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NOTES

Teachers work within a legal framework which gives rights to and places duties on those within the education service. It is also a requirement of the DfES that primary and secondary teachers assessed for Qualified Teacher Status "are aware of, and work within, the statutory framework relating to teachers' responsibilities." This guide is designed to help you to understand that framework and to help you in your teaching practice and later in your professional life.

The main areas that it covers are:

- teachers' duties of care to pupils, in school and on out of school activities; health and safety duties;
- teachers' roles in protecting children from abuse;
- appropriate physical contact with pupils;
- appropriate physical restraint of pupils;
- detention of pupils on disciplinary grounds; and
- dealing with discrimination issues.

1. A TEACHER'S DUTY OF CARE TO PUPILS

Teachers are required to do all that is reasonable to protect the health, safety and welfare of pupils. Their legal responsibilities derive from three sources and this section considers each of the three:

- (i) the common law duty of care;
- (ii) the statutory duty of care; and
- (iii) the duty arising from the contract of employment.

(i) *The Common Law Duty of Care*

Teachers have a duty of care to pupils which derives from the 'common law', which is the body of law derived from court decisions made over the years, as opposed to law which has been determined by Parliament and set down in statute.

Traditionally, the term 'in loco parentis' was used to describe the duty of care that a teacher has towards a pupil, to the effect that a teacher has a duty to take the same reasonable care of the pupil that a parent would take in those circumstances. 'In loco parentis' originally embodied the nineteenth century common law principle that a teacher's authority was delegated by a parent so far as it was necessary for the welfare of the child. A court held, in 1893, that "the schoolmaster is bound to take such care of his pupils as a careful father would".

The case law was brought more up-to-date in the 1950s and early 1960s. In 1955, it was held that "a balance must be struck between the meticulous supervision of children every moment of the day and the desirable object of encouraging sturdy independence as they grow up".

Teachers' professionalism was recognised by the courts in 1962, where the 'standard of care' expected of a teacher was held to be that of a person exhibiting the responsible mental qualities of a prudent parent in the circumstances of school, rather than home life. The standard of care expected of teachers is that of a reasonable person in the circumstances of class teacher. It has been recognised that a teacher's duty of care to individual pupils is influenced by, for example, the subject or activity being taught, the age of the children, the available resources and the size of the class.

Further, it is clear from case law that the standard of care expected is the ordinary skills of a competent professional, the skill and care of a reasonable teacher.

There is a proviso that if it can be shown that the professional acted in accordance with the views of a reputable body of opinion within their profession, the duty of care will have been discharged even though others may disagree with them.

A breach of the duty of care by a teacher could amount to negligence.

The teacher's employer could be liable for the payment of damages in compensation to a pupil who is injured as a result of negligence.

Whether or not a teacher is found negligent in the event of an accident will be influenced by whether or not whatever occurs might have been reasonably foreseen. If a teacher takes all reasonable steps to ensure pupils' safety, there is most unlikely to be negligence in the event of an unforeseen accident.

Negligence could also arise if there is a serious failure to prevent harm to a child arising from, for example, pupil bullying. If negligence arises in these circumstances it is more likely to be a collective failing, however, than the responsibility of one individual.

The same principles apply whatever the circumstances. A teacher's duty of care will depend upon what is reasonable and what can be expected of a competent professional acting within the constraints of the circumstances.

As long as teachers apply their professional judgement, training and experience to a situation in a reasonable manner, seeking to promote the best interests of the pupils in their care, their obligations will have been met.

(ii) Statutory Duty of Care

Teachers are also responsible under the Children Act which places duties upon those who care for children.

The Children Act 1989 s.3(5) defines the duty of care to the effect that a person with care of a child may do "all that is reasonable" under the circumstances for the purposes of safeguarding or promoting the welfare of the child.

The Children Act represented a change to a more child-focused approach to law with the needs of the child being paramount, rather than the old idea that a child was the property of its parents and parental authority was delegated to teachers during the school day.

A teacher should take into account the ascertainable needs and wishes of a child, considered in the light of the child's age and understanding, and any risk of harm, when particular issues of safeguarding or promoting the welfare of a child arise.

