



## December 2009

---

### News

---

#### **Health and Safety of Learners Outside the Classroom (HASLOC) – revision of guidance**

The Department for Children, Schools and Families (DCSF) has brought out a new guidance document on which it is seeking consultation. The new guidance is not statutory although it replaces the previous guidance to which Independent schools must have regard under the Education (Independent School Standards) (England) regulations 2003. The new guidance seeks to achieve four main criteria:

- to keep learners safe
- to cut red tape
- to build the confidence of those undertaking the trips
- to show how the employer should offer support in the event of an incident.

The guidance stresses the statutory legal obligations of the employer to ensure safety as far as reasonably practicable encompassing the obligation to carry out risk assessments, record any risks, take appropriate action to avoid those risks and to inform colleagues of any particular circumstances. Employers are responsible for ensuring that staff are properly trained in health and safety.

Employees have a responsibility to look after their own and others' health and safety, to be trained and to report a situation where they believe there is serious or immediate risk or systemic shortcoming.

Anyone in charge of children and young people has a common law duty of care where they are acting in loco parentis and must behave as a prudent parent would behave.

The guidance seeks to encourage staff to take on trips etc based on reassurance that as long as they have followed the guidance in accordance with the law, teachers will be supported by their employers. Whilst it is possible for a parent to sue an individual teacher in civil law there is no record by the DCSF that this has happened. Individual staff and governors would not be liable under the Corporate Manslaughter and Corporate Homicide Act 2007 although senior management and the governing body as a corporate entity would be. Two criminal prosecutions of individual staff have been recorded, one for breach of health and safety and one for manslaughter. It is worth noting that both instances

involved drowning and the transgressions were regarded as "unbelievably foolhardy and negligent" and "many safety measures were not adhered to". Since 1985 fatalities have averaged 2/3 per annum.

As an employer there needs to be appropriate insurance in place in the event that an accident occurs.

The value of learning outside the classroom is recognised but the increasing tendency for us to live in a litigious society means that many schools will adopt a 'why take the risk' approach. This guidance is intended to help to redress the balance. Comments are open to teachers, governors, parents and interested parties by February 2010.

## Children, Schools and Families Bill

---

The Queen's speech included reference to a new Bill, the purpose of which is to "introduce guarantees for pupils and parents to raise educational standards".

The thrust of the Bill is to empower parents to be able to hold schools accountable for delivering a recognised standard of education. The recognised standard of education is contained within 'specific entitlements'. Local Authorities will conduct parental satisfaction surveys annually and prepare response plans where the survey results are negative. To meet the acknowledged standards, 21st century schools will be expected to work more collaboratively, through partnerships and have greater flexibility in how they spend their budgets. Schools, through curriculum reform will be required to equip students with the skills required by employers and wanted by students, to take them forward into the world of work. Personal Social Health and Economic Education (PSHE) will become a statutory requirement.

The Bill anticipates a licensing system for teachers to (according to the official site of the Prime Minister's Office) "professionalise the workforce".

Finally, there will be emphasis placed upon safeguarding the vulnerable and opening up the amount of information that can be reported by the press attending proceedings in the family courts.

It is interesting to note that whilst the Bill anticipates the routes and actions open to parents to pursue schools in the event of unsatisfactory delivery, the schools do not appear to be given any sharper teeth with respect to the enforcement of any parenting agreements. 'Reasonable' effort is required to ensure these are signed but it is not compulsory and no child is to be excluded from school because their parent has not signed the declaration. Specifically, s.111(6) of the School Standards Framework Act 1998 states that the agreement provides no contractual or tortious liabilities if the agreement is breached. The proposed Bill does not change this.

## Case Reports

---

### **Webster and others v Governors of the Ridgeway Foundation School [2009]All ER ( D ) 196 (May)**

This case is ongoing and is a claim for compensation following the serious assault of a pupil on school grounds by fellow pupils and others. The attack followed racial tension at the school and an alleged history of fighting and bad behaviour. The claimants believe that the school was negligent in that it did not do enough to prevent the situation arising. What makes this case significant is that the High Court Judge has required that a Serious Case Review is carried out into the circumstances. Normally, such a review is carried out where parents have been neglectful or abusive. In this situation it is the school that could be held to account. The review would be called where there are deemed to be

lessons learned from the way local professionals and agencies work together to promote and safeguard the welfare of children, for example the Baby P case. When deciding whether such a review is required, guidance under the government guidance 'Working Together to Safeguard Children' is referred to. The guidance states that a review would be called where a child sustains a potentially life threatening injury or serious and permanent impairment of health and development through abuse or neglect. The guidance indicates that if the answer to a number of questions would be 'yes' then a review is required. These questions are:

Was there clear evidence of a risk of significant harm to a child that was:

- not recognised by organisations or individuals in contact with the child
- not shared
- not acted on appropriately.

Schools and Further Education Colleges have an obligation under Education legislation to provide a safe learning environment for their students. A serious case review should be completed within five months of the Local Safeguarding Children's Board being notified of the need. The Judges direction was given in November so the review should theoretically be completed by May of next year.

### **R (on the application of A) v North Somerset council**

This case concerned the right of a SEN student to free transport to the college of his choice.

Free transport had been refused by the council on the basis that an alternative college was able to provide the required course and that as that alternative college already had transport provisions in place, the additional taxi costs to get the student to the first choice college were not payable.

The student appealed on the basis that:

**a/**It was not the role of the panel to make a decision as to which institution a student should attend. A statement of educational needs spells out what the authority's duty is to make provision.

**b/**The panels decision was irrational i.e. 'it did not add up'.

**c/**Procedural unfairness based on the submission that proper notice was not given to the student who was not given the opportunity to respond.

**d/**There was a case under the Disability Discrimination Act 1995 that due regard must be given to needs of the disabled.

The High Court Judge concluded that it was correct to quash the original panel decision on the basis that it was irrational and fundamentally flawed with procedural unfairness. The panel decision was over focused on the educational content of the two college courses available and not the different time deliveries and intensities of the two courses. The student's statement showed that a slower more repetitive course was best suited to his needs and that he needed physical activity as an educational need. These factors were not given due consideration. The procedural unfairness was that the procedure adopted did not make it clear to the student precisely what the Council's concerns were or what local knowledge or expertise the panel had.

Points a and d were rejected.

The crux of the judgement is that a decision involving the choice of educational institution for a SEN student must have first regard to the student's needs in accordance with the statement. Whilst other considerations are material it is the student's holistic needs that must take precedence.

## Q & A

---

If you have a topic or question you would like answered and which can be covered in the bulletin, please forward it to us. The question will be edited so the identity of the questioner will not be given and anonymity assured.

For further information or advice on any education issue please contact Julia Green on:

e: [julia.green@footanstey.com](mailto:julia.green@footanstey.com)

t: 01752 675504

w: [www.footanstey.com](http://www.footanstey.com)

This bulletin is provided for information purposes only. Its contents do not constitute legal advice and should not be regarded as a substitute for specific professional advice.

© Foot Anstey 2009. All Rights Reserved.

---

**Offices in Exeter, Plymouth, Taunton & Truro**

*Foot Anstey is regulated by the Solicitors Regulation Authority No. 321319*

**[Click here](#)** to unsubscribe.

progressive ◀ determined ▶ supportive