

# **School Discipline and Pupil Behaviour Policies**

## **Draft Guidance for Schools**

**A Response by the  
Children's Commissioner**

**February 2007**

## **Consultation Response**

This paper responds to the draft guidance for schools on discipline and the use of force to control or restrain pupils, issued by the DfES in December 2006. The guidance aims to help schools understand their overall legal powers and duties, following the passing of the Education and Inspections Act 2006.

### **Commissioner's General Position on School Discipline and Behaviour**

Children and young people learn best in an environment which values their positive behaviour and is responsive to their needs and wishes. Where indiscipline, disruption and disrespectful behaviour are problematic, it is important that schools critically examine the quality of the learning experience they are providing, not simply rely on punitive measures against individual children. This perspective, commended by the Steer Report,<sup>1</sup> (see 4.17 below) and shared by the Children's Commissioner does not obviate the need for sanctions, but sets them within a wider discussion on school improvement and child-centred learning.

#### **Context – Children's Rights:**

All policy and practice must accord with the Human Rights Act (1998) and the United Nations Convention on the Rights of the Child (UNCRC), affording to all parties:

- Respect for private life
- The right not to be subjected to inhuman or degrading treatment
- The right to liberty and security; and
- The right not to be discriminated against in the enjoyment of these rights.

With particular reference to UNCRC:

- Article 3 - All interventions should be designed to achieve outcomes that are in the best interests of the child
- Article 10 – Appropriate legislative, administrative, social and educational measures will protect children from all forms of physical violence
- Article 28 (2) School discipline is administered in a manner consistent with the child's human dignity, and is in line with the Convention

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<sup>1</sup> Department for Education and Skills. 2005. *Learning Behaviour: the Report of the Practitioners' Group on School Behaviour and Discipline*.

## Context - Education Legislation and Guidance:

- The Education and Inspections Act 2006 introduced new provisions on behaviour and discipline (Part one of Chapter 7).
- Provisions on the use of force are in Section 93, which replaces section 550A of the Education Act 1997.
- DfES Circular 10/98 – which provided guidance to section 550A – will be replaced by the new general guidance on force. Specialist guidance developed in support of section 550A remains in force, and is referenced in the new draft guidance:
  - DfES. 2002. *Guidance on the use of restrictive physical interventions for staff working with children and adults who display extreme behaviour in association with learning disability and / or autistic spectrum disorders*. Status -Strongly recommended
  - DfES / DH. 2003. *Guidance on the use of restrictive physical interventions for pupils with severe behavioural difficulties*. Status – Guidance

### **A. School Discipline and Pupil Behaviour Policies**

*Numbering refers to the Draft Guidance.*

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

*Pupils' Rights: To contribute to discussions on the school behaviour policy*

This formulation is significantly weaker than that extended to parents ('To contribute to the development of the school behaviour policy'), despite the parity of their rights in this regard. The governing body is legally required to consult all pupils and parents in drawing up general principles which will inform the school's behaviour policy. This equal-handedness should be reflected in the phrasing.

*Pupils' Responsibilities: To act as positive ambassadors for the school when off school premises*

Section 4.4 addresses this issue in more detail. While it may be desirable for children and young people off of school premises to behave to high standards which reflect well on the school, it is not reasonable to state that children and young people have a responsibility to do so.

*Parents' Rights: To appeal to the head teacher / governors, and beyond that to the Secretary of State, if they believe that the school has exercised its disciplinary authority unreasonably.*

The right to access the complaint system (see 4.2.16) is open to pupils as well as parents. This equality should be reflected in the final document.

#### **3.13 Consultation with pupils**

'The consultation of pupils need not be laborious.'

The phrasing of this section is grudging rather than encouraging. This is an important new duty which embodies children's rights under Article 12 of the

UNCRC. It will greatly help schools to meet Healthy Schools Standard criteria on 'children's voice'.

#### **4.17 The Steer Report**

The 'Steer Report' presents a positive, practical and balanced analysis of behaviour and behaviour management in schools. The Children's Commissioner welcomes incorporation of many of its key messages within this guidance. Its central insights deserve reiteration, not least that:

*Pupil support is not just about behaviour. Poor pastoral support just focuses on 'naughty pupils'. Good pastoral support is concerned with academic attainment and developing pupils' ability to become good citizens.*

We welcome Steer's emphasis on the importance of using statistical information to monitor behaviour and evaluate the impact of strategies.