(iii) Contractual Duty

The duty of care also arises from the contract of employment.

The contractual duties of teachers are expressly defined in the annually updated School Teachers' Pay and Conditions Document which takes effect, by statutory order, as contract terms for all teachers employed in maintained schools. Relevant provisions from the list of contractual duties are:

- carrying out the professional duties of a schoolteacher as circumstances may require under the reasonable direction of the headteacher of that school;
- promoting the general progress and well-being of individual pupils and of any class or group of pupils assigned to the teacher;
- maintaining good order and discipline among the pupils and safeguarding their health and safety, both when they are authorised to be on the school premises and when they are engaged in authorised school activities elsewhere; and
- attending assemblies, registering the attendance of pupils and supervising pupils, whether these duties are to be performed before, during or after school sessions.

A headteacher is required by the provisions of the Pay and Conditions Document to carry out his or her professional duties in accordance with provisions of education legislation; education orders and regulations; articles of government of the school; any trust deed applicable; any scheme of local management of schools approved or imposed by the Secretary of State under their delegated powers; any rules, regulations or policies laid down by his or her employers and the terms of his or her appointment. Subject to these, the headteacher is responsible for the internal organisation, management and control of the school.

2. THE DUTY OF CARE AND OUT-OF-SCHOOL ACTIVITIES

Understanding of the duty of care can be particularly significant when a teacher is engaged in leading or assisting with activities off the school site, such as educational visits, school outings or field trips.

The legal liability of an individual teacher or headteacher for an injury which is sustained by a pupil on a school journey or excursion depends on whether or not the injury to the pupil is a direct result of some negligence or failure to fulfil the duty of care on the part of their teacher or headteacher. There is no legal liability for any injury sustained by pupils unless there is proven negligence.

The standard of care required of a teacher is that which, from an objective point of view, can reasonably be expected from teachers generally applying skill and awareness of children's problems, needs and susceptibilities. The law expects that a teacher will do that which a parent with care and concern for the safety and welfare of his or her own child would do, bearing in mind that being responsible for up to twenty pupils is very different from looking after a family. The legal duty of care expected of an individual teacher is that which a caring teaching profession would expect of itself.

NOTES

This means, in practice, that a teacher must ensure supervision of the pupils throughout the journey or visit according to professional standards and common sense. Reasonable steps must be taken to avoid exposing pupils to dangers which are foreseeable and beyond those with which the particular pupils can reasonably be expected to cope. This does not imply constant 24-hour direct supervision. The need for direct supervision has to be judged by reference to the risks involved in the activity being undertaken. It is the case that instructions given to pupils cannot always be regarded as enough. The possibility that there may be challenging behaviour has to be taken into account, together with the risk the pupils may encounter if they disobey instructions but, equally, pupils must be given a latitude consistent with their ages and levels of personal responsibility.

Teachers have the responsibility for pupils in their care but qualified instructors giving guidance to pupils will be responsible for their relevant area of expertise. If teachers are concerned, however, about the ability of any of their pupils to undertake any particular activity safely, pupils should, if necessary, be withdrawn from the activity.

Teachers should not be prepared to participate in a journey or visit which they believe is not being adequately prepared and organised.

Where the journey is one organised within the school, responsibility for ensuring that proper preparation has been made and that proper supervision will be provided is ultimately that of the headteacher. Heads should prohibit journeys and visits of this kind if they are not satisfied with the arrangements made.

Satisfying the duty of care absolves from legal liability. Sometimes accidents occur as a result of the fault of someone with no organising or supervising responsibility for the journey. Some accidents are pure accidents, not reasonably foreseen and not the result of anyone's negligence. Liability goes with fault. In the case of a pure accident, no-one bears liability. No-fault insurance covers this eventuality.

Employers have 'vicarious liability' for the negligence of their employees at work. This means broadly that the employer takes responsibility if employees do not fulfil their safety obligations at work properly. Where a legal claim is made following an accident and there is a suggestion of negligence on the part of the teacher, the claim will most likely be made against the local authority as the teacher's employers or the governing body in the case of voluntary aided, foundation schools, former sixth form colleges or independent schools, if the teacher was at the time working in the course of his or her employment.

