



# NUT NOTES

OUR AIM: PROFESSIONAL UNITY

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## Education, the law and you

NUT NOTES



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# NUT NOTES

## EDUCATION, THE LAW AND YOU

Teachers work within a legal framework which gives rights to and places duties on those within the education service. It is also a requirement of the Department for Children, Schools and Families (DCSF) in England that primary and secondary and further education (FE), sixth form and early years teachers assessed for qualified teacher status (QTS) "are aware of, and work within, the statutory framework relating to teachers' responsibilities." The Welsh Assembly Government (WAG) notes similar requirements.

These NUT notes provide information on the legal framework for teachers beginning their careers. **NUT members who believe that they need legal advice should contact the appropriate NUT regional office in England, or NUT Cymru in Wales.**

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## TEACHERS' DUTY OF CARE TO PUPILS

## NOTES

1. Teachers are required to do all that is reasonable to protect the health, safety and welfare of pupils. Their legal responsibilities derive from three sources and this section considers each of the three:
  - the common law duty of care;
  - the statutory duty of care; and
  - the duty arising from the contract of employment.

### *The Common Law Duty of Care*

2. Teachers have a duty of care to pupils which derives from the 'common law'. The 'common law' is the body of law derived from court decisions made over the years, as opposed to law which has been determined by Parliament and set down in statute.
3. Traditionally, the term 'in loco parentis' was used to describe the duty of care that a teacher has towards a pupil, to the effect that a teacher has a duty to take the same reasonable care of the pupil that a parent would take in those circumstances. 'In loco parentis' originally embodied the nineteenth century common law principle that a teacher's authority was delegated by a parent so far as it was necessary for the welfare of the child. A court held, in 1893, that "the schoolmaster is bound to take such care of his pupils as a careful father would".
4. During the 1950s and the 1960s case law was developed further by the courts. In 1955, it was held that "a balance must be struck between the meticulous supervision of children every moment of the day and the desirable object of encouraging sturdy independence as they grow up".
5. Teachers' professionalism was recognised by the courts in 1962, where the 'standard of care' expected of a teacher was held to be that of a person exhibiting the responsible mental qualities of a prudent parent in the circumstances of school, rather than home life. The current standard of care expected of a teacher is that of a reasonable person in the circumstances of a class teacher. It has been recognised that a teacher's duty of care to individual pupils is influenced by, for example, the subject or activity being taught, the age of the children, the available resources and the size of the class.
6. Further, it is clear from case law that the standard of care expected is the application of the ordinary skills of a competent professional, the skill and care of a reasonable teacher.
7. If it can be shown that a professional acted in accordance with the views of a reputable body of opinion within their profession, the duty of care will have been met even though others may disagree.
8. A breach of the duty of care by a teacher could amount to negligence.
9. A teacher's employer could be liable for the payment of damages in compensation to a pupil who is injured as a result of negligence.
10. Whether teachers are found negligent in the event of accidents will be influenced by whether whatever occurs might reasonably have been foreseen. If teachers take all reasonable steps to ensure the safety of their pupils, it is unlikely that a teacher will be held to be negligent in the event of an unforeseen accident.
11. Negligence could also arise if there is a serious failure to prevent harm to a child arising from, for example, pupil bullying. If negligence arises in these circumstances, however, it is more likely to be a collective failing than the responsibility of one individual.
12. A teacher's duty of care will depend upon what is reasonable and what can be expected of a competent professional acting within the constraints of the circumstances.

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13. As long as teachers apply their professional judgement, training and experience to situations in a reasonable manner, seeking to promote the best interests of the pupils in their care, their obligations will have been met.

### ***The Statutory Duty of Care***

14. Teachers are also responsible under the Children Act which places duties upon those who care for children.
15. The Children Act 1989 Section 3 (5) defines the duty of care to the effect that a person with care of a child may do all that is reasonable in the circumstances for the purposes of safeguarding or promoting the welfare of the child.
16. When issues arise concerning safeguarding or promoting the welfare of children, teachers should take into account the ascertainable needs and wishes of the children as individuals, considered in the light of their ages, understanding, and any risk of harm.

