

ROCHDALE BOROUGH COUNCIL

An information and guidance document for schools: Care and Control

Review Date: March 2020

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Care and Control

1. Statement of Intent

This guidance is applicable to the whole of Rochdale Children's Services and its users regardless of race, gender, ability, culture, creed or status.

Rochdale Children's Services recognises the right of every person to be protected from harm and, for that reason it seeks to protect all pupils from any form of physical intervention which is **unnecessary**, **inappropriate**, **excessive or unlawful**.

.....also acknowledges its responsibility for providing a healthy and safe working environment for school staff, who themselves may be put at risk whilst attempting to preserve good order and discipline. (Only for maintained schools not academies or non-maintained).

2. Context

The LA also recognises there are occasions when staff members touch children and young people in ways that are entirely appropriate. There is also a need to minimise the risk to staff of false accusations of improper conduct towards a pupil and to ensure that staff members feel confident about appropriate action in very difficult circumstances. Staff should at all times work in accordance with school procedures including the Safe Working Practice Guidance. Rochdale Local Authority recognises the constraints upon staff in this context and has issued this guidance to help them to deal with these issues upon which individual policies can be based.

3. Statutory Framework

The Education Act 1997 (Section 4) adds Section 550A to the Education Act 1996 and establishes the power of members of staff to restrain pupils and in certain specific instances to use reasonable force.

Section 548 of the Schools Standards and Framework Act 1998 is entitled 'Abolition of Corporal Punishment makes it very clear that the provision does not authorise any actions which constitute corporal punishment within the meaning of Section 548 of the Education Act 1996. The School Standards and Framework Act 1998 outlaws corporal punishment for all pupils

- for whom education is provided at any school, or
- for whom education is provided, otherwise than at school, under any arrangement made by the Local Authority, or
- for whom specified nursery education is provided other than at school.

Further guidance can be found in the **Behaviour & Discipline** In Schools: Advice for Headteachers and School Staff, January 2016.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/488034/ Behaviour_and_Discipline_in_Schools_- A_guide_for_headteachers_and_School_Staff.pdf

Clarification on the use of force to help school staff feel more confident about using this power when they feel it is necessary and to make clear the responsibilities of headteachers and governing bodies in respect of this is outlined in non-statutory advice from the Department for Education -

"Use of reasonable force in Schools: Advice for Headteachers, Staff and Governing Bodies, July 2013". As good practice Schools are advised to consult this guidance in conjunction with this document.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/444 051/Use_of_reasonable_force_advice_Reviewed_July_2015.pdf

Schools should also acknowledge the difference between emergency intervention and that which can be anticipated for some children with complex learning difficulties and planned for with risk assessments and an individual handling plan if necessary.

Additional Guidance shared with schools (via SEN) for specialist settings are included within 'Positive environments where children can flourish, A guide for inspectors about physical intervention and restrictions of liberty Ofsted guidance, 2018

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/693446/ Environments_where_children_can_flourish.pdf

4. Policies

Every school is required to have a strong behaviour policy to support staff in managing behaviour, including the use of rewards and sanctions. The Policy should be publicised to staff, parents/carers and pupils in writing annually and published on School's website. The Headteacher must have regard to any guidance or notification from its governing board which may include:

- screening and searching pupils;
- the power to use reasonable force and other physical contact;
- the power to discipline beyond the school gate;
- when to work with other local agencies to assess the needs of pupils who display continuous disruptive behaviour; and
- pastoral care for staff accused of misconduct.

There is no requirement to have a policy on the use of force but it is good practice to set out, in the behaviour policy, the circumstances in which force might be used. For example, it could say that teachers may physically separate pupils found fighting or that if a pupil refuses to leave a room when instructed to do so, they may be physically removed.

Any policy on the use of reasonable force should acknowledge their legal duty to make reasonable adjustments for disabled children and children with special educational needs (SEN).

Schools do not require parental consent to use force on a student.

Schools should not have a 'no contact' policy. There is a real risk that such a policy might place a member of staff in breach of their duty of care towards a pupil, or prevent them taking action needed to prevent a pupil causing harm.

