

# SOUTHWARK DIOCESAN BOARD OF EDUCATION

## BRIEFING SHEET

**SUBJECT: SCHOOL DISCIPLINE AND PUPIL BEHAVIOUR POLICIES**

**RECIPIENT(S):** Headteachers and Chairs of Governors of C of E Schools

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### **I INTRODUCTION**

**1.1** This is a brief summary of the DfES guidance on school discipline and pupil behaviour policies. The full guidance is available to download on:

<http://www.teachernet.gov.uk/wholeschool/behaviour/schooldisciplinepupilbehaviourpolicies/>.

The on-line document has links to other material which schools may download; this includes an audit tool for primary and secondary schools to enable schools to identify strengths and weaknesses, among many other matters.

**1.2** The guidance replaces earlier guidance provided by the National Strategies on School Behaviour and Attendance Policies published in 2003. It is additional to the revised booklet on exclusion which is due to be published in September and focuses on the relevant provisions on school discipline in the Education and Inspections Act 2006 (EIA 2006) which came into force on 1 April.

### **2 STATUTORY FORCE OF GUIDANCE**

**2.1** Part of the guidance has statutory force, ie, governing bodies must have regard to it; schools are strongly advised to follow those other parts of the guidance which do not have statutory force. In common with the admission code, the DfES uses “must” when something is legally required and “should” when it is good practice.

### **3 GOVERNORS' RESPONSIBILITIES FOR DISCIPLINE UNDER THE EIA 2006**

**3.1** The governing body\* must:

- 1 ensure that a behaviour and discipline policy is in place;
- 2 make and (review from time to time) a written statement of general principles on discipline, including any particular matters they consider the headteacher should include in the behaviour policy;
- 3 take reasonable steps to ensure that disabled pupils are not placed at a disadvantage and reasonable adjustments are made to discipline and behaviour policies;
- 4 consult the headteacher, staff, parents and pupils before making or revising the statement, this should include collecting the views of disabled pupils as to how the discipline and behaviour policies impact on them;
- 5 have regard to the health and welfare of staff in determining their policies;
- 6 have regard to the Secretary of State's guidance.

\* This applies to all maintained schools, but not to academies and city technology colleges (CTCs); however the guidance does indicate that academies and CTCs may find the advice in the guidance on developing the policy helpful.

**3.2** The principles in the discipline statement should:

- (a) be based on the school's values;
- (b) reflect a commitment to improving outcomes for pupils, ie, improved learning through improved behaviour;
- (c) seek to eliminate discrimination, harassment and bullying;
- (d) promote good relations and the welfare of all pupils;
- (e) encourage a healthy balance between rewards and sanctions;
- (f) represent widespread agreement about standards of behaviour among pupils, staff and parents;
- (g) be capable of being explained to pupils of any age or ability.

**3.3** Governors should take full account of the headteacher's views as to the effectiveness of any measure they wish to include in the behaviour policy before deciding whether to include it.

## **4 CONSULTATION**

**4.1** The duty to consult is widened to include all pupils, including those with disabilities; this can be done in a variety of ways, such as through suggestion boxes, school council, class discussion etc. Disabled pupils must have a full opportunity to express their views. Consultation with staff should include those who can represent the views of unions which are represented in the school. Schools should consider the most effective way to engage parents. This may be by letter, an item in the school newsletter, or through meetings/informal discussion, or through the PTA. Governors should also consider taking into account the views of local partners working with the school, eg, police, youth offending teams, Local Authority. Any feedback from the consultation should be considered by the full governing body and appropriately recorded.

## **5 SCHOOL PARTNERSHIPS**

**5.1** By September 2007 all secondary schools are expected to be in partnerships designed to improve behaviour and tackle persistent absence. Many primary schools will also be involved. Those in the partnership should understand and respect each others' behaviour policies. It is suggested that some degree of harmonisation might be helpful in agreeing overall principles.

