

**Letter from Chris Wells to Chief Education Officers on the Use of
Positive Handling Strategies, sent 24th April 2001**

Dear Colleague

**POSITIVE HANDLING STRATEGIES FOR PUPILS WITH SEVERE
BEHAVIOURAL DIFFICULTIES**

I am writing to update you on work the Department has carried forward since the consultation on guidance to promote positive handling strategies for pupils with severe behavioural difficulties.

The consultation drew in over 150 thoughtful and thought provoking responses. The key themes to emerge from the consultation were:

- that the key services, such as education and social services, should take a co-ordinated and consistent approach. There was widespread support for the recommendation that LEAs should seek advice on their policies in this area from their Area Child Protection Committee (ACPC);
- that the use of physical force should be seen as but one element of a school's overarching behaviour management policy;
- that incidents requiring the use of physical force should be thoroughly and systematically recorded; and
- that headteachers needed a means to ensure that any training they sanction in the use of physical force is safe, suitable and appropriate.

We have considered the above points, and indeed the broad sweep of the consultation responses, carefully. We will:

- commission, jointly with the Department of Health, the British Institute of Learning Disabilities (BILD) to develop a system to accredit organisations offering training in the use of physical force. As a first step, BILD will shortly produce a voluntary code of practice for all training providers;
- work with the Department of Health to produce joint guidance on the use of physical interventions with children and adults with learning disabilities;
- ask BILD, with the aid of an expert panel, to work up model physical intervention policies for LEAs and schools to draw upon when developing their own - these we will be able to issue in the late spring.

In addition to the above, I attach some guidance taking into account the responses to the promoting positive handling strategies consultation. This is with respect to the development of LEA-wide policies on the use of physical force to control or restrain pupils, new advice on related school based policies and on recording and monitoring incidents. This stands as additional guidance to supplement Circular 10/98 "Section 550a Of The Education Act 1996: The Use Of Force To Control Or Restrain Pupils".

Circular 10/98 provided general guidance on the coverage of Section 550a of the Education Act 1996 and its implications for schools and LEAs. In short, section 550a allows for certain members of staff of a school to use a reasonable degree of force in relation to a pupil for the purposes of preventing him/her doing any of the following:

- committing an offence;
- causing personal injury to, or damage to the property of, any person; or
- engaging in any behaviour prejudicial to the maintenance of good order and discipline at the school or among any of its pupils.

Implicit in Circular 10/98 was a requirement for LEAs to have a formal policy on the use of force. The Department's advice is that LEAs should link such policies to behaviour support plans. Further, such policies need to be comprehensive and cleared with area child protection committees.

The use of physical force by teachers should be rare. Behaviour management policies should be designed to ensure that early and preventive intervention is the norm, so reducing the incidence of extreme behaviour requiring the use of physical force. This said, the Department accepts that there will be times when staff have no option but to use reasonable force. We recommend that teachers and other staff should only use techniques for using physical force on pupils with which they are familiar and confident, and which are consistent with the school/LEA policy on the use of force. We believe that the creation of whole LEA policies, commented upon by ACPCs and supported by accredited training, will ensure greater consistency and safety when using physical intervention with children with severe behavioural difficulties.

Physical intervention can lead to allegations of inappropriate or excessive use of force, and policies should cross reference to the guidance about dealing with allegations in the Department's Circular 10/95 "Protecting Children from Abuse: The Role of the Education Service". As advised in that Circular staff who are the subject of allegations should not be suspended automatically, or without careful consideration of whether that is the appropriate course of action.

Yours sincerely

CHRIS WELLS

Head of Special Educational Needs Division

AGREEING PROCEDURES FOR THE USE OF PHYSICAL FORCE ON PUPILS

1. It is recommended that LEAs have a written policy on the use of physical force to control or restrain, where necessary, pupils in school, and on procedures for monitoring the use of physical force. This will help to ensure that maintained schools' behaviour policies, and those of independent and non-maintained special schools at which places are funded by the LEA, are in line with the general principles described in their Behaviour Support Plan. Circular 10/98: Section 550a Of The Education Act 1996: "The Use Of Force To Control Or Restrain Pupils" recommended that schools should put in place their own formal policies in this regard. A school's policy on the use of physical force on pupils should draw on its LEA's policy.

2. LEAs should consider whether to make model policies available to their schools for each to fine tune to meet its particular circumstances. The Department will commission the British Institute Of Learning Disabilities (BILD), with the aid of an expert panel, to work up model policies on the use of physical force in relation to pupils with special educational needs and/or severe behavioural difficulties which LEAs and schools may wish to draw upon when developing their own. We shall make these available in the late spring.

