

DFEE Circular Number IO/98

Section 550A of the Education Act 1996: The Use of force to Control or Restrain Pupils July 1998

Summary of contents:

A new provision comes into force on 1 September 1998 (Section 550A of the Education Act 1996). This clarifies the powers of teachers, and other staff who have lawful control or charge of pupils, to use reasonable force to prevent pupils committing a crime; causing injury or damage; or causing disruption. Such powers already existed under common law but they have often been misunderstood.

Neither the Act, nor this Circular, authorise the use of corporal punishment in any circumstances. Nor are they intended to encourage the use of inappropriate force.

The Circular:

- gives examples of circumstances in which physical intervention might be appropriate, and factors that teachers should bear in mind when deciding whether to intervene;
- discusses the meaning of 'reasonable force';
- advises that schools should have a policy about the use of reasonable force, and should tell parents about it; and,
- advises that schools should record incidents in which force is used to control or restrain a pupil, and tell parents of any such incidents involving their child.

This Circular is guidance. It should not be treated as a complete and authoritative statement of the law.

Section 550A of the Education Act 1996 10/98

July 1998

Introduction

1 The Education Act 1997 (Section 4) clarified the position about the use of physical force by teachers, and others authorised by the Head teacher of a school, to control or restrain pupils. The clarification was made by adding a section (Section 550A) to the Education Act 1996. This new section comes into force on 1 September 1998, and applies to all schools. It restates principles derived from common law and statute which have, in the past, been misunderstood. For example there is a common misconception that, since the Children Act 1989, any physical contact with a child is in some way unlawful. That is not true. Where necessary reasonable force can be used to control or restrain pupils. Physical contact with pupils may also be appropriate or necessary in other circumstances (see paragraphs 24 and 25 below).

Corporal Punishment

2 Section 550A does not in any way authorise the use of corporal punishment with pupils in maintained schools or publicly-funded pupils in independent schools. For those pupils the law forbids a teacher to use any degree of physical contact which is deliberately intended to punish a pupil, or which is primarily intended to cause pain or injury or humiliation (sections 548 to 550 of the 1996 Act). That ban applies in all circumstances, and has applied since 1987. The School Standards and Framework Bill currently before Parliament includes provisions to outlaw corporal punishment for all pupils in maintained and independent schools, and for children receiving nursery education. We expect these provisions to come into force on 1 September 1999.

Further Guidance

3 The Department will consult in the autumn on new guidance about pupil behaviour and discipline to replace the guidance in DfEE Circular 8/94

which meanwhile still applies. That should be read with the Department's letter of 8 May about the provisions of the Education Act 1997, particularly on school discipline policies and detention. T

4 The Department also intends to issue guidance to help staff choose strategies for restraining pupils presenting challenging behaviour with a focus on SEN settings. We aim to issue a draft for consultation in Spring 1999.

A School Policy

5 It is important that schools have a policy about the use of force to control or restrain pupils. All members of staff who may have to intervene physically with pupils must clearly understand the options and strategies open to them. They must know what is acceptable and what is not. The Governing Body, parents, and pupils, also need to know that.

6 The Head teacher should draw up a policy setting out guidelines about the use of force to control or restrain pupils, and discuss these with the staff who may have to apply them, and with the Governing Body of the school. When drawing up such a policy Head teachers of LEA maintained schools should refer to any model policy about touching, holding, or restraining pupils that the LEA has developed.

Head teachers of other schools may also find it helpful to refer to any such policy and/or seek advice from their professional association. In all cases Head teachers should take account of the Department's guidance on pupil behaviour and discipline policies (see paragraph 3).

7 A statement of the school's policy on this issue should be included with the information the school gives parents about the school's policy on discipline and standards of behaviour.

Planning for incidents

8 If a school is aware that a pupil is likely to behave in a way that may require physical control or restraint, it will be sensible to plan how to respond if the situation arises. Such planning needs to address:

- managing the pupil (e.g. reactive strategies to de-escalate a conflict, holds to be used);
- involving the parents to ensure that they are clear about what specific action the school might need to take;
- briefing staff to ensure they know exactly what action they should be taking (this may identify a need for training or guidance);
- ensuring that additional support can be summoned if appropriate;
- in some cases, particularly in SEN settings, the school may also need to take medical advice about the safest way to hold pupils with specific health needs.

9 The section allows teachers, and other persons who are authorised by the Head teacher to have control or charge of pupils (see paragraph 11 below), to use such force as is reasonable in all the circumstances to prevent a pupil from doing, or continuing to do, any of the following:

- committing a criminal offence (including behaving in a way that would be an offence if the pupil were not under the age of criminal responsibility);
- injuring themselves or others;
- causing damage to property (including the pupil's own property);
- engaging in any behaviour prejudicial to maintaining good order and discipline at the school or among any of its pupils, whether that behaviour occurs in a classroom during a teaching session or elsewhere.

