

1. INTRODUCTION

The Department for Education (DfE) has issued a new set of statutory guidance on behaviour and discipline, initially for **consultation**. Final versions will be published in July 2011.

The five documents are:

- **Ensuring Good Behaviour in Schools** – summarising the powers and duties applying to behaviour and attendance;
- **Behaviour and Discipline in Schools: Guidance for Headteachers and School Staff**: advising on developing the school behaviour policy, and explaining teachers' powers to discipline pupils;
- **Behaviour and Discipline in Schools: Guidance for Governors**: statutory guidance to governing bodies on their role in shaping their school's behaviour policy;
- **Use of Reasonable Force**: clarification to help school staff, and setting out the responsibilities of school leaders and governors;
- **Screening, Searching and Confiscation**: new information about legislation that came into force in September 2010, and new statutory guidance.

This Summary reproduces **Behaviour and Discipline in Schools: Guidance for Headteachers and School Staff** in all substantive respects. Other parts of the guidance will be summarised when final versions are published by the DfE.

The **Consultation** runs until **30 May 2011**.

2. KEY POINTS

- Teachers have statutory authority to discipline pupils for misbehaviour which occurs in school and, in some circumstances, outside of school.
- Heads and governing bodies must ensure they have a strong behaviour policy to support staff in managing behaviour, including the use of rewards and sanctions.
- Governing bodies have a duty under section 175 of the *Education Act 2002* requiring them to make arrangements to ensure that their functions are carried out with a view to safeguarding and promoting the welfare of children.

3. THE SCHOOL BEHAVIOUR POLICY

What the law says:

- the headteacher must set out measures in the behaviour policy which aim to: promote good behaviour, self discipline and respect;
- prevent bullying;
- ensure that pupils complete assigned work; and which
- regulate the conduct of pupils.¹
- When deciding what these measures should be, the headteacher must take account of the governing body's statement of behaviour principles. The headteacher must also take account of any guidance or notification provided by the governing body, including in relation to screening and searching pupils, the power to use reasonable force, the power to discipline beyond the school gate and pastoral care for school staff.
- The headteacher must decide the standard of behaviour expected of pupils at the school. He or she must also determine the school rules and any disciplinary penalties for breaking the rules. Teachers' powers to discipline include the power to discipline pupils even when they are not at school or in the

¹ Section 89 (1) (a to e) of the *Education and Inspections Act 2006*.

charge of a member of staff. The headteacher must publicise the school behaviour policy, in writing, to staff, parents and pupils at least once a year.

- The standard of behaviour expected of all pupils must be included in the school's home-school agreement² which parents must be asked to sign following their child's admission to a school. Further advice on home school agreements is available.

Developing the behaviour policy

- It is vital that the behaviour policy is clear, that it is well understood by staff, parents and pupils, and that it is consistently applied. In developing the behaviour policy, the headteacher should reflect on the following ten key aspects of school practice that, when effective, contribute to improving the quality of pupil behaviour³:

- 1) A consistent approach to behaviour management;
- 2) Strong school leadership;
- 3) Classroom management;
- 4) Rewards and sanctions;
- 5) Behaviour strategies and the teaching of good behaviour;
- 6) Staff development and support;
- 7) Pupil support systems;
- 8) Liaison with parents and other agencies;
- 9) Managing pupil transition; and
- 10) Organisation and facilities.

- The school's behaviour policy should set out the disciplinary action that will be taken against pupils who are found to have made malicious accusations against school staff.

4. TEACHERS' POWERS

Key Points

- Teachers have statutory authority to discipline pupils whose behaviour is unacceptable, who break the school rules or who fail to follow a reasonable instruction (Section 91 of the *Education and Inspections Act 2006*).
- The power also applies to all paid staff (unless the headteacher says otherwise) with responsibility for pupils, such as teaching assistants.
- Teachers can discipline pupils at any time the pupil is in school or elsewhere under the charge of a teacher, including on school visits.
- Teachers can also discipline pupils for misbehaviour outside school.
- Teachers have a specific legal power to impose detention outside school hours.
- Teachers can confiscate pupils' property.

5. PUNISHING POOR BEHAVIOUR

What the law allows:

- Teachers can discipline pupils whose conduct falls below the standard which could reasonably be expected of them. This means that if a pupil misbehaves, breaks a school rule or fails to follow a reasonable instruction the teacher can impose a punishment on that pupil.
- To be lawful, the punishment (including detentions) must satisfy the following three conditions:
 - 1) The decision to punish a pupil must be made by a paid member of school staff or a member of staff authorised by the headteacher;
 - 2) The decision to punish the pupil and the punishment itself must be made on the school premises or while the pupil is under the charge of the member of staff; and
 - 3) It must not breach any other legislation (for example in respect of disability, Special Educational Needs, race and other equalities and human rights) and it must be reasonable in all the circumstances.
- A punishment must be reasonable. In determining whether a punishment is reasonable, section 91 of the *Education and Inspections Act 2006* says the penalty must be proportionate in the circumstances and

² Sections 110 and 111 of the *School Standards and Framework Act 1998*.

