

Summary of EIS Policies on Violence, Challenging Behaviour and Physical Restraint

1. BACKGROUND

- 1.1.1 The Employment Relations Committee has produced a number of policies over the years relating to challenging behaviour, violence and physical restraint.
- 1.1.2 The Committee has agreed to bring these documents into a single policy document.
- 1.1.3 This policy subsumes the following policy papers : Violence Towards Staff (AGM 2002), Violence Against Teaching Staff : Strategy (AGM 2005), Violent Incidents Towards Staff – Recording and Reporting and Monitoring Guidelines (AGM 2005), Violent Incidents in School (AGM 2007), Work Related Violent Incidents (AGM 2007), Physical Restraint (AGM 2004 and 2005), Disruptive Pupils (AGM 2007), Violent Incidents Against Teaching Staff in Special Schools (AGM 2010), Statement Regarding the Unacceptability of Any Aggressive Behaviour (AGM 2010).
- 1.1.4 The EIS policy, Guidance Risk Assessment of Violent and Abusive Behaviours (AGM 2009) (Appendix C) is also referred to in this policy and provides important advice on the legal requirements for risk assessment and the risk assessment process.

2. DISRUPTIVE PUPILS

2.1 Legal Advice

- 2.1.1 Children in Scotland have the right, arising from the Education (Scotland) Act 1980, to be educated and, unless excluded from a school, have a right to receive their education from the school with which they are enrolled. If certain pupils were refused admittance to classes, such pupils would have a possible claim against the Council for denying them the right to an education. The Council may also be open to a claim under the Human Rights Act with regard to their right to be educated (Article 2 of Protocol).
- 2.1.2 A teacher's contract with an employer defines the employment law perspective. The contractual requirement is drawn from Annex B of the 2001 Agreement, A Teaching Profession for the 21st Century, which states:

Outline of Teacher Duties.- Subject to the policies of the school and the education authority the duties of teachers, promoted and unpromoted, are to perform such tasks as the

Headteacher shall direct having reasonable regard to overall teacher workload related to the following categories:

(a) teaching assigned classes together with associated preparation and correction."

2.1.3 A teacher who refused to admit a persistently disruptive pupil would, in effect, be refusing to comply with her or his contractual terms.

2.1.4 In terms of the employment contract the teacher who refuses to admit a disruptive pupil could be subject to disciplinary action.

2.1.5. Councils do have a duty to protect the health and safety of their employees. Therefore, if a teacher could establish that by admitting a disruptive pupil to class that her or his safety was at risk the teacher would have the potential right to refuse to admit the pupil and not be subject to disciplinary action. Councils also have a duty to protect the health and safety of other pupils in a class, and where there is a threat of physical violence a risk assessment should be carried out and based on its results a case to refuse admittance may be made.

2.2. Establishing a Legal Right

2.2.1 The right to exclude a pupil from a school derives from Regulation 4 of the Schools General (Scotland) Regulations 1975 as amended. The right to exclude is devolved to Headteachers by councils. The Headteacher has the legal right to exclude within the context of council procedures. It should be noted however that exclusion of some pupils may involve consultation with other professionals or with outside agencies such as social work. This will particularly be the case when the pupil has additional support needs, is looked after by the Council or in situations where there are child protection issues.

2.2.2 Any moves to give teachers the legal right to refuse to admit pupils would require changes to both regulations on exclusions and to teachers' contracts of employment. It is expected that both the Scottish Executive and Local Authorities would be opposed to giving teachers a legal right to exclude.

2.2.3 If teachers were given the direct legal right to refuse to admit pupils the teacher may be viewed in law as an autonomous professional and therefore accountable in law for such decisions. It is possible that legal challenges, as set out in 2.1 above, may be directed towards teachers rather than towards councils.

2.2.4 In light of both the anticipated difficulties in securing changes to the law and the unintended consequences should such a change be secured it is recommended that the EIS should not pursue the legal change.

2.3 Advice to Local Association Secretaries

- 2.3.1 There is no extant legal right to refuse to admit persistently disruptive pupils. Such action could potentially lead to disciplinary action against teachers for breach of contract.
- 2.3.2 A member who feels that there exists a demonstrable risk to herself or himself or to pupils from a persistently disruptive pupil who poses a threat of violence should ask in writing for a risk assessment to be conducted on that pupil. Advice should be sought from the Local Association Secretary on all occasions when a teacher is contemplating refusing to teach a persistently disruptive pupil. The LA Secretary must raise the matter with the Area Officer. The LA Secretary will then raise the matter with school management or the authority as appropriate and may advise the member to raise a grievance. If matters cannot be resolved, then the Area Officer may seek authorisation from HQ to advise the teacher to refuse to admit the persistently disruptive pupil who poses a threat of violence but advise that there may be a breach of contract.
- 2.3.3 Where the request to refuse to admit a disruptive pupil extends to all members in an establishment the Area Officer or, whom failing an Official, may contemplate declaring a dispute with the council for its failure to protect staff and seek authorisation, in accordance with Institute policy on industrial action, to pursue the matter through industrial action. Following P v NASUWT (2003) the House of Lords ruled that such action was about the particular instruction of an employer and therefore amounted to a dispute about teachers' terms and conditions. Any collective dispute must be conducted in terms of EIS policy on industrial action.