### ***The Contractual Duty***

17. The duty of care also arises from the contract of employment.
18. The contractual duties of teachers are expressly defined in the School Teachers' Pay and Conditions Document (STPCD), which applies to England and Wales and is available in schools and online at [www.teachernet.gov.uk](http://www.teachernet.gov.uk). It takes effect, by statutory order, as the terms of contract for all teachers employed in maintained schools. The Document is revised annually, the new provisions becoming effective in September of each year. Relevant provisions from the list of contractual duties are:
- carrying out the professional duties of a schoolteacher as circumstances may require under the reasonable direction of the head teacher of that school;
  - promoting the general progress and well-being of individual pupils and of any class or group of pupils assigned to the teacher;
  - maintaining good order and discipline among the pupils and safeguarding their health and safety, both when they are authorised to be on the school premises and when they are engaged in authorised school activities elsewhere; and
  - attending assemblies, registering the attendance of pupils and supervising pupils, whether these duties are to be performed before, during or after school sessions.
19. Head teachers have duties that are described separately in the STPCD.

## **TEACHERS' DUTY OF CARE AND OUT-OF-SCHOOL ACTIVITIES**

20. Understanding the duty of care can be particularly significant when a teacher is engaged in leading or assisting with activities off the school site, such as educational visits, school outings or field trips.
21. The legal liability of an individual teacher or head teacher for an injury which is sustained by a pupil on a school journey or excursion depends on whether or not the injury to the pupil is a direct result of some negligence or failure to fulfil the duty of care on the part of their teacher or head teacher. There is no legal liability for any injury sustained by pupils unless there is proven negligence.
22. The standard of care required of teachers is that which, from an objective point of view, can reasonably be expected from teachers generally applying skill and awareness of children's problems, needs and susceptibilities. The law expects that a teacher will do that which a parent with care and concern for the safety and welfare of his or her own child would do, bearing in mind that being responsible for up to twenty pupils is very different from looking after a family. The legal duty of care expected of an individual teacher is that which a caring teaching profession would expect of itself.



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31. It is strongly advisable, however, that a minimum of two teachers should be present on any one visit, regardless of the number of adult supervisors present, in order that one teacher has charge of the group while another deals with an emergency situation.

## HEALTH AND SAFETY AT WORK

32. The main responsibility under the Health and Safety at Work Act (HSWA) 1974 rests with employers, who have to take reasonable care for the health and safety of their employees and others on their premises.
33. Employers are required to organise, control, monitor and review how health and safety measures are managed. They must assess risks, record their assessments of risks and inform employees of safety procedures. Schools and colleges should have written health and safety policies in place, of which all employees, including teachers, should be informed.
34. All employees have a duty under the Act to take reasonable care for the health and safety of themselves and others who may be affected by their acts or omissions at work. Thus, teachers have a duty to take reasonable care of both their own and their pupils' health and safety at school (Section 7 of the HSWA).
35. Teachers should comply with any school, college or local authority guidance on health and safety issues and make sure they are familiar with any such guidance (Section 7). They should act with reasonable care at all times and apply good sense to everything they do, including not taking any unnecessary risk or doing anything that is potentially dangerous. It is unlawful (Section 8 HSWA) to interfere with or misuse, either intentionally or recklessly, anything which has been provided for the purposes of health and safety. Examples of this include propping open fire doors and blocking fire exits.
36. All employers have a duty to report any hazards and potentially dangerous incidents at work, and teachers should make themselves familiar with any recording system in the school or college, such as the accident report book.
37. It can be important, for example, to report what might seem to be minor matters, requiring cleaning up or minor repair. Seemingly minor matters can cause serious accidents, for example, wet patches or rubbish on the floor, which can cause slips, trips or falls.

