

children's law centre

Human Rights Awareness for School Managers



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FOREWORD



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In September 2001 the Department of Education together with the Northern Ireland Human Rights Commission hosted the Human Rights in Education Conference. One of the Conference workshops focused on 'The Human Rights Act 1998 and School Management' and a key conclusion that emerged was the need for simple, clear information on the implications of the Human Rights Act 1998 for those responsible for the complex and demanding role of managing the school environment.

The main purpose of this document is essentially to "unpack" the Human Rights Act 1998 and, given its importance as the only international human rights treaty dealing specifically with children, the United Nations Convention on the Rights of the Child (UNCRC). It examines the implications for school policy, procedure and ethos of these provisions. In order to contextualise what might at first sight seem to be rather remote legalistic issues, it was decided that the focus should be on those human rights issues which, it was felt, are likely to be of most concern to school managers, teachers, parents and pupils. These include Suspensions and Expulsions, Special Educational Needs and Bullying. Also, research conducted by the Children's Law Centre and others suggests that some groups of pupils are uniquely vulnerable to the latter and, given their circumstances, more prone to having their educational opportunities compromised. Accordingly, the section entitled 'Protecting the Rights of Vulnerable Groups in the Education System' deals with specific human rights issues surrounding these pupils.

Each section begins with an overview of domestic legislation, procedure and existing Department of Education guidance before moving on to a discussion of the potential applicability of the provisions contained in the Human Rights Act 1998 and the parallel 'model of good practice' provided by the relevant articles of the UNCRC. Given that education law surrounding these issues is a rapidly developing field, we have included relevant case law, most of which is English and, given the fact that the effects of the Human Rights Act 1998 have yet to be fully realised, not necessarily human rights-based. As there is potential for human rights arguments to be used in future education-related cases, it was felt that school managers should be alerted to the recurrent issues and themes being considered by the Courts. Finally, each section concludes with a series of 'Suggested Actions' which are, it must be stressed, not to be construed as legal advice. It is believed that the vast majority of school managers will be reassured to find that the Suggested Actions reaffirm existing good practice.

We hope that school managers will be reassured by the information contained in Human Rights Awareness for School Managers and will feel better equipped when reviewing their policy and procedures to promote and protect the rights of all pupils in their care.

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An Overview of International Human Rights Protection



An Overview of International Human Rights Protection

In order to fully explore the implications for schools of international human rights protection and protection afforded under domestic law, it is first necessary to historically contextualise the developments of a rights-based discourse in the second half of the twentieth century.

While the notion of rights dates back to the French and American Revolutions and found expression in these nations' laws, it is the end of World War Two and the subsequent revelation of Nazi war crimes that revealed the need for rights-based protection. Crucially, Nazism was legal (though of course not moral) and revealed the capacity for the state to systematically alter laws in order to strip its, and other, citizens of their freedom of religion, right to free speech, nationality, property, families and, ultimately, their lives. The Holocaust was not just the result of political terror: it was a process of genocide that was 'legitimised' by changes to German law.

It is against this background and the desire to prevent a repeat of Nazi horror and ensure that citizens can be protected from the state that two key international human rights documents were produced:

Universal Declaration of Human Rights (UDHR) 1948

European Convention on Human Rights (ECHR) 1950

Both documents seek to guarantee basic human rights protection for all and secure the minimum conditions that ensure the dignity of the individual. So, for example, both UN Declaration of Human Rights and The European Convention on Human Rights have as Article 4 the right not to be 'held in slavery or servitude'. In other words, both of these documents seek to establish a framework of human rights that secures a baseline of protection for everyone.

Despite their effectiveness in promoting internationally recognised standards of human rights protection, the UNDRH and ECHR very much reflect the historical contexts in which they were produced. The ECHR, however, was conceived as a 'living document' (an idea that will be developed later) and additions, more formally known as Protocols, have been made to ensure its relevance to cultural change. In this manual frequent reference will be made to the ECHR because of its incorporation into domestic law by the Human Rights Act 1998 (see below).

United Nations Convention on the Rights of the Child (UNCRC) 1989

The United Nations, recognising that in any society children are a particularly vulnerable group and need extra protection, decided that an international standard was required to ensure that states more effectively protected the human rights of children.

As the primary function of schools is to successfully educate children, frequent reference will be made to the Articles contained in the UNCRC.

The Rights and Responsibilities Debate: A Cautionary Note!

Educationalists need to be aware that human rights laws exist to ensure that governments respect the rights of their citizens. While these laws may provide a good ethical model for how citizens should treat each other, you will see that this is not relevant to the following examination of human rights issues in education.

Disclaimer

The information provided in this document is for guidance only and should not be regarded as a complete or authoritative statement of the law. In all cases appropriate legal advice should be sought from a solicitor. The Children's Law Centre will not be held in any way responsible for the use or reliance upon any information in this document by other individuals, school managers, organisations or agencies.

Domestic Law - The Human Rights Act 1998

With the introduction of the Human Rights Act 1998 (which came into effect 2 October 2000) most of the provisions of the European Convention on Human Rights became part of domestic law in the United Kingdom. Formerly, British citizens who felt that their rights under the ECHR had been breached, had to go to the European Court of Human Rights in Strasbourg for a ruling; since the introduction of the Human Rights Act 1998 they can now seek redress through the domestic courts. In this changed legal landscape public bodies (a category which includes all publicly funded schools) are now accountable and if their policies, rules and procedures are not compliant with the Human Rights Act they leave themselves open to civil litigation and claims of negligence. Given that schools formulate their own internal policies in response to legislation and guidance from the Department of Education, and that these internal policies and procedures frequently reflect aspects of their unique ethos, it is clear that awareness of their legal position and relevant articles of the Human Rights Act are crucial if they are to operate within the law and protect children's rights.

While only one article of the ECHR relates directly to education (Article 2, Protocol 1: The Right to Education) and even this has a UK reservation attached to it regarding the efficient use of resources, many other articles can be used in testing the compliance of school policies and procedures. Also, and very importantly, despite the fact that the ECHR is 50 years old it was conceived as a 'living document' with the scope to be interpreted to reflect new and emerging technological, social and cultural values and realities. Hence, it is very much in everyone's interest, including teachers and pupils, that school managers responsible for formulating, monitoring and implementing internal school policies are aware of the legal context in which they operate.

The Right to Education

Article 2, Protocol 1 the Right to Education:

“No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching is in conformity with their own religious and philosophical convictions”.

The right to education set out in the first sentence of Article 2 is that of the child and the parent’s right to respect for their convictions in the second sentence is subsidiary to the right of the child. It has been established in European case law that the parental right under Article 2 is not absolute and will not preclude the child’s right to receive an education. However, the Convention does not seek to define the level or nature of education, nor the State’s obligations in the provision of same. It would appear from the negative formulation of the first sentence to the Article, that there was a reluctance to impose an open-ended duty on the State.

This argument is supported when we consider that the UK Government has entered a *reservation* to the right to education:

“In view of certain provisions of the Education Acts in the United Kingdom, the principle affirmed in the second sentence of Article 2 is accepted by the United Kingdom only in so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure”.

The design and effect of the UK Reservation is to limit the obligation upon educational authorities to uphold parental convictions. It is necessary to refer to precedent case law in the Strasbourg Court, in order to assess how the Convention right to education has been interpreted and applied.

Article 2 provides a right to education but does not require states to establish institutions, which may offer education of a particular type. In the case of **X v United Kingdom**, the European Commission refused to bind the Government to provide funding for a non-denominational school in Northern Ireland in spite of the parent’s argument that this breached their religious and philosophical convictions. The Commission was of the opinion that this parental right and preference could be accommodated within the existing educational system. The primary objective of Article 2 is merely to guarantee a right of equal access to the means of instruction existing at a given time.

Special Educational Needs

The European Commission on Human Rights has considered several cases in relation to children who suffer from disabilities and special educational needs. The Commission has stated that it is in keeping with current educational thinking to ensure that children with special educational needs are educated in an integrated setting, provided that this is compatible with their own needs, the provision of an effective education for other children at the school and also represents efficient use of public funding and resources. Decisions about how to assess the suitability of a child with a disability to attend mainstream school are in practice left to the discretion of the State authorities (in the form of Education and Library Boards). Emphasis is placed on the need for proper assessments to be carried out in respect of each child’s individual needs and also to ensure that the placements adopted for every child are consistent with that assessment (the section on Special Educational Needs will explore these Human Rights issues more fully).

Which Articles of the European Convention of Human Rights are relevant to educationalists?

Article 2 - The Right to Life

Everyone's right to life shall be protected by law.

In extreme circumstances this article may be relevant to the issue of bullying where a child's life is endangered by the bully(ies) or they are at risk of self harm/suicide. Schools, as public bodies, owe a Duty of Care to their pupils and there is a clear need for schools to proactively tackle incidents of bullying behaviour (a more detailed analysis of this issue will be found in the section dealing with bullying).

Article 3 - The Prohibition of Torture

No one shall be subjected to torture or inhuman and degrading treatment.

While the inclusion of this Article may be perceived as extreme, schools need to ensure that their disciplinary measures are proportionate to the range of offences committed by pupils (there is no need to use a sledgehammer to crack a nut!). School disciplinary measures should never seek to humiliate or degrade a pupil who has behaved inappropriately.

Article 5 - The Right to Liberty and Security

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in...accordance with a procedure prescribed by law.

Article 5(d) does provide an exception to the right to liberty and security where a minor is detained by lawful order for the purpose of educational supervision. Obviously this will not be relevant to mainstream school settings and applies to children placed in secure accommodation.

Article 6 - The Right to a Fair Trial

In the determination of his civil rights and obligations or of any criminal charge brought against him, everyone is entitled to a fair trial and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Currently, there is no procedural protection afforded under Article 6 and it does not apply in education cases (an explanation for this is found in the Suspensions and Expulsions section). Once again, however, it must be remembered that the ECHR was conceived as a 'living document' that is elastic enough to be reinterpreted in the face of societal change. The full text of Article 6 articulates some of the values that underpin our legal system, such as the presumption of innocence until proven guilty. School disciplinary procedures, in the interests of fairness, should acknowledge the principles of procedural fairness and natural justice.

Article 8 - The Right to Respect for Private and Family Life

Everyone has the right to respect for his private and family life, his home and his correspondence.

In terms of the school environment (which we all acknowledge is a complex one) Article 8 has implications for bag searches, locker inspections and pupils' private letters. However, as with most Convention rights, the right of the individual to be protected under Article 8 is not absolute and the second paragraph allows for interference in exceptional circumstances such as 'the prevention of disorder or crime...the protection of health or morals, or...the protection of the rights and freedoms of others.' As schools owe a duty of care to all of their pupils, where for, for example, a school locker is suspected of containing illegal substances, an offensive weapon or other illegal or dangerous materials school managers may have to make a judgement call as to how to intervene in order to protect pupils and staff alike. Obviously if a crime is suspected police involvement should be considered.

Article 8 also has implications for teachers' access to social services reports concerning children in care and the disclosure to staff of information relating to difficulties being faced by a pupil at home or in residential care. To avoid the risks associated with disclosure of such confidential information, a 'need to know' basis might well serve to ensure that pupils have their Right to Respect for Private and Family Life maintained.

Article 9 - The Right to Freedom of Thought, Conscience and Religion

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to...manifest his religion or belief, in worship, teaching, practice and observance.

Schools need to be aware of the different cultural backgrounds of their pupil populations and, in terms of the school ethos, ensure that this right is respected.

Article 10 - Freedom of Expression

Everyone has the right to freedom of expression. This right shall include the freedom to hold opinions and to receive and impart information and ideas...

In terms of the school community as a whole, the development in recent years of participatory School Councils is to be welcomed.

Article 11 - The Right to Freedom of Assembly and Association

Everyone has the right to freedom of peaceful assembly and to freedom of association with others...

While it is appreciated that for many schools detention is a useful and necessary sanction, excessive use of break/lunchtime detentions may be perceived as impacting on a pupil's rights under Article 11.

In cases where the victims of bullying behaviour are supervised by staff at break/lunchtimes, again an issue can be raised under Article 11.

Article 14 - The Prohibition of Discrimination

The enjoyment of these rights and freedoms set forth in this convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 14 is not 'free-standing' and has to be argued with another convention right. The comprehensive insistence that rights and freedoms in the ECHR must be 'secured without discrimination on any ground' would suggest that school managers must ensure that their policies and procedures neither directly nor indirectly discriminate against individuals or sections of the pupil population.

The United Nations Convention on the Rights of the Child (UNCRC)

Another international human rights treaty that will be of particular interest to those working in the educational sector is the United Nations Convention on the Rights of the Child (UNCRC). While it is not directly enforceable in the domestic courts, you will see frequent reference to the UNCRC throughout these training materials. The UNCRC is the first international treaty that recognises children's rights separately from and in addition to the human rights enjoyed by adults. The United Kingdom Government ratified the UNCRC in 1991 and became a State Party to the convention. The Children (NI) Order 1995 embodies many principles of the UNCRC. The Government now has a duty to report to the United Nations Committee on the Rights of the Child every five years and update the Committee on its progress in implementing the Convention. The convention, therefore, can act both as a lever for change and a useful 'model of good practice'. The UNCRC is underpinned by three guiding principles that find expression Article 2 (non-discrimination), Article 3 (best interests of the child) and Article 12 (the child's right to be heard).

Some of the most important Articles that are contained in the Convention aim to raise the 'visibility' of children and promote their views on issues which affect them in society. In particular Article 12 states:

'State parties shall assure the child who is capable of forming his or her own views the right to express those freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.'

Throughout the following examination of school policies and children's rights, the need for consideration and inclusion of the principle of Article 12 will be affirmed.

The UNCRC may also have an impact on the curricular content of a child's education. The UNCRC makes it clear that children have a 'right to know about their rights' and in Article 42 requires that 'State Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike'. Good practice, therefore, would demand that schools actively encourage pupil participation and ensure that pupils are taught about their human rights.

Other rights enshrined in the UNCRC that will be of interest to educationalists are:

Article 2: Non-Discrimination

"State parties shall respect and ensure the rights set forth in the present convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status"

Protection from discrimination applies not only to children but also to their parents and guardians. The aim of this provision is to further protect children from the effects of discrimination aimed at their parents and guardians.

Article 3: The Child's Best Interests

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

Government, public and private bodies must ascertain the impact on children of their actions and ensure that the best interests of the child are a primary consideration in policy formulation. This principle is reflected in the Children (NI) Order 1995.

A school's Discipline Policy, for example, must function to protect, as far as possible, the interests of all the children in the school.

Article 23: The rights of children with a disability

"State parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions, which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

Recognising the special needs of a disabled child, assistance extended.... shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his/her cultural and spiritual development"

The Convention strongly promotes the integration and participation of children with disability in education.

The Convention also specifically refers to the child's right to education in Articles 28 & 29:

Article 28: Right to Education

State Parties recognise the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they shall in particular-

- a) Make primary education compulsory and available free to all
- b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child and take appropriate measures such as the introduction of free education and offering financial assistance in cases of need
- c) Make higher education available to all on the basis of capacity
- d) Make educational and vocational information and guidance available to children
- e) Ensure that school discipline is administered in a manner which is consistent with the child's human dignity and worth

Article 29: Aims of Education

State Parties agree that education shall be directed to the-

- a) development of the child's personality, talents, mental and physical abilities to their fullest potential
- b) development of respect for human rights
- c) development of respect for their parents, cultural identity, language, national values and civilisations different from his or her own
- d) preparation of the child for responsible life in a free society
- e) development of respect for the environment

Educationalists should be aware that the UNCRC strongly advocates the promotion through education of Convention rights.

Article 42: State Parties shall make the provisions of the Convention widely known to both adults and children

- The United Nations Committee has highlighted repeatedly the importance of training as a strategy for implementation of the Convention rights
- It is important that children are educated about their rights in schools
- It is necessary for teachers to be informed in relation to children's rights

Section 1: Suspensions and Expulsions

- 1.1 Which Legislation Governs the Law on Suspensions and Expulsions in N. Ireland?
- 1.2 The Suspension Procedure
- 1.3 The Expulsion Procedure
- 1.4 Key Human Rights issues in relation to the Suspension and Expulsion of Pupils
- 1.5 Which Human Rights values should underpin a school's internal policy on Suspensions and Expulsions?
- 1.6 Article 2, Protocol 1 (ECHR) - The Right to Education
- 1.7 Article 6(ECHR) - The Right to a Fair Trial
- 1.8 Article 14 (ECHR) - The Prohibition of Discrimination
- 1.9 Participation Rights in Article 12 of the UNCRC
- 1.10 Case Law 1: Investigative and Evidential Requirements in the Expulsion Process
- 1.11 Case Law 2: Parental Conduct and its influence in School Disciplinary Matters
- 1.12 Case Law 3: The Need to follow Procedures when Suspending a Pupil
- 1.13 Balancing Rights and Reinstatement
- 1.14 Suggested Actions



Section 1 - Suspensions and Expulsions

1.1 Which legislation governs the law in respect of school suspensions and expulsions in Northern Ireland?

There are 5 principal pieces of domestic legislation which govern the law relating to the suspension and expulsion of pupils in Northern Ireland:

- Education and Libraries Order (NI) 1993
- Schools (Suspension and Expulsion of Pupils) Regulations (Northern Ireland) 1995, as amended by
- Schools (Suspension and Expulsion of Pupils) (Amendment) Regulations (Northern Ireland) 1998
- Schools (Expulsion of Pupils) (Appeals Tribunal) Regulations (Northern Ireland) 1994, as amended by
- Schools (Expulsion of Pupils) (Appeals Tribunal) (Amendment) Regulations (Northern Ireland) 1998

THERE IS A STATUTORY REQUIREMENT THAT EVERY SCHOOL MUST HAVE A WRITTEN SCHEME GIVING ITS PROCEDURES FOR SUSPENSIONS AND EXPULSIONS

Schemes for the Suspensions and Expulsion of Pupils are issued by:

- CCMS
- BELB
- NEELB
- SEELB
- SELB
- WELB
- Grant Maintained Integrated Schools
- Voluntary Grammar Schools
- Irish Medium Schools

1.2 The Suspension Procedure

Background Information

- Only the school principal has the authority to suspend
- The first period of suspension will be for a maximum period of five days
- The Principal may suspend a pupil for longer only with the approval of the Chairperson of the Board of Governors
- The pupil may be suspended for a maximum period of 45 days in one school year
- The Principal is required to make appropriate arrangements to ensure that continuing educational provision is available to the student during a period of suspension
- There is no statutory right of appeal against a suspension
- Article 101 is a complaints procedure that could possibly be used where a Board of Governors has blatantly ignored guidance and legislation

Decision to suspend Pupil is made

The Principal makes the arrangements for the collection of school notes, class tests or homework from the school office

The Principal immediately notifies parents/carers of:

- i. Reasons for the suspension
- ii. Period of Suspension
- iii. Any extension(s) to the period of suspension

The principal must also notify in writing:

- i. The ELB;
- ii. Chairperson of the BOG; and
- iii. In the case of CCMS, the local diocesan office; giving reasons for the decision to suspend