2.4 Possible Way Forward

- 2.4.1 The 2006 Annual General Meeting approved a comprehensive policy paper on Pupil Indiscipline. This paper, following the work of the *ad hoc* Sub-Committee on Pupil Indiscipline, called for the Scottish Executive and local authorities to ensure sufficient funding for:-
- additional support wherever this is needed.
 - additional staffing for in-school behaviour bases and units.
 - the provision of additional off site behaviour facilities.
 - a reduction in class sizes in all schools to support better behaviour and improved discipline in the classroom.
 - the development of enhanced provision of better behaviour/discipline strategies as part of initiate teacher education.

- the provision of local authority support, in matters relating to better behaviour/discipline strategies, for teachers in their induction year.
- the provision of appropriate CPD relating to better behaviour/discipline strategies for teachers throughout their careers.

2.4.2 The Report encouraged LNCTs to enter discussions with Councils to agree local better behaviour/discipline policies. Each school should develop a policy in accordance with local policies and would include the following:-

- the application of curriculum flexibility and “A Curriculum for Excellence” to bring benefits to all pupils.
- establishing clear links between effective teaching and learning and effective behaviour management.
- ensuring that there is prompt and appropriate access to a carefully – balanced range of specialist provision and support for schools. This should include specialist behaviour support staff, on-site support bases or sufficient, appropriate off-site provision.
- an indication of the criteria for exclusion and re-affirmation of the right of Head Teachers to use exclusion where appropriate.
- ensuring effective systems for the dissemination of good practice to the local authority.
- making available high quality professional staff development on learning and teaching and behaviour management, both to teaching and support staff. An annual menu of CPD provision on behaviour management should be made available to teachers. Such CPD should include opportunities for courses organised by colleagues in partner agencies.

2.4.3 As such policies evolve it is likely that, within staffing and other resource limitations, a dialogue will be established between head teachers and teachers in all schools which will remove pupils from certain classes or from aspects of the curriculum without being formalised into an exclusion from school.

2.4.4 Such decision will arise in circumstances where the pupil persistently disrupts in certain classes or in aspects of the curriculum. Such decisions are taken on a pragmatic, *ad hoc* basis and are more manageable when on-site provision is available.

2.4.5 The teacher has no right to refuse to admit a pupil but will have the right to seek to refuse to do so. There may be scope for this area to be developed in Council policies and from that teachers may establish a de facto right, rather than a de jure right, to refuse to

admit a pupil although this would be qualified by the overall decision of a Head Teacher operating within a Council's policy.

3. VIOLENT INCIDENTS IN SCHOOLS

3.1 Definition

3.1.1 The Health and Safety Executive defines violence at work as:

"Any incident in which a person is abused, threatened or assaulted in circumstances relating to their work."

3.1.2 This definition should include verbal or written forms of abuse.

3.1.3 Sexual and racial harassment should also be dealt with as violence at work.

3.2 Legal Rights

3.2.1 All staff are entitled to rely on the protection provided by a number of statutory provisions.

3.2.2 The Health and Safety at Work etc Act 1974 places employers under a duty to ensure, as far as is reasonably practicable, the health, safety and welfare of employees at work. This duty includes protecting employees from violent incidents and reducing the risks of such incidents occurring.

3.2.3 The Safety Committee and Safety Representative Regulations 1977 requires employers to inform Safety Representatives in good time on matters related to the health and safety of their members and to consult with them. Safety Representatives have the right to investigate violent incidents, carry out safety inspections and to investigate potential hazards. Violence to staff, the development of procedures and policies should all be matters which are considered by Safety Committees within both local authorities, schools and colleges.

3.2.4 Under the Management of Health and Safety at Work Regulations 1999 employers must assess risks to employees and make arrangements for their health and safety by effective planning, organisation, control, monitoring and review. This includes protecting employees from the risk of violence. It is important that individual employees are consulted as part of the risk assessment process and that Safety Representatives are consulted on risk assessment processes, procedures and findings.

3.2.5 The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (as amended) (RIDDOR) requires employers to

notify any act of violence which leads to incapacity for more than three consecutive days to the Health and Safety Executive.

3.2.6 All staff are covered by an employer's common law duty of care and could sue an employer for damages if it can be demonstrated that the employer has been negligent in protecting staff.