## PHYSICAL CONTACT WITH PUPILS

38. Teachers have the power to use reasonable force to restrain in certain circumstances, dealt with below. However there will be other circumstances in which physical contact with pupils may be appropriate. A common sense approach, based on a teacher's professional training and experience, can guide teachers on this matter. In England, the teachernet website [www.teachernet.gov.uk](http://www.teachernet.gov.uk) provides the following guidance on the parameters for physical contact and how this can be misconstrued:

"Physical contact may be misconstrued by a pupil, parent or observer. Touching pupils, including well-intentioned gestures such as putting a hand on a shoulder, can, if repeated regularly, lead to serious questions being raised. As a general principle staff must not make gratuitous physical contact with their pupils. It is particularly unwise to attribute touching to their teaching style or as a way of relating to pupils. Teachers and other staff do have, however, the right to use reasonable physical force to restrain pupils in certain circumstances.

Any form of physical punishment of pupils is unlawful as is any form of physical response to misbehaviour unless it is by way of restraint. It is particularly important that staff understand this both to protect their own position and the overall reputation of the school.

**Where physical contact may be acceptable**

There may be occasions where a distressed pupil needs comfort and reassurance which may include physical comforting such as a parent would give. Staff should use their discretion in such cases to ensure that what is normal and reasonable does not become unnecessary and unjustified contact, particularly with the same pupil over a period of time. Where members of staff have particular concern about the need to provide this type of care and reassurance they should seek the advice of their head teacher.

Some staff are likely to come into physical contact with pupils from time to time in the course of their duties. Staff should be aware of the limits within which such contact should properly take place and of the possibility of such contact being misinterpreted."

39. Welsh Office Circular 37/98 (see paragraph 40) also stresses that there are times when physical intervention may be appropriate. Apart from emergency situations, it notes that:

"There are situations other than those covered by Section 550A, in which physical contact may be appropriate or necessary. Some physical contact may be necessary to demonstrate exercises or techniques in the course of PE lessons or sports coaching; if a member of staff has to administer first aid; or where a pupil is in distress and needs comforting. Staff are expected to have regard for local policy guidance and to use their professional judgement when they feel a pupil needs this kind of support."

**TEACHERS' POWER TO USE REASONABLE FORCE TO RESTRAIN**

40. In England, guidance can be found in:

- DCSF Revised Guidance on the Use of Force to Control or Restrain Pupils (which replaces DfES Circular 10/98);
- DfES Guidance on the 'Use of Restrictive Physical Interventions for Staff Working with Children and Adults who Display Extreme Behaviour in Association with Learning Disability and/or Autistic Spectrum Disorders' (Ref: LEA 0242 2002);
- DfES guidance on the 'Use of Restrictive Physical Interventions for Pupils with Severe Behavioural Difficulties' (Ref: LEA 0264 2003).

In Wales, guidance can be found in:

- Welsh Office Circular (37/98) 'The Use of Reasonable Force to Control or Restrain Pupils'.
- WAG Guidance Circular 23/2006 'Teaching Drama: Guidance on Safeguarding Children and Child Protection for Managers and Drama Practitioners'.

The WAG has indicated its intention to issue a consultation document in September 2008 to bring together four themes dealing with pupil behaviour, including the use of physical intervention. The other three will be discipline, the power to search pupils and parenting contracts for schools.

41. Teachers have a statutory power to use reasonable force to restrain pupils in a number of circumstances, set out in Section 93 of the Education and Inspections Act 2006. Teachers are able to use such force as is reasonable in the circumstances to prevent a pupil from doing or continuing to do, any of the following, namely

- committing any offence, including behaving in a way that would be an offence if the pupil were not under the age of criminal responsibility;
- causing personal injury to, or damage to the property of, any person, including pupils' own property; and
- engaging in any behaviour prejudicial to the maintenance of good order and discipline at the school or among any of its pupils, whether that behaviour occurs during a teaching lesson or otherwise.