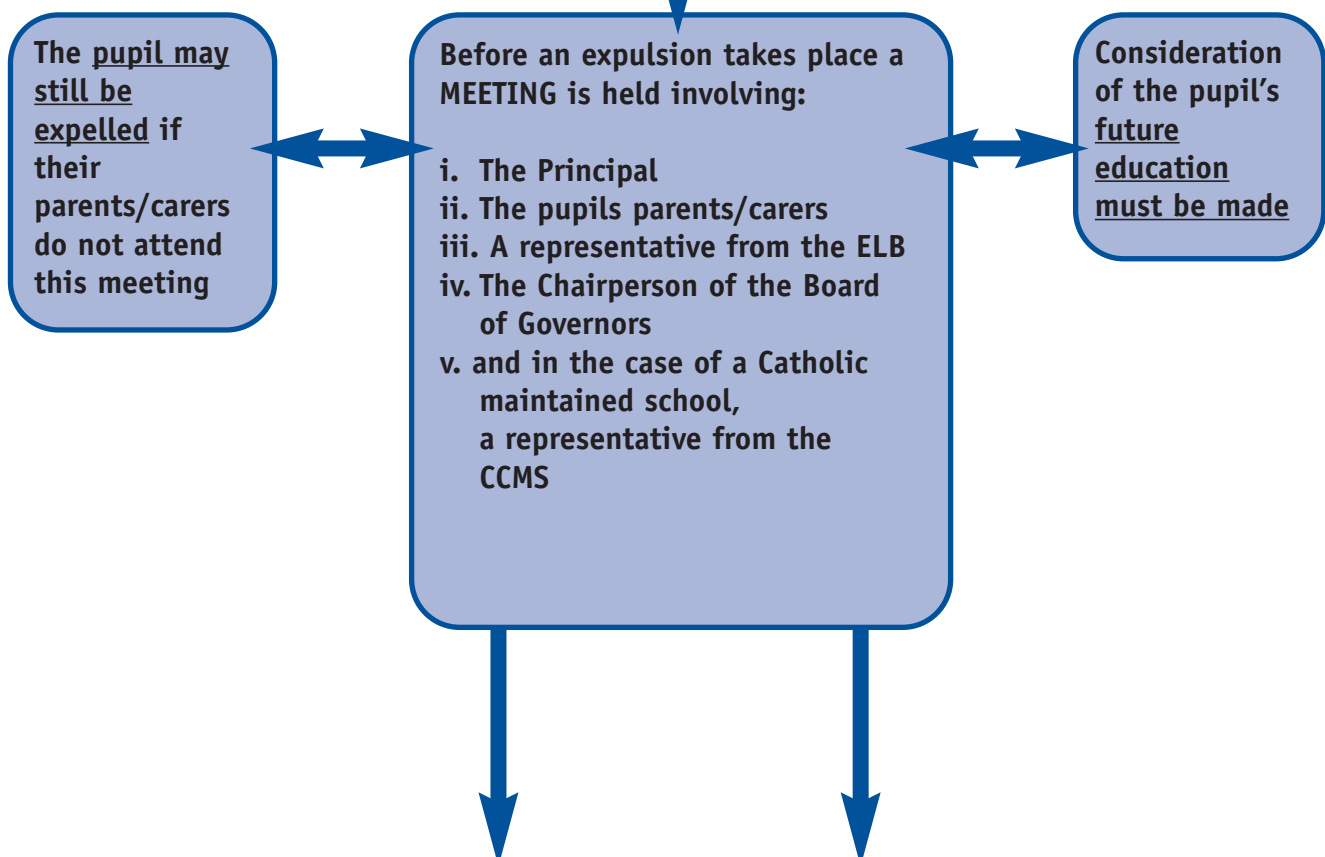
The Principal invites parents/carers to the school to discuss the suspension

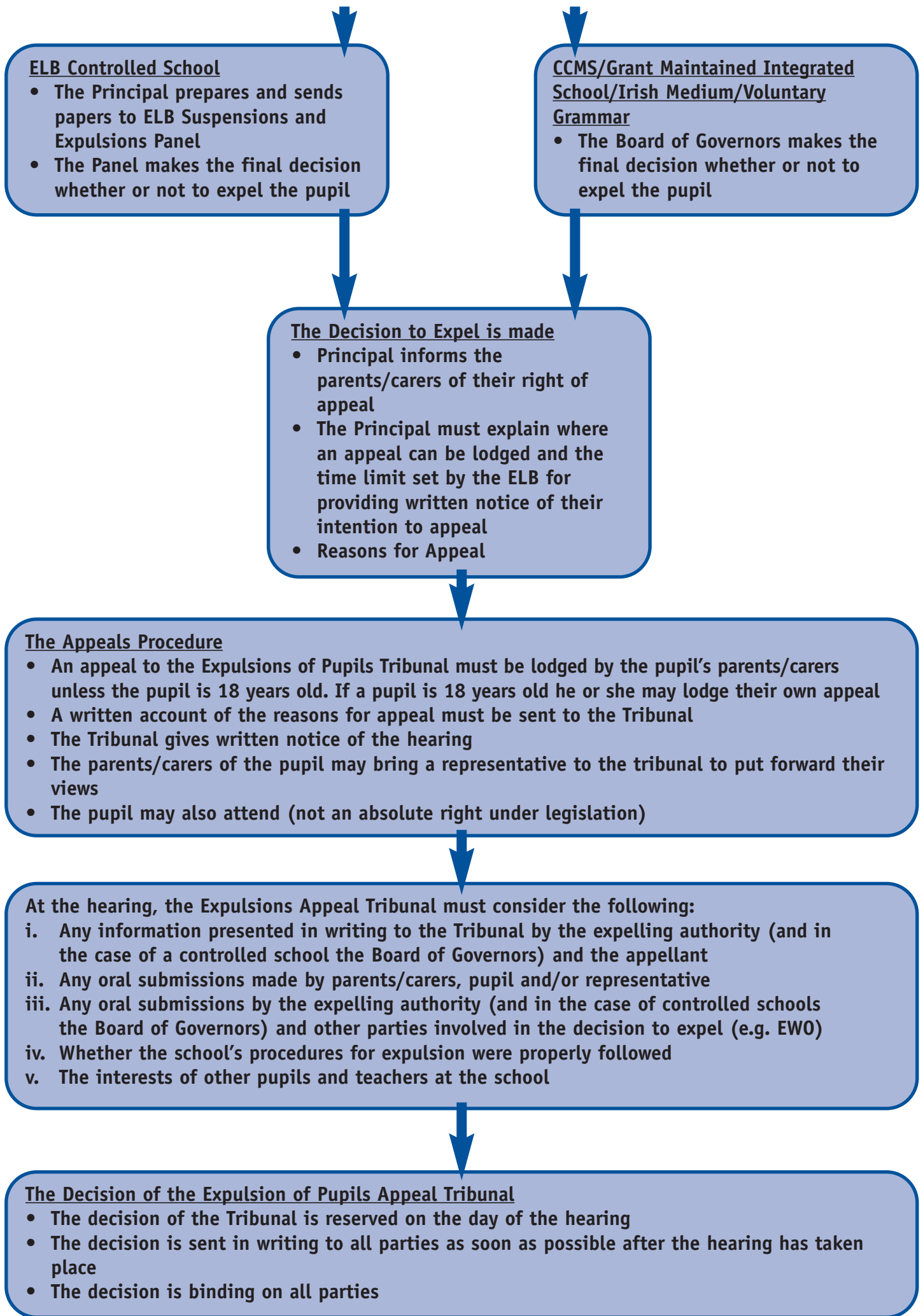
1.3 The Expulsion Procedure

Background Information

- A pupil must have been suspended at least once before they may be expelled
- The ELBs and the CCMS provide their own guidance to controlled and Catholic Maintained Schools on expulsion procedures
- Before an expulsion can take place there must be a consultative meeting about the proposed expulsion between the parents/guardians of the pupil, the Principal, the Chairperson of the Boards of Governors, the Chief Executive of the ELB (or another officer authorised by her/him) and in the case of a catholic maintained school, the Director of the CCMS (or another officer authorised by her/him)
- A pupil may still be expelled if the parents/guardians do not attend this consultative meeting. They need only be notified of the date of the meeting and invited to attend
- The consultation must include discussion about the future provision of suitable education for the pupil
- There is a statutory right of appeal against expulsion and this is to the Expulsion of Pupils Appeal Tribunal. Normally the time limit to lodge a notice of appeal is within 10 days of receipt of the letter confirming the expulsion

Disciplinary measures are initiated and a meeting is convened to consider further disciplinary action and future educational provision for the pupil





1.4 Key Human Rights Issues in Relation to the Suspension and Expulsion of Pupils

- The European Court of Human Rights has decided (see below) that suspensions and expulsions per se do not breach Article 2, Protocol 1 (the Right to Education). Despite this, however, suspensions and expulsions which prevent education being received elsewhere must be treated with great caution.
- Both the CCMS 'Scheme for the Suspension and Expulsion of Pupils' and the 'Scheme for the Suspension and Expulsion of Pupils at Board Controlled Schools' stress that expulsion should only be applied as a 'last resort' measure or in circumstances where there has been gross misconduct on the pupil's part.
- There is a great deal of disparity in relation to the standard of behaviour deemed acceptable in our schools. School discipline policies often evolve to reflect this.
- The law relating to suspension and expulsion procedures does not allow children any participatory rights in the consultation and decision-making process (only when they have attained the age of 18 are they afforded an independent right of appeal under expulsions procedures). Nor are they provided with the right to make their own representations/or to be separately represented at an Expulsions Appeal Tribunal hearing.
- There is no statutory right of appeal against a suspension afforded to either the pupil or their parents/guardians, even though the law allows for a child to be suspended for up to 45 days in any one school year.
- Informal and illegal expulsion tactics, if they were to be used, may breach Article 2, Protocol 1 (ECHR)
- There is a need for supporting guidance to assist all staff in addressing how to conduct proper investigations into incidents, keeping pupil records and following correct procedures when investigating incidents.
- It is important to safeguard children with Special Educational Needs and those pupils undergoing assessment under the Code of Practice. Children in these categories may be more vulnerable to suspension or expulsion from mainstream schools. Pupils with Emotional and Behavioural Difficulties (EBDs), a category that includes, for example, pupils with Attention Deficit/Hyperactivity Disorder, Asperger's Syndrome and Autistic Spectrum Disorder, are considered under the Code of Practice to have a Special Educational Need. As these pupils may present particularly challenging behaviour they frequently become the subject of school disciplinary procedures. Those involved in expulsion procedures should, therefore, check whether a pupil has a Special Educational Need, when necessary seek advice from the SENCO and take any relevant information into consideration when deciding whether or not to expel the pupil.

1.5 Which Human Rights Articles should underpin a school's internal policy on suspensions and expulsions?

1.6 Article 2, Protocol 1 (ECHR) - The Right to Education:

'No person shall be denied the right to education. In the exercise of any function which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education is in conformity with their own religious and philosophical convictions.'

While it has already been established in European Court of Human Rights case law in *Yansik v Turkey*¹ that suspensions and expulsions *per se* do not breach Article 2, Protocol 1, where a pupil is below statutory school-leaving age and the child is entitled to receive an effective education elsewhere.

School Principals and Boards of Governors should, therefore, ensure that pupils who are suspended from school are provided with 'adequate' school work, covering all aspects of the Northern Ireland Curriculum, so they do not fall behind their peers while they are absent from school.

It is clear from the European Court of Human Rights interpretation of Article 2, Protocol 1, **that education must be practical and effective and that an individual must have the benefit of drawing profit** (i.e. working towards gaining qualifications) from the education received. This interpretation is particularly pertinent regarding suspensions that take place close to coursework and/or examination deadlines. This would further reinforce the necessity for schools to have procedures in place for the collection of notes, worksheets, revision materials etc. by suspended pupils and for these pupils and their parents to be reminded of any approaching examination or coursework deadlines.

The decision to expel a pupil fundamentally affects their Right to Education and if schools are to proceed along this route they must act with procedural propriety at all stages or their expulsion could be deemed unlawful and they may be in breach of their duties under the Human Rights Act 1998. It is emphasised in all of the ELB and CCMS schemes (the CCMS scheme does provide some considerations prior to the implementation of suspension and expulsion procedures) that expulsion is very much a 'last resort' measure and should only be used in cases of gross misconduct by pupils. Any school discipline policy should outline the types of behaviour, circumstances and considerations that will warrant such severe action in clear terms and this must be brought to the attention of the whole school community including pupils, parents and all members of school staff.

¹ (1993) 74 DR 14

1.7 Article 6 (ECHR) - Right to a Fair Trial:

'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.'

Currently our education legislation does little to ensure that children's voices are heard. While Article 6 guarantees the right to a fair trial, it is only applicable in the determination of 'civil rights and obligations'. There has been some debate as to whether the right to education enshrined in Article 2, Protocol 1 (see above) is a 'civil' or private right. At the moment, the procedural protection afforded under Article 6 does not apply in education cases.²

Remember, however, that the ECHR was conceived as a 'living document' and it may be that the right to a fair trial in Article 6 will attract further scrutiny by the Courts in future. Accordingly this procedural protection may become applicable to parents and children seeking to secure their rights under Article 2, Protocol 1. In the meantime, school managers in charge of implementing the school discipline policy should have regard to the principles of 'natural justice' and exercise procedural fairness in all decisions affecting a child's education.

1.8 Article 14 (ECHR) - Prohibition of Discrimination:

'The enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'

The full text of Article 14 has been included to emphasise the breadth of the phrase 'without discrimination on any grounds'. Article 14 is not a free standing article and must be deployed in conjunction with another convention right such as Article 2 Protocol 1 (The Right to Education).

School managers must ensure that they apply their discipline policies and procedures without discrimination. The decision to suspend or expel a pupil (a decision that will certainly affect the pupil's Right to Education under Article 2 Protocol 1 of the ECHR) should focus primarily on the pupil's behaviour and, where relevant, disciplinary record. It would be prudent, therefore, for school managers to clearly outline in advance the types of behaviour/breaches of discipline that warrant suspension or expulsion and ensure that pupils, parents and staff are made aware of the content of the discipline policy and the sanctions contained therein.

Another factor that school managers should take cognisance of is the potential for school discipline policies to discriminate against pupils with Special Educational Needs, whether they are stated or non-stated. In particular, as mentioned above, pupils with Educational and Behavioural Difficulties (a category which includes ADD/ADHD, Asperger's Syndrome and Autistic Spectrum Disorder) can present extremely challenging behaviours that can result in them being the subject of school disciplinary procedures including expulsion proceedings. In the guidance 'Pastoral Care in Schools: PROMOTING POSITIVE BEHAVIOUR' it is recommended that schools should avail of Board help such as Behaviour Support services and ensure that pupils in this category are provided individualised Educational Plans (EPs) and behaviour management programmes by SENCOs. Ideally, a pupil should never be expelled solely because of their Special Educational Needs and school managers should be sure that they have examined all the available information and

² A conclusion was reached in the case of *R v Head teacher of Alperton Community School et al* ([2001] EWHC Admin 229,QBD) where it was held that the right to education is not deemed to be a civil or private right

exhausted all potential avenues of help before considering such measures. Regarding statemented pupils, a review of the pupil's statement is the appropriate course of action rather than expulsion. Remember, the ECHR was conceived as a 'living document' to be reinterpreted afresh with societal change and as more research emerges on, for example, ADD/ADHD, school managers should be aware of the need for monitoring suspensions and expulsions within their schools.

The United Nations Convention on the Rights of the Child

1.9 Application of the Child's Right to Participation, contained in the United Nations Convention on the Rights of the Child:

Article 12 of the United Nations Convention of the Rights of the Child states that:

'States Parties shall ensure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.'

Currently there is no statutory right for young people (unless they are over 18 years of age) to attend or be represented in consultative meetings and tribunal hearings. It is, however, clear from case law that the rules of natural justice apply in relation to the involvement and participation of children and young people in these proceedings.

Although the rights contained in the Convention are not enforceable in our domestic Courts, the principals of the United Nations Convention on the Rights of the Child should be used as a 'model of good practice' and should always be referred to in the development and implementation of policies and procedures concerning children's rights to and in education. Furthermore, as the articles in the UNCRC are increasingly being used as an interpretative tool by European and domestic courts, school policy-makers who are interested in the protection and promotion of these rights would do well to consider incorporating the principles of the Convention into their school discipline policies.

In its second report to the United Nations Committee on the Rights of the Child in 1999, the UK Government addressed the issue of children's participation in expulsion procedures. The government acknowledged that it might be appropriate for older children to address an Expulsions Appeals Panel about their expulsion from school (a change in Northern Ireland legislation would be required for this). Allowing children to have their voices heard is also conducive to the principles of natural justice under our Common Law.

1.10 Case Law 1

Investigative and Evidential Requirements in the Expulsion Process

Obviously any serious breach of school discipline should be investigated and recorded. Where such an incident would warrant expulsion, school managers should be aware that the investigation that they carry out and the records they make will be closely scrutinised by the courts in any future proceedings concerning the decision taken.

The following case highlights the need for thorough and well documented investigative procedures.

R v Head teacher and Independent Appeal Committee of Dunraven School ex parte B³

Facts:

- 3 boys (B, D & M) were expelled following the theft of a handbag from the staff room
- The discipline committee of the governing body heard representations on behalf of each pupil in turn.
- The committee heard B's case after that of D.
- D had made a written statement implicating B, which was seen by the Committee during the course of D's hearing. This material was not made available to B's representatives.
- The committee reinstated D, but not B.
- B appealed to the Expulsion Appeals Panel. They upheld the decision of the discipline committee.
- The case went to judicial review, which failed at first instance but was allowed by the Court of Appeal.
- The Court of Appeal laid down a number of principles, as follows:
 - o The discipline committee is under a duty to establish the primary facts of the case and to independently check the decision of the head teacher. The head teacher is under an onus to justify his decision to the committee.
 - o The investigation process carried out by the head teacher must be considered fair and reasonable. (This places a burden upon the head teacher to conduct a good quality investigation and to ensure that all procedures and statements are properly recorded).
 - o Where the behaviour alleged would constitute a criminal offence, the standard of proof to be applied by the head teacher/committee, should not be the same as in the criminal courts, where guilt must be proved 'beyond reasonable doubt'. However, it is suggested that the likelihood of guilt should 'be distinctly more probable' than not.
 - o A legal principle was asserted in this case that elementary fairness requires that 'the pupil, through his or her parent, had a right to be heard. Such a right was worthless unless the parent knew in some adequate form what was being said against the child....Moreover, it was unfair for the decision-maker to have access to damaging material to which the person at risk, here the pupil through his parent, had no access.'
 - o Furthermore, in this case the Court considered the need to protect D, as the informant, from exposure and possible subsequent reprisal. If the governors wished to take D's witness statement into consideration, they had first to consider whether his identity could be concealed; if it could not, then they had to consider whether to proceed without reliance on D's account of events. In the absence of D's statement, there was no other evidence against B.
 - o The court held that the principle of natural justice requires any evidence taken into account by the head teacher/ committee, must be made available to the accused for comment and answer. Any evidence that has not been disclosed to the accused cannot then be relied upon to support a decision to permanently exclude a pupil. (This may present difficulties for schools where they wish to protect the anonymity of witnesses, who are pupils at the school).

³ [2000] ELR 156

Conclusion

The principles outlined in *Dunraven* show clearly that school managers who are investigating incidents must do so thoroughly and that adequate evidential material (such as witness statements) which are important to the procedure must be made available to the appellant pupil/parent so that they are given a fair opportunity to comment on it and the child is given a fair opportunity to be heard.

One difficulty that arises from the 'Dunraven Principles' is in relation to pupil witnesses who wish to remain anonymous. If there is a need to protect the anonymity of a child witness, firstly consideration should be given as to whether the child's identity could be concealed. If this is not possible, schools may be placed in the position where they must decide whether to rely upon witness statements given. In some circumstances a school may have to disregard material evidence that they hoped to rely upon to substantiate their decision and proceed without reliance upon such statements. Clearly, a lack of evidence will undermine the facts determining a case.

Following the case of *Dunraven*, the issue of anonymised witness statements was again addressed by the Court of Appeal in the case of **S (R on the application of) v London Borough of Brent and Ors**⁴. In this case it was stated as follows:

'There may be very good reasons, especially in cases involving bullying, for anonymising such statements, but the injustice of using them may be even greater than the injustice of not using them. Appeal panels (and governing bodies too) should be prepared to disregard anonymised statement(s) as evidence if they are damaging to the pupil in ways which the pupil cannot be expected to deal with without knowing who has made the statement.'

While there may appear to be good reasons to protect the anonymity of witnesses, particularly in cases where there are allegations of bullying or assault, Principals and Boards of Governors would be advised to seek legal advice before relying on such evidence to substantiate a decision to expel a pupil.

1.11 Case Law 2

Parental Conduct and Influence in School Disciplinary Matters

Potentially, a matter of difficulty for any school may be the conduct/attitude of parents. Obviously, schools should never allow parental behaviour to influence disciplinary procedures or any subsequent decision to suspend or expel a pupil. While the vast majority of schools attempt to create positive home-school liaison and seek parental support where necessary, such support is not always forthcoming or reciprocated.

The following case, while containing some unusual facts, not only illustrates the effect parents can have upon their children's behaviour at school, but more importantly the necessity for schools to administer their discipline policies fairly. **Remember, Article 14 (Prohibition of Discrimination) of the Human Rights Act 1998 states: 'The enjoyment of the rights and freedoms set forth in the convention shall be secured without discrimination on any ground...'**

R v Board of Governors and Appeal Committee of Bryn Elan High School ex parte Whippe⁵

The issue in this case was parental conduct. The Court had to consider whether parental behaviour could be taken into account, as well as a pupil's misconduct, in deciding whether or not to expel a pupil.

⁴ [2002] EWCA Civ 693 (Judgement dated 17/05/02)

⁵ [1999] ELR 380

Facts:

- 2 girls aged 13 and 17 were expelled
- Their father was the previous head teacher at the school and was highly critical of the new school management
- The school had obtained a court injunction against the father
- The girls' misconduct included: walking out of assembly, unacceptable behaviour at an awards ceremony, a pupil protest was believed to have been orchestrated by the younger daughter and both girls had confronted teachers
- The judge concluded that, but for the views of and behaviour of their father, the girls would have been unlikely to have found themselves expelled from school
- However, following further consideration of the girls' behaviour, he held that:
 - o The girls' conduct was extreme enough to merit expulsion
 - o It was reasonable for the appeal committee to consider the likely impact of the father's views on the girls' future conduct
 - o The other children in the school were likely to be affected, if the girls were reinstated
 - o On this basis the expulsions were justified

While the Judge in this case pointed out that the conduct of the girls had been conditioned by the views and influence of the father, it is *primarily on the basis of their behaviour* that the decision to expel was upheld.

