

NUT NOTES

2013-14

Education,
The Law
and You



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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. The “Revised professional standards for education practitioners” have applied to teachers in Wales since September 2011 and the “Teachers’ Standards” have applied to teachers in England since September 2012. In accordance with these standards, teachers are required to maintain up-to-date knowledge and understanding of and to act within the statutory frameworks which set out their professional duties and responsibilities.

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 their NUT regional office in England or NUT Cymru in Wales. For contact details, please see page 17.

The Department for Education (DfE) and the Welsh Government are responsible for education and children’s services in England and Wales. Where Department for Education and Skills (DfES) or Department for Children, Schools and Families (DCSF) statutory and non-statutory guidance is referred to in these *NUT Notes*, it continues to reflect the current legal and policy position.

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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 law developed through decisions of the Court 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 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 satisfied, even though others may disagree.
8. A breach of the duty of care by a teacher could amount to common law negligence.
9. A teacher's employer could be liable to pay 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 the incident that occurred could reasonably have been foreseen. If a teacher takes all reasonable steps to ensure the safety of their pupils, it is unlikely that the 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, it is more likely to be a collective failing rather 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.
13. Provided 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.

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The Statutory Duty of Care

14. Teachers are also responsible under the Children Act which places statutory 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 what is reasonable in all the circumstances for the purpose 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, the terms of which will depend on the type of school in which the teacher works.
18. The School Teachers' Pay and Conditions Document (STPCD) defines expressly the contractual duties in England and Wales upon all teachers employed in maintained schools. It also applies to teachers in independent schools (including academies and free schools) where the STPCD (as amended) has been incorporated into their contracts. The document takes effect by statutory order and is revised annually, the new provisions becoming effective in September of each year. It is available in schools and online at www.education.gov.uk. Relevant provisions from the list of contractual duties include promoting the safety and well-being of pupils and maintaining good order and discipline among pupils.
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 breach of 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.
23. In practice, this means that teachers must provide supervision of the pupils throughout school journeys or visits according to professional standards and common sense. Reasonable steps must be taken to avoid exposing pupils to dangers which are foreseeable and beyond those with which the particular pupils can reasonably be expected to cope. This does not imply constant 24-hour direct supervision. The need for direct supervision has to be judged by reference to the risks involved in the activity being undertaken. It may not always be sufficient to give instructions to pupils. The possibility that there may be challenging behaviour has to be taken into account, together with the risk the pupils may encounter if they disobey instructions. Equally, teachers may take account of the ages and levels of personal responsibility of their pupils.

24. Teachers have responsibility for pupils in their care but qualified instructors giving guidance to pupils will be responsible for their relevant area of expertise. If teachers are concerned about the ability of any of their pupils to undertake any particular activity safely, those pupils should, if necessary, be withdrawn from the activity.
25. Teachers should not participate in journeys or visits which they believe are not being adequately prepared and organised. Any concerns should be raised with the head teacher.
26. Where journeys are organised within schools, responsibility for establishing that proper preparation has been made and that proper supervision will be provided is ultimately with the head teacher. Head teachers may delegate this function to the educational visits coordinator (EVC). Head teachers should prohibit journeys and visits if they are not satisfied with the arrangements made.
27. Satisfying the duty of care absolves teachers from legal liability. Sometimes accidents occur as a result of the fault of persons with no organising or supervising responsibility for the journey. Some events are accidents, not reasonably foreseeable and not the result of anyone's negligence. Liability goes with fault. In the case of a pure accident, no-one bears liability. No-fault insurance covers this eventuality.
28. Employers have 'vicarious liability' for the negligence of their employees at work. This means broadly that the employer takes responsibility if employees do not properly fulfil their health and safety obligations at work. Accidents involving pupils where negligence is alleged on the part of teachers may give rise to legal claims. If the teachers were at the time working in the course of their employment, such legal claims will most likely be made against employers. The employer might be the local authority (LA) or, in the case of a foundation school, voluntary aided school, sixth form college, independent school, academy or trust school, the governing body.
29. The Department for Education (DfE) has withdrawn its guidance on school trips 'Health and Safety of Pupils on Educational Visits' (HASPEV), replacing it with a summary of the law relating to health and safety both in schools generally and on school visits specifically. In the view of the NUT, the DfE document issued in June 2013, 'Health and Safety: Department for Education Advice on Legal Duties and Powers for Local Authorities, Head Teachers, Staff and Governing Bodies' does not provide anything like the level of detailed good practice guidance found in HASPEV. The DfE has published separate 'Advice on Driving School Minibuses'. The HSE's guidance, 'School trips and outdoor activities – tackling the health and safety myths' is available at www.hse.gov.uk/services/education/school-trips.pdf. Further to this guidance, the HSE has published five case studies to illustrate examples of proportionate responses to planning and delivering school trips. These case studies can be found at www.hse.gov.uk/services/education/case-studies.htm.
30. In Wales, the Welsh Assembly Government (WAG) guidance, 'Educational Visits: A Safety Guide for Learning Outside the Classroom' covers the legal responsibilities of those organising visits and contains guidance on the various stages of planning visits, staffing and supervision ratios, preparation of pupils, special considerations for particular categories of pupils, transport and insurance matters, emergency procedures, and special considerations when planning trips abroad. The document includes a series of model forms for use at all stages of organising a trip. The Safety Guide can be found by entering 'educational visits' in the search box at www.wales.gov.uk
31. Such advice is designed to work alongside local authority guidance and to offer national guidance where information from elsewhere is unavailable, incomplete or not up-to-date. Schools in both England and Wales can also draw upon the authoritative information and guidance contained on the website of the Outdoor Education Advisers' Panel (OEAP), which can be found at www.oeap.info. This site can be used where employers have adopted this guidance through their policy.

