

Review of the Recording and Reporting of the Use of Force in Schools

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30 July 2011

Dear Michael

Earlier this year, you asked me to review the implications for schools of this requirement. Please find below my summary and conclusions.

I have asked for views from a number of sources in order to get the widest perspective on the requirement. These included:

Head teachers of primary, secondary and special schools, and pupil referral units from both the maintained and Academy sectors.

The main teaching unions - NASUWT, NUT, ASCL, ATL, NAHT and Voice Trainers in de-escalation and physical restraint

The Children's Rights Alliance for England and the NSPCC

Local authority and church representatives

I have also had the benefit of support from and discussions with policy officials and lawyers in the Department for Education

Charlie Taylor

Current Practice

Teachers' experience of using the power

1. For the vast majority of teachers, incidents in which they use significant force are extremely rare. The exceptions to this are in special schools when some pupils, either due to a special need or because they have severe behaviour difficulties, can require more regular physical intervention. In addition there are a very few pupils with special needs in mainstream schools for whom the use of force is sometimes more regularly necessary. Teachers are very reluctant to use force, they understand that it can often make a situation worse and can put both the adult and the child at risk of injury.

Recording and reporting the use of the power

2. 90% of the 32 schools I surveyed already have a system for recording and reporting the use of force to parents. On the very rare occasions that force was used, the schools felt they had a responsibility to keep parents informed. They also felt that recording incidents, including witness statements, is a way of protecting staff from any legal repercussions.

In special schools

3. Special schools, which often need to use force more regularly, ensure staff are trained appropriately and that there are clear systems for recording and reporting the use of force to parents. These schools may have a different threshold for what is "significant" force and they use their judgement to decide which incidents should be reported to parents. This judgment will take into account their relationship with the parent and the potential negative effect, in some cases, of reporting every incident. Communication between special schools and parents is generally excellent and schools are sensitive about jeopardising this by being too negative.

Deciding which incidents to record

4. A number of schools did not make distinctions about the use of force and recorded all incidents whether significant or not. Half of the schools surveyed felt that, if the requirement became law, they would feel obliged to record all incidents. This would suggest that the requirement would increase the bureaucratic burden on some schools.

Views on the impact of commencing the duty

Schools

5. Although most schools already have systems in place for recording and reporting, it is likely that the requirement would increase their bureaucratic burden as some schools felt they would end up recording all incidents, whether they were significant or not. More significantly, governing bodies may insist on complicated catch-all policies that attempt to make specific definitions of what constitutes “force” or “significant”. This change could cause teachers to stop using their own professional judgment and rely on protracted, box-ticking policy or guidance. In general schools did not feel children would be made any safer by the legislation. The requirement would mean teachers would not be allowed to make their own judgements when it came to reporting to parents and would be obliged to report each significant incident even where they thought this was not helpful for either the child or the parent. The word “significant” is a general term and is not setting-specific. This means that different schools would not be able to have different interpretations of the word and therefore institutions, such as special schools, may have to record and report considerably more incidents.

6. I don't believe teachers and school staff would welcome commencement of this legislation. They see it as a bureaucratic overlaying of systems they already have in place. The legislation was originally proposed following a particularly concerning case in which a school had used poor judgement and failed to keep parents appropriately informed about frequent physical intervention with their child. However, there is little evidence that schools routinely fail to record or report the use of force. The majority of schools have developed their own systems for keeping records of serious incidents and reporting to parents in a sensible and safe way that suits their own context. ASCL made this case and felt that the Government should trust the judgement of schools and teachers rather than to legislate. An over-exaggerated fear of parental complaints and litigation has caused schools to adopt no-touch policies in the past. There is a concern that this requirement could feed this fear and lead to teachers being more reluctant to touch children.

7. Some of the teacher unions felt recording and reporting affords better protection to their members. NASUWT felt this should be required by legislation, whereas NAHT felt it would be good practice and are not convinced this needs to be enforced by Government.

8. Obliging schools to record significant incidents of force means that they could be held more accountable for their actions. Though it would not be a direct requirement, Ofsted may chose to look at the data on recording and reporting the use of force and comment on its use. As part of the new inspection framework they may also ask pupils about the use of force in the school and measure this against the school's data. Governing bodies may also wish to be kept informed about incidents of the use of force, though there is nothing to stop them asking for this data now.

Children's rights lobby

9. The case made by the children's rights lobby is that under the current system there are rare, but worrying, cases where parents have not been kept informed about cases of physical restraint. They see the recording and reporting requirement in terms of a basic minimum protection for children, particular vulnerable children who rely on the state, and in terms of the parent's right to know.

Increase in litigation/complaints

10. I have heard differing views expressed on whether commencing this duty would lead to an increase in litigation against schools. My understanding of the legal position is that any claimant bringing a claim for damages for breach of this statutory duty would have to prove that it was the failure to record and report which caused physical or psychological injury. In my view an increase in litigation is an unlikely result of commencement. However, commencing the duty might lead to an increase in complaints to schools and into the Department, particularly given the subjective nature of what might or might not be interpreted as "significant".