The Department for Education and Skills has issued a guidance document 'Health and Safety of Pupils on Educational Visits'. The document is designed to work alongside LEA guidance and to offer national guidance where guidance from elsewhere is unavailable, incomplete or not up-to-date. Any teacher organising or accompanying a visit should do so in accordance with school and/or local education authority guidance on out-of-school visits and in accordance with the guidance issued by the DfES.

The DfES document gives advice on staffing ratios. These should not be exceeded and, in addition, may need to be reduced where the nature of the groups or the nature of the activity require this, for example, where the group includes pupils with special educational needs.

It is strongly advisable, however, that a minimum of two teachers be present on visits, regardless of the number of adult supervisors present, in order to ensure that one teacher is able to remain in charge of the group where another is required to deal with emergency situations.

3. HEALTH AND SAFETY AT WORK

The main responsibility under the Health and Safety at Work Act 1974 rests with the employers, who have to take reasonable care for the health and safety of their employees and others on their premises.

Employers are required to organise, control, monitor and review how health and safety measures are managed. They must assess risks, record their assessments of risks and inform employees of safety procedures. Schools should have written health and safety policies in place, of which all employees, including teachers, should be informed.

All employees have a duty under the Act to take reasonable care for the health and safety of themselves and others who may be affected by their acts or omissions at work. Thus, teachers have a duty to take reasonable care of both their own and their pupils' health and safety at school (Section 7 of the HSWA).

Teachers should co-operate with any school-based or local education authority guidance on health and safety issues and make sure they are familiar with any such guidance (s.7). Teachers should act with reasonable care at all times and apply good sense to everything they do, including not taking any unnecessary risk or doing anything that is potentially dangerous. It is also unlawful (s.8 HSWA) to interfere with or misuse, either intentionally or recklessly, anything which has been provided for the purposes of health and safety.

All employers have a duty to report any hazards and potentially dangerous incidents at work, and teachers should make themselves familiar with any recording system in the school, such as the Accident Report Book.

It can be important, for example, to report what might seem to be minor matters, requiring cleaning up or minor repair. Seemingly minor matters can cause serious accidents, for example, wet patches or rubbish on the floor, which can cause slips, trips or falls by the unsuspecting.

4. THE ROLE OF THE EDUCATION SERVICE IN PROTECTING CHILDREN FROM ABUSE

A number of statutory provisions place responsibilities for child protection upon LEAs, schools and colleges.

Under the Children Act 1989, LEAs, LEA maintained schools, special schools, CTCs, FE and sixth form colleges have a duty to assist local authority social services departments acting on behalf of children in need or enquiring into allegations of child abuse. Section 175 Education Act 2002 is expected to come into force in 2003, clarifying that the school governing body and LEA should carry out their functions with a view to safeguarding and promoting the welfare of children. Besides these statutory duties, schools and colleges have a pastoral responsibility towards their pupils.

Individual teachers' responsibilities depend upon their role in relation to child protection in their school. DfES Circular 10/95 contains advice about child protection procedures and responsibilities.

(i) Teacher responsibilities

Teachers are not expected to investigate or assess reports or suspicions regarding child protection matters. Other than a designated teacher, the role of other staff is to be alert to signs of abuse and to know which staff within their school have designated responsibility for child protection. Teachers should be familiar with the procedures in school for dealing with suspected abuse.

A teacher with designated responsibilities for child protection should ensure that they are aware of the child protection procedures established by the Area Child Protection Committee (ACPC) and how matters should be referred and liaison with other agencies developed. They will be responsible for co-ordination of child protection matters. In an LEA maintained school, the designated teacher should also be aware of procedures established by the LEA. The designated teacher may be the Headteacher or another senior member of staff and should receive relevant training.

A copy of Circular 10/95 should be available in every school or can be accessed on the DfES website: www.dfes.gov.uk. It is anticipated that this guidance will be updated and reissued during the academic year 2003/2004.