3.2.7 Where a teacher has been injured as a result of a criminal act the Criminal Injuries Compensation Authority (CICA) can award compensation regardless of whether the assault is in the workplace or not. Members are advised that, unless there is a police report, CICA cannot award compensation to victims.

3.2.8 Any member who has been subject to violence in the workplace has an absolute entitlement to raise a complaint with the Police.

3.3 Local Authority/School/College Policies

3.3.1 All employers should have clear policies on dealing with Violent Incidents. Local Association Secretaries should ensure that violent incidents in the education sector are subject to separate advice or a discrete section in council policies. The definitive advice remains Violence to Staff in the Education Sector (1997) (Education Service Advisory Committee) which should provide the basis for all local authority and school policies.

3.3.2 Policies should be subject to regular review and evaluation and unions should be involved in the process.

3.3.3 The Health and Safety Commission's advice, set out in the ESAC guide, covers a number of areas which should be included in policies –

- (a) defining violence and violent incidents
- (b) assessing risk factors
- (c) developing an action plan to include
 - (i) security of the physical environment
 - (ii) work practices (e.g. remote buildings, evening work etc)
 - (iii) physical aspects of the building
 - (iv) staff training
- (d) reporting and recording incidents
- (e) supporting victims.

3.3.4 Following Dunblane all Councils produced policies on school security. The majority of schools and colleges will now have a range of security measures including, inter alia, perimeter fences, controlled entry systems, staff security passes, security lighting and cameras.

3.3.5 The EIS is opposed to teachers and lecturers being required to be trained in physical restraint techniques. However, there is scope for staff to be trained in avoidance and de-escalation techniques.

3.4 Members Subject to Violence

- 3.4.1 There are a number of steps that a member subject to a violent act, or a threat of violence, should take.
- 3.4.2 At the time of the incident help should be sought from colleagues and management. The incident should be reported to management and the victim should ensure that the incident is recorded in the accident book, in a Violent Incident Recording form and reported to the Police. Management can assist by bringing police officers to the workplace to interview the victim and witnesses rather than putting the onus on the victim to report the matter to the Police at the end of the working day in their own time.
- 3.4.3 Where appropriate medical assistance should be sought at the time of the incident. It is also appropriate to provide time off with pay to allow the victim to recover from the immediate trauma of the incident.
- 3.4.4 Any absence arising from a violent incident should be treated as special leave with full pay. For teachers the absence should be covered by the provisions of the SNCT Handbook (SNCT Handbook, paragraphs 6.22 and 6.23). Where necessary the victim should also be advised of the opportunity to make a phased return to work, for example, reducing working hours or changing the work pattern.
- 3.4.5 In circumstances where the victim is absent from work any absence extending beyond three days should be notified to HSE under RIDDOR.
- 3.4.6 Decisions on a return to work should also allow consideration of restricting or altering the normal range of duties and the possibility of a return to a different location.
- 3.4.7 The victim should be offered counselling. This counselling should be arranged as close to the incident as practicable. As well as the employer's internal counselling services or access to external services advice can be sought from Victim Support Scotland or Teacher Support Scotland.
- 3.4.8 Following a violent incident a risk assessment should be conducted to determine whether the risk of future incidents can be avoided or reduced. Guidance should also be given on contact between the victim and assailant.
- 3.4.9 Detailed advice is appended (Appendix A) on supporting staff who return to work following a violent incident.

3.5 Pupils/Students as Assailants

3.5.1 Where a pupil or student commits an act of violence against a member of staff the pupil or student should be excluded.

3.5.2 During the period of exclusion there should be full consultation with the staff on the pupil or student's future in the establishment. The views of the victim should be taken into account. Risk assessments should also be carried out.

3.5.3 In circumstances where a pupil is being returned to the establishment against the wishes of EIS members advice should be sought from the Local Association Secretary or Branch Secretary. The Local Association Secretary or Branch Secretary must raise the matter with the Area Officer. The Local Association Secretary or Branch Secretary will then raise the matter with the employer. The member, or members in a branch, who would prefer to refuse to teach a pupil or student who has been violent may be advised to raise a grievance. If matters cannot be resolved, the Area Officer may seek authorisation from HQ to advise the member(s) to refuse to admit the pupil or student. In such circumstances there may be issues of breach of contract and it is important for members to be aware of the risks and to be clear of EIS support.

3.5.4 Key recommendations of the *ad hoc* Sub-Committee on Pupil Indiscipline are still relevant for dealing with violence or threats of violence as well as general indiscipline. *Inter alia*, the paper called on Scottish Government and local authorities to ensure sufficient funding for:

- additional support wherever this is needed
- additional staffing for in-school behaviour bases and units
- the provision of additional off site behaviour facilities.

3.5.5 It is a matter of regret that a sub-group of the Government's Working Group on Pupil Indiscipline looking at off-site provision did not reach a conclusion and the Discipline Stakeholder Group has still to set out its view on this matter. The EIS must continue to campaign for such provision.

