loss of access to transport) can improve behaviour. Expectations can be made clear through a 'safe travel' lesson as part of pupils' induction to the school.
- 3.4.10 Some schools discuss policies relating to out-of-school behaviour with local groups such as Neighbourhood Watch, retail staff, street wardens and police to establish clear communication routes and operational strategies. This is often an effective way to manage complaints by individuals in the community.
- 3.4.11 Schools should, through their standard communication routes, set out how parents can:
- report poor out-of-school behaviour of specific types by pupils; and
  - be assured that close liaison as necessary with neighbourhood police teams or other agencies, such as transport providers, can deal with the issues.
- 3.4.12 A standard procedure for applications for educational visits should include clear statements to parents and pupils about behaviour standards and processes.

- 3.4.13 The staff handbook should include clarity about the expectations and procedures related to transport, educational visits, work experience and college placements. It should also make clear to staff procedures related to poor conduct by pupils off site. (See **section 3.2** for general guidance on communicating the behaviour policy).

#### **Ways in which the policy might be applied**

- 3.4.14 If pupils use contract transport services, schools can negotiate with pupils and the transport providers a code of conduct, measures for monitoring behaviour (for example using pupil surveys, incident logs, bus supervisors and driver reports) and problem solving strategies when incidents occur.
- 3.4.15 If pupils use service buses or trains, schools could enter into discussions with service providers and other agencies as appropriate (for example British Transport Police) about promoting clear expectations of behaviour monitoring and problem solving routines.
- 3.4.16 A staff educational visits procedures pack should state clearly the expectations and disciplinary sanctions available to staff. Head teachers should be explicit about levels of authority which are delegated to staff on educational visits. For residential trips, and particularly for international visits, a contact strategy should be given to a senior leader so that advice for staff is available in a crisis.
- 3.4.17 For work experience and college placements the school contract with the providers can make clear expectations of standards of behaviour and procedures to use in the case of poor conduct. Schools give briefings and contracts for pupils and parents about these opportunities – and should use these means to make clear expected standards of behaviour.
- 3.4.18 New media (such as mobile phones, internet sites and chat rooms) can be exploited by pupils in order to bully or embarrass fellow pupils or members of staff. Schools should make clear in their behaviour policy that the use of defamatory or intimidating messages/images inside or outside of school will not be tolerated and that disciplinary sanctions will be applied to perpetrators. Schools should also be aware that the organisations behind some of the most popular internet sites amongst young people are working with the Department to help prevent and tackle cyberbullying.

#### **Abuse or intimidation of staff outside school**

- 3.4.19 Head teachers should adopt firm measures against abuse or intimidation of staff. This includes unacceptable conduct by pupils when not on the school site, and when not under the lawful control or charge of a member of staff of the school. Staff should be made aware that:
- they have the same rights of protection from threat as any citizen in a public place;

- they should use their professional judgement about immediate action to take in circumstances where a number of young people are present and displaying intimidating behaviour:
    - their first concern must be for their own personal safety;
    - they should make clear that the pupil has been recognised, even if in a group of young people;
    - they should then use their judgement about how to leave a difficult situation without provoking further confrontation;
  - the school will apply appropriate disciplinary sanctions when the pupil is next in school.
- 3.4.20 Schools should liaise with Neighbourhood Police Teams (and Youth Offending Teams for specific individuals) to develop agreements about which serious behaviours require referral to the police. School partnerships have found that this can be done for the whole partnership. DfES and Home Office guidance on **Safer School Partnerships** illustrates how this type of agreement can be developed.

### 3.5 Promoting and rewarding good behaviour

#### Key Points

- Strike the right balance between:
  - rewards and sanctions
  - rewarding consistently good behaviour and rewarding improved behaviour
- Monitor distribution of rewards by age, ethnicity, gender, special educational needs (SEN) and disability.

- 3.5.1 It has long been established that rewards are more effective than punishment in motivating pupils. By praising and rewarding positive behaviour, others will be encouraged to act similarly. The school behaviour policy should therefore not only specify what sanctions are available to staff but also how positive behaviour will be reinforced through praise and rewards.
- 3.5.2 The Elton Report noted that a rewards/sanctions ratio of at least 5:1 is an indication of a school with effective rewards and sanctions system. The **Learning Behaviour** report (paragraphs 37-39) similarly recommended that all schools should have a wide range of rewards and sanctions which are applied fairly and consistently. The head teacher's legal duties with regard to determining the school behaviour policy include a duty to determine measures aimed to encourage good behaviour and respect.

3.5.3 Praise begins with frequent use of encouraging language and gestures, both in lessons and around the school, so that positive behaviour is instantly recognised and positively rewarded. A more formal system of credits, merits and prizes can also be used to recognise and congratulate pupils when they set a good example or show improvement in their behaviour.

Rewards might include, for example:

- ‘congratulations’ and ‘good news’ postcards home;
- personalised letters to parents;
- certificates which recognise positive contributions to the school community;
- celebration assemblies, involving parents;
- special privileges;
- prizes or, in the case of younger children, gold stars (prizes could be purchased from a school reward shop).

3.5.4 Praise and rewards may be for an individual pupil, whole class or year group. It is advisable to pay attention to those who have previously been associated with poor behaviour or who have been less likely to meet standards so that it is not always the same (‘good’) pupils who receive praise and rewards. Striking the right balance between rewarding pupils with consistently good behaviour and those achieving substantial improvement in their behaviour is important. As noted in the **Learning Behaviour** report, this can help improve relations with parents who have become tired of receiving letters and phone calls when things go wrong. Staff should also monitor any emerging patterns – revealed through, for example, an annual behaviour audit or a routine recording system – in relation to age, ethnicity, gender, special educational needs, disability etc. and take appropriate action to avoid bias.

3.5.5 Praise and rewards can also be used to help reinforce a school’s efforts to tackle one particular aspect of behaviour. For example, if a school has particular concerns over prejudice-driven bullying, it might actively seek to praise and reward pupils who – rather than acting as passive bystanders – act positively in standing up against such behaviour. Or if there are concerns about misbehaviour on journeys to and from school, on work placements or at external sports events, praise and rewards might be targeted particularly on pupils who make efforts to act as positive ambassadors for the school. Celebrating good pupil behaviour outside school may also help in ensuring that some pupils who do not usually receive praise in school are singled out for recognition.

### 3.6 Punishing poor behaviour – use of disciplinary sanctions

#### Key Points

- School staff have a statutory power to impose sanctions.
- Sanctions must be reasonable and proportionate to the circumstances of the case.
- Schools should monitor the use of sanctions by age, ethnicity, gender, special educational needs (SEN) and disability.

#### What the law says

3.6.1 The Government is determined to support teachers and other school staff in securing high standards of behaviour in schools. This support includes legislation. The Education and Inspections Act 2006 confirms and clarifies the right of the school to impose disciplinary sanctions on a pupil when their conduct falls below the standard which could reasonably be expected of them. These disciplinary sanctions are actions which aim to make clear the boundaries of acceptable behaviour to the pupil and the school community.

3.6.2 The way in which the Act defines the power to impose sanctions – including who is able to use this power and in what circumstances – is described in **section 3.3** of this guidance.

3.6.3 Any lawful use of sanctions must be reasonable and proportionate to the circumstances of the case. In particular, the Act requires that account be taken of the pupil's age, any special educational needs, any disability and any religious requirements affecting the pupil (see **section 3.9** of this guidance for further details).

#### What this means for schools in practical terms

##### Effective disciplinary sanctions

3.6.4 The **Learning Behaviour** report highlighted several key aspects of good practice in the use of both rewards and sanctions. As indicated in the report, schools should have an appropriately wide range of sanctions. It will help if there is also a scale of disciplinary sanctions allowing responses which are reasonable and proportionate. The school behaviour policy should explain the reasons why these disciplinary sanctions are used.

3.6.5 Disciplinary penalties have three main purposes, namely to:

- impress on the perpetrator that what he or she has done is unacceptable;
- deter the pupil from repeating that behaviour;
- signal to other pupils that the behaviour is unacceptable and deter them from doing it.

