

The government has produced revised guidance

DfE: Use of reasonable force (updated: 11 July 2011)

The link below will take you to the web site that contains the full DFE version.

<http://www.education.gov.uk/search/results?q=use+of+force>

The version below has been adapted and highlighted to draw your attention to salient parts that you need to be particularly aware of. It also has details of how to obtain further advice and information.

DfE: Use of reasonable force (updated: 11 July 2011)

This advice replaces the use of force to control and restrain pupils: Guidance for schools in England.

It is non-statutory advice from the Department for Education.

Expiry/review date

This advice is being reviewed in Autumn 2011 after the Education Bill, currently before Parliament, receives Royal Assent.

This guidance relates to the Education and Inspections Act 2006 and **is aimed at governing bodies, head teachers and school staff in all schools in England.**

Key points

School staff have a legal power to use force and lawful use of the power will provide a defence to any related criminal prosecution or other legal action.

Suspension should not be an automatic response when a member of staff has been accused of using excessive force.

Senior school leaders should support their staff when they use this power.

Definitions

Control means either passive physical contact, such as standing between pupils or blocking a pupil's path, or active physical contact such as leading a pupil by the arm out of a classroom.

Restraint means to hold back physically or to bring a pupil under control. It is typically used in more extreme circumstances, for example when two pupils are fighting and refuse to separate without physical intervention.

Who can use Reasonable force?

All members of school staff have a legal power to use reasonable force. This power applies to any member of staff at the school. It can also apply to people whom the head teacher has temporarily put in charge of pupils such as unpaid volunteers or parents accompanying students on a school organised visit.

Schools can use reasonable force to:

- **Remove disruptive children from the classroom** where they have refused to follow an instruction to do so.
- **Prevent a pupil behaving in a way that disrupts a school event** or a school trip or visit.
- **Prevent a pupil leaving the classroom where allowing the pupil to leave would risk their safety or lead to behaviour that disrupts the behaviour of others.**
- **Prevent a pupil from attacking a member of staff or another pupil**, or to stop a fight in the playground.
- **Restrain a pupil at risk of harming themselves through physical outbursts.**

Schools cannot:

Use force as a punishment - it is always unlawful to use force as a punishment.

Communicating the school's approach to the use of force

Every school is **required by law to have a behaviour policy** and to make this policy known to staff, parents and pupils. **The governing body** should notify the head teacher that it expects the school behaviour policy to include the power to use reasonable force.

There is no legal requirement to have a policy on the use of force but it is good practice to set out, in the behaviour policy, the circumstances in which force might be used.

For example; it could say that teachers will physically separate pupils found fighting or that if a pupil refuses to leave a room when instructed to do so they will be physically removed.

Any policy on the use of reasonable force should acknowledge their legal duty to make reasonable adjustments for disabled children and children with Special Educational Needs.

Schools do not require parental consent to use force on a student.

Schools should not have a "no contact" policy. There is a real risk that such a policy might place a member of staff in breach of their duty of care towards a pupil, or prevent them taking action needed to prevent a pupil causing harm.

Unacceptable risk

A panel of experts identified that certain restraint techniques presented an unacceptable risk when used on children and young people. The techniques in question are:

- **The "seated double embrace"** which involves two members of staff forcing a person into a sitting position and leaning them forward, while a third monitors breathing.
- **The "double basket-hold"** which involves holding a person's arms across their chest.
- **The "nose distraction technique"** which involves a sharp upward jab under the nose.

Staff training

Schools need to take their own decisions about staff training. The head teacher should consider whether members of staff require any additional training to enable them to carry out their responsibilities and should consider the needs of the pupils when doing so.

Oxfordshire provides advice and guidance to help schools to develop an appropriate training programme - contact peter.wild@oxfordshire.gov.uk

Telling parents

It is good practice for schools to speak to parents about serious incidents involving the use of force and to consider how best to record such serious incidents. **It is up to schools to decide whether it is appropriate to report the use of force to parents.**

In deciding what is a serious incident, teachers should use their professional judgement and also consider the following:

- The pupil's behaviour and level of risk presented at the time of the incident.
- The degree of force used the effect on the pupil or member of staff the child's age.

In a Written Ministerial Statement, published on 23 June 2011, the Minister of State for Schools announced that he has asked Charlie Taylor, the Government's Expert Adviser on Behaviour, to review the implications for schools of the requirement to record and report the use of force in schools, as set out in section 246 of the Apprenticeships, Skills, Children and Learning Act 2009. In particular, Mr Taylor has been asked to make sure that the accompanying guidance provides the best possible advice to schools on establishing 'light touch' systems while still providing protection for pupils and staff.

It remains the intention to commence this requirement from 1 September 2011, subject to the outcome of Mr Taylor's review.

This advice will also be updated to reflect the outcome of Mr Taylor's review.

Handling pupil complaints when force is used against them.

All complaints about the use of force should be thoroughly, speedily and appropriately investigated.

Where a member of staff has acted within the law, that is, they have used reasonable force in order to prevent injury, damage to property or disorder, this will provide a defence to any criminal prosecution or other civil or public law action.

When a complaint is made the onus is on the person making the complaint to prove that his/her allegations are true, it is not for the member of staff to show that he/she has acted reasonably.

Suspension must not be an automatic response when a member of staff has been accused of using excessive force. Schools should refer to the "**Dealing with Allegations of Abuse against Teachers and Other Staff**" guidance where an allegation of using excessive force is made against a teacher. This guidance makes clear that a person must not be suspended automatically, or without careful thought.

Schools must consider carefully whether the circumstances of the case warrant a person being suspended until the allegation is resolved or whether alternative arrangements are more appropriate.

If a decision is taken to suspend a teacher, the school should ensure that the teacher has access to a named contact who can provide support.

Governing bodies should always consider **whether a teacher has acted within the law when reaching a decision on whether or not to take disciplinary action against the teacher.**

As employers, schools and local authorities have a duty of care towards their employees. It is important that schools provide appropriate pastoral care to any member of staff who is subject to a formal allegation following a use of force incident.

Comment – please note:

It is clear that the government wants the pendulum to swing back to adult rights and for education services to be places where adults are firmly and fairly in charge of children. The guidance produced is strong on message but weak on detail.

It leaves all the responsibility and accountability for decision making in this area with Head teachers and Governing Bodies.

An analogy might be that it provides education services with a destination and goal, but with no map or pointers on how to get there. **Therefore if you are unclear about any aspect of this guidance or its application in your school or setting please contact the Local Authority (see email details below).**

Contact - peter.wild@oxfordshire.gov.uk

Position statement for Team-Teach services / tutors

Banned techniques referred to in guidance

"We have no such named techniques within the Team-Teach framework. TT training in seats allows only **a single elbow to be part of a sustained hold** and that the person's ability to breathe (since they are being held in a fairly upright position) should not be compromised. This is clearly evidenced within the Standing Graded holds to seats video clips.

"Photographs of techniques can be misleading and misrepresented which is why TT provides video files of all holds, allowing for a dynamic interpretation related to context and circumstance.

The Wrap hold is a single person hold designed for smaller children where the arms are held down, crossing below the belly button and the hands held against the child's hips. The arms are NOT held across the chest. The second member of staff is able to monitor the airways breathing and circulation of the child.

TT techniques are not risk free, but our on going analysis of incidents and any associated injury rates for children, young people, vulnerable adults and staff over the last 15 years provides a very strong evidence base for their operational safety.

Peter Wild
July 2011