3. When reviewing their Behaviour Support Plans, LEAs are recommended to incorporate their policy on the use of physical force into the Plan. As a minimum, it is recommended that the two documents should be clearly cross-referenced. LEAs and schools which place pupils who are under 16 and have special educational needs for their education at colleges in the further education sector are recommended to make sure that the colleges are aware of their policy on the use of physical force.

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Agreeing Policies On The Use Of Physical Force On Pupils With Regulatory Bodies

4. Section 550A of the Education Act 1996 and Circular 10/98 sets out the parameters within which school staff are permitted to work. LEAs' policies should fully support staff who need to use reasonable force in the circumstances set out in s550A. Agreeing a policy on how those principles will be applied in practice will help

ensure a consistent approach and prevent misunderstandings between agencies if allegations of physical abuse are made. It is recommended that, when drawing up policies on the use of physical force, LEAs work closely with the local Social Services Department and with those responsible for health and safety policy across the Local Authority.

5. It is, of course, important that the policy on the use of physical force does not recommend procedures that might prevent the Local Authority exercising its duty to safeguard the health and safety of its employees and/or the welfare of the children in its care. The Health And Safety Executive expect Local Authorities to have a corporate policy on managing violence against staff, including for education and social services. It is recommended that the policy on the use of physical force on pupils is considered alongside this and, as appropriate, cross referenced with it.^{1[1]} Policies should be cleared with an LEA's legal advisers before consultation with other local statutory bodies.

6. It is important that LEAs are proactive in ensuring that draft policies on the use of physical force are agreed by the other local statutory bodies. LEAs should also consider carefully which statutory bodies to consult. As a minimum, it is recommended that LEAs agree their policies through the local Area Child Protection Committee (ACPC). The full range of statutory bodies with an interest in child protection are represented on the ACPC, including Education itself, Social Services Departments and the Police. Once a policy is agreed LEAs will need to liaise closely with colleagues from other parts of the Local Authority and statutory bodies to review the effectiveness of the policy. Much can be gained by LEAs working collaboratively on their policies and the Special Educational Needs Regional Collaboration Projects are likely to provide suitable fora for facilitating this process.

7. It is recommended that children looked after by the Local Authority, in respite care, or cared for by others with legal responsibility for them should, wherever possible, be subject to the same policy on the use of physical force in and out of school. Ideally, the policy will be jointly worked up by the LEA and Social Services Department and, where applicable, the relevant National Health Service Trust.

Schools' Policies

^{1[1]} HSE website: <http://www.hse.gov.uk>

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8. It is recommended that schools which have pupils with severe behavioural difficulties should take especial care in preparing the physical force element of their behaviour policies. The use of physical force should be considered within the wider context of other measures - for example, strategies for using diversion, defusing situations, negotiation and establishing and maintaining good relationships. Children with behavioural difficulties sometimes present particularly challenging behaviour that may necessitate the use of reasonable force to prevent injury, or damage to property, or the breakdown of discipline. Wherever possible, this should be anticipated and provided for in the policy. (It might also be helpful to describe situations where it would be inappropriate to use physical force.) As Circular 10/98 notes, head teachers should draw on their LEA's related policy when preparing their school's policy. It may also be useful to look at policies prepared by other schools catering for pupils with similar special educational needs. Complying with a LEA's clear central steer on the use of physical force may make it easier for a school or a member of staff, if challenged, to show that what they did was reasonable and lawful.

Agreeing Policies

9. It is recommended that each maintained school should agree its policy on the use of physical force with its governing body and maintaining LEA. (As the governing body may need to hear disciplinary cases involving members of staff who have used physical force on pupils, it is important that governors are fully aware of the content of the school's policy and understand the context in which staff operate.) Head teachers of non-maintained special schools are also recommended to agree their policy with the governing body.

Schools Taking Pupils From Outside The Home LEA

10. In most cases, it will be impracticable for a school which takes pupils from outside its own Local Authority area to modify its policy on the use of physical force to bring it exactly in line with those of each placing LEA or Social Services Department. Therefore, prior to placing a pupil at the school, it is recommended that the placing authority satisfy itself that it is content for the pupil to be subject to the school's policy. For its part, the school may wish to seek formal confirmation of this point prior to offering a place. If the LEA or co-sponsoring Social Services Department is unable to agree to the general principles of a school's policy, it is recommended that the pupil be placed elsewhere.

11. Where a placing authority is generally supportive of a school's policy, but, at the outset, feels that some adjustments will need to be made to it to accommodate the likely needs of a prospective pupil, it is recommended that these be agreed formally prior to the school offering a place. If the changes involve the use of procedures and techniques for using physical force that are significantly different from those set out in the school's policy and the school nonetheless wishes to offer a place to the pupil, it would be advisable for the school to discuss the proposed agreement with its local Social Services Department. It is recommended that schools inform their LEA and Social Services Department of any significant changes to their policy on the use of physical force and/or the way they operate them.