- 3.6.6 One way of developing an appropriate scale of sanctions is to use a whole-school staff training session or formal discussion on the different forms of misbehaviour. This can help build agreement about what are low-level misbehaviours (for example only requiring a quiet reprimand) and what are serious misbehaviours (requiring referral to senior staff and a range of intervention strategies). The training objective is to ensure shared understanding of proportionate and differentiated sanctions, and the thresholds for their use.
- 3.6.7 Schools should ensure their referral systems identify which matters can be dealt with by any staff member with the power to discipline and which require referral to a more senior member of staff. Referrals for assistance in a crisis situation in class can be based on using pupils to call for assistance or using IT or wireless systems. Schools should also work out protocols with local police and youth offending services, for use if very serious incidents occur.
- 3.6.8 Depending on the nature of the incident and the circumstances of the individual pupil involved, a referral to senior staff might also involve: consultation with the parent, engagement with multi-agency staff, use of continual reporting systems (books, cards) for the pupil, and/or creation of a **pastoral support programme (PSP)**.
- 3.6.9 A PSP is a school-based intervention to help individual pupils to manage their behaviour. It is particularly useful for those whose behaviour is deteriorating rapidly and who are in danger of permanent exclusion. The PSP should identify precise and realistic targets for the pupil to work towards; it should be short, practical and agreed with parents. The local authority will be informed and other agencies involved. In some circumstances it may also be appropriate for schools to offer a parenting contract alongside the PSP. Pastoral support is not, however, just about addressing behaviour, however. Good pastoral support should also be concerned with academic attainment and developing pupils' ability to become good citizens.
- 3.6.10 Staff need to apply sanctions consistently and fairly. Schools should monitor the overall impact of their sanctions by age, ethnicity, gender, special educational needs and disability (which would not mean monitoring every individual sanction, however small, but rather taking reasonable steps to get a picture of whether overall any particular groups of pupils are disproportionately affected). Such information is, for example, required as part of a school's disability equality, race equality and gender equality schemes. Schools should be aware that failure to monitor the use of sanctions in this way might leave them open to legal challenge. Any patterns revealed which raise concerns about the application of the policy against the principles can then drive amendments to practice.

- 3.6.11 There are a number of ways in which schools may choose to monitor pupils' behaviours and the use of sanctions. They may, for example use records such as Staff or Pupil Planners, wall charts or IT-based data recording systems, as a continual process or to monitor specific behaviours. It is important to use these to capture both desirable and undesirable behaviours so that balanced evaluations can be reached. This sort of data can also identify common times and locations for issuing sanctions and so identify where other interventions are needed to support staff.
- 3.6.12 Data gathered consistently and analysed can reinforce good news stories about school improvement; contribute to the school Self Evaluation Form; and inform discussions with staff, governors, pupils (including through the school council), parents and multi-agency staff about patterns of poor behaviour and steps taken to tackle it.
- 3.6.13 Monitoring systems should be designed with staff workload in mind. The aim should be to gather necessary information in the most efficient and least bureaucratic way.
- 3.6.14 Sanctions are more likely to promote positive behaviour if pupils see them as fair. The guidelines to staff for implementing the school's behaviour policy should therefore advise them to:
- make clear they are dealing with the behaviour, rather than stigmatising the person;
  - avoid early escalation to severe sanctions, reserving them for the most serious or persistent misbehaviour;
  - avoid sanctions becoming cumulative and automatic (sanctions should always take account of individual needs, age and understanding – see **section 3.9** for more information);
  - avoid whole group sanctions that punish the innocent as well as the guilty;
  - wherever possible, use sanctions that are a logical consequence of the pupil's inappropriate behaviour (for example, if work is not finished in class the teacher might make the pupil stay behind at break time to finish it off);
  - use sanctions to help the pupil and others to learn from mistakes and recognise how they can improve their behaviour (i.e. a learning outcome);
  - when appropriate, use sanctions to put right harm caused;
  - never issue a sanction that is humiliating or degrading;

- use sanctions in a calm and controlled manner;
- ensure that sanctions are seen as inevitable and consistent (pupils should know that a sanction, when mentioned, will be used);
- attempt to link the concept of sanctions to the concept of choice, so that pupils see the connection between their own behaviour and its impact on themselves and others, and so increasingly take responsibility for their own behaviour.

3.6.15 Sanctions should not be used where low-level interventions, such as giving a non-verbal signal or reminding a pupil of a rule, are all that is needed. Staff should also consider when it might be more appropriate to, rather than impose a sanction, encourage pupils to reflect on the harmful effects of their misbehaviour, through producing a written account of the problem or through individual or group discussions aimed at repairing relationships for example.

3.6.16 Some schools use restorative approaches to address poor behaviour. The underlying principle is that pupils are held to account for their actions and encouraged to put right the harm caused. Restorative techniques can be effective when used correctly and when the requisite time and resources are committed (more information can be found on the **Youth Justice Board website**). Further information on restorative approaches – and other strategies for managing pupil behaviour – can be found in the Department’s anti-bullying guidance.

3.6.17 Staff should also consider, when using sanctions, whether an apparent behaviour difficulty is in fact a manifestation of unidentified learning difficulties or other type of special educational need (see further **section 3.9**).

### Examples of sanctions used by schools

3.6.18 It is for individual schools to determine what sanctions to use. Examples are:

- one-to-one admonishment;
- removal from the group (in class);
- withdrawal from a particular lesson or peer group;
- withdrawal of access to the school IT system (if the pupil misuses it by, for example, accessing an inappropriate website);
- withholding participation in a school trip or sports event that is not an essential part of the curriculum;
- withdrawal of break or lunchtime privileges;

- carrying out a useful task in the school;
- a variety of forms of detention (see **section 3.7** of this guidance);
- a fixed period exclusion;
- permanent exclusion.

3.6.19 Separate guidance is available on the use of **exclusions** – the one sanction reserved exclusively to the head teacher – and on dealing with extreme or **violent behaviour**.

3.6.20 Corporal punishment is unlawful (this includes the use of force in order to punish).

### 3.7 Detention

#### Key Points

- School staff have a statutory power to put pupils aged under 18 in detention after school sessions and on some weekend and non-teaching days.
- Detentions are lawful if:
  - pupils and parents have been informed that the school uses detentions as a sanction; and
  - the school gives parents 24 hours' notice of detentions outside school sessions.

3.7.1 Section 92 of the **Education and Inspections Act 2006** provides significant new scope for schools to apply the disciplinary penalty of detention. Schools now have much greater flexibility to impose detentions without parental consent, which should help both in strengthening their authority and in using this key sanction in ways that are suitably responsive to local circumstances. It is, however, important that these enhanced powers are used responsibly – taking appropriate account of a range of issues relating to the welfare and rights of staff, pupils and parents. This is particularly important where the detention would involve the child staying late or coming into school on a day when they would not normally be present.

#### What the law now provides

3.7.2 Hitherto it has only been lawful for teachers to impose the sanction of detention without parental consent during the school day, in the evenings and at lunchtimes. The law also required 24 hours' written notice to be given to parents for lunchtime and evening detentions.

3.7.3 The Act extends schools powers to use detentions, by making it lawful for schools to put pupils aged under 18 in detention without parental consent at a variety of other times, outside school hours. It also removes the requirement for 24 hours' notice for lunchtime detentions (as lunchtimes occur during normal school hours and keeping back a child for a short period at the end of the morning session will not usually cause significant problems for them as regards lunch arrangements). Moreover, along with all other disciplinary penalties apart from exclusion, this sanction is now available to all school staff in lawful control or charge of pupils and not just to teachers. The exception would be if a head teacher chose to limit the power of detention to certain groups of staff.

3.7.4 Other legal requirements as regards detentions remain unchanged:

- Detention is only an available sanction to a school if the head teacher has previously determined this, and made it generally known within the school and to the parents of registered pupils of the school.
- The sanction of detention can only be applied to pupils aged under 18.
- The requirement of 24 hours' written notice to parents continues to apply to all detentions outside normal school hours. The 24 hour notice period is intended to inform parents of where their child is expected to be and to allow parents an opportunity to make alternative arrangements for travel for the child. Schools should take careful account of the circumstances of the detention known to them, for example family holidays and care duties or other commitments of the family since the legality of the detention would be called into question if the school was acting unreasonably. However, a mere inconvenience or disagreement with the penalty on the part of the parent is no excuse for non-attendance.

3.7.5 The times outside normal school hours when detention without parental consent may be given are evenings (as previously), plus weekends and certain non-teaching days (days which have been set aside wholly or mainly for members of staff to work but not to teach pupils, sometimes referred to as 'training days', 'INSET days' or 'non-contact days').

3.7.6 In the case of weekend detentions, this excludes a Saturday or Sunday which falls during, or at a weekend immediately preceding or immediately following, a half-term break. Some schools made use of detentions at weekends or on non-teaching days before the Education and Inspections Act 2006 was introduced, but this was only lawful where parental consent had first been obtained. The Act removes the requirement for parental consent for these detentions, thus removing a burden from schools and strengthening their disciplinary authority. Schools now have the power, if they wish, to require pupils to attend detentions on such days.

- 3.7.7 A school may require a pupil to attend detention on all non-teaching days except those excluded by regulations.<sup>8</sup> The regulations exclude non-teaching days that occur on public holidays; before the first day of term; and during a half-term break. Non-teaching days that fall after the last school day of term are also generally excluded, but there is an exception: term-time weekday non-teaching days that immediately follow the day a school breaks up before half-term or the end of term may be used for detentions (so long as they are not public holidays).

### **What this means for schools in practical terms**

#### **Limiting to certain staff the power to impose this particular sanction**

- 3.7.8 Some schools may wish to limit to certain senior staff the power to put pupils in detention – for example, to heads of year or heads of department. Other schools may wish to use the flexibility created by the Act in the opposite way – extending the power to a wider range of staff, including some or all support staff in lawful control or charge of pupils. This is entirely a matter for individual schools to decide, and to reflect in their individual behaviour policies. Decisions will depend on the circumstances and staffing structures of the school. Schools should take appropriate account of training and development needs in deciding this. They should also make any such decisions in consultation with staff and school workforce unions.