One may extrapolate from this case some useful guidance on the issue of parental conduct and its influence in disciplinary matters. Take the following scenarios:

- The son/daughter of a Parent Governor is involved in a serious breach of discipline that normally warrants suspension
- The son/daughter of a parent who has been totally unsupportive of school policy and verbally abusive to members of staff is involved in a breach of discipline that normally warrants suspension

Is one pupil more deserving of suspension, due to the parent's relationship with the school, than the other? Put another way, should positive or negative parental interjection be a deciding factor? Likewise, should the behaviour of siblings (no matter how notorious) in the same school affect any disciplinary measures brought against an individual child?

The Bryn Elan High School case would seem to suggest that parental attitude, while it can be a factor in a child's behaviour, when it comes to the issue of school suspensions or expulsions is very much a subsidiary issue: it is primarily on the specific breach of discipline and sanctions outlined in the School Discipline Policy that any decision should be based.

Conclusion

To avoid a challenge under Article 14 (Prohibition of Discrimination) of the Human Rights Act 1998, schools would do well to separate out the behaviour of the child and the behaviour/attitudes of the parent(s)/guardians or other family members and apply their discipline policies fairly. While parental conduct can be threatening and sometimes even violent, it is very much a subsidiary issue in making a decision to exclude a child.

1.12 Case Law 3

The Need to Follow Procedures when Suspending a Pupil

Although there is no statutory right of appeal against a school's decision to suspend a pupil under existing legislation, there are two alternatives by which a challenge may be mounted by parents.

1. Lodging an Article 101 complaint with the Department of Education

Parents may lodge a complaint, in writing with the Department of Education. This complaints procedure is restricted to complaints about the Education and Library Boards and where a Board of Governors has blatantly ignored relevant legislation and Department of Education guidance. The Article 101 complaints procedure does not extend to the actions of the principals of schools.

It is important to note that while the principal is the individual empowered to suspend a pupil from school for the first period of up to five days, the Chairperson of the Board of Governors must approve any decision to extend the suspension.

Therefore, Governors should take note that if they are consulted by a principal and allow a principal to continue to suspend a pupil inappropriately, a 101 complaint could be founded on the basis that a Board of Governors has failed to perform its statutory duties.

2. Judicial Review:

The following case illustrates the need for school managers to not only have policies in place that are underpinned by human rights values such as equality and fairness, but highlights the requirement placed upon school managers to follow the procedures outlined in their disciplinary policy when making a decision to suspend.

In **RE Kean's Application**⁶ a pupil successfully challenged a decision to suspend on the grounds that the procedures employed by the principal were unfair. This was a Northern Ireland High Court decision and Justice Coghlin heard the matter.

Facts:

- The pupil had put her foot through a glass door, thereby damaging school property
- The pupil was not given an opportunity to respond to witness statements
- The principal immediately suspended the pupil
- The principal did not invite the pupil's parents into the school to discuss the suspension
- These omissions by the principal contravened the procedures outlined in the school's Disciplinary Policy

Conclusion

While this Judicial Review application was successful, the Judge acknowledged that the day-to-day disciplinary powers of a teacher/principal should **not 'be subject to the unwieldy and time-consuming supervision of the law'**.

In spite of this commentary by Justice Coghlin, his judgement was that the suspension was procedurally unfair on the facts of the case. Accordingly, a legal precedent has been set for initiating Judicial Review proceedings in suspensions cases.

As we can see in this and the other case studies, a school's policies and procedures may be scrutinised in appeal and Judicial Review settings.

⁶ [1997] NIJB 109, Queen's Bench Division (Crownside) Coghlin J, 3rd June and 3rd July 1997

1.13 Balancing Rights and Reinstatement

Balancing Rights: The Individual and the Whole School Community

The Right to Education enshrined in Article 2, Protocol 1 of the European Convention is not absolute. With reference to the above-mentioned general principles, we can see how in each individual case, it is necessary to consider the rights of an individual child to receive an education and to balance this carefully against the rights of other individuals involved, so that other individuals and/or the whole school community are not prejudiced. Therefore, while it may interfere with a disruptive and/or violent pupil's education to expel them from school, such action may be justifiable and wholly compatible with Convention rights, where that pupil is likely to jeopardise the educational achievement of others, or even to threaten the safety of staff and other pupils at the school.

It is important that any disciplinary action taken by a school is reasonable and proportionate to the risks perceived. For example, a pupil should not be expelled when a suspension would 'be a punishment befitting the crime'. Also, school's governing bodies must ensure that proper procedures are followed 'to the letter' in order to minimise the likelihood of challenge against any decisions that they make.

Although this case comes from English case law, it highlights the balancing of rights that can take place in a decision to expel a pupil for a first serious breach of discipline.

The Queen o.t.a C v Sefton M.B.C. Independent Appeals Panel and the Governors of Hillside High School⁷

Facts:

- C had fallen out with W over a girl, S.
- C sent an aggressive text message to W and at lunchtime pushed him violently through a classroom door, causing him to fall and hit his head. It was suspected that W's nose was broken in the incident. C was restrained and threatened to knock W out if he did not stay away from S.
- The head teacher's decision to permanently exclude was supported by the disciplinary committee and by the independent appeal panel.
- The Court considered **DfEE Circular 10/99 Social Exclusion: Pupil Support**, which provides that expulsion appeal panels must direct reinstatement of a pupil unless there are compelling reasons not to do so.
- In his judgement Scott Baker J was satisfied that the Departmental Circular had been taken into account.
- The facts of the case were not disputed and he held that the decision makers had been entitled in the particular circumstances "to impose a Draconian remedy because of the lack of self control and the risk of what could happen in the future".

Conclusion

This case highlights the need to balance the rights of the individual pupil against the rights of the school community as a whole. The independent panel took seriously the future threat posed to other individuals if reinstatement took place and so the head teacher's original decision was upheld.

Reinstatement and Teacher Industrial Action

Another issue that has been dealt with in recent English case law is the conflict of interest faced by a governing body where an appeal panel directs the reinstatement of the pupil, yet the teachers at school refuse to teach the pupil concerned. For example, teachers may argue that being exposed to the risk of violence is a breach of the Board of Governors duty to provide a safe working environment for pupils and staff.

⁷ [2001] ELR 393; ELJ Volume 2, Issue 3

This has led to detailed consideration of what is meant by 'reinstatement' in two recent cases in the Court of Appeal:

The Queen ota C v Governors of B School ⁸

Facts:

- C was expelled but the appeal panel directed reinstatement.
- The school's teaching staff refused to teach C and threatened industrial action.
- C was returned to school but was taught separately outside the principal's office with a learning mentor and spent some time at a local Pupil Resource Unit.
- C's argument that the governing body was in breach of its duty to comply with the appeal panel's binding decision to reinstate was unsuccessful.
- Richards J held that C had been reinstated, on the basis that the expulsion had not continued. The governing body had a discretion in relation to the process of reinstatement and had exercised it lawfully by taking C back into school.
- It was not unlawful for the governing body to take account of the threat of industrial action when deciding how to act.
- It was appropriate that the governing body considered the interests of all pupils at the school.

The Queen o.t.a. L v The Governors of J School ⁹

Facts:

- L was expelled following an incident in the boy's toilet in school, which resulted in a serious physical assault on another pupil.
- L admitted being present and aiming a kick at the victim's head, but said that he had not made contact.
- The appeal panel directed reinstatement.
- Staff balloted for industrial action. The head teacher felt that he could not direct staff to teach L, as the risk of strike action would prejudice other pupils, particularly with the encroachment of public examinations.
- He made arrangements for L to be taught in isolation and external teachers were brought in especially for this purpose.
- In the Court of Appeal, Laws LJ concurred that a pupil was reinstated provided he was no longer expelled. He stated as follows:

"The notion of reinstatement cannot in my judgement demand a precise, or even approximate, restoration of the conditions in which the pupil's life at school was carried on before his exclusion.... The reality is that once he is reinstated, his exclusion is cancelled, and he is to be treated like any other pupil; and in respect of any pupil, special or particular measures or initiatives may be required at any time".

Conclusion

These two reinstatement cases again highlight the need to balance the rights of the individual with those of the school community as a whole. Obviously the head teachers involved ensured that the right to education of the reinstated pupils was maintained through the use of 'particular measures or initiatives' while at the same time taking seriously the effect teacher action could have on the rest of the pupils in the school.

⁸ [2001] ELR 285; ELJ Volume 2, Issue 2

⁹ [2001] EWHC Admin 318; [2001] ELR 411

1.14 Suggested Actions

It is clear from this section that suspensions and expulsions can fundamentally affect the individual pupil's right to an effective education in the spirit of Article 2, Protocol 1 of the ECHR/Human Rights Act 1998. This is reflected in both the ELB and CCMS schemes which emphasise that expulsion is very much a 'last resort' measure.

So what can school managers do to help ensure that their internal policies and procedures protect children's rights in these areas?

- ✓ The school Discipline Policy should be made widely known to all members of the school community including pupils, members of staff and parents. The types of behaviour that warrant suspension or expulsion should be clearly defined in advance.
- ✓ The school Discipline Policy should be cross-referenced with the Special Educational Needs Policy and procedures should be put in place to allow the SENCO to provide relevant information on pupils with Special Educational Needs who face suspension or expulsion. In addition, school managers should actively monitor the suspensions and expulsions to ensure that their procedures are not discriminating against pupils with Special Educational Needs.
- ✓ Procedures should be followed 'to the letter' and staff be made aware of the need to conduct investigations fairly and record evidence in a detailed way.
- ✓ Pupils/parents must be given an opportunity to hear the allegations and evidence presented against them in an adequate form and be afforded the opportunity to respond
- ✓ In any circumstances where criminal prosecution is likely to arise, it is appropriate that the Principal inform the parents and offer them an opportunity to speak to their child and to seek legal advice (where they so wish) in advance of any police interview or investigation.
- ✓ If, in any circumstances, the Principal feels it is necessary to search a pupil or any of his/her personal possessions it is appropriate for the Principal to first inform the pupil's parents and offer them the opportunity to be present during the course of the search. There may be some discretion afforded should there be grounds for reasonable suspicion that the pupil has in their possession any item which is likely to cause direct and immediate harm to other pupils and staff at the school.
- ✓ Subject to their age and understanding, pupils must be given the opportunity to participate in all meetings in a meaningful way.
- ✓ In order to ensure that the Right to Education of suspended pupils is maintained, the school must put in place mechanisms to ensure that work is either collected or sent to the pupil while s/he is at home.



Section 2: Special Educational Needs

- 2.1 Which Legislation Governs the Law on Special Educational Needs in N. Ireland?
- 2.2 The Five Stages of the Code of Practice
- 2.3 Key Human Rights issues in relation to pupils with Special Educational Needs
- 2.4 Which Human Rights values should underpin a school's internal policy on Special Educational Needs?
- 2.5 Article 2, Protocol 1 (ECHR) - The Right to Education
- 2.6 Article 14 (ECHR) - The Prohibition of Discrimination
- 2.7 Participation Rights in Article 12 of the UNCRC
- 2.8 The Rights of the Disabled Child in Article 23 of the UNCRC
- 2.9 Case Law 1: Negligence and the Duty of Care owed to Children with Special Educational Needs
- 2.10 Case Law 2: The Implications of the United Kingdom's Reservation on Article 2, Protocol 1 (ECHR) for Children with Special Educational Needs
- 2.11 The Implications of the proposed Special Educational Needs and Disability Act (SENDA) for N. Ireland
- 2.12 Suggested Actions



2.1 Which legislation Governs the Law on Special Educational Needs in N. Ireland?

There are 4 principle pieces of domestic legislation which govern the law on special educational needs in Northern Ireland:

- **The Education (Northern Ireland) Order 1996**
- **Special Educational Needs Tribunal Regulations (Northern Ireland) 1997**
- **Education (Special Educational Needs) Regulations (Northern Ireland) 1997**
- **Education (Special Educational Needs) (Amendment) Regulations (Northern Ireland) 1998**

The Education (Northern Ireland) Order 1996 regulates a number of procedures relevant to this field of law, to include identification and assessment of special educational needs and provision; the Department's duty to issue a Code of Practice to assist Education and Library Boards and Boards of Governors of grant-aided schools in discharging their duties towards children with special educational needs; procedures for statutory assessment of a child's special educational needs; the processes for making, reviewing, amending and ceasing to maintain a statement of special educational needs; the duties imposed upon an Education and Library Board to determine and maintain suitable educational provision to meet a 'statemented' child's needs and the constitution of a Special Educational Needs Tribunal for Northern Ireland.

The Special Educational Needs Tribunal Regulations (Northern Ireland) 1997 set out the procedures for appeal to the Special Educational Needs Tribunal (SENT), where parents wish to challenge particular decisions regarding their child's education.

Regarding an ELB's decision to carry out an assessment of a pupil, the Education (Special Educational Needs) Regulations (NI) 1997 outlines the principal's responsibility to provide, when requested, advice on an individual pupil's progress. The advice provided by the principal should include 'the steps that have been taken by the school to identify and assess the special educational needs of the child and to make provision for the purpose of meeting those needs' (Regulation 6(4)). Similarly, when the Board decides to review a statement of special educational needs, the principal has, depending on the age of the child, specific duties regarding the collation of advice from a range of sources, including the child's parents and members of staff who teach the child. If a child is under 14 years of age the principal shall normally organise a report for the Board. If, however, the child is over 14 years of age, Regulation 14(4) states that the principal will collate information on the child's progress from a range of sources in advance of a meeting attended by a representative of the Board. After the meeting it is the Board's duty to prepare the report and a '**transition plan**' outlining provision, including special educational provision, for the young person from 14 to 19 years of age.

The Education (Special Educational Needs) (Amendment) Regulations (NI) 1998 deal primarily with the time limit (and the circumstances that will allow exemption from the time limit) placed on ELBs to produce a proposed statement of special educational needs.

The Code of Practice on the Identification and Assessment of Special Educational Needs

Article 4(1) of the Education (Northern Ireland) Order 1996 placed a duty on the Department of Education to issue a Code of Practice, which would provide "practical guidance in respect of the discharge by Boards and the Boards of Governors of grant-aided schools of their functions (as detailed in the legislation)." The Department fulfilled this statutory obligation by launching a Northern Ireland based Code of Practice which has been operative since 1st September 1998.

The Code of Practice is designed to help schools make effective decisions in relation to the educational needs of their pupils and offers guidance for ELBs and schools as to the circumstances in which assessments and statements should be initiated.

It is important to note that the Code of Practice is not a legally binding document and that the Code can inform but cannot direct schools or education authorities how to respond to an individual student's needs. However, schools would be well advised to follow it carefully.

The Code is supplementary to the legislation and is the key touchstone for all educators when identifying and assisting children with special educational needs within the school environment, prior to making any decision to refer a child to the relevant ELB and requesting a formal statutory assessment of the child's needs.

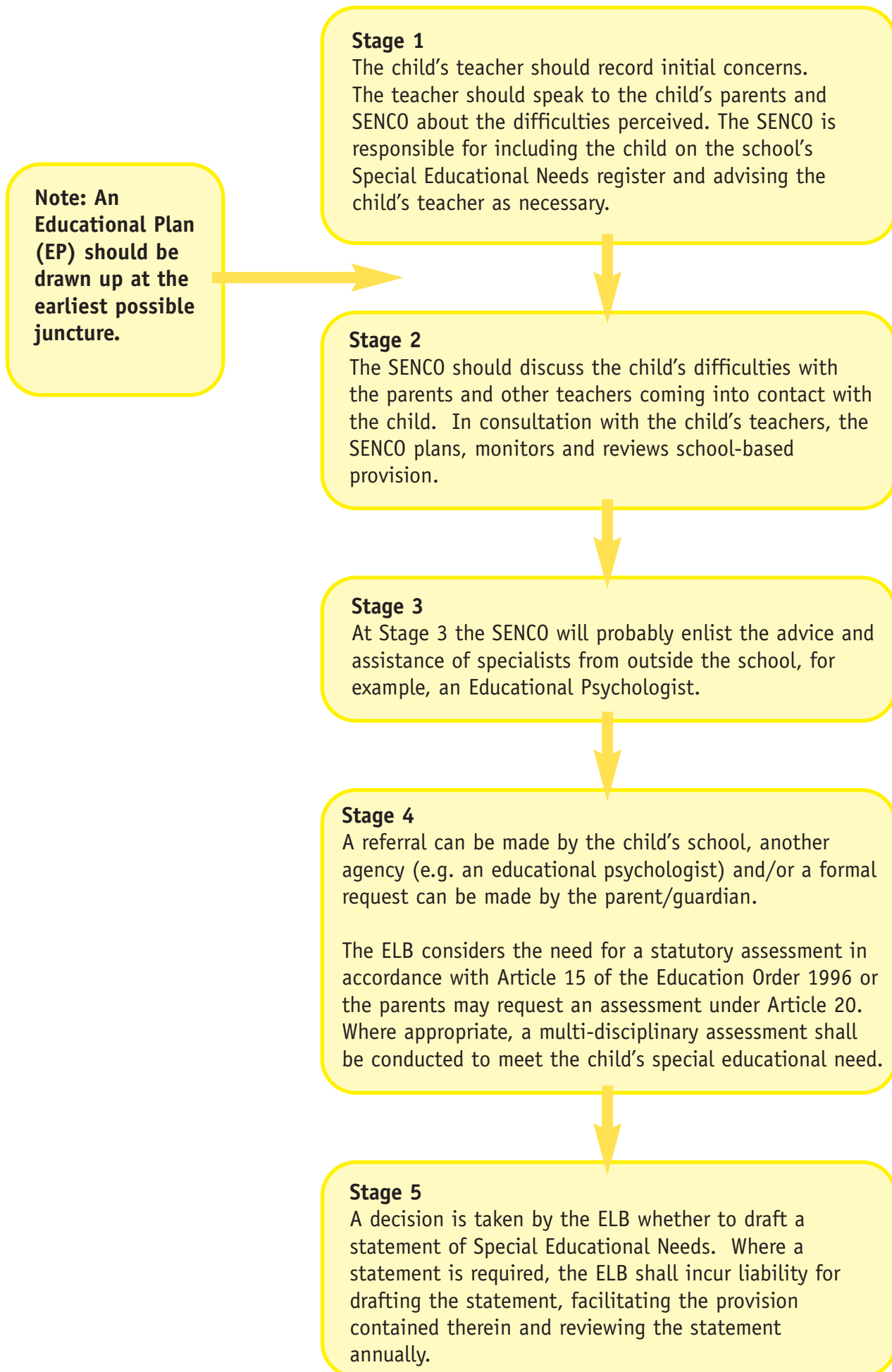
What is the legal effect of the Code for Boards of Governors?

Article 4(2) of the Education (Northern Ireland) Order 1996, requires the Boards and Boards of Governors of grant-aided schools "to have regard to the provisions contained within the code".

It is important to distinguish this obligation from a stricter duty to comply with the provisions contained within the code. It is not clear from this legislation to what extent ELB's and Boards of Governors should have regard to the code or indeed what this duty may entail. It is suggested that in light of Article 4(2), no decision should be made without first having considered any relevant issues under the Code.

There are a number of other statutory safeguards in place. Article 9 of the 1996 Order provides that the Board of Governors of every grant-maintained school is under a strict obligation to ensure that the school has a policy in relation to the provision of education for children with special educational needs. Furthermore, the Board of Governors is required to produce details of special educational needs provision made available to pupils at the school in its annual report.