3.6 Recording and Reporting

3.6.1 While the EIS supports a return to the collation of national statistics on violent incidents it is recognised that robust arrangements must be in place at local level to ensure the statistics are reliable. The collection and evaluation of statistics on incidence of violence to employees should be overseen by the Health and Safety Committee or other appropriate bodies. Such statistics should be used to inform both procedures and the risk assessment process.

3.6.2 In the School sector local monitoring should be in the context of public accountability through education and children's services

committees. Local monitoring procedures should not be used to publish local league tables of schools' Violent Incident figures.

- 3.6.3 The EIS supports annual discussions within Health and Safety Committees to consider how risks can be reduced and within LNCTs to discuss councils' discipline procedures, including exclusion policies and alternative provision. In colleges, such discussion should take place within Joint Consultative Committees.
- 3.6.4 Violent Incident reporting forms should be brief, contain essential information and should not discourage reporting by being over complex. The form produced by the 2005 AGM is appended to this paper (Appendix B).

4. STATEMENT REGARDING THE UNACCEPTABILITY OF ANY AGGRESSIVE BEHAVIOUR

4.1. Background

- 4.1.1 The EIS has surveyed all Scottish Councils and Scotland's Colleges on whether they had statements regarding the unacceptability of any aggressive behaviour shown toward staff and whether statements are clearly placed in appropriate areas in schools/colleges.
- 4.1.2 All those who responded intimated that as employers they were committed to eradicating aggressive behaviour.
- 4.1.3 Examples of posters, intranet statements and handbooks were provided by a number of respondees. In one council area, staff are issued with cards identifying steps to take in defusing difficult situations.
- 4.1.4 Some respondees advised that they were in discussion with EIS LA Secretaries or Branch Secretaries considering suitable posters.
- 4.1.5 A number of respondees indicated that currently posters were not publicly displayed. In this regard two responses are noteworthy. One College Principal responded:

"For our part, and to the best of my knowledge, we have not experienced such problems in XXX College.....In such circumstances, I would be very loath to display any posters that would give the wholly wrong impression that we do have such a problem."

In school sector one Depute Director stated that posters are circulated to heads of establishments who may display them if it is considered necessary. He added:

“However the posters are not routinely displayed in schools since we are keen to avoid the perception that aggressive behaviour is in some way common place.”

4.2. Actions

- 4.2.1 The EIS acknowledges the level of responses and the provision of posters, statements and handbook inserts which emphasise the seriousness of violence or threats of violence. In many cases these statements stress that action, including police involvement will follow.
- 4.2.2 However, not all establishments routinely display posters regarding the unacceptability of violent behaviour. This should be pursued by Local Association Secretaries and Branch Secretaries with a view to posters being routinely displayed in prominent positions in schools and colleges.

5. PHYSICAL RESTRAINT TECHNIQUES

5.1 Background

- 5.1.1 The integration of more children with complex behavioural needs in mainstream schools has created a context in which many councils are producing policies on physical restraint. Regrettably all teachers face more challenging behaviour and may have to intervene to prevent or to stop physical violence, as a last resort.
- 5.1.2 Scottish Office Circular 5/97 defines Violence as “Any incident in which any employee of a school is seriously abused, is threatened or is assaulted by a pupil, parent, member of the public or any other persons in circumstances arising out of the course of his/her employer.”
- 5.1.3 The EIS challenges the assumption that teachers should be expected to tolerate or deal with violent behaviour from pupils in Scottish schools and challenges the assumption that the solution lies in physical restraint techniques. On the contrary the EIS demands schools free from violent behaviour where teachers can concentrate on the job of teaching.
- 5.1.4 It should be understood that it is not possible to give unambiguous advice on physical restraint. Any act of restraint brings the possibility of legal challenge to teachers and judgement made through a legal process rather than through a local authority’s policies.

5.2. The Legal Background

- 5.2.1 Section 48A(3) of the Education (Scotland) Act of 1980, as amended by the 1986 Act (which abolished corporal punishment in Scottish schools) states:

“A person is not to be taken for the purposes of this section as giving corporal punishment by virtue of anything done for reasons which include averting an immediate danger of personal injury to, or an immediate danger to the property of, any person (including the pupil concerned).”

- 5.2.2 The Education Scotland Act of 1995 also stated that schools do not have the general authority of Section 5 of the Act to do what is reasonable to safeguard the child’s health, discipline and welfare. They must have this authority delegated by parents. The 1995 Act strengthens the rights of parents or guardians to challenge teachers who deploy restraint.
- 5.2.3 The sections above may allow teachers to restrain children but only in the context of a general duty of care. Members are reminded that any physical restraint brings a risk of criminal investigation and prosecution. The application of “reasonable force” is open to a variety of interpretations and teachers may be subject to challenge through legal process, an employer’s disciplinary procedures and GTC(S) disciplinary investigation.
- 5.2.4 The Health and Safety at Work etc Act 1974 requires Local Authorities to ensure, so far as is reasonably practicable, the health and safety of all their employees. The Management of Health and Safety at Work Regulations 1999 requires employers to complete suitable and sufficient risk assessments. The risks to teachers’ safety from assaults, violent and other unacceptable behaviours and from, where implemented, the use of physical restraint techniques should be assessed.