By taking steps to ensure that staff, pupils and parents are clear about when force might be used, the school will reduce the likelihood of complaints being made when force has been used properly.

(advice on policies)

The policy should identify 10 key aspects of school practice that, when effective, continually contributes to improving pupil's behaviour:

- Consistent and appropriate approach to behaviour management
- Strong School Leadership
- Classroom Management
- Rewards and Sanctions
- Behaviour Strategies and the teaching of good behaviour
- Staff Development and support
- Pupil Support Systems
- Liaison with Parents/Carers and other agencies
- Managing pupil transition
- Organisation and facilities

Schools should also consider:

- Where physical intervention sits as part of the school's general behaviour management policy
- The range of approaches which should be used prior to force being used in crisis situations
- The type of intervention used: (In schools where staff members have been given specific training, policies will refer to specific techniques and how the training is quality assured.)
 (i) Restraint
 - (ii) Holding

(iii) Guides/Supports

- Complaints and allegations how these will be handled by the school.
- The circumstances/conditions when intervention may be necessary and the consequences if intervention did not occur when the situation was this serious.
- Alternatives available before restraint including strategies for preventing and "de-escalating" behaviours that precipitate the use of physical interventions
- What disciplinary action that may be taken against pupils
- Recording and reporting arrangements to Governors and including ways parents/carers will be informed and involved.
- The approach to risk assessment and when necessary "dynamic "risk management employed
- Support available after restraint
- Ongoing training and monitoring of staff use of holds and quality assurance methods.
- Distinctions between seclusion, time out, withdrawal
- Distinctions between planned and emergency physical interventions
- Evaluating and reviewing procedures

Whilst Headteachers have ultimate responsibility for pupils, all staff have a duty of care and must take reasonable and appropriate steps to ensure the safety and well-being of all pupils.

Any action taken must be in the best interests of both the pupil and staff member. Failure to take such action could be regarded as negligence on the part of the individual staff member.

5. Duty of Care

The LA, Governing Board for Aided schools, Foundation Schools and Trustees to Academy's etc. share a "duty of care" to its staff and pupils within schools. The general obligation "It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare of all employees" - the Health and Safety at Work etc. Act 1974, specifies the employers duty to keep its employees informed and safe.

The Children Act 1989 Annex A Section 8 (para 3b) with its guiding principle of:

"the welfare" of the child being paramount, also supports the taking of;

"... any necessary action to prevent injury or serious damage to property..."

Section 3(5) states:

"A person who does not have parental responsibility for a particular child, but 'has care of' the child may (subject to the provision of this Act) do what is reasonable in all circumstances of the case for the purpose of safeguarding or promoting the child's welfare".

All school staff must seek to protect the child from harm to the same extent that a parent/carer would. The duty of care is owed to the **individual child** rather than the ordinary or reasonable child. There is a need for staff to take account of all the circumstances surrounding a child which may be influencing some behaviour.

Statutory Power

All paid members of school staff including teachers, teaching assistants with responsibility for pupils and other staff members authorised by the head teacher has the statutory power to use force. Head teachers can also decide whether to authorise for a limited time volunteers at the school although this should be in exceptional circumstances only. Such individuals should be given clear instruction on when the power can be used and on the school's policy and practice.

The head teacher or delegated senior member of staff is advised to do the following:

- As part of a staff induction process, set out the school policy on the use of force; and
- Ensure that all authorised staff know that they have the power to use force.
- Ensure that all authorised staff are trained and the use of restraints is quality assured on a regular basis.

Head teachers are expected to take all reasonable steps to ensure staff members have access to training and guidance in relation to the school's behaviour and discipline policy and procedures. **More specialist settings will require specialist training**

6. Appropriate Physical Contact

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;
- To give first aid.

The following guidelines maybe helpful for school staff when considering whether or not touch is appropriate in any given situation. Also consider action in relation to age appropriateness.

- For whose benefit is this taking place
- Is it for the sake of the child or young person or is it for your own benefit?
- If no-one else is present, it is always advisable to consider avoiding physical contact.