2.2 The Five Stages of the Code of Practice



2.3 Key Human Rights Issues in relation to pupils with Special Educational Needs:

- Early identification of difficulties and prompt reference to the Code of Practice is of paramount importance. The lengthy period some children have to wait for identification and assessment of their Special Educational Needs may infringe upon their right to an effective education under Article 2, Protocol 1 (ECHR).
- Emotional and Behavioural Difficulties (EBDs), as stated in the Appendix to the Code of Practice, should be properly recognised as a Special Educational Need. The document 'Pastoral Care in Schools: PROMOTING POSITIVE BEHAVIOUR' recommends that schools, when faced with challenging EBDs, should pro-actively seek the advice and support of the Behaviour and Support Service in their ELB area (reflected in the Code of Practice Appendix A.10 - A.13)
- Of children with Special Educational Needs, pupils with EBDs (including ADD/ADHD, Asperger's Syndrome and Autistic Spectrum Disorder) are more susceptible to suspension and expulsion. Schools should be mindful of Article 2, Protocol 1 and Article 14 (Non-Discrimination) of the ECHR. A child should never be expelled solely because of their Special Educational Need.
- In terms of the identification and assessment procedures outlined in the Code of Practice, it is recommended that reasonable efforts should be made to ascertain the views of the child regarding their learning difficulties. This is in keeping with Article 12 of the United Nations Convention on the Rights of the Child (see below) which states that, where appropriate, children have a right to be consulted and express their views on decisions that affect them. Schools should try to incorporate the wishes and feelings of children, subject to their age and understanding, in any decision-making process.
- Sometimes non-statemented pupils and those who are awaiting assessment do not receive appropriate assistance and provision may be restricted by the school's budget for Special Educational Needs. Similarly, pupils out of school on long term illness due to their specific needs may not receive effective provision (although Article 86 of The Education (NI) Order 1998 does provide for exceptional provision to be made by the respective ELB, it is very much at the discretion of the Board and, as yet, no Department of Education guidance exists on this piece of legislation).
- There is a lack of equality of access for children with physical disabilities to the school of their choice. Following the introduction of the Special Educational Needs and Disability Act (SENDA) 2001 in England and Wales, the rights of children with Special Educational Needs to attend mainstream schools was strengthened. Introduced in May 2001 SENDA demands that schools increase the extent to which disabled children can participate in the curriculum and that physical access to the school environment is improved for this group of pupils. Schools should be aware that it is likely that similar legislation will soon be introduced in Northern Ireland.
- School Admission Policies may indirectly discriminate against children with disabilities, where sub-criteria for admissions include attendance records, evidence of sporting achievement, Duke of Edinburgh Award Schemes, etc.
- Given that Special Educational Needs is such a huge umbrella term for a vast array of specific learning difficulties, disabilities and specialist needs and that research is ongoing in this area, identifying children with these needs is becoming increasingly difficult. In order to secure for these pupils their right to an effective education, SENCOs and other

teachers will need training (provided by CASS) throughout their careers to ensure that they can identify children with Special Educational Needs, make appropriate provision and seek relevant assistance from the ELBs.

2.4 Which Human Rights Articles should underpin a school's internal policy on Special Educational Needs?

2.5 Article 2, Protocol 1 (ECHR) - The Right to Education:

'No person shall be denied the right to education. In the exercise of any function which it assumes to education and to teaching the State shall respect the right of parents to ensure such education is in conformity with their own philosophical and religious convictions.'

Article 2, Protocol 1 has been interpreted as the right to an effective education. Schools must ensure pupils who are not statemented, those awaiting statementing or those who are appealing a decision to SENT receive appropriate assistance to make their education 'effective'. School Managers (in liaison with the SENCO), must ensure that all members of staff are reminded of the Code of Practice and internal procedures for raising concerns regarding identification of and provision for a pupil's Special Educational Needs.

In order, therefore, to ensure compliance with Article 2, Protocol 1 the progress of individual pupils must be closely monitored and, where necessary, appropriate educational provision made in terms of individualised Education Plans (EPs), differentiated learning activities and resources. Good practice would demand that school departmental Schemes of Work should reflect the whole school policy on Special Educational Needs and detail procedures for liaising with the SENCO over individual pupils. Progress of individual pupils should be closely monitored and evaluated in an ongoing basis.

2.6 Article 14 (ECHR) - The Prohibition of Discrimination:

'The enjoyment of these rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'

Article 14 of the ECHR is not free-standing and has to be argued in conjunction with another Convention right. Schools need to be aware that, in the area of Special Educational Needs, there is great scope for legal argument to be raised regarding Article 2, Protocol 1 -The Right to Education (see below 2.9).

Admissions policies can indirectly discriminate against pupils with physical disabilities if sporting achievement and other extra-curricular activities are part of the criteria.

School Managers need to be mindful that pupils who have an Emotional and Behavioural Difficulty (EBD) are, under the Code of Practice, considered to have a Special Educational Need and, consequently, may require an individualised Education Plan (EP). The guidance 'Pastoral Care in Schools: PROMOTING POSITIVE BEHAVIOUR' includes in this category pupils whose behaviour is affected by Attention Deficit/Hyperactivity Disorder (ADD/ADHD) and Autistic Spectrum Disorder, including Asperger's Syndrome.

Obviously, because of the nature of their Special Educational Need, these pupils may become subject to the school's disciplinary procedures and can even be expelled. In terms of both the school's Special Educational Needs and discipline policies, cognisance should be taken of the fact that pupils with EBDs may be more prone

to suspension and expulsion from school and use of these procedures should be carefully monitored. Pupil response to any disciplinary measures adopted by a school should be carefully observed. The Departmental Strategy for 'Promoting and Sustaining Good Behaviour in Schools' provided for £3 million additional resources in 1998/99. A principle objective of this strategy was the development of school-based and external support services (in each ELB area a Behaviour Support Service was set up). School managers should, whenever necessary, seek the support of the relevant ELB's support services and draw up a behaviour management programme for pupils with EBDs.

Overall, school managers should ensure that pupils with Special Educational Needs (whether the Special Educational Need be physical disability, learning difficulty or a combination of behavioural or emotional disorders) are not discriminated against, either directly or indirectly, by the school's policies and/or procedures and are provided with appropriate EPs or behavioural support (in, for example, the form of a behaviour management programme) whenever necessary.

The United Nations Convention on the Rights of the Child

2.7 Application of the Child's Right to Participation contained in the United Nations Convention on the Rights of the Child:

Article 12 of the United Nations Convention on the Rights of the Child provides:

'State Parties shall ensure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.'

While the UNCRC is not directly enforceable in domestic courts, it does provide a model of good practice in the protection and promotion of children's rights.

The 'voice of the child' principle enshrined in Article 12 of the UNCRC should be taken into account at all stages of the identification, assessment procedure and prescription of 'suitable' provision - particularly where a child is of the age and maturity to express their own views regarding their Special Educational Needs. The Code of Practice recommends the involvement of the child in the decision-making process in paragraphs 2.28, 2.29, 2.48, 3.59, 6.49 and 6.50.

2.8 Application of the Disabled Child's Rights

Article 23 of the United Nations Convention on the Rights of the Child provides:

'State parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community

Recognising the special needs of a disabled child, assistance extended...shall be designed to ensure that the disabled child has effective access to and receives education, training...opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his/her cultural and spiritual development.'

It is clear from the wording of Article 23 that the UNCRC strongly promotes social integration and active participation in the community for children with disabilities through the medium of education.

All children with Special Educational Needs and disability must be provided with an opportunity to access the Northern Ireland Curriculum **at a level which is consistent with their ability and aptitude**. Modification of the Curriculum may be required to ensure that some individual's special educational needs are met. For some children this may only be secured by placement in a mainstream school. While statemented pupils will have funding provided by the appropriate ELB for additional resources, non-statemented pupils are more dependent on the schools Special Educational Needs budget (specific provision may be made by the ELB at Stage 3 upon request by the school). Flexibility, therefore, will be required on the part of teachers, SENCOs and principals in the management of the child's education and in the provision of all practical requirements. Schools should pro-actively promote the inclusion of children with SEN or disability in all of the activities that other children within the school environment take part.

2.9 Case Law 1

Negligence and the Duty of Care owed to Children with Special Educational Needs

The following case deals primarily with an educational psychologist who failed to identify dyslexia as a pupil's Special Educational Need. It highlights the importance for schools, when assessing a pupil, to refer to every stage of the Code of Practice, accurately document the concerns raised, make appropriate provision, and, where necessary, promptly seek external advice and assistance (at Stage 3) from outside the school. Obviously, the role of the SENCO is central to ensuring that the individual child's difficulties are made known to the parent(s)/guardians and the child's teachers who will need to take cognisance of these difficulties when planning work commensurate with the child's ability. A partnership approach, therefore, that involves the parent(s)/guardians, child and school is perhaps the most productive way of ensuring that effective identification, educational provision and monitoring of the individual child's Special Educational Need takes place.

House of Lords Decision in *Phelps v Hillingdon Borough Council and others* (July 2000 HOLs)¹⁰

Facts:

- The plaintiff was referred to the Local Educational Authority's (LEA) psychological service for assessment of her Special Educational Needs
- The Educational Psychologist found no specific weaknesses
- Shortly before she left school, the plaintiff was diagnosed with dyslexia
- She brought a claim for damages against the LEA

The finding of the House of Lords in *Phelps*:

- The Educational Psychologist owed a duty of care to the child she assessed
- The child and the parents relied on the advice given
- The LEA were vicariously liable for a breach of that duty
- The psychological assessment had been negligent - the girl was unable to proceed with the type of employment she had envisaged and had suffered financial loss - £44,000 compensation was awarded for loss of future earnings

Conclusion

The House of Lords' decision (which was unanimous) emphasised that educational authorities have a legal duty to ensure that their pupils' educational needs are met. An educational authority (and, as the parameters of responsibility are not yet clear, it must be noted that in the future this could include a school) is liable for the negligent actions of a teacher, school management or educational psychologist in relation to pupils with Special Educational Needs. The House of Lords also expressed the view that liability for negligence would be exceptional and a claimant must demonstrate that the service provided 'fell below the standard expected of a reasonable body of similarly professional people'.

¹⁰ [1998] ELR 38 (High Court); [1998] ELR 587 (CA)

It is through good professional practice that schools can ensure that all pupils, stated and non-stated alike, receive an effective education in the spirit of Article 2, Protocol 1 of the ECHR. Reference to the Code of Practice within the school's policy on Special Educational Needs, effective monitoring of policy implementation and pupil progress is essential if School Managers (Boards of Governors, Principals and SENCOs) are to ensure that their duty of care is discharged to this group of pupils. While Boards of Governors have a strict obligation to ensure that a policy is in place on the provision of education for children with Special Educational Needs and that details of this provision is made available to parents in their annual report, it is only through monitoring effectiveness of procedures that appropriate provision can be made.

2.10 Case Law 2

The United Kingdom's Reservation on Article 2, Protocol 1 of the ECHR and its implications for children with Special Educational Needs.

In the introductory section it was highlighted that the UK Government entered a reservation to the right to education:

'In view of certain provisions of the Education Acts in the United Kingdom, the principle affirmed in the second sentence of Article 2 is accepted by the United Kingdom only in so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure.'

It must be pointed out that this reservation only applies to the second sentence of Article 2, Protocol 1 where the State should respect the right of parents to ensure such education and teaching is in 'conformity with their own religious and philosophical convictions.' It does not apply to the child's right to education contained in the first sentence of Article 2, Protocol 1.

Remember that the objective of Article 2, Protocol 1 is merely to guarantee the right of equal access to the means of instruction at a given time. The effect of the UK reservation is to further limit the financial burden on public expenditure.

Ultimately, in order to protect the rights of children with Special Educational Needs, schools must do their utmost to provide an effective education. The following case, however, highlights the importance of the UK's resource-based reservation. It demonstrates how **the principle of proportionality** (see below) can be used in cases relating to children with Special Educational Needs to test whether or not a breach of an individual's rights has taken place.

McIntyre v UK (unreported)¹¹

In this case the European Commission considered an argument in relation to the effectiveness of the education provided to a child with Special Educational Needs. Here the legal team argued Article 14 (The Prohibition of Discrimination) together with the right to education in Article 2, Protocol 1.

Remember, Article 14 of the ECHR is not free-standing and must be argued in conjunction with other Convention Articles. Part of Article 14 reads as follows:

"...the enjoyment of the rights and freedoms set forth in this convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or other social origin, association with a national minority, property, birth or other status".

¹¹ McIntyre v UK unreported Commission decision 21/10/98 29046/95

Facts:

- A young girl with muscular dystrophy had been assessed as capable of attending a mainstream school
- The medical record annexed to her statement read “She walks with difficulties, will require transport and should not have to climb stairs”
- 1992 - The child started at a recommended school
- 1993 - The statement was reviewed and her physical condition had deteriorated to the extent where she increasingly needed a wheelchair during the day
- The family requested that a lift be installed to facilitate access to the first floor of the school (science lab and library)
- Cost for lift installation: £47,000
- The Local Educational Authority (similar to an ELB in N. Ireland) said this was not an efficient use of resources
- The school had already been targeted for improved access - £15,000 for ramps and toilet facilities
- The school had taken measures to accommodate the child:
 - A care assistant supervised her while her peers were in the science lab
 - Library books were brought to her on request
 - The LEA provided her with a laptop computer
- The child’s mother initiated Judicial Review proceedings in respect of the refusal of the LEA to install a lift - these were dismissed and leave was refused to bring the case to the Court of Appeal
- The case was taken to the European Commission - arguing that the child was being denied her right to an effective education

The Principle of Proportionality

The European Commission held that the cost of installing a lift for one pupil was disproportionate to the educational benefit she would receive. They noted that the Local Educational Authority had provided the child with a number of other resources and had minimised the level of disruption to her education. The fact that her statement included the requirement of “full access to the curriculum” did not necessitate the installation of a lift, provided the applicant received an effective education.

The Commission also considered it relevant that Sudbourne School was one of a number of schools in the area, which had been targeted by the Local Educational Authority for funding to improve access for pupils with limited mobility and that £15,000 had recently been spent on improving access ramps and toilet facilities at the school. Given that the school in question was relatively small and that the Local Educational Authority had employed other helpful measures, the sum of £47,000 was found to be excessive, particularly when balanced with the demands of other schools within the Local Educational Authority area. The Commission held that the complaint was inadmissible.

Conclusion

Although this case was not successful on the particular facts, it is likely that future cases may be taken on similar grounds. It is clear from the judgment delivered that the principle of proportionality shall be the key to a successful application. For example, the decision may have been swayed had the lift been less costly, the school larger, or if no other measures had been taken to assist children with special educational needs. In this instance, given its budgetary constraints, the school (in liaison with the Local Educational Authority) had used its best endeavors to provide this pupil with an effective education.

It may also be interesting to relate this argument to some of the situations, which may commonly arise in Northern Ireland. For example, there may be issues around access to an effective education for children from an ethnic minority whose first language is not English (who are not to be considered as having ‘a learning difficulty’ solely on this basis under Article 3(3) of the Education (Northern Ireland) Order 1996). Further human rights arguments may be raised in relation to ‘statemented’ children who are suspended or expelled from school and do not receive an effective education, taking account of their specific needs.

Given the resources available to them, School Managers (in liaison with their respective ELB support services) should do their utmost to ensure that the right to an effective education for pupils with Special Educational Needs, whether they are statemented or non-statemented, is maintained. Flexibility in terms of teaching styles, delivery of the curriculum and, perhaps, even practicalities such as time-tabling and accommodation may well be required to provide this.

2.11 The implications of the proposed Special Educational Needs and Disability Act (SENDA) for N. Ireland

The Special Educational Needs and Disability Act 2001 became law in England and Wales on 11th May 2001. The provisions of this legislation affect both schools and further education colleges - In Northern Ireland this would cut across the remit of both the Department of Education and the Department of Employment and Learning. Both Ministers have shown commitment to introducing similar legislation in Northern Ireland. A consultation document has been published in 2002 and legislation is likely to be passed in the near future.

What are the main effects of SENDA (in England and Wales)?

- It strengthens the rights of children with SEN to be educated in mainstream schools, where parents want inclusion and the interests of other pupils can be protected.
- It prohibits all schools and colleges from treating disabled students less favourably than other students without disabilities.
- It requires educational institutions to make 'reasonable adjustments' so that disabled students are not put to substantial disadvantage.
- It requires educational providers to plan over time to increase the physical accessibility of their premises, review the curriculum available for existing disabled students and to prospective disabled students in the future.
- To make provision for mediation and conciliation strategies for the resolution of allegations of discrimination on the grounds of disability.

2.12 Suggested Actions

From examining the case law in this area it is obvious that legal action focusing on Special Educational Needs and mainstream school provision is on the increase. Under the Human Rights Act 1998 schools (as public bodies) must ensure that the Right to Education contained in Article 2, Protocol 1 (this being the right to an effective education) is secured for all pupils, without discrimination.

While it is not legally binding and cannot direct a school's response to an individual pupil's needs, the first three stages of the Code of Practice place the responsibility for assessment, educational provision and monitoring of pupils with Special Educational Needs squarely on the school and within the in-school Special Educational Needs budget.

So what can school managers do to help ensure that their internal policy and procedures protect children's rights in this area?

- ✓ Prompt reference to the Code of Practice is important in order to identify and assess a pupil's Special Educational Need.
- ✓ In order to protect the rights of this group of pupils and promote awareness amongst staff, school managers should ensure that school policies specifically refer to the Code of Practice
- ✓ All staff should be routinely made aware of the school's Special Educational Needs Policy, of the five stages of the Code of Practice and their professional responsibilities as teachers in this area.
- ✓ The SENCO should regularly liaise with all staff to ensure that they are aware of the particular difficulties that individual pupils may have and, where necessary, advise teachers on appropriate learning approaches. Similarly, relevant information from parents regarding a child's difficulties should be made known to his/her teachers. Partnership with parents is recommended in the Code of Practice at paragraphs 2.21 - 2.27)
- ✓ Emotional and Behavioural Difficulties (EBDs) should be properly recognised as a Special Educational Need and strategies, including links to help available from outside the school, should be developed to deal with challenging behaviours.
- ✓ The School Discipline Policy should be cross-referenced to the Special Educational Needs Policy and procedures put in place to allow the SENCO to provide relevant information on pupils with Special Educational Needs who face suspension or expulsion.
- ✓ In terms of the identification and assessment procedures outlined in the Code of Practice, there is provision for the 'voice of the child' to be heard. As Article 12 of the UNCRC states that children have a right to be consulted about decisions that affect them, good practice would demand that the principle of participation is embedded in the school's Special Educational Needs Policy (this is advised in the Code of Practice at paragraphs 2.28, 2.29, 2.48, 3.59, 6.49 and 6.50).
- ✓ School managers will need to demonstrate flexibility in providing the most effective educational experience possible for non-statemented pupils with Special Educational Needs.
- ✓ Throughout their careers teachers should be encouraged to attend training courses in order to update their knowledge of developments and research in the realm of Special Educational Needs. Likewise, as more research emerges on ADD/ADHD, Asperger's Syndrome and Autistic Spectrum Disorder, specialists in the Board area (for example, educational psychologists, ASD Support Services) should be invited into school to brief staff on new research findings, new treatment regimes and developments in teaching methodologies.
- ✓ Social inclusion must be the bedrock of any educational experience - there is a need to eliminate isolation of children with SEN. The principles contained within Article 23, UNCRC represent an internationally agreed standard, to promote and uphold the integration and participation of children with disabilities with the rest of the (school) community. The principle of social inclusion should underpin any school's policy on Special Educational needs.



Section 3: Bullying

- 3.1 Which Legislation Governs a School's Responsibility for Pupil Conduct in N. Ireland?
- 3.2 Departmental Guidance on Bullying Behaviour in Schools
- 3.3 Issues to be Considered in Relation to Tackling Bullying in the School Environment
- 3.4 Which Human Rights Articles Should Underpin a School's Internal Policy on Bullying?
- 3.5 Article 2, Protocol 1 (ECHR) – Right to Education
- 3.6 Article 2 (ECHR) – Right to Life
- 3.7 Article 3 (ECHR) – Prohibition of Torture, Inhuman and Degrading Treatment or Punishment
- 3.8 Article 11 (ECHR) – Right to Freedom of Assembly and Association
- 3.9 Article 8 (ECHR) – Right to Respect for Private and Family Life
- 3.10 Article 9 (ECHR) – Right to Freedom of Thought, Conscience and Religion
- 3.11 Article 14 (ECHR) – Prohibition of Discrimination
- 3.12 Participation Rights in Article 12 of the UNCRC
- 3.13 Right to Protection from Physical and Mental Violence in Article 19 of the UNCRC
- 3.14 What legal action can parents take if their child is a victim of bullying?
- 3.15 Recent Case Law Relevant to the Issue of Bullying in Schools
- 3.16 Case Law 1: The Need for schools to tackle Bullying Behaviour in a Proactive Manner
- 3.17 Case Law 2: The Duty of Care and the Issue of Bullying Outside of School
- 3.18 Suggested Actions



3.1 Which Legislation Governs a School's Responsibility for Pupil Conduct in Northern Ireland?

Prior to the 1st April 2003 there was no strict duty in Northern Ireland for schools to specifically address the issue of bullying or, to produce specific documents, such as an internal policy on bullying. Previously, most school managers relied upon Department of Education guidance (see 3.2) and the issue of bullying was subsumed under a number of areas such as school discipline, pastoral care and child protection policies.

Article 3 of the Education (NI) Order 1998 sets out the responsibilities that the Board of Governors and Principal have for behaviour and discipline in grant-aided, voluntary and integrated schools, in particular:

- The Board of Governors has responsibility of ensuring that internal policies are in place that promote good behaviour and discipline in the school
- It is the duty of the Board of Governors to prepare a written statement of general principles and issue guidance, when appropriate, to the Principal in relation to particular disciplinary matters

The duties of the school principal are as follows:

- To determine disciplinary measures (which may include the making of school rules and sanctions) to:
 1. Promote self-discipline and proper regard for authority amongst pupils
 2. Encourage good behaviour amongst the pupils
 3. Securing an acceptable standard of behaviour
 4. Otherwise regulate pupil conduct
- To act in accordance with any written statement of general principals provided by the Board of Governors
- To have regard to the guidance offered by the Board of Governors
- To prepare a written statement of disciplinary measures, to publish that statement free of charge to parents of pupils registered at the school and to arrange for copies to be available for inspection at the school.
- For the standard of behaviour at the school to be determined by the Principal, insofar as it is not already determined by the Board of Governors.