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32. In summary, teachers organising or accompanying visits should do so in accordance with the guidance from schools and local authorities, government guidance and guidance from the OEAP.
33. The Welsh Government document and OEAP guidance give advice on staffing ratios. The ratio of pupils to staff should be determined by risk assessment, according to, for example, the nature of the trip and activities planned, the age, ability and special needs of the pupils, the experience and competence of the staff and the location and environment in which the activity is to take place.
34. 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 any emergency situation.

Health and Safety at Work

35. The main responsibility under the Health and Safety at Work etc 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. 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. All schools, academies, free schools and colleges should have written health and safety policies in place, of which all employees, including teachers, should be informed. Furthermore, Section 2 of the HSWA requires employers to consult with safety representatives on health and safety matters.
36. The duty on employers includes taking reasonable care for both the physical and mental health of their employees. This means that employers should assess the risks to teachers of excessive workload, pupil behaviour and the conduct of other staff.
37. 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).
38. Teachers should comply with any school, academy, free 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 of the 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.
39. 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, academy, free school or college, such as the accident report book.
40. 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 could cause slips, trips or falls.

Physical Contact with Pupils

41. In July 2013 the DfE issued revised non-statutory guidance to all schools: 'Use of reasonable force – Advice for head teachers, staff and governing bodies.' The advice which applies to academies, free schools, independent schools and all types of maintained schools states: "It is not illegal to touch a pupil. There are occasions when physical contact, other than reasonable force, with a pupil is proper and necessary.

Examples of where touching a pupil might be proper or necessary:

- Holding the hand of the child at the front/back of the line when going to assembly or when walking together around the school;
- When comforting a distressed pupil;
- When a pupil is being congratulated or praised;
- To demonstrate how to use a musical instrument;
- To demonstrate exercises or techniques during PE lessons or sports coaching; and
- To give first aid."

Teachers' Power to use Reasonable Force to Restrain

42. In England, the following guidance can be found on the DfE website www.education.gov.uk

- 'Use of reasonable force – Advice for head teachers, staff and governing bodies' DfE 2013
- 'Behaviour and discipline in schools – A guide for head teachers and school staff' DfE 2013
- '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' DfES Guidance (Ref: LEA 0242 2002)
- 'Use of Restrictive Physical Interventions for Pupils with Severe Behavioural Difficulties' DfES guidance (Ref: LEA 0264 2003)

In Wales, the following guidance may be found on the Welsh Government website www.wales.gov.uk

- 'Safe and effective intervention – use of reasonable force and searching for weapons' (March 2013)
- Welsh Government Guidance Circular 23/2006 'Teaching Drama: Guidance on Safeguarding Children and Child Protection for Managers and Drama Practitioners'.