10 The provision applies when a teacher, or other authorised person, is on the school premises, and when he or she has lawful control or charge of

the pupil concerned elsewhere e.g. on a field trip or other authorised out of school activity.

Authorised Staff

11 The Act allows all teachers at a school to use reasonable force to control or restrain pupils. It also allows other people to do so, in the same way as teachers, provided they have been authorised by the Head teacher to have control or charge of pupils. Those might include classroom assistants, care workers, midday supervisors, specialist support assistants, education welfare officers, escorts, caretakers, or voluntary helpers including people accompanying pupils on visits, exchanges or holidays organised by the school.

12 Head teachers should identify people, other than teachers, whom they wish to authorise to have control or charge of pupils and therefore be able to use force if necessary. Authorisation may be on a permanent or long term basis because of the nature of the person's job, or short term for a specific event such as a school trip. The Head should explicitly inform the people concerned, and ensure that they are aware of and properly understand what the authorisation entails. To ensure that, Heads may find it helpful to arrange for a senior member of the teaching staff to provide training or guidance.

They should keep an up-to-date list of authorised people and ensure the teachers know who they are.

Action in self-defence or in an emergency

13 Section 550A does not cover all the situations in which it might be reasonable for someone to use a degree of force. For example, everyone has the right to defend themselves against an attack provided they do not use a disproportionate degree of force to do so. Similarly, in an emergency, for example if a pupil was at immediate risk of injury or on the point of inflicting injury on someone else, any member of staff would be entitled to intervene. The purpose of Section 550A is to make it clear that teachers, and other authorised staff, are also entitled to intervene in other, less extreme, situations.

Types of Incidents

14 There are a wide variety of situations in which reasonable force might be appropriate, or necessary, to control or restrain a pupil. They will fall into three broad categories:

- a. where action is necessary in self-defence or because there is an imminent risk of injury;
- b. where there is a developing risk of injury, or significant damage to property;
- c. where a pupil is behaving in a way that is compromising good order and discipline.

15 Examples of situations that fall within one of the first two categories are:

- a pupil attacks a member of staff, or another pupil;
- pupils are fighting;
- a pupil is engaged in, or is on the verge of committing, deliberate damage or vandalism to property;
- a pupil is causing, or at risk of causing, injury or damage by accident, by rough play, or by misuse of dangerous materials or objects;
- a pupil is running in a corridor or on a stairway in a way in which he or she might have or cause an accident likely to injure him or herself or others;
- a pupil absconds from a class or tries to leave school (N.B. this will only apply if a pupil could be at risk if not kept in the classroom or at school).

Examples of situations that fall into the third category are:

- a pupil persistently refuses to obey an order to leave a classroom;

- a pupil is behaving in a way that is seriously disrupting a lesson.

Reasonable Force

16 There is no legal definition of 'reasonable force'. So it is not possible to set out comprehensively when it is reasonable to use force, or the degree of force that may reasonably be used. It will always depend on all the circumstances of the case.

17 There are two relevant considerations:

- the use of force can be regarded as reasonable only if the circumstances of the particular incident warrant it. The use of any degree of force is unlawful if the particular circumstances do not warrant the use of physical force. Therefore physical force could not be justified to prevent a pupil from committing a trivial misdemeanour, or in a situation that clearly could be resolved without force.

- the degree of force employed must be in proportion to the circumstances of the incident and the seriousness of the behaviour or the consequences it is intended to prevent. Any force used should always be the minimum needed to achieve the desired result.

18 Whether it is reasonable to use force, and the degree of force that could reasonably be employed might also depend on the age, understanding, and sex of the pupil.

Practical considerations

19 Before intervening physically a teacher should, wherever practicable, tell the pupil who is misbehaving to stop, and what will happen if he or she does not. The teacher should continue attempting to communicate with the pupil throughout the incident, and should make it clear that physical contact or restraint will stop as soon as it ceases to be necessary. A calm and measured approach to a situation is needed and teachers should never give the impression that they have lost their temper, or are acting out of anger or frustration, or to punish the pupil.

20 Sometimes a teacher should not intervene in an incident without help (unless it is an emergency).

For example, when dealing with an older pupil, or a physically large pupil, or more than one pupil,

or if the teacher believes he or she may be at risk of injury. In those circumstances the teacher should remove other pupils who might be at risk, and summon assistance from a colleague or colleagues,

or where necessary phone the Police. The teacher should inform the pupil(s) that he or she has sent for help. Until assistance arrives the teacher should continue to attempt to defuse the situation orally, and try to prevent the incident from escalating.

Application of Force.

21 Physical intervention can take several forms. It might involve staff:

- physically interposing between pupils;
- blocking a pupil's path;
- holding;
- pushing;
- pulling;
- leading a pupil by the hand or arm;
- shepherding a pupil away by placing a hand in the centre of the back; or,
- (in extreme circumstances) using more restrictive holds.