#### **What a detention can be used for**

- 3.7.9 A range of activities can be required of the pupils which will be engaging and not lead to further ill discipline. Such activities might include: completing assessed coursework; undertaking tasks to assist staff such as classroom display work or materials preparation; or assisting staff with reparation tasks which do not raise any health and safety or child protection issues.

#### **Notifying parents about a detention**

- 3.7.10 The Act requires that 24 hours' notice be given in writing, by any effective method, for all detentions outside normal school hours. It is of course open to schools to notify parents or carers of detentions at other times if they so wish.

- 3.7.11 Notifying can mean:

- a letter, memorandum or pro-forma delivered by pupil post or by mail (allowing for the time this will take to be delivered and the fact that the 24 hours' notice requirement applies from the time that the notification is received by the parent);
- a signed, dated note by a teacher or staff member in a pupil planner (acceptable if there is clearly stated expectation in the school information to parents – for example, the home school agreement

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<sup>8</sup> The Education (Excluded Days of Detention) (England) Regulations 2007.

or prospectus – that parents will read the planner every day for notes from school); or

- an e-mail or text notification may be used where schools have reason to be confident that the parent can be contacted reliably by this route, and where parents have previously signified agreement that communication of this sort can be sent to them via e-mail or text.

- 3.7.12 In best practice a counter signature or return message is proof that parents know about the detention – but this is not a requirement for the detention to proceed.
- 3.7.13 If there is doubt about the parents receiving or responding to a detention notification, then some schools use a confirming phone call, text message, or e-mail. A written record should be made of such contacts and retained in case of any subsequent challenge.

#### **Detentions outside school hours – including weekends and non-teaching days**

- 3.7.14 While the Education and Inspections Act 2006 makes it possible for schools to give detentions at weekends and on certain non-teaching days without parental consent, it is entirely a matter for individual schools to decide whether this would be an appropriate strategy for them and fits into their overall behaviour policy. There is neither a duty nor expectation on schools to do this.
- 3.7.15 Where the school wishes to include provision for detentions at weekends or on non-teaching days as part of its overall behaviour policy, it needs to ensure that it takes appropriate account of issues around staff workload and conditions of service; issues around pupil welfare and notification to parents; plus issues around school security, cleaning, and budgets. Such issues may also apply to detentions after the end of the normal school day. For detentions on non-teaching days, there are also particular issues for the school to consider around entitlements to staff professional development.
- 3.7.16 The particular issues which weekend and non-teaching day detentions raise as regards staff, pupils and parents are considered more fully in paragraphs 3.7.17 to 3.7.22, immediately below. More general factors relating to the welfare of staff and pupils are in paragraphs 3.7.23 to 3.7.29 below, under the heading ‘deciding if the timing of a detention is reasonable’.

#### **Staff**

- 3.7.17 It is vital that arrangements for supervision by staff are undertaken in a manner that is consistent both with their contracts and job descriptions, and with the National Agreement on Raising Standards and Tackling Workload. Schools should also have regard to issues around work-life balance.

- 3.7.18 Schools also need to bear in mind that supervising detentions is not generally something which would require the professional judgement and expertise of a teacher. In accordance with the principles set out in the National Agreement on Raising Standards and Tackling Workload, it is a task that **should normally be undertaken by appropriately skilled and rewarded support staff**.
- 3.7.19 It is important to ensure, however, that staff monitoring detentions are not open to any **allegations of misconduct**. This will usually mean two members of staff supervising pupils in detention, or that a member of staff is continually visible by another member of staff. Some schools are using CCTV to provide back-up support for staff but this should not be the sole form for protecting staff from allegations.
- 3.7.20 Schools should also bear in mind that in many cases non-teaching days will involve training for all the school staff. **Teachers and other staff should not miss training on such days because a pupil has been put in detention**. Similarly, schools should ensure that detention is not arranged at weekends to the detriment of extended activities taking place at that time, or that extended school activities are not disrupted because detention is happening at the weekend as well.
- 3.7.21 These issues may be avoided if, for example, the school uses its delegated budget to buy in suitable help from outside the school. Where a detention is arranged for a non-teaching day, the following principles should be applied:
- the detention should not interfere with the training of any member of staff;
  - it should be carried out by support staff except in exceptional circumstances; and
  - it should only occur with the agreement of the member of staff concerned (unless it is otherwise a requirement of their contract of employment).

### **Pupils and parents**

- 3.7.22 Bearing in mind the requirement for 24 hours' notice to be given to parents, schools should ensure that both parents and pupils are informed:
- what the day is going to be used for;
  - when the pupil is required to arrive and when they will depart, and that the family needs to ensure suitable arrangements are in place for the pupil to get to and from school;
  - which members of staff the pupil should report to;

- whether uniform should be worn;
- whether the pupil needs to bring:
  - packed lunch and drink
  - any medication
  - any coursework or other learning materials
- that the school has a legal power to impose the disciplinary penalty of detention, and what the consequences would be for non-attendance.

#### **Deciding if the timing of a detention is reasonable:**

- 3.7.23 **Transport:** If a pupil is required to use transport to or from a detention (especially on a weekend or non-teaching day) the school should take into account whether such transport arrangements are reasonable and practicable. This may be a particular issue for schools where public transport is limited or expensive. In these circumstances schools will want to make reasonable arrangements with parents while insisting on the terms of the detention being met.
- 3.7.24 **The pupil's out of school responsibilities:** Schools will need to be sensitive to issues where a pupil is a primary carer, a looked after child or vulnerable in other ways. For example, a pupil may have responsibilities for helping care for a sick family member or for escorting a younger sibling home. Or a pupil with a history of severe behavioural problems may be required as a part of a Youth Offending Team contract or court order to attend specific sessions which may fall at the time of a detention. Close liaison between schools and partner agencies is desirable.
- 3.7.25 **Family holidays and other commitments:** When setting weekend detentions or detentions on non-teaching days, schools should take into account holidays or other commitments that have been pre-planned. It would not be reasonable to expect a pupil to miss a family wedding, an extra-curricular activity that their parents have paid for in advance, or a sporting/cultural event that the family has tickets for, to name a few examples. Further, if the non-teaching day on which the proposed detention is to be held is at the end of the school term, the family may have arranged to start their holiday on that day. It would be unreasonable to expect the family to alter their travel arrangements.
- 3.7.26 **Nutrition:** Although 24 hours' notice is no longer a legal requirement for lunchtime detentions, schools should continue to be sensitive to the personal circumstances of pupils expected home for lunch and should ensure that lunchtime detentions are not of such duration that a pupil misses the opportunity to eat (not to do so would affect the reasonableness, and thus potentially the legality, of the sanction).

- 3.7.27 The fact that lunchtime detentions may now be given without 24 hours' notice makes it particularly important for schools to ensure they are clear which pupils are expected home for lunch. In particular, schools usually require that parents inform them in writing if a pupil will be going home for lunchtime as a routine. In such circumstances schools may find it helpful to develop guidelines which allow pupils to be in detention for a certain period of time before releasing them to go home for lunch and get back in time for afternoon school. Alternatively – given the complexity of managing this – some schools adopt a standard '5 minute' lunchtime detention for pupils who go home to lunch and as needed defer a longer detention to after school the next day or to a weekend/ non-teaching day.
- 3.7.28 It is essential that staff and pupils get a reasonable break at lunchtime to eat, drink and use toilets. Lunchtime detentions should not be of a duration that would deprive any individual staff member or pupil from their proper entitlement to these things.
- 3.7.29 **Medical or religious circumstances:** Schools will need to respond to specific circumstances affecting individual pupils, for example a requirement to take medication at specific times or the need for space for religious observance.

#### Deciding how long the detention should be

- 3.7.30 Schools will want to set out standard procedures. For example, a detention to complete outstanding coursework may need to be longer than a detention for an incident of aggression which may achieve its purpose within a shorter time. Questions to consider include:
- Is the length reasonable in the light of the seriousness of the misbehaviour?
  - Is the length reasonable to achieve a specific outcome?
  - Is the length proportionate compared to other misbehaviour?
  - If the detention is outside normal school hours, will it keep the pupil back beyond a time that might be regarded as reasonable (e.g. in terms of transport, late hours or implications for meal times)?

#### What to do if a pupil walks out of a detention

- 3.7.31 Generally, a requirement to remain in the classroom or elsewhere in the school should not be enforced by use of force, although failure to comply may be treated as a disciplinary offence. The only circumstances in

which using force would be justifiable would be where the staff involved judged that allowing the pupil to leave would:

- entail serious risks to the pupil's safety (taking account of their age and understanding), to the safety of other pupils or staff or of serious damage to property; and/or
- lead to behaviour that prejudiced good order and discipline. In itself, refusal to remain in a particular place would not be enough to justify use of force. Staff would have to be convinced that, if allowed to leave, the pupil would seriously disturb the running of the school by, for example, disrupting other classes.