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42. The provision applies when a teacher or other authorised person is:
- on the premises of the school; or
  - elsewhere at the time when, as a member of school staff, he or she has lawful control or charge of the pupil concerned, for example, on an out-of-school activity.
43. There had been a misconception that only in emergencies can teachers use force, for example: where pupils place themselves at risk of physical injury; where pupils' actions place other pupils, staff or members of the public at risk of physical injury and where damage to property could be limited by the use of restraint, without endangering the physical safety of pupils or staff. The law, however, makes it clear that teachers and other authorised members of staff are entitled to intervene in other, less extreme situations.
44. The National Employers' Organisation for School Teachers (NEOST) Guidance on Conduct for Teachers, Education Staff and Volunteers gives guidance as follows:
- "There may be occasions where it is necessary for staff to restrain a pupil physically to prevent them from inflicting injury to others, self-injury, damaging property, or causing disruption. In such cases only the minimum force necessary may be used and any action taken must be to restrain the pupil. Where an employee has taken action to physically restrain a pupil they should make a written report of the incident in the form prescribed by the school's policy on restraint."
45. It should be noted that the use of any degree of force is unlawful if the particular circumstances do not warrant it. The degree of force should be in proportion to the circumstances and the seriousness of the behaviour or consequences it is intended to prevent. The level and duration of the force used should be the minimum necessary to achieve the desired result, such as to restore safety.
46. It is always unlawful to use force as a form of punishment or discipline.
47. It is impossible to describe definitively when it is reasonable to use force and how much may be used, beyond stating that this will depend on the circumstances of the case. Relevant considerations as to whether it might be reasonable to use force and the degree of force to be used could include, for example, the age and strength of the child. In some circumstances, it will, of course, be inadvisable for a teacher to intervene without help, such as where a number of pupils are involved; where the pupil is older and physically mature, and where the teacher might be at risk of injury.
48. It is relevant that failure to respond in circumstances which merit it can be as serious as overreacting. In many circumstances, it is not a safer option for a teacher to do nothing or to take very limited action, when to take action could restore safety. This action may involve swiftly alerting a third party. So far as a teacher's duty of care is concerned, an omission can be significant if there were to be a subsequent claim for negligence. This will depend on the circumstances of the case and teachers would not be expected to intervene to restore safety at the expense of their personal safety.
49. Incidents of restraint should be logged in a record book provided for this purpose and monitored by a senior staff member. The record should be contemporaneous and detailed, as this will help in the event of any later investigation or complaint. Similarly, it is advisable to inform parents of any recorded incident. DCSF Guidance on the Use of Force and Welsh Office Circular 37/98 contain guidance on incident books.



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57. In other circumstances, staff should not act in a way that might reasonably be expected to cause injury, for example by:
- holding a pupil around the neck, or by the collar, or in any other way than might restrict the pupil's ability to breathe;
  - slapping, punching or kicking a pupil;
  - twisting or forcing limbs against a joint;
  - tripping up a pupil;
  - holding or pulling a pupil by the hair or ear;
  - holding a pupil face down on the ground.
58. Staff should always avoid touching or holding a pupil in a way that might be considered indecent.

## THE ROLE OF THE EDUCATION SERVICE IN PROTECTING CHILDREN FROM ABUSE

59. A number of statutory provisions place responsibilities for child protection upon local authorities (LAs), schools and colleges.
60. Under the Children Act 1989, local authorities, schools and colleges have a duty to assist local authority social services departments acting on behalf of children in need or enquiring into allegations of child abuse. Education bodies have a statutory duty to carry out their functions with a view to safeguarding and promoting the welfare of children under the Education Act 2002 and accompanying regulations. This includes taking steps to protect children who are at risk of significant harm. Harm is defined as ill treatment or the impairment of a child's physical or mental health or of their physical, intellectual, emotional, social or behavioural development.
61. The duty applies to local authorities, governing bodies of community, foundation, voluntary aided, voluntary controlled, special and maintained nursery schools and FE colleges, and the proprietors of independent schools including Academies and City Technology Colleges. Besides these statutory duties, schools and colleges have a pastoral responsibility towards their pupils.
62. The individual responsibilities of teachers depend upon their role in relation to child protection in their schools or colleges. DCSF guidance on child protection in the education service has been consolidated in a single document "Safeguarding Children and Safer Recruitment in Education", available at <http://publications.teachernet.gov.uk>. WAG guidance is contained in Circular 005/2008, "Safeguarding Children in Education: The Role of Local Authorities and Governing Bodies under the Education Act 2002." A copy of the relevant guidance should be available in every school or college or can be accessed on the DCSF website [www.dcsf.gov.uk](http://www.dcsf.gov.uk) or the WAG website [new.wales.gov.uk](http://new.wales.gov.uk).
63. Under the Children Act 2004, local authorities have a duty to make arrangements to promote co-operation between agencies in order to improve children's well being.