(ii) If Child Abuse is Suspected

Circular 10/95 gives a definition of child abuse, which includes 'neglect', which is persistent or severe; 'physical injury', including actual or likely injury or failing to prevent injury or suffering; 'sexual abuse' means the actual or likely sexual exploitation of a child; and 'emotional abuse' means persistent or severe emotional ill treatment or rejection, with an actual or likely severe adverse effect on a child's emotional and behavioural development.

Teachers are not responsible for investigating suspected abuse but should know to whom they should report any concerns. It is the designated teacher's responsibility to discuss cases with, or refer them to, the investigating agencies, which are social services departments and the police. All schools and colleges should have procedures, of which all staff should be aware, for handling suspected cases of abuse of pupils or students, including procedures to be followed if a member of staff is accused of abuse. The school or college child protection policy should also be made known to parents.

Each school should also have procedures for dealing with allegations of physical or sexual abuse which have been made against members of staff. There are national guidelines on such procedures which have been drawn up by the six teacher organisations and the national employers' organisation. A copy of the original agreement was appended to the DfES guidance document but has since been updated. It is available from LEAs and from teacher organisations.

Each local education authority should have model procedures which have been adopted by schools locally. The procedures apply equally to non-LEA maintained schools, former sixth form colleges, and to the independent sector. Schools' and colleges' procedures should be consistent with those of the ACPC and, in the case of LEA maintained schools, with those of the local education authority.

5. PHYSICAL CONTACT WITH PUPILS

DfES Circular 10/95 contains guidance on physical contact with pupils, which has been drawn up after consultation with the teacher organisations. It is anticipated that this guidance will be updated during the academic year 2003/2004 and the updated version will be accessible on the DfES website at www.dfes.gov.uk. The Circular points out that, since the Children Act 1989, there has been a common misconception that any physical contact with children is in some way unlawful. This is not true. The Circular gives guidance about circumstances where physical contact may be appropriate. A common sense approach, based on a teacher's professional training and experience, can guide teachers on this matter. The DfES Circular provides sensible guidance on the parameters for physical contact and how this can be misconstrued.

“49. It is unnecessary and unrealistic to suggest that teachers should touch pupils only in emergencies. Particularly with younger pupils, touching them is inevitable and can give welcome reassurance to the child. However, teachers must bear in mind that even perfectly innocent actions can sometimes be misconstrued. Children may find being touched uncomfortable or distressing for a variety of reasons. It is important for teachers to be sensitive to a child's reaction to physical contact and to act appropriately. It is also important not to touch pupils, however casually, in ways or on a part of the body that might be considered indecent.

51. Employers and senior staff have a responsibility to ensure that professional behaviour applies to relationships between staff and pupils, that all staff are clear about what constitutes appropriate behaviour and professional boundaries, and that those boundaries are maintained with the sensitive support and supervision required. That is important in all schools, but residential institutions need to be particularly mindful of this responsibility, as do individuals in circumstances where there is one to one contact with pupils, for example, in the teaching of music or in extra curricular activities.

52. Schools may find it helpful to agree in consultation with the LEA or ACPC a code of conduct for staff to reduce the risk of allegations being made. Some LEAs have already drawn up such codes which they recommend to schools. Where a school agrees such a code, it should be made known to the parents to help avoid any misunderstandings.”

Paragraph 50 is excluded, since this relates to the use of restraint. Further updated guidance is now in place on restraint (see below).

6. PHYSICAL RESTRAINT OF PUPILS

1. The Education Act 1996, section 550a, sets out the legal position on the use of restraint by teachers. The Act restates the law which has, until now, been derived from both case decisions (common law) and statute.

The section allows teachers and other persons authorised by the Headteacher, such as non-teaching staff, to have control or be in charge of pupils to use such force as is reasonable in the circumstances for the purpose of preventing the pupil from doing, or continuing to do, any of the following, namely –

- committing any offence, including behaving in a way that would be an offence if the pupil were not under the age of criminal responsibility;
- causing personal injury to, or damage to the property of, any person, including pupils' own property;
- engaging in any behaviour prejudicial to the maintenance of good order and discipline at the school or among any of its pupils, whether that behaviour occurs during a teaching lesson or otherwise.

The provision applies when a teacher or other authorised person is:

- on the premises of the school; or
- elsewhere at the time when, as a member of its staff, he has lawful control or charge of the pupil concerned, for example, on an out-of-school activity.