3.7.32 If the pupil walks out of the detention:

- It is best to let a staff member deal with the pupil after leaving the room – the first aim being to point out the need to return to the detention, but the second position being to make clear that the pupils will be held to account for the action they have taken.
- It is important to make clear to other pupils that the pupil has made choices and will be held to account for those choices. The purpose of this is to calm down other pupils.
- A further and higher level sanction may be imposed on the pupil. This higher level sanction might be a fixed period exclusion, imposed by the head teacher.

### 3.8 Confiscation (including retention and disposal) of inappropriate items

#### Key Points

- Schools can include confiscation of pupils' property as a disciplinary sanction in their behaviour policy.
- To be lawful, confiscation must be a reasonable sanction in the circumstances of the particular case.
- Decisions about retention and disposal of confiscated property must also be reasonable in the circumstances of the particular case.
- The Education and Inspections Act 2006 includes a specific statutory defence for school staff who have reasonably confiscated pupils' property.

### What the law now provides

- 3.8.1 The EIA 2006 provides two things. First, the overall power to enforce disciplinary penalties, described in **section 3.3** of this guidance, would cover the use of confiscation as a disciplinary penalty (sanction). That includes seizure and also, as appropriate, the retention and disposal of certain items. As with other sanctions, the sanction of confiscation must be applied in a reasonable and proportionate way. But it would be entirely proper for a school to include confiscation as one of the disciplinary measures that might be applied as part of the school's behaviour policy.
- 3.8.2 Second, the Act provides a member of staff with a specific statutory defence if he or she proves that the seizure, retention or disposal was lawful. Unauthorised seizure, retention or disposal of a pupil's property interferes with that pupil's rights under Article 1 of the First Protocol to the European Convention on Human Rights, which guarantees entitlement to peaceful enjoyment of one's possessions. It also interferes with the pupil's rights under domestic law. A consequence of this is that a teacher or other member of staff may only seize, retain or dispose of a pupil's property if he or she has authority to do it. The Education and Inspections Act 2006 provides that authority when the confiscation is a lawful disciplinary penalty. It is for the staff member confiscating to show the legality of the confiscation since he or she has made the decision to interfere with the property. If authority can be shown, the staff member has a defence to all proceedings against him or her and is not liable for any damage or loss arising.
- 3.8.3 For the confiscation to be lawful it must be proportionate, necessary in a democratic society and in pursuance of a legitimate aim. Generally, the aim pursued in confiscating property is maintaining an environment conducive to learning, one which safeguards the rights of other pupils to be educated. However, proportionality is very relevant, and that in turn depends on the value of the property. If a pupil is playing music loudly on a personal music player, it is likely that total destruction of the device after it has been seized is disproportionate, which would make such a step unlawful. Taking the device and returning it at the end of the school day is much more likely to be a proportionate response. On the other hand, if a paper ball or piece of chewing gum has been confiscated, disposal of the item is likely to be a proportionate response.
- 3.8.4 A separate legal provision in the Violent Crime Reduction Act 2006, inserted in the Education Act 1996, makes it lawful for certain school staff to search suspected pupils for knives or other weapons without consent. It also deals with the seizure of items found during the course of a search. Associated guidance sets out that schools can also screen pupils without suspicion using electronic means such as wands or arches.

3.8.5 Schools should note, however, that the legal power for school staff to search pupils currently only extends to weapons. A pupil might reasonably be asked to turn out their pockets or to hand over an item such as a personal music player that is causing disruption, and the school might use its legal power to discipline if the pupil unreasonably refuses to cooperate. However, if it is felt necessary for a pupil to be searched for (say) illegal drugs or stolen property, that should be done by the police rather than school staff using the appropriate powers available to them.

3.8.6 Schools should also note that, while confiscation of a mobile phone is legitimate, searching through a phone or accessing text messages without the pupil's permission is not. In some circumstances it may be reasonable for a member of staff to ask a pupil to reveal a message for the purpose of establishing whether cyberbullying has occurred, for instance, but if the pupil refuses then the member of staff should not enforce the instruction. The staff member can, however, legitimately issue a disciplinary penalty for failure to follow a reasonable instruction.

#### **What this means for schools in practical terms**

##### **What criteria for confiscation might be used by a school?**

3.8.7 These criteria are for individual schools to determine in the light of their policies on school uniform or behaviour generally. They might include:

- an item poses a threat to others: for example, a laser pen is being used to distract and possibly harm other pupils or staff;
- an item poses a threat to good order for learning: for example, a pupil uses a personal music player in class;
- an item is against school uniform rules: for example, a pupil refuses to take off a baseball cap on entering a classroom;
- an item poses a health or safety threat: for example, a pupil wearing large ornate rings in PE may present a safety threat to other pupils;
- an item which is counter to the ethos of the school: for example, material which might cause tension between one community and another;
- an item which is illegal for a child to have: for example, racist or pornographic material. Protocols for how to deal with such items can be agreed with local police.

##### **Confiscating items of clothing or jewellery – risks for schools to bear in mind**

3.8.8 Schools should take particular care when deciding whether to confiscate items of clothing or jewellery. In particular, they should have appropriate regard to whether the item in question has religious or cultural significance to the pupil (see further **section 3.9**) and should avoid physical contact or interference with pupils' clothing of a kind that might give rise to child abuse allegations. In order to minimise

such risks, schools should ensure that if an item of clothing or jewellery is confiscated, this is done by a staff member of the same gender as the pupil and with another staff member present where possible. Confiscation of any item that would leave the pupil only partly dressed must be avoided.

#### What to do with confiscated items

- 3.8.9 Schools should keep records of confiscated items and the grounds for the action, so that they may justify them later if challenged. Some schools write a note in the pupil planner to inform the pupil's parent that an item has been confiscated, and the note is countersigned on return.
- 3.8.10 Pupils have a right to expect that confiscated items, especially those of monetary or emotional value, will be stored safely until they can be returned. For items of obvious value, schools should ensure appropriate storage arrangements (for example, in a safe, the finance office, or the head teacher's office). All reasonable steps should be taken to make such arrangements secure. If similar items have been confiscated from several pupils – such as mobile phones or personal music players for example – schools should take care to ensure that they are clear which item belongs to which pupil.
- 3.8.11 For some items school staff should seek specialist advice – for example, suspected illegal drugs or items which might be used as weapons. Schools should develop protocols in partnership with police, Youth Offending Teams and other specialist agencies to cover such issues and to ensure that schools have access to specialist support and advice if an incident occurs. For further information on establishing relationships with the police, see the guidance on **Safer School Partnerships**, and for advice on the safe storage and disposal of illegal drugs, see the Department's **Drugs** guidance.

#### Mobile communication technologies (including mobile phones and wireless technologies)

- 3.8.12 The **Learning Behaviour** report of the Practitioners' Group on School Behaviour and Discipline suggested a need for schools to have a clear policy on the use and possession of mobile phones. This should include clear statements about powers of confiscation, taking account of:
- the safety of pupils on the journey home and parental concerns over this issue – schools should return confiscated phones before the pupil leaves the school premises, if these are relevant factors;
  - examination board and school rules about the use of such technologies in examination settings, including supervised coursework;

- the unacceptability of pupils using phones or other technological equipment to humiliate or bully other members of the school community (e.g. sending abusive text messages, **cyberbullying** or using camera phones for so-called ‘happy slapping’, i.e. recording and transmitting of images of abuse);
- whether, and in what circumstances, the school judges it appropriate to inform parents about the confiscation of such items.

### How long should items be confiscated for?

3.8.13 In most cases, confiscation is a sufficient sanction, and return of the item at the end of the lesson, school session, or school day is adequate time to reinforce the school rule. This also limits the chance of problems with loss of items while in the care of school staff.

3.8.14 There may be some instances when the school chooses not to return an item to the pupil:

- items of no value, such as an inappropriate message scrawled on a piece of paper, may simply be disposed of. However, schools should keep in mind that some items of seemingly no value may have emotional value to the child – staff should establish if this is the case before deciding whether or not to dispose of the confiscated item;
- items of value which the pupil should not have brought to school or has misused in some way might – if the school judges this appropriate and reasonable – be stored safely at the school until a responsible family adult can come to retrieve them. For example, there is no acceptable reason why a pupil should bring a cigarette lighter to school. In such circumstances, retention is a reasonable step both to protect property and to enable discussion about whether the pupil is smoking and how this can be addressed;
- other items which the pupil should not have had in their possession – particularly of an unlawful or hazardous nature – may be given by the school to an external agency for disposal or further action as necessary. This should always be followed by a letter to the parents confirming that this has taken place and the reasons for such action.