## **6 DEVELOPING THE BEHAVIOUR POLICY**

### **Headteachers' responsibilities for the behaviour policy under the EIA 2006**

**6.1** The headteacher must determine measures to be taken with a view to:

- (a) promoting, among pupils, self-discipline and proper regard for authority;
- (b) encouraging good behaviour and respect for others on the part of pupils and, in particular, preventing all forms of bullying among pupils;
- (c) securing that the standard of behaviour of pupils is acceptable;
- (d) securing that pupils complete any tasks reasonably assigned to them in connection with their education; and
- (e) otherwise regulating the conduct of pupils.

**6.2** The headteacher must act in accordance with the governors' discipline statement and the policy must include rules and provision for sanctions and cover all forms of bullying (including that relating to race, religion, culture, homosexuality, sex, special needs, disability and also cyber-bullying). The policy may also include a code of conduct and must be publicised to all staff, parents and pupils annually. The policy may also include any reasonable measures to regulate the conduct of pupils off-site; this will include the journey to and from school, work experience, educational visits and sporting events and any occasion when the pupil is in uniform.

**6.3** The policy should aim to establish a positive school ethos and promote effective teaching and learning. This will be aided by:

- (a) clearly stated expectations of acceptable behaviour;
- (b) effective behaviour management strategies;
- (c) processes which recognise, teach, reward and celebrate positive behaviour;
- (d) processes, rules and sanctions to deal with poor conduct.

### **The role of staff**

**6.4** Headteachers may decide that certain members of staff have the power to impose certain sanctions; such powers may also be extended to other adults with lawful control or charge of pupils. It is important that all staff have ownership of the policy and all are clear about the level of sanction that they may apply both on and off-site. Staff should be clear about the expectations of the policy and the headteacher should ensure that they have access to appropriate training in managing behaviour.

**6.5** Staff must act reasonably and will need to take account of the age of the pupil and any special educational needs or disability. Effective systems should be in place to ensure that staff refer individual pupils to pastoral staff, SENCO, learning mentor etc, as appropriate, especially in large schools where staff cannot be expected to be aware of all individual needs.

## **7 COMMUNICATING THE BEHAVIOUR POLICY**

**7.1** The headteacher has a legal duty to publicise the written policy to all pupils, parents and staff at least once a year. Headteachers should ensure that new parents, pupils and staff are also apprised of the policy if they were not at school to receive the annual notification. Supply teachers should also receive an induction pack which includes the behaviour policy. The policy should be in the staff handbook and easily accessible for pupils, eg in the library, on the school website, school prospectus. The policy should also be made available in a range of accessible formats and languages to reflect the needs of the school, community. The different strategies for communicating the policy should be monitored and evaluated.

**7.2** Letters inviting parents to apply for school trips should make clear that the policy will apply to school trips and that sanctions may be used for poor behaviour.

**7.3** Schools in local partnerships, federations or education improvement partnerships should share behaviour policies with each other.

## **8 NEW LEGAL POWER TO DISCIPLINE ON AND OFF SCHOOL PREMISES**

**8.1** Prior to the introduction of the new legislation under the EIA 2006, a school's legal authority to discipline pupils has been based on the common law principle of the teacher being *in loco parentis*. The new power provides teachers and other paid staff who are in lawful control of pupils with a clear statutory authority for punishing pupils whose behaviour is unacceptable, who break the school rules, or fail to follow a reasonable instruction. Schools will need to make it clear in their policies which members of staff have power to discipline and impose certain reasonable penalties. The headteacher may extend this power to other adults who have lawful control of pupils such as volunteers. It is advisable, for the sake of clarity, that powers given to staff are clearly written down, so that all pupils, parents, staff and other adults in the school are aware of the powers both on and off the school premises. Any disciplinary penalty must be reasonable and should take account of the pupil's age, special educational needs or disability.