22 In exceptional circumstances, where there is an immediate risk of injury, a member of staff may need to take any necessary action that is consistent with the concept of 'reasonable force': for example

to prevent a young pupil running off a pavement onto a busy road, or to prevent a pupil hitting someone, or throwing something.

23 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 that 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.

24 Staff should always avoid touching or holding a pupil in a way that might be considered indecent.

25 Where the risk is not so urgent the teacher should consider carefully whether, and if so when, physical intervention is right. Teachers should always try to deal with a situation through other strategies before using force. All teachers need developed strategies and techniques for dealing with difficult pupils and situations which they should use to defuse and calm a situation. Advice about this will be included in the draft guidance on pupil behaviour and discipline policies referred to in paragraph 3.

In a non-urgent situation force should only be used when other methods have failed.

26 That consideration is particularly appropriate in situations where the aim is to maintain good order and discipline, and there is no direct risk to people or property. As the key issue is establishing good order, any action which could exacerbate the situation needs to be avoided. The possible consequences of intervening physically, including the risk of increasing the disruption or actually provoking an attack, need to be carefully evaluated.

27 The age and level of understanding of the pupil is also very relevant in those circumstances. Physical intervention to enforce compliance with staff instructions is likely to be increasingly inappropriate with older pupils. It should never be used as a substitute for good behavioural management.

Recording Incidents

28 It is important that there is a detailed, contemporaneous, written report of any occasion (except minor or trivial incidents) where force is used. It may help prevent any misunderstanding or misrepresentation of the incident, and it will be helpful should there be a complaint.

29 Schools should keep an up-to-date record of all such incidents, preferably in an incident book.

Immediately following any such incident the member of staff concerned should tell the Head or a senior member of staff and provide a written report as soon as possible afterwards. That should include:

- the name(s) of the pupil(s) involved, and when and where the incident took place;
- the names of any other staff or pupils who witnessed the incident;
- the reason that force was necessary (e.g. to prevent injury to the pupil, another pupil or member of staff);
- how the incident began and progressed, including details of the pupil's behaviour, what was said by each of the parties, the steps taken

to defuse or calm the situation, the degree of force used, how that was applied, and for how long;

- the pupil's response, and the outcome of the incident;
- details of any injury suffered by the pupil, another pupil, or a member of staff and of any damage to property.

Staff may find it helpful to seek advice from a senior colleague or a representative of their professional association when compiling a report. They should also keep a copy of the report.

30 Incidents involving the use of force can cause the parents of the pupil involved great concern. It is always advisable to inform parents of an incident involving their child, and give them an opportunity to discuss it. The Head teacher, or member of staff to whom the incident is reported, will need to consider whether that should be done straight away or at the end of the school day, and whether parents should be told orally or in writing.

Complaints

31 Involving parents when an incident occurs with their child, plus a clear policy about physical contact with pupils that staff adhere to, should help to avoid complaints from parents. It will not prevent all complaints, however, and a dispute about the use of force by a member of staff might lead to an investigation, either under disciplinary procedures or by the Police and social services department under child protection procedures. DfEE Circular 10/95: Protecting Children From Abuse gives guidance about the latter, and about procedures for dealing with allegations against teachers.

32 The possibility that a complaint might result in a disciplinary hearing, or a criminal prosecution, or in a civil action brought by a pupil or parent, cannot be ruled out. In those circumstances it would be for the disciplinary panel or the court to decide whether the use and degree of force was reasonable in all the circumstances. In that event, however, the panel, or court, would have regard to the provisions of section 550A. It would also be likely to take account of the school's policy on restraint, whether that had been followed, and the need to prevent injury, damage, or disruption, in considering all the circumstances of the case.

Physical Contact With Pupils In Other Circumstances

33 There are occasions when physical contact with a pupil may be proper or necessary other than those covered by Section 550A of the 1996 Act. Some physical contact may be necessary to demonstrate exercises or techniques during PE lessons, sports coaching, or CDT, or if a member of staff has to give first aid. Young children and children with special educational needs may need staff to provide physical prompts or help. Touching may also be appropriate where a pupil is in distress and needs comforting. Teachers will use their own professional judgement when they feel a pupil needs this kind of support.

34 There may be some children for whom touching is particularly unwelcome. For example, some pupils may be particularly sensitive to physical contact because of their cultural background, or because they have been abused. It is important that all staff receive information on these children. In addition, the school will need to develop clear common practice towards particular groups of children and events. There should be a common approach where staff and pupils are of different sexes. Physical contact with pupils becomes increasingly open to question as pupils reach and go through adolescence, and staff should also bear in mind that even innocent and well-intentioned physical contact can sometimes be misconstrued.