2. The law is protective. It does not require teachers to change their practice if they choose not to. If, however, their judgement leads them to using physical restraint in the way envisaged by legislation, the law protects them from accusations of abuse.

3. There had been a misconception previously that teachers may use force in an emergency only, for example: where pupils place themselves at risk of physical injury; where pupils' actions place other pupils, staff or members of the public at risk of physical injury and where damage to property can be limited by the use of restraint, without endangering the physical safety of pupils or staff. The law makes it clear that teachers and other authorised members of staff are entitled to intervene in other, less extreme situations.

4. There is no definition in the Act of reasonable force, only a description of the circumstances where it might be used in schools by teachers and authorised staff. It should be noted that the use of any degree of force is unlawful if the particular circumstances do not warrant it. The degree of force should be in proportion to the circumstances and the seriousness of the behaviour or consequences it is intended to prevent. The level and duration of the force used should be the minimum necessary to achieve the desired result, such as, to restore safety.
5. It is impossible to describe definitively when it is reasonable to use force and how much may be used, beyond stating that this will depend on the circumstances of the case. Relevant considerations as to whether it might be reasonable to use force and the degree of force to be used could include, for example, the age and strength of the child. In some circumstances, it will, of course, be inadvisable for a teacher to intervene without help, such as where a number of pupils are involved; where the pupil is older and physically mature, and where the teacher might be at risk of injury.
6. Although the Act does not address the point, it is also relevant that failure to take action in circumstances which merit it can be as serious as overreacting. In many circumstances, it is not a safer option for a teacher to do nothing or to take very limited action, when to take action could restore safety. This action may involve swiftly alerting a third party. So far as a teacher's duty of care is concerned, an omission can be significant if there were to be a subsequent claim for negligence. Again, the circumstances of the case are the deciding factor and a teacher would not be expected to intervene to restore safety, at all costs, to his or her personal safety.
7. Incidents of restraint should be logged in a record book provided for this purpose and monitored by a senior staff member. The record should be contemporaneous and detailed, as this will help in the event of any later investigation or complaint. Similarly, it is advisable to inform parents of any recorded incident. The DfES Circular 10/98 contains guidance on incident books.
8. The DfES gives detailed guidance on restraint in its Circular 10/98, accessible on its website at www.dfes.gov.uk. A copy should be available in every school. It emphasises that all schools should have a policy about the use of force to control or restrain pupils. All members of staff who may have to intervene physically with pupils must clearly understand the options and strategies open to them. They must know what is acceptable and what is not. The Governing Body, parents and pupils, also need to know that. Every headteacher should draw up a policy setting out guidelines in this area and discuss these with staff.
9. Teachers should also be familiar with the schools' policy on behaviour and discipline. Guidance on behaviour and discipline is contained in DfES Circular 10/99.
10. The DfES guidance sets out a variety of situations where reasonable force might be appropriate or necessary to control or restrain a pupil. They will fall into three broad categories:
 - a. Where action is necessary in self-defence or because there is an imminent risk of injury;
 - b. where there is a developing risk of injury, or significant damage to property;
 - c. where a pupil is behaving in a way that is compromising good order and discipline.
11. Examples of situations that fall within one of the first two categories are:
 - a pupil attacks a member of staff, or another pupil;
 - pupils are fighting;
 - a pupil is engaged in, or is on the verge of committing deliberate damage or vandalism to property;
 - a pupil is causing, or at risk of causing, injury or damage by accident, by rough play or by misuse of dangerous materials or objects;
 - a pupil is running in a corridor or on a stairway in a way in which he or she might have or cause an accident likely to injure him or herself or others;
 - a pupil absconds from a class or tries to leave school (NB - This will only apply if a pupil could be at risk if not kept in the classroom or at school).

Examples of situations that fall into the third category are:

 - a pupil persistently refuses to obey an order to leave a classroom;
 - a pupil is behaving in a way that is seriously disrupting a lesson.