### 3.9 Taking account of individual pupil needs

3.9.1 This section provides guidance to help schools take account of a range of individual pupil needs when developing and implementing their behaviour policies. It focuses primarily on pupils with SEN or disabilities, but also refers to needs within certain other groups defined by Ofsted<sup>9</sup> as ‘at risk’ within the education system: minority ethnic and faith groups, travellers,

<sup>9</sup> Evaluating Educational Inclusion: Guidance for Inspectors and Schools (HMI 235, October 2000)

asylum seekers and refugees; pupils who need support to learn English as an additional language (EAL); children looked after by the local authority; sick children; young carers; children from families under stress; pregnant schoolgirls and teenage mothers; and any other pupils at risk of disaffection and exclusion.

3.9.2 All these groups may at some point require the adults in school to take account of their individual needs and circumstances when applying the school's behaviour policy.

### Examples of situations schools should avoid

3.9.3 The following are examples of unfortunate situations which schools should avoid. They illustrate the importance of sensitivity to individual needs. Some of the inappropriate school responses described here contravene legislative requirements and could result in the school's actions being subject to challenge.

- A pupil is admonished for failure to follow a long and complicated instruction given by an adult, but the pupil has speech and language difficulties and cannot process complex language.

**A more appropriate response would be for the adult to make instructions short, and clarify understanding by asking the child to repeat them.**

- A pupil is put in detention because he would not look at his teacher when being told off. The teacher interpreted this as disobedience and disrespect, but in this pupil's culture it is considered disrespectful to look an adult in the eye.

**A more appropriate response would be to understand that the pupil was attempting to show respect.**

- A looked-after pupil is sent out of class after an emotional outburst. This happens despite the staff member being aware that the pupil had been told by her social worker the night before that her foster family could no longer keep her and that she would shortly be moving to another family and school.

**A more appropriate response would be to use a pre-agreed means for the pupil to take herself to a place where she could calm down and, if necessary, talk to a sympathetic listener.**

- A pupil on the autistic spectrum is disciplined for making personal comments about an adult's appearance. The pupil has no sense that such comments can be hurtful and should be avoided.

**A more appropriate response would be for the adult to tell the pupil that the comment was hurtful and inappropriate, to inform the pupil's key worker or the SENCO, but not apply a sanction.**

- A refugee pupil dives under the desk at a sudden noise that reminds him of a terrifying event in his past. Other pupils laugh and the teacher, thinking he is playing the clown, requires him to miss the first ten minutes of his break time.

**A more appropriate response would be to let the class know there are special circumstances and offer the pupil reassurance and support.**

- A Gypsy/Roma child is put on report for speaking in a seemingly over-familiar way to a teacher, when he had not previously had expectations made clear to him, had no intention of being rude but was simply using the register considered appropriate in his culture.

**A more appropriate response would have been to explain and demonstrate to the pupil what is expected in school, and consider involving the Traveller Education Service in providing support.**

### Taking account of race, religion and culture

#### Key Points

- Schools must avoid discriminating against particular racial groups in the application of their behaviour policies.
- Schools must monitor and assess the impact of their behaviour policy on pupils, staff and parents of different racial groups.
- Schools should ensure staff are well informed about cultural differences in behaviour and their implications.
- Schools should support newly arrived pupils in understanding and following the behaviour policy.
- Schools should take appropriate account of cultural and/or religious needs when developing or reviewing rules related to school uniform and appearance.

### What the law says

3.9.4 Schools must be fully aware of the equal opportunities legislation as it relates to behaviour policies. The Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000, and regulations made under it require schools to:

- eliminate unlawful racial discrimination;

- promote equality of opportunity and good relations between people of different racial groups;
- assess the impact of school policies on pupils, staff and parents of different racial groups;
- monitor the operation of the school's policies and their impact on pupils of different racial groups; and
- take reasonable steps to make available the results of its monitoring.

#### What this means for schools in practical terms

3.9.5 Schools need to think carefully about how they support newly arrived pupils in understanding and following the behaviour policy, how staff are informed about cultural differences in behaviour and their implications, and the support systems in place for pupils whose personal circumstances may result in particular behavioural difficulties.

3.9.6 Staff should, for example:

- be aware that a pupil who is behaving inappropriately may be experiencing an ongoing, repeated barrage of racially based provocation;
- be aware of the risk of certain pupils being 'over-disciplined' through misinterpretation of their behavioural norms, such as a 'loud' social style;
- be aware, on the other hand, that an inappropriate reluctance to discipline certain groups of pupils (for fear, for example, of being thought of as racist) is likely to result in their misbehaviour escalating so that it has to be dealt with through exclusion;
- understand the cultural importance of showing respect. This means listening to pupils' perspectives; speaking calmly rather than shouting; avoiding language that might humiliate them; using a quiet word after class rather than admonishing them in the presence of their friends.

3.9.7 Rules relating to school uniform and appearance should take appropriate account of the cultural and/or religious needs of particular groups of pupils. For example:

- gold rings and earrings are often viewed as an intrinsic part of Gypsy/Roma identity;
- Sikh pupils may be required by their religion to carry a kirpan (ceremonial knife) or wear a kara (metal bracelet) after completing the Amrit Pahul ceremony;
- female Muslim pupils may observe the hijab and Jewish pupils the kippah/yarmulke head covering.

- 3.9.8 In drawing up or reviewing their policies, schools should reach a sensible compromise between the practices of particular minority groups and the need to ensure the health and safety of all pupils, effective teaching and learning, the promotion of a strong, cohesive school identity and harmony between the different groups represented in the school. See further the DfES Guidance to Schools on School Uniform Related Policies.
- 3.9.9 Schools must have careful regard to their responsibilities under relevant legislation. A rule which resulted in the exclusion of a pupil for wearing a kirpan, for instance, might be considered discriminatory under the race relations legislation. Taking health and safety legislation into consideration, a school governing body might decide that a rule forbidding knives was necessary to secure pupil welfare, and would then have to decide whether to allow kirpans, based on whether they could satisfy themselves that they did not present a safety risk. In such situations, it is often possible to reach a compromise – many Sikhs believe that kirpans which are symbolic, or secreted in clothing and unable to be drawn, are permissible (see Annex F of the **School Security: Dealing with Troublemakers** guidance for further information on this issue).
- 3.9.10 Schools should consult widely on proposed school uniform related policies (including with community leaders of minority ethnic and religious groups), consider how the proposed policy might affect each group represented in the school, consider any concerns expressed in the consultation and document carefully the consultation process and its outcomes.

### Taking account of SEN, disability and the circumstances of other vulnerable pupils

#### Key Points

- Schools must make reasonable adjustments in the application of their behaviour policy to disabled pupils.
- Schools must make special educational provision for pupils whose behaviour-related learning difficulties call for it to be made.
- Schools should be alert to the potentially disproportionate impact of the school's disciplinary framework on vulnerable pupils.
- Schools should identify at-risk pupils in advance.
- Schools should plan proactively how the school's disciplinary framework should be applied for each of these pupils.
- Schools should ensure that all those in contact with the pupil know what has been agreed.

### Key Points (cont'd...)

- Schools should make sure that every vulnerable pupil has a key person in school who knows them well, has good links with the home, and can act as a reference point for staff when they are unsure about how to apply the disciplinary framework.
- Schools should ensure that all staff are aware of appropriate referral procedures.

### What the law says

- 3.9.11 The Disability Discrimination Act 1995 and the SEN duties in the Education Act 1996 (both of which were amended by the SEN and Disability Act 2001), together with the Disability Discrimination Act 2005 (which also amended the Disability Discrimination Act 1995), provide the statutory framework that underpins equality of opportunity for pupils with SEN or disabilities in accessing school education.
- 3.9.12 Disabled pupils are those who have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. This broad definition encompasses an estimated 7% of the child population and includes hidden disabilities such as dyslexia, autism and speech and language impairments; sensory and physical impairments; and medical conditions such as diabetes, epilepsy or disfigurement. Some pupils with more complex behavioural, emotional or social difficulties (BESD) may also fall under the definition of disabled. The definition of disability includes conduct disorders such as oppositional defiance disorder (ODD); hyperkinetic disorders such as attention deficit disorder or attention deficit hyperactivity disorder (ADD/ADHD); and syndromes such as Tourette's and other mental health disorders. Such disorders do not have to have been officially diagnosed in order for a pupil to be classified as disabled: the impairment simply needs to exist.
- 3.9.13 There is a significant overlap between those who have a disability and those who have SEN. The definition of SEN includes many but not all disabled children: disabled children have SEN if they have learning difficulties which call for special educational provision to be made for them. The definition of 'learning difficulty' under the Education Act 1996 includes a disability which either prevents or hinders a child from making use of educational facilities of a kind generally available in the area.
- 3.9.14 Under the Education Act 1996, as amended by the SEN and Disability Act 2001, schools must make special educational provision for pupils whose behaviour-related learning difficulties call for special educational provision to be made for them. Local authorities also have a duty under the Act to, where necessary, assess a child's SEN and draw up a SEN

'statement' setting out the extra provision the child requires to meet his or her SEN. Schools can request an assessment for a child.