### *Teacher Responsibilities*

64. Teachers should be familiar with the procedures in their schools for dealing with suspected child abuse. Concern or suspicions should be reported. Each school should have a designated member of staff responsible for child protection matters. The 'designated person' will usually be a teacher and he or she must undertake regular training on child protection and inter-agency work. All other staff, including supply teachers and fixed term teachers, should receive appropriate training on child protection issues.

***If Child Abuse is Suspected***

- 65. The DCSF guidance defines child abuse and neglect. This includes physical abuse, emotional abuse, which is the persistent emotional maltreatment of a child such as to cause severe and persistent adverse effects on the child’s emotional development; sexual abuse which involves forcing or enticing a child or young person to take part in sexual activities, including prostitution; and neglect, which is the persistent failure to meet a child’s basic physical and/or psychological needs, and is likely to result in the serious impairment of the child’s health or development. Similar definitions are given in the WAG guidance.
- 66. Teachers are not responsible for investigating suspected abuse but should know to whom they should report any concerns. It is the responsibility of the designated teachers to discuss cases with, or refer cases to, the investigating agencies, which are social services departments and the police. All schools and colleges should have procedures, of which all staff should be aware, for handling suspected cases of abuse of pupils or students. The school or college child protection policy should also be made known to parents.

***Allegations of Abuse by Teachers***

- 67. Each school and college should also have procedures for dealing with allegations of physical or sexual abuse which have been made against members of staff. There are national guidelines on such procedures which have been drawn up by the six teachers’ organisations and the national employers’ organisation. The DCSF publication ‘Safeguarding Children and Safer Recruitment in Education’ provides detailed procedures on how allegations should be handled. Similar definitions are given in the still current Welsh Office Circular 52/95 but are likely to be strengthened in the forthcoming ‘Safeguarding Children in Education’.
- 68. Each local authority should have model procedures which have been adopted by schools and colleges locally. The procedures apply equally to non-local authority maintained schools, former sixth form colleges, and to the independent sector including Academies and City Technology Colleges. Schools’ and colleges’ procedures should be consistent with those of the LSCB (Local Safeguarding Children Board) and, in the case of local authority maintained schools, with those of the local authority.

**TEACHERS’ POWER TO DISCIPLINE**

- 69. Teachers now have an express power to enforce school discipline which derives from their professional status as teachers. The NUT sought this change to eradicate the notion that teachers rely on delegated parental authority. Now, the Education and Inspections Act 2006 sets out teachers’ statutory powers of discipline and restraint.
- 70. The power to discipline includes imposing a penalty when a pupil’s standard of behaviour falls below that which is reasonable to expect, as well as the legal right to confiscate inappropriate items from pupils such as mobile phones or music players and to discipline pupils who behave badly on the way to and from school, for instance when travelling on buses and trains.
- 71. All the powers should be exercised in accordance with the school’s behaviour policy.
- 72. The statutory power to discipline which is contained in the Act already applies in England but at the time of writing has not yet been brought into force in Wales (see paragraph 40).

**DETENTION OF PUPILS ON DISCIPLINARY GROUNDS**

73. By virtue of Section 91 of the Education and Inspections Act 2006, there is a legal right for teachers to detain pupils after the end of a school or college session or on most week ends, without parental consent. Certain conditions apply in order for the detention to be lawful. These are that:
- the head teacher must have made it generally known within the school or college and brought it to the attention of parents that detention might be imposed, for example, through the school or college’s behaviour and discipline policy;
  - the detention must be imposed by any paid member of staff authorised to do so, either generally or specifically authorised;
  - the detention “must be reasonable in all the circumstances”, that is, it must be a proportionate punishment. Any special circumstances relevant to the particular pupil must be taken into account, such as the pupil’s age, special needs, religious requirements or any disability he or she may have, and whether suitable alternative travel arrangements can be made by the parents where school to home transport arrangements are made;
  - at least 24 hours’ advance notice is given to the parents by post, ‘pupil post’, or fax (except for detentions between break times or between school sessions); and
  - the pupil is under the age of 18.
74. Teachers are advised to ensure they follow carefully the disciplinary policies of their schools or colleges. In England, information on behaviour, attendance, discipline, and exclusions can be found in DCSF publication, ‘Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units’ (which replaces DfES Circular 10/99) and at [www.teachernet.gov.uk](http://www.teachernet.gov.uk). In Wales, guidance on exclusion is given in Circular 1/2004 and amended by Circular 1(A)2004. A consolidated version of this is available on [new.wales.gov.uk](http://new.wales.gov.uk).