5.3 Guidance from Employers

- 5.3.1 The motion approved by Executive Council requires advice for individual members. However, the context in which members operate will be dependent on the policies of respective employers. Therefore, local association secretaries, branch secretaries in colleges and representatives in private schools, particularly EBD or CLD establishments, should be consulted on policies on physical restraint or physical intervention which may include guidance on physical restraint.
- 5.3.2 In any consultation the following principles should be underpinning the EIS negotiating approach:
- a recognition that teachers cannot be required to be trained in physical restraint techniques but techniques to reduce threatening behaviour may be introduced in certain establishments.
 - EBD and CLD schools are the appropriate establishments for pupils whose behaviour is likely to lead to threatening behaviour

- a recognition that all staff may have to respond to emergency situations
- recording procedures when any physical restraint is deployed.

5.4 Advice to Members

- 5.4.1 Physical restraint techniques and training are more directly relevant to the duties of care workers and certain special needs auxiliaries than to teachers.
- 5.4.2 The Institute believes that employers should carry out risk assessments to identify potentially violent situations and appropriate strategies to prevent violent incidents occurring, thus minimising the need for staff to employ physical restraint techniques.
- 5.4.3 The Institute believes that where young children exhibit violent behaviour or pose a threat of violence, identified through a risk assessment procedure, the most appropriate placement is an EBD school or unit.
- 5.4.4 There can be no requirement for Institute members to be trained in physical restraint techniques and the Institute will provide full support to any member pressured by an employer to be trained in physical restraint techniques. Such training should be voluntary and is most relevant for members deployed in EBD schools and units. However, the Institute accepts that members can be involved in training to minimise the risk of violence and to deal with issues of immediate danger e.g. training in de-escalation techniques.
- 5.4.5 The Institute recognises that where there is an immediate danger to other persons or the possibility of physical assault upon themselves members may intervene physically. Should any member physically intervene in these circumstances they must be aware that any physical contact brings the risk of disciplinary action from the employer or criminal investigation and prosecution.
- 5.4.6 Intervention should be the last resort and other than in exceptional circumstance should only be considered following other measures to defuse the situation, following, wherever possible, the summoning of assistance and, wherever possible, following a clear warning.
- 5.4.7 Any action should be the minimum required in the circumstances to prevent a young person harming herself/himself, others or the member.

5.4.8 Where physical contact has occurred the member should report the incident to the head of establishment and branch representatives who shall, when necessary, contact the local association secretary.

5.5 Advice to Members in Emotional Behaviour Difficulty and Complex Learning Difficulty Schools and Units

5.5.1 The EIS cannot provide advice on the relative merits of various restraint techniques. This is a matter for the employer. However, the views of teachers should be considered and any approved written policy should be subject to annual review. Where there are a number of EBD/CLD schools or units across an authority advice should be sought from LA secretaries and the policy should be agreed by the LNCT.

5.5.2 Policy should at a minimum set out and emphasise de-escalation techniques, define the circumstances in which restraint may become necessary and define, as far as is practicable, the issue of "reasonable force".

5.5.3 Policy should also provide for recording and reporting mechanisms.

5.5.4 Where members in EBD and CLD schools and units have agreed to undertake physical restraint appropriate initial and refresher training, on an annual basis, should be provided by the employer.

APPENDIX A

(from 2008 AGM Paper, Work Related Violent Incidents)

4. Advice to Local Associations and College Branches

- 4.1. In the first instance, local associations and college branches should seek to review agreements covering the support available to teaching staff following an incident of violence and, where necessary, secure improvements as outlined below.
- 4.2. Minimum acceptable standards for the provision of support for teaching staff returning to work who have been subject to a violent incident include the following.
 - (a) confirmation that any absence from work as a consequence of an incidence of violence will be treated as special leave with full pay;
 - (b) the availability of a phased return to work, on an agreed part-time basis, in the first instance;
 - (c) the possibility of restrictions or alterations to the normal range of duties in the initial return to work period;
 - (d) the possibility of a return to work (either permanently or temporarily) to a different location or workplace;
 - (e) access to an independent, professional counselling service provided either locally or nationally;
 - (f) self-referral to the council's normal Occupational Health Service provider;
 - (g) the provision of additional direct support from another individual during working hours (including appropriate debriefing);
 - (h) a return to work interview with an appropriate manager to consider/agree the support mechanisms required;
 - (i) the availability of suitable refresher training or appropriate CPD programmes;
 - (j) the introduction of an agreed "settling-in period followed by a further review/agreement in relation to other support measures;
 - (k) consideration to be given to avoidance of future contact between the victim and perpetrator;
 - (l) a key member of staff should be allocated responsibility for staff welfare and support in this regard (including appropriate debriefing);

- (m) agreement on a "formal plan" to deliver the necessary support needs of staff returning to work following an incidence of violence.