3.9.15 The Disability Discrimination Act 1995 (as amended) requires maintained schools and other public authorities, when they are carrying out their duties, to have regard to the need to:

- promote equality of opportunity between disabled people and other people;
- eliminate discrimination that is unlawful under the Act;
- eliminate harassment of disabled people that is related to their disability;
- promote positive attitudes towards disabled people;
- encourage participation by disabled people in public life;
- take steps to meet disabled people's needs, even if this requires more favourable treatment.

3.9.16 A school is discriminating unlawfully against disabled pupils if:

- it treats a disabled pupil or prospective pupil less favourably than another for a reason related to their disability and without justification; or
- it fails, without justification, to take reasonable steps to avoid placing disabled pupils at a substantial disadvantage. This is often known as the 'reasonable adjustments' duty.

#### **What this means for schools in practical terms**

3.9.17 The Disability Rights Commission (DRC) has provided guidance that illustrates areas of high risk of discrimination for schools in relation to the application of their behaviour policy ([www.drc.org/thelaw/practice](http://www.drc.org/thelaw/practice)). These include, for example:

- blanket policies, such as policies that provide a fixed penalty for a particular offence: an automatic internal exclusion for a pupil who swears at a teacher might put the school at risk of discriminating against disabled pupils. The policy might appear to have the advantage of consistency, but may discriminate because it fails to make reasonable adjustments for the disabled pupils for whom the swearing may be 'related to their disability';
- failing to communicate to all staff the particular reasonable adjustments that need to be made for individual pupils, for example in managing potentially confrontational situations. A failure to communicate the need to make these adjustments might put

the school at risk of discriminating against disabled pupils. This is particularly so when encounters around the school bring pupils into contact with staff who do not work with them on a regular basis in the classroom.

- 3.9.18 Section 5 of the DRC guidance clarifies the occasions when a school might be seen to treat a pupil less favourably than another for a reason linked to their disability. It gives the example of a pupil with Tourette's syndrome who is stopped from going on a school visit because he has used abusive language in class. This would constitute less favourable treatment, since the pupil's involuntary swearing is a symptom of his Tourette's syndrome.
- 3.9.19 Another example is of a school which receives complaints from local shopkeepers about the rowdy and disruptive behaviour of some of its pupils. It decides that the pupils in question should be banned from taking part in a school theatre visit because of their behaviour. One of the pupils has a hearing impairment. The rowdy and disruptive behaviour is not in this case directly related to the pupil's impairment. As the school is not treating the pupil less favourably than others for reasons linked to his particular impairment, it is acting lawfully.
- 3.9.20 The reasonable adjustment duty in the disability discrimination legislation requires schools to think ahead, anticipate the barriers that disabled pupils may face and remove or minimise them before a disabled pupil is placed at a substantial disadvantage. For the pupil with Tourette's syndrome, the school would be expected to plan and implement adjustments such as introducing new ideas carefully in class and avoiding putting the pupil under undue time pressures. Left unmanaged, both of these tend to exacerbate the effects of his impairment. Well managed, they would reduce the risk of him contravening school rules by using inappropriate language.
- 3.9.21 Another example in the DRC's guidance concerns a pupil with dyslexia. He is given a detention for not doing his homework, when the homework was quickly written on the board at the end of a lesson without giving him time to copy it down. This means that he is being treated less favourably than others for reasons linked to his impairment. The school is also in breach of its duty to make reasonable adjustments such as writing up the homework earlier in the lesson, or printing it out onto sticky address labels so that pupils who find it hard to copy from the board or write at speed can put it in their planner.
- 3.9.22 A final example is of a child with autism who goes to the front of the dinner queue. A teacher standing nearby tells him not to 'barge in'. The pupil becomes anxious but does not move. The teacher insists that the pupil must not 'jump the queue'. The pupil becomes even more anxious and agitated and hits the teacher. He is then excluded temporarily from the school.

- 3.9.23 Attacks on school staff are clearly an extremely serious matter. As the Department's guidance on pupil exclusions makes clear, permanent exclusion may be an appropriate response to serious actual or threatened violence – even where this is a 'one-off' offence. However, in the example quoted above, the pupil's disability is clearly a factor. For the head teacher simply to exclude the pupil without taking account of the child's autism might constitute less favourable treatment for reasons linked to his disability. Pupils on the autistic spectrum have difficulty in managing social situations and often take language very literally. This pupil does not understand the purpose of a queue. He does not understand figurative terms and the instruction not to 'barge in' or 'jump the queue' is confusing. He also has difficulty in managing escalating levels of anxiety.
- 3.9.24 The school might argue that the less favourable treatment was justified in terms of order and discipline in the school. Any assault is likely to constitute a material and substantial reason justifying exclusion, and the law allows for such justification. The issue would be, however, whether there were reasonable steps that would have prevented the incident from taking place which the school could have made but did not. Such steps might have been providing training to all staff to help them understand autism, providing training for the pupil on how to handle social situations such as queuing, and making arrangements for the pupil to exit quickly from a situation of escalating anxiety in order to seek help from an identified person. If steps of this type had been taken but the incident had still happened, the school would be likely to be able to justify the exclusion. If reasonable steps had not been taken, they would be contravening the law in excluding him.
- 3.9.25 The DfES publication **Inclusive Schooling: Children with SEN** provides further examples of reasonable adjustments for pupils with autistic spectrum disorders and for a number of commonly occurring scenarios that may be linked to a disability: a child who finds it very hard to sit still and pay attention, a primary aged child who has severe temper tantrums, and a secondary aged pupil with emotional and social difficulties leading to challenging behaviour. Another useful publication is the DfES guidance **Implementing the Disability Discrimination Act in schools and early years settings**, a training resource for schools and local authorities. The 'Essential viewing' and 'Behaviour for learning' sections on the DVD within this publication provide examples of reasonable adjustments to behaviour policies. Specific guidance on **dealing with severe behavioural difficulties and extreme behaviour in association with learning disability and/or autistic spectrum disorders** is provided.
- 3.9.26 Not all pupils with BESD are classified as disabled or fall under the provisions of disability discrimination legislation. The schools involved in the production of the **Implementing the Disability Discrimination Act** DVD materials, however, all emphasise that the adjustments they

have made for disabled pupils have had an impact beyond those pupils directly targeted.

- 3.9.27 No guidance can cover every eventuality or every type of need that may require adjustments to a school's behaviour policy. There are, however, some general principles to guide the common-sense decisions that schools will make when applying their policies to individuals.
- 3.9.28 Proper assessment and identification of needs is essential. It is good practice for schools to check that what are apparently behaviour difficulties are not in fact a manifestation of unidentified learning difficulties. Equally, it is important to be aware that there is a raised incidence of other types of SEN in pupils identified as having BESD. It is sometimes difficult to discern the main cause of the behaviours displayed or to identify whether an underlying impairment or condition – such as Autistic Spectrum Disorders (ASD) or speech, language and communication difficulties – is actually the main need. Understanding the main need or disorder can help in identifying suitable interventions; and meeting the main need appropriately could lessen the behaviours significantly.

#### **Reasons why some pupils may behave inappropriately**

- 3.9.29 There are a number of reasons why pupils with SEN or disabilities and other vulnerable pupils may behave inappropriately. The first reason may be that they do not have the cognitive, physical or social and emotional competences necessary to understand and follow a school rule. They may not understand an instruction because, for example, they have a hearing or speech and language impairment. There may be cultural differences that mean they behave in ways that adults in school may not be used to. They may not, as with a child who has severe learning difficulties, have reached a developmental stage where they are capable of comprehending something as abstract as a general rule. They may have attention difficulties that mean they cannot sit still for long periods, and so be unable to comply with requirements to sit still in an assembly or whilst listening to a story.
- 3.9.30 A more subtle example would be pupils who have never been taught the skills they need in order to regulate their emotions or behave appropriately in social situations. Such pupils may not be aware of the need to use different language and behavioural registers in the playground and the classroom, may not know how to manage anxiety, may know no way to resolve conflict other than through violence, or may not have learned the skills involved in working in a group with others.
- 3.9.31 A second reason for inappropriate behaviour in vulnerable pupils may be that they have the necessary understanding and competences to follow the school rules but are not choosing to deploy those competences because alternative choices offer them bigger rewards, or because the

sanctions that are in place do not act as an effective deterrent. One example is a pupil who finds it hard to make friends but knows that they will gain attention or approbation from peers by misbehaving. The reward of becoming more popular may outweigh the sanctions that will follow. Another example is a pupil who so much needs adult attention that they actually find rewarding the school sanction of being sent to the head teacher for persistent misbehaviour.

- 3.9.32 A third reason for inappropriate behaviour might be that although the pupil has the necessary competences, and the right incentives to use them are in place, they are experiencing such stress that they are temporarily unable to make rational choices. Examples include a pupil who has been abused, lives in a household where there is domestic violence, is worried about a sick parent, has experienced a bereavement, is being bullied, or whose parents are in the process of an acrimonious separation or divorce. Another example is a pupil who is repeatedly teased because of a disability.
- 3.9.33 Each of these possible reasons for inappropriate behaviour has implications for implementing the behaviour policy to meet individual needs.