When it is Reasonable to Use Force

43. Teachers in both England and Wales have a statutory power to use reasonable force to restrain pupils in a number of circumstances as set out in Section 93 of the Education and Inspections Act 2006. Teachers are generally permitted the use of reasonable force to prevent pupils from hurting themselves or others, from damaging property, or from causing disorder. The DfE guidance on the 'Use of Reasonable Force' provides that teachers can use reasonable force:

- to remove disruptive children from the classroom where they have refused to follow an instruction to do so
- to prevent a pupil behaving in a way that disrupts a school event or a school trip or visit
- to prevent a pupil leaving the classroom where allowing the pupil to leave would risk their safety or lead to behaviour that disrupts the behaviour of others
- to prevent a pupil from attacking a member of staff or another pupil, or to stop a fight in the playground
- to restrain a pupil at risk of harming themselves through physical outbursts.

44. The statutory provisions can apply when a teacher or other authorised person is:

- on the premises of the school (or academy); or
- elsewhere at a time when, as a member of school staff (or academy staff), he or she has lawful control or charge of the pupil concerned, for example, on an out-of-school activity.

- 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 is 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 own personal safety.

Recording and Reporting Incidents

- 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. Parents must be informed as soon as possible after every recorded incident, unless it appears that doing so would be likely to result in significant harm to the pupil.
- 50. Teachers should be familiar with the school, academy or college behaviour policy. Maintained schools are legally required to have such policies in place. There is no legal requirement to have a policy on the use of force, but DfE guidance recommends that, as a matter of good practice, schools (including academies) and colleges should set out in their behaviour policy the circumstances in which force might be used. This is likely, according to DfE guidance, to reduce the likelihood of complaints being made when force has been used properly.
- 51. 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

- 52. A number of statutory provisions place responsibilities for child protection upon local authorities (LAs), schools, academies and colleges, although – in the context of FE colleges – child protection responsibilities also extend to vulnerable adults.
- 53. Under the Children Act 1989, local authorities, schools (including academies) 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.

- 54. 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. Besides these statutory duties, schools (including academies) and colleges have a pastoral responsibility towards their pupils.
- 55. The individual responsibilities of teachers depend upon their role in relation to child protection in their schools or colleges. The DfE has issued guidance to maintained and independent schools (including academies), and colleges, called 'Dealing with Allegations of Abuse Against Teachers and other Staff'. It is available for download on the DfE website www.education.gov.uk. 'Working Together to Safeguard Children' was revised by the DfE in March 2013, and is also available on the DfE website. It sets out how individuals and organisations should work together to safeguard and promote the welfare of children. Welsh Government 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 Welsh Government website www.wales.gov.uk
- 56. Under the Children Act 2004, local authorities have a duty to make arrangements to promote cooperation between agencies in order to improve children's well-being.

Teachers' Responsibilities

- 57. Teachers should be familiar with the procedures in their school, academy or college for dealing with suspected child abuse. Concern or suspicions should be reported. Each school, academy or college 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

- 58. Child abuse is widely defined, but may include 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.
- 59. 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, academies and colleges should have procedures, of which all staff should be aware, for handling suspected cases of abuse of pupils or students. The school, academy or college child protection policy should also be made known to parents.

Allegations of Abuse by Teachers

- 60. Each school, academy 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 Welsh Government Circular, 'Safeguarding Children in Education: The Role of Local Authorities and Governing Bodies under the Education Act 2002', provides detailed procedures on how allegations should be handled, although the DfE equivalent guidance currently lacks detail. Schools, academies and colleges are not prohibited, however, from using previous DCSF guidance i.e. 'Safeguarding

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Children and Safer Recruitment in Education' where this is more helpful. Schools, academies and colleges may also refer to the 'Joint NEOST/Teacher Union Guidance on Education Staff and Child Protection: Staff Facing an Allegation of Abuse'. The document may be found at www.lge.gov.uk/lge/aio/51022.

61. 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. Schools' (including academies) and colleges' procedures should be consistent with those of the Local Safeguarding Children Board (LSCB) and, in the case of local authority maintained schools, with those of the local authority.