**SEARCHING PUPILS**

75. Section 550AA of the Education Act 1996, as amended by Section 45 of the Violent Crime Reduction Act 2006, gives head teachers the power to search pupils without their consent, if the head teacher has reasonable grounds for suspecting that the pupil has a knife or other offensive item or weapon. The DCSF has adopted these enabling powers but the WAG has not done so as yet (see paragraph 40). A head teacher may delegate this power to staff who agree to accept it but teachers may not be directed to search pupils. Teachers are entitled to refuse outright to search pupils. Further, teachers who have accepted the power to search pupils may decide not to exercise that power on a case by case basis. This decision will be based on the teacher’s own professional judgment of the circumstances.
76. The provision applies when the head teacher, teacher or other authorised person is on the school premises or where he or she has lawful control of the pupil albeit outside the school premises, such as on an out-of-school activity.
77. The member of staff searching the pupil must be of the same sex as the pupil and must not require the pupil to remove any clothing except outer clothing and may carry out the search only in the presence of another member of staff who is also of the same sex as the pupil. The DCSF Guidance on the Use of Force advises teachers not to search pupils where resistance is expected, but rather to call the police.
78. If, in the course of a search, the person carrying out the search finds an offensive weapon or article, he or she may seize and retain the item which must be handed over to the police as soon as possible. All staff willing and authorised to search pupils must first receive appropriate and adequate training.

79. The law prohibits discrimination against pupils on grounds of sex, race, disability, religion and sexual orientation. ....
80. The law concerning sex and race discrimination is contained in two pieces of legislation, the Sex Discrimination Act 1975, and the Race Relations Act 1976. Both have certain key provisions in relation to the treatment of pupils, which are very similar and are considered here together. ....
81. It is unlawful to discriminate against a pupil on grounds of sex or on racial grounds. Racial grounds are grounds of race, colour, nationality, ethnic or national origins. It is unlawful to discriminate against a pupil, directly or indirectly. ....
82. Direct discrimination is where a person is treated less favourably, because of his or her race or sex, than another person of the opposite sex or different race in similar circumstances would be treated. ....
83. Direct discrimination takes many forms. In the treatment of pupils and students, for example, it may vary from crude remarks to subtle differences in assessment, expectation, provision and treatment. It may be unconscious or even well-intentioned but still unlawful. ....
84. Racial or sexual harassment is a form of direct discrimination. ....
85. Indirect discrimination is more complex. This is where a provision, criterion or practice, although applied equally, puts members of a particular racial group or sex at a disadvantage and cannot be justified objectively. ....
86. 'Justified objectively' means, in an educational context, justifiable on educational or other grounds. It is a question of fact in each case. ....
87. An example of indirect race discrimination, based on a case heard by the House of Lords, was a requirement to wear a cap as part of a school uniform. Although applied equally to all pupils, it had the effect of excluding Sikh boys from the school and was not justifiable on educational grounds. ....
88. In schools and colleges, discrimination is specifically unlawful as follows:
- on the terms on which admission is offered;
  - in refusing to accept an application;
  - in the way pupils are afforded access to benefits, facilities or services;
  - by refusing to afford pupils access to benefits, facilities or services; and
  - by excluding pupils or subjecting them to any other detriment.
89. An exception is made for single sex schools, though the facilities available should be not less favourable than those at other schools in a local authority. ....
90. The Race Relations Act (RRA) was amended in 2000 by the Government to take forward the recommendations of the Stephen Lawrence Inquiry. The amended law places positive duties on public authorities to promote race equality, rather than merely prohibiting discrimination. Public authorities include governing bodies of schools and colleges and consequently schools and colleges are under a duty to promote equality of opportunity and good relations between people of different racial groups. ....
91. The Disability Discrimination Act 1995 (DDA) was amended in 2001 to extend its coverage to the education sector. Under the amended DDA, it is unlawful to discriminate against disabled pupils and prospective pupils. Schools and colleges are under a duty not to treat disabled pupils less favourably than non-disabled pupils. They must take reasonable steps to ensure that disabled pupils are not put at a substantial disadvantage and local authorities, schools and colleges are required to plan to increase access to education services for disabled pupils. ....