APPENDIX B

This form should be used to report all incidents of violence to staff. Incidents of both verbal and physical assaults and threats of violence should be reported. This form should be completed by the person subject to the incident in conjunction with his/her headteacher/line manager.

Please fill in the blanks (a continuation sheet may be used if required) and tick the appropriate boxes:

School: _____

Date of incident: _____ **Time:** _____ **Place:** _____

Person assaulted:

Name: _____ Position: _____ Gender: _____

Details of perpetrator (if known):

Name: _____ Age: _____ Stage: _____ Gender: _____

Details of any Additional Support Needs: _____

Status: Pupil Past pupil Parent
Other

Previous similar incidents involving the above perpetrator: _____

Details of Incident:

Type of incident: Verbal abuse Physical assault

Other factors: Sexual harassment Religious beliefs Sexual orientation

Racial harassment Disability

Please provide a brief description of what happened: _____

Please detail injury/damage/effects: _____

Number of days off work due to incident: _____

Post Incident Action: e.g., police involvement risk assessment disciplinary action RIDDOR form completed

Accident Book

Further action required: _____

Any further comments: _____

Please sign below:

Headteacher/Line Manager: Signed _____ Date _____

Position _____

Person subject to incident: Signed _____ Date _____

GUIDANCE ON RISK ASSESSMENT OF VIOLENT AND ABUSIVE BEHAVIOURS

Background

1.1 The AGM in June 2008 passed the following motion:

“This AGM instructs Council to produce guidelines for Local Associations on the use of risk assessment in relation to pupils exhibiting violent or abusive behaviours.”

1.2 Information on the legal requirements for risk assessment and EIS guidance on the risk assessment process is provided in the EIS Health and Safety Handbook which is issued to all EIS Safety Representatives and is available on the EIS website. The guidance in this paper is set in the context of this general guidance.

1.3 This motion relates to risk assessment within schools. FELA has produced guidance for colleges and universities on dealing with violence and aggression. However, the FELA guidance does not contain detailed advice on risk assessment and, therefore, it should be supplemented by the advice contained in this paper.

Risk Assessment

2.1 The Health and Safety Executive (HSE) provides a general definition of what a risk assessment is:

“A risk assessment is simply a careful examination of what, in your work, could cause harm to people, so that you can weigh up whether you have taken enough precautions or should do more to prevent harm.”

2.2 A risk assessment can also look at a specific hazard or risk in a particular situation. Within schools the risk from violence and abusive behaviours is a significant problem and it is important that such risks are properly assessed. It may not be possible or appropriate to exclude a pupil at the first sign of violent or abusive behaviours, therefore, it is essential that the extent of the risk is properly assessed and suitable control measures, precautions, procedures and training are provided.

2.3 The risk is assessed by consideration of the likelihood that the potential harm will occur and the severity of the possible consequences. The success of a risk assessment is judged on whether or not the risks, following assessment and implementation of measures for prevention, are adequately controlled. To undertake this requirement it is important that the process of risk assessment is rigorous and that staff are consulted at all stages.

Compliance with Legal Requirements

- 3.1 Under the Health and Safety at Work etc Act 1974 an employer has a duty to ensure the health, safety and welfare of his/her employees. The specific requirements for risk assessment arise from the Management of Health and Safety at Work Regulations 1999. Unfortunately, there has been a lack of risk assessment with respect to risks from violence and abuse and this is often due to employers claiming a lack of a suitable model for conducting an assessment. The process outlined in this guidance and the pro-forma provided in Appendix 1, along with the example risk assessment in Appendix 2, provides advice which should assist in overcoming barriers to fulfilment of this legal requirement.
- 3.2 Where an employer has 5 or more employees the risk assessment must be recorded. The risk assessment formats used for general risks, which may also include the risk of violence from the public or parents, is not always suitable when assessing violent or abusive behaviours from specific children or young people. Appendix 1 provides a practical means of recording the risk assessment.
- 3.3 Where an employee's circumstances change the employer should reconsider the risk assessment, in particular where an employee becomes pregnant, develops a disability or returns to work from major surgery. This is of particular importance if the teacher is dealing with situations where she/he is at risk from violent and abusive behaviours. Once an employer has been informed by the employee that she is pregnant it is a legal requirement that a specific risk assessment is carried out and that this assessment should consider the risks to the unborn child. The risk assessment should consider all risks including risks from violent and abusive behaviours.
- 3.4 The Safety Representatives and Safety Committees Regulations 1977 require employers to consult with trade union safety representatives on matters concerning the health or safety of their members. This requirement includes consultation on the risk assessment process and the outcomes of risk assessments. Safety representatives are entitled to access to risk assessment documents. This applies to risk assessments dealing with violent and abusive behaviours.