Article 19 of the Education and Libraries (Northern Ireland) Order 2003 has introduced several new duties upon principals and Boards of Governors of Grant-Aided Schools as follows:

- Article 3 of the 1998 Order has been amended to require school principals to determine disciplinary measures in order to encourage good behaviour and respect for others on the part of pupils "and, in particular, preventing all forms of bullying amongst pupils"
- Principals are further required to consult with the registered pupils at the school and their parents when determining measures to be taken regarding bullying behaviour
- Boards of Governors are also placed under a statutory duty before making or revising a statement of general principles concerning discipline to consult with the registered pupils at the school as well as their parents.

3.2 Department of Education Guidance on Bullying Behaviour in Schools in Northern Ireland

As pointed out in 3.1, the Department of Education has issued guidance to all schools on how to put in place policies and procedures to tackle bullying behaviour. This guidance can be found in the following documents:

- **Pastoral Care in Schools: CHILD PROTECTION (DE 1999)**
- **Pastoral Care in Schools: PROMOTING POSITIVE BEHAVIOUR (DE 2001)**

While both documents dedicate sections to the issue of bullying in schools, in 'Pastoral Care in schools: PROMOTING POSITIVE BEHAVIOUR' there is a change of emphasis and greater degree of recognition of the need for all schools to have an Anti-bullying Policy in place.

It is important to note that both documents recognise that bullying in the educational system is a Human Rights issue.

Pastoral Care in Schools: CHILD PROTECTION

The introduction to this document specifically refers to the UNCRC and the principles outlined in Article 19 (the right to protection from physical and mental violence), Article 12 (the right to participation) and Article 3 (the best interests of the child).

The guidance in this document provides a useful definition of bullying and extends the range of identified bullying behaviour beyond physical violence.

Bullying is defined in the guidance as:

“Deliberately hurtful behaviour, repeated over a period of time, where it is difficult for the victim to defend him/herself.”

(It must be noted that that the behaviour identified in this context is **by one child or young person against another child or young person**)

The guidance goes on to outline the different forms bullying can take in the school environment:

1. **Physical** – hitting, kicking, spitting, theft and and/or damage to personal belongings
2. **Verbal** – threats, name-calling, sectarian, homophobic or racist name-calling or remarks
3. **Indirect** – bullying behaviour may include the spreading of rumours or exclusion from social groups
In practice, it may be harder for schools to detect and control verbal and indirect forms of bullying behaviour, particularly where large groups of children are involved.

What advice does 'Pastoral Care in Schools: CHILD PROTECTION' provide for schools?

1. It is the schools responsibility to keep pupils safe from harm and to provide a secure learning environment
2. Schools should act promptly and firmly to combat bullying
3. All schools should have within their pastoral care and discipline policies, a clear whole school anti-bullying policy statement, which is familiar to all staff and pupils
4. Where bullying behaviour is persistent and cannot be prevented by behaviour management strategies or disciplinary methods within a reasonable time, child protection policies should be instigated

5. The victims needs should always be paramount

This guidance goes on to detail what information should be included in a school's anti-bullying policy:

- Strategies for tackling incidents of bullying
- Policy to ensure confidentiality for any victim of bullying
- Procedures for reporting and recording incidents as they occur
- Procedures for the investigation of allegations of bullying by staff
- Sanctions for the bully

Pastoral Care in Schools: PROMOTING POSITIVE BEHAVIOUR

In 'Pastoral Care in Schools: PROMOTING POSITIVE BEHAVIOUR' a whole chapter is devoted solely to the issue of bullying in schools and, specifically, refers to the principles contained in Article 2, Protocol 1 (The Right to Education) and Article 3 (The Prohibition of Torture, Inhuman and Degrading Treatment and Punishment) of the Human Rights Act 1998. The section 'Developing an Anti-Bullying Culture' suggests a more holistic approach to tackle the problem of bullying behaviour in schools. All members of the school community, including the Principal, members of the Boards of Governors, pupils, parents, teachers and ancillary staff, should be in agreement on the policy for the development of an anti-bullying culture within the school environment.

What are the key issues raised in respect of bullying in 'Pastoral Care in Schools: PROMOTING POSITIVE BEHAVIOUR'?

1. The definition of bullying has been extended to include bullying of pupils by teachers and also the bullying of teachers by pupils.
2. It is recommended that individual incidents of bullying should not be dismissed as a 'one-off'. The risk of the threat of escalation must be considered.
3. Schools should encourage a culture where all pupils are valued and cared for.
4. Pupils should be encouraged to report incidents of bullying and support their peers who are victims of bullying.
5. The development of peer mentoring and support strategies should be put on the agenda.
6. Pupils and schools should keep a detailed log of bullying incidents.
7. Staff accessibility is of vital importance. Staff should be available to listen to pupils' concerns and take account of the pupil's own views on how best to resolve incidents of bullying.
8. In the spirit of Article 12 of the UNCRC, pupils should be consulted about aspects of school life, including behaviour and school rules
9. Class discussion, for example in PSE, should be encouraged to explore the issue of bullying.
10. Dealing with the bully – It is recommended that bullying behaviour should be dealt with the same sensitivity as any form of behavioural difficulty. In some cases referral to the Code of Practice may be necessary and if abuse is suspected as triggering the behaviour, referral to the school's Child Protection Policy may be required.

11. The aim is to change the bully's behaviour and this will not be achieved where purely defensive mechanisms are used to protect the victim of bullying.

3.3 Issues to be Considered in Relation to Tackling Bullying in the School Environment:

- Sometimes schools do not have a specific anti-bullying policy and instead the issue of bullying is subsumed under other policy areas that include school discipline, pastoral care and child protection. Since September 1999, schools in England and Wales have been legally obliged to have anti-bullying policies. In Northern Ireland, Article 19 of the Education and Libraries (NI) Order 2003 has introduced a similar duty.
- In order to promote an anti-bullying culture in schools, the Principal and the governing body must make their anti-bullying policies and procedures familiar and accessible to all staff, pupils, parents and governors on a regular basis.
- Policy-making is not, in itself, sufficient and school managers must ensure that policy implementation is constantly under review. A school's anti-bullying procedures must be carefully monitored to ascertain their effectiveness.
- Schools should avoid purely 'defensive measures' when tackling bullying behaviour. Pupils and parents are often frustrated that this is sometimes the only action that takes place and, in its worst form, can be viewed as 'punishing' the victim rather than the perpetrator.
- Any anti-bullying policy, if it is to effectively contribute to the development of an anti-bullying culture, must include procedures to investigate, monitor and remedy incidents of bullying behaviour.
- The issue of racial discrimination and homophobic harassment should be addressed specifically in every school's anti-bullying policy.
- Given the traumatic effect bullying behaviour can have on a victim, allegations of bullying should be taken seriously, thoroughly investigated and prompt action taken.
- Often, during the development of internal school policies that affect them, pupils are not consulted. Article 12 of the UNCRC (see 3.12 below) states that where appropriate the views of children, subject to their age and understanding, should be considered in any decision-making process. This is further reflected in Article 19 of the Education and Libraries (NI) Order 2003 which requires direct consultation with pupils.
- In dealing with an incident of bullying behaviour, school managers should be aware of the conflicting rights of the perpetrator(s) and the victim. In any disciplinary measures taken against the perpetrator(s), consideration must be given as to how their right to education under Article 2, Protocol 1 of the ECHR (see 3.5 below) will be protected.

3.4 Which Human Rights Articles Should Underpin a School's Internal Policy on Bullying?

It is clear from examination of the European Convention on Human Rights (incorporated into domestic law by the Human Rights Act 1998), that a number of Articles may be directly or indirectly applicable to incidents of bullying given, of course, the particular facts and circumstances surrounding the individual case.

3.5 Article 2, Protocol 1 (ECHR) - The Right to Education

'No person shall be denied the right to education. In the exercise of any functions, which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching is in conformity with their own religious and philosophical convictions.'

Apart from the emotional damage caused by bullying, the direct effect on an individual's educational performance can be massive. Often when a child is being bullied their work rate suffers, their attendance at school may become erratic and, because they may perceive school as being a threatening environment where help is either unavailable or ineffective, they may even truant. The holistic model of an Anti-Bullying Policy suggested in 'Pastoral Care in Schools: PROMOTING POSITIVE BEHAVIOUR' emphasises that help, in a variety of forms, should be available. If a victim's educational performance is prejudiced due to a school's inability to deal with the bullying and/or provide adequate protection, their Right to Education (this of course is the right to an *effective* education) enshrined in Article 2, Protocol 1 (ECHR) may have been breached.

Sometimes the parent(s) of a victim of bullying are forced, in the interests of their child's safety, to remove their son or daughter from school. Once a parent has voluntarily removed their child from school it may be very difficult to secure home tuition services from the respective ELB as the child remains on the school roll. Parents may also find it very difficult, especially in the post-primary sector, to secure a suitable place after the normal date of commencement of the first year. Once again, if the original school's response to the incidents of bullying were inadequate, the subsequent disruption to the child's education that is compounded by withdrawal from school could be seen as a breach of their Right to Education.

Once an incident of bullying is reported, schools must follow their procedures and do everything in their power to guarantee the victim's safety and right to an *effective* education. This will include, investigating the allegations, the use of sanctions against the bully(ies) (where necessary, referral under the Code of Practice to counselling may also be required), monitoring of subsequent events and reporting to parent(s)/guardian(s) of the school's actions to date. School Managers should ensure that contemporaneous notes are kept of the incident and of all measures adopted.

3.6 Article 2 (ECHR) - The Right to Life

'Everyone's right to life shall be protected by law.'

Where a school fails to investigate allegations and/or suspicions of bullying (especially within the school environment), act on obvious warning signals and do all within its power to protect a pupil from bullying behaviour and, in an extreme situation, a child is fatally injured or tragically decides to take their life, there may be an argument that the school could be in breach of Article 2 of the ECHR.

3.7 Article 3 (ECHR) - Prohibition of Torture

‘No one shall be subjected to torture or to inhuman and degrading treatment or punishment.’

A school’s anti-bullying policy must make the safety of the individual child paramount. Failing to promote an anti-bullying culture and a safe environment combined with inaction regarding complaints of bullying can be regarded as a failure of the Common Law Duty of Care and, potentially, the new statutory Duty on Boards of Governors to safeguard and promote the welfare of pupils, as introduced under Article 17 of the Education and Libraries (NI) Order 2003.

Where a school fails to protect a child from bullying by another child or a member of staff this could constitute a breach of Article 3. ‘Pastoral Care in schools: PROMOTING POSITIVE BEHAVIOUR’ highlights the fact that certain teacher actions are unacceptable and if regularly applied to certain individual pupils, can be interpreted as bullying behaviour. The actions identified include the persistent use of sarcasm, ridicule of a pupil’s work or other personal characteristics, disparaging comments and the harsh use of sanctions for what in the school environment are normally considered misdemeanours. The guidance acknowledges that while certain actions by teachers may not be intended to hurt or distress pupils, teachers should in the interests of good professional practice and the desire to promote positive behaviour, be regularly reviewing their approaches to and interactions with the pupils in their care.

3.8 Article 11 (ECHR) - Freedom of Assembly and Association

‘Everyone has the right to freedom of peaceful assembly and to freedom of association with others...’

A child’s Right to Freedom of Assembly and Association may be infringed where solely defensive measures are adopted in order to curtail incidents of bullying in the school environment. For example, if a child is prevented from associating with his/her peers during break and lunch periods so that he/she can be supervised by members of staff, it could be interpreted that a breach of his/her rights has taken place. In order to avoid pupils who are the victims of bullying (and their parent(s)/guardian(s)) feeling that they are being punished, schools must pro-actively tackle the bullying behaviour.

3.9 Article 8 (ECHR) - Right to Respect for Private and Family Life

‘Everyone has the right to respect for his private and family life, his home and his correspondence.’

Article 8 is a qualified right under the ECHR. This means that there are exceptions included in the wording of Article 8, where a public authority (in this case a member of school staff), may interfere with a pupil’s right to respect for family and private life (see Introduction for exceptions).

Article 8 may be breached in circumstances where, for example, children have their bags, lockers or person searched without their consent, have their personal belongings defaced or removed, have private correspondence read out in class, or are exposed to video surveillance in school. These actions, subject to the circumstances of each individual’s case, may constitute a breach of their right to respect for their private and family life.

3.10 Article 9 (ECHR) - Freedom of Thought, Conscience and Religion

'Everyone has the right to freedom of thought, conscience and religion; this right includes freedom...to manifest his religion or belief, in worship, teaching, practice and observance.'

Together with:

3.11 Article 14 (ECHR) - Prohibition of Discrimination

'The enjoyment of the rights and freedoms set forth in this convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status.'

Article 14 of the ECHR is not free-standing and has to be argued in conjunction with another Convention right such as, for example, Article 2, Protocol 1 the Right to Education.

Where a child is bullied on the grounds of, for example, his religion, colour, race, nationality, language, ethnic or social origin and a school does not intervene, under Article 14 the child's rights may have been breached.

The Race Relations (NI) Order 1997 also provides some protection from racial discrimination in the provision of educational services. (See below)

The United Nations Convention on the Rights of the Child

3.12 Application of the child's Right to Participation contained in the United Nations Convention on the Rights of the Child

Article 12 of the UNCRC provides:

'States Parties shall ensure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.'

The section dealing with bullying in 'Pastoral Care in Schools: PROMOTING POSITIVE BEHAVIOUR' recommends that schools should adopt a more collaborative approach in the development of policies that deal with behaviour and school rules. Consulting pupils when reviewing the school anti-bullying policy, as is now required under Article 19 of the 2003 Order, is an effective stage in developing an anti-bullying culture as a whole.

Similarly, the victims of bullying should be consulted about the best way forward regarding the school's response to bullying behaviour from which they have suffered.

3.13 Application of the child's Right to Protection from Physical and Mental Violence contained in the United Nations Convention on the Rights of the Child

Article 19 of the UNCRC provides:

'States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardians(s) or any other person who has the care of the child.'

Although not directly enforceable in our domestic courts, Article 19 of the UNCRC is not, insofar as it aims to protect children from physical and emotional abuse, dissimilar in intention from Article 3 (see above) of the Human Rights Act 1998. Staff may need to be reminded on a regular basis, not only of the school's policies and procedures regarding the combating of bullying amongst the pupils, but also of their responsibility through good professional practice for contributing to an anti-bullying culture within the school as a whole. In addition to the new statutory duty of care placed on Boards of Governors under Article 17 of the 2003 Order, a further requirement has been introduced under Article 18 for all grant-aided schools to have a child protection policy.

3.14 What legal action can parents take if their child is a victim of bullying behaviour?

It is useful for school managers to be aware of the options available to parents whose children have been subjected to bullying behaviour and/or the parents are unhappy with how a school has responded to bullying of their child.

1. Civil Litigation:

School managers are bound by a Duty of Care to all pupils registered at a school. They are responsible for the safety and security of pupils, on school premises, during the course of their education. Accordingly, if a child is bullied and the school is shown to have been negligent, a claim for damages may ensue.

The law of negligence requires proof that a school has a duty of care towards a child and that this has been breached, leading to either physical or psychological harm to the child. It must also be proven that school staff could reasonably have foreseen that the child might suffer harm as a result of bullying.

2. Judicial Review:

A decision of a school not to take action in a bullying case may be subject to Judicial Review. The parent(s)/guardian(s) would first have to exhaust all internal remedies, which may include letters of complaint to the Principal and the Chair of the Board of Governors and any other appeals procedures available to them. It is required this takes place prior to the issue of Judicial Review proceedings.

A Judicial Review application may be appropriate where a school has failed to implement its policies and/or contravened guidance issued by the Department of Education in relation to bullying, or failed to protect an individual's rights under the Human Rights Act 1998.

3. Criminal Prosecution:

Parents may report allegations to the PSNI who may decide to investigate incidents of bullying behaviour. Criminal charges such as harassment, assault or indecent assault, may arise in more serious cases of bullying.

4. Criminal Injury Claims:

If a child sustains physical or psychological injuries/harm as a direct result of a violent criminal act, a claim for compensation may be lodged with the compensation Agency, seeking damages from the Northern Ireland Office, in accordance with the procedures detailed within the Criminal Injuries (Compensation) (NI) Order (1998).

5. The Race Relations (NI) Order 1997:

Where bullying or discrimination occurs in a school due to a person's colour, race, nationality, ethnic or national origin, it is important to be aware of the existence of the Race Relations (NI) Order 1997. County Court proceedings for damages may ensue where allegations of racial discrimination in education occur.

Article 18 of the Order provides that there is a duty on all bodies responsible for educational establishments to ensure any applications for admission; any terms offered to admit a pupil; and the services and facilities for education accessible to pupils are provided free from discrimination on racial grounds.

Article 19 provides that ELBs and CCMS must not discriminate on racial grounds in carrying out their functions under the Education Orders.

Article 20 provides that *all* educational bodies have a general duty to ensure that facilities for education, ancillary benefits and services are provided without racial discrimination.

Note: This Order specifically includes children from the Traveller Community, thereby affording statutory protection to their rights of access to educational establishments and facilities.

In November 2001, the Department of Education supported and endorsed the launch and publication of a document by the Equality Commission for Northern Ireland entitled 'Racial Equality in Education – A Good Practice Guide'. There is a section in the guidance that deals with the issue of racial incidents and racial bullying.

3.15 Recent Case Law Relevant to the Issue of Bullying in Schools

There have been two recent judgements in the English courts which clearly demonstrate the way the courts view litigation about bullying.

In neither of these cases were breaches of Convention Rights under the European Convention of Human Rights raised by the legal teams. However, given earlier references to the potential relevance of the Human Rights Act 1998, there is wide scope for legal argument to be further developed in this area.

3.16 Case Law 1: The Need for Schools to Tackle Bullying Behaviour in a Proactive Manner

In the following case a young man set legal precedent by receiving an award for damages in the sum of £1500, for injuries sustained as a result of verbal bullying. The case highlights the need for schools to be proactive in tackling incidents of bullying behaviour; in other words, it is not enough to have policies and strategies in place, the monitoring of these procedures in order to ensure their effectiveness is also required.

C. v Trafford Borough Council¹²

Facts

- The boy was 12 years old when the bullying commenced at school. He was 17 years old when the case concluded.
- Damages were awarded for psychiatric injuries stemming from an 18-month long campaign of homophobic bullying, which culminated in a sexual assault by two other pupils while on a school trip to France.
- In his judgement, Judge Holman found that the school could not have foreseen that the bullying would escalate to this assault. Accordingly no damages were awarded in relation to the assault.
- However, in relation to psychiatric evidence produced to the Court, the boy was unable to attend school for two years, required psychiatric treatment and was prescribed anti-depressants as a direct consequence of the bullying.
- Judge Holman ruled that the school was in breach of its duty of care for the following reasons:
 - o Teachers in his school, in light of the information regarding the bullying which was available to them, did not do enough to protect him
 - o The school had “fallen down” in its anti-bullying procedures. He stated that the school should have been more proactive by adopting a new strategy to deal with the consistent bullying behaviour
 - o Specifically, there was a failure to:
 - i. Investigate
 - ii. Appreciate and act on clear warning signals
 - iii. Keep colleagues informed
 - iv. Ensure consistency of approach by members of staff
 - v. Collect evidence
 - vi. Keep adequate records
 - vii. Engage the bullies as well as the victim
 - viii. To effectively monitor the anti-bullying strategy

During his judgement Judge Holman imparted the following pertinent observation in relation to the nature of bullying and the duty of care imposed upon school:

“Bullying is a fact of life. It can never be eliminated and no school, however hard it tries, can guarantee that a child in its care will not be subjected to it. A school must, however, take reasonable steps to minimise it and to address problems in a proactive manner.”

Conclusion

For school managers, the Judge’s salutary analysis of the school’s failure to deal with this incident of bullying behaviour is particularly relevant. The realistic acknowledgement that bullying will take place in the school environment can be no excuse for lack of proactive intervention and this places a responsibility on schools to have in place and, most importantly, monitor policies and procedures to ensure their effectiveness.

Judge Holman’s detailing of the school’s failure to properly act on warning signals, investigate the incident and tackle the bullies demonstrates the importance of the advice given in the Departmental guidance ‘Pastoral Care in Schools: PROMOTING POSITIVE BEHAVIOUR’.