³ Learning behaviour - the Report of the Practitioners' Group on School Behaviour and Discipline (2005).

that account must be taken of the pupil's age, any special educational needs or disability they may have, and any religious requirements affecting them.

- The headteacher may limit the power to apply particular punishments to certain staff and/or extend the power to discipline to adult volunteers, for example to parents who have volunteered to help on a school trip.
- Corporal punishment is illegal in all circumstances.
- Schools should consider whether the behaviour under review gives cause to suspect that a child is suffering, or is likely to suffer, significant harm. Where this may be the case, school staff should follow the schools' safeguarding policy.

6. PUPILS' CONDUCT OUTSIDE THE SCHOOL GATES – TEACHERS' POWERS

What the law allows:

- Teachers have a statutory power to discipline pupils for misbehaving outside of the school premises. Section 89(5) of the *Education and Inspections Act 2006* gives headteachers a specific statutory power to regulate pupils' behaviour in these circumstances 'to such extent as is reasonable'.
- The school's behaviour policy should set out what the school will do in response to all non-criminal bad behaviour and bullying which occurs anywhere off the school premises and which is witnessed by a staff member or reported to the school, including the punishments that will be imposed on pupils.
- Subject to the school's behaviour policy, the teacher may discipline a pupil for:
 - any misbehaviour when the child is:
 - taking part in any school-organised or school-related activity or
 - travelling to or from school or
 - wearing school uniform or
 - in some other way identifiable as a pupil at the school.
 - or misbehaviour at any time, whether or not the conditions above apply, that:
 - could have repercussions for the orderly running of the school or
 - poses a threat to another pupil or member of the public or
 - could adversely affect the reputation of the school.

7. DETENTION

What the law allows:

- Teachers have a legal power to put pupils (**aged under 18**) in detention.
- Schools must make clear to pupils and parents that they use detention (including detention outside of school hours) as a sanction. Where detention is outside school hours they must give parents 24 hours notice, in writing. [*The Education Bill 2011 removes this requirement, and guidance will change if approved by Parliament*]. They do not have to give 24 hours notice for a lunchtime detention.
- The times outside normal school hours when detention can be given (the 'permitted day of detention') include:
 - a. any school day where the pupil does not have permission to be absent;
 - b. weekends - except the weekend preceding or following the half term break;
 - c. non-teaching days – usually referred to as 'training days', 'INSET days' or 'non-contact days'.
- The headteacher can decide which members of staff can put pupils in detention. For example, they can limit the power to heads of year or heads of department only or they can decide that all members of staff, including support staff, can impose detentions.

Matters schools should consider when imposing detentions

- Parental consent is not required for detentions.
- The school must act reasonably when imposing a detention as with any disciplinary penalty. In addition, when deciding the timing, the teacher should consider whether suitable travel arrangements can be made by the parent for the pupil. It does not matter if making these arrangements is inconvenient.
- With lunchtime detentions, schools should allow reasonable time for the pupil to eat, drink and use the toilet.

8. CONFISCATION OF INAPPROPRIATE ITEMS

What the law allows:

- There are two sets of legal provisions which enable school staff to confiscate items from pupils:
 - 1) The **general power to discipline** [as described in Section 4 Key Points above] enables a member of staff to confiscate, retain or dispose of a pupil's property as a punishment and protects them from liability for damage to, or loss of, any confiscated items. The legislation does not describe what must be done with the confiscated item and the school behaviour policy may set this out.
 - 2) **Power to search without consent** for weapons, knives, alcohol, illegal drugs and stolen items ('prohibited items' – [to be updated subject to legislation]). The legislation sets out what must be done with prohibited items found as a result of a search and this is described in more detail in separate guidance in *Screening, Searching and Confiscation – guidance for school leaders, staff and governing bodies*.
- Weapons and knives must always be handed over to the police otherwise it is for the teacher to decide when and if to return a confiscated item.
- More detailed advice on confiscation is provided in *Screening, Searching and Confiscation – guidance for school leaders, staff and governing bodies*.

9. POWER TO USE REASONABLE FORCE

- The legal provisions on school discipline also provide members of staff with the power to use reasonable force to prevent pupils committing an offence, injuring themselves or others, or damaging property, and to maintain good order and discipline in the classroom. Separate advice is available in *Use of Reasonable Force – guidance for school leaders, staff and governing bodies*.

The document can be viewed/downloaded at:

<http://www.education.gov.uk/schools/pupilsupport/behaviour/behaviourpolicies/a0076392/behaviour-and-discipline-in-schools>

The same website gives access to all the documents listed in this Summary's Introduction, and to the Consultation documents.