NOTES

Physical intervention can take several forms. It might involve staff:

- physically interposing between pupils;
- blocking a pupil's path;
- holding;
- pushing;
- pulling;
- leading a pupil by the hand or arm;
- shepherding a pupil away by placing a hand in the centre of the back; or
- in extreme circumstances using more restrictive holds.

In exceptional circumstances, where there is an immediate risk of injury, a member of staff may need to take any necessary action that is consistent with the concept of 'reasonable force': for example, to prevent a young pupil running off a pavement onto a busy road, or to prevent a pupil hitting someone, or throwing something.

In other circumstances, staff should not act in a way that might reasonably be expected to cause injury, for example by:

- holding a pupil around the neck, or by the collar, or in any other way than might restrict the pupil's ability to breathe;
- slapping, punching or kicking a pupil;
- twisting or forcing limbs against a joint;
- tripping up a pupil;
- holding or pulling a pupil by the hair or ear;
- holding a pupil face down on the ground.

Staff should always avoid touching or holding a pupil in a way that might be considered indecent.

7. DETENTION OF PUPILS ON DISCIPLINARY GROUNDS

By virtue of the Education Act 1996, s.55OB, there is a legal right for teachers to detain pupils after the end of a school session, without parental consent. Certain conditions apply in order for the detention to be lawful. These are that:

- the headteacher must have made it generally known within the school and brought it to the attention of parents that detention might be imposed, for example, through the school's behaviour and discipline policy;
- the detention must be imposed by the headteacher or another teacher authorised to do so, either generally or specifically authorised;
- the detention "must be reasonable in all the circumstances", that is, it must be a proportionate punishment. Any special circumstances relevant to the particular pupil must be taken into account, such as the pupil's age, special needs, religious requirements, and whether suitable alternative travel arrangements can be made by the parents where school to home transport arrangements are made; and
- at least 24 hours' advance notice is given to the parents by post, 'pupil post', or fax.

Teachers are advised to ensure they follow carefully a school's policy on disciplinary sanctions in exercising detention of pupils. The DfES gives guidance on detention in its Circular 10/99.

8. ANTI-DISCRIMINATION LAW AND HUMAN RIGHTS

Currently the law prohibits discrimination on grounds of sex and marital status, race and disability. On 1 December 2003 new provisions which outlaw discrimination on grounds of sexual orientation and religion and belief in the employment field will come into force. This gives a brief guide to these provisions.

1. The law concerning sex and race discrimination is contained in two pieces of legislation, the Sex Discrimination Act 1975, and the Race Relations Act 1976. Both have certain key provisions in relation to the treatment of both teachers and pupils, which are very similar and are here considered together.
2. It is unlawful to discriminate against a person on grounds of sex or on racial grounds. Racial grounds are grounds of race, colour, nationality, citizenship, ethnic or national origins. It is unlawful to discriminate against a pupil, directly or indirectly.
3. Direct discrimination is where a person is treated less favourably, because of his or her race or sex, than another person of the opposite sex or different race in similar circumstances would be treated.

Direct discrimination takes many forms. In the treatment of pupils and students, for example, it may vary from crude remarks to subtle differences in assessment, expectation, provision and treatment. It may be unconscious or even well-intentioned, but still unlawful.

Racial or sexual harassment is a form of direct discrimination.

4. Indirect discrimination is more complex. This is where a provision, criterion or practice, although applied equally, puts members of a particular racial group or sex at a disadvantage and cannot be justified objectively.

'Justifiable objectively' means, in an educational context, justifiable on educational or other grounds. It is a question of fact in each case.

An example of indirect race discrimination, based on a case heard by the House of Lords, was a requirement to wear a cap as part of a school uniform. Although applied equally to all pupils, it had the effect of excluding Sikh boys from the school and was not justifiable on educational grounds.

5. In schools, discrimination is specifically unlawful as follows:

- on the terms on which admission is offered;
- in refusing to accept an application;
- in the way pupils are afforded access to benefits, facilities or services;
- by refusing to afford pupils access to benefits, facilities or services;
- by excluding pupils or subjecting them to any other detriment.

An exception is made for single sex schools, though the facilities available should be not less favourable than those at other schools in an LEA.