¹² (Unreported) Manchester County Court, HHJ Holman, 6th October 2000

3.17 The Duty of Care and the Issue of Bullying Outside of School¹³

Bradford-Smart v West Sussex County Council

This case, while it focuses once again on the importance of policies, procedures and teacher action in the school environment, places some limitations on the duty of care owed by a school to a pupil based on the location where acts of bullying were alleged to have taken place.

Facts

- September 1990 - the claimant, Leah, started at Ifield Middle School (IMS)
- Leah mother informed a member of staff that Leah had been bullied at her Primary School
- Leah's class teacher agreed to look out for any problems
- Leah alleged that for the next 3 years she was bullied both inside and outside school
- Particular allegations were made against a neighbour's niece at IMS who, along with friends, were said to have bullied Leah on her housing estate, on the bus to and from school and at school
- Pre- 1992, the school rules at IMS condemned bullying
- In September 1992, the school rules were replaced by a document entitled 'Working Together' which provided a definition of bullying and stated that the school would make every attempt to investigate incidents
- February 1993 – Leah was due to move school but her mother decided not to send her to the local school where the bullies would be going
- Unfortunately, Leah was refused entry to the local alternative school
- 1994 – After some time out of school, Leah started Crawley College
- 1995 – She sat her GCSEs achieving low grades
- February 1996 – She saw a clinical psychologist, who concluded that as a result of severe bullying, Leah was suffering from depression and Post-Traumatic Stress Disorder (PTSD)
- 1996 – Later in the year Leah re-sat here GCSEs gaining one grade C
- 1996 – 1999 She studied performing arts and, after various part- time jobs she became employed full-time with a ticketing agency
- 2000 – A further report concluded that Leah was likely to be vulnerable to depressive episodes throughout her life as a consequence of the bullying
- She sued her Local Education Authority (LEA) for psychiatric injury caused by the bullying when she was a pupil at IMS (covering the period September 1990 – June 1993)
- She claimed general damages, unquantified loss of future earnings and quantified special damages
- HER CLAIM WAS NOT SUCCESSFUL

The Court defined bullying as **“unprovoked, intended to hurt and persisting over a period of time”** (Definition of Professor Smith, expert witness)

- On the facts, it was accepted that Leah was bullied at her Primary School but the Court could not conclude that from the evidence given that there was bullying at IMS during the school year 1990 – 1991
- While in 1991 – 1992 there was some evidence of name-calling on the bus, the bullying recorded was not deemed to be targeted and persistent (see the Court's definition above)
- From July 1992, Leah was found to have been seriously bullied at home and on the bus going to and from school
- The school's policies and procedures to counter bullying were examined by expert witnesses and found to be 'thoroughly up to date and satisfactory'
- The actions of Leah's class teacher was also scrutinised by the court
- She was in regular contact with Leah's mother
- She was fully aware of what was happening and did all she could to safeguard Leah while she was at school
- She allowed Leah to stay with her if she felt threatened
- She kept the head teacher informed of all incidents as they occurred
- She generally 'kept an eye on' Leah at school

¹³ [2001] ELR138; [2001] ELJ Volume 2, Issue 1

- The teacher's defensive actions had prevented an overspill of the bullying into school
- It was held that if Leah suffered a psychiatric illness, the causative bullying was on the bus and at home, rather than at school
- The Court found that even if the school had been aware of the bullying outside school, it would not be fair, just and reasonable to impose a greater duty than to ensure that the bullying did not take place at school
- The class teacher in this case was found to have taken reasonable steps to safeguard Leah at school. The teacher's conduct did not fall short of that expected of *an ordinarily competent class teacher*
- If a school chose to be pro-active about external bullying, this was deemed to be a matter for discretion rather than legal obligation
- On the facts, the case failed

Conclusion

In order to establish negligence on the part of a school the claimant has to show that a Duty of Care was owed to him/her, that there has been a breach of that duty and that damages have been sustained as a result of that breach. This case again highlights the need for schools to have effective policies and procedures (such as active liaison with parents) in place to tackle bullying and, in order to monitor these procedures, to maintain contemporaneous notes of incidents and the actions taken by members of staff.

Also, it is clear from this case that a school cannot be held responsible for incidents that occur outside the school gates such as on the bus, in town or in the child's community (an exception being in the case of **J v North Lincolnshire County Council** where it was held that there is a duty to ensure young or irresponsible children do not escape on to the road where they can cause and/or be the victim of an accident). Neither can a school be expected to know everything that is happening at home or to investigate external disputes. If incidents of bullying behaviour between pupils from the same school do occur outside of school and this is brought to the Principal's attention by a parent or guardian, the Principal should carry out an investigation to establish whether bullying is also taking place within the school environment. Ultimately, some external matters may fall within the remit of the police and/or social services and school principals should refer to child protection procedures where there is a reasonable suspicion of the child coming to any harm outside the school environment.

3.18 Suggested Actions:

Under The Human Rights Act 1998 schools, as public bodies, must protect the rights of their pupils. As we have seen the Right to Education in Article 2, Protocol 1 (this being the right to an effective education) and the Prohibition of Torture contained in Article 3 (including inhuman or degrading treatment) are central to the issue of bullying behaviour and its effect on the victim. While in the two cases examined human rights arguments were not used, their applicability in future cases would appear likely.

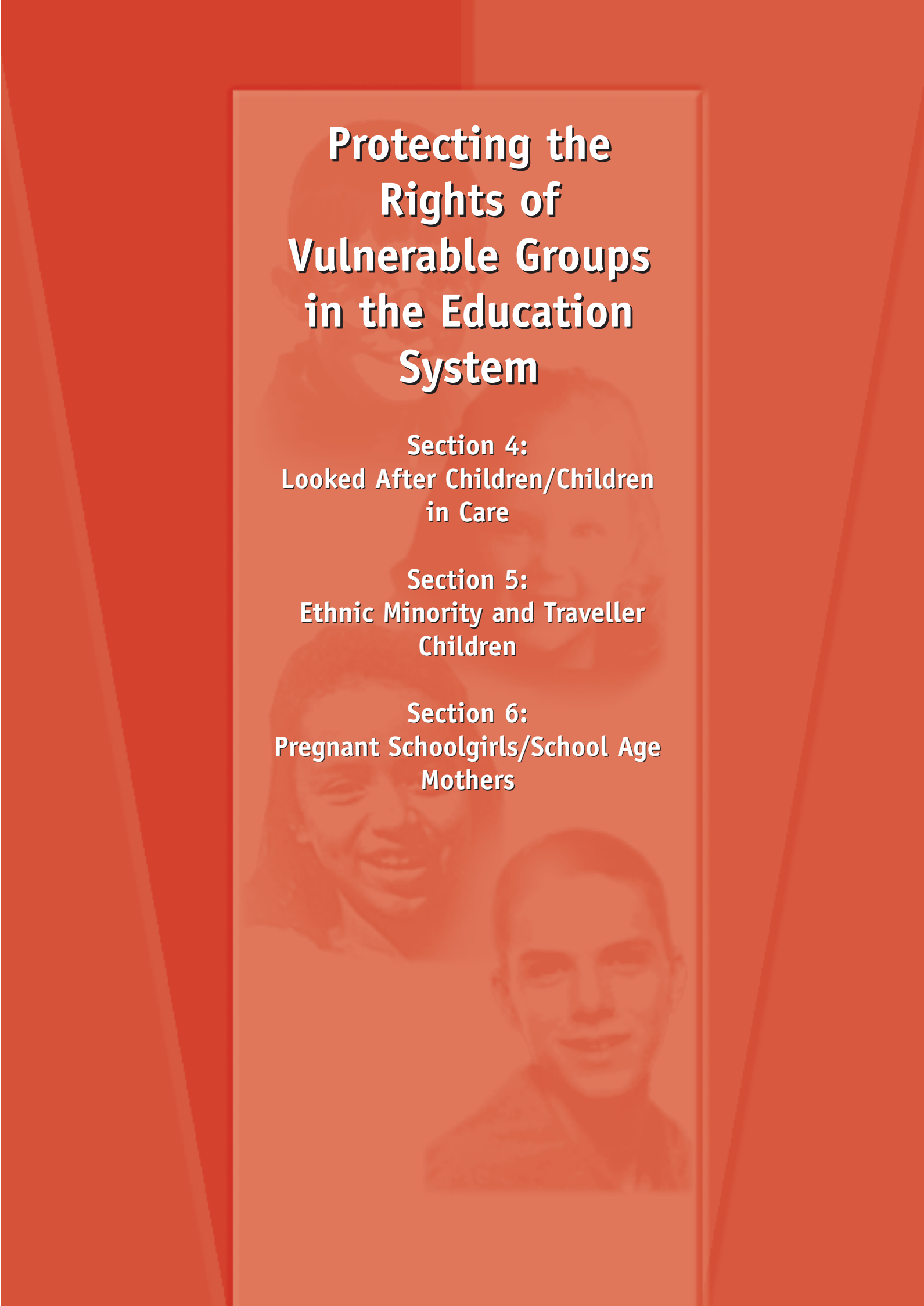
So what can school managers do to help protect children's rights in this area?

- ✓ In order to promote an anti-bullying culture and ensure that they take reasonable steps to prevent all forms of bullying behaviour within the school, the Principal and the governing body should put in place a separate anti-bullying policy. This is now a statutory requirement under Article 19 of the Education and Libraries (NI) Order 2003.
- ✓ A school's anti-bullying policy should refer to human rights principles and values. Following the guidance provided in 'Pastoral Care in Schools: PROMOTING POSITIVE BEHAVIOUR', at the centre of the policy should be Article 2, Protocol 1 and Article 3 of the ECHR. As schools owe a duty of care to their pupils and under the Human Rights Act 1998

can be considered public bodies, they must ensure that reasonable steps are taken to prevent and tackle all forms of bullying behaviour.

- ✓ In the spirit of Article 12 of the UNCRC, school managers should seek the views of the pupil population on any proposed anti-bullying policy or initiative. Article 19 of the 2003 Order (see above) provides a duty to directly consult with children in any review of existing policy and procedure. Such a consultative process not only highlights bullying as a whole school issue, but emphasises its undesirability as behaviour.
- ✓ School managers must ensure that the school's anti-bullying policy is made known to all members of staff, all pupils and all parents. The school management must promote awareness of the policy and procedures on a regular basis.
- ✓ It is not sufficient for school managers and the governing body to merely make policy: anti-bullying policy implementation must be constantly monitored and under review. Record keeping of incidents and subsequent teacher action is of vital importance here.
- ✓ As the document 'Pastoral Care in Schools: PROMOTING POSITIVE BEHAVIOUR' extends the definition of bullying to include the bullying of pupils by teachers and, vice versa, bullying of teachers by pupils, any anti-bullying policy must take account of this.
- ✓ All allegations or suspicions of bullying behaviour should be investigated, recorded and monitored. Any reported incident should be taken seriously.
- ✓ Liaison with parents must be at the centre of a school's investigative procedure over incidents of bullying behaviour.
- ✓ Sanctions for bullying behaviour, depending of course on its severity, should be clearly outlined in the school's Discipline Policy. Likewise, the school's policy on Special Educational Needs should have, in more extreme and persistent cases, a section on bullying as a behavioural difficulty and, where necessary outline recourse to the Code of Practice and/or counselling for the perpetrator(s) and the victim(s).
- ✓ Bullying outside of school premises is a difficult issue for school managers. Certainly, if a parent/guardian brings this to the attention of a Principal and the perpetrators are pupils at the school, it would be prudent for the Principal to investigate the issue, consider any measures that can be realistically taken and report back to the parent. Certainly some incidents will be beyond the schools control and fall within the remit of other outside agencies.





Protecting the Rights of Vulnerable Groups in the Education System

**Section 4:
Looked After Children/Children
in Care**

**Section 5:
Ethnic Minority and Traveller
Children**

**Section 6:
Pregnant Schoolgirls/School Age
Mothers**



Section 4: Looked after Children/ Children in Care

- 4.1 Introduction
- 4.2 The Children (NI) Order 1995
- 4.3 Guidance
- 4.4 Research
- 4.5 Key Human Rights Issues in Relation to Looked After Children in Schools
- 4.6 Which Human Rights Principles should underpin a School's Educational Provision for Looked After Children?
- 4.7 Article 2, Protocol 1 (ECHR) – Right to Education
- 4.8 Article 14 (ECHR) – Prohibition of Discrimination
- 4.9 Article 8 (ECHR) – Right to Respect for Family and Private Life
- 4.10 Participation Rights in Article 12 of the UNCRC
- 4.11 The Right of a Looked After Child to Special Protection and Assistance contained in Article 20 of the UNCRC
- 4.12 Suggested Actions



4.1 Introduction

Technically speaking, the term 'in care' only refers to children for whom a formal court order is in place. The term looked after is a wider definition encompassing all children looked after by a Trust (this would include voluntary placements and children accommodated under the Children (NI) Order 1995). While the two terms are often used interchangeably, for the purpose of considering the rights of this group of children in the educational system, the rights discussed apply to all looked after children.

Given that the personal histories of many looked after children can be characterised by a lack of stability and continuity, it is important for schools to appreciate the vital role they can play in providing a positive personal, social and educational experience for pupils who are looked after. Sometimes looked after children will not have the support structures that are readily available to the majority of pupils in a school (for example, contact with their family) and school managers should be aware of the difficulties this can cause.

While in the previous sections of this manual school managers have been advised to apply their policies fairly and without discrimination, special consideration of any pupil's personal circumstances and/or difficulties should always be at the centre of any decision-making process. In keeping with guiding principles of the United Nations Convention on the Rights of the Child, schools should always have regard to Article 2 (non-discrimination), Article 3 (the best interests of the child) and Article 12 (the right of a child to express their opinion) when making a decision about the educational future of a child.

It is essential, however, that schools seek to ensure that looked after children and young people have a positive educational experience and that they are not stigmatised or labelled in any way.

4.2 The Children (NI) Order 1995

There is a general duty on each Trust to safeguard and promote the welfare of children in their care and a key element of care is education. The Children (NI) Order 1995 Guidance refers specifically to the need for schools to be aware of the dangers of under expectation of the educational achievements of children in care and states that they should be encouraged to obtain academic qualifications and stay on at school if possible.

Care Plans

Each child who enters the public care system must have a care plan and it is a specific requirement that plans for a child's education form part of this care plan.

Placement

The Trust must also have regard to a child's educational history, the need to achieve continuity in the child's education and the need to identify and assess suitable provision for special educational needs when considering appropriate placements for children.¹⁴

Review

There is a statutory requirement to address the education of looked after children under The Review of Children's Cases Regulations (NI) 1996.

¹⁴ See The Arrangements For Placement of Children (General) Regulations (NI) 1996, Schedule 3

4.3 GUIDANCE

There is no specific guidance in N. Ireland in relation to the education of children who are looked after.

In England, lengthy guidance has been issued by the DFEE/DH entitled, Education of Young People in Public Care.

4.4 Research on Looked After Children in the Mainstream Educational System

Recent research has highlighted the difficulties faced by looked after children in the mainstream educational system. Research has shown that a high proportion of children in the care system underachieve academically and are more likely to be suspended or expelled from school than their peers. There are many complex reasons for these difficulties and multi-disciplinary work between the Educational sector and Social Services is central to the promotion and protection of the right of these children to an effective education.

The research carried out by Pinkerton & McCrea (1992) in **Meeting the Challenge? Young People Leaving the Care of Social Services and Training Schools in N. Ireland** highlights evidence of the educational and social disadvantage faced by this group:

- Being in care has been described as an 'educational hazard' for children and young people.
- Almost 1:2 of the care leavers and 2:3 of those leaving training schools had no educational or vocational qualifications
- Around 1:4 of care leavers had at least one GCSE O level and about 1:8 had a vocational qualification
- 6 months later, only 1:9 was involved in full time education.
- Young women leaving care are more likely to become pregnant.

Special Educational Needs

- Research carried out by the South & East Belfast Health & Social Services Trust (supported by Belfast and South Eastern Education & Library Board) in 1999 indicated that over half the looked after children identified had special educational needs.¹⁵
- An Audit of the educational experiences and attainments of children and young people in foster care in the NHSSB area July 2001 concluded that 40% of the foster children concerned were classed as having special educational needs within stages 1-5 of the Code of Practice.
- In an Audit of the educational experiences and achievements of children and young people in children's homes, September 2000, NHSSB, 23% of children had a statement (it was not clear how many were receiving help under the Code of Practice for Special Educational Needs).
- 'Better Education, Better Futures' (Barnardos, 2001) at page 108¹⁶ identifies a very high proportion of looked after children as being assessed as having special educational needs (30-50%).

¹⁵ Unpublished research commissioned by S & E Belfast Trust and presented at BASW Learning To Care Conference 27 Feb 2001

¹⁶ 'Better Education, Better Futures', Sonia Jackson & Darshan Sachdev, (Barnardos, 2001)

- The audits in the Northern Health and Social Services Board have also stressed in their recommendations the importance of ensuring that specialist child psychology assessment and support is available for those children accommodated in children's homes whose educational experience is being significantly diminished as a result of the impact of past experiences (particularly in relation to mental health or behavioural difficulties) and the need to keep under review adolescent mental health services.

Suspensions & Expulsions

What the research says about looked after children

- Research conducted in The Southern Health & Social Services Board in 2000 in relation to children in residential placements showed that the majority of children had irregular attendance, over half had been suspended and few accessed after school facilities.¹⁷
- An NHSSB audit of educational experiences and attainments of children and young people in foster care in the NHSSB area, July 2001 indicated that 7.6 % of children in the survey had been suspended from school at some time in their education compared with 1.3% in the general school population.
- A NHSSB audit of the educational experiences and achievements of children and young people in children's homes, September 2000 found that 7 out of 15 children from one Trust area had been excluded from school the previous term, 2 had been suspended and 5 had been expelled.
- 'Better Education, Better Futures', (Barnardos, 2001) at page 107 states that children in residential care are the highest risk group of all (in relation to exclusion from school). The Audit Commission report 'Seen But Not Heard' found that 35% of children in children's homes were permanently or indefinitely excluded.
- The report 'Branded a Problem?' (Save the Children, First Key, VOYPIC, 2002) interviewed fifty-two looked after children and young people aged between nine and seventeen years old. The report found that 40% of the young people had been excluded at least once and that all the boys in residential care had been excluded from school.¹⁸

¹⁷ Research findings presented at BASW Learning To Care Conference 27 Feb 2001

¹⁸ 'Branded a Problem? A participative research project on the educational experiences of children and young people in care' (Young People's Summary report), Mark Hannan, (Save the Children, First Key, VOYPIC, 2002) page 9

4.5 Key Human Rights Issues in relation to Looked After Children in Mainstream Schools

- There is high proportion of looked after children who have been suspended or expelled from school and this would indicate a need for appropriate intervention strategies in these cases.
- Article 2, Protocol 1 (ECHR) has been interpreted as the right to an *effective* education. The available research shows a level of academic underachievement by looked after children. This suggests that there is a need for better support mechanisms to be put in place on a multi-disciplinary basis.
- Early identification and assessment of Special Educational Needs and prompt reference to the Code of Practice is essential in appropriate cases
- Looked After children in residential care may not have a suitable environment to complete home work tasks (e.g. there is a lack of privacy, computer facilities, etc.). Schools should consider doing their utmost, in terms of the good practice that already exists in after school homework clubs, to provide opportunities for pupils in this group to access resources and complete tasks.
- The sharing of information between social services and schools requires careful consideration. Clear protocols should be developed between schools and social services in this regard.

4.6 Which Human Rights Articles should underpin a school's provision for Looked After Children?

It is obvious that many children in this group may well have experienced disruption in their lives that has directly and adversely impacted on their education (in, for example, multiple school placements).

4.7 Article 2, Protocol 1 (ECHR) - Right to Education

“No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching is in conformity with their own religious and philosophical convictions”.

In order for schools to provide an effective education for looked after children, it will often be necessary for information to be shared about the child, so that appropriate support mechanisms both within and outside the school can be put in place in a comprehensive way.

It is useful to have a designated teacher who can act as a point of contact for other agencies and as a resource and mentor for the child within school.

The emphasis in relation to information sharing must be on relevant information. (i.e. factors which affect the child's education or behaviour within school eg lack of privacy for homework, emotional and behavioural difficulties) The designated teacher should carefully regulate the way in which this information is further disclosed to other teachers. Subject to age and understanding and to child protection considerations, the child

or young person should be involved in this process and consulted and informed regarding what information is to be shared and with whom.¹⁹ There is a need for clear guidance in this area.

A designated teacher should be given responsibility to function as a point of contact for looked after children attending a school. If a pupil who is looked after becomes subject to a school's disciplinary procedures, the designated teacher should be involved in the decision making process.

Schools should take account of the individual circumstances of looked after children. As with all pupils, academic performance should be carefully monitored, and where necessary, prompt reference to the Code of Practice should be made if a special educational need is identified. If the child has an Emotional and Behavioural Difficulty (EBD) advice may need to be sought from the relevant ELB's Behaviour Support Service.