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92. From April 2007, the Gender Equality Duty requires public authorities to promote gender equality and eliminate sex discrimination. The duty places the legal responsibility on public authorities to demonstrate that they treat men and women fairly. The general duty applies to all functions of every public authority including the education functions of local authorities and schools.
93. The former Equal Opportunities Commission issued a Code of Practice on how public authorities can meet the legal requirements of the gender equality duty.
94. The Disability Equality Duty came into force on 4 December 2006. This legal duty requires all public bodies to actively look at ways of ensuring that disabled people are treated equally. All of those covered by the specific duties including local authorities and schools must also have produced a Disability Equality Scheme, which they must implement. The Disability Rights Commission (DRC) Statutory Code of Practice on the Disability Equality Duty aims to clarify what the duty means for the public sector.
95. Protection from discrimination for pupils was extended to cover sexual orientation and religion or belief by the Equality Act 2006 and corresponding regulations. Under the new provisions most school governing bodies are prohibited from admitting or refusing to admit or excluding pupils on the basis of their religion or belief or lack of religion or belief or on grounds of sexual orientation. Particular exceptions apply to faith schools, religious worship and the curriculum. It is anticipated that the new provisions will raise awareness of homophobic and religious bullying of pupils.
96. The Human Rights Act 1998 protects against discrimination in relation to the enjoyment of other rights guaranteed by the European Convention of Human Rights (ECHR). For example, the right to education is guaranteed by the ECHR, so education must not be provided in a manner that discriminates against individuals.
97. Schools and colleges have important roles to play in promoting equality of opportunity. Teachers are likely to be more aware of the consequences of stereotyping than anyone else. Teachers should follow carefully a school or college's equal opportunities policy and encourage this to be applied consistently and reviewed if it does not address situations which arise commonly in school or college. In particular, schools, colleges and teachers should have regard to policies and practices relating to:
- admissions;
  - the day-to-day organisation of school or college life;
  - the broader social context and local community in which education takes place;
  - the relationship between pupils and staff inside and outside the classroom;
  - assessments;
  - raising attainment levels;
  - delivering the curriculum;
  - behaviour and discipline, including exclusions; and
  - guidance and support.
98. Codes of Practice set out practical standards for the elimination of discrimination and the promotion of equality of opportunity.

99. Teachers are protected from discrimination in employment on grounds of race, sex, marital status, sexual orientation, religion or belief, disability, age, transgender status and trade union membership or activity or by reason of working part-time or on a fixed term contract. It is unlawful for employers to discriminate in recruitment or selection procedures, or to treat employees differently, in ways that amount to direct or indirect discrimination. Discrimination might occur, for example, in promotion opportunities or training; access to benefits or services; in disciplinary, grievance or other procedures; or in dismissal or other detrimental treatment. Teachers are protected from direct and indirect discrimination, victimisation and harassment. Employers must take steps to avoid discrimination in contractual provision and working practices and must take steps to prevent teachers from being harassed by colleagues, parents or pupils.
100. Schools or colleges should have equal opportunities policies and practices which ensure equal treatment of all employees and which contain provision for complaints to be pursued.
101. Teachers, like other employees, can raise grievances and bring complaints to employment tribunals about unlawful discrimination. Grievances must be raised in writing within three months of the discriminatory act occurring or, if the discrimination is continuous, within three months of the most recent incidence of it. The NUT provides advice to members who wish to raise grievances.