• Use physical contact in a way that conveys appropriate concern but in a way that is least likely to be misconstrued. For example, an arm around the shoulder standing by the side of a child or young person may be more appropriate than a full 'hug'.

• Remember that not all express friendship or affection in the same way and some people (children included) find excessive touching an infringement of their personal space.

• If you find that the child or young person is cringing or responding in a negative way to being touched, then stop immediately and find an alternative, non-tactile way to convey your concern.

7. Circumstances Justifying Physical Intervention

This can range from guiding/supporting a pupil to safety by the arm through to more extreme circumstances such as breaking up a fight or where a student needs to be restrained to prevent violence or injury.

Schools generally use force to **control** pupils and/or to **restrain** them. Control means either passive physical contact, such as standing between pupils, or active physical contact such as leading a pupil by the arm out of a classroom.

Circumstances include:

- a) Committing any offence (or for a pupil under the age of criminal responsibility, what would be an offence for an older pupil).
- b) At imminent risk of causing personal injury to self.
- c) At imminent risk of injuring someone else.
- d) Causing significant damage to property.
- e) Prejudicing the maintenance of good order and discipline at the school or among pupils receiving education at the school, whether during a teaching session or otherwise.

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 trip or other authorised out of school activity.

Use of force as a punishment is always unlawful.

The use of force can be regarded as reasonable if:

- It is used for the minimum length of time to achieve its objective;
- It is used as a last resort and in an emergency;
- The degree of force must be the minimum necessary and in proportion to the incident and the seriousness of the behaviour or the consequences it is intended to prevent; (reference BILD code of practice)

Lawful methods of reasonable force 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.

8. Unreasonable levels of physical restraint

Only a court can judge and does so retrospectively, if a reasonable level of physical force was used to restrain a child/young person. The following actions are likely to be deemed unreasonable:

- Holding a pupil around the neck, or by the collar, or in any way that might restrict the pupil's ability to breathe;
- Slapping, punching or kicking a pupil;
- Twisting or forcing limbs against a joint;
- Tripping a pupil;
- Holding or pulling a pupil by the hair or ear;
- Holding a pupil on the ground except in specialist settings in which appropriate training has been offered to authorised staff;

This list is not exhaustive, nor does it cover all possible circumstances which could arise. The application of restraint will vary according to the particular circumstances of each case. The omission of a particular kind of conduct from this list does not mean that it would be deemed reasonable. For instance, much will depend on a child/young person's age, size, race, culture, disability or demeanour. There may also be particular difficulties when a member of staff of the opposite sex restrains a child/young person, and much will depend on the circumstances and background.

9. Follow up with Staff

It is best practice that after a crisis the members of staff involved in holding a pupil are given the appropriate support. They should be given reassurance and guidance as well as time to sort themselves out both physically and emotionally. Time should be taken to support the staff to reflect on the incident in a non-blaming, supportive and caring manner.

If the incident is significant the immediate priority is to ensure support for everyone involved and reporting the incident to the relevant parties. It would be beneficial to discuss the incident with LADO to ensure that the recording and reporting procedures are followed correctly. Contact email:lado@rochdale.gov.uk

10. Recording incidents

Governing boards must ensure that a procedure for recording incidents is in place and is followed by staff and any volunteers working in the school. A record should be made as soon as practicable after the incident when all parties involved are emotionally ready to do so.

All accounts of the same incident should be taken including those of the pupil/pupils involved where possible.

Best practice demonstrates that this should be a description of the behaviour and action taken. There should be no emotive or judgemental language.

Schools should keep an up to date record of all incidents cross references to a more detailed, numbered recording sheet, as appropriate. (See pro forma in Appendix 2). It is best practice that this book is kept in a secure place and monitored by the Head teacher and/or a member of the Senior Leadership Team.

Staff may find it helpful to seek advice from a senior colleague or a representative of their professional association when compiling a report. If a member of staff is injured through the intervention then they will be required to complete the online accident incident form belonging to the LA, alternatively their organisation's (Trust's) document, to comply with RIDDOR '2013 (Reporting of injuries, diseases and dangerous occurrences regulations.