Conclusion

11. I do not believe that this legislation is necessary either to keep children safe or to protect school staff. If commenced, it would add to the bureaucratic burden for some, but not all, schools.

12. If Ministers decide to commence the legislation there would need to be a revision of the use of force guidance, making clear that most physical contact does not need to be recorded or reported, and which further reiterates that school staff should not avoid appropriate physical contact such as hugging distressed children or applying first aid.

13. If a decision is taken not to commence then it may be necessary to amend the use of force guidance to strengthen the recommendation that schools record and report.

Summary of responses to Charlie Taylor's questionnaire on recording and reporting use of force

I received 32 completed questionnaires from the Lead Behaviour Schools Event (5 July), the Reducing Bureaucracy Reference Group (7 July), and the London Challenge Inclusion Group (12 July), with a further twelve e-mailed following the Education Forum event on 13 July. This ensured a good mix of responses from heads and senior school leaders from primary, secondary, special schools and PRUs from both the maintained and academy sectors, together with those from senior executives of the teacher unions, and representatives of local authority and church organisations.

All but four respondents from schools indicated that their school already had in place a formal or informal system for recording and reporting to parents incidents where staff have used force on pupils. Of those with a system in place, 10 (33%) indicated that they record and report every incident involving physical force. Five (18%) declared that they had a clear framework in place to decide which incidents needed recording and reporting. 41% of all respondents believed that all incidents involving force should be recorded and reported.

There was a wide variation of responses to the question of how to decide which incidents were "significant". The most common response was that decisions should reflect the professional judgement of senior school leaders or teachers (25%), followed by the view that it should be through clear guidelines agreed by the school community (23%). Only two responses (5%) identified a solid example of what constitutes "significant" – "when the impact of the behaviour involves a safeguarding issue". Other responses included making the decision by using a staged approach (identifying set levels of intervention and agreeing which needed to be recorded and reported) (11%). Other responses were "with difficulty" and "depending on the situation" (11%).

60% of all respondents believed that the law would not make pupils safer and 20% thought that it would. A further 6% thought that it would help make pupils safer only at schools with a poor behaviour ethos and only if the law was properly upheld.

Half of all respondents indicated that they felt they would have to record every incident of physical intervention in order to avoid the possibility of disputes with parents. 16% said that they would not record every incident. A further 11% indicated that it would depend on the circumstances and whether clear guidelines had been agreed by the school community.

About 41% of all respondents indicated that the requirement would not improve relations between parents and schools. Only 11% believed it would improve relations. About a third of respondents did not respond to this question.

Of those that responded to the final question, 15 (34% of all respondents) believed the requirement would make staff reluctant to physically intervene with pupils and 12 (27%) believed it would not. Respondents were almost equally divided over whether the requirement would cause schools to adopt 'no contact' policies (11 for yes and 13 for no – 25 and 30% of all respondents respectively). A further 5 indicated that it could possibly have that effect. 16 respondents (37%) believed the requirement would not make staff more confident to use force, and 15 believed it would (with some suggesting that it would only if appropriate training was provided as well). Two respondents did not want staff to feel more confident to use force.

Amongst the comments provided were that the requirement:

- would increase bureaucracy unnecessarily;
- would encourage the “I know my rights” culture;
- needed to be consistently applied in schools; and
- is not needed and will make no difference as this already happens in most schools.

Other more general comments included:

- decisions on when to record and report should be left to the professional judgement of school staff;
- force should be used as a last resort, and it is not good that the Government seems to be encouraging staff to use force more, for reasons other than safety;
- more clarification required on what we mean by “use of force”;
- schools with weak leadership might not comply;
- should staff be allowed to use force as it is used at home?;
- new laws are needed to minimise the interpretation of “significant”;
- teachers welcome the trust the Government puts in them to respond appropriately, and to have physical contact where appropriate;
- there was concern at the possibility of airport-style security becoming commonplace in schools;
- staff are not confident to use force at present – too afraid they’ll be blamed. But CCTV is useful in providing evidence; and
- schools should nominate a key staff member to lead on physical intervention issues.

Background

All school staff have a legal power, under section 93 of the Education and Inspections Act 2006, to use reasonable force to prevent a pupil from committing an offence, causing injury or damage, or prejudicing the maintenance of good order.

A requirement on schools to record & report to parents significant incidents of the use of force was introduced in section 246 of the Apprenticeships, Skills Children and Learning Act 2009. The legislation has not been brought into force.

The Minister of State for Schools' Written Ministerial Statement of 23 June 2011 announced that the Secretary of State had asked Charlie Taylor, Expert Adviser on Behaviour, to review the implications for schools of the requirement.

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