The Risk Assessment Process

- 4.1 There are 5 Steps to risk assessment as outlined in the HSE guidance. These steps apply equally to specific risk assessments on violence and abusive behaviours.
- 4.2 Step 1 is the identification of hazards. Violent and abusive behaviours which may cause injury are hazards. Such hazards can be identified by incident reports where violent or abusive

behaviours have been reported and where there has been no injury or following a violent incident where injury has occurred. It is important to be pro-active with identifying this kind of hazard and if a teacher identifies violent and abusive behaviours she/he can request that a risk assessment is carried out. Following an incident a risk assessment should be carried out before the pupil is returned to class.

- 4.3 Step 2 requires identification of who might be harmed and how this may happen. In schools the employer must consider employees, pupils and employees of other employers, for example, catering or janitorial staff not directly employed by the council. In this type of risk assessment it will also be important to identify the causes of and triggers for behaviours.
- 4.4 Step 3 evaluates the risks and decides on the precautions required. This is about looking at what is already in place and attempting to reduce risks to an acceptable level. What is required to be done in the case of violent and abusive behaviours is not prescribed in regulations and is neither set out in an Approved Code of Practice nor provided in HSE Guidance. There is general guidance on managing violence within the education sector but this does not provide advice on what to do in specific circumstances and with specific violent or abusive behaviours.

The employer must ensure that he/she has done all that is 'reasonably practicable' to reduce the risks. The term 'reasonably practicable' is used frequently in health and safety legislation and means that there must be an evaluation of the level of risk and the resources required to take additional measures to reduce the risk further. It does not mean that an employer can make a decision not to take additional precautions or preventative steps based only on financial cost.

In the case of risks from violent and abusive behaviours there may also be pressure to avoid exclusion and this can influence the decisions and judgements made in the risk assessment. Risk assessment in this area is far from being scientific and it is important that the process involves consultation with the staff who come into contact with the pupil to fully understand their views, observations and perceptions of the level of risk.

- 4.5 Step 4 requires the findings to be recorded (for employers with 5 or more employees) and, most importantly, implemented. Good practice is for implementation to be allocated to individuals/departments and realistic time scales set. Such timescales will be dependent on the level or risk. There may be measures that need to be put in place before the pupil can return to school.
- 4.6 Step 5 is the review of the risk assessment. With this type of risk assessment it will be essential to review any measures taken to reduce risk at an early stage, to assess the impact of the additional

measures and to assess whether or not the risk is being adequately controlled. Following a review a decision should be made on a future review date. If there is a further violent incident the risk assessment should be reviewed. Where there is a behavioural risk assessment for a pupil and that pupil moves school the existing risk assessment must be reviewed in the light of the new circumstances.

- 4.7 Risk assessments should be carried out by a 'competent person', who is trained in the risk assessment process and has sufficient experience of the work and knowledge of health and safety requirements. With a risk assessment that is assessing the risks presented by behaviours it would be good practice to have an assessment led by a competent person and also involving experts and practitioners. This is a difficult risk assessment process and a multidisciplinary and consultative approach will assist in producing effective, appropriate and acceptable outcomes. The EIS recommends a team approach to risk assessment with trained assessors leading the process.
- 4.8 EIS Safety Representatives should be consulted on all such risk assessments and be involved in the process as the outcomes of the assessment will have a direct effect on the safety of members. Risk assessments should be available to all staff at risk and such staff should be informed of both the risks and the specific control measures required to reduce the risks.

EIS Pro-forma

- 5.1 The pro-forma provided in Appendix 1 may be used or developed by councils. It is an example of how this specific type of risk assessment can be undertaken and recorded.
- 5.2 Appendix 2 provides an example of a completed risk assessment. It does not represent a 'model answer' as each risk assessment will be specific to the pupil, environment and situation. This type of risk assessment requires informed judgement by assessors and it is essential that all staff involved are consulted during the assessment process.

Additional Advice

- 6.1 It is the EIS view that if a teacher has been injured as a result of a violent incident she/he should be given the option not to go back to teaching the pupil responsible, even if the risk assessment process identifies that the risk from that pupil can be controlled.
- 6.2 The EIS Safety Representative is entitled to access to all risk assessments and this can be useful if there is doubt over the precautions and procedures that have been put in place.
- 6.3 If an EIS Safety Representative/member believes that the risk assessment is neither suitable nor sufficient, due to the risks remaining high or there being other measures which could be taken

to reduce risks to an acceptable level, this should be reported to the employer, via line management/headteacher. In this situation a review of the risk assessment should be carried out.