All parties should keep a copy of the report. Forms are accessible on the Rochdale Schools Intranet under the 'Safety and Insurance' section.

It is the Head teachers' responsibility to monitor and review the use of physical intervention within their school. It is good practice that all reports of physical intervention are seen by the Head teacher or a member of senior leadership.

It is good practice for head teachers to keep their Governing Board informed about physical interventions in their termly report including methods of quality assurance of the use of physical interventions. Head teachers should be reporting to their Governing Board of such interventions at least annually.

It is assumed that planned responses are put into place if a risk is recognised and the details are set out in 'Positive Handling Plan' or 'Behaviour Plan'. This plan should be revisited after any incident to assess its usefulness and to amend if necessary following the post incident learning detailed on the recording form. Any plan for physical intervention should be shared with parents of the child in question.

11. Involvement of Parent and Carers

Schools do not require parental consent to use force on a pupil and parents/carers should not be given copies of the incident reports as a matter of routine.

However, it is good practice for schools to speak to parents/carers about serious incidents involving the use of force. It is up to schools to decide whether it is appropriate to report the use of force to parents.

In deciding what a serious incident is, teachers should use their professional judgement and consider the:

• Pupil's behaviour and level of risk presented at the time of the incident.

- Degree of force used.
- Effect on the pupil or member of staff.
- The child's age.

If a complaint is received from a parent/carer regarding the use of physical intervention, a school should follow the Allegations and Management process and then seek advice from the LADO if appropriate.

A copy of the schools complaint's procedure may be offered to the parent/ carer Contact email: <u>lado@rochdale.gov.uk</u>

12.Risk Assessment

Schools need to consider using appropriate Risk Assessment tools to manage risks for the minority of severely challenging pupils whose behaviour may result in adverse outcomes for themselves or others.

For the minority of pupils where extra support is needed a 'Positive Handling Plan' or 'Behaviour Plan' should be completed as referred to previously.

Risk assessment and management is the process that helps staff and others to consider risk issues, to act reasonably, and to learn from what happens in every day practice. In the main, risk assessment and management involves:

- Using what is known, in the light of experience, to make rational judgements about risk issues.
- Weighing up options and taking reasonable risks.
- Taking action to implement a range of approaches to support and safeguard children and others.

Challenging behaviours are often foreseeable, even though it may be difficult to predict exactly when they will occur or the degree of challenge they will pose. As a general rule schools should:

- Explore why pupils behave in ways that pose a risk.
- Try to understand the factors that influence the behaviour.
- Recognise the early warning signs that indicate that the pupil's behaviour is beginning to emerge; and develop skills to manage difficult situations competently and sensitively.

Key steps in risk assessment and management are:

- Assessing the context for risk trying to predict the situations in which the pupil may display the dangerous behaviour.
- Assessing the probability how likely is it to occur and how likely it is that injury would result to pupil or others.
- Assessing the seriousness trying to gauge the kind of injury that may result.

13. Complaints

All complaints about the use of force should be thoroughly, speedily and appropriately investigated.

Where a member of staff has acted within the law – that is, they have used reasonable force in order to prevent injury, damage to property or disorder – this will provide a defence to any criminal prosecution or other civil or public law action.

When a complaint is made the onus is on the person making the complaint to prove that his/her allegations are true – it is not for the member of staff to show that he/she has acted reasonably. Schools should follow the Schools Complaints Procedure. Suspension should only be considered as a last resort and having secured advice from the onset from their HR Provider. Suspension should not be an automatic response when a member of staff has been accused of using excessive force. If there are volunteers working in the school, advice from your HR Provider as to the appropriate action to be taken should also be sought. Schools should refer to the 'Dealing with Allegations of Abuse against Teachers and Other Staff' guidance where an allegation of using excessive force is made against a teacher. This guidance makes clear that a person must not be suspended automatically, or without careful thought. Schools should also act in accordance with the Schools Disciplinary Procedures.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/361 444/DFE-RR192.pdf

Schools must consider carefully whether the circumstances of the case warrant a person being suspended until the allegation is resolved or whether alternative arrangements are more appropriate. If a decision is taken to suspend a member of staff, the school should ensure they have access to a named contact who can provide support.