12. It is often appropriate for outside bodies with a professional interest in a pupil with special educational needs and/or severe behavioural difficulties to be involved in agreeing the procedures which will be followed when using physical interventions on him or her. It is recommended that parents or those with legal responsibility for caring for such pupils should, where practicable, be asked to agree to these also.

Recording Incidents

13. Paragraphs 28-30 of Circular 10/98 offer guidance on recording incidents involving the use of physical force. Paragraphs 30 and 31 describe how these records might be used by investigating authorities when complaints are made and some of the procedures it is advisable to follow. It is important that staff in special schools should follow the procedures outlined carefully.

14. The Circular advises that schools keep detailed, contemporaneous, written reports of all incidents where physical force has been used. (Under its new inspection framework, OFSTED look at all a school's incident reports compiled in the year previous to an inspection.) It is recommended that these should be recorded in an incident book with consecutively numbered pages within 24hrs of the incident but wherever feasible on the day it occurs. Entries in the incident book should be cross-references to any more detailed records kept elsewhere, such as those examining the possible causes of the incident, the after effects, follow-up action and linkages to previous incidents. It is recommended that schools produce, or build into their behaviour policies explicit instructions on:

- procedures staff are expected to follow when completing records and the time scales they should normally work to; and
- guidance on where copies should be lodged (including where the master set

can be found).

15. Schools catering for pupils with severe behavioural difficulties - where there can be appreciable numbers of false allegations against staff - are advised to be especially careful to follow set procedures when recording incidents. A thorough record which shows that the school's procedures were followed diligently might act as a useful aid to staff who are wrongly accused. The corollary is that where no record or an incomplete record is kept of an incident and/or other procedures were not properly followed, the person accused might be vulnerable. The school might also be criticised for poor practice. A pupil's records describing past behaviour will never, by themselves, constitute an admissible defence if a member of staff is charged with assault or a claim for damages is sought. However, it will be a defence to show that a member of staff acted in accordance with S550A of the Education Act 1996, and records of a pupil's behaviour may assist them in making out that defence.

16. The requirements of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 may apply if employees or pupils are injured whilst using techniques in the use of physical force i.e. in the case of death or "major injury" (as defined in the regulations) of a member of staff, or an injury to a pupil requiring hospital treatment. The appropriate enforcing authority (usually the Health and Safety Executive) should be informed if any such incidences are 'reportable'.^{2[2]}

Monitoring Incidents And Reviewing Procedures

17. It is recommended that the LEA's policy on the use of physical force should set out the circumstances in which incidents should be reported to it. In their responses to the consultation, an appreciable number of LEAs made the point that they find it helpful to obtain as much information on their schools' use of physical

^{2[2]} See: HSE leaflets, Reporting Of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR), "Everyone's Guide to RIDDOR '95 (1996) HSE31 - free leaflet or available in priced packs. ISBN 0 7176 1077 2, "Reporting school accidents (1997)" EDIS 1 - free information sheet (available from <http://www.hse.gov.uk/pubns/edis1/htm>)

HSE website: <http://www.hse.gov.uk>

HSE Information Line: 0541 545500 (HSE Information Centre, Broad Lane, Sheffield S3 7HQ) HSE publications: HSE Books, PO Box 1999, Sudbury, Suffolk CO10 6FS. Tel: 01787 81165 Fax: 01787 313 995

force as they can. This enables them to easily identify trend information across the area and see quickly where schools might be experiencing difficulties.

18. It is recommended that the LEA's school link officer or SEN adviser should regularly review a cross section of incident reports from each school catering for children with severe behavioural difficulties. LEAs may wish to agree common practices across all schools for both recording and passing to the LEA records of incidents involving the use of physical force, to aid monitoring of specific or general trends.

19. At school level, it is important to regularly review the records of incidents to ascertain trend information and to assess the impact of training. It is recommended that head teachers should involve the school's governing body in this process and that feedback on the level and type of incidents involving the use of physical force should be a set item at governors' meetings. It is recommended too that the effectiveness of any training in physical intervention techniques used should be assessed at least annually. Some schools have used computer systems to provide trend information to give early warning of emerging problems. Schools are also recommended to regularly review the effectiveness of their physical intervention and behaviour management policies.

20. Opinion was sharply divided amongst those responding to the consultation over whether it is desirable for schools to seek to have their incident records externally audited. DfEE accepts that different systems will suit differing circumstances. There is definite benefit in records being reviewed by a third party with a sufficient level of knowledge and appreciation of the specific circumstances of a school. However, finding people with this level of expertise can be problematic and some, at least, of this validating role is undertaken by the regulatory authorities that routinely visit the school.