6. The Race Relations Act (RRA) was amended in late 2000 by the Government to take forward the recommendations of the Stephen Lawrence Inquiry. The amended law now places new positive duties on public authorities to promote race equality, rather than merely prohibiting discrimination. Public authorities include governing bodies of schools and consequently schools are under a duty to promote equality of opportunity and good relations between people of different racial groups.

7. The Disability Discrimination Act 1995 (DDA) was amended in 2001 to extend its coverage to the education sector. Under the amended DDA, it is unlawful to discriminate against disabled pupils and prospective pupils. Schools are under a duty not to treat disabled pupils less favourably than non-disabled pupils. They must take reasonable steps to ensure that disabled pupils are not put at a substantial disadvantage and LEAs schools are required to plan to increase access to schools for disabled pupils.

The Disability Rights Commission has issued a code of practice on the duties of schools and other providers to eliminate discrimination. All schools should be aware of this in order to assist them in their duties to disabled pupils.

8. The Human Rights Act 1998 protects against discrimination in relation to the enjoyment of other rights guaranteed by the European Convention of Human Rights (ECHR). For example, the right to education is guaranteed by the ECHR, so education must not be provided in a manner that discriminates against individuals. The Convention's provisions on discrimination are broader than those covered in existing UK law, which prohibits discrimination only on grounds of sex, race or disability. The Convention, on the other hand, includes a non-exhaustive list prohibiting discrimination in relation to the 'enjoyment' of the substantive Convention rights. This is consistent with the design of the Convention as a 'living instrument' that can evolve with social norms.

9. Schools have important roles to play in promoting equality of opportunity. Teachers are likely to be more aware of the consequences of stereotyping than anyone else. Teachers should follow carefully a school's equal opportunities policy and encourage this to be reviewed if it does not address situations which arise commonly in school. In particular, schools and teachers should have regard to policies and practices relating to:

- admissions;
- the day-to-day organisation of school life;
- the broader social context and local community in which education takes place;
- the relationship between pupils and staff inside and outside the classroom;
- assessments;
- raising attainment levels;
- delivering the curriculum;
- discipline, including exclusions; and
- guidance and support.

NOTES

10. The Commission for Racial Equality, the Disability Rights Commission and the Equal Opportunities Commission all issue Codes of Practice on the elimination of discrimination and the promotion of equality of opportunity. Complaints against schools or education authorities concerning pupils can be made to the Secretary of State or, involving legal action, in the county court.
11. Teachers are protected from discrimination in employment on grounds of race, sex, marital status, disability, transexuality or trade union membership or activity or by reason of working part-time. It is unlawful for an employer to discriminate in recruitment or selection procedures, or to treat employees differently, in ways that amount to direct or indirect discrimination. Discrimination might occur, for example, in promotion opportunities or training; access to benefits or services; in disciplinary, grievance or other procedures; or in dismissal or other detrimental treatment. Regulations giving protection from discrimination on grounds of sexual orientation and religion or belief will come into effect at the beginning of December 2003. These apply only in the employment field and will not automatically apply to discrimination against pupils. Age discrimination will become unlawful from October 2006.
12. Schools should have equal opportunities policies and practices which ensure equal treatment of all employees and which contain provision for complaints to be pursued.
13. Teachers, like other employees, can bring complaints about unlawful discrimination to employment tribunals. Complaints must be made within three months of the discriminatory act occurring or, if the discrimination is continuous, within three months of the most recent incidence of it. Teachers with complaints about discrimination should seek advice from their professional organisation/trade union.

9. SPECIAL EDUCATIONAL NEEDS (SEN) CODE OF PRACTICE

The Code of Practice on the identification and assessment of special educational needs was established by primary legislation in 1993. A revised version of the Code is expected during the academic year 2003/2004. The bulk of the Code, which is not contained in legislation, gives guidance to which LEAs, headteachers, school governing bodies, parents, other local authority services and teachers, particularly Special Educational Needs Co-ordinators (SENCOs), are required to have regard.

The term "have regard" means that if a course of action is taken which is different to that set out in the Code, it has to be justified by those concerned as qualitatively the same or better than the Code's own guidance.