Governing boards should always consider whether a member of staff has acted within the law when reaching a decision on whether or not to take disciplinary action against them. As employers, schools and local authorities have a duty of care towards their employees. It is important that schools provide appropriate pastoral care to any member of staff who is subject to a formal allegation following a use of force.

14. Other Sources of guidance

On 27th June 2019, the DfE published non-statutory guidance "Reducing the Need for Restraint and Restrictive Intervention - Children and young people with learning disabilities, autistic spectrum conditions and mental health difficulties in health and social care services and special education settings". <u>https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/812</u> <u>435/reducing-the-need-for-restraint-and-restrictive-intervention.pdf</u>

This guidance is not intended to address actions which are intended as a disciplinary penalty but is designed to help settings and services adopt a preventative approach to supporting children and young people whose behaviour challenges. It highlights action to improve assessment and understanding of the range of communication used by children and young people including the reasons for and nature of distressed behaviour, including behaviour that challenges, planning of support, and assessment and management of risks.

It promotes the use of evidence-based practice to create an environment in which the likelihood of the need for restraint is reduced. Where restraint and restrictive interventions are used they should be used appropriately, only where necessary and for the minimum time required, by trained staff and in

line with the Human Rights Act 1998, relevant international obligations such as the UN Convention on the Rights of the Child.

The guidance is non-statutory and advisory and applies only to certain settings and services, however all Schools/Academies/Settings should note its existence.

Appendix 1

Safeguarding in Schools Guidance on Conduct for Staff in Educational Establishments Child Protection Procedures

At our school we follow the policies and procedures generated by

- When staff receive a disclosure or notice something which leads them to suspect that abuse may have taken place the information is recorded on our 'Note of Concern'. If physical abuse is suspected a 'Skin Map' will be used to record the site and extent of any injury that has been noticed. These are passed in a sealed envelope to the Designated Safeguarding Lead (DSL) as soon as possible. This record should include:
 - The date and time of the observation/disclosure.
 - Full information including verbatim accounts when possible of the incident.
 - o Comments about the child's appearance, behaviour, emotional state and actions.
 - When staff are receiving a disclosure from children they should follow the guidance issued by the RSCBP.
 - When technology is involved we retain all the evidence (e.g. screen shots/emails/text messages) and use it to support the 'note of concern'. However we do not search mobile phones or computers to gain further information.
- 2. Upon receiving the 'note of concern' the DSL follows the procedures endorsed byChildren Safeguarding Partnership, which are described in the flow-chart that is displayed around school. Action should be taken within the same working day and as early as possible.
- Where abuse is suspected a referral will be made to EHASH (Early Help and Safeguarding Hub) by the DSL. A verbal referral will be supported by the completion of the Children and Families Assessment in line with local procedures

The content of the referral will be discussed with parents/carers where this is appropriate. Advice may be sought from Childrens Social Care concerning this aspect of information sharing. It is recognised that parents/carers are unlikely to be told that a referral is being made if sexual abuse or fabricated illness are suspected. Staff are aware that they must not discuss any issues with parents/carers unless they are told to do so by the designated officer.

NO ATTEMPT SHOULD BE MADE BY OUR STAFF TO CONDUCT AN INVESTIGATION INTO CASES OF SUSPECTED ABUSE.

Children's Social Care and the police are responsible for undertaking investigations. Inappropriate actions by others may negate or contaminate evidence.

At our school it is expected that staff will co-operate with those investigating abuse following a referral. It will be the responsibility of those investigating the case to ensure that parents/carers are fully informed about the investigation. This is not the responsibility of our school.