Teachers' Power to Discipline

62. Teachers 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. The Education and Inspections Act 2006 sets out teachers' statutory powers of discipline and restraint. The DfE issued the following guidance in 2012 'Ensuring good behaviour in schools – A summary for head teachers, governing bodies, teachers, parents and pupils'.
63. The power to discipline includes imposing a penalty when a pupil's standard of behaviour falls below that which it 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.
64. All the powers should be exercised in accordance with the school, academy or college's behaviour policy.

Detention of Pupils on Disciplinary Grounds

65. By virtue of Section 92 of the Education and Inspections Act 2006, there is a legal right for teachers to detain pupils after the end of a school, academy or college session or on most weekends, without parental consent. Certain conditions apply in order for the detention to be lawful. These are that:
 - the head teacher/principal must have made it generally known within the school, academy or college and brought it to the attention of parents that detention might be imposed, for example, through the school, academy or college's behaviour and discipline policy
 - the detention must be imposed by a paid member of staff either generally or specifically authorised to do so
 - 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
 - for pupils at schools in Wales, 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)
 - the pupil is under the age of 18.
66. Teachers are advised to ensure they follow carefully the disciplinary policies of their schools, academies and colleges. In England, information on behaviour, attendance, discipline, and exclusions can be found in the DCSF publication, 'Exclusion from maintained schools, academies and pupil referral units in England: a guide for those with legal responsibilities in relation to exclusion' 2012. In Wales, guidance on exclusion is called 'Exclusion from Schools and Pupil Referral Units' 2012 and is available from www.wales.gov.uk

Searching Pupils

Notes

67. In England, sections 550ZA and 550ZB of the Education Act 1996 empower a head teacher to search a pupil or a pupil's possessions if the head teacher has reasonable grounds for suspecting that the pupil has a 'prohibited item' i.e. a knife, an offensive weapon, alcohol, controlled drugs, stolen property, an article that may be used to commit an offence or to cause injury or damage or any other item which the school rules identify as an item for which a search may be made.
68. In Wales, section 550AA of the Education Act 1996 empowers a head teacher to search a pupil or a pupil's possessions if the head teacher has reasonable grounds for suspecting that the pupil has a knife or an offensive weapon.
69. A head teacher may delegate this power to staff who agree to accept it but teachers may not be directed to search pupils. All staff willing and authorised to search pupils must first receive appropriate and adequate training. 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 judgement of the circumstances.
70. 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.
71. The Education Act 1996 requires the member of staff searching the pupil to be of the same sex as the pupil and the search may only be carried out in the presence of another member of staff who is also of the same sex as the pupil. An exception applies where the teacher reasonably believes that there is a risk that serious harm will be caused to a person if the search is not carried out as a matter of urgency, and in the time available it is not reasonably practicable for the search to be carried out by a person of the same sex as the pupil or in the presence of another member of staff. The member of staff searching the pupil must not require the pupil to remove any clothing except outer clothing, such as a shoe, coat or hat.
72. 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.
73. The DfE has revised its guidance for school leaders, staff and governing bodies called 'Screening, Searching and Confiscation – Advice for head teachers, staff and governing bodies', and 'Advice for Principals and Staff of Further Education Colleges, Sixth Form Colleges and 16-19 Academies' which can be found on the DfE website www.education.gov.uk

Anti-Discrimination Law and Human Rights – Pupils

74. The law prohibits discrimination against pupils on grounds of disability, pregnancy, race, religion or belief, sex, sexual orientation and trans status. These are referred to as 'protected characteristics'.
75. Discrimination law is mainly contained in the Equality Act 2010.
76. It is unlawful to directly or indirectly discriminate against a pupil with a 'protected characteristic'.
77. Direct discrimination is where a person is treated less favourably because of his or her protected characteristic, in circumstances where another person without his or her protected characteristic is treated or would have been treated more favourably. 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.

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78. Indirect discrimination is more complex. This is where a provision, criterion or practice, although applied equally to everyone, puts people with a particular protected characteristic at a disadvantage and cannot be justified objectively. 'Justified objectively' means, in an educational context, justifiable on educational or other grounds. It is a question of fact in each case. 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.
79. Pupils are protected from discriminatory harassment on grounds of their protected characteristics. They are also protected from victimisation i.e. from detrimental treatment on grounds that they have, for example, made a complaint of discrimination.
80. In schools (including academies) and colleges, discrimination is specifically unlawful as follows:
- on the terms on which admission is offered (although certain exceptions apply to schools with a religious ethos and single sex schools)
 - 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
 - by excluding pupils or subjecting them to any other detriment.