The SEN Toolkit, published by the DfES, is a good starting point for classroom teachers. All schools should have copies. It is available from www.dfes.gov.uk/sen.

The Code stresses the importance of working with and taking into account the views of parents and pupils. It emphasises the need for early identification and assessment of SEN and describes the conditions for the inclusion of pupils with SEN within mainstream schools.

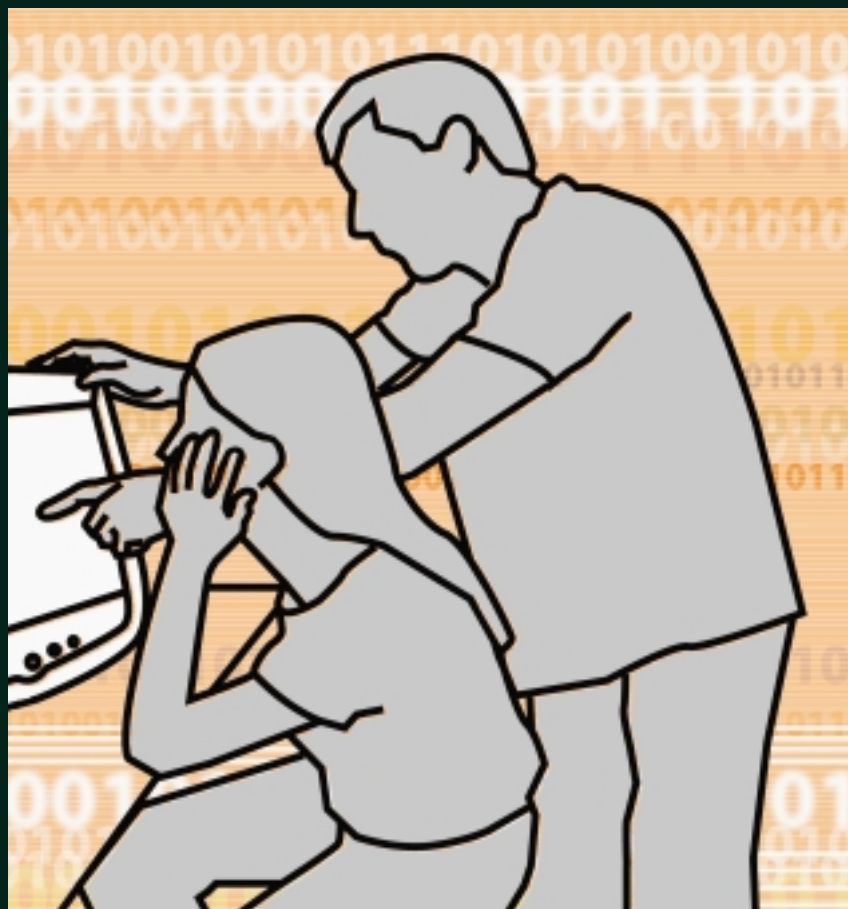
When a teacher identifies a pupil as having SEN, relevant teachers, in consultation with the SENCO, are expected to devise interventions additional to or different from those provided by the school's usual curriculum. Subject and pastoral teachers remain responsible for working with the pupil on a daily basis and for planning and delivering individualised programmes. An Individual Education Plan (IEP) can be devised at this stage, although this is not required. The SENCO is expected to take the lead in planning future interventions for the pupil in discussion with colleagues, then monitoring and reviewing the action taken. The importance of working with other providers of support such as LEA support services, health care professionals and social services departments is stressed.

There is an expectation in the Code that IEPs are working documents available to all teaching staff. The need to monitor pupils' progress and regularly review IEPs is stressed. Each child's IEP is expected to be evaluated at a minimum of twice yearly. All teachers who teach a pupil with SEN should be made aware of the individual targets and the planned strategies.

The SEN code of practice will continue to be the guide for decisions about the provisions of educational aids and services for pupils with SEN, but the Disability Rights Code (above) should also be considered where children with SEN have, in addition, a disability covered by the Disability Discrimination Act.

The NUT is a source of expert advice to members on the application of the Code. Members who need further advice should contact their regional office or, in Wales, the NUT Cymru Office in the first instance.

A little colour for your grey matter.



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