#### **Pupils who do not have the necessary understanding or skills**

- 3.9.34 Pupils who fail to follow school rules because they do not have the necessary cognitive, physical or social and emotional competences, or share the cultural assumptions of the majority, require a carefully planned response.
- 3.9.35 As a first step, schools should aim to establish reasonable expectations about the pupil's ability to understand and follow rules. For example, for a child with severe learning difficulties, it might involve considering their ability to comprehend simple instructions. It is, however, possible for staff expectations about the behaviour of some pupils with SEN to be set too low. An example would be a school which, with the best possible intentions, exempted a pupil with Down's Syndrome from all forms of sanctions because they felt her special needs precluded her from conforming to behavioural expectations. This is not the case: the child, though behind in academic skills, might be fully capable of understanding and following basic rules once they have been carefully taught to her by her parents and the school's special needs department. Exempting her from sanctions does not help her development, her popularity amongst her peers or the smooth running of the school, and has the effect of making her feel less included.
- 3.9.36 Taking appropriate account of the individual child's needs, the school will then need to identify any areas of the behaviour policy that are likely to cause difficulty, and make sure that all staff are informed well

in advance about how to implement the school's policy for these pupils. There will be a need to ask questions, such as: Can this pupil reasonably be expected to sit through an assembly, or is this beyond their capacity? What level of adult language can they understand? Are there important cultural differences we need to be aware of?

- 3.9.37 This may mean consulting pupils' parents or carers, others who know the child well, the inclusion coordinator, the designated teacher for looked after children or SENCO, external agencies, or the wider community. Home-school agreements provide a framework for discussion with parents about any areas of the school behaviour policy that might prove problematic for their child; primary schools need to pass on to secondary schools information about what to expect and watch out for.
- 3.9.38 Where pupils do not have the necessary skills to follow a school rule it will be important to provide appropriate teaching. A pupil who does not know how to cope in a dinner queue, for example, can be taught to do so. Work to develop social and emotional skills, such as managing anger or working in groups, can be an important part of the provision a school makes for pupils with SEN.

#### **Pupils who can behave but choose not to**

- 3.9.39 The fact that some vulnerable pupils have the necessary understanding and competences to follow school rules but simply make a conscious choice to behave differently underlines the need for a firm framework that can be consistently applied in these cases, even where pupils may have SEN or other difficulties. A clear framework of rules, rewards and sanctions, that is linked to communally agreed rights and responsibilities helps all pupils to make appropriate choices. It provides clarity about what is expected and what will happen as a consequence of their behavioural choices. It also allows adults in school to apply disciplinary policies to vulnerable pupils in ways that avoid emotional confrontation and further damage to self esteem that is often fragile. When pupils begin to misbehave, for example, adults can remind them of the rule ('The rule we agreed in our classroom is...') rather than criticise them or their behaviour, and use the language of choice ('You have a choice – do x and y will happen; do a and then b will happen') rather than issue directives.
- 3.9.40 The framework of consequences – positive and negative – can also be modified to make it more effective for an individual child. Presumed positive consequences need to be experienced by a pupil as positive if they are to provide an incentive to behave well; equally, presumed negative consequences need to be perceived as negative. For some pupils, our assumptions about what is a reward and what is a sanction may be inaccurate. In these cases it is helpful to have a discussion with the pupil and/or their parents in order to identify deterrents that will be more powerful for them, and rewards that they find important.

These can be built in to an individual behaviour contract spelling out a set of consequences that may differ from those that apply in the overall school behaviour policy, but which can still be applied in a predictable and consistent way by all those who work with the pupil. Such individual modifications would be expected to be short, and used as part of an overall strategy to help the pupil move, in time, towards a greater accommodation with the norm.

- 3.9.41 Individual behaviour contracts like this can be supplemented by work with the peer group, whose approval may be acting as a more powerful motivator for the pupil than any rewards or sanctions the school has to offer. Similarly, one-to-one work with pupils can help them learn how to resist peer pressure, or to reconsider the thinking that is influencing their faulty behavioural choices.

#### **Pupils who have the necessary skills but are experiencing trauma**

- 3.9.42 Pupils who fail to follow school rules, even though they have the necessary competences, present the greatest challenges to our thinking about the application of behaviour policies. Like adults, some children do go off the rails if they experience significant loss or trauma, and act in ways that are often irrational and unhelpful to themselves or others.
- 3.9.43 The most effective schools seek to prevent such incidents by establishing systems to detect pupils' distress and provide safe havens to which they can temporarily retreat when they are at risk of losing control of their behaviour. They also liaise with parents and, as appropriate, with external agencies – such as social services or specialist local authority staff – to ensure that the child's needs are addressed in a holistic way.
- 3.9.44 Where pupils understand the rules, know they should follow them, have the social and emotional skills to follow them but simply 'lose it' because of the acute stress they are under, schools might feel it appropriate to exempt them from normal sanctions or have those sanctions modified so as to be less severe. However, there are risks in such an approach.
- 3.9.45 Modifying or not applying a sanction is what would usually happen in a home setting, where a parent or carer, knowing their child to be going through a difficult time, would be more lenient with them for a period. This is manageable within the relatively small community that is a family. However, in the much larger community of a school, there will be concerns about the impact on others of one child being seen to be treated differently from others.
- 3.9.46 There are also questions about whether it is always helpful to waive or reduce expectations simply because a child or adult is under stress. Adults do not expect to be let off a speeding fine because they were under stress, however great: the consistency of the rule of law and the maintenance of expectations is an incentive to choose safe and appropriate behaviour

even at the most difficult times. Similarly, it is likely that having pupils understand that some behaviours, particularly those that place others at risk, will always carry a sanction will help them to make appropriate behavioural choices even when they are under stress.

- 3.9.47 What is important is how the sanctions are managed. The pupil needs to know there will be a sanction, but also that adults understand the feelings and personal circumstances which led to the event, are concerned about their welfare, and will put in place appropriate support systems for the future.
- 3.9.48 For behaviours that do not carry a risk to others, the school may well decide to modify a sanction in the light of the pupil's personal circumstances. Sparingly used, such adaptations can be explained to other pupils and fully accepted by them as appropriate and fair. The most effective schools are as explicit about the differentiation of their behaviour policy as about their differentiation of learning opportunities in the classroom. Pupils, parents and staff are all aware that, from time to time, some pupils will be treated differently because they have extra needs that could happen to any pupil at any time.
- 3.9.49 Such schools also ensure that if extra rewards are used to help pupils with difficulties behave well, these are shared with others. One school, for example, when rewarding a pupil with behaviour difficulties with a trip out of school for achieving a short-term goal, pairs that child on the outing with one of what they call their 'always' children – a child who always behaves well.
- 3.9.50 Pupils who are looked after by the local authority have often experienced significant loss or trauma, and schools need to be aware of their particular needs. Many show remarkable strength in spite of experiencing trauma and separation. There should never be an automatic assumption that they will display poor behaviour. However, some looked after pupils will need help with their emotional well-being and may express their pain and anger through difficult behaviour at school. Behaviour policies should take account of how the school will respond to challenging behaviour in such circumstances.
- 3.9.51 Young people in care usually prefer not to be treated differently from others but sensitive support as part of the school's pastoral support programme, and through involvement of the school's designated teacher, could prevent problems as well as dealing early with any emerging or existing behaviour difficulties. The school may want to plan how to promote positive behaviour by developing the pupil's social, emotional and behavioural skills. The school might also consider how strategies such as providing a 'buddy' for a new pupil, use of more one-to-one support and the involvement of other agencies can

contribute to promoting positive behaviour. Helpful guidance is available from the British Association for Adoption and Fostering ([www.baaf.org.uk](http://www.baaf.org.uk)).<sup>10</sup>

### Practical steps for school leaders

3.9.52 There are a number of practical steps school leaders can take to ensure that the design and implementation of the behaviour policy takes account of both collective and individual needs, as regards vulnerable pupils:

- Involving inclusion coordinators or SENCOs in the development or review of the policy, so as to provide advice on the content of the policy and coordinate consultation with groups of vulnerable pupils and with their parents.
- Ensuring everyone in the school community understands that there are circumstances in which some pupils may be treated differently from others, and why; building this into the consultation on the policy and into its wording.
- Planning carefully how to communicate the policy to pupils with learning difficulties and disabilities and to pupils and parents with English as an additional language (see further advice on communicating the school behaviour policy in **section 3.2**).
- Making effective use of available resources to provide appropriate professional development opportunities to help staff understand the implications of SEN, disability and pupils' personal circumstances for the day-to-day implementation of the behaviour policy.
- Providing appropriate opportunities for staff to have training in avoiding and de-escalating conflict.
- Identifying at-risk pupils in advance and using established pastoral and SEN processes to identify barriers that may make it difficult for them to understand and follow particular school rules.
- Planning proactively how to overcome these barriers, involving parents/carers and social workers, where appropriate, in this discussion.
- Ensuring all those who teach a pupil know what has been agreed, using existing systems such as student information sheets or class SEN or additional needs summaries. Channels like these can provide easily accessible advice to staff about how to discipline particular pupils, as well as how to teach them.