**NB: The power to exclude pupils remains solely with the headteacher.**

**8.2** The EIA 2006 clarifies the powers of schools to regulate the conduct of its pupils off school premises. This includes behaviour on school trips, at sporting events, work experience placements and behaviour on the way to and from school and when wearing school uniform in a public place. Schools must act reasonably both in relation to its expectations and sanctions. The following may be taken into account when determining any disciplinary sanction:

- (a) severity of misbehaviour
- (b) extent to which school's reputation is affected;
- (c) whether pupil was easily identifiable as a member of the school (ie, in uniform)
- (d) extent to which behaviour might impact on orderly running of the school, or might pose a threat to pupils or staff, eg abuse or harassment through the internet, text messaging etc;
- (e) whether misbehaviour was on the way to or from school, outside the gates or in close proximity to the school;
- (f) whether the pupil was otherwise acting as an ambassador for the school, eg, work placement, sporting event etc.

**8.3** Schools should work with transport providers, retailers and police and other local groups as appropriate to ensure that expectations of pupil behaviour are clear. There should be clear procedures for reporting misbehaviour out of school and parents and pupils should be clear about the standards expected. Staff should not be subjected to intimidation or abuse and should use their professional judgement about action to take when confronted with such behaviour in a public place. Safety of the individual must be paramount, but the pupils should be made aware that they have been recognised; the school will apply appropriate sanctions when the pupil is next in school. Liaison should take place with neighbourhood police or youth offending teams where appropriate.

## **9 REWARDS AND SANCTIONS**

### **Rewards**

**9.1** Schools should aim to strike the right balance between rewards and behaviour. Positive behaviour should be rewarded. Rewards might include:

- (a) letters to parents;
- (b) certificates recognising positive contributions to the school community;
- (c) celebration assemblies;
- (d) special privileges;
- (e) prizes, gold stars etc
- (f) individual, class or year group awards.

**9.2** Care should be taken to reward those whose behaviour improves, not just those who exhibit good behaviour. An audit of rewards and behaviour should reveal any trends in relation to age, ethnicity, gender, SEN, disability etc and enable schools to take action to avoid bias.

### **Sanctions**

**9.3** The EIA 2006 confirms the right of schools to impose disciplinary sanctions on pupils whose conduct falls below the standard that could reasonably be expected of them. Sanctions must be reasonable and proportionate taking account of age, SEN, disability and any religious requirements affecting the pupil.

**9.4** Schools should ensure that all staff are aware of policy and that a clear referral system is in place. Sanctions must be applied consistently and are more likely to promote positive behaviour if pupils see them as fair.

**9.5** Schools should monitor the use of sanctions by age, ethnicity, gender, SEN and disability to ensure that particular groups of pupils are not disproportionately affected. (Such information is required as part of a school's disability, equality, race equality and gender equality schemes.) Failure to monitor in this way may leave schools open to legal challenge.

## **10 DETENTION**

**10.1** Under the EIA 2006 schools have greater flexibility to impose detentions without parental consent. Schools must inform parents and pupils that detention is used as a sanction and must give parents 24 hours notice of detentions which fall outside school sessions. Schools may determine who has the power to impose detentions.

For pupils under 18, schools may:

- (i) give lunchtime detentions without the requirement for 24 hours notice;
- (ii) give detentions on evenings, weekends or certain INSET days\*.

**10.2** Weekend detentions exclude Saturdays and Sundays which fall during or immediately before or after half-term. Detentions on INSET days exclude those occurring on public holidays, those before the 1<sup>st</sup> day of term or during half term; those occurring after the last school day of term are generally excluded except where they fall on a weekday following the day a school breaks up for half term or end of term. Schools should be mindful of the possibility of allegations of misconduct where only one member of staff is supervising pupils in detention.

**\*NB:** The 24 hours notice requirement is from the time the notice is received by a parent. Communication may be by email or text if parents have indicated that this is acceptable for this type of communication. It is helpful, but not a requirement if parents acknowledge receipt of the notice, eg, by return email, text or by countersignature. Schools should keep records of any communication, including telephone calls in case of challenge.

**10.3** In deciding the reasonableness of detentions schools should take account of the following:

- (i) transport to and from school, especially at weekends;
- (ii) any out of school responsibilities, eg, if pupil is primary carer, or a looked after child;
- (iii) family holidays, events, eg, family wedding, sporting or cultural events;
- (iv) nutrition (pupils should not miss the opportunity to eat at lunchtime);
- (v) medical/religious circumstances, eg, requirement to take medication at specific time, religious observance;

- (vi) length of detention will depend on seriousness of misbehaviour, possibly the achievement of a specific outcome, and should be proportionate.