Managing allegations against members of staff

All members of staff and volunteers in our school are aware that they have a duty to report any concerns they have about the conduct of another member of staff, volunteer or governor to the Headteacher. If the concerns are about the Headteacher they are aware that they report the matter to the Chair of Governors. When an allegation has been made against a member of staff the Headteacher will consider whether the allegation suggests that the individual has:

Behaved in a way that has harmed, or may have harmed a child

Possibly committed a criminal offence against or related to a child

Behaved towards a child or children in a way that indicates they pose a risk of harm to children.

If any of the above may have happened the Headteacher must record the concerns, and contact the Local Authority Designated Officer (LADO) to ask for advice about how to proceed. The LADO will advise the Headteacher about whether to complete an initial consideration form or a referral form depending on whether the matter should be dealt with under the Allegations Management process or recorded and dealt with under the Schools internal procedures.

If the allegation was made against the Headteacher the Chair of Governors should contact the Local Authority Designated Officer immediately to ask for advice about how to proceed. All staff are made aware of this policy at least annually.

Example of a PHYSICAL INTERVENTION REPORTING FORM

School:	Report Number:			
Name of Young Person:	Date of Birth:	Year Group:		
Date/Time of incident:	Location:			
CONTEXT: Events Leading up to	the incident. Describe de-e	escalation strategies used		
Anxiety Behaviours of Student:				
Staff Response:				
Defensive/Escalation Behaviours of Student:				
Staff response:				
Perceived Risk: Reason for Physical Intervention				

NAMES OF OTHER PEOPLE PRESENT: identify which staff are trained and the date of their training.

POSITIVE HANDLING STRATEGY USED

Tick the correct hold and indicate whether it was a guide or restraint

Standing	Seated	Ground	Guide	Restraint
-				-

Duration of physical intervention:	
Date and time line manager notified:	
Parent/Carer notified (date/method):	
Name of injured people:	
Injury sustained:	
Accident form completed – Reference no:	RIDDOR form: Yes 🗌 No 🗌
Damage to property	Reference no.:

DESCRIPTION OF OUTCOME – Recovery and depression

Post Incident De brief-

Does the student have a 'positive handling' or 'behaviour management' plan in place to prevent future incidents? Yes No

Signed:

Position:

Date and time of report:

Completed form to be returned to:

Copy to file/bound and numbered book and seen by Head teacher and/or Senior Leadership

Signed.....

Appendix 3 – Example of a Positive Handling Plan

Name:

Setting:

TRIGGER Behaviours: (Describe common behaviours / situations which are known to have led to Positive Handling being required. When is such behaviour likely to occur?)

TOPOGRAPHY of Behaviour: (Describe what the behaviour looks / sounds like?)

PREFERRED Supportive & Intervention Strategies (Other ways of C.A.L.M.ing such behaviours Describe strategies that, where and when possible, should be attempted before positive handling techniques are used)

Verbal advice and support	Distraction (Known Key words, objects, etcLikes)	
Reassurance	Take up Time	
C.A.L.M talking / Stance	Time Out (Requires a written plan)	
Negotiation	Withdrawal (Requires Staff/Carer Observation)	
Choices / Limits /	Cool Off: Directed / Offered (Delete as appropriate) Time allowed out to calm down or cool off.	
Humour	Contingent Touch	
Consequences	Transfer Adult (Help Protocol)	
Planned Ignoring	Success Reminder	

Others?

Praise Points / Strengths: (Areas that can be developed and built upon) Please state at least 3 Bridge builders.

1:

2:

3:

Medical Conditions that should be taken into account before physically intervening. i.e. Asthma, Brittle bones

Preferred Handling Strategies: (Desribe the preferred holds: standing, sitting, ground, stating numbers of staff, what "get outs" that can be used when holding, etc)

De-briefing process following incident: (What is the care to be provided)

Recording and notifications required:

Please print:		Please sign:	-
Establishment:		Name:	
Placing Authority:		Name:	
Parents/Guardians:		Name:	
Name:		Signature:	
Date:	/	Review Date:	/

Other Factors to Consider:

- Key behaviour difficulties
- Our understanding of the behaviour
- What we want to see instead
- Environmental Changes that might help
- Monitoring progress

- How the individual can help
- How Parents or Carers can help
- Rewarding progress