Race

81. The Race Relations Act (the provisions of which are now contained in the Equality Act 2010) was amended in 2000 by the Government to take forward the recommendations of the Stephen Lawrence Inquiry. Discrimination in connection with the provision of education on grounds of race is generally unlawful. Pupils are protected from discrimination on grounds of their colour, nationality and ethnic or national origins.

Disability

82. The Disability Discrimination Act 1995 (DDA) was amended in 2001 to extend its coverage to the education sector. The provisions of the DDA may now be found in the Equality Act 2010. It is unlawful to discriminate against disabled pupils and prospective pupils. Schools (including academies) 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 (including academies) and colleges are required to plan to increase access to education services for disabled pupils.

Gender and Gender Reassignment

83. Discrimination on grounds of gender is generally unlawful in schools and FE and HE colleges. Sex discrimination cases in schools might occur in admissions, in pupil discipline, in exclusions and in deciding what education is to be provided for boys and for girls. Single-sex schools are permissible but the local authority must ensure that there is equality of educational provision for boys and girls respectively. Discrimination against a pupil in connection with the provision of education on grounds of past, present or proposed gender reassignment is generally unlawful under the 2010 Act.

Sexual Orientation and Religion or Belief

84. Protection from discrimination for pupils was extended to cover sexual orientation and religion or belief by the Equality Act 2006 and corresponding regulations and may now be found in the Equality Act 2010. Under the provisions, most school (including academy) 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. These exceptions do not extend to pupil discipline or pupil exclusions. It is anticipated that these provisions will raise awareness of homophobic and religious bullying of pupils.

The Single Equality Duty

85. In April 2011 the three existing general equality duties (i.e. race, disability and gender) were combined into a single public sector equality duty and extended to cover all the other protected characteristics (except marriage and civil partnership). The coalition government is threatening some damaging changes to the public sector equality duty but at the time of writing the duty remains intact.
86. The general duty requires all local authorities, schools, academies, free schools and colleges in the state sector and also independent schools in the exercise of their education functions, to have due regard to the need to eliminate discrimination, to advance equality of opportunity and to foster good relations.
87. Public authorities are required to demonstrate that they meet the general duty, for example by publishing objectives and reports that they promote good relations between pupils from different racial groups.
88. Schools (including academies) 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, academy 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 the school, academy or college. In particular, schools (including academies), colleges and teachers should have regard to policies and practices relating to:
- admissions
 - the day-to-day organisation of school, academy 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
 - guidance and support.

The Equality and Human Rights Commission

89. The Equality and Human Rights Commission (EHRC) was established in October 2007. It combines the responsibilities and powers of the three previous commissions: the Equal Opportunities Commission, the Disability Rights Commission and the Commission for Racial Equality. It has the power to enforce the public sector equality duty on organisations bound by it, including schools, academies and colleges.
90. Codes of Practice set out practical steps for the elimination of discrimination and the advancement of equality of opportunity. These may be found on the EHRC website www.equalityhumanrights.com

Special Educational Needs (SEN) Code of Practice

91. The DfE wants to fundamentally change the SEN system. The proposed changes are set out in the SEN and Disabilities Green Paper available at www.education.gov.uk. The government proposes that the final year of the current arrangements will apply to the academic year September 2012. At the time of writing, arrangements from September 2013 are not available.

92. The Code of Practice on the identification and assessment of SEN was established by primary legislation in 1993. The NUT believes the SEN Code of Practice is the safest way to ensure resources available for SEN provision are allocated, as equitably as possible, between the children who need support. A revised version of the Code was issued by the DfES in England in 2001 (DfES/581/2001). The Welsh 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 coordinators (SENCOs), are required to have regard.
93. 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.
94. 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.education.gov.uk
95. 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.
96. 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.
97. There is an expectation in the Codes that IEPs should 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 least twice yearly. All teachers who teach a pupil with SEN should be made aware of the individual targets and the planned strategies.
98. 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 Equality Act 2010.
99. The NUT is a source of expert advice to members on the application of the Codes of Practice and the duties of schools under discrimination legislation. For contact details, please see page 17.
100. In Wales, the Education (Wales) Measure 2009 gives children and young people with SEN themselves the right to make SEN appeals and claims of disability discrimination to the SEN Tribunal for Wales. Pilot schemes are taking place, with a view to rolling out the new appeals process in 2013.

