

APPRENTICESHIPS, SKILLS, CHILDREN AND LEARNING ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 11: Learners

Recording and reporting use of force

808. Staff at schools and FE institutions who supervise learners have powers to use force to prevent the commission of any criminal offence, injury, damage to property or serious breaches of discipline. The legislation that provides this power for schools has existed in its current form since 1998 and was re-enacted by section 93 of the Education and Inspections Act 2006. The analogous legislation for colleges is section 85C of the Further and Higher Education Act 1992 (inserted by the Education and Inspections Act 2006).
809. The Department for Children, Schools and Families issued revised guidance, entitled *The Use of Force to Control or Restrain Pupils* in November 2007.
810. This guidance is supplemented by two specialist guidance documents which provide additional information for staff working with pupils with special educational needs and/or disabilities, namely:
- *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* (Circ LEA/0242/2002); and
 - *Guidance on the Use of Restrictive Physical Interventions for Pupils with Severe Behavioural Difficulties* (Circ LEA/0264/2003).
811. The Association of Colleges in partnership with the then Department for Education and Skills issued revised guidance, entitled *The Use of Force to Control or Restrain in Further Education* in April 2007. This document refers to the specialist guidance documents prepared for schools which may help FE Institutions in working with similar client groups. With the re-designation of sixth form colleges, this guidance will cover both general FE and sixth form colleges.

Section 246: Recording and reporting the use of force in schools: England

812. This section inserts a new subsection 93A into the Education and Inspections Act 2006. Subsections (1), (2) and (3) of 93A require the governing body of a school in England to ensure that a procedure is in place for recording significant incidents where a member of staff has used force on a pupil and to take reasonable steps to ensure that the procedure is followed by staff at the school. The procedure must provide that such incidents are both recorded in writing, and reported to the pupil's parents (except where the pupil is aged 20 or over, or the exception in *subsection (5)* applies) as soon as possible after the incident.

813. Subsection (1)(b) specifies that the report must be made to each of the pupil's parents. *Subsection (7)* states that "parent" has the meaning given by section 576 of the Education Act 1996, and includes a local education authority which provides accommodation for a child or young person in care. This means that, for example, where a pupil has a mother and father who both have parental responsibility for him, or her, and is the subject of a Care Order under section 31 of the Children Act 1989, or being accommodated under section 20 of that Act, the child's mother, father and the relevant local education authority must be told about the incident.
814. *Subsection (4)* specifies that the governing body must have regard to guidance issued by the Secretary of State for the purposes of recording and reporting significant incidents of the use of force. A considerable amount of good practice guidance has been issued about the use of force upon pupils. It is important to understand that the obligation to have regard to guidance only relates to governing bodies' obligations in relation to reporting and recording. This guidance (paragraphs 44 and 45) sets out some questions that schools may find helpful in deciding whether an incident is significant and requires a written record.
815. *Subsection (5)* provides an exception to the duty to report each use of force incident to the parent of the pupil. Subsection (5)(a) provides that the procedure must include provision that an incident must not be reported to the parent if it appears that it is likely to result in significant harm to the pupil. Subsection (5)(b) provides that if there is no parent of the pupil that the incident can be reported to without it resulting in significant harm to the pupil, the incident should be reported to the local authority within whose area the pupil is ordinarily resident.
816. *Subsection (6)* provides that the Secretary of State will issue guidance on the meaning of significant harm and whether reporting an incident to a parent is likely to result in significant harm to the pupil.

Section 247: Recording and reporting the use of force in FE institutions: England

817. This section creates a new section 85D of the Further and Higher Education Act 1992 ("the 1992 Act"), to be inserted after section 85C. Subsections (1), (2) and (3) of this section require the governing bodies of institutions within the FE sector in England (including sixth form colleges) to ensure that a procedure is in place for recording significant incidents where a member of staff has used force on a student and to take reasonable steps to ensure that the procedure is followed by staff at the institution. The procedure must provide that such incidents are both recorded in writing, and reported to the student's parents (except where the student is aged 20 or over, or the exception in subsection (5) applies) as soon as possible after the incident.
818. Subsection (1)(b) specifies that the report must be made to each of the student's parents. *Subsection (7)* states that "parent" has the meaning given by section 576 of the Education Act 1996, and includes a local education authority which provides accommodation for a child or young person in care. This means that, for example, where a student has a mother and father whom both have parental responsibility for him, or her, and is the subject of a Care Order under section 31 of the Children Act 1989, or being accommodated under section 20 of that Act, the student's mother, father and the relevant local education authority must be told about the incident.
819. *Subsection (4)* specifies that the governing body must have regard to guidance issued by the Secretary of State for the purposes of recording and reporting significant incidents of the use of force. It is important to understand that the obligation to have regard to guidance only relates to governing bodies' obligations in relation to reporting and recording.
820. *Subsection (5)* provides an exception to the duty to report each use of force incident to the parent of the student. Subsection (5)(a) provides that an incident must not be reported to the parent if it appears that it is likely to result in significant harm to the

*These notes refer to the Apprenticeships, Skills, Children and Learning
Act 2009 (c.22) which received Royal Assent on 12 November 2009*

student. Subsection (5)(b) provides that if there is no parent of the student that the incident can be reported to without it resulting in significant harm to the student, the incident should be reported to the local authority within whose area the student is ordinarily resident.

821. *Subsection (6)* provides that the Secretary of State will issue guidance on the meaning of significant harm and whether reporting an incident to a parent is likely to result in significant harm to the student.