<sup>10</sup> Learn the child – helping looked after children to learn, Kate Cairns and Chris Stanway

- Ensuring every vulnerable pupil has a key person in school who knows them well, has good links with the home, and can act as a reference point for staff when they are unsure about how to apply the disciplinary framework.
- Building into the disciplinary framework time for adults to consult with this key person, the SENCO, designated teacher for looked after children or other senior staff member before applying disciplinary consequences to vulnerable pupils.
- Ensuring all staff are clear about referral procedures.
- Teaching vulnerable pupils to take some of the responsibility for communicating their needs, particularly in large schools where not all the adults can know all pupils as individuals. For pupils who have difficulties in expressing themselves or coping with social encounters, such as those with communication difficulties or autistic spectrum disorders, it can be helpful if, with their and their parents' agreement, they carry a warning card saying that the adult should talk to a named member of staff before taking disciplinary action.
- Ensuring vulnerable pupils have an agreed means of removing themselves from situations where tensions are escalating.
- Ensuring there are systems pupils can use to let a key adult know when they are under stress.
- Monitoring the use of differentiated plans for individuals as part of monitoring the implementation of the behaviour policy as a whole, both by direct observation in and out of class, and by monitoring records of the use of rewards and sanctions.
- Having systems in place to teach appropriate behaviour, as well as to respond to misbehaviour.

## 4. The rights and responsibilities of schools, pupils and parents in ensuring an orderly climate for learning

- 4.1 This section of the guidance offers a view on the kinds of expectations which the school, pupils and parents might reasonably have of one another – expectations of what each will do to help ensure an orderly and safe climate for learning.
- 4.2 As indicated in section 2.13 of this document, establishing a basic set of expectations or values within a school is fundamental to establishing the principles of the school behaviour policy. Rules, rewards and punishments do not work in a vacuum.
- 4.3 For ease of reference, the set of expectations is set down below in the form of a summary chart with the ‘rights’ and ‘responsibilities’ of schools, pupils and parents in two columns. It should be emphasised that these are moral, rather than legal, rights and responsibilities (though a number of them link to particular aspects of the law) and also that they are only intended as illustrative examples and not as a prescriptive list. Schools will determine their own values and expectations of behaviour in the light of their individual characteristics, community and any local school partnership arrangements.
- 4.4 ‘Rights’ and ‘responsibilities’ are often two sides of the same coin. For example, while a school has the right to enforce its own behaviour policy, this could also be regarded as a responsibility. The chart below is thus only an approximate mapping. The Department hopes, nonetheless, that schools may find it helpful when thinking about such issues.
- 4.5 Effective approaches to discipline are characterised by a healthy balance between the rights and responsibilities of staff and pupils, based on mutual respect. However, it should always be clear that head teachers, teachers and other school staff are in charge.
- 4.6 It is important that the values and expectations of the school are appropriately communicated to parents and that schools do what they can to secure agreement from parents to these. See further 2.22, 3.2.4 and 3.2.11 to 3.2.13.

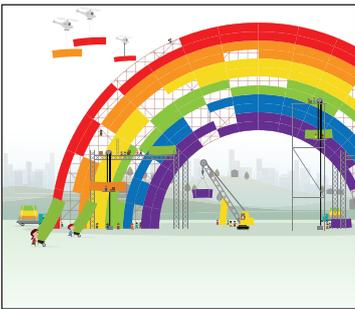
Schools	
Rights	Responsibilities
<ul style="list-style-type: none"> <li>• To make clear the school’s statutory power to discipline pupils and that pupils and parents will need to respect this.</li> <li>• To enforce their school behaviour policy – including rules and disciplinary measures.</li> <li>• To expect pupils and parents’ cooperation in maintaining an orderly climate for learning.</li> <li>• To expect pupils to respect the rights of other pupils and adults in the school.</li> <li>• Not to tolerate violence, threatening behaviour or abuse by pupils or parents. If a parent does not conduct himself/herself properly, a school may ban them from the school premises and, if the parent continues to cause nuisance or disturbance, they may be liable to prosecution.</li> <li>• To take firm action against pupils who harass or denigrate teachers or other school staff, on or off premises – engaging external support services, including the police, as appropriate.</li> </ul>	<ul style="list-style-type: none"> <li>• To ensure the whole school community is consulted about the principles of the school behaviour policy.</li> <li>• To establish and communicate clearly measures to ensure good order, respect and discipline.</li> <li>• To cooperate and agree appropriate protocols with other schools in the local <b>school partnership for behaviour and persistent absence</b>.</li> <li>• To ensure the school behaviour policy does not discriminate against any pupil on e.g. grounds of race, gender, disability or sexual orientation and that it promotes good relations between different communities.</li> <li>• To ensure teachers’ roles in school discipline matters are consistent with the National Agreement Raising Standards and Tackling Workload and workforce remodelling agenda, so that there is due recognition of the enhanced roles of support staff and not all responsibilities are focused on teachers.</li> <li>• To ensure staff are clear about the extent of their disciplinary authority and receive necessary professional development on behaviour strategies.</li> <li>• To support, praise and, as appropriate, reward pupils’ good behaviour.</li> <li>• To apply sanctions fairly, consistently, proportionately and reasonably – taking account of SEN, disability and the needs of vulnerable children and offering support as appropriate.</li> </ul>

	<ul style="list-style-type: none"> <li>• To make <b>alternative provision from day six</b> for fixed period excluded pupils, and – where appropriate – to arrange reintegration interviews for parents at the end of a fixed period <b>exclusion</b>.</li> <li>• To take all reasonable measures to protect the safety and well-being of staff and pupils, including preventing all forms of <b>bullying</b> and dealing effectively with reports and complaints about bullying.</li> <li>• To ensure staff model good behaviour and never denigrate pupils or colleagues.</li> <li>• To promote positive behaviour through active development of pupils’ social, emotional and behavioural skills.</li> <li>• To keep parents informed of their child’s behaviour – good as well as bad, use appropriate methods of engaging them and, where necessary, support them in meeting their parental responsibilities.</li> <li>• To work with other agencies to promote community cohesion and safety.</li> </ul>
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Pupils	
Rights	Responsibilities
<ul style="list-style-type: none"> <li>• To contribute to the development of the school behaviour policy, with every pupil involved in the consultation process.</li> <li>• To be taught in environments that are safe, conducive to learning and free from disruption.</li> <li>• To expect appropriate action from the school to tackle any incidents of violence, threatening behaviour, abuse, discrimination or harassment.</li> </ul>	<ul style="list-style-type: none"> <li>• To follow reasonable instructions by school staff, obey school rules and accept sanctions in an appropriate way.</li> <li>• To act as positive ambassadors for the school when off school premises.</li> <li>• Not to bring inappropriate or unlawful items to school.</li> <li>• To show respect to school staff, fellow pupils, school property and the school environment.</li> </ul>

<ul style="list-style-type: none"> <li>To appeal to the head teacher/governors, and beyond that to the Secretary of State, if they believe the school has exercised its disciplinary authority unreasonably.</li> </ul>	<ul style="list-style-type: none"> <li>Never to denigrate, harm or bully other pupils or staff.</li> <li>To cooperate with and abide by any arrangements put in place to support their behaviour such as Pastoral Support Programmes or Parenting Contracts.</li> </ul>
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Parents	
Rights	Responsibilities
<ul style="list-style-type: none"> <li>To contribute to the development of the school behaviour policy.</li> <li>To be kept informed about their child's progress, including issues relating to their behaviour.</li> <li>To expect their children to be safe, secure and respected in school.</li> <li>To have any complaint they make about their child being bullied taken seriously by the school and investigated/resolved as necessary.</li> <li>To appeal to the head teacher/governors, and beyond that to the Secretary of State, if they believe the school has exercised its disciplinary authority unreasonably.</li> <li>To appeal against a decision to exclude their child, first to the governing body of the school and then – in cases of permanent exclusion – to an independent appeal panel.</li> </ul>	<ul style="list-style-type: none"> <li>To respect the school's behaviour policy and the disciplinary authority of school staff.</li> <li>To help ensure that their child follows reasonable instructions by school staff and adheres to school rules.</li> <li>To send their child to school each day punctually, suitably clothed, fed, rested, and equipped and ready to learn.</li> <li>To ensure school staff are aware of any SEN-related or other personal factors which may result in their child displaying behaviours outside the norm.</li> <li>To be prepared to work with the school to support their child's positive behaviour.</li> <li>To attend meetings with the head teacher or other school staff, if requested, to discuss their child's behaviour.</li> <li>To adhere to the terms of any <b>Parenting Contract or Order</b> relating to their child's behaviour.</li> <li>If their child is excluded from the school, to ensure the child is not found in a public place during school hours in the first five days of exclusion and, if invited, to attend a reintegration interview with the school at the end of a fixed period <b>exclusion</b>.</li> </ul>



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