**10.4** If pupils walk out of a detention they should be made aware of the consequences, but force should not be used to prevent a walkout unless there are risks to a pupil's safety, or that of others, or if walkout could lead to behaviour that prejudiced good order and discipline, eg, disrupting other classes.

## **II CONFISCATION**

**11.1** The EIA 2006 provides an overall power to enforce disciplinary penalties and provides a specific statutory defence for members of staff if he/she proves that the seizure, retention or disposal was lawful. Unauthorised seizure etc would be an infringement of a pupil's human rights. For a confiscation to be lawful it must be proportionate, necessary in a democratic society and in pursuance of a legitimate aim; for schools this aim is maintaining an environment conducive to learning and which safeguards the right of other pupils to be educated. Proportionality is key and will depend on the value of the property. Destroying a personal stereo because the pupil was playing music loudly would not be proportionate and therefore would be unlawful, but confiscation until the end of the school day would be proportionate. Disposal of a paper ball or chewing gum is likely to be a proportionate response.

**11.2** The ability to search pupils is regulated under the Violent Crime Reduction Act 2006 and relates solely to the search for suspected weapons; it cannot be used to search for other items. Pupils may reasonably be asked to turn out their pockets if, for instance, a personal stereo is causing disruption. If drugs or stolen property are suspected the school should leave any search to the police.

**11.3** Circumstances in which confiscation might legitimately be used:

- (i) item poses threat to others;
- (ii) item poses threat to good order for learning;
- (iii) item is against uniform rules;
- (iv) item poses health and safety risk;
- (v) item is counter to the school's ethos;
- (vi) item is illegal for a child to have.

**11.4** Schools should take care when deciding to confiscate clothing or jewellery and should have regard to the religious or cultural significance of the item to the pupil. Staff should avoid physical contact or interference which might give rise to child abuse allegations.

**11.5 Records:** Schools should keep records of confiscated items and the grounds for action so that confiscation can be justified later if challenged. Schools may consider writing a note in a pupil planner to inform parents that an item has been confiscated. Safe storage of items, especially those of monetary or emotional value, should be assured.

**11.6 Mobile phones:** Schools should have a clear policy on the use and possession of mobile phones, taking account of the following:

- (i) safety of pupils on journey to and from school;
- (ii) exam board rules about use of such technology in exam settings, including supervised coursework;
- (iii) the unacceptability of cyber-bullying, "happy slapping", abusive text messages;
- (iv) circumstances in which parents should be informed about confiscation of such items.

**11.7** Length of confiscation period: In most cases items should be returned at the end of a lesson, school session or school day. There may be instances when the school chooses not to return an item:

- (i) items of no value, eg, inappropriate message scrawled on paper. Schools should, however, bear in mind that some items which are seemingly of no value may be of emotional value to the child: this should be established before disposal;
- (ii) items of value or which are inappropriate for the child to have in school, eg a cigarette lighter, which the pupil should not have brought to school may be retained until a responsible adult can collect the item;

- (iii) items of a hazardous nature; this should be followed by a letter to parents explaining why the item was disposed of.

## **12 TAKING ACCOUNT OF INDIVIDUAL PUPIL NEEDS**

**12.1** Schools should take account of the specific circumstances of children and whether their family circumstances, the fact they are looked after children, refugees, or autistic has contributed to their behaviour. The school's response should be appropriate in such cases taking account of the child's needs, rather than rigidly applying the policy.

### **Race, religion and culture**

**12.2** Schools must take care not to contravene equal opportunities legislation and should assess the impact of their policy on pupils, staff and parents of different racial groups through monitoring. Newly arrived pupils should be helped to understand the behaviour policy and staff should be aware of cultural differences, eg, there is a risk of over-disciplining children through a misinterpretation of their behavioural norms.