- 6.4 All incidents of violence or abuse where there has been an injury, whether physical or psychological, should be reported to the police. If the school or council have not or will not report the incident the Local Association Secretary should advise the injured member to do so. If a report is not made to the police the member may be denied compensation if a claim is made to the Criminal Injuries Compensation Authority.
- 6.5 The responsibilities and requirements for risk assessments should be set out in a policy on violence and every council should have such a policy.

Action

- 7.1 This advice should be added to the EIS Health and Safety Handbook and be available on the EIS website.
- 7.2 Local Associations should seek to have the requirement to conduct specific risk assessments in respect of violent and abusive behaviours included in their council's policy on violence. Some councils already use specific risk assessments to assess risks from 'Challenging Behaviour', including violent and abusive behaviours. If this is sufficient to deal with the risks a separate system of risk assessment does not need to be established.
- 7.3 The EIS pro-forma and guidance may be used and adapted by any council which has not yet developed a system for assessing the risks from violent and abusive behaviours.

Appendix 1

Risk assessment pro-forma for assessing and managing risks of violent and abusive behaviours:

Name of pupil

School/Class

Assessment completed by

Date

RISK ASSESSMENT AND MANAGEMENT PROCEDURE	
Identify violent behaviour, e.g. kicking, biting, punching, running into, hair pulling, throwing objects, spitting, etc.	
What factors contributed to this behaviour? E.g. situation, triggers or any special conditions	
Who is likely to be harmed?	
What kinds of harm/injuries are likely to occur?	
Evidence of previous violent behaviours, incidents or actions	

Measures already in place			
Measures required to reduce risk			
<p>Estimate the level of risk, consider combination of likelihood and potential for harm – choose from the 3 adjacent options.</p> <p>Risk estimate: Risk is ????</p>	<p>High – likely and potential for serious or major injury, e.g. fractures or multiple injuries</p>	<p>Medium – likely and potential for minor injury, e.g. scratch or bruise</p>	<p>Low – possible but unlikely or infrequent and potential for minor injury</p>
Measures to be actioned by:	Timescale for implementation:	Will level of risk be acceptable if measures are implemented?	

Date for Review:

Appendix 2

Risk assessment pro-forma for assessing and managing risks of violent and abusive behaviours:

Name of pupil: Pupil Y

School/Class: Hayfield Primary/P4

Assessment completed by: Assessment Team

Date: 4 March 2010

RISK ASSESSMENT AND MANAGEMENT PROCEDURE	
Identify violent behaviour, e.g. kicking, biting, punching, running into, hair pulling, throwing objects, spitting, etc.	Chair throwing, hitting and kicking furniture
What factors contributed to this behaviour? E.g. situation, triggers or any special conditions	Last incident followed his causing disruption with other pupil, shouting at him, and when asked to move seats he started throwing the chair and kicking desk. Incidents becoming more frequent and more uncontrolled.
Who is likely to be harmed?	Staff and pupils
What kinds of harm/injuries are likely to occur?	Fractures, head injuries, bruising and soft tissue injuries

Evidence of previous violent behaviours, incidents or actions	4th incident in 3 weeks, also numerous incidents of threatening and abusive language to other pupils.		
Measures already in place:	Temporary exclusion Meeting with carer re behaviour management		
Measures required to reduce risk:	Referral to Educational Psychologist (EP) Support-worker to be provided during lesson time Training for staff in de-escalation techniques Emergency procedure to be put in place. Restraint procedure to be agreed and non-restraint alternative to be determined ¹ . Information on procedure to be provided to all relevant staff.		
Estimate the level of risk, consider combination of likelihood and potential for harm – choose from the 3 adjacent options. Risk estimate: Risk is High	High – likely and potential for serious or major injury, e.g. fractures or multiple injuries	Medium – likely and potential for minor injury, e.g. scratch or bruise	Low – possible but unlikely or infrequent and potential for minor injury
Measures to be actioned by:	Timescale for implementation:	Will level of risk be acceptable if measures are implemented?	
Education Officer (EO) to request EP referral and to feedback timescale to school EO to put forward request for additional resources for full-time support worker EO to arrange training of all staff involved with Pupil Y Head Teacher to consult with staff and develop emergency procedure – taking advice from council specialists	ASAP ASAP Within 1 month Before return from exclusion	Review of risk assessment to establish effect should be carried out within 2 weeks of all provisions being met. Appropriate emergency procedure should reduce risk to Medium but risk should be reduced further	

Date for Review: At latest 5 May 2010

Footnote: ¹EIS policy is that there can be no requirement for teachers to be trained in physical restraint techniques and the EIS will provide full support to any member pressured by an employer to be trained in physical restraint techniques. Participation in such training is on a voluntary basis.