Anti-Discrimination Law and Human Rights – Teachers

101. Teachers are protected from discrimination in employment on grounds of age, disability, marital or civil partnership status, maternity/pregnancy, race, religion or belief, sex, sexual orientation, trade union membership or activity, trans status and 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.

102. Schools (including academies) 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. Policies should prohibit unlawful discrimination, harassment and bullying of teachers by other teachers or pupils. Procedures should allow teachers to record every incident of discrimination, harassment or bullying and employers should take reasonable steps to prevent any further such conduct.

103. Teachers, like other employees, can raise grievances and bring complaints to employment tribunals about unlawful discrimination or harassment. The NUT provides advice to members who wish to raise grievances.

Criminal Records and Suitability to Work with Children

104. When appointments are offered, teachers are asked to apply for an Enhanced Disclosure from the Disclosure and Barring Service (DBS). In addition to any convictions, disclosure includes information from local police records such as acquittals, allegations or other non-conviction information (referred to as soft information).

105. 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, unless the conviction has been removed by the DBS from a disclosure certificate as old and minor. Further guidance may be found in the NUT document 'Disclosure of Police Information to Employers: FAQs June 2013', which is available at www.teachers.org.uk/node/18564

106. The DBS provides teachers with a copy of the information before it is 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 DBS fee but in practice most employers pay it. Agency teachers are less fortunate, in that few agencies agree to meet the DBS fee.

107. Teachers will generally be carrying out work that is classed as 'regulated activity'. 'Regulated activity' is a legal phrase, which appears in the Safeguarding Vulnerable Groups Act 2006 and refers to activities that involve working with children on a frequent, intensive or overnight basis. The significance of carrying out regulated activity for teachers is that employers will be required by law to obtain a DBS certificate where:

- the individual has been employed since March 2002 and has had a break in service of three months or more; or
- the individual has been employed since May 2006.

Legal and Professional Advice from the NUT

108. Student teachers have rights as well as the legal responsibilities outlined above. Student teachers may want to know what duty schools (including academies) and colleges have in providing support and training, or want some advice about their 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 concern.

109. 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. For contact details, please see page 17.

Contact the NUT

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3 McMillan Close, Saltwell Business Park,
GATESHEAD NE9 5BF
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e: northern@nut.org.uk

