

The legal duties on schools



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Themes: what are the limits of a school's power?

- Do the school's duties stop at the school gate? If not, how much further do they stretch?
- Can a school investigate an incident being investigated by the police? What about the burden of proof?
- Does a school have a duties in relation to historic abuse allegations?

The different angles

- We will consider:
 - Safeguarding
 - Discipline
 - Historic allegations

Safeguarding: legislation

- Maintained schools: GB “shall make arrangements for ensuring that their functions relating to the conduct of the school are exercised with a view to safeguarding and promoting the welfare of children who are pupils at the school” (section 175 Education Act 2002).
- Academies / independent schools have to ensure there are “arrangements...to safeguard and promote the welfare of pupils at the school” (Education (Independent School Standards) Regulations 2014).

Safeguarding: key guidance

- ‘Sexual violence and harassment between children in schools and colleges’ (DfE, May 2018) (non statutory guidance)
- ‘Keeping children safe in education’ (DfE, January 2021) (statutory guidance)

Safeguarding: responding to a report

- 'Victim' should be reassured they are being taken seriously and be supported
- Scope of duty:
 - Where report away from school premises, the principles to promote safeguarding remain the same.
 - Applies where both students from same school, and where students from different schools

See para 45 of non statutory guidance.

Safeguarding: following report

- Designated safeguarding lead should carry out a risk assessment considering victim, alleged perpetrator and other children.
- Options to consider:
 - Manage internally
 - Early help
 - Referrals to social services
 - Reporting to policy.

Discipline: legal framework

- Headteacher responsible for “disciplinary penalties” (section 89 of Education and Inspections Act 2006).
- “Disciplinary penalty” includes “conduct which occurs at a time when the pupil is not on the premises of a school and is not under the lawful control or charge of a member of the staff of a school, but only to the extent that it is reasonable for the school imposing the penalty to regulate the pupil's conduct at such a time” (section 90(2)(a)).

Discipline: legal framework

- Behaviour and discipline in schools (DfE, January 2016)
- Behaviour policy of school

Discipline: concurrent investigations

- NSG: “Disciplinary action can be taken whilst other investigations by the police and/or children’s social care are ongoing.”
- However consider the following issues:
 - Different burdens of proof
 - Whether they would prejudice investigation or subsequent prosecution
- Any investigation has to be fair, balancing victim and perpetrator interests

Historic allegations

- Depends on case by case basis: primarily whether alleged perpetrator / victim still at the school.
- May be non-legal reasons to investigate.

Thank you for listening

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