**SPECIAL EDUCATIONAL NEEDS (SEN) CODE OF PRACTICE**

102. The Code of Practice on the identification and assessment of special educational needs was established by primary legislation in 1993. A revised version was issued by the DfES in England in 2001 (DfES/581/2001). The Welsh Assembly Government published its code in 2002. The bulk of the Codes, which is not contained in legislation, gives guidance to which local authorities, head teachers, school governing bodies, parents, other local authority services and teachers, particularly special educational needs co-ordinators (SENCOs), are required to have regard.
103. The term 'have regard' means that, if a course of action is taken which is different from that set out in the Code, it has to be justified by those concerned as qualitatively the same or better than the Code's own guidance.
104. The SEN Toolkit, published by the DCSF, is a good starting point for classroom teachers. All schools should have copies. It is available from [www.dfes.gov.uk/sen](http://www.dfes.gov.uk/sen).
105. Both Codes stress the importance of working with and taking into account the views of parents and pupils. They emphasise the need for early identification and assessment of SEN and describe the conditions for the inclusion of pupils with SEN within mainstream schools.
106. When teachers identify pupils as having SEN, relevant teachers, in consultation with the SENCO, are expected to devise interventions additional to or different from those provided by the school's usual curriculum. Subject and pastoral teachers remain responsible for working with the pupils on a daily basis and for planning and delivering individualised programmes. Individual education plans (IEPs) will usually be devised at this stage, although this is not required. The SENCO is expected to take the lead in planning future interventions for the pupils in discussion with colleagues, then monitoring and reviewing the action taken. The importance of working with other providers of support such as local authority support services, health care professionals and social services departments is stressed.

## NOTES

107. There is an expectation in the Codes which is that IEPs be working documents available to all teaching staff. The need to monitor pupils' progress and regularly review IEPs is emphasised. Each child's IEP is expected to be evaluated at a minimum of twice yearly. All teachers who teach a pupil with SEN should be made aware of the individual targets and the planned strategies.
108. The relevant SEN Code of Practice will continue to be the guide for decisions about the provisions of educational aids and services for pupils with SEN, but the Disability Rights Code of Practice for Schools should also be considered where children with SEN are disabled and are covered by the Disability Discrimination Act 1995 (the DDA).
109. The NUT is a source of expert advice to members on the application of the Codes of Practice and the duties of schools under the DDA.
110. In Wales, the WAG received royal approval in April 2008 for a Legislative Competence Order (LCO) dealing with SEN. The LCO gives the WAG the power to introduce its own laws, known as Measures, in the field of education and training for persons with additional learning needs and disabilities. The issues that the WAG is likely to address are: strengthening the status of the SEN Code of Practice; reform of the SEN Statutory Assessment Framework; and altering the range of individuals with the right to appeal to the SEN Tribunal for Wales.

## CRIMINAL RECORDS

111. Teaching posts are exempted from the provisions of the Rehabilitation of Offenders Act 1974 under which 'spent' convictions do not need to be disclosed to employers. Teachers should therefore inform a prospective employer of any convictions when requested.
112. When appointments are offered, teachers are asked to apply for an Enhanced Disclosure from the Criminal Records Bureau (CRB). Employers process these applications. The Disclosure includes information from local police records such as acquittals or other non-conviction information, in addition to any convictions.
113. The CRB provides teachers with a copy of the information sent to employers so that they can check that they have been correctly identified and that the information supplied is accurate. Technically the employee is responsible for the CRB fee but in practice most local authorities pay.

## NUT LEGAL AND PROFESSIONAL SERVICES

114. Student teachers have rights as well as the legal responsibilities outlined above. Student teachers may want to know what duty schools and colleges have in providing support and training, or want some advice about the working environment during teaching placements. By joining the Union, student teachers have access to the NUT's unrivalled legal protection and professional support and will be able to seek advice and information about issues of personal concern.
115. Members in difficulty or needing advice can contact their NUT regional office in England, or NUT Cymru in Wales. Each office has professional advisers, casework officers and a solicitor who can assist. Contact details are available on the NUT website, [www.teachers.org.uk](http://www.teachers.org.uk)