2 NORTH WEST NUT REGIONAL OFFICE

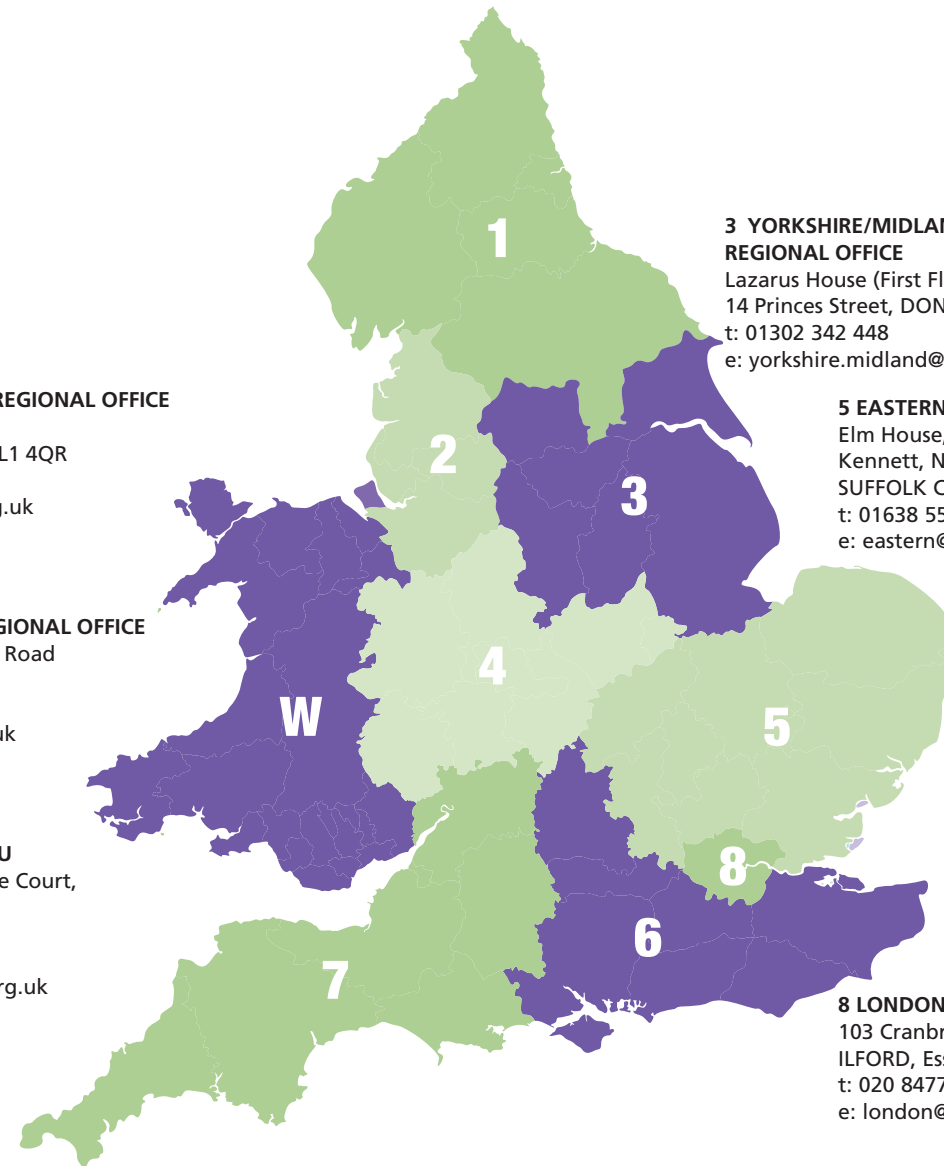
25 Chorley New Road,
BOLTON, Lancashire BL1 4QR
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e: north.west@nut.org.uk

4 MIDLANDS NUT REGIONAL OFFICE

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e: midlands@nut.org.uk

W WALES NUT CYMRU

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Vanguard Way,
CARDIFF CF24 5PJ
t: 029 2049 1818
e: cymru.wales@nut.org.uk



3 YORKSHIRE/MIDLAND NUT REGIONAL OFFICE

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5 EASTERN NUT REGIONAL OFFICE

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Kennett, Newmarket,
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t: 01638 555 300
e: eastern@nut.org.uk

8 LONDON NUT REGIONAL OFFICE

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t: 020 8477 1234
e: london@nut.org.uk

7 SOUTH WEST NUT REGIONAL OFFICE

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EXETER, Devon EX1 2PR
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e: south.west@nut.org.uk

6 SOUTH EAST NUT REGIONAL OFFICE

Britton House, College Road,
ARDINGLY, Haywards Heath,
West Sussex RH17 6TT
t: 01444 894 500
e: south.east@nut.org.uk

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together to provide you with all the
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MOBILE TEL: **HOME TEL:**

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PLEASE COMPLETE EITHER SECTION A OR B

SECTION A UNIVERSITY BASED

NAME OF UNIVERSITY, COLLEGE OR SCITT:

COURSE: PGCE PGCE(FE) BEd BA(QTS) BSc(QTS) SCITT
Other:

When does your course finish? 2014 2015 2016 2017

SECTION B SCHOOL BASED

PROGRAMME: School Direct (non-salaried) School Direct (salaried) Teach First Overseas Trained Teacher

NAME OF SCHOOL:

ADDRESS:
 POSTCODE:

When does your programme finish? 2014 2015 2016

Information about your rights to data protection as an NUT member is available at www.teachers.org.uk/dataprotection

Signed:

FOR OFFICE USE ONLY:
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Return your completed application form to your regional office in England or NUT Cymru in Wales. See page 17 for contact details.