**12.3** Uniform policy should take account of the cultural/religious needs of particular groups. A compromise may be reached in certain circumstances. Further guidance is available from the DfES on uniform policy.

### **SEN, disability and vulnerable pupils**

**12.4** Schools must make reasonable adjustments in the application of their behaviour policy to disabled pupils and for those with special needs, or who are vulnerable. At-risk pupils should be identified in advance and schools should plan how the disciplinary framework will apply to these pupils.

**12.5** A school is discriminating unlawfully against disabled pupils if:

- (i) it treats a disabled pupil, or prospective pupil, less favourably than another for a reason related to their disability and without justification;
- (ii) it fails, without justification, to take reasonable steps to avoid placing disabled pupils at a substantial disadvantage ("reasonable adjustments duty").

**12.6** In practice the following could mean discriminating against disabled pupils:

- (i) policies that provide for an automatic fixed penalty for a particular offence (while consistency is important this type of rigid policy fails to make reasonable adjustments);
- (ii) failure to communicate to all staff the particular reasonable adjustments that need to be made for individuals.

**12.7** Examples include:

- (i) banning a pupil with Tourette's syndrome from a school trip because he/she had sworn at a teacher would be unlawful because the behaviour relates to the disability;
- (ii) banning pupils, including a pupil with a hearing impairment, from a school trip because they had been rowdy and disruptive to local shopkeepers, would not be unlawful because the behaviour is not linked to the pupil's disability;
- (iii) an autistic child who goes in front of others in the dinner queue and, is told by a teacher not to barge in, becomes anxious but does not move. The teacher insists and the child becomes more agitated and hits the teacher. He is temporarily excluded but because of the child's disability is deemed to have been treated less favourably than others. While attacks on staff are very serious, autistic pupils have difficulty managing social situations; he does not understand the purpose of a queue or the figurative term "barge in". The issue would be whether the school could have prevented the situation from developing by providing staff training in understanding autism and providing training for the pupil in handling such situations.

### **Reasons for inappropriate behaviour**

**12.8** Inappropriate behaviour in pupils with SEN or disabilities may be for a number of reasons, eg:

- (i) pupils may not have the cognitive, physical or social and emotional ability to understand and follow a rule;
- (ii) pupils may not have been taught to regulate their behaviour in social situations, work co-operatively with others and may only be able to resolve conflict through violence;

- (iii) vulnerable pupils may seek attention and the increase in popularity in their view outweighs the sanctions that follow;
- (iv) pupils may be under stress and temporarily unable to make rational choices, eg a child may have been abused, experienced bereavement or divorce.

### **Practical steps**

**12.9** School leaders can take a number of steps to ensure that the behaviour policy takes account of both collective and individual needs:

- (i) involve inclusion co-ordinators or SENCOs in the development and review of policy;
- (ii) ensure the school community understands that there are circumstances in which some pupils may be treated differently;
- (iii) effective communication of the policy with those who have learning difficulties, disabilities or English as an additional language;
- (iv) appropriate professional development for staff;
- (v) identify at-risk pupils in advance;
- (vi) identify barriers to understanding of the school rules and ways of overcoming them;
- (vii) ensure staff have the requisite information about individual pupils;
- (viii) ensure vulnerable pupils have an identified adult who knows them well, had good links with home and can act as a reference point for staff;
- (ix) ensure staff are clear about referral procedures;
- (x) enable vulnerable pupils to take some responsibility for communicating their needs;
- (xi) ensure vulnerable pupils have an agreed means of removing themselves from tense situations or letting an adult know when they are under stress;
- (xii) monitor the use of differentiated plans for individuals;
- (xiii) have systems in place to teach appropriate behaviour as well as respond to misbehaviour.

**NB:** The final section of the guidance is a table listing the rights and the responsibilities of schools, pupils and parents in ensuring an orderly climate for learning.

### **Action by schools:**

- 1 Governing body to determine an appropriate timescale for review of the discipline statement (SDBE model discipline statement to follow in June 07).
- 2 Headteacher to review behaviour policy in light of DfES guidance and the governors' statement.