Good professional practice should recognise that many pupils, including looked after children, may not have the appropriate space, facilities and resources to complete homework or revise for examinations to the best of their ability. Schools should do their utmost, in the form of after school homework or revision clubs, to maximise pupil engagement with their education.

Article 14 (ECHR) – Prohibition of Discrimination

'The enjoyment of these rights and freedoms set forth in this convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'

Article 14 is not free-standing and has to be argued with another convention Article, for example Article 2, Protocol 1 (see above). The all-encompassing wording of Article 14, concluding with the catch all category of 'other status' makes it particularly relevant to this vulnerable group of pupils. In order for schools to apply their policies and procedures fairly and without discrimination, any special circumstances surrounding a looked after child should be considered carefully before making decisions about their education.

Article 8 (ECHR) - The Right to Respect for Private and Family Life

'Everyone has the right to respect for his private and family life, his home and his correspondence.'

As stated above, for a school to do their utmost in providing an effective education to looked after children it is essential that members of staff who come in to regular contact with the child have access to any relevant information regarding their educational history to date and any other factors that may influence their academic performance or social interaction at school. There is, of course, a fine line to be drawn on what should, in the interests of the child's right to respect for private and family life contained in Article 8, be disclosed to staff. This is certainly an area where formal guidance is needed. For this reason, staff should routinely be reminded of their professional duty to protect the interests of the child in any situation where confidential material is made known to them.

¹⁹ As recommended in *Branded a Problem?* page 10

4.10 Application of the Child's Right to Participation contained in the United Nations Convention on the Rights of the Child:

Article 12 of the United Nations Convention on the Rights of the Child provides:

'State Parties shall ensure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.'

While the UNCRC is not directly enforceable in domestic courts, it does provide a model of good practice in the protection and promotion of children's rights.

Article 12 ensures that a child, subject to their maturity and understanding, has a right to be consulted about any decisions that affect them. It is important that in any decision-making process that affects a looked after child, the school should, where appropriate, seek the views of the child subject to the individual's age and understanding.

4.11 The Right of the Children who are Looked After to Special Protection and Assistance in Article 20 of the UNCRC

Article 20 of the United Nations Convention on the Rights of the Child provides:

'A Child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.'

It becomes clear in any discussion on educational provision for looked after children that the spirit of Article 20 should be at the centre of any approach, policy or procedure used by a school. The unique circumstances surrounding each child's care background should, whenever necessary, be taken into account so that schools can afford them with any special protection and assistance.

4.12 Suggested Actions

Given that the available research points to a real potential for looked after children to 'fall through the system' and have their subsequent life chances compromised, it is important that schools take pro-active steps to ensure that they do their utmost to provide a positive educational experience for pupils in this category. This can be done in ways which do not stigmatise or label the pupils concerned.

So what can school managers do to help protect and promote the rights of pupils in this vulnerable group?

- ✓ The UNCRC provides an internationally agreed standard and model of good professional practice. When making any decision about a child's future, school managers should have regard to Article 20 of the UNCRC that demands that special protection and assistance should be extended to looked after children.

- ✓ Article 12 states that, according to their maturity and understanding, looked after children should be consulted and their views sought regarding any decisions that affect their right to education.
- ✓ A designated teacher should be given responsibility to function as a point of contact for looked after children. Specific training in counselling and conflict resolution may be required if this teacher is to effectively liaise with social workers, carers, Educational Welfare Officers, the SENCO and other teachers in the school.
- ✓ Information that is directly relevant to the child's academic performance, behaviour, attendance or other aspect of school life should be communicated to members of staff who teach the child. This, however, should only be done in the child's best interests and should not contravene his/her right to private and family life contained in Article 8 of the ECHR.
- ✓ Clear protocols should be developed between schools and social services regarding the sharing of information.
- ✓ As looked after children are disproportionately represented in statistics relating to suspension and expulsion (two disciplinary methods that directly affect the right to education in Article 2, Protocol 1 of the ECHR), school managers should take into account their special circumstances when making any disciplinary decisions. For example, if a child has an Emotional and Behavioural Difficulty (EBD), the school should seek external help from the ELB's Behaviour Support Service.
- ✓ Given that a looked after child may have had a fragmented rather than long term and continuous experience of care, the SENCO may not be made aware of any special educational needs. Parents/guardians may provide valuable information on a child's difficulties and push for assessment under the Code of Practice. The SENCO should be aware that looked after children may not have these support structures. Careful briefing of teachers should take place in order to emphasise the need to monitor the individual child's progress and, if necessary, trigger the five stages of the Code of Practice.
- ✓ As some pupils may not have adequate facilities at home to complete school work or revise for important public examinations, schools should consider what they can realistically do in order to provide for these pupils. After school homework clubs and revision sessions can provide invaluable support for looked after children.
- ✓ All teaching staff should be made aware of the way the Looked After Children (LAC) review system operates. Staff training should be considered in this area.
- ✓ School managers should also ensure that teaching staff have up to date information about the support available from the ELB Behavioural Support Units.
- ✓ Teachers should be made aware of the report and accompanying recommendations contained in 'Branded a Problem?' (see section 4.4)



Section 5: Ethnic Minority and Traveller Children

- 5.1 Introduction
- 5.2 The Race Relations (NI) Order 1997
- 5.3 The Northern Ireland Act 1998
- 5.4 Guidance: Racial Equality in Education – a Good Practice Guide
- 5.5 Key Human Rights Issues in Relation to Ethnic Minority and Traveller Children in Mainstream Schools
- 5.6 Which Human rights principles should underpin a school's educational provision for Ethnic Minority and Traveller Children?
- 5.7 Article 2, Protocol 1 (ECHR) – Right to Education
- 5.8 Article 9 (ECHR) – Right to Freedom of Thought, Conscience and Religion
- 5.9 Article 14 (ECHR) – Prohibition of Discrimination
- 5.10 Suggested Actions



5.1 Introduction

In June 2001, the Equality Commission with the endorsement of the Department of Education launched the document entitled '**Racial Equality in Education – a Good Practice Guide**' (see 5.4) aimed at policy makers and others in the educational sector. The introduction to this guidance recognises evidence which suggests that black and minority ethnic pupils face difficulties in the educational system in Northern Ireland and that institutions need to address this situation.

The Travelling community in Northern Ireland is a distinct ethnic group and is now recognised as such under the Race Relations (NI) Order 1997 and they also enjoy the protection of the 'equality provisions' of the Northern Ireland Act (1998) in Section 75.

In terms of educational participation and attainment, the PSI Working Group on Travellers (New TSN) points to a 100% participation rate of children at primary level education. This level of participation is not, however uniform at all age groups. Only 21% of Traveller children benefit from pre-school activity and only 43% of Traveller children continue on to secondary level education. Furthermore, perseverance at secondary level greatly diminishes beyond the age of 13 and the vast majority of travellers have no formal qualifications whatsoever. A staggering 92% of travellers have no GCSEs or equivalent qualifications upon leaving school.²⁰ The significant drop-put rate in the transition from primary to secondary school has been the focus of some initiatives by the Department of Education in recent years.

5.2 The Race Relations (NI) Order 1997

If discrimination occurs in a school due to a person's colour, race, nationality, ethnic or national origin, it is important to be aware of the existence of the Order. County Court proceedings for damages may ensue where allegations of racial discrimination in education are made.

School managers should in the interests of good professional practice, be aware of the following Articles contained in the Order:

Article 5(1) defines a 'racial group' as being 'a group of persons defined by reference to colour, race, nationality or ethnic or national origins, and references to a person's racial group refer to any racial group into which he falls.'

Article 5(3) of the Order goes on to specify that the term 'racial group' includes the Irish Traveller community.

Article 18 of the Order provides that there is a duty on all bodies responsible for educational establishments to ensure any applications for admission; any terms offered to admit a pupil; and the services and facilities for education are equally accessible to pupils and are provided free from discrimination on racial grounds.

Article 19 provides that ELBs and CCMS must not discriminate on racial grounds in carrying out their functions under the Education Orders.

Article 20 provides that *all* educational bodies have a general duty to ensure that facilities for education, ancillary benefits and services are provided without racial discrimination.

²⁰ Report on the PSI Working Group on Travellers (New TSN) p.5

5.3 The Northern Ireland Act (1998)

School managers should be aware that Section 75 of the Northern Ireland Act (1998), commonly referred to as the 'Equality Provision', places a statutory duty on all public authorities to have regard to the need to promote equality of opportunity for all:

Section 75 (1) A public authority shall in carrying out its functions relating to Northern Ireland have due regard to the need to promote equality of opportunity –

- a) **between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;**
- b) **between men and women generally;**
- c) **between persons with a disability and persons without; and**
- d) **between persons with dependants and persons without.**

Section 75 (2) Without prejudice to its obligations under subsection (1), a public authority shall in carrying out its function relating to Northern Ireland have regard to the desirability of promoting good relations between persons of different religious belief, political opinion and religious group.

The Department of Education and the Education and Library Boards are included within the definition of 'public authorities' under Schedule 9 of the Northern Ireland Act 1998. While individual schools and Boards of Governors have no strict duty placed upon them to comply with the Equality Provision, school managers would be advised to take cognisance of Section 75 whenever producing or monitoring internal policies.

5.4 Guidance: Racial Equality in Education – a Good Practice Guide

Following on from the Race Relations (NI) Order 1997, the Equality Commission's **Good Practice Guide** identifies key areas that school managers should address in order to eliminate discrimination and promote equality. These areas include school admissions, accessibility, suspensions and expulsion, the curriculum and racial bullying.

The development of an equality culture is presented in the **Good Practice Guide** as being 'more than simply adhering to the letter of the law. It is about the creation of an ethos that celebrates diversity and which recognises and accommodates the needs of black and minority ethnic children and their parents' (2.2).

So what does 'Racial Equality in Education – A Good Practice Guide' say about Ethnic Minority Groups (including Traveller Children) in Mainstream Schools?

School managers would be advised to read the **Good Practice Guide** in its entirety, but here are summaries of some of the key points:

Admissions

Section 3.1 of the **Good Practice Guide** recommends that when Boards of Governors and management committees are publishing and reviewing their admissions criteria they should ensure that unlawful discrimination does not take place. Specifically, the example is given of 'a residency requirement...which could adversely impact on Traveller children.'

Section 3.2 points out that it is unlawful to instruct or put pressure on others to discriminate on racial grounds and the example given is that of a Board of Governor's instructing a Principal not to allocate a place to a Traveller child.

Suspension and Expulsion

Section 5.1 of the **Good Practice Guide** recommends that all internal disciplinary policies need to be monitored to 'ensure that there is no inherent bias, whether conscious or unconscious, against black or minority ethnic children'.

Special Educational Needs

Section 10.2 recognises the difficulty of identifying and assessing special educational needs in pupils for whom English is not their first language. Similarly, section 10.3 recognises that any measures that a school plans to take are made known to and understood by parents. This may necessitate the use of interpreters and translators.

Racist Incidents and Racist Bullying

Section 13.2 of the '**Racial Equality in Education – a Good Practice Guide**' states that when an incident occurs, 'It is important to act decisively, sensitively and consistently when dealing with racially motivated incidents and racial harassment.' Evidence from the report 'Opportunities For All' suggests that the majority of schools do not take incidents of racist bullying seriously and either minimise its severity or ignore it.²¹

In England and Wales, following the 1999 Macpherson report on the Stephen Lawrence Inquiry, the Government has given OFSTED responsibility to inspect schools for racial equality and to monitor their anti-racist bullying strategies.²²

²¹ 'Opportunities For All: Minority ethnic people's experiences of education, training and employment in Northern Ireland', Connolly and Keenan, Northern Ireland Statistics and Research Agency, 2000, pps 62-67 and 96

²² 'Inspecting Schools For Race Equality: OFSTED's Strengths and Weaknesses', Osler and Morrison, Commission for Racial Equality, 2000

5.5 Key Human Rights Issues in relation to Ethnic Minority and Traveller Children in Mainstream Schools

- As identified in 'Racial Equality - A Good Practice Guide' school's admissions criteria can directly or indirectly discriminate against children from ethnic minority and Traveller backgrounds.
- The ethos of some schools may have an ethnocentric bias and so directly or indirectly discriminate against pupils from different cultural backgrounds.
- Effective monitoring of a school's suspensions and expulsions is essential if schools are to ensure that their discipline policy is neither directly nor indirectly discriminating against children from ethnic minority, including Traveller, backgrounds
- The identification and assessment of special educational needs for children whose first language is not English is a very difficult area. While Article 3 (3) of the Education (NI) Order 1996 states that a child whose first language is not English is not to be considered as having 'a learning difficulty' solely on this basis, the SENCO should, as with all pupils suspected of having a special educational need, closely monitor pupils from ethnic minority and Traveller background
- The issue of racial discrimination and harassment should be addressed specifically in every schools anti-bullying policy.

5.6 Which Articles of the ECHR should underpin a school's educational provision for children from Ethnic Minority and Traveller backgrounds?

In order to ensure that school policies and procedures do not discriminate against pupils from distinct ethnic backgrounds, school managers would be advised to refer to the following articles when developing policies:

5.7 Article 2, Protocol 1 (ECHR) - The Right to Education

'No person shall be denied the right to education. In the exercise of any functions, which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching is in conformity with their own religious and philosophical convictions.'

Article 2, Protocol 1 has been interpreted as being both a right of *access* to existing educational provision and the right to an *effective* education. To ensure that pupils from ethnic minority backgrounds are not being discriminated against in terms of the access to education being provided by an establishment, school managers should, as recommended in the 'Racial Equality in Education – a Good Practice Guide', review their admissions criteria on a regular basis.

Likewise, as suspension and expulsion fundamentally affects a child's right to education, the school's discipline policy should be monitored to ensure that it is neither directly nor indirectly discriminating against pupils from ethnic minority and Traveller backgrounds.

If a pupil's first language is not English, the identification and assessment of any special educational needs may well prove to be very difficult. Clearly, the progress of pupils in this category may be hard to monitor and school managers may need to enlist specialist support from the relevant ELB. Also, effectively communicating with the pupil's parents/guardians during parents' evenings, in school communications or when producing end of term/year reports on educational achievement may also prove difficult. As with all pupils, home-school partnership is vitally important and school managers may need to form links or points of contact with any ethnic community organisations that can provide information or interpretation / translation services.

Ultimately, in order to protect the right to education of pupils from ethnic minority backgrounds, school managers must implement and monitor policies that neither directly nor indirectly discriminate against these pupils.

5.8 Article 9 (ECHR) - Freedom of Thought, Conscience and Religion

'Everyone has the right to freedom of thought, conscience and religion; this right includes freedom...to manifest his religion or belief, in worship, teaching, practice and observance.'

The ethos of a vast majority of schools in Northern Ireland is characterised by reference to the Western European Christian belief system and institutional rules and rituals, like assemblies, reflect this. If schools are to promote an equality culture, they must ensure that the belief system(s) of pupils from minority ethnic backgrounds are treated with respect by the school community as a whole and accommodate their religious and cultural needs (including the manifestation of belief such as religious observance). At least one school in the Belfast area has provided an isolated room for private prayer for Muslim pupils and permitted flexibility in individual timetables to allow for religious observance.

Likewise, flexibility may well be required with regard to school rules that regulate pupil appearance, such as the school uniform policy.

5.9 Article 14 (ECHR) - Prohibition of Discrimination

'The enjoyment of the rights and freedoms set forth in this convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status.'

Article 14 of the ECHR is not free-standing and has to be argued in conjunction with another Convention right, such as Article 2, Protocol 1 (Right to Education) or Article 9 (Freedom of Religion).

Where a child is bullied on the grounds of his religion, colour, race, nationality, language, ethnic or social origin and a school does not intervene, under Article 14 the child's rights may have been breached.

5.10 Suggested Actions

Apart from the Race Relations (NI) Order 1997, school managers should take cognisance of the Human Rights Act 1998, which effectively incorporates the European Convention on Human Rights into domestic law. Under the Human Rights Act, schools are considered to be public bodies and should ensure internal policies and procedures are compliant with the law.

So what can school managers do to help ensure that the rights of children from ethnic minority and Traveller backgrounds are promoted and protected in the school environment?

- ✓ Equality of provision should be at the centre of school policies that apply to pupils. These policies will probably include admissions, discipline, suspensions and expulsions, bullying, uniform and special educational needs.
- ✓ Policies should be regularly reviewed and monitored to ensure that procedures are neither directly nor indirectly discriminating against ethnic minority groups.
- ✓ All members of staff should be made aware of relevant Articles of the Race Relations (NI) Order 1997 and the Human Rights Act 1998. In order to help develop an anti-racist ethos in the school as a whole, the possibility of anti-racism training should be considered for staff development days.
- ✓ Incidents of racist and sectarian bullying should be taken very seriously. Schools should have in place a separate anti-bullying policy and this should contain a section on racist and sectarian bullying. It should be recognised in the policy that staff can bully pupils and, vice versa, pupils can racially bully members of staff. The anti-bullying policy and procedures should be made known to all pupils, parents and staff on a regular basis.
- ✓ Where language support is needed, links should be made with the appropriate ELB's support service.
- ✓ As the **'Racial Equality in Education – a Good Practice Guide'** suggests, it is not just enough for schools to obey the law, a more holistic approach is needed where a school's ethos reflects and celebrates the diversity of its pupil population.

Section 6: Pregnant Schoolgirls/ School Age Mothers

- 6.1 Introduction
- 6.2 Strategy Framework for the Education of School Aged Mothers (1997)
- 6.3 Sex Discrimination (Northern Ireland) Order 1976 (as amended by the Sex Discrimination (Northern Ireland) Order 1988)
- 6.4 The Northern Ireland Act 1998 – ‘The Equality Provision’
- 6.5 Key Human Right Issues in relation to Pregnant Schoolgirls and School Age Mothers
- 6.6 Which Human Rights Articles of the ECHR should underpin a school’s educational provision for School Age Mothers?
- 6.7 Article 2, Protocol 1 (ECHR) – Right to Education
- 6.8 Article 14 (ECHR) – Prohibition of Discrimination
- 6.9 Article 8 (ECHR) – Right to Respect for Private and Family Life
- 6.10 Participation Right in Article 12 of the UNCRC
- 6.11 Suggested Actions



6.1 Introduction

There has been some research conducted into teenage parenthood and the difficulties faced by school age mothers in relation to their education.

Save the Children published a report entitled 'A Sense of Purpose'²³ in which a group of 14 – 27 year old mothers were given an opportunity to express their views and experiences about growing up as young mothers in Northern Ireland. The group's comments and recommendations in relation to education were as follows:

- Sex Education in Schools was described as "inadequate", "not realistic", or "not detailed enough"
- Lack of access to affordable childcare was a major obstacle in returning to education
- The cost of transport was another consideration in getting to and from childcare facilities before and after classes
- It was identified that the school system needs to exercise more acceptance and positive support towards pregnant school girls and school age mothers

The last point is particularly relevant to schools. Given that many girls become pregnant in the year of or years leading up to public examinations, the effect on their future life chances can be enduring. Schools have a positive role to play in helping to support these pupils during this difficult time and providing opportunities for re-integration into school life.

6.2 Strategy Framework for the Education of School Aged Mothers (1997)

In 1997 the Department of Education, the Education and Library Boards and Catholic Council for Maintained Schools (CCMS) jointly produced a strategy document for the education of school age mothers

The Mission Statement of the document was:

"To provide the best possible opportunities for school age mothers (and pregnant school girls) to learn and develop, so as to help them fulfil their potential and to contribute to society and the economy".

Strategic Aims:

- 1) To support each individual schoolgirl to remain in full-time mainstream education
- 2) To sustain educational support for each individual schoolgirl to the end of compulsory schooling and beyond, as appropriate
- 3) To work co-operatively with other agencies to develop and secure support outside the scope of the education sector

²³ 'A Sense of Purpose: The Views and Experiences of Young Mothers in Northern Ireland About Growing Up', Horgan, Save the Children, 2001

Supporting Aims:

- 1) To foster school-based support systems for pregnant schoolgirls and school age mothers
- 2) To ensure that any 'education otherwise than at school' (EOTAS) provision is responsive and appropriate to the needs of the individual school girl
- 3) To seek to ensure, in cooperation with other parties and agencies, that all pregnant schoolgirls and school age mothers have access to appropriate support

Identified Objectives and Action Points for Schools:

School Objectives:

- Providing additional support during pregnancy
- Facilitating the pupil's stay in school as long as possible before giving birth
- Keeping in contact during absence from school
- Creating an individualised Education Plan (EP)
- Providing support upon the pupil's return to school
- Facilitating completion of schooling

School Action Point:

- Development of a whole school Pastoral Care Policy, which addresses the specific needs of pregnant school girls and school age mothers

Identified Objectives and Action Points for Education and Library Boards

ELB Objectives:

- Appointment of a named Board officer with responsibility for educational support in each Board area team
- Promotion of the benefits of completing an education following the birth of a child
- Creating awareness of the educational options available
- Development of EOTAS suitable to individual needs
- Facilitate where possible, a quick return to school

ELB Action Points:

- **The responsibility for support of pregnant schoolgirls and school age mothers shall rest with the Education Welfare Service**
- **Publication of an information leaflet:**
- In September 2000, the Department of Education contributed to a publication entitled '**Circles and Hoops- Information for Young Parents**', following consultation with voluntary sector organisations including Barnardo's, Gingerbread, Save the Children and also the Northern Ireland Housing Executive. The completed document was published by Gingerbread and included practical advice and information on social security benefits entitlement, how to seek suitable accommodation, childcare, personal health issues, training and education and also provided useful contacts for young parents seeking further information and advice on these issues. The Department of Education purchased sufficient copies of the publication and arranged for dissemination of a copy to every post-primary school with female pupils in Northern Ireland.