We welcome Steer's insistence that bullying, harassment and oppressive behaviour should not be tolerated, although evidence reviewed by the Children's Commissioner indicates that punitive responses are not invariably the most effective response.<sup>2</sup>

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

Because the Act gives the power to enforce disciplinary penalties to all teachers and certain other school staff, *except* where the headteacher deems otherwise, the Children's Commissioner regards clarity in this area as essential to consistent and responsible practice.

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

Being involved in an 'extended school activity' is cited as one of the possible scenarios in which it would be appropriate to consider sanctioning 'off-site' behaviour. Given the scale and importance of the extended school programme we would look for more detailed guidance in this area.

#### **4.4.15. New media**

The Children's Commissioner welcomes the recognition of 'cyberbullying' as a serious problem.

#### **4.6.9 Fairness and consistency**

The guidance draws on the Steer Report to highlight the need for monitoring of high-level sanctions by age, ethnicity, gender, special educational needs and disability. We believe that schools should be made aware that failure to do so would be a serious shortcoming in practice, which might leave them open to legal challenge.

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<sup>2</sup> Office of the Children's Commissioner. 2006. *Bullying Today*.

#### **4.8.8 Confiscating items of clothing or jewellery**

'Confiscation of any item that would leave the pupil only partly dressed should be avoided.' We regard this phrasing as inadequate. Although it would not be unreasonable to confiscate some decorative items of clothing, such as scarves or hats, it would be wholly inappropriate to leave pupils 'partly dressed', and could be interpreted as humiliating or degrading treatment.

#### **4.8.9 Storing of confiscated items**

This section states that items may have 'emotional' as well as monetary value. Good child-centred practice will recognise this reality, and the guidance should emphasise it more clearly. (See 4.8.14 'disposal of items of no value'.)

## **B. The Use of Force to Control or Restrain Pupils**

### **The Children's Commissioner's General Position on the Use of Force**

The UNCRC places rigorous duties on the state to protect children from physical violence. Controlling children's behaviour through force constitutes a substantial interference in their rights and must be an extremely rare occurrence. Force must be proportionate and its use accountable. The Children's Commissioner feels that the guidance should be prefaced by the principles already developed between DfES and DH in consultation with the voluntary children's sector:

- The use of force should, wherever possible, be avoided
- There are occasions when the use of force is appropriate
- When force is necessary, it must be used in ways that maintain the safety and dignity of all concerned<sup>3</sup>

#### **12. Who is authorised to use force**

The Children's Commissioner had serious reservations about the wisdom of extending authority to use force to any person who, with the authority of the head teacher, has lawful control or charge of pupils. This category includes volunteers and premises-related staff. Although the guidance clarifies the head teacher's responsibility to identify and inform adults in this category, and includes them in the training needs assessment, we would look for a positive presumption that training and support would be provided to this group.

#### **32. What constitutes reasonable force**

The draft mentions that in 'extreme circumstances', restrictive holds, including drawing a pupil's arms across his/her chest could be used. The draft notes that because this technique can affect breathing, it should only be used for a short time. Particularly given that there is no *requirement* that those applying the crossed-arm technique should have received training, the Children's Commissioner believes that it is entirely inappropriate for the guidance to raise the possibility of its use.

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<sup>3</sup> DfES / DH. 2002. *Guidance on the use of restrictive physical interventions for staff working with children and adults who display extreme behaviour in association with learning disability and / or autistic spectrum disorders.*

### ***36. Force and punishment***

We fully agree that 'Under no circumstances should force be threatened or used as a punishment'. This is a key message that needs to be emphasised in the final document and in school policies.

### ***43-5. Reporting and recording incidents***

We believe that there should be a strong presumption in favour of recording all use of force. Reports of incidents should be written within 24 hours. Incident reports must be audited regularly, with trends and learning points identified to the Governors and taken fully into account as part of school improvement strategies. The Children's Commissioner would like to see a mechanism introduced through which Ofsted inspections will assess these records and the pattern of behaviour they reveal. Any substantial rise in recorded incidents should be regarded as a significant cause for concern, and trigger a review of practice.

Training materials will give detailed information on the ways force can be safely used and what de-escalation techniques should be employed in volatile situations. Nevertheless, it would be helpful for the guidance to flag up fundamental aspects of good practice, such as the giving of clear warnings to young people before force is used.