- **The Education section in ‘Circles and Hoops’ makes the following recommendations:**
 - i. Promotion of completion of a formal education
 - ii. Promotion of the mother remaining in the same school following the birth
 - iii. Consultation with the Pastoral Care Teacher throughout the pregnancy and upon return to school
 - iv. Contacting the Education Welfare Service for additional support
 - v. Sets out the young person’s educational options: returning to school; home tuition; securing a place in a Further Education College; or an alternative education project (provided the mother is over 16 years).
 - vi. **The document states that an Education Welfare Officer shall be appointed to develop an individualised Education Plan (EP) and liaise with other agencies to make suitable childcare arrangements**

- **Establishment of Guiding Principles to include the following:**
 - i. Identification of all needs
 - ii. Partnership between pupil and Education Welfare Officer to develop the individualised Educational Plan (EP)
 - iii. School participation
 - iv. ‘Matching’ of pupil with tutor
 - v. Promotion of inclusion and involvement of parents and support agencies
 - vi. Focus upon reintegration to school

6.3 Sex Discrimination (Northern Ireland) Order 1976 (as amended by the Sex Discrimination (Northern Ireland) Order 1988)

There is potential for the above-mentioned legislation to be utilised by school age mothers, in order to challenge discrimination in access to educational provision and services.

Discrimination in Education

Under Article 24 in Part IV of this legislation, it is unlawful for an educational establishment to discriminate against a woman:

- In the terms offered for her admission
- By refusing or deliberately omitting to accept an application for admission
- In the way it affords access to any benefits, facilities or services (or by refusing such access)
- By excluding her or subjecting her to any other detriment

Article 24 applies to grant-aided schools, independent schools and Universities.

The Education and Library Boards and the Governing Bodies of all of these institutions are responsible for ensuring that discrimination on the grounds of gender does not occur.

Sex Discrimination against Women

Article 3 of Part II of the Order provides a more generalised interpretation of the types of behaviour, which would constitute discrimination against a woman:

3(1) A person discriminates against a woman in any circumstances relevant **for the purposes of any provision of this Order** if –

(a) on the ground of her sex he treats her less favourably than he treats or would treat a man, or

(b) he applies to her a requirement or condition which he applies or would apply equally to a man but-

i. which is such that the proportion of women who can comply with it is considerably smaller than the proportion of men who can comply with it, and

ii. which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied, and

iii. which is to her detriment because she cannot comply with it.

Entitlement to initiate Civil Proceedings in the County Court

The legal remedy provided under this Order is for the claimant to issue civil proceedings for damages in the County Court. If the claimant is successful, compensation may be awarded for injury to feelings, provided an unlawful act of discrimination is established to have taken place.

Statutory Requirement to give Notice of a Claim to the Department of Education

Article 66 (5) of the Order provides that in any claim of discrimination in contravention of Article 24, ***civil proceedings may not be instigated unless the claimant has first given notice to the Department of Education of the intention to initiate such proceedings*** and that either:

1) the Department of Education has informed the claimant in writing that it does not require further time to consider the matter; or

2) a period of **2 months** has elapsed since the claimant gave such notice to the Department of Education.

6.4 The Northern Ireland Act 1998 - 'The Equality Provision'

Statutory Duties on Public Authorities

Section 75 of the Northern Ireland Act provides that:

"A public authority shall in carrying out its functions relating to Northern Ireland have due regard to the need to promote equality of opportunity-

(a) **between persons of different religious belief; political opinion; racial group; age; marital status or sexual orientation;**

(b) **between men and women generally;**

(c) **between persons with a disability and persons without; and**

(d) **between persons with dependents and persons without".**

Section 75 of the Northern Ireland Act places a statutory duty upon public authorities such as the Department of Education, the Education and Library Board's, the Department of Health Social Services and Public Safety and each of the Health and Social Services Boards and Trusts, to promote equality of opportunity among the nine categories of person identified under the legislation.

School age mothers may fall within a number of these 'categories', as follows:

- 1) School age mothers should be provided equality of opportunity in their access to education and other public services as compared to their peers who do not have dependent children (Section 75(1)(d)).
- 2) School age mothers may also be protected under S.75 (1)(b), which requires public authorities to promote equality of opportunity between men and women generally.
- 3) Finally, school age mothers should be given equality of opportunity in education, on the basis of their age, at the time when they become pregnant. (Section 75(a)).

If an individual believes that they have suffered discrimination in any decision or action taken by a public body, they are entitled to seek a remedy under Schedule 9 of the Northern Ireland Act 1998.

Under Schedule 9 paragraph 10 (1), an individual may make a complaint to the Equality Commission of any failure by a public authority to comply with an Equality Scheme. The Commission is required to either investigate the complaint, or to give the complainant reasons for not investigating any decision made.

Having fully investigated the complaint, the Equality Commission shall produce a report detailing its investigation to the public authority, the Secretary of State, the Northern Ireland Assembly and the complainant. This report may contain recommendations for action to be taken by the public authority and if such action is not undertaken within a reasonable period of time, the Commission may then refer the issue to the Secretary of State, who has power to issue directions in relation to the matter. Where the Secretary of State makes directions to a public authority, he shall also provide written notification to the Northern Ireland Assembly (if reconstituted) of his actions.

6.5 Key Human Right Issues in Relation to Pregnant Schoolgirls and School Age Mothers

- There have been cases of school management advising pregnant schoolgirls and their parents not to return to school
- Teenagers of compulsory school age must be encouraged to remain in education.
- Given that pregnancy and childbirth necessitate disruption to a pupil's attendance, schools sometimes fail to make appropriate educational provision for the child (for example, the use of flexible time table arrangements and the sending of notes/work home).
- In terms of preparation for public examinations, pupils must be provided with information relating to coursework deadlines and examination time-tabling.
- If a child is bullied by her peers due to the discovery of her pregnancy and the school fails to take appropriate measures to tackle the situation there may be a breach of the duty of care.

6.6 Which Human Rights Articles of the ECHR should underpin a school's educational provision for School Age Mothers?

6.7 Article 2, Protocol 1 (ECHR) - The Right to Education

'No person shall be denied the right to education. In the exercise of any functions, which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching is in conformity with their own religious and philosophical convictions.'

Together with:

6.8 Article 14 (ECHR) - Prohibition of Discrimination

'The enjoyment of the rights and freedoms set forth in this convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status.'

There have been cases of the parents of pregnant school girls being asked by Principals to withdraw their child from school. This is a fundamental denial of the pupil's right to education enshrined in Article 2, Protocol 1 and, in terms of Article 14 of the ECHR, a highly discriminatory action. Also, it may be challenged under Section 24 of the Sex Discrimination (Northern Ireland) Order 1976 (as amended by the Sex discrimination (Northern Ireland) Order 1988).

As we have seen before, Article 2, Protocol 1 has been interpreted as the right to an *effective* education, meaning that an individual should be able to draw profit from it (i.e. gain recognised qualifications). If a school is to ensure that a pregnant school girl's or school age mother's right to education is protected, flexibility in terms of a reduced timetable, provision for the collection of notes and/or sending work home may well be required. In terms of supporting such a pupil, effective school-home liaison is essential if their individual educational needs are to be met.

Likewise, while pregnant school girls and school age mothers are still at school, school managers should be alert to the possibility of bullying and provide a system of pastoral support during this vulnerable time.

6.9 Article 8 (ECHR) - Right to Respect for Private and Family Life

Everyone has the right to respect for his private and family life, his home and his correspondence.

Even in the early stages of pregnancy, the possibility of medical emergency will probably necessitate the schoolgirl's teachers being informed of her condition. Clearly, senior members of staff should communicate this information in a confidential manner and as sensitively as possible on a 'need to know' basis. Given the proximity of other pupils in the school environment, staff should be reminded of the child's right to privacy and good professional practice should highlight the inappropriateness of public speculation on the circumstances surrounding the pregnancy.

6.10 Application of the Child's Right to Participation contained in the United Nations Convention on the Rights of the Child:

Article 12 of the United Nations Convention on the Rights of the Child provides:

'State Parties shall ensure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.'

While the UNCRC is not directly enforceable in domestic courts, it does provide a model of good practice in the protection and promotion of children's rights.

Obviously the individual educational, domestic and medical needs will vary greatly from one pregnant school girl or school age mother to another. In planning future educational provision and in the drawing up of an Individualised Educational Plan, the views of the individual pupil should be sought and carefully considered at all stages.

6.11 Suggested Actions

Given the nature of the school environment and the fact that many school girls become pregnant in the crucial GCSE years, it is clear that many pupils in this category will require a great deal of support if they are to gain an effective education in compliance with Article 2, Protocol 1 of the ECHR. As the level of support from home will vary from individual to individual, schools can have a significant influence in helping to ensure that the educational and future opportunities of these pupils are not compromised. Ultimately, schools, in liaison with other agencies, should aim for re-integration of the pupil back into education after their pregnancy.

So what can school managers do to help ensure that pregnant school girls and school age mothers have their rights protected?

- ✓ School managers should develop a policy on educational provision for pregnant school girls and school age mothers. The policy should be underpinned by reference to Article 2, Protocol 1 and have as its central aim the re-integration of the pupil into school life. It should outline procedures for liaison with home and outside agencies, pastoral support while at school, where necessary the provision of flexible time-tabling and the responsibility of a designated member of staff to collect work from teachers and arrange for it to be sent home.
- ✓ At the earliest possible point, a member of staff who perhaps will be a designated pastoral care co-ordinator and/or trained in counselling, should be identified as a point of contact between home, outside agencies and other members of staff. This member of staff should be able to provide pastoral support for the pupil.
- ✓ An individualised Education Plan (EP) should be drawn up as soon as the pupil has difficulty maintaining regular attendance and/or production of school work. The plan will probably need to be flexible and, in the case of pupils approaching public examinations, identify achievable goals.
- ✓ In the spirit of Article 12 of the UNCRC, the views of the individual should be sought whenever planning future educational provision.

- ✓ In order to protect the individual child from bullying from other pupils in the school and to encourage an understanding approach by teachers, staff should be made aware of the pupil's situation and their responsibilities as professionals.
- ✓ In accordance with Article 8 of the ECHR, the pupil's right to privacy should be respected at all stages of the pregnancy and birth.
- ✓ Post-birth, the school should liaise with the school age mother and have procedures to facilitate her re-integration both into school life and her education.



**Glossary of Legal
Terms**

**Recommended
Further Reading List**

**Advice and
Information**

Acknowledgements



Glossary of Legal Terms

Administrative Tribunal	A body established by or under an Act of Parliament to decide claims and disputes arising in connection with the administration of legislative schemes. E.g. industrial tribunal and education tribunals. Tribunals exist outside ordinary courts of law but their decisions are subject to judicial control.
Breach of Statutory Duty	Breach of a duty imposed on some person or body by a statute. The person or body in breach of the statutory duty may be liable to any criminal penalty imposed by the statute and may also be liable to pay damages to the person injured by the breach.
Common Law	The part of English Law based on rules developed by the royal courts during the first three centuries after the Norman Conquest in 1066 as a system applicable to the whole country, as opposed to local customs. Royal representatives were sent on tours (known as circuits) of the local shires to check on the conduct of local affairs generally, and this involved participating in the affairs of the local courts. At this time a body of the king's advisors also set up the first permanent royal court. Three royal courts were set up at Westminster known as the Court of the Exchequer which largely heard disputes concerning the revenues, the Court of Common Pleas followed and judges began to exercise jurisdiction in cases involving disputes between subjects rather than the royal revenues. A third royal court emerged known as the Court of King's Bench whose principal functions were the trial of civil actions in contract and tort and the exercise of superior functions over the inferior courts. The High Court of Justice replaced these three courts of common law together with the Court of Chancery when their jurisdiction was merged under the Judicature Acts of 1873-75.
Damages	A sum of money awarded by a court as compensation for a tort or breach of contract.
Derogation	An exemption clause that permits a member state of the EU to avoid a certain directive or regulation. E.g. The U.K. reservation to the Right to Education under Article 2, Protocol 1 (ECHR).
Duty of Care	The legal obligation to take reasonable care to avoid causing damage. There is no liability in tort for negligence unless the act or omission that causes damage is a breach of a duty of care owed to the plaintiff.
ECHR	The European Convention on Human Rights. A convention, originally formulated in 1950, aimed at protecting the human rights of all people in the member states of the Council of Europe. The Convention, together with a number of subsequent protocols, defines the freedoms that each member state must guarantee to all within its jurisdiction.

European Commission of Human Rights

The Convention established a Commission of Human Rights and a Court of Human Rights in Strasbourg. The Commission may hear complaints by an individual, group or non-governmental organisation claiming to be a victim of a breach of the Convention. The Commission cannot hear any complaint, however, unless the applicant has first tried all possible remedies in the national courts (in England he must usually first appeal to the House of Lords). All complaints must be made not later than 6 months from the date on which the final decision against the applicant was made in the national courts. Provided a case is deemed admissible to the Commission, the Commission will investigate a complaint and attempt to achieve an amicable settlement between parties. If this fails, the Commission sends a report on the case to the Committee of Ministers of the Council of Europe. The case may then be brought before the Court of Human Rights within three months by either the Commission or one of the states concerned (an individual victim cannot take the matter to the court himself).

European Court of Human Rights

See European Commission of Human Rights (above). The Court has the power to make a final ruling, which is binding on state parties, and in some cases to award compensation. If the matter is not taken to the Court, a decision is instead made by the Committee of Ministers of the Council of Europe.

House of Lords

The final court of appeal in the U.K. in both civil and criminal cases.

Human Rights

The rights and freedom to which every human being is entitled.

Judicial review

The procedure by which remedies are obtainable in the High Court against inferior courts, tribunals and administrative authorities.

Loco parentis

The traditional view was that a teacher's authority derived from implied delegation of parental authority. The teacher was, as it were, in loco parentis during the school day and, as such, had the same power and authority as a parent. Under the Children (NI) Order 1995, a person with parental authority may delegate some or all of their responsibility to another person who already has parental responsibility for the child or to those who have not, such as schools or holiday camps. Such delegation will not absolve a person with parental responsibility from any liability for failure to discharge his/her responsibilities towards the child. The legal position of those who are caring for a child but who do not have parental responsibility is that they may (subject to the provisions of the Children (NI) Order 1995) do what is reasonable in all of the circumstances for the purpose of safeguarding or promoting the child's welfare.

Natural Justice	Rules of fair play originally developed by the courts of equity to control the decisions of inferior courts and then gradually extended to apply equally to the decisions of administrative and domestic tribunals and of any authority exercising an administrative power that affects a person's status, rights or liabilities. Any decision reached in contravention of natural justice is void as <i>ultra vires</i> (beyond the rule of law). There are two principal rules. The first is the rule against bias. This means that any decision is invalid, if made by a person with any financial or other interest in the outcome or any known bias that might have affected his impartiality. The second is <i>audi alteram partem</i> (hear the other side). It states that a decision cannot stand unless the person directly affected by it was given a fair opportunity both to state his case and to know and answer the other side's case.
Negligence	Carelessness amounting to the culpable breach of a duty: failure to do something that a reasonable man (i.e. an average responsible citizen) would do, or doing something that a reasonable man would not do. In cases of professional negligence, involving someone with a special skill, that person is expected to show the skill of an average member of his profession. Negligence does not give rise to civil liability unless the defendant's failure to conform to the standards of the reasonable man was a breach of a duty of care (see above) owed to the plaintiff, which has caused the plaintiff damage.
Proof/Standard of Proof	The degree of proof required for any fact in issue in litigation, which is established by assessing the evidence relevant to it. In criminal cases the standard of proof is 'beyond reasonable doubt' and in civil cases the standard is 'on a balance of probabilities'.
Proportionality	A principle of the EU ensuring that a legislative measure is introduced at EU level only when it is appropriate to have a measure at that level, and that when local legislation is all that is needed, this will be encouraged.
Protocol	Often used to amend treaties, it may also be an instrument subsidiary or ancillary to a convention and may deal with points of interpretation or reservation.
Reservation	See Derogation (above).
Tort	A wrongful act or omission for which damages may be obtained in a civil court by the person wronged, other than a wrong that is only a breach of contract.

UNCRC

The United General Assembly adopted the United Nations Convention on the Rights of The Child on 20th November 1989. The U.K. Government ratified the Convention in December 1991 and as such has given a firm commitment to ensure that legislation, policy and practice relating to children is in conformity with the Convention rights. The UNCRC is the first international treaty that recognises children's rights as separate from and additional to the rights of adults. The Convention covers not only civil and political rights but also social, economic, cultural and humanitarian rights. Although the rights are not arguable before our domestic courts, the European Court of Human Rights increasingly looks to expanding human rights arguments for children by using some of the provisions in the Convention. For this reason, the Convention provides an important tool for examining and evaluating legislation policy and practice in all aspects of children's lives.

Vicarious Liability

Legal liability imposed upon on one person for crimes or torts committed by another (usually an employee but sometimes an independent contractor or agent), although the person made vicariously liable is not personally at fault. An employer is vicariously liable for torts committed by his employees when he has authorised or ratified them or when the tort was committed in the course of the employees' work.

All of the above definitions of legal terms have been adapted from the Oxford Dictionary of Law (Fourth Edition), Edited by Elizabeth A. Martin and published by Oxford University Press.

Recommended Further Reading List

- 'ChildRIGHT' – A journal of law and policy affecting children and young people in England and Wales published by the Children's Legal Centre in association with the University of Essex
- Education Law Reports, published by Jordans in association with ELAS
- Education Law Journal, published by Jordans 'The Child and the European Convention on Human Rights' by Dr. Ursula Kilkelly, Lecturer in Law, University College Cork, published by Ashgate Dartmouth
- 'Education Law, Policy and Practice in Northern Ireland' by Laura Lundy, Senior Lecturer, School of Law, Queen's University, Belfast, published by SLS Legal Publications (NI)
- 'Education in England, Wales and Northern Ireland: A Guide to the System' written by Holt, Boyd, Dickinson, Loose and O'Donnell, published by NFER
- 'Focus on Bullying', Save the Children, 2002
- 'Governor's Handbook: A comprehensive guide to the duties and responsibilities of school governors in England and Wales' (Fifth Edition), published by the ADVISORY CENTRE FOR EDUCATION (ACE), 1C Aberdeen Studios, 22 Highbury Grove, London N5 2DQ – Guidance for England and Wales
- 'Governor's pocket guide to exclusion from school', published by the ADVISORY CENTRE FOR EDUCATION (ACE) – Guidance for England and Wales
- Oxford Dictionary of Law (Fourth Edition), edited by Elizabeth A. Martin
- 'Special Needs: Support for Governors: Guidance and Training Materials to help School Governors carry out their duties for Special Educational Needs' published by the ADVISORY CENTRE FOR EDUCATION (ACE) – Guidance for England and Wales
- 'Running a School: Legal Duties and Responsibilities 2002/03' – An annual guide to the changing legal duties and responsibilities of managing schools today, written by Richard Gold and Dena Coleman and published by Jordans - Guidance for England and Wales

Advice and Information

The Children's Law Centre (NI), publish a comprehensive Information Pack on the law relating to children and young people in Northern Ireland. This Information Pack may be purchased by mail order by contacting the Children's Law Centre directly.

Fee for Information Pack

£20 to Members and Membership Organisations
£35 to Non-Members

Subscription Fee for Membership

£35 per annum (per organisation)
£30 per annum (associate membership)

The Children's Law Centre may also provide an advice and information service to all its subscribed Members, on the rights and laws affecting young people including specific information on Education legislation, policy and practice in Northern Ireland, upon request.

Contact: The Children's Law Centre
3rd Floor
Philip House
123 –137 York Street
Belfast
BT15 1AB

Tel: 028 90 245704
Fax: 028 90 245679

The Children's Law Centre also operates a freephone advice line for children and young people, detailed as follows:

CHALKY FREEPHONE ADVICE LINE –TEL NO: 0808 808 5678
(Hours of business: 9am – 4.30pm Monday –Friday)

Posters and flyers in respect of this service may be obtained for your school by contacting the Children's Law Centre directly.

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